



Preparation of General and Sector Specific Implementation Guidelines for Public Private Partnerships

APPENDIX

Appendix A PPP Glossary and Key Concepts

This section provides a PPP Glossary of key terms, and references for further reading on PPP key concepts.

- I. **Part 1: Glossary**
- II. **Part 2: PPP Toolkits**

Part 1: Glossary

A	
Accountability	This word refers to the basic principle that the manager responsible for a service should have the authority to control all of the necessary functions of the organization. In return should take the responsibility for ensuring that the organization operates in a satisfactory and cost effective manner. The Private Party should acknowledge that it is accountable to the end-users and to the Contracting Authority that has engaged or licensed them. The Private Party is aware that if it fails to provide the required service in the required way, there will be consequences as defined in the Agreement. Such accountability results from a well-prepared contractual agreement, from effective enforcement of the terms of the agreement, and from the understanding that there will be penalties if expectations are not met.
Affordability	Ability of an individual or a community to pay for the services as proposed. A proposal is said to be affordable if it requires an individual expenditure at below their ability. (See also Willingness to Pay)
Affordability Analysis	Affordability analysis is the procedure for determining the maximum amount that the clients of a PPP, whether a public authority, end-users, or a combination of both, can afford to pay for the new PPP project’s services over the entire life of the contract. This procedure is often completed by setting an “affordability limit” that clients can be expected to pay, and PPP prices or tariffs that are above this limit are considered unaffordable and therefore cannot be approved by the PPP Board.
Annual debt service cover ratio (ADSCR)	This measures the pre-finance post-tax cash flow for the previous year in relation to the amount of loan interest and principals payable for that period.
Availability	When applied to equipment or vehicles it means the percentage of time that the item is in a condition such that it can perform the work for which it is intended, and not required for any maintenance or testing purpose that would prevent it from being used for this work. The period when the facility (or the relevant part thereof) is able to provide the service as required under the PPP Agreement. When applied to infrastructure it means the percentage of time the infrastructure is available to provide the service as required under the PPP contract and not closed due to maintenance, breakdown and so on.
Award criteria	The criteria based on which the Preferred Bidder is selected and the PPP contract is awarded.
B	
Balance Sheet	A statement of the total assets and liabilities of an organization at a particular date, usually the last day of the accounting period. The first part of the statement lists the fixed and current assets and the liabilities, the second part shows how they have been financed: the totals for each part must be equal. The balance sheet is one of the primary statements to be included in the financial accounts of a company.

Bankruptcy	A legal condition in which an individual's or a company's assets are assumed by a court official, and the company is operated and/or its assets are used to pay off its creditors
Base Case	The lenders' projections of project cash flow at or shortly before the stage of Financial Closure .
Bid Bond	The corporate surety bond or a certified check drawn on a national bank, in the amount specified in the Instruction to Bidders, submitted with the bid as a guarantee that the bidder will, if called upon to do so, accept and enter into the Contract.
Bidder	Someone who responds to a request for Expression of Interest or an invitation to submit a bid in response to a Project Notice. A bidder could be a single party or a consortium of parties, each responsible for a specific element, such as constructing the infrastructure, supplying the equipment, or operating the business. Government normally contracts with only one lead party (Lead Firm) who is responsible for the provision of all contracted services on behalf of the consortium.
Board	The Board established pursuant to the Public Private Partnership Proclamation No. 1076/2018.
BOO	Build Own Operate. A form of project wherein a private party or consortium agrees to finance, construct, operate, and maintain a facility previously owned and/or operated by a Public Entity. The Private Party retains ownership of the facility. The Private Party bears the commercial risk of operating the facility.
BOOT	Build Own Operate Transfer. A PPP Model under which the Private Party builds the assets, owns them, operates and maintains them and at the end of the PPP Term, transfers the assets back to the Contracting Authority.
BOT	Build Operate Transfer. A PPP Model under which the Private Party builds the assets, operates and maintains them and at the end of the PPP Term, transfers the assets back to the Contracting Authority.
Business Case	The formal presentation of the project for approval within the Public Entity and to other branches of government
C	
Capacity Building	Improving and building the technical and managerial skills and resources within an organization. This could include training in technical, managerial and administrative fields, the provision of extra staff, the development of computer software and administrative procedures, and new personnel management policies.
Capex (CAPEX)	Capital Expenditure; usually refers to the costs of constructing, developing or acquiring an Infrastructure Facility.
Capital costs	Investment cost. Includes items such as land, site development, infrastructure, plant and equipment, and license costs.
Commercial Operations Date (COD)	The stage when project construction ends and commercial operations start.

Concession	Concessions are essentially an extension of the lease concept. The Contracting Authority concedes the right to ownership and management of the domain of the concession for a specified duration, with ownership to be returned to the concession authority at the end of the concession period. The duration of the concession depends upon a number of factors, the most important being the time required to recover initial investments made by the private party (the concessionaire). There is a grey area between leases and concessions, depending on issues such as the extent to which the private party is responsible for financing investments.
Concession agreement	The contract document for a concession, specifying every element of the project in detail, to be signed between the Private Party and the Contracting Authority
Concession Period	The duration of the concession agreement
Concessionaire	The Project Company set up by the Private Party that has won a concession to provide a service by means of an Infrastructure Facility, and has signed a concession agreement.
Conditions Precedent	Conditions to be fulfilled by the Project Company before drawing on the debt, or before project contract becomes effective. Also, conditions to be fulfilled by the Contracting Authority before the project contract becomes effective.
Construction period	The period from Financial Close to the Service Availability Date.
Construction Risks	Risks relating to the construction of the facility/relevant infrastructure.
Contingent Liability	A liability which is uncertain as to its materialization, e.g. a guarantee by the government to pay the debt of a public enterprise, either in amount or in timing
Contracting Authority	A Public Body or a Public Enterprise which intends to enter into a Public Private Partnership Agreement with a Private Party .
Cost recovery	Recovering the cost of services from the users. Cost recovery may be by direct or indirect charges.
Cost-Benefit Analysis	The ratio of the Net Present Value (NPV) of the benefits of a project to the NPV of its costs (from the public-sector point of view)
Cost-Effectiveness Analysis	A comparison of the costs of different solutions to procurement of a project
Credit Risk	The risk that a borrower will default on any type of debt by failing to make payments which it is obligated to do

D

Data Room	In addition to the PPP bidding documents, the Information Memorandum, and the Draft PPP Contract, private bidders for large and complex PPP projects often need access to additional, detailed and specialized background information about the PPP project in order to prepare competitive and innovative bids. Data rooms are typically libraries of numerous volumes of detailed records, reports, and plans relevant to a specific (usually large) infrastructure project that bidders may access while they are preparing their bids. For PPPs that require private partners to take over the operation and management of existing facilities, having access to historical design plans, asset registries, and operating and maintenance data will be critical. For PPP projects in which the bidders will be assuming end-user demand risks, having access to detailed demand, billing, collection, and revenue records will also be critical. “Virtual” data rooms use the data storage technologies and webpages to make this information available electronically to prequalified bidders.
DBF	Design-Build-Finance a form of contract for the design and construction of a facility, in which short-term financing for the construction of the relevant infrastructure is completely or partially provided by the Private Party. The agreement may be supplemented with an operations contract where the Private Party operates the relevant infrastructure for a fixed fee.
DBFO	Design-Build-Finance-Operate a form of contract for the design, construction, finance and operation of a relevant infrastructure in return for a fixed fee paid by the Contracting Authority or from fees collected by users of the relevant infrastructure.
DBO	Design-Build-Operate, a form of long-term contract for construction and operation of a facility, in which funding is provided by the Contracting Authority
Debt	Finance provided by the lenders
Debt Service	The amount of debt interest and the principal repayments
Debt Service Coverage Ratio (DSCR)	The ratio of cash available for debt service to the actual debt service. Lenders typically require a DSCR ranging from 1.2 to 1.5 when there is no demand/market risk for the output and a higher level where demand/market risk is present.
Debt: Equity Ratio	Ratio of debt to equity. This will range from 90:10 to 60:40 depending on the risks the project is facing
Demand Analysis	Demand analysis is the procedure that forecasts the volume of service that the public authority client or end users will need from the project over its entire economic life of the project. This demand forecasts provides a very important indication of how large the project must be in terms of its design capacity, to adequately meet projected demand. This demand forecast will also indicate whether, when, and what size additional expansions to project’s capacity should be made during the life of the project in order to adequately meet future demand.
Discount rate	The percentage rate used to reduce a future cash flow to a current value, and so calculate its Net Present Value (NPV)
Discounted Cash Flow (DCF)	A calculation of the current value (NPV) of a future cash flow

Divestiture	The partial or full disposal of a business, by sale or otherwise, of a business activity
Due Diligence	Review and evaluation of the Project, scope, obligations, legal situation, parties involved, contracts, etc. and their related risks, carried out by both the Contracting Authority and the lenders
E	
Early termination payment	Most PPP contracts incorporate clauses that determine compensation payments, based on the expected losses that either party will incur due to the early project termination and dependent on the outcome of negotiations on risk distribution.
Economic Feasibility Analysis (EFA)	A PPP project's economic costs include both the direct and tangible, cash-based costs as well as the indirect and intangible costs, such as costs for mitigating negative environmental impacts, resettlement costs, etc. The project's economic benefits, which are often a major source of justifying a long-term infrastructure project's enormous investment requirements, will also include indirect benefits such as reduced congestion on roads, improved public health levels, improved education levels, etc. As economic feasibility analysis makes adjustments to a project's financial feasibility analysis, this procedure requires that the PPP Project Financial Feasibility Analysis be completed first.
Emergency Step-In	The right of the Contracting Authority to take over operation of the Facility for reasons of safety, public security, etc.
Engineering, Procurement and Construction Contract (EPC Contract)	A fixed-price, date-certain, turnkey contract. Usually, it involves design and engineering, equipment procurement or manufacture, and construction and erection of process or other plant. Until the time that PPPs were introduced, this was the most common mode of procurement in Governments.
Environmental Impact Assessment (EIA)	A study of the effect of the project's construction and operation on the natural and human environment
Environmental Impact Assessment (EIA)	Analysis of which environmental permits will likely be required, how to determine the project's overall environmental feasibility, and which additional environmental impact remediation measures the project would require.
Environmental risks	Risks relating to the environmental effect of the construction or operation of the Facility
Equality of treatment	The principle of Equality of Treatment means that all bidders are, in advance, equally aware of the tender procedure, the award criteria, the award method and (if applicable) the qualification criteria and the pre-established criteria apply to all bidders in the same manner.
Equity	The portion of the project's capex contributed by the investors to the Project Company, either as share capital or subordinated debt
Expression of Interest (EOI)	A document submitted by prospective Private Parties in response to a request for prequalification issued by the PPPDG.
Externalities	Economic, social, environmental or other effects of a project, the benefit or cost of which cannot be charged to users of the facility
F	

Facility	The public infrastructure provided under the PPP Contract
Financial closure	The stage when the Concessionaire ties up with the banks/financial institutions for the funds required for the project, and conditions precedent to initial drawing of the debt have been fulfilled
Financial Feasibility Analysis	Financial feasibility analysis for a PPP estimates the total costs of the project and then identifies the likely range of tariffs, fees or per-unit prices that will be required to recover all of these costs for the project to financially viable as a PPP. These cost estimates must include a realistic, expected return on the private partner’s equity. Financial feasibility analysis differs from economic feasibility analysis, which estimates and includes the non-cash benefits and costs of the project (i.e. reduced traffic congestion, shorter commuting times, reduced pollution levels, etc.) as well as the traditional cash-based revenues and costs of financial feasibility analysis.
Financial model	The financial model(s) used by the Public Authority, investors and lenders to review and monitor the project
Force Majeure	Acts of God and other specified risks (e.g. terrorism) which are beyond the control of the parties to the contract and as a result of which a party is prevented from or delayed in performing any of its non-financial obligations under the contract
G	
Government Support	The economic support and guarantees that may be provided in accordance with Article 47 of the Public Private Partnership Proclamation No. 1076/2018.
Greenfield Project	Project involving constructing a completely new facility or building on a site where there have previously been no major structures
Guarantees	Guarantees serve to reduce the project risk for either party. Examples are: The potential PPP contractor has to provide bid guarantee with the bid, to mitigate the risk of the potential contractor not being able to provide the services as per his bid. The public sector can provide minimum income guarantees to the PPP contractor, herewith reducing the project's demand risk.
H	
Handback requirements	Hand-back requirements are included in the PPP contract to describe the quality and maintenance standards under which a project is to be handed back to the public authorities at the end of the PPP contract period.
I	
Independent Engineer	The consulting engineer or expert jointly appointed by the Authority and the Concessionaire whose duties involve
Infrastructure Facility	As per the Public Private Partnership Proclamation No. 1076/2018, this means any physical facility and systems that directly or indirectly provide Public Service Activity .

Investors' Conference	Investor Conferences are meetings conducted by public authorities to promote private investor interest in an individual or a group of related PPP investment projects and contracting opportunities. These conferences, which seek to distribute key information about new projects, may be conducted within Country, or may even feature investment “road shows” beyond the region, which will target potential foreign investors and operator.
K	
Key Performance Indicators (KPI)	An objective and verifiable criteria that measures the success of an activity or process
L	
Legal & Institutional Feasibility Analysis	This procedure assesses the existing laws and regulations that are relevant to the specific project and determines whether or not these are adequate to make the project viable. This procedure also analyzes whether the existing public sector institutions have the capacity and resources to enforce these laws & regulations and to sustain all of the public sector’s roles and obligations throughout the term of the PPP contract.
Life cycle costs	The costs of major renewals of equipment/assets over the term of the PPP Contract
Limited recourse	Finance with limited guarantees from the Sponsors
Liquidated Damages	The agreed level of loss when a party does not perform under a contract.
LOI	Letter of Intent
M	
Management contract	A contract which engages expertise to direct manpower employed by the grantor and to use resources owned by the grantor. Management decisions are made by the contractor. The grantor pays only for management input.
Market Testing: Assessing the Private Sector’s Interest in the Project as a PPP	This is the process of determining if the both the general nature of the given project, plus the proposed risk allocation structure is one that serious private sector investors and their financiers would be willing to undertake as a PPP.
Ministry or Minister	The Ministry or Minister of Finance, respectively.
N	
Net Present Value (NPV)	<p>The discounted present value of a stream of future cash flows, i.e., the value of future cash flows in today’s money.</p> <p>If the NPV is greater than 0 it means the investment would add value to the firm. The project should be accepted.</p> <p>If the NPV is less than 0 it means the investment would subtract value from the firm. The project should be rejected</p> <p>If the NPV = 0 it means the investment would neither gain nor lose value for the firm. The project could be accepted as shareholders obtain required rate of return.</p>

Non-Recourse Finance	Refers to the financing of a project with no guarantee from the Sponsors, i.e., the lenders cannot mortgage/seize the personal assets/finances of the Sponsors in the event of payment default
O	
O&M	Refers to a contract for the Operation and Maintenance of a relevant infrastructure or Public Service Activity.
Operating Expenditures or Operational Expenses (OPEX)	Refers to the day-to-day general, administration and overhead costs of a relevant activity
Operation phase	The period between the start of commercial operations and the end of the PPP contract term.
Operation phase risks	Risks relating to the operation phase which may affect the Project Company's revenues or Operating Expenditures (OPEX).
Output Levels of Service	This is the procedure, at the beginning of the PPP Feasibility Study, of preparing the key output levels of service that the PPP project will be required to deliver to successfully meet the project's goals and needs. Such output levels of service must be clear, measurable, and also provide a solid foundation for the overall analysis, preparation, risk-structuring and "bankability" of the project as a PPP. It should be noted that this is the first attempt and organizing, outlining, and drafting the PPP's outputs standards, and that it is likely these will need to be updated, modified, and made more specific before the PPP Feasibility Study is completed, based on the results of the other procedures of this Phase.
Outputs	Service requirements under a PPP, defined on the basis of the Contracting Authority's requirements rather than how these requirements are to be delivered.
Owner's risks	The responsibilities of the Project Company under the Construction Subcontract.
P	
Project Management Checklist	A checklist designed to assist the Project Management Team and the PPP Directorate General in monitoring the responsibilities of the Contracting Authority and Private Partner under the Project Agreements for a specific project.
Penalties	Payments by the Project Company for failure to meet service requirements under a Concession
Performance Monitoring	Measuring the performance of a service on an on-going basis, in order to encourage the efficient use of available resources.
Person	Any natural or juridical person
Pilot Testing	A trial run of a planned program conducted on a small scale to forecast the likely success or effectiveness of the planned program. Changes may be made to the program depending on the results of the pilot study. The pilot test may be used to collect data that will be needed for comparison with alternatives or for full-scale implementation.

Political risks	Risks related to government actions affecting the Project Company or its operations.
PPP Directorate General Representative	The representative of the PPP Directorate General designated by the PPP Directorate General to serve on the Project Management Team.
PPP Project Pipeline	A list of projects that have been identified as potential Public Private Partnership projects
Private Party	A party that enters into a Public Private Partnership Agreement with a Contracting Authority .
Private sector	The part of the economy in which economic activity is carried out by private enterprise as distinct from the public sector.
Privatization	Complete transfer of public infrastructure to the private sector, as compared to PPPs, where it remains in the public sector.
Profit and Loss Account	Financial statement depicting a business entity's operating performance and reports the components of net income, including sales of service/units, rental income, operating rental expenses, income from rental operations, and income before tax.
Profit cap	A profit cap is a restriction on the rate of return allowed to be earned by the PPP Company. Profits that exceed the specified limited of allowed income (i.e. the profit cap) will then be withheld by the public.
Profit sharing	Profit-sharing concerns contractual provisions that specify that profits that exceed a certain pre-defined unacceptable level of income will be shared between the public and the private sector parties.
Project Agreement	The Public Private Partnership Agreement and other agreements entered into between the Contracting Authority or another Public Entity and the Private Party for the purpose of the project.
Project Company	The legal entity incorporated under the laws of the Federal Democratic Republic of Ethiopia by the successful bidder whose sole purpose shall be to execute and implement the Public Private Partnership Agreement and other Project Agreements, if any.
Project Finance	A method of raising long term debt financing for major projects through 'financial engineering', based on lending against the cash flow generated by the project alone; it depends on a detailed evaluation of a project's construction, operating and revenue risks, and their allocation between investors, lenders and other parties through contractual and other arrangements.
Project Information Memorandum (PIM)	The Information Memorandum (or "Info Memo") is a summary of the most relevant information that private investors would need to understand the overall purpose, objectives, key components, and major financial requirements and return opportunities from the new project. Unlike full PPP feasibility studies, which can go into great detail describing and analyzing a PPP project, an info memo provides a summarized version (usually 30-75 pages) of these analyses and describes the PPP project's risk-allocation structure to allow investors and financiers to decide whether and how to invest in the project.

Project Management Team	The team established by the Contracting Authority in accordance with Article 14 of PPP Proclamation and Article 9 sub article 1 of the Directive.
Proportionality	The Principle of Proportionality limits the scope for a tender awarding authority in the pre-establishment of the technical, financial and professional criteria for participation in and ultimate winning of the tender. The following main criteria for compliance with the Principle of Proportionality can be identified: - Tender criteria must be technically, financially and professionally proportionate to the subject of the tender; - Duration must allow for appropriate recovery of investment.
Public Body	Any organ of the Federal Government which is wholly financed by the Federal Government budget”
Public Enterprise	An enterprise fully owned by the Federal Government and defined under the relevant laws of the Federal Democratic Republic of Ethiopia.
Public Entity	Either a Public Body or a Public Enterprise
Public Private Partnership (PPP)	A long-term agreement between a Contracting Authority and a Private Party under which a Private Party: a) undertakes to perform a Public Service Activity that would otherwise be carried out by the Contracting Authority; b) receives a benefit by way of: (1) compensation by or on behalf of the Contracting Authority; (2) tariffs or fees collected by the Private Party from users or consumers of a service; or (3) a combination of such compensation and such charges or fees. c) is generally liable for risks arising from the performance of the activity or use of the state property in accordance with the terms of the Project Agreements.
Public Private Partnership Agreement	A contract concluded between the Contracting Authority and a Private Party setting forth the terms and conditions of the Public Private Partnership.
Public Private Partnership Directorate General or PPP Directorate General	The unit established within the Ministry pursuant to the Public Private Partnership Proclamation No. 1076/2018.
Public Procurement	The process of competitive bidding for a contract with the public sector.

Public Sector Comparator (PSC)	PSC represents the most efficient public procurement cost (including all capital and operating costs and share of overheads) after adjustments for Competitive Neutrality, Retained Risk and Transferable Risk (for definitions of these terms please refer to the Public Sector Comparator technical note) to achieve the required service delivery outcomes. This is used as the benchmark for assessing the potential value for money of private party bids in PPPI projects.
Public Service Activity	Any activity the government has decided to perform for the reason that it has deemed to be necessary in the general interest of the public and considered that private initiative was inadequate for carrying it out.
R	
Rate of Return	The return made on an investment, the rate of return indicates the profitability of the project.
Rate of return regulation	Regulation regarding the PPP company's maximum rate of return relative to the invested capital.
Refinancing	The process by which the previously-determined terms and conditions of financing are later changed through negotiations with the senior lenders, to create refinancing benefits for the shareholders and public sector authority, e.g. improved interest rates or longer maturity or repayment terms.
Regional States	Any region referred to in Article 47(1) of the Constitution of the Federal Democratic Republic of Ethiopia and includes the Addis Ababa and Dire Dawa city administrations.
Request for Proposal (RFP)	The Request for Proposal document should include all the information needed by qualified bidders to submit full and detailed bids for a PPP project to the public authority. This includes instructions to bidders for how to present their bids, as well as other relevant background information about the project, including the contents or the Data Room(s) (technical, economic, financial, legal, environmental, and other feasibility analyses) as well as the detailed PPP risk allocation structure of the project. These also includes instructions to bidders about the required formats in which their bids must be submitted and other requirements with which they must comply.
Request for Qualification (RFQ)	Pre-Qualification is the process of selecting a limited number of private sector bidders to actually submit full and detailed proposals for the given PPP project. This process ensures that only bids from qualified and experienced parties need to be evaluated. Implementing this procedures requires that the public authority both prepare Pre-Qualification documents and criteria for evaluating submitted qualifications
Residual Value	The value of the assets of the PPP contract at the end, by termination or otherwise, of the PPP Term.
Revenue sharing	Revenue-sharing concerns contractual provisions that specify that revenues that exceed a certain pre-defined level will be shared between the public and the private sector parties.
Risk	It refers to the probability of an event occurring and the consequences of its occurrence.

Risk Allocation Structure	Risk allocation is the process of determining which parties to make responsible for bearing the impacts of and for managing and controlling each project risks. These risks, which were identified and analyzed by the previous procedures (risk identification and analysis) should each be clearly allocated between the different parties to the project, including: the private service provider, the Government/public authority, or shared between the two.
Risk Analysis	This is the process of estimating the size of the impact of each major risk to the PPP project as well as estimating the probability that this specific risk event will occur to estimate the total cost of the risk, in quantitative terms, to the proposed PPP project.
Risk Identification	Risk identification is the process of determining which specific possible risk events (such as increases in the costs of land to be acquired, higher than planned construction costs, higher than planned operating costs, less than projected levels of demand for the project, etc.) are the most important in determining whether the project will be viable as a PPP or not.
Risk Management	The identification, assessment, allocation, mitigation and monitoring of risks associated with a project. The aim is to reduce their variability and impact.
Risk Matrix	A method of presenting all possible significant risks likely to be encountered in a project, the magnitude and likelihood of the risks occurring, their areas of impact, the allocation of risks between parties and the risk mitigation techniques to be employed.
Risk Mitigation	The attempt to reduce the likelihood of the risk occurring and the degree of its consequences for the risk-taker.
S	
Selection criteria	Selection criteria are used to pre-qualify bidders.
Senior Debt	The major funding component of the funds required for construction etc. Provided by banks or bonds, it has priority of repayment over other funding sources.
Senior Lenders	Lenders whose debt service comes before debt service on mezzanine or subordinated debt or Distributions.
Sensitivities	Variations on the Base Case assuming a worse than expected outcome for the project.
Shadow toll	Payment from the public budget to the private contractor related to the actual use of the service. For instance, on a road the private investor would receive a payment from the public budget for each car that uses the road.
Site Inspections	PPP projects that require complex construction activities, such as the construction of a new road along a lengthy corridor, include “site inspections” and “walk-throughs” hosted by the Public Authority and their PPP advisor for bidders’ technical staff to physically inspect to the proposed right-of-way and key project sites first-hand.
Site Risks	Risks related to the acquisition or condition of the project site.
Site-Legacy Risk	The risk of pre-existing contamination on the project site.

Special Purpose Vehicle (SPV) or Project Company	In establishing a project consortium, the sponsor or sponsors typically establish the private party in the form of an SPV which contracts with government. The SPV is simply an entity created to act as the legal manifestation of a project consortium, with no historical financial or operating record which government can assess. An SPV is a legal entity with no activity other than those connected with its borrowing.
Sponsors	The investors who bid for, develop and lead the project through their investment in the Project Company.
Stakeholders Consultation Plan	This procedure requires both the design as well as the on-going implementation of a plan for communicating with stakeholders and incorporating stakeholder inputs into key PPP project structuring decisions. Includes the important participation of key stakeholders from the end user, labor, private sector, public sector, Non-Governmental, and other relevant sectors
Step-in rights	A procedure allowing for the Contracting Authority or a project’s lenders to substitute the Private Party in a PPP Agreement upon serious breach by the Private Party or other events that could otherwise justify the termination of the PPP Agreement.
Subcontract	A contract between the Project Company and a third party, providing for performance of part of the Project Company's obligations under the PPP Contract.
Subcontractor	The party signing a Subcontract with the Project Company.
Subordinated Debt	Debt provided by investors whose debt service is paid after amounts due to Senior Lenders but before payment of dividends. Also known as “Junior Debt.”
Subrogation	Right of an insurer or guarantor to take over an asset on which an insurance claim or guarantee has been paid.
T	
Tariff	Payments under a contract, consisting of either an Availability Charge or a Usage Charge or both.
Technical Feasibility Analysis	A PPP project’s technical feasibility analysis identifies the key functional components of a project, the applicability of existing technologies to meet the planned output standards, as well as the size and probability of key risks to the technical performance of the project and its component parts. PPP contracts need to be output-based and to assign the risks of selecting the project’s inputs (like selecting the technology, design, materials, etc.) to the private partner. However, this procedure does not seek to prescribe what technical inputs the private partner must use. Rather this procedure confirms that a viable technical solution to the project does exist, it analyzes key risks to the technical performance of the project, and provides inputs for subsequent procedures that estimate the project’s capital and operating costs.
Termination sum	The compensation payable by the Public Authority for the early termination of the PPP Contract.
Transaction Advisor (TA)	The consultant for the project, offering financial, marketing and legal advice. Usually, TA offers service up to the stage of Financial Closure .
Transaction costs	Costs incurred by the Sponsoring Authority before Financial Close, such as consultancy charges, pre-feasibility analysis, etc.

Transferable risk	The risks that are likely to be allocated to the private party under a PPP arrangement.
Transparency	A method of conducting affairs in which the criteria for making decisions are clearly specified and these criteria are clearly employed in any decision-making process. It follows that there is no secrecy regarding the reasons for the making of any decision. In the context of this Pack, the decisions for which transparency is of particular importance are the selection of private sector companies to provide services. Transparency is also desirable in connection with the management of public funds, so that the reasons for allocation of funds are clear to the public and so that there is no suggestion of corruption.
Transparent	An action which incorporates objectivity and accountability;
Turnkey Contract	A contract with single-point responsibility for design, engineering, procurement of any equipment, and construction.
Two stage bidding	Adopted for large projects, wherein the Technical/Financial capability documents are invited from prospective bidders prior to inviting financial bids. Only technically and financially qualified bidders are asked to submit financial bids later on.
U	
Unitary payment	The private contractor is paid for its services from public budget, based on contractually agreed performance and regardless of the actual use of the services by the public.
Unsolicited proposals	As per the Public Private Partnership Proclamation No. 1076/2018, this means any proposed undertaking a Public Private Partnership project that is not submitted in response to a request or solicitation issued by the Contracting Authority within the context of a competitive selection procedure.
User charges	Users pay the private contractor directly for the use of the services.
V	
Value for Money (VfM)	Means that the undertaking of Public Service Activity of the Contracting Authority by a Private Party under a Public Private Partnership results in a net benefit accruing to that Contracting Authority or consumer defined in terms of cost, price, quality, quantity, timeliness of implementation and other factors which influence the determination of the best economic value compared to other options of delivering this Public Service Activity or use of government property.
Viability Gap Funding (VGF)	Where projects with low financial viability are given grants of up towards the project cost, making them financially viable under PPP. This is an important bidding parameter, if applicable.
W	
Willingness to pay	The willingness and ability of users of a Concession to pay the tolls or other usage fees required by the Concessionaire. This signifies that an individual or community is prepared to contribute regularly a specified sum of money for a particular benefit. It is different from ability to pay in that a citizen may be unwilling to pay a required fee (even if able to do so) if (s)he feels that the organization to be paid should not be supported because it is inadequate (for example, unreliable or corrupt) or that the service to be provided is unnecessary or unsuitable.

<p>Windfall gains</p>	<p>Although earning profits is a perfectly legitimate rational and a baseline condition for private sector business, instances can arise where profit levels of a PPP project increase so drastically (windfall gains) that it becomes socio-economically and politically unacceptable. For such instances, provisions should be provided in the PPP contract that specify how windfall gains should be dealt with. Generally, three types of provisions exist for dealing with windfall gains: (i) Profit (benefit) sharing; (ii) Rate of return regulation; (iii) Profit cap.</p>
<p>Win-Win</p>	<p>In the world of sport most games are “win-lose” – one side wins and the other loses. A win-win situation is one in which both or all parties involved benefit and are pleased with the outcome.</p>
<p>Working capital</p>	<p>The amount of funding required for operating and financing costs incurred before receipt of revenues.</p>

Part 2: PPP Toolkits

- The APMG Public-Private Partnership (PPP) Certification Guide
<https://ppp-certification.com>
- Australia – Guidelines for PPPs. The Partnership Framework. Australian Capital Territory, Canberra
https://apps.treasury.act.gov.au/_data/assets/pdf_file/0010/869941/Guidelines-for-PPPs-Second-Edition.pdf
- Australia – Partnerships Victoria PPP Guide
<http://www.dtf.vic.gov.au/Infrastructure-Delivery/Public-private-partnerships>
- Canadian Council for PPP
https://www.pppcouncil.ca/web/Knowledge_Centre/web/P3_Knowledge_Centre/P3_Knowledge_Centre.aspx?hkey=3087bf12-4363-4af3-b020-76b023d882b2
- Caribbean PPP Toolkit
<https://www.caribank.org/sites/default/files/publication-resources/PPP%20Toolkit-interactive.pdf>
- EU PPP Guide
http://ec.europa.eu/regional_policy/sources/docgener/guides/ppp_en.pdf
- European PPP Guide:
<http://www.eib.org/epec/g2g>
- Global Infrastructure Hub
<https://www.gihub.org/>
- IMF – Infrastructure Governance
<https://www.imf.org/external/np/fad/publicinvestment/>
- India PPP Toolkit
<https://www.pppinindia.gov.in/toolkit/highways/module1-racfopd-mriip.php?links=risk1a>
- OECD: Public Governance of Public-Private Partnerships
<https://www.oecd.org/governance/budgeting/PPP-Recommendation.pdf>
- PPIAF
<http://www.ppiaf.org>
- PPP: Principles of Policy and Finance. E. R. Yescombe 2007 Butterworth- Heinemann
- Private Financing of Toll Roads Gregory Fisher & Suman Babbar RMC Discussion Paper Series 117
http://documents.worldbank.org/curated/en/903191469672211019/pdf/164370REP_LACEM0gebank0please0fix0it.pdf
- PWC: Reimagining Public Private Partnerships (October 2017)
<https://www.pwc.com.au/legal/assets/reimagining-ppps-oct17.pdf>
- UNECE PPP Toolkit

- <https://www.unece.org/cicppp/cecipublications/ceci/2008/guidebook-on-promoting-good-governance-in-public-private-partnerships/guidebook-on-promoting-good-governance-in-public-private-partnerships.html> World Bank Private Participation in Infrastructure Database
<http://ppi.worldbank.org>
- World Bank: Public Private Partnership – Reference Guide (Volume 3)
<https://ppp.worldbank.org/public-private-partnership/library/ppp-reference-guide-3-0>
- World Bank: Creating a framework for public-private partnership (PPP) programs
<http://documents.worldbank.org/curated/en/153101468190188221/Creating-a-framework-for-public-private-partnership-PPP-programs-a-practical-guide-for-decision-makers>
- World Bank: Guidance on PPP Contractual Provisions (2019)
<https://ppp.worldbank.org/public-private-partnership/library/guidance-ppp-contractual-provisions>
- World Bank: A Checklist for Public-Private Partnership Projects
https://ppp.worldbank.org/public-private-partnership/sites/ppp.worldbank.org/files/documents/global_checklist_ppp_g20_investmentinfrastructure_en_2014.pdf
- World Bank: Policy Guidelines for Managing Unsolicited Proposals in Infrastructure Projects – Volume II
<https://ppp.worldbank.org/public-private-partnership/library/policy-guidelines-managing-unsolicited-proposals-infrastructure-projects>
- World Bank: How to Engage with the Private Sector in PPPs in Emerging Markets. Farquharson, Edward, Clemencia Torres de Mästle, E. R. Yescombe, and Javier Encinas. 2011
<http://documents.worldbank.org/curated/en/995241468337913618/pdf/How-to-engage-with-the-private-sector-in-public-private-partnerships-in-emerging-markets.pdf>

Specific References for Fiscal affordability and budget transparency

- OECD Budget Transparency Toolkit
<http://www.oecd.org/governance/budget-transparency-toolkit/>
- Fiscal Transparency Handbook 2018
https://books.google.co.uk/books?id=SNVVDwAAQBAJ&pg=PA121&lpg=PA121&dq=p+fram+tool&source=bl&ots=dbQmesVgQN&sig=ACfU3U1_buAWerPp5DIODPcfc12c7urWyQ&hl=en&sa=X&ved=2ahUKEwjD1ZuYp8jjAhV3VxUIHdT9AYAQ6AEwCHoECAgQAQ#v=onepage&q=p%20fram%20tool&f=false

- **PFRAM**

https://books.google.co.uk/books?id=SNVVDwAAQBAJ&pg=PA121&lpg=PA121&dq=p+fram+tool&source=bl&ots=dbQmesVgQN&sig=ACfU3U1_buAWerPp5DIODPcfc12c7urWyQ&hl=en&sa=X&ved=2ahUKEwjD1ZuYp8jjAhV3VxUIHdT9AYAQ6AEwCHoECAgQAQ#v=onepage&q=p%20fram%20tool&f=false

<https://www.github.org/resources/publications/ppp-fiscal-risk-assessment-model-pfram/>

- **IMF: How to control the fiscal costs of Public-Private Partnerships**

<https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=4&ved=2ahUKewit5N7b-crjAhXsSRUIHVpwAoIQFjADegQIBhAC&url=https%3A%2F%2Fwww.imf.org%2F~%2Fmedia%2Ffiles%2Fpublications%2FHowToNotes%2Fhowtonote1804.ashx&usg=AOvVaw1n2jPFDrrijINP9ByzB0QW>

<http://pubdocs.worldbank.org/en/773541448296707678/Disclosure-in-PPPs-Framework.pdf>

- **Implementing a Framework for Managing Fiscal Commitments from Public Private Partnerships. Operational Note 80057 the Financial and Private Sector Development (FPD) Network— Investment Climate Global Practice Private Participation in Infrastructure and Social Sector Service Line and the World Bank Institute (WBI).**

<http://documents.worldbank.org/curated/en/887211467986349778/pdf/80057-WP-ON-FCManagement-ForDistribution-Box-377295B-PUBLIC.pdf>

Appendix B Phase 1 PPP Project Identification & Suitability Analysis

- I. Part 1: PPP Suitability Application (Preliminary Screening Form and Prioritization)**
- II. Part 2: PPP Pre-feasibility Checklist**
- III. Part 3: PPP Project Pipeline Form**
- IV. Part 3 : Indicative Terms of Reference (ToR) for the External Advisor**

Part 1: PPP Suitability Application (Preliminary Screening Form and Prioritization)

Table B-1: PPP Suitability Application (Preliminary Screening)

	Preliminary Screening Question	Explanatory Notes	Public Entity Explanation		Public Entity Comments & Explanations
			Yes	No	
1	Is the project consistent with Ethiopia’s development objectives?	<ul style="list-style-type: none"> Is the project in line with the Growth and Transformation Plan? If so, answer yes. Is the project a priority for the Government? If so, answer yes. 			
2	Is there sufficient demand for the project outputs?	<ul style="list-style-type: none"> Does a project concept note exist with specified outputs and evaluating potential demand? If so, answer yes. 			
3	Will the project give substantial benefit to the public?	<ul style="list-style-type: none"> Have the potential benefits to the public been identified and are they significant? If so, answer yes. 			
4	Is the project expected to be able to transfer meaningful and appropriate risks to a private sector partner?	<ul style="list-style-type: none"> Has the potential allocation of risk between parties been identified by the Contracting Authority? If so, answer yes. 			
5	Is the project likely to deliver Value for Money?	<ul style="list-style-type: none"> Has the Contracting Authority identified the potential Value for Money the project can generate? If so, answer yes. 			
6	Are there sufficient financial resources, including those required for expected government support, available for the project?	<ul style="list-style-type: none"> Have the needs for financial resources from the Government been identified and can they be secured? If so, answer yes. 			
7	Does the Contracting Authority have sufficient capacity and resources to appropriately prepare and implement the project?	<ul style="list-style-type: none"> Has the Contracting Authority the adequate resources to carry out the feasibility study and to implement the project? If so, answer yes. 			
8	Is the output or services from the project affordable to users/ customers?	<ul style="list-style-type: none"> If a willingness to pay survey has been conducted and is positive, answer yes. 			

PPP Guidelines – Appendix

	Preliminary Screening Question	Explanatory Notes	Public Entity Explanation		Public Entity Comments & Explanations
			Yes	No	
		<ul style="list-style-type: none"> If a similar project has been implemented in Ethiopia providing services as a commercial project or a PPP, answer yes. 			
9	Is the project large enough to justify transaction costs, i.e. above USD 50M, and of a “bankable” size?	<ul style="list-style-type: none"> If so, answer yes. If project cost parameters are unknown at the preliminary screening stage, answer yes – transaction size and bankability will then be examined in detail at the prioritization screening stage. 			
10	Are the environmentally and social impacts of the project acceptable and can they be mitigated using Ethiopian and international standards?	<ul style="list-style-type: none"> If an E&SIA had been conducted and the result is positive, answer yes. If a largely similar project has been transacted in Ethiopia as a PPP with acceptable level of environmental/ social impact risk, answer yes. 			
11	Is the project replicable or scalable?	<ul style="list-style-type: none"> If a largely similar project has been successfully transacted in Ethiopia as a PPP, answer yes. If the project has characteristics that are obviously replicable or scalable, answer yes. 			
12	Can appropriate and relevant project risks be allocated to the public sector?	<ul style="list-style-type: none"> Has the GoE agreed to appropriate sovereign guarantees for largely similar projects elsewhere in Ethiopia? If so, answer yes. Have such risks been identified by the CA, and if so, are they of a type that are commonly allocated to the public sector, e.g. expropriation, title ownership, foreign exchange remittances, off-take guarantees, land provision, contribution of assets? If so, answer yes. 			
13	Is the business and revenue model adequate to attract private investment?	<ul style="list-style-type: none"> Has an estimate been made of IRR in excess of 15%? If so, answer yes. 			

PPP Guidelines – Appendix

	Preliminary Screening Question	Explanatory Notes	Public Entity Explanation		Public Entity Comments & Explanations
			Yes	No	
		<ul style="list-style-type: none"> ▪ Is there unmet strategic demand with no alternative source for services similar to that to be provided by the project? If so, answer yes. ▪ Are the project users' mainly commercial entities? If so, answer yes. ▪ Has the GoE accepted the demand risk with a subsidy for a largely similar project? If so, answer yes. ▪ Have investors shown interest in the sector and/ or project? If so, answer yes. 			

Table B-2: PPP Suitability Application (Prioritization)

	PPP Prioritization	Explanatory Notes	Contracting Authority Comments & Explanations	Step I Scoring (1-4)
Primary Criteria I - Level and Forms of Support				
1	Government / Political Support	<ul style="list-style-type: none"> This criterion refers to the government priority level for the project to begin the transaction process and the level of the continued political support expected for the project. Is the project a focus of the Growth and Transformation Plan II with appropriate buy-in from the government and contracting authority? If so, it should receive a relatively high score accordingly. 		
2	Market Support	<ul style="list-style-type: none"> Has the private sector demonstrated interest in the financing and/or implementation of project? Has the consumer demand for the project also been demonstrated and documented and will the output of the project be affordable to the end user? From the point of view of supply, demand and pricing, is the project viable? 		
3	Legal, Regulatory, Institutional Support	<ul style="list-style-type: none"> Are the legal and regulatory frameworks for the proposed sector of investment in place? Do the contracting authority and/or regulatory agency have the institutional capacity to undertake the oversight of the PPP and all that it entails? 		
4	Data and Information Support	<ul style="list-style-type: none"> For a project to advance and be ranked highly in this criterion, it really needs to have some project history of analysis and reliable data to support its viability. For a project to score highly in this criterion, feasibility studies, environmental and social impact analysis, economic impact assessment, and other substantive documentation should be available for review. 		

PPP Guidelines – Appendix

	PPP Prioritization	Explanatory Notes	Contracting Authority Comments & Explanations	Step I Scoring (1-4)
5	Social and Environmental Sustainability	<ul style="list-style-type: none"> ▪ Will the community benefit and can the project garner support because the beneficiaries will be broad-based and active? ▪ Are there significant environmental or social concerns regarding the implementation of the proposed project? ▪ If so, can any environmental and social risks be mitigated to an acceptable level? 		
Sub-total 1				
Primary Criteria II – Fundamental Feasibility				
1	Technical Feasibility	<ul style="list-style-type: none"> ▪ This refers to the engineering challenges faced by the project. ▪ What is the capacity, the performance characteristics, or functionality of the proposed investment? ▪ Is the technology proven and is it appropriate for the planned application? ▪ Is the technical solution cost effective and “built to last”? 		
2	Financial Feasibility / Private Sector Attractiveness	<ul style="list-style-type: none"> ▪ Can the project be structured using verifiable revenue streams and/or user fees? ▪ How attractive is the project to the private sector? ▪ Has there been demonstrated interest on the part of the private sector in the implementation of the project as a result of its financial attractiveness? 		
3	Replicability	<ul style="list-style-type: none"> ▪ Can the PPP approach selected be duplicated and/or is it scalable so that other communities can benefit from the PPP solution and approach? 		
4	Affordability and Risk Transfer	<ul style="list-style-type: none"> ▪ Is the fiscal burden on the GoE acceptable, in the sense that the project is self-financing or not reliant on any or too much government support both direct and indirect? ▪ Will the Government of Ethiopia need to provide revenue guarantees or other fiscal commitments in order to achieve the realization of the project? 		

PPP Guidelines – Appendix

	PPP Prioritization	Explanatory Notes	Contracting Authority Comments & Explanations	Step I Scoring (1-4)
		<ul style="list-style-type: none"> Will the risks allocated to the Government be the type that are commonly allocated to the public sector, e.g. expropriation, title ownership, foreign exchange remittances, off-take guarantees, land provision, contribution of assets? Will the transfer meaningful and appropriate risks to the private sector? Is the project likely to deliver Value for Money? Is the project large enough (50 million USD) to justify transaction costs and of a “bankable” size? 		
5	Ease of Implementation	<ul style="list-style-type: none"> Have similar transactions been completed successfully, either in Ethiopia or the region? Can it be structured using a variety of PPP modalities to address potential issues and risks? Can it avoid major political issues involving costs, tariffs, land acquisition, multiple authorities, etc.? If so, it should be considered feasible and attractive. 		
Sub-total 2				
TOTAL				

Scoring Methodology	Comments	How to do the scoring of each criteria
4 points	High	All of the question of the criteria are answered positively and supporting data is provided as required
3 points	Above Average	Most questions are answered (positively) and supporting data is provided as required
2 points	Average	The questions are partially answered (positively) and (i) the remaining questions are not answered due to lack of data or (ii) are answered (negatively)
1 point	Below Average	Limited data available to answer the questions or questions answered mainly negatively
0 points	None or Unknown	Information not available or the project does not qualify for this criteria

Source: PPP Project Pipeline Screening and Initial Feasibility Assessment of Potential Infrastructure PPPs Report, Ministry of Finance (August 2018)

Part 2. PPP Pre-Feasibility Checklist

Table B-3: PPP Pre-Feasibility Checklist

Project Characteristic		Explanatory Notes	Public Authority Response		Public Authority Comments & Explanations
			Yes	No	
1. The Need for the Investment	Is the project included in the public authority’s strategic plan?	A clear indicator of whether a project is a priority or not is if it is included in any current sector strategic plans. If it is not, a clear justification of its level of priority should be given.			
	Does the project lie within the context of other competing investment priorities?	Higher priority investment projects make better candidates for PPPs.			
	Will the project include the provision of new assets? (Greenfield vs. brownfield?)	Generally projects that require the provision of new assets are more suitable for PPP because of the opportunity for a Service Provider to provide better design and construction			
	Will the project include upgrading of existing assets and facilities?	Upgrade-based projects can also be suitable for PPP. However, they do feature the additional risk of accurately measure the condition of the existing assets to better estimate the costs of refurbishment			
	Can this PPP be replicated?	Can this project be copied and applied numerous times elsewhere in the country			
	Are there any available data for this project?	Is there access to data such as existing public sector costs, existing sector plans or feasibility estimates? Existing sector, project, technical, environmental studies?			
2. Nature of the Investment &	Has a similar project been implemented before? If so, briefly describe.	It is easier to identify the requirements and risks of a project if analysts can study the results of a similar, completed project in the same sector			

PPP Guidelines – Appendix

Project Characteristic		Explanatory Notes	Public Authority Response		Public Authority Comments & Explanations
			Yes	No	
Suitability for PPP	Are there existing designs for the project?	It is easier to analyze a project as a PPP if a full design of the project already exists. Note that a private service provider will still generally want to develop its own design (i.e. “inputs”) to meet the same output standards. At a minimum, a high level concept design and budget should be prepared.			
	If there are existing designs for the project, could they be adopted by a private service provider?				
	Will the project require the use of technology that is not widely available?	Projects relying on technologies that are limited in their availability are less likely to attract competing private bids.			
	Will the project impose end user charges?	If a project requires end user charges, an end user affordability analysis will likely be required			
	Are there any special constraints to the project, - such as environmental, traffic, heritage, archeological, or other constraint?	Projects with these constraints can still make suitable candidates for PPPs, but it is important to identify these constraints early-on so that subsequent procedures can focus on thoroughly analyzing and proposing feasible solutions to these constraints.			
3. Affordability	Is there evidence that the public authority’s budget projections could afford to pay for these PPP services in the future? If end-user fees are required, will end-users likely be able to afford to pay them	While many new infrastructure projects and public services are needed throughout the Country, there is an important limit to what public authorities or end users can afford to pay for. PPPs still need to collect their revenues from either public authorities, end-users, or both in order to viable. If it looks like a project is needed, but it cannot be afforded, then it should not proceed to Phase 2			

PPP Guidelines – Appendix

Project Characteristic		Explanatory Notes	Public Authority Response		Public Authority Comments & Explanations
			Yes	No	
4. Legal and Institutional Framework	Is the project supported by central or local sector strategy/plans?				
	Are there any explicit legal barriers or obstacles to PPPs in this sector? If so, please explain				
	Is there sufficient institutional capacity to prepare, analyze & implement a transaction as well as to monitor & manage the PPP's performance?				
5. Duration of the Project	Is the duration of the project likely to exceed 10 years?	The project must be understood not as just construction of new assets but in terms of the services that it must deliver and make available over its entire life. Many PPP projects have durations of 20 years or more based on the level of CAPEX and the affordability.			
6. Size	Is the cost of the project likely to exceed 50 million Dollars in total?	Try to make sure that the project's whole-life costs (design, construction, operation & maintenance, periodic renewals, etc. over entire life of the project) are included in this cost estimation. Larger-sized projects tend to be more suitable for PPPs because of the larger potential value for money benefits they can deliver.			

PPP Guidelines – Appendix

Project Characteristic		Explanatory Notes	Public Authority Response		Public Authority Comments & Explanations
			Yes	No	
7. Risk	Is there potential to achieve better value for money (VfM) through the transfer of certain risks (and their costs) to a private service provider? Consider the VfM benefits of the following risks:	The fundamental purpose of PPPs is to provide better projects that cost, are completed, and perform exactly as planned. This can only be achieved by a more detailed, up-front process of identifying all relevant risks, thoroughly analyzing them, and ensuring they are managed effectively through detailed contracts.			
	<ul style="list-style-type: none"> Design and/or Technology Risk 	This is the risk that the design of the project may be inadequate to meet its needs, or that it causes problems during construction and operation			
	<ul style="list-style-type: none"> Construction Risk 	This is the risk that construction of the project either costs more than is planned & budgeted for, or its completion is late, imposing additional costs of interim solutions & unavailable services			
	<ul style="list-style-type: none"> Market/Demand Risk 	This is the risk that there are fewer end users of the project's service than were planned			
	<ul style="list-style-type: none"> Operational Risk 	The risk that the project's operating costs are higher than planned			
	<ul style="list-style-type: none"> Availability/Performance Risk 	The risk that the projects services or benefits are not available to clients due to lack of performance			
	<ul style="list-style-type: none"> Residual Value Risk 	This the risk or uncertainty about the value or condition of the remaining, residual assets at the end of the life the project			
	<ul style="list-style-type: none"> Other Risks 	Identify any other relevant sector risks or project-specific risks that could provide the Public Sector with VfM if they were transferred to a private Service Provider to manage and be responsible for			

PPP Guidelines – Appendix

Project Characteristic		Explanatory Notes	Public Authority Response		Public Authority Comments & Explanations
			Yes	No	
8. Bundling of Services or Contracts	Will the project involve a number of individual contracts for the delivery of services?	Many large public sector projects are actually a combination of different functions or services to provide a common project goal. PPPs provide an opportunity to achieve better overall results if these different services are bundled together and made the responsibility of a single Service Provider.			
	Will the project involve an asset provision contract?	Projects are generally more suitable as PPPs when they require the provision of a new asset by a Service Provider. For example, an office building or roadway construction			
	Is there a potential to bundle these different services into a single, long-term contract?	If there are obstacles to combining services like design, construction, equipment supply, operation, maintenance, etc. together into a single long-term contract, please describe.			
9. Third Party Revenue	Is there potential for the asset to earn additional revenue by selling its excess capacity to third parties?	In some cases part of a PPP project’s capacity is delivered to the Public Sector, while additional capacity may be available for lease to third parties. This may be opportunity to lower the size of the required availability payment from the Public Sector. However, such opportunities should be analyzed to ensure that services remain affordable to Third Parties including end users			
10. Performance Based Contract	Is it likely that the project could be fully described in terms of output-based Key Performance Indicators?	In conventional procurements the Public Sector has specified the inputs, while the actual output levels from projects have tended to vary. In PPPs, however, the Public Sector must specify clear, measurable, and enforceable output performance indicators, and allow the Service Provider to decide what inputs to use. This			

PPP Guidelines – Appendix

Project Characteristic		Explanatory Notes	Public Authority Response		Public Authority Comments & Explanations
			Yes	No	
		is one of the most important parts of a project’s suitability as a PPP, and should be considered with care.			
11. Innovation	Does the project allow a Service Provider opportunities to innovate in managing the project’s inputs, by providing clearly definable and measurable output specifications	PPPs can generally only deliver better VfM if the Service Provider can innovate in providing better designs, better construction management, more efficient & effective operations, etc. The more that a project can rely on providing clear output specifications, and not on dictating inputs like designs, technologies, materials, etc. the more suitable the project will be as a PPP			
	Is the project likely to involve a high degree of complexity?	Complex projects are ones that require many different components that usually depend upon each other, and different phases and milestones. These may include the timely completion of land acquisition, approach roads, utility interconnections, raw input supply, etc. If the different components cannot be feasibly bundled together under one PPP contract, then careful analysis should be done of how these required components will be provided on time.			
	Is there significant scope for innovation through the use of new technologies?	Projects that can be implemented more efficiently through new technologies (design technologies, construction techniques, and operating technologies) can provide better VfM benefits than projects that do not. Keep in mind, though, that if a project relies on a new technology that only 1 or 2 Service Providers can provide, the lack of potential competition may reduce VfM benefits.			

PPP Guidelines – Appendix

Project Characteristic		Explanatory Notes	Public Authority Response		Public Authority Comments & Explanations
			Yes	No	
12. Market Appetite	Is there private sector experience with similar projects in Country, or elsewhere in similar developing economies?	Potential bidders in Country will likely look closely to see if PPPs in the same sector have succeeded elsewhere.			
	Is there likely to be private sector demand for involvement in this project?	Often this question cannot be fully answered at this initial Phase (to answer this question fully would require a formal survey of private contractors and investors). At this point the response should be based upon whether it appears that local or foreign contractors in the sector would likely be interested in taking on risks like design, construction, operation, demand, etc.			

Source: CPCS

Part 3. PPP Project Pipeline Form

Table B-4: PPP Project Pipeline Form

S/N	Project	Contracting Authority	Sector	Location
1. IDENTIFIED PROJECTS				
1.1 Potential Projects Identified by PPPDG and Contracting Authority				
1.2 Potential Projects Granted Approval to Proceed to Feasibility Study				
2. PROJECTS UNDER PREPARATION				
2.1 Feasibility Study and Tender Documents Under Preparation				
2.2 Projects Granted Approval to Tender				
3. PROJECTS UNDER TENDERING PROCESS				
3.1 Tendering Underway				
3.2 Project Awarded				
4. PROJECTS UNDER IMPLEMENTATION				
5. REJECTED PROJECTS				

Source: CPCS

Part 4: Indicative Terms of Reference (ToR) for the External Advisor

1. Introduction

- i. Funding mechanism for the advisory services, i.e. which funds have been earmarked to pay for the services of advisors? Often this would be a reference to government budgetary allocations or an international development assistance loan. The purpose is to demonstrate to prospective feasibility consultants that government funding to pay for the advisory work is committed
- ii. Identify of the Contracting Authority and its legal mandate to provide the Public Service Activity and also to procure the services of advisors for the feasibility study.
- iii. Reference to the policy and/or legal directives mandating the procurement of a feasibility study towards a PPP transaction.

2. A brief background for the Public Service Activity.

- i. This section would present an objective discussion of the historical performance of any public enterprises or service providers providing the Public Service Activity. Any statistics on demand, outputs and performance should be provided in this section in the Terms of Reference. Where a pre-feasibility study had been completed before the feasibility study, key findings and conclusions from that study would be summarized in this section of the Terms of Reference.

3. Scope of Work

3.1 Feasibility Study and Tender Documents Preparation

- i. Refining the scope of the project in terms of clear, measurable, and relevant output levels of service;
- ii. Options Analysis: Analysis of options for delivery of the project/ service and explanation for why the PPP route is proposed
- iii. Value for Money of the project compared to other procurement methods;
- iv. Development of the stakeholder consultation plan and advice on its implementation;
- v. Fiscal Affordability Analysis: Estimating the public sector's affordability limit for the project;
- vi. Demand Analysis: Estimating the level of demand for the project's services; affordability for the end-user
- vii. Technical Feasibility Analysis: assessing project's technical components and technology required to meet output standards & demand levels;
- viii. Financial Feasibility Analysis: Carrying out Financial Modelling including the estimation of project capital & operating costs and sensitivity to assumption changes. Within the model evaluate PPP options, value for money and key structural options and outputs such as guarantees, viability gap funding, direct and contingent liabilities linked to items ii, iii & v
- ix. Economic Appraisal: Measurement & analysis of economic and social costs & benefits;
- x. Institutional & Legal Feasibility Analysis: Assessing all the institutional requirements within the public sector to sustain the PPP project;

- xi. Socio-Environmental Impact Analysis: analysis of project environmental and social/gender impacts, options for mitigating socio-environmental impacts, and additional costs of mitigation measures;
- xii. PPP Risk Identification: common PPP risks, sector risks & project-specific risks, utilizing PPP Risk Matrix;
- xiii. PPP Risk Analysis: initial estimation of risk events impacts and probability levels;
- xiv. PPP Risk Allocation: initial proposed allocation of identified projects risks;
- xv. Assessment of Private Sector Market Interest/Market sounding: determining if local private sector & international would be interested in investing in the project as a PPP.

3.2 Procurement Phase

- i. Review all PPP feasibility analyses and recommended PPP risk structuring option, and incorporate PPP Board/PPPDG/PMT comments and instructions into the revision of the PPP Feasibility Study, PPP Tender Documents, and Draft PPP Contract;
- ii. Support the PPPDG to ensure that necessary preconditions are completed in advance of the tender (e.g. confirming Government fiscal support, confirming ancillary services and infrastructure will be ready for the project, etc.);
- iii. As relevant, draft and prepare the Information Memorandum, General Procurement Notice, Request for Expression of Interest and Evaluation Criteria, Request for Proposal and Evaluation Criteria, and PPP Agreement;
- iv. Assist the PPPDG in the coordination and management of tendering activities such as investment road-shows, Bidders' Conference, site inspections/site visits, as well as the setting-up and management of physical and /or virtual project data rooms as needed;
- v. Assist the PPPDG in identifying interested, potential private sector providers for similar projects (i.e. size, location, etc.);
- vi. Draft responses to all questions submitted by interested and short-listed firms, including making any needed amendments and/or modifications to the PPP tender documents and PPP Agreement;
- vii. Provide support to ensure that the PPPDG complies with all relevant PPP legal requirements and regulations;
- viii. Provide support in the evaluation process for the submitted EOI and RFP received from Bidders;
- ix. Assist the PPPDG and the PMT with monitoring the progress of the PPP contractor during the subsequent PPP contract management and performance monitoring phase, including reaching financial closure, project construction & commissioning, and during the initial operational/service delivery phase.

4. Schedule.

- i. An indicative schedule for the procurement of advisors through the completion of the feasibility study work and PPP transaction procurement. The schedule should clearly indicate the approval requirement at the end of the feasibility study and be unambiguous about the fact that should the feasibility study not receive the approval of the PPP Board, the mandate would come to an end.

5. Competence and expertise required

5.1 Feasibility Study and Tender Documents Preparation

- a. experience in undertaking similar feasibility study assignments on large infrastructure development involving preparation of agreements for similar infrastructure and related project operations
- b. financial and economic analysis, with relevant PPP and project finance experience
- c. technical due diligence
- d. experience in carrying out ESIA
- e. sector stakeholder consultation and management
- f. expertise in legal advisory practice, particularly in large infrastructure development
- g. experience in PPP structuring and contracts
- h. project planning management
- i. relevant expertise in the sector

5.2 Procurement Phase

- a. experience in PPP procurement in the relevant sector
- b. expertise in legal advisory practice, particularly in large infrastructure development
- c. financial modeling
- d. project planning management
- e. negotiations
- f. experience in attainment of financial closure
- g. contract management
- h. relevant expertise in the sector

6. Qualification of Key Experts

6.1 Feasibility Study and Tender Documents Preparation

a. Technical/Sector Expert

- University degree in Engineering, Finance, Management, Economics, or any other relevant field.
- Demonstrated experience in developing infrastructure projects on PPP basis including extensive experience in project structuring and risk analysis, allocation and management; project agreements.
- Relevant qualifications and experience in the sector infrastructure development.
- Communication and writing skills, especially in report writing, are essential

b. Financial Expert

- University degree in Finance; Business; Economics; Management; or any related field, with a relevant post graduate qualification.
- Demonstrated professional experience in PPPs and project finance with a proven track record in financial evaluation and financial modelling of PPP projects including value for money, PSC analysis, affordability and fiscal impact assessment.
- Demonstrated experience in dealing with project finance structures and products and experience in financially closing of PPP projects.
- Knowledge of the relevant sector and experience in financial structuring of projects in that sector.
- Communication and writing skills, especially in report writing, are essential.

c. Legal Expert as a minimum are as follows:

- University degree in law.
- Demonstrated international and regional experience in PPPs and related legal and contractual matters, and policy and institutional assessments.
- Demonstrated professional experience and knowledge of the legal (commercial and contract law), regulatory and institutional framework for PPPs in Ethiopia.
- Communication and writing skills, especially in report writing, are essential.

d. Environmental/Social Expert

- University degree in social or environmental sciences, development studies or other related field.
- Demonstrated experience in the assessment of social and environmental impact assessment and mitigation measures, and gender analysis
- Experience in the application of development partnerships in Environmental and Social Management Framework on Safeguards Policy Statement (involuntary resettlement safeguards, indigenous peoples safeguards, Physical Cultural Resources, etc.) in implementing PPP projects will be an additional merit.
- Communication and writing skills, especially in report writing, are essential.

6.2 Procurement Phase

a. Transaction Director:

- Relevant experience in managing multi-disciplinary teams for comparable projects
- Experience as Transaction Director (or equivalent) for a PPP transaction.
- Hold at least a primary degree in a relevant discipline.
- Experience in negotiating engineering and finance agreements (in case Negotiations are led by the Transaction Director).

b. Financial Expert

- University degree in Finance; Business; Economics; Management; or any related field, with a relevant post graduate qualification.
- Demonstrated professional experience in PPPs and project finance with a proven track record in financial evaluation and financial modelling of PPP projects including value for money, PSC analysis, affordability and fiscal impact assessment.
- Knowledge of the international PPP finance market, particularly for the relevant sector.

c. Technical specialist

- Engineering degree or equivalent and relevant technical experience.

d. Legal Expert

- University degree in law.
- Demonstrated international and regional experience in PPPs and related legal and contractual matters, and policy and institutional assessments.
- Demonstrated professional experience and knowledge of the legal (commercial and contract law), regulatory and institutional framework for PPPs in Ethiopia.
- Communication and writing skills, especially in report writing, are essential.

e. Procurement Specialist should have a relevant degree experience in the procurement of PPP projects.

Appendix C Phase 2 PPP Appraisal and Preparation

- i. **Part 1: Background References – Phase II Outcome from the PPP Feasibility Study**
- ii. **Part 2: Sample PPP Feasibility Study Table of Contents**
- iii. **Part 3: Fiscal Affordability Forms**

Part 1: Background References – Phase II

I. OUTCOMES FROM THE PPP FEASIBILITY STUDY:

Key Question	PPP Outcomes	PROJECT APPRAISAL				PROJECT VALUATION			PROJECT STRUCTURING		
		Needs Analysis	Technical Due Diligence	Legal Due Diligence	Social & Environmental Assessment	Financial Appraisal	Economic Impact Assessment	Risk Identification & Allocation	PPP Options Analysis	Value for Money Assessment	PPP Procurement Strategy
What is the current and historical demand for the public service?	Min/Max number of users to be serviced	●									
Who are the users of the public service and is this group anticipated to grow?	Scalability of service offering	●									
What is the current/future income of users of the service?	Min/max fee rates to charge for services	●									
How much are users paying AND able to pay for service?	Min/max fee rates to charge for services	●									
What is the likely variability in the growth rate and other user dynamics?	Risk sharing proposal with private party	●						●			
What infrastructure is required to accommodate current/future users?	Site/asset allocation and service scalability		●								
Is the infrastructure readily available to be utilized for the service?	Site/asset allocation and legal title transfer		●								
What works need to be carried out to make the infrastructure fit-for-purpose?	Investment requirements and min/max value		●								
What are the lifetime costs to claiming the infrastructure for the service?	Obligation for CAPEX & OPEX requirements		●			●					
What institutions/laws/regulations govern the provision and use of the service?	Enabling authority for PPP relationship			●					●		
Do the laws governing the service allow for delegation of responsibility?	Enabling authority for PPP relationship			●					●		
Are the laws governing the service modern and in line with best practice?	Scope for regulation by PPP contract			●							
Are the laws governing the service being amended or due for amendment?	Scope for regulation by PPP contract			●							
Are there current or pending legal challenges to the law governing the service?	Scope for regulation by PPP contract			●							
What are the relevant regulations governing the provision and use of service?	Monitoring & Oversight responsibilities			●							
Do the regulations prohibit the use of service as contemplated in the PPP?	Scope for regulation by PPP contract			●							
Are there gaps in the laws or regulations that prevent safe and efficient service?	Scope for regulation by PPP contract			●							
Are there gaps in laws or regulations that adversely impact service users?	Scope for regulation by PPP contract			●							
Do all user groups have non-discriminatory and safe access to service?	Scope of regulation by PPP contract	●		●	●						
Does service provision impose a cost/benefit on society and environment?	Setting fee rates for service		●		●						
How sensitive is the service design to society and environment issues?	Setting fee rates for service	●			●						
What measures are needed to mitigate any societal/environmental cost?	Standards for safeguards M&E				●						
Do users pay any fees for service usage and is this fee sufficient to cover costs?	Setting fee rates/Public sector contribution	●									
What level of fees is sufficient to cover service costs?	Setting fee rates/Public sector contribution	●				●					
Does the public sector contribute in any way to service costs?	Setting fee rates/Public sector contribution	●				●	●				
Do existing laws and regulations allow public sector contribution to costs?	Setting fee rates/Public sector contribution	●		●							
Do existing laws allow free-market determination of fees to cover costs?	Setting fee rates/Public sector contribution	●	●	●							
What are the current revenues from the service usage?	Setting fee rates/Public sector contribution	●	●			●					
What are the likely future revenues from service usage?	Setting fee rates/Public sector contribution	●	●			●					
Are user fees subject to external shocks and pressures such as FX?	Setting fee rates	●				●	●	●	●		
How variable are the future revenues based on different economic outcomes?	Setting fee rates/Public sector contribution	●	●			●					
Do current and future revenues cover lifetime costs and under what scenarios?	Setting fee rates/Public sector contribution	●	●			●	●				
Are there other societal benefits and costs from the provision of the service?	Setting public sector contribution						●			●	
Do existing/proposed laws allow incentives for service provision?	Enhancements in PPP contract					●		●		●	
Can societal benefits and costs be quantified and do benefits outweigh costs?	Setting fee rates/Public sector contribution					●	●			●	
Does public sector policy make it in the society's interest to provide service?	Setting fee rates/Public sector contribution						●			●	
Does it benefit the public sector to designate another to provide service?	Setting public sector contribution						●			●	
Can the benefit of delegation be quantified and does it outweigh any costs?	Setting public sector contribution						●			●	
Is the service can be designated, how can this be achieved within the law?	Setting PPP relationship			●					●		●
If delegation cannot be achieved within the law, how does the law change?	Not applicable			●					●		●
How can delegation be achieved to maintain public sector objectives?	Set KPIs in PPP agreement								●		●
What is a realistic roadmap for achieving this delegation?	PPP procurement timetable										●
What are the roles of the public/private sector in this roadmap?	PPP procurement timetable			●							●
What are the responsibilities of the public/private sector in this roadmap?	PPP procurement timetable								●		●
What are the current and anticipated challenges with delegation?	PPP procurement timetable							●			

Part 2. Sample PPP Feasibility Study Table of Contents

- 1 Name of the Project
- 2 Type of PPP (BOT, BOOT, etc.)
- 3 Location (Region/City)
- 4 Public authority/contracting authority (CA)
- 5 Contracting authority's (CA) Project Team & contact details
- 6 Transaction advisor (if applicable)
- 7 Private sector Company's responsibility (financing, construction, maintenance and operation of the project)
- 8 Project Description
- 9 Scope of Project
- 10 Justification for the project
- 11 Possible alternatives, if any
- 12 Estimated total project cost with break-up under major heads of expenditure. Including the basis of cost estimation
- 13 Phasing of investment
- 14 Project due diligence
 - Technical feasibility
 - Legal
 - Regulatory
 - Economic (EIRR ENPV)
 - Environmental
 - Stakeholder consultation
- 15 Procurement delivery options (PPPs/Traditional) and evaluation of appropriate options
- 16 Project risk allocation
- 17 Financial feasibility (NPV & FIRR) and value for money assessment
- 18 Details of proposed economic support (grants, subsidies)
- 19 Affordability, fiscal risk, contingent liability issues
- 20 Ability of CA to procure, implement, manage, enforce, monitor and report on the PPP
- 21 Project Implementation Schedule

- 22 Financing Arrangements
- 23 Sources of financing (equity, debt, etc.)
- 24 Revenue streams of the Project (annual flows over project life). Also indicate the underlying assumptions.
- 25 Tariff and Procedure for fixing the tariff/ user charges
- 26 Will the project have predetermined user charges/tariffs?
- 27 Clearance required from the Government and other local bodies
- 28 Indicate how the user fee has been determined; the legal provisions in support of user fee (attach the relevant rules/notification); and the extent and nature of indexation for inflation
- 29 Provisions, if any, for mitigating the risk of lower revenue collection
- 30 Provisions, if any for compulsory buy -back of assets upon termination/ expiry
- 31 Provisions for change of scope and the financial burden thereof
- 32 Minimum standards of Operation and Maintenance/ Performance standards
- 33 Penalties for violation of prescribed O&M standards/ Performance standards
- 34 Recommendation & Next Steps

Part 3: Fiscal Affordability Forms – at Feasibility/Structuring Phase

FISCAL AFFORDABILITY FORMS

For submission to the MFO Debt Management Directorate at Feasibility/Structuring Approval Stage

Cover Sheet

Name of the Project on the contract:	
Brief Project Outline:	
Name of the Partner company:	
Responsible entity / contracting authority:	
Sector:	
Date of analysis:	
Date of Commissioning/PPP start:	
Length of the Contract:	
Total Estimated Investment value:	
Proposed Investment grant/subsidy:	
Proposed Public payments: Availability, operating subsidy, etc.	
Proposed Guarantees: By type (specific risk, payment, other)	
Mechanism for restoring the financial equilibrium of the project:	
Observations:	
Main budgetary commitments:	
Main budgetary risks:	

Detailed Estimates

		NPV	Years													
Revenue																
PPP fees	Concession fee - Upfront															
	Concession fee - fixed annual															
	Concession fee - Variable															
	Revenue sharing															
	Other															
Total																
Expenditure																
Government commitments:																
Capital:	Investment grants															
	Repayments/refunds															
	Other															
Total																
Annual payments:	Availability payments															
	PSO/subsidy payments															
	Other															
Total																
Contingent Liabilities:	Guarantees - specific risk															
	Guarantees - other															
	Termination - Government default															
	Termination - Private Party default															
	Other															
Total																

Notes:

Estimates will arise as outputs to the FS financial model and PPP options analysis.

Where multiple guarantees, payment mechanisms, etc. list separately.

NPV= Net Present Value of the cash flows over the duration of the contract (Using government borrowing discount rate)

Appendix D Phase 3 Structuring, Draft Contract & Tender Documents

I. Part 1: Background References – Phase III

This section also provides sample templates for each stage of the PPP lifecycle.

*CPCS has prepared these contractual document templates as a Consultant, based on industry best practices, and not as a Legal Advisor. Should these templates be referenced for a prospective PPP project in Ethiopia, we recommend that the contractual document templates be vetted by a local law firm for conformity with local law; if a Transaction Advisor is engaged, they should be required to carry out this review through a local law firm as part of their scope of work. Guiding comments and notes within these documents have been **presented in blue font**.*

II. Part 2: Sample Request For Expression of Interest (REOI)

III. Part 3: Sample Request For Qualification (RFQ)

IV. Part 4: Sample RFQ Evaluation Form

V. Part 5: Sample Request for Proposal (RFP)

VI. Part 6: Template PPP Agreement:

- 6.1 Concession Agreement (Greenfield)
- 6.2 Concession Agreement (Brownfield)
- 6.3 Management Contract Agreement

VII. Part 7: Executive Memo for Approval of the Feasibility Study and Tender Documents

Part 1: Background References – Phase III

I. TYPE OF PROCUREMENT PROCESSES

Table B-1: Single Stage Bidding Process

Single Stage Bidding Process			
PREQUALIFICATION	<ul style="list-style-type: none"> PPP Board approved Feasibility Study and PPP project Structure 	<ul style="list-style-type: none"> PPP Board communicate approval of Feasibility Study Report and PPP Project structure to PPPDG, along with instructions to proceed to PPP prequalification 	
	<ul style="list-style-type: none"> PPPDG issues a Request for Qualification notice 	<ul style="list-style-type: none"> Notice drafted by Transaction Advisor and consistent with approved Feasibility Study PPP structure Notice to follow structure illustrated in Appendix D and include PPP requirements and evaluation criteria Notice must be published in well circulated newspaper in Ethiopia 	
	<ul style="list-style-type: none"> Project Evaluation Team to evaluate responses to prequalification submission 	<ul style="list-style-type: none"> Evaluation based on evaluation criteria stated in RFQ notice The combined experience of each member of bidding consortium should be evaluated. The PPPDG to have all representatives of the Project Management Team sign a confidentiality agreement and provide team with a scope of work. The Project Evaluation Team to issues a shortlist of bidders who have been evaluated to meet the criteria stated in the RFQ notice PPPDG to approve the shortlist of Bidders Send written communication to shortlisted Bidders informing them of the shortlist and communicating date when Request for Proposal will be received 	
	REQUEST FOR PROPOSAL	<ul style="list-style-type: none"> Contracting Authority to prepare Request for Proposal and PPP Agreement Package 	<ul style="list-style-type: none"> Transaction Advisor prepares Request for Proposal and PPP Agreement Package consistent with approved Feasibility Study PPP structure. Transaction Advisor to also prepare confidentiality agreement for bidders PPP Board approves Request for Proposal and PPP Agreement Package
		<ul style="list-style-type: none"> PPPDG to send Request for Proposal to shortlisted bidders 	<ul style="list-style-type: none"> PPPDG sends confidentiality agreement¹ to bidders for signing before a specified date a minimum of 10 working days from the date of courier and another 10 working days before intended date of distribution of Request for Proposal. Receive and counter-sign confidentiality agreements. Produce duplicate copy to be sent back to each bidder with Request for Proposal On date of distribution of Request for Proposal, send signed RFP and confidentiality agreement to shortlisted bidders
		<ul style="list-style-type: none"> PPPDG to attend meetings, issues clarifications and make modifications to Request for Proposal Contracting Authority to organize site visits 	<ul style="list-style-type: none"> PPPDG to host data room, bidders conference, road shows and other activities as recommended by the Transaction Advisor and detailed in the Request for Proposal Contracting Authority to host site visits PPPDG with support from the Transaction Advisor to provide written responses to comments received from bidders on the Request for Proposal and PPP Agreement Package. PPPDG to continually provide clarifications. Responses to be communicated to all bidders If permitted in RFP, PPPDG to issue the final Request for Proposal and final PPP Agreement Package at date specified in the RFP. The final RFP may or may not include an extension to the bid submission deadline. The PPPDG to clarify with all bidders that no further comments or questions will be entertained following the circulation of the final RFP and PPP Agreement.
<ul style="list-style-type: none"> PPPDG to receive bidders Technical and Financial Proposals on or before date specified in the Request for Proposal 		<ul style="list-style-type: none"> Seven working days before the bid submission deadline indicated in the RFP, PPPDG to communicate to all shortlisted bidders the deadline for the submission of Proposals and whether or not any extension to the deadline have/will be granted by the PPPDG On the bid submission deadline, PPPDG to take custody of secure room where shortlisted bidders have been instructed in the RFP to submit their Technical and Financial Proposals. A representative of the PPPDG should be presented in the room at all times to receive bidders' proposals and record: <ul style="list-style-type: none"> Name of bidder Name and contact details of representative submitting for bidder Date and time of submission of proposal All representatives submitting proposals must be provided a receipt dated, time-stamped and signed by the PPPDG's representative as well as the representative submitting on behalf of the bidder It is best practice to receive all proposals submitted to the PPPDG. Following receipt, the PPPDG can communicate to all shortlisted bidders to confirm if proposal submission was compliant with instructions in the RFP and the proof of this assertion. 	
		<ul style="list-style-type: none"> Evaluation of Proposals 	<ul style="list-style-type: none"> PPPDG to have all representatives of the Project Evaluation Team sign a confidentiality agreement and provide team with a scope of work. Transaction Advisor to provide workshop on evaluation process to Project Evaluation Team.
			<ul style="list-style-type: none"> Project Evaluation Team to carry out evaluation of Technical Proposal in accordance with evaluation criteria provided in RFP and prepare a Technical Evaluation Report for the approval of the PPP Directorate General. Following approval of the Technical Proposal Evaluation Report, PPPDG to send written communication to shortlisted bidders with results of the evaluation process, consistent with instructions provided in Request for Proposal

¹ Refer to Section 6.2.2 on "Preparation of Confidentiality Agreement"

		<ul style="list-style-type: none"> ▪ In accordance with RFP, eligible bidders will be invited for opening of Financial Proposals. Scores of the Technical and Financial Proposal should be read out publicly to all invited bidders before the opening of the Financial Proposal ▪ With the support of the Transaction Advisor, Project Evaluation Team will review and clarify Financial Proposal of bidders ▪ Transaction Advisor to prepare report on Evaluation of combined Technical and Financial Proposal with recommendation. ▪ PPPDG to send notification to bidder identified as having submitted the most economically advantageous bid in Combined Evaluation Report. Notification should be in accordance with requirements in RFP and state date of commencement of negotiations.
NEGOTIATIONS	<ul style="list-style-type: none"> ▪ Commence negotiations 	<ul style="list-style-type: none"> ▪ On date(s) identified for negotiations, PPPDG, with the support of Transaction Advisor, to host preferred bidder, and carry out negotiations in accordance with procedures indicated in RFP. ▪ Final PPP Agreement Package, including any Commercial and Technical Schedules to be finalized during negotiations. PPP Agreement Package should not be materially different from versions approved by the PPP Board
APPROVAL OF BOARD	<ul style="list-style-type: none"> ▪ PPP Directorate General to submit Negotiations Report to PPP Board 	<ul style="list-style-type: none"> ▪ PPPDG to submit Negotiation Report it prepared along with Combined Evaluation Report and final negotiated PPP Agreement Package to PPP Board for approval ▪ PPP Board to request any clarifications on Negotiation Report and final negotiated PPP Agreement Package. Upon satisfaction, PPP Board will approve Negotiation Report and final negotiated PPP Agreement Package and forward to PPPDG General with approval for award and PPP agreement signing.
AWARD AND SIGNING	<ul style="list-style-type: none"> ▪ PPP Directorate General to communicate approval to award and sign PPP Agreement 	<ul style="list-style-type: none"> ▪ PPPDG to communicate approval to award PPP to Contracting Authority ▪ PPPDG to communicate in writing to preferred bidder notification of award and schedule date for Contract signing in accordance with instructions in RFP ▪ Contracting Authority to strengthen Project Management Team and supervise contract signing and fulfilling of all obligations ▪ PMT to prepare Procurement Close-out Report with detailed reporting on processes and lessons learned to PPPDG

Table B-2: Two-Stage Bidding Process

Two-Stage Bidding Process			
PREQUALIFICATION	<ul style="list-style-type: none"> PPP Board approved Feasibility Study and PPP project Structure 	<ul style="list-style-type: none"> PPP Board communicate approval of Feasibility Study Report and PPP Project structure to PPPDG, along with instructions to proceed to PPP prequalification following a two-stage procurement process as recommended in Feasibility Study 	
	<ul style="list-style-type: none"> PPPDG issues a Request for Qualification notice 	<ul style="list-style-type: none"> Notice drafted by Transaction Advisor and consistent with approved Feasibility Study PPP structure Notice to follow structure illustrated Appendix D and include PPP requirements and evaluation criteria Notice must be published in well circulated newspaper in Ethiopia 	
	<ul style="list-style-type: none"> Project Evaluation Team to evaluate prequalification submission 	<ul style="list-style-type: none"> Evaluation based on evaluation criteria stated in RFQ notice The combined experience of each member of bidding consortium should be evaluated. The PPPDG to have all representatives of the Project Management Team sign a confidentiality agreement and provide team with a scope of work. The Project Evaluation Team issues a shortlist of bidders who have been evaluated to meet the criteria stated in the RFQ notice PPPDG to approve the shortlist of Bidders Send written communication to shortlisted Bidders informing them of the shortlist and communicating date when Request for Proposal will be received 	
	ROUND 1 REQUEST FOR PROPOSAL	<ul style="list-style-type: none"> Contracting Authority to prepare Request for Proposal and PPP Agreement Package 	<ul style="list-style-type: none"> Transaction Advisor prepares Request for Proposal and PPP Agreement Package consistent with approved Feasibility Study PPP structure. Transaction Advisor to also prepare confidentiality agreement for bidders PPP Board approves Request for Proposal and PPP Agreement Package Transaction Advisor to provide workshop on design of Two-Stage bidding process included in Request for Proposal and proposal evaluation process.
		<ul style="list-style-type: none"> PPPDG to send Request for Proposal to shortlisted bidders 	<ul style="list-style-type: none"> PPPDG sends confidentiality agreement to bidders for signing before a specified date a minimum of 10 working days from the date of courier and another 10 working days before intended date of distribution of Request for Proposal. Receive and counter-sign confidentiality agreements. Produce duplicate copy to be sent back to each bidder with Request for Proposal On date of distribution of Request for Proposal, send signed RFP and confidentiality agreement to shortlisted bidders
		<ul style="list-style-type: none"> PPPDG to receive bidders Technical and Financial Proposals on or before date specified in the Request for Proposal 	<ul style="list-style-type: none"> On Round 1 Proposal submission deadline, PPPDG to take custody of secure room where shortlisted bidders have been instructed in the RFP to submit their Technical and Financial Proposals. A representative of the PPPDG should be presented in the room at all times to receive bidders' proposals and record: <ul style="list-style-type: none"> Name of bidder Name and contact details of representative submitting for bidder Date and time of submission of proposal All representatives submitting proposals must be provided a receipt dated, time-stamped and signed by the PPPDG'S representative as well as the representative submitting on behalf of the bidder It is best practice to receive all proposals submitted to the PPPDG. Following receipt, the PPPDG can communicate to all bidders to confirm if proposal submission was compliant with instructions in the RFP and the proof of this assertion. Project Evaluation Team to meet with bidders to review and clarify Round 1 Proposals as well with any elements of Request for Proposal. Following review of proposals, Project Evaluation Team to propose changes and clarifications to the Request for Proposal. PPPDG to submit revised Request for Proposal to PPP Directorate General for approval
		ROUND 2 REQUEST FOR PROPOSAL	<ul style="list-style-type: none"> PPPDG to issue Round 2 Request for Proposal and PPP Agreement Package
<ul style="list-style-type: none"> PPPDG to attend meetings, issues clarifications and make modifications to Request for Proposal Contracting Authority to organize site visits 			<ul style="list-style-type: none"> PPPDG to host data room, bidders conference, road shows and other activities as recommended by the Transaction Advisor and detailed in the Request for Proposal Contracting Authority to host site visit PPPDG to provide written responses to comments received from bidders on the Request for Proposal and PPP Agreement Package. PPPDG to continually provide clarifications. Responses to be communicated to all bidders If permitted in RFP, PPPDG to issue the final Round 2 Request for Proposal and final PPP Agreement Package at date specified in the RFP. The final Round 2 RFP may or may not include an extension to the bid submission deadline. PPPDG to clarify with all bidders that no further comments or questions will be entertained following the circulation of the final RFP and PPP Agreement.
<ul style="list-style-type: none"> PPPDG to receive bidders Technical and Financial Proposals on or before date specified in the Request for Proposal 			<ul style="list-style-type: none"> Seven working days before the bid submission deadline indicated in the RFP, PPPDG to communicate to all Round 2 bidders the deadline for the submission of Proposals and whether or not any extension to the deadline have/will be granted by the PPPDG On the bid submission deadline, PPPDG to take custody of secure room where shortlisted bidders have been instructed in the RFP to submit their Technical and Financial Proposals. A representative of the PPPDG should be presented in the room at all times to receive bidders' proposals and record: <ul style="list-style-type: none"> Name of bidder

		<ul style="list-style-type: none"> - Name and contact details of representative submitting for bidder - Date and time of submission of proposal
		<ul style="list-style-type: none"> ▪ All representatives submitting proposals must be provided a receipt dated, time-stamped and signed by the PPPDG’s representative as well as the representative submitting on behalf of the bidder ▪ It is best practice to receive all proposals submitted to the PPPDG. Following receipt, the PPPDG can communicate to all shortlisted bidders to confirm if proposal submission was compliant with instructions in the RFP and the proof of this assertion.
	<ul style="list-style-type: none"> ▪ Evaluation of Proposals 	<ul style="list-style-type: none"> ▪ Project Evaluation Team to carry out evaluation of Technical Proposal in accordance with evaluation criteria provided in the Round 2 RFP and prepare a Technical Evaluation Report for the approval of the PPP Directorate General. ▪ Following approval of the Technical Proposal Evaluation Report, PPPDG to send written communication to shortlisted bidders with results of the evaluation process, consistent with instructions provided in the Round 2 Request for Proposal ▪ In accordance with the Round 2 RFP, eligible bidders will be invited for opening of Financial Proposals. Scores of the Technical and Financial Proposal should be read out publicly to all invited bidders before the opening of the Financial Proposal ▪ The Project Evaluation Team to review Financial Proposals. Transaction Advisor to prepare report on Evaluation of combined Technical and Financial Proposal with recommendation
NEGOTIATIONS	<ul style="list-style-type: none"> ▪ Commence negotiations 	<ul style="list-style-type: none"> ▪ PPPDG to send notification to bidder identified as having submitted the most economically advantageous bid in Combined Evaluation Report. Notification should be in accordance with requirements in RFP and state date of commencement of negotiations. ▪ On date(s) identified for negotiations, PPPDG, with the support of Transaction Advisor, to host preferred bidder, and carry out negotiations in accordance with procedures indicated in RFP. ▪ Final PPP Agreement Package, including any Commercial and Technical Schedules to be finalized during negotiations. PPP Agreement Package should not be materially different from versions approved by the PPP Board
APPROVAL OF BOARD	<ul style="list-style-type: none"> ▪ PPPDG to submit Negotiations Report to PPP Board 	<ul style="list-style-type: none"> ▪ PPPDG to submit Negotiation Report it prepared along with Combined Evaluation Report and final negotiated PPP Agreement Package to PPP Board for approval ▪ PPP Board to request any clarifications on Negotiation Report and final negotiated PPP Agreement Package. Upon satisfaction, PPP Board will approve Negotiation Report and final negotiated PPP Agreement Package and forward to PPP Directorate General with approval for award and PPP agreement signing.
AWARD AND SIGNING	<ul style="list-style-type: none"> ▪ PPPDG to communicate approval to award and sign PPP Agreement 	<ul style="list-style-type: none"> ▪ PPPDG to communicate approval to award PPP to Contracting Authority ▪ PPPDG to communicate in writing to preferred bidder notification of award and schedule date for Contract signing in accordance with instructions in RFP ▪ Contracting Authority to strengthen Project Management Team and supervise contract signing and fulfilling of all obligations ▪ PMT to prepare Procurement Close-out Report with detailed reporting on processes and lessons learned to PPPDG

Table B-3: Competitive Dialogue Process

Competitive Dialogue Process		
PREQUALIFICATION	<ul style="list-style-type: none"> PPP Board approved Feasibility Study and PPP project Structure 	<ul style="list-style-type: none"> PPP Board communicate approval of Feasibility Study Report and PPP Project structure to PPPDG, along with instructions to proceed to PPP prequalification following a competitive dialogue procurement process as recommended in Feasibility Study
	<ul style="list-style-type: none"> PPPDG issues a Request for Qualification notice 	<ul style="list-style-type: none"> Notice drafted by Transaction Advisor and consistent with approved Feasibility Study PPP structure Notice to follow structure illustrated in Appendix D and include PPP requirements and evaluation criteria Notice must be published in well circulated newspaper in Ethiopia
	<ul style="list-style-type: none"> Project Evaluation Team to evaluate responses to RFQ 	<ul style="list-style-type: none"> Evaluation based on evaluation criteria stated in RFQ notice The combined experience of each member of bidding consortium should be evaluated. The PPPDG to have all representatives of the Project Management Team sign a confidentiality agreement and provide team with a scope of work. The Project Management Team issues a shortlist of bidders who have been evaluated to meet the criteria stated in the RFQ notice PPPDG to approve the shortlist of Bidders Send written communication to shortlisted Bidders informing them of the shortlist and communicating date when Request for Proposal will be received
	<ul style="list-style-type: none"> Contracting Authority to prepare Contract Notice 	<ul style="list-style-type: none"> Transaction Advisor prepares a Contract Notice in accordance with the Feasibility Study recommendations. Transaction Advisor to also prepare confidentiality agreement for prequalified bidders PPP Board approve Contract Notice Transaction Advisor to provide workshop on design of Competitive Dialogue process and procedures to be adopted.
	<ul style="list-style-type: none"> PPPDG to send Contract Notice to shortlisted bidders 	<ul style="list-style-type: none"> PPPDG sends confidentiality agreement to prequalified bidders for signing. Receive and counter-sign confidentiality agreements. Produce duplicate copy to be sent back to each bidder with Contract Notice setting up PPPDG's and Contracting Authority's needs and requirements. In accordance with procedures issued in Contract Notice, PPPDG to host events with prequalified bidders to help identify and define means best suited to address Contracting Authority's needs. Discussions should cover all aspects of Project PPP agreement package.
	<ul style="list-style-type: none"> ISSUE CONTRACT NOTICE OUTLINING NEEDS AND REQUIREMENTS 	<ul style="list-style-type: none"> In accordance with procedures issued in Contract Notice, PPPDG to host as many events in as many rounds as prescribed in the Contract Notice with prequalified bidders to help identify and define means best suited to address Contracting Authority's needs. Discussions should cover all aspects of Project PPP agreement package. In accordance with Contract Notice, once preferred solution is identified, PPPDG shall notify all bidders, and request submission of final Proposals. A representative of the PPPDG should be presented in the room at all times to receive bidders' proposals and record: <ul style="list-style-type: none"> Name of bidder Name and contact details of representative submitting for bidder Date and time of submission of proposal All representatives submitting proposals must be provided a receipt dated, time-stamped and signed by the PPPDG's representative as well as the representative submitting on behalf of the bidder It is best practice to receive all proposals submitted to the PPPDG. Following receipt, the PPPDG can communicate to all shortlisted bidders to confirm if proposal submission was compliant with instructions in the RFP and the proof of this assertion. Project Evaluation Team to meet with bidders to review and clarify Round 1 Proposals as well with any elements of Request for Proposal. Following review of proposals, Project Evaluation Team to propose changes and clarifications to the Request for Proposal. PPPDG to submit revised Request for Proposal to PPP Directorate General for approval
REQUEST FOR PROPOSAL	<ul style="list-style-type: none"> PPPDG request final Proposal from bidders 	<ul style="list-style-type: none"> PPPDG to issue Request for Proposal with clear instructions and timetable for submission and evaluation of final Proposals.
		<ul style="list-style-type: none"> Contracting Authority to host site visits. PPPDG to host data room, bidders conference, road shows and other activities as recommended by the Transaction Advisor and detailed in the Request for Proposal
		<ul style="list-style-type: none"> PPPDG to provide written responses to comments received from bidders on the Request for Proposal and PPP Agreement Package. Contracting Authority to continually provide clarifications. Responses to be communicated to all bidders
		<ul style="list-style-type: none"> On the date of submission of final Proposal, a representative of the PPPDG should be presented at the designation location for submission of Proposals at all time and record for each proposal submitted: <ul style="list-style-type: none"> Name of bidder Name and contact details of representative submitting for bidder Date and time of submission of proposal All representatives submitting proposals must be provided a receipt dated, time-stamped and signed by the PPPDG's representative as well as the representative submitting on behalf of the bidder

		<ul style="list-style-type: none"> It is best practice to receive all proposals submitted to the PPPDG. Following receipt, the PPPDG can communicate to all shortlisted bidders to confirm if proposal submission was compliant with instructions in the RFP and the proof of this assertion.
	<ul style="list-style-type: none"> Evaluation of Proposals 	<ul style="list-style-type: none"> Project Evaluation Team to carry out evaluation of Technical Proposal in accordance with evaluation criteria provided in the final RFP and prepare a Technical Evaluation Report for the approval of the PPP Directorate General. Following approval of the Technical Proposal Evaluation Report, PPPDG to send written communication to shortlisted bidders with results of the evaluation process, consistent with instructions provided in the final Request for Proposal Eligible bidders will be invited for opening of Financial Proposals. Scores of the Technical and Financial Proposal should be read out publicly to all invited bidders before the opening of the Financial Proposal The Project Evaluation Team to review Financial Proposals. Transaction Advisor to prepare report on Evaluation of combined Technical and Financial Proposal with recommendation.
NEGOTIATIONS	<ul style="list-style-type: none"> Commence negotiations 	<ul style="list-style-type: none"> PPPDG to send notification to bidder identified as having submitted the most economically advantageous bid in the Combined Evaluation Report. Notification should be in accordance with requirements in RFP and state date of commencement of negotiations. On date(s) identified for negotiations, PPPDG, with the support of the Transaction Advisor, to host preferred bidder, and carry out negotiations in accordance with procedures indicated in RFP. Final PPP Agreement Package, including any Commercial and Technical Schedules to be finalized during negotiations. PPP Agreement Package should not be materially different from versions approved by the PPP Board
APPROVAL OF BOARD	<ul style="list-style-type: none"> PPPDG to submit Negotiations Report to PPP Board 	<ul style="list-style-type: none"> PPPDG to submit Negotiation Report it prepared along with Combined Evaluation Report and final negotiated PPP Agreement Package to PPP Board for approval PPP Board to request any clarifications on Negotiation Report and final negotiated PPP Agreement Package. Upon satisfaction, PPP Board will approve Negotiation Report and final negotiated PPP Agreement Package and forward to PPP Directorate General with approval for award and PPP agreement signing.
AWARD AND SIGNING	<ul style="list-style-type: none"> PPPDG to communicate approval to award and sign PPP Agreement 	<ul style="list-style-type: none"> PPPDG to communicate approval to award PPP to Contracting Authority PPPDG to communicate in writing to preferred bidder notification of award and schedule date for Contract signing in accordance with instructions in RFP Contracting Authority to strengthen Project Management Team and supervise contract signing and fulfilling of all obligations PMT to prepare Procurement Close-out Report with detailed reporting on processes and lessons learned to PPPDG

Table B-4: Direct Negotiations Process

Direct Negotiations Process			
IF NECESSARY, CARRY OUT A PREQUALIFICATION PROCESS	<ul style="list-style-type: none"> PPP Board approved Feasibility Study and PPP project Structure 	<ul style="list-style-type: none"> PPP Board communicate approval of Feasibility Study Report and PPP Project structure to PPPDG, along with instructions to, if necessary, proceed to PPP prequalification with the intention to enter into direct negotiations with prequalified bidders 	
	<ul style="list-style-type: none"> PPPDG issues a Request for Qualification notice (optional) 	<ul style="list-style-type: none"> Notice drafted by Transaction Advisor and consistent with approved Feasibility Study PPP structure Notice to follow structure illustrated in Appendix D and include PPP requirements and evaluation criteria Notice must be published in well circulated newspaper in Ethiopia 	
	<ul style="list-style-type: none"> Project Evaluation Team to evaluate responses to RFQ 	<ul style="list-style-type: none"> Evaluation based on evaluation criteria stated in RFQ notice The combined experience of each member of bidding consortium should be evaluated. The PPPDG to have all representatives of the Project Evaluation Team sign a confidentiality agreement and provide team with a scope of work. The Project Evaluation Team issues a shortlist of bidders who have been evaluated to meet the criteria stated in the RFQ notice PPP Directorate General to approve the shortlist of Bidders Send written communication to shortlisted Bidders informing them of the shortlist and communicating date when Request for Proposal will be received 	
	PREPARE AND ISSUE DESCRIPTION OF NEEDS AND REQUIREMENTS ALONG WITH PPP AGREEMENTS	<ul style="list-style-type: none"> Contracting Authority to prepare and issue statement of needs and requirements and PPP agreements. 	<ul style="list-style-type: none"> Transaction Advisor prepares a description of the needs and requirements and PPP Agreements for Contracting Authority. Transaction Advisor also to prepare detailed process for Direct Negotiations for submission to PPP Directorate General Contracting Authority submits needs and requirements and PPP Agreements, along with adopted Direct Negotiations process to PPPDG PPPDG to submit PPP needs and requirements and Agreements to PPP Board for approval Transaction Advisor to provide workshop on Direct Negotiations process and procedures to be adopted.
		<ul style="list-style-type: none"> PPPDG to enter negotiations with one or as many bidders 	<ul style="list-style-type: none"> Following procedures outlined in approved Direct Negotiations process, PPPDG, with the support of Transaction Advisor and the Contracting Authority, will enter into negotiations with as many bidders and over as many rounds as needed. Negotiations should cover needs and requirements as well as the PPP Agreement document package
		<ul style="list-style-type: none"> Evaluation of Proposals 	<ul style="list-style-type: none"> Direct Negotiations process should also include mechanism for bidders eliminated from the process to take recourse
	PREPARE EVALUATION REPORT ON DIRECT NEGOTIATIONS	<ul style="list-style-type: none"> PPPDG to issue report on Direct Negotiations 	<ul style="list-style-type: none"> Following successful conclusion of negotiations, PPPDG, with the support of Transaction Advisor and the Contracting Authority, will issue a report detailing the Direct Negotiations process and all outcomes in the process
APPROVAL OF BOARD	<ul style="list-style-type: none"> PPPDG to submit Negotiations Report to PPP Board 	<ul style="list-style-type: none"> PPPDG to submit Negotiation Report and final negotiated PPP Agreement Package to PPP Board for approval PPP Board to request any clarifications on Negotiation Report and final negotiated PPP Agreement Package. Upon satisfaction, PPP Board will approve Negotiation Report and final negotiated PPP Agreement Package and forward to PPP Directorate General with approval for award and PPP agreement signing. 	
AWARD AND SIGNING	<ul style="list-style-type: none"> PPPDG to communicate approval to award and sign PPP Agreement 	<ul style="list-style-type: none"> PPPDG to communicate approval to award PPP to Contracting Authority PPPDG to communicate in writing to preferred bidder notification of award and schedule date for Contract signing in accordance with instructions in RFP Contracting Authority to strengthen Project Management Team and supervise contract signing and fulfilling of all obligations PMT to prepare Procurement Close-out Report with detailed reporting on processes and lessons learned to PPPDG 	

Part 2: Sample Request for Expression of Interest (REOI)



Request for Expression of Interest Notice

FEDERAL DEMOCRATIC REPUBLIC OF ETHIOPIA

PPP DIRECTORATE GENERAL (PPPDG)

On behalf of

[Contracting Authority]

[Project Title/Name of Transaction] [Project ID]

[Description of the Assignment]

The Description may include the following components:

- i. Objectives of the Contracting Authority and the transaction, where possible linking this objective to a specific Government development plan, policy or legislation.*
- ii. Information on where the Public Service Activity or infrastructure takes place or is located in the country. Provide relevant available information on utilization or demand of the Public Service Activity, capacity, technical specifications and performance to date.*
- iii. Indicative timing for the publication of the Request for Qualification (RFQ).*

[Funding Source/Project Sponsors]

[Procurement Procedure]

The tender will be carried out in accordance with the [IFI Procurement Policies and Rules, Date of latest revision] which can be found at [URL].

- E.g. Procurement of contracts financed by the World Bank under the project will be conducted through the procedures as specified in the World Bank's Procurement Regulations for IPF Borrowers dated July 2016, revised November 2017 (Procurement Regulations), and is open to all eligible firms and individuals as defined in the Procurement Regulations.*
- E.g. the tender will be carried out in accordance with the EBRD Procurement Policies and Rules (Rev. November 2017), which can be found at <https://www.ebrd.com/work-with-us/procurement/policies-and-rules.html>.*

[Contact Information]

Interested bidders may obtain further information via email:

Name:

Title:

Department:

Address:

Email Address:

Part 3: Sample Request for Qualification (RFQ)



FEDERAL DEMOCRATIC REPUBLIC OF ETHIOPIA

PPP DIRECTORATE GENERAL (PPPDG)

On behalf of

[Contracting Authority]

[Project Title/Name of Transaction]

REQUEST FOR QUALIFICATION

Background

[Indicate the objectives of the Contracting Authority and the transaction]

1. *In line with the [Contracting Authority's] mandate of ensuring [description of Public Service Activity], the [name of transaction] has been approved and qualified by the Federal Democratic Republic of Ethiopia as eligible for Public-Private Partnership in the form of [PPP model].*
2. *To this end, the [PPPDG] has retained the services of [Name of Transaction Advisors] as Transaction Advisors to assist in the procurement of an [operator/manager/developer] for the [Public Service Activity].*
3. *In light of the foregoing, the [PPPDG] hereby announce this invitation to prospective [operators/managers/developers] to express interest in the [PPP model] for the [Public Service Activity].*
4. *[Provide brief information on where the relevant Public Service Activity is carried out located in the country, any relevant information on capacity, technical specifications, or other key features – for example:*
5. *The Addis Ababa to Bahir Dar highway is a 487km 8-lane divided highway. The proposed corridor for the road will be provided free of encumbrances.*

Method of Application:

6. *The [operator/manager/developer] of the [Public Service Activity] will be procured via [type of procurement process e.g. competitive bidding, following a two-stage bid process: a pre-qualification stage and a proposal stage]. In order to be pre-qualified, prospective bidders, who must be [operators/managers/developers e.g. local/international toll road manager] must be able to demonstrate a track record of successful [relevant expertise required e.g. must be able to demonstrate a track record of successful development (including EPC) and management of a toll road in accordance with international best practices.]*
7. Interested applicants should indicate their interest by providing brief documentation structured into the following sections:
 - 8.1 Full name of company and contact person, postal address, telephone/fax numbers, and e-mail address. If a consortium or joint venture, provide names and contact details of consortium members, evidence of association or joint venture agreement, and indicate the lead firm in the consortium or joint venture;
 - 8.2 Ownership structure of bidding entity. Name(s) of major shareholders and percentage shareholding of participants in the bidding entity;
 - 8.3 *[Indicate any statutory documentation requirement(s)] [Bidders may be required to present documentation to support their eligibility such as evidence of incorporation or its equivalent for foreign firms. To note, such requirements should be kept to a minimum at this stage, so as not to inundate bidders with documentation requirements or drive up the cost of bid preparation].*
 - 8.4 *[Indicate any information on eligibility] Foreign firms are encouraged to submit a bid, and may bid alone, as a consortium or joint venture, or as a locally-registered entity. Foreign firms are encouraged to partner with local partners. Note that only a locally-registered entity will be awarded a contract for the specified services;*
 - 8.5 Audited financial statements for the most recent three (3) years;
 - 8.6 Technical and operational capabilities including:
 - i. *Track record of [successful provision of relevant services]. E.g. Track record in EPC for road and highway infrastructure and toll road management, stating the total km under management, the average length and average vehicular traffic in the most recent three (3) years;*
 - ii. *Local and regional (Africa) experience in [providing similar services]. E.g. Managing toll-roads in Africa;*

8.7 Three (3) references on past performance.

Submission of Qualification Documents:

8. Qualification documents must be submitted in one (1) original and five (5) printed copies in a sealed envelope clearly marked "QUALIFICATION SUBMISSION FOR [PROJECT TITLE]". An electronic copy on USB drive should also be included.
9. Submitted documents must be delivered not later than 15:00 hrs. local time (GMT+3) on [full date] at the following address:
Relevant Department/Ministry
Attention:
Address
Email, Contact Number
10. Interested applicants may obtain further information via e-mail: [transaction@pppdg.org.et] or at the above address from 9.00am to 4.00pm, Monday through Friday (except public holidays).
11. Following the evaluation of submitted Qualification documents, a shortlist of bidders which meet the minimum pre-qualification criteria will be issued a Request for Proposal (RFP) and other bidding documents. Applicants will be notified whether they have been pre-qualified or not following the evaluation of the prequalification submission documents.
12. Submission documents must be in the [English] Language only. The [PPPDG] shall not be responsible for the cost of any submission.

Part 4: Sample RFQ Evaluation Form



Evaluation of Request for Qualification [SAMPLE]
[Project Name/Name of Transaction]

Bidding Firm:	Date:
Key Contact Person for Bidding Firm: Name: Email: Phone Number:	

PPP Guidelines - Appendix

The evaluation template below accompanies the sample Request for Qualification. The breakdown of the scoring provided below is exemplary of one of many approaches which may be adopted. This sample structure reflects the typical breakdown at the prequalification stage, which reflects an evaluation based on (1) Basic Compliance, (2) Financial Capacity, and (3) Operational Capacity – sometimes referred to as Technical Capacity. The scoring guidelines are tied to a sample transaction to procure a Highway/Road Toll PPP, and are not meant to be prescriptive. The evaluation criteria will reflect the specific parameters of each PPP project under consideration.

BASIC COMPLIANCE (PASS/FAIL)				
<i>Bidders must PASS each Basic Compliance criteria to be considered for prequalification.</i>				
S/N	Evaluation Criteria	Guidelines	Compliance (Pass/Fail)	Comments/Justification for Score
1a	Provision of full contact details (i) Full name of company and contact person, postal address, telephone/fax numbers, e-mail. (ii) If a consortium or joint venture, provide names and contact details of consortium members, and indicate the lead firm in the consortium or joint venture	Bidders produced all requirements. PASS Bidders did not produce all requirements (some or all were missing). FAIL		
1b	Ownership structure of the Bidding Entity (i) Name(s) of major shareholders and percentage shareholding of participants in the bidding entity;			
1c	Evidence of Incorporation or its equivalent for foreign firms			
1d	Provision of audited financial statements for the most recent three (3) years.			
Subtotal:				
FINANCIAL CAPACITY (Max. 30 points)				

PPP Guidelines - Appendix

S/N	Evaluation Criteria	Guidelines	Score	Comments/Justification for Score
2a	Annual turnover of the Lead Equity Partner(s) of not less than US\$[X] million <i>[as a benchmark, the proposed revenue from the Public Service Activity, from the feasibility study, should not be 50% or more of Lead Equity Partner's current turnover. An operate may struggle to ramp up performance to achieve 50% more revenue year-on-year]</i>	Turnover is equal to or greater than benchmark 15 points		
		Turnover is 10% – 25% less than the benchmark 9-14 points <i>[scored proportionally]</i>		
		Turnover is 50% – 25% less than the benchmark 3-8 points <i>[scored proportionally]</i>		
2b	Average Total Assets (as shown on Audited Financial Statements of most recent three years) operated and managed by Lead Equity Partner(s) of not less than US\$[X] million <i>[as a benchmark, the proposed CAPEX required to develop the Public Service Activity, from the feasibility study, should not be greater than 30% of Lead Equity Partner's Average Total Assets for 3 years. Assumes the Lead Equity Partner has a 70-30 leverage]</i>	3-Year Average Total Asset value is equal to or greater than benchmark 10 points		
		3-Year Average Total Asset value is 10% – 25% less than the benchmark 5-9 points <i>[scored proportionally]</i>		
		3-Year Average Total Asset value is 50% – 25% less than the benchmark 1-4 points <i>[scored proportionally]</i>		
2c	Comfort letter from reputable financial institution expressing support if bidder emerges preferred bidder	Comfort letter from a financial institution quoted on an international stock exchange 5 points		
		Comfort letter from a financial institution quoted on a domestic stock exchange 3 points		
		Comfort letter from a financial institution not quoted on a stock exchange 1 points		
Subtotal:				

OPERATIONAL CAPACITY (Max. 70 points)

S/N	Evaluation Criteria	Guidelines	Score	Comments/Justification for Score
3a	Local or international [operator/manager/developer] with a demonstrated track record in [Public Service Activity] <i>E.g. of Road and Highway EPC contracts</i>	Lead member of the consortium has completed [more than 5] projects for [Public Service Activity] with similar description to proposed PPP. <i>E.g. of Completed 5 EPC contracts for road/highway of similar length/quality</i> 20 points		
		Lead member of the consortium has between [3 and 5] projects for [Public Service Activity] with similar description to proposed PPP. <i>E.g. of Completed 3 EPC contracts for road/highway of similar length/quality</i> 11-19 points <i>[scored proportionally]</i>		
		Lead member of the consortium has completed [less than 3] projects for [Public Service Activity] with similar description to proposed PPP. <i>E.g. of Completed 1 EPC contracts for road/highway of similar length/quality</i> 3-8 points <i>[scored proportionally]</i>		
3b	Local or international [operator/manager/developer] with a demonstrated track record in [Public Service Activity] <i>E.g. of Road and Highway Toll Management</i>	Lead member of the consortium is currently managing [Public Service Activity] with similar description to proposed PPP. <i>E.g. managing a toll road/highway of similar length/quality</i> 15 – 20 points <i>[scored based on similarity in project]</i>		
		Member (not the lead) of the consortium is currently or in the past has managed [Public Service Activity] with similar description to proposed PPP. <i>E.g. managing a toll road/highway of similar length/quality</i> 5 – 14 points <i>[scored based on similarity in project and equity share in SPV of Member with experience]</i>		
3c		Lead member of the consortium has experience with Privately-Financed Infrastructure for any		

PPP Guidelines - Appendix

	Local or international [operator/manager/developer] with experience in Private Finance Initiatives (PFI) for public infrastructure or services	[Public Service Activity]. <i>E.g. PPP for toll road/highway</i> 8 – 10 points		
		Lead member of the consortium has experience with Privately-Financed Infrastructure for any public service activity. <i>E.g. PPP for railways or ports</i> 5 – 7 points		
		Member of the consortium has experience with Privately-Financed Infrastructure for any public service activity. <i>E.g. PPP for railways or ports</i> 2 – 4 points		
3d	Local or international [operator/manager/developer] with relevant regional experience in [Public Service Activity]	Bidder has relevant experience in Ethiopia and other African countries. 8 – 10 points		
		Bidder has relevant experience in Ethiopia only, OR other African countries. 6 – 7 points		
		Bidder has relevant international experience, but not in Ethiopia or Africa. 3 – 5 points		
3e	Provision of a minimum of three (3) references on past performance.	Bidder provided all required reference and feedback on bidder’s performance was mostly positive 9 – 10 points		
		Bidder provided all required reference and feedback on bidder’s performance was mixed 5 – 8 points		
		Bidder did not provide all required reference 0 – 4 points [<i>scored based on feedback in references provided</i>]		
Subtotal:				

PPP Guidelines - Appendix

Overall Assessment (Total Points):	
PASS/FAIL (Min. Score of 75 points)	

DECLARATION BY EVALUATORS:

Name						
Title						
Department						
Organization						
Signature						

DECLARATION BY OBSERVER:

I _____ of _____ confirm that I have observed the bid evaluation for **the [Transaction Name]**
Transaction on [Date].

Part 5: Sample Request for Proposal (RFP)

FEDERAL DEMOCRATIC REPUBLIC OF ETHIOPIA



PPP Directorate General (PPPDG)

On behalf of

[Contracting Authority]

Request for Proposal (RFP) for the

[Project Title]

[Date]

INVITATION TO BIDDERS

[Date]

[Insert a description of the Public Service Activity and objectives of the PPP project. Introduce the Contracting Authority given the legal mandate to deliver the Public Service Activity. The following line may be added: "The Public Private Partnership Directorate General is empowered by the Public Private Partnership Proclamation No. 1076/2018 to procure PPPs on behalf of Contracting Authorities. The [insert Project Title] having been approved by the Public Private Partnership Board of the Ministry of Finance, the PPPDG is seeking to identify a competent partner to implement the project.]

[Describe the type of [Operator/Manager/Developer] that the [PPPDG] is seeking to procure for the PPP project, and summarize the Public Service Activity to be undertaken.]

The PPPDG hereby requests proposals from pre-qualified Bidders for the [**Public Service Activity**].

The Bid Documents include the following:

- (i) Request for Proposal (RFP, this document);
- (ii) Draft [Type of PPP Agreement]; and
- (iii) Comment Template (in Microsoft Excel).

This RFP is non-transferable and is provided to the Bidders which have:

- Been pre-qualified to bid; AND
- Signed the Confidentiality Agreement.

Shortlisted Bidders may partner with non-shortlisted entities with complementary expertise as necessary to comprehensively address the requirements specified under Section C.4 of this RFP.

The PPPDG will select a pre-qualified Bidder for the [**Public Service Activity**], using the evaluation procedures described in this RFP. Unless the pre-qualified Bidder is in the form of a legally registered joint venture, the [**Contracting Authority**] will enter into a [**PPP Agreement model**] with the Lead Member of the Bidder. This Lead Member will be solely responsible for the performance of all activities/services provided by the consortium, including from other members of the Bidder team.

No later than five (5) Business Days after your receipt of the RFP, you are required to respond to confirm that you have received all the Bid Documents and that you intend to submit a full Technical and Financial Proposal. Confirmation must be provided using *Form 1* of Part II of this RFP, including the Bidder's primary representative's full contact information, information of all Members of the Bidder consortium, and the Bidder's representatives' full contact information for the purpose of obtaining access accounts to the virtual data room. Your response should be sent to all the email addresses indicated in Section B.2 of this RFP. The email's subject line should clearly indicate "[Bidder's name]: Form 1". Failure to do so will result in lack of receipt of any further

information concerning this transaction, including amendments and clarifications, and may result in exclusion from the bid process itself.

Bidders should review the entire RFP and prepare their Proposals in strict compliance therewith. All Proposals must be accompanied by a Bid Bond, in the form of an on-demand payment bond payable upon presentation in Ethiopia. The Bid Bond should be denominated in Ethiopian birr and for the amount of:

- [XXX] Birr Only (ETB XXX)

The Proposal, together with the Bid Bond, must be submitted to:

Address: [Position, Relevant Department]
[Address]

Attn: [Name]

Email: [Email address]

Tel: [Contact information]

The deadline for receipt of Proposals is 15:00 hours local time (GMT + 3) [date].

DISCLAIMER

This Request for Proposal (“RFP”) was prepared by the PPPDG [Can add, “with the support of Transaction Advisor”]. A Project Management Team led by a representative from the Contracting Authority as well as other members have been working with the PPPDG [Can add, “and its advisors”] to develop this RFP and Bid.

This RFP is being distributed to those companies and consortia which have:

- Been pre-qualified to bid for the [Name of the transaction];

AND

- Signed the Confidentiality Agreement.

Neither the PPPDG, Contracting Authority or their Advisors warrant the accuracy or completeness of the information presented herein, nor do they make any representation that the information presented herein constitutes all the information necessary to bid upon or develop the present transaction. No Bidder is entitled to rely on the PPPDG, Contracting Authority or Transaction Advisor’s involvement in the preparation of this RFP or in the solicitation process as a basis for bidding upon or developing the project.

Each Bidder accepts full responsibility for conducting an independent analysis of the feasibility of the project and for gathering and presenting in its Proposal(s) all necessary information. Each Bidder assumes all risks associated with the project, and no adjustments will be made based on the Bidder's erroneous interpretation of the information provided.

The PPPDG and the Transaction Advisor expressly disavow any obligation or duty (whether in law, contract, tort or otherwise) to any Bidder.

All information submitted in response to this RFP becomes the property of the PPPDG.

The PPPDG reserves the right, in its absolute discretion, at any stage and without notice, to terminate further participation in the process by any Bidder, to change the structure and timing of the tender process, to amend the information contained in the Request for Proposals or to terminate the tender process itself.

Neither the PPPDG, the Government of the Federal Democratic Republic of Ethiopia nor their respective directors, officers, members, employees, agents or advisors (including the Transaction Advisors) shall have any responsibility or liability for any costs, expenses or other liabilities incurred by any participants in the tender process.

In submitting information in response to the RFP, each Bidder certifies that it understands, accepts and agrees to these disclaimers. Nothing contained in any other provision of this RFP, nor any statements made orally or in writing by any person or party, shall have the effect of negating or superseding any of the foregoing disclaimers.

TABLE OF CONTENTS

PART I	<u>GENERAL INFORMATION AND INSTRUCTIONS TO BIDDERS</u>	7
A.	<u>Definitions</u>	7
B.	<u>General Information</u>	10
B.1	<u>COST OF PREPARING PROPOSAL(S)</u>	10
B.2	<u>WRITTEN CORRESPONDENCE</u>	10
B.3	<u>RETURN OF INFORMATION</u>	10
C.	<u>Pre-Qualification & Change of Members of a Bidder</u>	11
C.1	<u>CALIBRE OF BIDDER SOUGHT</u>	11
C.2	<u>DISCLAIMER OF RELATIONSHIPS</u>	11
C.3	<u>CHANGES OF BIDDER'S NAME</u>	11
C.4	<u>CHANGES TO MEMBERS OF A BIDDER</u>	11
D.	<u>Fraud and Corruption</u>	13
E.	<u>Confidentiality</u>	14
F.	<u>Transaction Schedule</u>	15
G.	<u>Comments on Bid Documents, Clarifications and Amendments</u>	16
G.1	<u>COMMENTS</u>	16
G.2	<u>CLARIFICATIONS</u>	17
G.3	<u>AMENDMENTS</u>	17
H.	<u>Data Room, Site Visits, and Transaction Review Conference</u>	18
H.1	<u>DATA ROOMS</u>	18
H.2	<u>VIRTUAL DATA ROOM</u>	18
H.3	<u>PHYSICAL DATA ROOM</u>	18
H.4	<u>SITE VISITS</u>	19
H.5	<u>BIDDERS' CONFERENCE</u>	19
I.	<u>Preparation and Submission of Proposals</u>	21
I.1	<u>PROPOSAL SUBMISSION AND CONFORMITY</u>	21
I.2	<u>DETAILS OF CONSTITUENT PARTS OF THE PROPOSAL</u>	21
I.3	<u>SUPPORTING EVIDENCE</u>	21
I.4	<u>PROPOSAL FORMAT</u>	21
I.5	<u>PACKAGING OF PROPOSALS</u>	22
I.6	<u>PROPOSAL SUBMISSION DEADLINE</u>	23
I.7	<u>REPRESENTATIONS</u>	23
I.8	<u>DISCLOSURE OF BIDDERS</u>	23
I.9	<u>PROPOSAL VALIDITY</u>	24
I.10	<u>DISCLAIMERS</u>	24
L.	<u>Modification or Withdrawal of Proposal</u>	25
K.	<u>Proposal Evaluation</u>	26
K.1	<u>GENERAL</u>	26
K.2	<u>ASSESSMENT OF COMPLETENESS AND SUBSTANTIAL RESPONSIVENESS</u>	26
K.3	<u>TECHNICAL EVALUATION – OVERVIEW</u>	28
K.4	<u>TECHNICAL EVALUATION – RELEVANT EXPERIENCE</u>	28
K.5	<u>TECHNICAL EVALUATION – EVALUATION OF BUSINESS/OPERATING PLAN</u>	29
K.6	<u>TECHNICAL EVALUATION – EVALUATION OF LOCAL CONTENT PLAN</u>	30
K.7	<u>TECHNICAL EVALUATION – SCORING</u>	31

K.8	<u>FINANCIAL EVALUATION – SCORING</u>	31
K.9	<u>CLARIFICATION OF PROPOSALS BY PROJECT EVALUATION TEAM</u>	32
K.10	<u>CORRECTION OF ERRORS</u>	32
K.11	<u>DESIGNATION OF PREFERRED BIDDER AND RESERVED BIDDER</u>	33
L.	<u>Financial Guarantees Required from Bidders during Bidding Process</u>	33
L.1	<u>REQUIREMENT SUMMARY</u>	33
L.2	<u>BID BOND</u>	33
L.3	<u>PREFERRED BIDDER’S BANK GUARANTEE</u>	34
L.4	<u>RESERVED BIDDER’S BID BOND</u>	35
M.	<u>Return of Submitted Proposals</u>	36
N.	<u>Disclosure of Proposal Evaluation Results</u>	36
O.	<u>Negotiations and Award</u>	36
P.	<u>Discretion of the PPPDG</u>	36
Q.	<u>Currency of PPP Agreement</u>	37
PART II	<u>GENERAL FORMS</u>	38
FORM 1	<u>CONFIRMATION OF RECEIPT OF BID DOCUMENTS AND INTENTION TO BID, AND REQUEST FOR ACCESS ACCOUNTS FOR VIRTUAL DATA ROOM OR PHYSICAL DATA ROOM</u>	39
FORM 2	<u>REQUEST FOR SITE VISITS</u>	45
FORM 3	<u>DISCLAIMER OF RELATIONSHIPS (PRIOR TO PROPOSAL SUBMISSION AS PER SECTION C.2 OF THE RFP)</u>	46
FORM 4	<u>CONFIRMATION OF PARTICIPATION IN BIDDERS’ CONFERENCE</u>	47
PART III	<u>TERMS OF REFERENCE</u>	48
PART IV	<u>TECHNICAL PROPOSAL INSTRUCTIONS AND FORMS</u>	49
TECHNICAL 1	<u>TECHNICAL PROPOSAL INSTRUCTIONS</u>	50
TECHNICAL 2	<u>PROPOSAL SUBMISSION LETTER</u>	55
TECHNICAL 3	<u>ORGANIZATIONAL STRUCTURE AND BUSINESS ARRANGEMENT OF THE BIDDER</u>	57
TECHNICAL 4	<u>CORPORATE HISTORY AND PROFILE</u>	58
TECHNICAL 5	<u>OWNERSHIP OF BIDDER’S MEMBER COMPANIES</u>	60
TECHNICAL 6	<u>SUBSIDIARIES AND AFFILIATED COMPANIES</u>	61
TECHNICAL 7	<u>CONFIRMATION OF DISCLAIMER OF RELATIONSHIPS</u>	62
TECHNICAL 8	<u>FINANCIAL PROFILE</u>	64
TECHNICAL 9	<u>RELEVANT EXPERIENCE</u>	66
TECHNICAL 10	<u>CURRICULA VITAE</u>	67
TECHNICAL 11	<u>INITIAL STAFF REQUIREMENTS</u>	69
TECHNICAL 12	<u>STANDARD LANGUAGE OF BID BOND</u>	70
TECHNICAL 13	<u>STANDARD LANGUAGE OF PREFERRED BIDDER’S BANK GUARANTEE</u>	72
PART V	<u>FINANCIAL PROPOSAL INSTRUCTIONS AND FORMS</u>	74
FINANCIAL 1	<u>FINANCIAL PROPOSAL INSTRUCTION</u>	75
FINANCIAL 2	<u>FINANCIAL PROPOSAL SUBMISSION LETTER</u>	76
FINANCIAL 3	<u>FINANCIAL PROPOSAL [REVENUE AND EXPENSES] WORKSHEET</u>	78

PART I GENERAL INFORMATION AND INSTRUCTIONS TO BIDDERS

A. Definitions

1. In this Request for Proposal: except to the extent the context otherwise requires:

"Authorised Representative" means a person who is from the Bidder's lead Member and has been nominated and authorized by all Members of the Bidder to act as its primary point of contact with the PPPDG for all matters relating to this RFP and the bidding process;

"Bid Bond" bears the meaning set out in Paragraph 115;

"Bid Documents" means:

- (i) this Request for Proposal (RFP);
- (ii) the Public Private Partnership Agreement;
- (iii) the Comment Template (in Microsoft Excel).

"Bid Process Events" means those events set out in the Transaction Schedule;

"Bidder" means the company or Consortium, which has been pre-qualified to bid for the [Public Service Activity].

"Business Day" means any day of the week other than a Saturday or Sunday that is not an Ethiopian national holiday or a day on which banks are authorized by law or executive order to be closed in the Federal Democratic Republic of Ethiopia; provided, however, that in the event that such law or executive order results in banks in the Government of the Federal Democratic Republic of Ethiopia being closed for more than three (3) weekdays or non-holidays in succession, the next weekday following such three (3) days shall be deemed to be a Business Day;

"Confidentiality Agreement" means the confidentiality agreement signed by the Bidder in order to obtain the Bid Documents;

"Completion" shall have the same meaning as in the PPP Agreement;

"Consortium" means a prospective bidder which comprises two or more companies who have signed a consortium agreement;

"Contracting Authority" means a **Public Body** or a **Public Enterprise** which intends to enter into a Public Private Partnership Agreement with a **Private Party**;

"Designated Bank Account" shall have the same meaning as in the PPP Agreement;

"Draft PPP Agreement" means a version of the Public Private Partnership Agreement on which Bidders will be allowed the opportunity to comment and mark-up for the purpose of discussions at the Bidders' Conference;

"Effective Date" shall have the same meaning as in the PPP Agreement;

"Extended Proposal Validity Period" bears the meaning set out in Paragraph 71;

“Final PPP Agreement” means the final version of the PPP Agreement to be issued after the Bidders Conference reflecting Bidders comments, observations and suggestions for change that have been accepted by the [PPPDG];

"Financial Proposal" means Part B of the Proposal as described in Paragraph 52;

“Government” means all the Federal Governments of Ethiopia, excluding State, and local governments;

“Lead Member” means the Member of the Bidder that identified as the lead Member in Bidders RFQ submission to the PPPDG or as subsequently approved by PPPDG pursuant to Section C.4 of this RFP;

"Member" means, if the Bidder is a Consortium, a member thereof;

“Operator” shall have the same meaning as in the PPP Agreement;

“Preferred Bidder” means the Bidder that will be selected to undertake the [Public Service Activity] on the basis of its Technical and Financial Proposals, evaluated in accordance with Section K of this RFP;

“Preferred Bidder’s Bank Guarantee” bears the meaning set out in Paragraph 120;

“Project Company” means the legal entity incorporated under the laws of the Federal Democratic Republic of Ethiopia by the successful bidder whose sole purpose shall be to execute and implement the Public Private Partnership Agreement and other Project Agreements, if any;

"Proposal" consists of the Technical Proposal and the Financial Proposal as described in Paragraph 52;

"Proposal Submission Deadline" bears the meaning set out in Paragraph 65;

"Proposal Validity Period" bears the meaning set out in Paragraph 70;

“Public Body” means any organ of the Government of the Federal Democratic Republic of Ethiopia which is wholly financed by the Federal Government budget”;

“Public Enterprise” means an enterprise fully owned by the Federal Government and defined under the relevant laws of the Federal Democratic Republic of Ethiopia;

“Public Entity” means either a Public Body or a Public Enterprise;

“Public Private Partnership” means a long-term agreement between a Contracting Authority and a Private Party under which a Private Party: (a) undertakes to perform a Public Service Activity that would otherwise be carried out by the Contracting Authority; (b) receives a benefit by way of: (1) compensation by or on behalf of the Contracting Authority, (2) tariffs or fees collected by the Private Party from users or consumers of a service, or (3) a combination of such compensation and such charges or fees; (c) is generally liable for risks arising from the performance of the activity or use of the state property in accordance with the terms of the Project Agreements.;

PPP Guidelines - Appendix

“Public Private Partnership Agreement” or **“PPP Agreement”** means a contract concluded between the Contracting Authority and a Private Party setting forth the terms and conditions of the Public Private Partnership;

“Public Private Partnership Directorate General” or **“PPP Directorate General (PPPDG)”** means the unit established within the Ministry pursuant to the Public Private Partnership Proclamation No. 1076/2018;

“Request for Proposal” or **“RFP”** means this document, including all of its annexes and forms;

“Technical Proposal” means Part A of the Proposal as described in Paragraph 52;

“Transaction Advisor” means [Name of Transaction Advisor] and its consortium members engaged by the PPPDG to advise on this transaction;

“Transaction Schedule” means the schedule set out in Section F of this RFP; and

“Transaction Process” means the process for selecting the [Operator/Manager/Developer], including each of the Bid Process Events.

B. General Information

B.1 Cost of Preparing Proposal(s)

2. Bidders shall bear all costs associated with the preparation and submission of their Proposals and the finalisation and execution of the Public Private Partnership Agreement, including the costs of site visits, visit to the data room and attendance at the Bidders' Conference. The PPPDG and its advisors, including the Transaction Advisor, will in no case be responsible or liable for these costs, regardless of the conduct or outcome of the evaluation process.

B.2 Written Correspondence

3. All written correspondence from Bidders to the PPPDG, unless otherwise instructed, shall be addressed to the following, copying all email addresses set out below:

[Position, Department]
Address: [Address]

Attn: [Name]

Email: [Email Address]

4. All correspondence should be clearly marked “[name of the Bidder]: [subject matter]”, unless otherwise instructed and sent to *all* email addresses listed in Paragraph 3.

B.3 Return of Information

5. The PPPDG reserves the right, in its absolute discretion, to require the return of all information which has been provided to any Bidder (or any of its advisors) by, or on behalf of the PPPDG or any of their respective advisors or consultants, in written or tangible form. If so requested, the Bidder shall promptly return any and all such information, together with any copies it has made of such information, and shall provide a written confirmation to the PPPDG that any and all information that has been stored electronically has been deleted from the Bidder's (and any of its advisors') systems.

C. Pre-Qualification & Change of Members of a Bidder

C.1 Calibre of Bidder Sought

[This section should reflect the requirements set forth in the Pre-qualification stage, such as the specific experience and expertise that Bidders must be able to demonstrate in order to undertake the [Public Service Activity]. The PPP legal framework² requires that Bidders maintain their prequalification status up to the point of signing the PPP Agreement.]

6. The PPPDG is seeking Bidders that have:
 - (a) the [required prequalification expertise/experience item #1];
 - (b) the [required prequalification expertise/experience item #2];
 - (c) the [required prequalification expertise/experience item #3];
 - (d) No conflicts of interest with other activities in which it, or affiliated, organisations are involved;
 - (e) no undeclared financial or other business relationships with any member of the PPPDG, or the Government, or with any Consultants employed by them on this assignment, who would be in a position to influence the outcome of the bid process.
7. The Bidders who have received this RFP are deemed by the PPPDG to prima facie have met the above requirements, and will continue to maintain their prequalification and eligibility to participate in the Bid Process.

C.2 Disclaimer of Relationships

8. Within ten (10) Business Days of the receipt of the Bid Documents, Bidders are required to provide a disclaimer of relationships using *Form 3* of Part II of this RFP. One (1) form should be filled and signed by each Member of the Bidder, and the completed forms should be sent to all the email addresses indicated in Section B.2 of this RFP. The email's subject line should clearly indicate "[Bidder's name]: Form 3".

C.3 Changes of Bidder's Name

9. A Bidder may change its name by submitting to the PPPDG a written request for approval. Any such change will be at the risk of the Bidder and should be submitted to the PPPDG by the Primary Representative identified in *Form 1* in Part II of this RFP at least ten (10) calendar days before the Proposal Submission Deadline. If a Bidder does not receive a response from the PPPDG within ten (10) Business Days of submitting the request, the Bidder can consider its request for change of its name approved by the PPPDG.

C.4 Changes to Members of a Bidder

10. In order to ensure that all pre-qualified Bidders continue to satisfy the requirements of Section C.1, they are not allowed to change the constituent Members or its legal form (or alter the responsibilities for specified functions of individual Members, which may have been allocated by the Bidder during the pre-qualification), except as shown below:

² Public Private Partnership Proclamation (No. 1076/2018) (the "PPP Proclamation").

(a) A Bidder may add, delete or substitute its constituent Members (or alter the responsibilities for specified functions of individual Members which may have been allocated by the Bidder during pre-qualification) by submitting to the PPPDG a written request for approval. Any request for adding or substituting a Member must be accompanied by a disclaimer of relationships filled by the additional or substituting Member using Form 3 of Part II of this RFP. Any such addition, deletion or substitution will be at the risk of the Bidder and should be submitted to the PPPDG by the Primary Representative identified in *Form 1* in Part II of this RFP at least fifteen (15) Business Days before the Proposal Submission Deadline. The PPPDG may request more information on the changes. If a Bidder does not receive a response from the PPPDG within ten (10) Business Days of submitting the request, the Bidder can consider its request for change to its Members approved by the PPPDG.

(b) A Bidder may establish a new legal entity such as a Project Company that will take on the position of a pre-qualified Bidder provided that the Bidder submits to the PPPDG a written request for approval. When establishing such an entity, the Bidder's Primary Representative identified in *Form 1* in Part II of this RFP must submit to the PPPDG a written request for approval at least ten (10) Business Days before the Proposal Submission Deadline. The PPPDG may request more information on the changes. If a Bidder does not receive a response from the PPPDG within five (5) Business Days of submitting the request, the Bidder can consider its request for change of legal form approved by the PPPDG. In submitting a written request for the establishment of a new legal entity, a Bidder (or the Lead Member, if the Bidder is not a legal person that can be sued in its own right) must provide as part of that written request a legally binding guarantee (in the form of a parent company guarantee) whereby the Bidder/Lead Member guarantees to the PPPDG that the new legal entity will assume all the obligations which the Bidder has agreed to assume as a pre-qualified Bidder, failing which the PPPDG will be able to claim directly against the Bidder/Lead Member.

D. Fraud and Corruption

11. The PPPDG and the Bidders and each of their respective advisors must exercise the highest standard of ethics in this Transaction Process. In pursuance of this policy, it is acknowledged by the Bidders that:
- (a) The PPPDG will not select a Bidder to enter into a PPP Agreement if it is determined that the Bidder engaged in the practices defined in Subparagraphs (a)i-(a)iv, and any Bidder to which any of Subparagraph (a)i-(a)iv applies will be excluded from this Transaction process:
- i. "Corrupt Practice", which means the offering, giving, receiving or soliciting of anything of value to influence the action of a public official in the Transaction Process;
 - ii. "Fraudulent Practice", which means a misrepresentation of facts in order to influence the Transaction Process to the detriment of the PPPDG and, ultimately the Government, and includes collusive practices among Bidders (prior to or after submission) designed to establish bid prices at artificial, non-competitive levels and to deprive the PPPDG and the Government of the benefits of free and open competition;
 - iii. "Coercive Practice", which means impairing or harming, or threatening to impair or harm, directly or indirectly, any party or the property of the party to influence improperly the actions of the party; and
 - iv. "Obstructive Practice", which means:
 - Deliberately destroying, falsifying, altering or concealing material evidence in order to impede the PPPDG's or any relevant authority's investigation into allegations of a corrupt, fraudulent, coercive or collusive practice; and/or
 - Threatening, harassing, or intimidating any party to prevent it from disclosing his/her knowledge of matters relevant to the investigation or from pursuing the investigation; and/or
 - Act intended to materially impede the exercise of the PPPDG's inspection and audit rights during the Transaction Process.
- (b) The PPPDG will not select a Bidder to enter into a PPP Agreement if it determines that the Bidder has, either directly or indirectly, colluded or cooperated with any other Bidder (or their consultants or its advisors) in the preparation of any Proposal except any party that is in the same Bidder consortium, and any Bidder the PPPDG determines has been engaged in such practice will be excluded from the Transaction Process; and
- (c) Any effort by a Bidder to influence Government officials, the PPPDG or any of its officers, any members of the proposal evaluation team, the PPPDG advisors, stakeholders, or others who may have involvement in the process of the Bid Document preparation, and examination, clarification, evaluation and comparison of Proposals, and in decisions concerning the grant of the PPP Agreement, will result in the rejection of the Bidder's Proposal.

E. Confidentiality

12. In addition to the obligations contained in the Confidentiality Agreement, which was signed by each Bidder to receive this RFP, no party to whom this RFP has been issued shall communicate or in any way disclose, either directly or indirectly, any information whatsoever relating to its Proposal(s) (or any part thereof), or the preparation of its Proposal(s) (or any part thereof), to any other party (or any other party's consultants or advisors) to whom this RFP has been issued except any party which is in the same Bidder consortium as the disclosing party.
13. Bidders are allowed to share Bid Documents with their respective financiers, lawyers, technical advisors and other specialists involved in the preparation of their Proposals or generally in the Transaction Process. Each Bidder will assume liability for any unauthorized publication of information relating to this transaction that is traced to the Bidder.

F. Transaction Schedule

14. The schedule to complete the Transaction Process is presented in the table below. The schedule assumes the launch date for the Bid Documents, including this Request for Proposal, as of [Date]:

	Bid Process Events	Date(s)
1.	Issue Bid Documents	
2.	Virtual Data Room available	
3.	Start of Site Visits	
4.	Bidders Conference	
5.	Issue revised Bid Documents and Final PPP Agreement to Bidders	
6.	Deadline for clarifications/comments on revised Bid Documents	
7.	Proposal Submission Deadline	
8.	Invitation for Financial Bid Opening	
9.	Opening of Financial Proposals	
10.	Negotiations with the Preferred Bidder	
11.	Execution of the PPP Agreement	
12.	Formal Handover	

G. Comments on Bid Documents, Clarifications and Amendments

G.1 Comments

15. Bidders are allowed to provide their comments on the draft PPP Agreement and this RFP until the deadlines indicated in the Transaction Schedule provided in Section F of this RFP. Bidders should use the Comment Matrix provided as part of the Bid Documents Package.
16. All comments must be provided in writing to the email addresses indicated in Section B.2 of this RFP. The subject line of these emails must clearly indicate, respectively:
 1. “[name of the Bidder]: Comments on PPP Agreement”; or
 2. “[name of the Bidder]: Comments on RFP”.
17. Comments on the draft PPP Agreement and this RFP must be provided using the standard Microsoft Excel comment template provided as part of this Bid Documents.
18. **Comments on draft PPP Agreement.** Bidders’ comments on the draft PPP Agreement submitted by the deadline indicated in the Transaction Schedule provided in Section F of this RFP will be reviewed by the PPPDG. Based on this feedback, the PPPDG will, in its sole discretion, make amendments it deems acceptable to the PPP Agreement. Comments to the draft PPP Agreement should be made in the comments matrix (in Microsoft Excel) which will be made available in the Virtual Data Room.
19. Following the Bidders’ Conference, the revised Bid Documents, including the Final PPP Agreement will be issued by the PPPDG to all Bidders who confirmed their receipt of the Bid Documents using *Form 1* of Part II of this RFP in accordance with the Transaction Schedule indicated in Section F of this RFP. The Final PPP Agreement will also be posted in the Virtual Data Room.
20. The PPPDG will not contemplate any further material changes to the PPP Agreement after the issuance of the Final PPP Agreement. Once the Final PPP Agreement is issued, Bidders should carefully review this document and use it as the basis for the development of their financial offers.
21. Any Bidder who proposes in their Technical Proposal changes that have been rejected by the PPPDG would be deemed non-compliant with the proposal requirements.
22. **Comments on RFP.** Bidder’s comments on this RFP submitted by the deadline indicated in the Transaction Schedule provided in Section F of this RFP will be reviewed by the PPPDG. Comments to this RFP should be made in the comments matrix (in Microsoft Excel) which will be made available in the Virtual Data Room.
23. For the avoidance of doubt, the revised RFP will be issued by the PPPDG to all Bidders who confirmed their receipt of the Bid Documents using *Form 1* of Part II of this RFP in accordance with the Transaction Schedule indicated in Section F of this RFP. The revised RFP will also be posted in the Virtual Data Room.

G.2 Clarifications

24. Any Bidder seeking clarification on any matter pertaining to the RFP or the Transaction Process must notify the PPPDG in writing to all the email addresses specified in Section B.2 above. The final date for receipt of requests for clarification shall be no later than [20 twenty (20)] Business Days before the Proposal Submission Deadline. The PPPDG will respond to all requests for clarification not later than [fifteen (15)] Business Days before the Proposal Submission Deadline.
25. When requesting clarifications, the subject line of the email should clearly indicate “[Name of the Bidder]: Request for Clarifications”
26. In order to keep all questions and responses accessible to all Bidders, a Question and Answer Matrix will be maintained in the Virtual Data Room that will serve as a directory of all comments or questions received along with the answers provided by the PPPDG. As further questions are responded to, a new file will be uploaded into the Virtual Data Room containing all Questions and Answers since the issuance of the RFP. A summary of all Questions and Answers provided in the Virtual Data Room will be emailed to the Bidder’s authorised representative, indicated in *Form 1* of Part II of this RFP, not later than [fifteen (15)] Business Days prior to the Proposal Submission Deadline.
27. In all replies to requests for clarifications, the identities of the Bidders who submitted clarification requests will not be disclosed.

G.3 Amendments

28. At any time prior to the Proposal Submission Deadline, the PPPDG may issue addenda in writing to all Bidders who confirmed their receipt of the Bid Documents using *Form 1* of Part II of this RFP. This addenda may delete, modify, or expand any part of the RFP (including, for the avoidance of doubt, any of the forms, agreements and other attachments thereto). The receipt of an addendum by a Bidder shall be acknowledged promptly in writing to all the email addresses specified in Section B.2. A Bidder's late receipt of any addendum or failure to acknowledge the receipt of any addendum shall not relieve the Bidder from being bound by such addendum. All the addenda will also be uploaded to the Virtual Data Room.
29. In order to afford Bidders reasonable time in which to take a clarification or amendment into account in preparing their Proposals, the PPPDG may, at its discretion, extend the Proposal Submission Deadline in accordance with Paragraph 66.

H. Data Room, Site Visits, and Transaction Review Conference

H.1 Data Rooms

30. Bidders will be provided with access to a [Physical Data Room and/or a Virtual Data Room].

H.2 Virtual Data Room

31. A web-based virtual data room containing information and documents for the reference of Bidders will be provided by the PPPDG at: [insert URL]
32. Each Bidder will be provided with up to three (3) Virtual Data Room accounts.
33. The user account information will be sent by email directly to those individuals whose names and contact information are provided to receive access to the Virtual Data Room as part of confirmation of the receipt of the Bid Documents using *Form 1* of Part II of this RFP. User accounts will be provided within two (2) Business Days after receiving the Bidder's confirmation of receipt of the Bid Documents using *Form 1* of Part II of this RFP.
34. If for any reason any individual whose contact information is submitted to obtain the access accounts for the Virtual Data Room does not receive an email invitation to access the virtual data room, this individual should immediately:
 - a. Check his/her spam folder to see if their email service provider has filtered this invitation as spam. If found there, please save this domain as a trusted domain so that any future emails are not filtered to spam; or
 - b. [PPPDG to add any other procedures recommended by VDR service provider]
35. If the above-steps 34.a and 0 do not resolve the problem, Bidders are requested to provide an alternate email address to use for access to the Virtual Data Room, and an invitation will be sent to that address. When requesting access using an alternate email address, please indicate the original email address submitted and which Bidder this Virtual Data Room account is associated with when making this request.
36. Bidders should also take note that files will continue to be uploaded into the Virtual Data Room throughout the transaction. Weekly reports will be sent out in an email form to Virtual Data Room account holders indicating a summary of new documents uploaded.
37. Some folders or subfolders in the Virtual Data Room may contain no documents. The structure of the Virtual Data Room is based on a template format, and some folders may not contain any files.
38. When corresponding concerning the Virtual Data Room, the subject line of the email should clearly indicate "[name of the Bidder]: Virtual Data Room Access".

H.3 Physical Data Room

39. A Physical Data Room containing information and documents for the reference of Bidders will be maintained by the Contracting Authority at [location], and will be available to Bidders from [insert date] to [insert date].

40. Bidders may request a maximum of [three (3)] Access Passes to visit the Physical Data Room as part of confirmation of the receipt of the Bid Documents using *Form 1* of Part II of this RFP.
41. Bidders should submit a written request to the PPPDG at least [seven (7)] calendar days in advance of each proposed visit to the Physical Data Room. The Access Passes will allow Bidder' representatives nominated using *Form 1* of Part II of this RFP to gain access to the Physical Data Room.
42. Only one Bidder at a time will be allowed in the Physical Data Room and the number of members of a Bidder's team that will be allowed in the data room at any one time

H.4 Site Visits

43. Bidders are invited to visit the [PPP project site] and to obtain or verify all information they deem necessary for the preparation of their Proposals. Within [five (5)] Business Days of the receipt of the Bid Documents, Bidders should indicate in writing whether they wish to visit [the project site], using *Form 2* of Part II of this RFP.
44. A Bidder or its agents will only be granted permission to undertake a site visit on the express condition that the Bidder agrees to follow all instructions of the PPPDG and Contracting Authority, to release and indemnify the PPPDG and Contracting Authority and their advisors (including the Transaction Advisor) from and against any liability in respect of any personal injury, loss or damage to property and any other loss, damage, costs and expenses howsoever caused, which, without the granting of such permission, would not have arisen.
45. Failure to visit the site shall not be a ground for a Bidder subsequently to alter its Proposal or any of the Bid Documents, nor shall it relieve the Bidder from any responsibility for estimating properly the difficulty or cost of successfully implementing the PPP Agreement.

H.5 Bidders' Conference

46. A Conference to review the Bid Documents and answer any questions from Bidders will be held in [Location] on the date indicated in the Transaction Schedule provided in Section F of this RFP. The Conference will allow Bidders to discuss the draft PPP Agreement, the RFP and other issues, as well as for the PPPDG to obtain Bidders' views and provide clarifications as appropriate. Up to [five (5)] representatives from each Bidder may attend the conference at their own expense.
47. Bidders intending to attend the conference should advise the PPPDG in writing, using *Form 4* of Part II of this RFP, at least [three (3) weeks] before the conference of the names and positions of its representatives who will attend. The written communication should be sent to all the email addresses indicated in Section B.2 of this RFP.
48. In order to permit the PPPDG to adequately prepare responses to the Bidders' comments, Bidders are encouraged to submit initial comments in writing to all the email addresses indicated in Section B.2 of this RFP at least five (5) Business Days prior to the Bidders' Conference. Final comments on the draft PPP Agreement and RFP will be due no later than the deadline indicated in the Transaction Schedule. Bidders should refer to

PPP Guidelines - Appendix

Section G.1 of this RFP which sets out detailed instruction for providing comments on the draft PPP Agreement and this RFP.

I. Preparation and Submission of Proposals

I.1 Proposal Submission and Conformity

49. Only Proposals from the pre-qualified Bidders who have signed the Confidentiality Agreement will be considered.
50. Each Bidder must, on or before the Proposal Submission Deadline, submit its Proposal in accordance with this RFP.
51. All Proposals must remain valid and open for acceptance by the PPPDG for the period specified in Section I.9 (the "Proposal Validity Period"). Any Proposal offering less than the stipulated Proposal Validity Period will be rejected.

I.2 Details of Constituent Parts of the Proposal

52. The Proposal shall comprise:

Part A: Technical Proposal, which includes:

- Proposal Submission Letter
- Signature Authority (in the case where the Bidder only has one Member) *or* A Signed Consortium Agreement (in the case where a Bidder has more than one Member)
- Bidder's Information and Qualifications
- Audited Financial Statements for all Members of the Bidder
- [Operating Plan/Business Plan]
- Initialled Final PPP Agreement
- A USB drive containing a soft copy of the Technical Proposal

Part B: Financial Proposal, which includes:

- Financial Proposal Submission Letter
- Financial Offer
- A USB drive containing a soft copy of the Financial Proposal

Part C: Bid Bond, a separate sealed envelope containing the Bid Bond as described in Section L.2 of this proposal. Failure to submit the Bid Bond will entail the unconditional disqualification of the Bidder.

53. The detailed instructions for the Technical and Financial Proposals as well as the required forms are provided in Part IV and Part V of this RFP, respectively.

I.3 Supporting Evidence

54. Bidders are required to submit verifiable evidence (to include up-to-date contact details for references) regarding their qualifications and experience.

I.4 Proposal Format

55. All written information shall be in the [English] language. Supporting documents and printed literature furnished by Bidders with their Proposals may be in any other language, provided that they are accompanied by a certified [English] translation.

Supporting materials that are not accompanied by a certified [English] translation will not be considered in the evaluation. For the purpose of evaluating a Proposal, the [English] language translation shall prevail.

56. Proposals shall be submitted in hardcopy format as one (1) original and five (5) copies in accordance with the requirements for packaging set out in Section I.5.
57. Each Proposal shall also be submitted in electronic format on two (2) USB drives: one (1) for Part A: Technical Proposal and one (1) for Part B: Financial Proposal, in accordance with the instructions provided in Part IV and Part V of this RFP. The USB drives are to be submitted in the corresponding packages with the hard copies of the Proposal. In the event there is a discrepancy between the electronic copy and the hard copy, the hard copy original will prevail.
58. All mathematical analyses that are provided as supporting information to the Technical Proposal shall be submitted in unprotected Microsoft Excel workbook in accordance with the instruction provided in Part IV of this RFP to facilitate any checking by the PPPDG.

I.5 Packaging of Proposals

59. The three (3) parts shall be enclosed in separate sealed envelopes or packages and shall be clearly marked, as appropriate:
 3. "Part A: Technical Proposal";
 4. "Part B: Financial Proposal"; and
 5. "Part C: Bid Bond".
60. The Bidder's name should also be clearly marked on each package.
61. The three (3) envelopes or packages containing Part A, Part B and Part C of the Proposal should be packaged in an outer envelope/package. The outer envelope/package should be clearly marked "Proposal for the [Transaction Name]" and the Bidder's name, and should be addressed to:

	Position, Department
Address:	Address
Attn:	Name

Unless instructed in writing otherwise, Bidders should not email copies of the Technical or Financial Proposal.

62. The packaged Proposal shall be submitted either by hand-delivery or by pre-paid, registered or certified mail or courier to the address provided in Paragraph 61 above on or before the Proposal Submission Deadline specified in Section I.6.
63. The PPPDG shall maintain a register of Bidders at the venue of submission of bids stated in paragraph 61 hereof, wherein will be recorded the following information relating to all proposals submitted: the name of each Bidder, date and time of submission and persons submitting on behalf of the Bidder, or the post/courier company through which

it has been submitted. In addition to the bid register, Bidders requiring an acknowledgement from the PPPDG can present a copy of the Bid submission label (label of the label on bid envelopes), for the PPPDG representative to stamp and sign as an acknowledgement of bid submitted.

64. [The PPPDG may also opt to accept soft copy submissions of proposals. The procedure follows:]
- a. *Bidders should submit a password-protected Technical Proposal and password-protected Financial Proposal as separate files by email before the bid submission deadline indicated in in Section I.6.*
 - b. After the bid submission deadline, Bidders will be contacted by email by the PPPDG to provide the password for the Technical Proposals ONLY. Bidders should respond to that correspondence with the password for the Technical Proposal ONLY.
 - c. Following evaluation of the Technical Proposals, Bidders deemed to have met the requirements will be contacted by the PPPDG by email to provide the password for their Financial Proposal file. Bidders should respond to that correspondence with the password for the Financial Proposal ONLY.

I.6 Proposal Submission Deadline

65. All Proposals must be received at the address given in Paragraph 61 prior to 15:00 hours local time (GMT+3) on [Date].
66. The PPPDG may, at its discretion, extend the Proposal Submission Deadline by issuing an addendum in accordance with Section G.3.
67. Any Proposal delivered after the Proposal Submission Deadline will be rejected no matter the reason for the delay.

I.7 Representations

68. In submitting a Proposal, the Bidder shall confirm in its Proposal Submission Letter that there has been no material change to the information provided by it or, if applicable, by any of its Members, in the response to the Invitation to Pre-qualify, or shall indicate clearly the material changes to the information previously provided by it and confirm that these changes have been approved by the PPPDG prior to the submission of the Proposal as per Section C.4.

I.8 Disclosure of Bidders

69. Bidders submit their Proposals with full knowledge of the PPPDG's right to disclose the names of the Bidders, and their constituent Members, major sub-contractors and suppliers, and in so doing, specifically waive any rights they may have under any applicable law to prevent the disclosure thereof to the public at the time of such disclosure.

I.9 Proposal Validity

70. All Proposals shall remain valid and open for acceptance by the PPPDG for a period of [one hundred and eighty (180)] days from the Proposal Submission Deadline. Any Proposal offering less than the stipulated Proposal Validity Period will be rejected.
71. Prior to expiry of the original Proposal Validity Period, the PPPDG may request one (1) or more of the Bidders to allow a specified extension to the Proposed Validity Period (the "Extended Proposal Validity Period"). A Bidder agreeing to the request will neither be required nor permitted to modify its Proposal.

I.10 Disclaimers

72. In submitting a Proposal, each Bidder specifically acknowledges in its Proposal Submission Letter the procedures and disclaimers described in this RFP.

J. Modification or Withdrawal of Proposal

73. A Bidder may modify or withdraw its Proposal after it has been submitted without any penalty, provided that the modification or notice of withdrawal is received in writing by the PPPDG as per Paragraph 74 prior to the Proposal Submission Deadline specified in Paragraph 65.
74. A Bidder's modification or notice of withdrawal shall be prepared in writing (hard copy). It should be placed in a sealed envelope, marked in accordance with the provision of Paragraph I.5, additionally marked "Modification to Technical Proposal", "Modification to Financial Proposal" or "Withdrawal of Proposal" as appropriate, and delivered to the address specified in Paragraph 61. The PPPDG shall subsequently register the Bidder's modification or notice of withdrawal in the bid submission register.
75. Subject to Section K.9, no Proposal may be modified after the Proposal Submission Deadline.
76. The modification and withdrawal provisions in this section shall not be used by a Bidder as a means of submitting a late Proposal. Additionally, these modification and withdrawal provisions will not alter the PPPDG's right to reject any Proposal.

K. Proposal Evaluation

K.1 General

77. This section sets out the guidelines under which the proposal evaluation will be conducted.
78. All Bidders are required to comply with the financial guarantee requirements set forth in Section L.
79. The proposal evaluation will be carried out by the Project Evaluation Team, and in strict conformity to the evaluation guidelines set out in this section.
80. The process for assessment of Proposals comprises three (3) principal stages:
1. **Assessment of Completeness and Substantial Responsiveness** conducted on a pass/fail basis, as more fully described in Section K.2;
 2. **A Technical Evaluation** of the Proposal covering two elements as follows:
 - Evaluation of [Relevant Experience]
 - Evaluation of [Operating Plan/Business Plan]
 3. **A Financial Evaluation** of the Proposal to determine the bidder that offers the lowest financial offer as more fully described in Section K.8.
81. The two (2) top ranked Bidders according to evaluation criteria will be declared the Preferred Bidder and the Reserved Bidder, respectively, subject to the restrictions and conditions set forth in Section K.11 of this RFP and subject to meeting the financial guarantee requirements set forth in Section L of this RFP.

K.2 Assessment of Completeness and Substantial Responsiveness

82. The Project Evaluation Team, will scrutinise the Proposals (together with any modifications received in accordance with Section J of this RFP) following the Proposal Submission Deadline to determine whether the completeness and responsiveness requirements laid out in this RFP have been met.
83. Proposals, for which a notice of withdrawal has been submitted pursuant to Paragraphs 73 and 74, will not be opened and will be returned to the Bidders unopened.
84. The proposal evaluation team will scrutinise the Technical Proposal to ensure that they are complete and substantially responsive to the RFP, based on the following criteria:

Item		Evaluation
i.	Bidder submits Proposal Submission Letter, using the required form, respecting the Proposal Validity Period, signed by the Bidder’s Authorized Representative and witnessed.	Pass/Fail
ii.	(Where the Bidder is a single firm,) Bidder provides a Signature Authority in the form of a board resolution or a power of attorney; or (Where the Bidder is a consortium,) Bidder provides a Consortium Agreement signed by all Members of the Bidder, supported by	Pass/Fail

Item		Evaluation
	signature authority in the form of a board resolution or a power of attorney from each Member of the Bidder providing its signatory the authority to sign and commit the Member to the Consortium Agreement.	
iii.	Bidder provides all the required information on Bidder's information and qualifications using required templates and forms.	Pass/Fail
iv.	Bidder provides [Operating Plan/Business Plan], which forms the Technical Proposal.	Pass/Fail
v.	All salient* parts of Proposal provided in [English] language.	Pass/Fail
vi.	Bidder submits the required value of Bid Bond in a separate sealed envelope and is valid until the associated expiration date.	Pass/Fail
vii.	USB drive included as part of Technical Proposal contains full Technical Proposal in PDF plus the main text of the proposal in Microsoft Word 2010, and any supporting calculations and estimates in Microsoft Excel 2010.	Pass/Fail
viii.	Bidder provides a Disclaimer Statement for each Member	Pass/Fail
ix.	Bidder provides audited financial statements for the last [#] years and preferably by the same auditor. In a situation where there has been a change of auditor, a letter stating reasons for change should be submitted alongside	Pass/Fail
x.	Bidders must confirm their willingness to conform to the terms of the Final PPP Agreement in their Proposal Submission Letters and by initialling all pages of the Final PPP Agreement.	Pass/Fail

* Documents must be submitted in [English]. Where an original is not in [English], the documents should be accompanied with a certified [English] translation.

85. A complete and substantially responsive Proposal is one where any deviations from the requirements of the Bid Documents are not sufficient to prevent a fair comparison with other Proposals. The evaluation criteria will be conducted as follows:

6. Items [i, ii, vi, x]: If any of the required item is missing, or if Bidder does not conform to any of these requirements, the Proposal will be declared non-responsive.
7. Items [iii, iv, v, vii, ix]: If two or more of the required items are missing, or if Bidder does not conform to two or more of these requirements, the Proposal will be declared non-responsive. In the event where one of these items is incomplete or improperly submitted, the PPPDG, at its sole discretion, may ask the Bidder to resubmit the item. Failure to resubmit the item at the request of the PPPDG may be grounds for disqualification.
8. Failure to submit the Bid Bond will result in an unconditional disqualification.

86. Proposals that are disqualified or declared non-responsive will be excluded from the further evaluation process. Only Proposals that passed this assessment will be further

evaluated against the criteria set out in Section K.3 below, in order to ultimately identify the Preferred Bidder.

K.3 Technical Evaluation – Overview

87. In the period following the Proposal Submission Deadline, the Technical Proposals that have passed the Evaluation of Completeness and Substantial Responsiveness in accordance with Section K.2 will be evaluated against the Technical Proposal Evaluation Criteria described in this section.

88. The Technical Evaluation will be carried out on the basis of the following two (2) broad criteria:

- Relevant Experience
- [Business Plan /Operating Plan]
- Local Content Plan

K.4 Technical Evaluation – Relevant Experience

89. Bidders’ Relevant Experience (rE) will be evaluated against a scoring system that adds to a total of one hundred (100) points. Bidder are to submit verifiable experiences, with supporting accurate and up to date references, with their proposals for evaluation.

	Maximum Points (100)
RELEVANT EXPERIENCE TOTAL (rE)	
Evaluation Criteria #1 required to undertake [Public Service Activity]	30
[Evaluation sub-criteria #1]	10
[Evaluation sub-criteria #2]	5
[Evaluation sub-criteria #3]	10
[Evaluation sub-criteria #4]	5
Evaluation Criteria #2 required to undertake [Public Service Activity]	20
[Evaluation sub-criteria #1]	10
[Evaluation sub-criteria #2]	10
Evaluation Criteria #3 required to undertake [Public Service Activity]	20
[Evaluation sub-criteria #1]	15
[Evaluation sub-criteria #2]	5
Evaluation Criteria #4 required to undertake [Public Service Activity]	15

[Evaluation sub-criteria #1]	15
Evaluation Criteria #5 required to undertake [Public Service Activity]	15
[Evaluation sub-criteria #1]	9
[Evaluation sub-criteria #2]	6

90. An indicative Bidder A’s Relevant Experience (rE) shall be scored according to the formula below:

$$\text{Relevant Experience } (rE)_A = \frac{rE \text{ Score}_A}{100} \times 13$$

K.5 Technical Evaluation – Evaluation of Business/Operating Plan

91. Each major component of Bidder’s [Business Plan/Operating Plan (“OP”)] will be evaluated against a scoring system that adds to a total of one hundred (100) points as highlighted in the table below.

	Maximum Points (100)
[BUSINESS PLAN/OPERATING PLAN TOTAL (OP)]	
Operating Plan/Business Plan Component 1 <i>e.g. Operations Management</i>	50
Sub-Component 1 <i>e.g. Plan for Health, Safety and Environment (HSE) Practice</i>	15
Sub-Component 2	15
Sub-Component 3	5
Sub-Component 4	10
Sub-Component 5	5
[Operating Plan/Business Plan Component 2] <i>e.g. HR Management and Staffing Plan</i>	20
Sub-Component 1	5
Sub-Component 2	5
Sub-Component 3	2
Sub-Component 4	2
Sub-Component 5	1
Sub-Component 6	5
Operating Plan/Business Plan Component 3] <i>e.g. Commitment to Innovation</i>	10
Sub-Component 1	10
Operating Plan/Business Plan Component 4] <i>e.g. Continuous Improvement</i>	10

Sub-Component 1	7
Sub-Component 2	3
Operating Plan/Business Plan Component 5] e.g. Proposed Training Program	10
Sub-Component 1	5
Sub-Component 2	5

92. An indicative Bidder A’s [Business Plan/Operating Plan (“OP”)] experience shall be scored according to the formula below.

$$\text{Operating Plan (oP)}_A = \frac{oP \text{ Score}_A}{100} \times 60$$

K.6 Technical Evaluation – Evaluation of Local Content Plan

93. The Local Content Plan of each Bidder will be scored to ensure that it meaningfully involves Ethiopian nationals and institutions in the implementation of the project.

94. A Bidder can score a maximum of 7 percent of the total score of the Technical Proposal from its Local Content Plan.

95. An indicative Bidder A’s [Local Content Plan (“LCP”)] shall be scored according to the following criteria.

	Maximum Points (100)
LOCAL CONTENT PLAN TOTAL (LOCp)	
Evaluation Criteria #1: Localisation of Management Personnel	30
[Evaluation sub-criteria #1 (<i>E.g. % personnel at project start-up that are Ethiopian nationals</i>)]	10
[Evaluation sub-criteria #2] (<i>E.g. % personnel that are Ethiopian nationals by Year 5</i>)	5
[Evaluation sub-criteria #3]	10
[Evaluation sub-criteria #4]	5
Evaluation Criteria #2: Equity Share in Project Company held by Ethiopian Nationals	50
[Evaluation sub-criteria #1]	10
[Evaluation sub-criteria #2]	10
Evaluation Criteria #3: Localisation of Service Delivery Value Chain	20
[Evaluation sub-criteria #1] (<i>E.g. % suppliers and subcontractors that are locally registered entities</i>)	15

[Evaluation sub-criteria #2] <i>(E.g. % professional services providers that are locally registered entities)</i>	5
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96. An indicative Bidder A’s [Local Content Plan (“LOCp”)] shall be scored according to the formula below.

$$Local\ Content\ Plan\ (LOCp)_A = \frac{LOCp\ Score_A}{100} \times 7$$

K.7 Technical Evaluation – Scoring

97. An indicative Bidder A’s combined Technical Proposal score shall be computed as illustrated below:

$$Technical\ Proposal\ Score_A = (rE_A + oP_A + LOCp_A)$$

98. A Bidder must score a minimum of [60] points out of the maximum 80 points to have their Financial Proposal considered.

K.8 Financial Evaluation – Scoring

99. The Financial Proposals that are submitted by technically qualified Bidders will be opened in a public session on a date to be communicated to the Bidders by the PPPDG. Those Bidders whose Technical Proposals are evaluated as unacceptable will have their Financial Proposals returned unopened within a period of [four (4)] weeks of the completion of the Technical Evaluation.

100. Bidder’s Financial Proposal shall consist of the following sections:

- A Financial Offer Letter using Form 2 Financial Offer
- A Financial Submission Letter using Form [] explaining the Financial implications of the Bidders Local Content Plan
- A soft copy only of financial projections of operating scenarios

101. Bidders will be awarded a financial bonus of up to 7 percent of the total Financial Score points for demonstrating meaningful involvement of Ethiopian nationals and institutions in their Proposals.

102. Bidders will receive this 7 percent bonus if all the following conditions hold:

- 50.1 percent or more of the Project Company is held by Ethiopian Nationals
- 50 percent of the Project Company management are Ethiopian Nationals
- 50 percent of the Project Company employees are Ethiopian Nationals

PPP Guidelines - Appendix

- 30 percent of raw materials used in construction are sourced inside Ethiopia OR the Bidder scored 80% or more on Local Content Plan in section K.6.

103. Bidders who meet only some of the individual criteria shall receive a Financial Score bonus equivalent to the maximum percentages below.

Financial Proposal Bonus	Maximum Score awarded (% of Financial Proposed Score)
50.1 percent or more of the Project Company is held by Ethiopian Nationals	2%
50 percent of the Project Company management are Ethiopian Nationals	2%
50 percent of the Project Company employees are Ethiopian Nationals	2%
30 percent of raw materials used in construction are sourced inside Ethiopia OR the Bidder scored 80% or more on Local Content Plan in section K.6.	1%

104. Bidders Financial Proposals shall be supported by financial projections of operating scenarios consistent with Bidders' [Business/Operating Plans].

105. Assumptions that are prescribed for Bidders for the purpose of developing financial projections are presented in Part V of this RFP.

106. Financial projections in Bidders Financial Proposals should be developed in Microsoft Excel (2010 or later version) format and all relevant input and output worksheets should be unlocked and unprotected.

107. The Microsoft Excel financial projections should be included on the USB included in the Financial Proposal.

K.9 Clarification of Proposals by Project Evaluation Team

108. During the examination, evaluation and comparison of Proposals, the Project Evaluation Team may, at its discretion, ask the Bidders for clarification of their Proposals. Requests for clarifications and responses shall be in writing, and no change in any Proposal or substance of the Proposal shall be sought, offered or accepted.

K.10 Correction of Errors

109. Proposals will be checked for any arithmetical errors in computation and summation. Where there is a discrepancy between amounts in figures and in words, the amount in words will prevail.

110. The amounts stated in the Proposal will be adjusted in accordance with the above procedure for the correction of errors. The Bidder will be informed in writing of any arithmetical adjustments made should the PPPDG wish to further consider that Proposal. Where any arithmetical adjustment results in a material change to the Proposal (as determined in the PPPDG's sole discretion), the Bidder may withdraw its Proposal within five (5) Business Days of the PPPDG advising the Bidder of the arithmetical adjustments and, for the avoidance of doubt, in such situation the Bidder's financial guarantee(s) in place at the time shall be forfeited. If the Bidder does not withdraw the Proposal within five (5) Business Days, the Bidder shall be deemed to have accepted the arithmetical adjustments.

K.11 Designation of Preferred Bidder and Reserved Bidder

111. Upon meeting the guarantee requirements set out in Section L of this RFP, the first (1st)-ranked Bidder and the second (2nd)-ranked Bidder will be designated as the Preferred Bidder and the Reserved Bidder.

112. In order for the first (1st)-ranked Bidder and the second (2nd)-ranked Bidder to be declared the Preferred Bidder and the Reserved Bidder, respectively, they may be required to also extend their Proposal Validity Period so that their Proposals will be valid for a period specified by the PPPDG at the time of extension.

L. Financial Guarantees Required from Bidders during Bidding Process

L.1 Requirement Summary

113. During the Transaction Process, the following financial guarantees are required:

9. A Bid Bond to be submitted with the Bidder's Proposal; and
10. Preferred Bidder's Bank Guarantee to be provided by the first (1st)-ranked Bidder.

114. All of the above-mentioned financial guarantees should be in the form of an on-demand payment bond payable upon presentation in Ethiopia and from a local or international bank acceptable to the PPPDG.

L.2 Bid Bond

115. Each Proposal must be accompanied by a Bid Bond that can be submitted in Ethiopian birr for:

- [Amount] Birr Only (ETB [Amount])

The Bid Bond will be valid for [one-hundred and eighty (180)] calendar days after the Proposal Validity Period. The Bid Bond should be provided using the standard language provided in *Form Technical 12 Standard Language of Bid Bond* of Part IV of this RFP. Proposals not accompanied by a Bid Bond will be rejected.

116. A Bidder's Bid Bond will be forfeited without any prior notice, demand, or other legal process, upon occurrence of any of the following events, during the interval between Proposal Submission Deadline and the expiration of the Proposal Validity Period:

11. The Bidder withdraws its Proposal;
 12. The Bidder's Proposal is found to contain a false statement or a material misrepresentation;
 13. The Bidder fails to post Preferred Bidder's Bank Guarantee pursuant to Paragraph 120; or
 14. The Bidder is found to have engaged in any of the activities described in Section D of this RFP.
117. If a Bidder agrees to an extension of the Proposal Validity Period, provision must be made for extension of the terms of the Bid Bond so that it is valid for one-hundred and eighty (180) calendar days after the Extended Proposal Validity Period. The provisions regarding the release and forfeiture of the Bid Bond pursuant to Paragraph 116 shall continue to apply during the Extended Proposal Validity Period.
118. If a Bidder declines a request by the PPPDG to extend the Proposal Validity Period, its Bid Bond will be returned without penalty at the end of the original Proposal Validity Period.
119. Within four (4) weeks of the following events, whichever is earlier, a Bidder's Bid Bond will be returned without penalty:
15. Rejection of the Bidder's Proposal;
 16. Expiry of the Proposal Validity Period (or the Extended Proposal Validity Period if applicable);
 17. The completion of the Transaction Process; or
 18. Posting of a Preferred Bidder's Bank Guarantee pursuant to Paragraph 120.

L.3 Preferred Bidder's Bank Guarantee

120. The first (1st)-ranked Bidder determined in accordance with Section **Error! Reference source not found.** of this RFP shall furnish, within fifteen (15) Business Days of official notification by the PPPDG, a Preferred Bidder's Bank Guarantee in the amount equivalent to [(xx)] percent of the Bidder's Financial Offer for the PPP Agreement and valid for [one-hundred and eighty (180)] calendar days after the Proposal Validity Period or Extended Proposal Validity Period. Posting the Preferred Bidder's Bank Guarantee in a stipulated timeframe is a requirement for the first (1st)-ranked Bidder to be declared Preferred Bidder. The Preferred Bidder's Bank Guarantee should be provided using the standard language provided in *Form Technical 13 Standard Language of Preferred Bidder's Bank Guarantee* of Part IV of this RFP.
121. The 2nd ranked Bidder will be declared the Reserved Bidder following the declaration of the 1st ranked Bidder as the Preferred Bidder.
122. Upon occurrence of any of the following events, the Reserved Bidder will be required, within [fifteen (15)] Business Days of official notification by the PPPDG, to post a Preferred Bidder's Bank Guarantee in the amount equivalent to [(xx)] percent of the Bidder's Financial Offer for the PPP Agreement, in order to be declared the Preferred Bidder. The Bank Guarantee must be valid for [one-hundred and eighty (180)] calendar days after the Proposal Validity Period:

19. The first (1st)-ranked Bidder fails to post a Preferred Bidder's Bank Guarantee to become the Preferred Bidder pursuant to Paragraph 120;
 20. The Preferred Bidder fails to enter into negotiations with the PPPDG;
 21. The negotiations between the PPPDG and the Preferred Bidder fails;
 22. The Preferred Bidder is determined to have engaged in any of the activities described in Section D of this RFP.
123. A Bidder's Preferred Bidder's Bank Guarantee will be forfeited without any prior notice, demand, or other legal process, upon occurrence of any of the following events, during the interval between Proposal Submission Deadline and the expiration of the Proposal Validity Period:
23. The Bidder withdraws its Proposal;
 24. The Bidder's Proposal is found to contain any false statement or material misrepresentations;
 25. The Bidder fails to enter into negotiations with the PPPDG;
 26. The Bidder fails to execute the PPP Agreement due to the Bidder refusing to accept the terms of the Final PPP Agreement, which it previously had expressed its acceptance in its Proposal Submission Letter by initialling every page of the Final PPP Agreement submitted in its proposal;
 27. The Bidder is determined to have engaged in any of the activities described in Section D of this RFP.
124. If a Bidder agrees to an extension of the Proposal Validity Period, provision must be made for extension of the terms of the Preferred Bidder's Bank Guarantee so that it is valid for [one hundred and eighty (180)] calendar days after the Extended Proposal Validity Period. The provisions regarding the release and forfeiture of the Preferred Bidder's Bank Guarantee pursuant to Paragraph 123 shall continue to apply during the Extended Proposal Validity Period.
125. If a Bidder declines a request by the PPPDG to extend the Proposal Validity Period, its Preferred Bidder's Bank Guarantee will be returned without penalty at the end of the original Proposal Validity Period.
126. Within four (4) weeks after the PPP Agreement is executed, the Preferred Bidder's Bank Guarantee will be returned.

L.4 Reserved Bidder's Bid Bond

127. The second (2nd)-ranked Bidder will be required to maintain its Bid Bond valid for [one hundred and eighty (180)] calendar days after the Proposal Validity Period or Extended Proposal Validity Period the Bidder has agreed to in order to maintain its status as the Reserved Bidder.
128. The Reserved Bidder's Bid Bond will be forfeited without any prior notice, demand, or other legal process, upon occurrence of any of the following events, during the interval between Proposal Submission Deadline and the expiration of the Proposal Validity Period:
 28. The Bidder withdraws its Proposal;

29. The Bidder's Proposal is found to contain any false statement or material misrepresentations;
 30. The Bidder fails to post Preferred Bidder's Bank Guarantee pursuant to Paragraph 122; or
 31. The Bidder is determined to have engaged in any of the activities described in Section D of this RFP.
129. If a Bidder agrees to an extension of the Proposal Validity Period, provision must be made for extension of the terms of the Bid Bond so that they both are valid for [one hundred and eighty (180)] calendar days after the Extended Proposal Validity Period. The provisions regarding the release and forfeiture of the Bid Bond pursuant to Paragraph 128 shall continue to apply during the Extended Proposal Validity Period.
130. The Bid Bond posted by the Reserved Bidder will be returned when the Preferred Bidder affects Completion or at the expiry of the Proposal Validity Period or any Extended Proposal Validity Period, whichever is earlier.

M. Return of Submitted Proposals

131. Other than the following, the PPPDG will return neither the original nor the copies of any Proposal submitted by a Bidder:
32. Those Proposals withdrawn prior to the Proposal Submission Deadline pursuant to Paragraphs 73 and 74; and
 33. The Financial Proposals returned pursuant to Paragraphs 83 and 99.

N. Disclosure of Proposal Evaluation Results

132. After opening the Proposals, information relating to the examination, clarification, evaluation and comparison of any of the Proposals and recommendations concerning the selection of the Preferred Bidder shall not be disclosed by the PPPDG to any Bidder or other persons not officially concerned with such process until a Preferred Bidder is affirmed in accordance with Paragraph 120 above or the Transaction Process is terminated without the PPP Agreement having been awarded.

O. Negotiations and Award

133. The designated Preferred Bidder will be invited for negotiations with the PPPDG. In the event that the negotiations between the PPPDG and the Preferred Bidder fails, the Reserved Bidder will be invited to enter into negotiations.

P. Discretion of the PPPDG

134. The PPPDG reserves the right to accept or reject any Proposal, and to annul the Transaction Process and reject all Proposals at any time prior to signing the PPP Agreement without thereby incurring any liability to the affected Bidders (or to the Preferred Bidder) or any obligation to inform the affected Bidders (or the Preferred Bidder) of the grounds for the PPPDG's action.
135. If the Transaction Process is annulled, Bid Bonds and Preferred Bidder's Bank Guarantee, whichever is in place at the time of the annulment, will be returned to the Bidders within [four (4)] weeks from the date of the annulment.

Q. Currency of PPP Agreement

136. Payments made to or received from the [Operator/Manager/Developer] will be in Ethiopian birr;

PART II **GENERAL FORMS**

Form 1 **CONFIRMATION OF RECEIPT OF BID DOCUMENTS AND INTENTION TO BID, AND REQUEST FOR ACCESS ACCOUNTS FOR VIRTUAL DATA ROOM OR PHYSICAL DATA ROOM**

(One form should be completed per Bidder).

All the information in Table 1 and Table 2 is required. If there is not sufficient space for in Table 2, i.e. there are more than five (5) Members in the Bidder, add additional spaces in the table for Member 6 onward.

For Table 3, each Bidder can provide, or the purpose of obtaining the access accounts for the Virtual Data Room, up to three (3) persons' contact information. Bidders are allowed to add/delete rows in Table 3 as necessary.

Treat these Tables 1, 2, and 3 separately – If a Bidder wishes to create an access accounts using the primary representative's contact information, the primary representative's information must be also entered in Table 3.

If for any reason any individual whose contact information is submitted to obtain the access accounts for the virtual data room in Table 3 does not receive an email invitation to access the virtual data room, this individual is encouraged to:

- a) Check his/her spam folder to see if their email service provider has filtered this invitation as spam. If found there, please save this domain as a trusted domain so that any future emails are not filtered to spam; or*
- b) [PPPDG to add any other procedures recommended by VDR service provider]*

If the above-steps 34.a and 0 do not resolve the problem, please provide an alternate email address to use for access to the virtual data room, and an invitation will be sent to this address. When requesting access using an alternate email address, please indicate the original email address submitted and which Bidder this virtual data room account is associated with when making this request.

[Date]

[Title, Department]

Client Address: [Address]

Attn: [Name]

Re: Confirmation of the Receipt of Bid Documents for [Project Title]

We, [Bidder's name], hereby confirm that we have received the Bid Documents and reconfirm our intention to submit a full Technical and Financial Proposal.

Our primary representative's full contact information is provided below, followed by full contact information of representatives of each of our Members, and our representatives, for whom we request the accounts for the virtual data room be created.

Name:

Signed:

In the capacity of:

Table 1: Primary Contact Information

Bidder's Name	
Primary Representative's Information	Firm Name: Name: Title: Phone: E-mail: Postal Address:

Table 2: Bidder Composition

Bidder's Name	
Member 1 (Lead Member)	Firm Name: Name: Title: Phone: E-mail: Postal Address:
Member 2	Firm Name: Name: Title: Phone: E-mail: Postal Address:
Member 3	Firm Name: Name: Title: Phone: E-mail: Postal Address:
Member 4	Firm Name: Name: Title: Phone: E-mail:

PPP Guidelines - Appendix

	Postal Address:
Member 5	Firm Name: Name: Title: Phone: E-mail: Postal Address:

Table 3: Virtual Data Room Accounts

Bidder's Name	
Virtual Data Room Account 1	Name: Title: Phone: E-mail: Postal Address:
Virtual Data Room Account 2	Name: Title: Phone: E-mail: Postal Address:
Virtual Data Room Account 3	Name: Title: Phone: E-mail:

PPP Guidelines - Appendix

	Postal Address:
--	-----------------

Table 4: Access to Physical Data Room

Bidder's Name	
Physical Data Room Access Pass 1	Name: Title: Phone: E-mail: Postal Address:
Physical Data Room Access Pass 2	Name: Title: Phone: E-mail: Postal Address:
Physical Data Room Access Pass 3	Name: Title: Phone: E-mail: Postal Address:

Form 2 REQUEST FOR SITE VISITS

(One form should be completed per Bidder if the Bidder wishes to conduct a site visit.)

[Date]

[Position, Department]

Client Address: [Address]

Attn: [Name]

Re: Request for Site Visits for [Project Title]

We, [Bidder's name], hereby confirms our interest to carry out a site visit for the [Project Title] on [insert dates].

[Bidder to insert the sites to visit, the purpose of each trip and the representatives they wish to meet while on the site visit]

We understand that the site visit will be conducted by the [Insert Name of Contracting Authority] and depending on ongoing activities or the availability of persons we wish to meet, the Contracting Authority may be unable to accommodate our requested dates and would propose alternative dates at least [two (2)] weeks before the proposed site visits.

Our representative's full contact information is provided below.

Name:

Signed:

In the capacity of:

Bidder's Name	
Primary Representative's Information	Name: Title: Phone: E-mail: Postal Address:

Form 3 DISCLAIMER OF RELATIONSHIPS (PRIOR TO PROPOSAL SUBMISSION AS PER SECTION C.2 OF THE RFP)

(Each Member of the Bidder to complete one (1) form.)

[Date]

[Position, Department]

Client Address: [Address]

Attn: [Name]

Disclaimer of Relationships Prior to Proposal Submission

[Name of the Member company] of [address] hereby confirms to the PPPDG that there no financial or business relationships with any staff of PPP Directorate General (“PPPDG”), any member of the Government of Ethiopia or any consultant employed by any of the above organisations in relation to the Transaction Process, apart from those listed below³.

No.	Name and Position	Description of the nature of relationship in detail.
1		
2		
3		

To the best of the knowledge of the management of [name of the Member company], there is no undeclared relationships between any of its employees or agents and the persons cited above.

[Name of the Member company] further confirms that no conflict exists that would prevent [Name of the Member company] from contracting with the PPPDG, either on its own account or as a member of a consortium.

Signed:

Date:

Position:

Company:

³ State “nil” if there is no relationships to disclose and delete the table. Delete or add rows as required.

Form 4 CONFIRMATION OF PARTICIPATION IN BIDDERS' CONFERENCE

(One (1) form should be completed per Bidder.)

[Date]

[Position, Department]

Client Address: [Address]

Attn: [Name]

Re: Participation in Bidders' Conference

We, [Bidder's name], hereby confirm that the following representatives will participate in the Bidders' Conference:

	Name	Position/Title	Bidder Name	Member
1				
2				
3				
4				
5				

Name:

Signed:

In the capacity of:

PART III **TERMS OF REFERENCE**

Examples of components to develop the Terms of Reference:

Background: Policy Context and Strategic Objectives

Description of the Public Service Activity

The Contracting Framework

Key Performance Indicators

Payment Terms and Risk Sharing

Other Information

Scope of Work for Public Service Activity

Staffing Strategy and Skill Requirements for Key Personnel

PART IV TECHNICAL PROPOSAL INSTRUCTIONS AND FORMS

Technical 1 TECHNICAL PROPOSAL INSTRUCTIONS

Each Bidder is required to submit a Technical Proposal that comprises the following:

- 1 Proposal Submission Letter
- 2 Signature Authority (when the Bidder is a single firm) or Signed Consortium Agreement (when the Bidder is a consortium)
- 3 Bidder's Information and Qualifications, supported by independently verifiable evidence
- 4 Audited Financial Statements from the most recent [#] year periods and other
- 5 [Business/Operating Plan]
- 6 Initialled draft Final PPP Agreement
- 7 Bid Bond
- 8 USB drive

Of the above-mentioned items that constitute a Technical Proposal, each of the following items should be bound separately as standalone documents in the hard copy submission of the Proposal:

- **Volume 1: Submission Letter & Bidder Agreements**
 - Proposal Submission Letter;
 - Signature Authority or Signed Consortium Agreement; and
- **Volume 2: Bidder's Information and Qualifications**
 - Bidder's Information and Qualifications (including all the relevant supporting documents)
 - Bidder's relevant experience
 - Audited financial statements for each consortium member along with other financial supporting letters to illustrate [financial criteria, e.g. ability to finance working capital]
- **Volume 3: [Business/Operating Plan]**
 - [Operating Plan/Business Plan]
- **Volume 4: Bid Bond**
- **Volume 5: Initialled Agreements**
 - Initialled Final PPP Agreement

1 PROPOSAL SUBMISSION LETTER

Bidders shall provide a Proposal Submission Letter using *Form Technical 2 Proposal Submission Letter*. The Proposal Submission Letter shall be signed by the Authorized Representative of the Bidder.

When a Bidder is a consortium, the Authorized Representative should be from the Lead Member of the Bidder, which shall be identified in the signed Consortium Agreement (see Section 2 of this instruction below).

2 SIGNATURE AUTHORITY OF THE BIDDER OR CONSORTIUM AGREEMENT

If a Bidder is a single firm:

The Bidder shall provide a copy of the relevant board resolution or power of attorney (and evidence of the authority of the person providing the power of attorney to grant the power) vesting authority in its Authorized Representative signing the Proposal. Each signature to the Proposal shall be witnessed.

If a Bidder is a consortium:

When a Bidder consists of more than one company, a Consortium Agreement detailing the roles and responsibilities of the Bidder, signed by the authorized representative of each Member of the Bidder should be provided. The Consortium Agreement should, at minimum:

- Identify the lead firm (“Lead Member”) of the Bidder consortium;
- Identify the Authorized Representative of the Bidder consortium, who is from the Lead Member of the Bidder consortium and is authorized by all Members of the Bidder to sign the Bid and to act as its primary point of contact with the PPPDG and its Transaction Advisor for all matters relating to this RFP and the bidding process.
- Describe roles and responsibilities of each Member in the Bidder consortium (The information should be consistent with the information provided in *Form Technical 3 Organizational Structure and Business Arrangement of the Bidder*);
- Be signed by the authorized representative of each Member of the Bidder; and
- Include a copy of the relevant board resolution or power of attorney from each Member, vesting authority in its authorized representative signing the Consortium Agreement.

3 BIDDER’S INFORMATION AND QUALIFICATIONS

The Bidder shall provide its profile and qualification summary in narrative in the maximum of four (4) pages. The narrative summary should include a description of each of the Bidder's professional and technical advisors.

The narrative summary should be followed by completed technical forms (each form provides an instruction, and Bidders are required to follow the instructions in preparing the forms):

- *Technical 3 Organizational Structure and Business Arrangement of the Bidder*
- *Technical 4 Corporate History and Profile*
- *Technical 5 Ownership*
- *Technical 6 Subsidiaries and Affiliated Companies*
- *Technical 7 Confirmation of Disclaimer of Relationships*
- *Technical 8 Financial Profile, complemented by audited financial statements with supporting evidence that is independently verifiable*
- *Technical 9 Relevant Experience, with supporting evidence that is independently verifiable*

4 AUDITED FINANCIAL STATEMENTS AND OTHER FINANCIAL EVIDENCE

Bidder must provide audited financial statements from a licensed financial auditing firm for the last [#] years with the latest financial statement not earlier than a period ending [date]. It is preferred that the statements be audited by the same auditor and in situations where there has been a change of auditor, a letter stating reasons for change should be submitted alongside.

Bidders are also encouraged to provide other substantive evidence to illustrate capacity to finance the expected working capital. The evidence presented should be consistent with the work programs proposed in Bidder’s Operating Plan. Such evidence can include commitment letters from shareholders/consortium members in addition to letters of support from financial institutions.

5 [OPERATING PLAN/BUSINESS PLAN]

Bidders must demonstrate their technical, managerial and financial capacity to [undertake the Public Service Activity]. It should consist of narrative, supported by detailed estimates and projections in tabular form as set forth below.

Bidders shall provide an Executive Summary of the [Operating Plan/Business Plan], which must not exceed a maximum of [five (5)] pages. The Executive Summary must include the following table (indicating under “Location in Our [Operating Plan/Business Plan]” where each of the required [Operating Plan/Business Plan] components is discussed in the [Operating Plan/Business Plan]):

Operating Plan Component	Location in Our [Business/Operating Plan]
1. Relevant Experience	
2. [Business/Operating Plan]	
Technical Forms	Location in Our [Business/Operating Plan]
<i>Technical 3 - Organizational Structure and Business Arrangement of the Bidder</i>	
<i>Technical 4- Corporate History and Profile</i>	
<i>Technical 5 - Ownership of Bidder’s Member Companies</i>	
<i>Technical 6 - Subsidiaries and Affiliated Companies</i>	
<i>Technical 7 - Confirmation of Disclaimer of Relationships</i>	
<i>Technical 8 - Financial Profile</i>	
<i>Technical 9 - Relevant Experience</i>	
<i>Technical 10 - Curricula Vitae</i>	
<i>Technical 11 - Initial Staff Requirements</i>	

Bidder's [Business/Operating Plan] must not exceed [fifty (50)] pages, excluding the Executive Summary, CVs and other supporting documents. All the tables and figures that are required as part of the [Business/Operating Plan] should be included within the page limit specified above.

Bidder's [Business/Operating Plan] should, at minimum, include the business arrangements of the consortium for a period of at least [five] years from the date of handover and cover the following:

- Roles of consortium members in the [Public Service Activity];
- Transition plan to take over [Public Service Activity] while ensuring continuity of service and maintenance of performance standards

1. Relevant Experience – discuss, at a minimum, the following in detail:

[Criteria 1]

- Sub-criteria 1
- Sub-criteria 2
- Sub-criteria 3

[Criteria 2]

- Sub-criteria 1
- Sub-criteria 2
- Sub-criteria 3

[Criteria 3]

- Sub-criteria 1
- Sub-criteria 2
- Sub-criteria 3

[Criteria 4]

- Sub-criteria 1
- Sub-criteria 2
- Sub-criteria 3

2. [Business/Operating Plan], Discuss, at a minimum, the following in detail:

[Criteria 1]

- Sub-criteria 1
- Sub-criteria 2
- Sub-criteria 3

[Criteria 2]

- Sub-criteria 1
- Sub-criteria 2
- Sub-criteria 3

[Criteria 3]

- Sub-criteria 1
- Sub-criteria 2
- Sub-criteria 3

[Criteria 4]

- Sub-criteria 1
- Sub-criteria 2
- Sub-criteria 3

6 INITIALLED FINAL PPP AGREEMENT

Bidders shall initial each page of the Final PPP Agreement issued by the PPPDG following the Bidders' Conference. The agreement should be bound separately as a standalone document and submitted as part of the Technical Proposal. Bidders are only required to submit one copy of the initialled Final PPP Agreement with their Original Technical Proposal. For the avoidance of doubt, Bidders are not required to submit additional copies of the initialled agreement with the additional copies of the Proposal submitted.

7 BID BOND

For the Bid Bond requirements, refer to Section L.2 of Part I of this RFP. The Bid Bond should be submitted using *Form Technical 12 Standard Language of Bid Bond*.

The Bid Bond must be packaged in accordance with Section I.5.

8 USB DRIVE

For the soft copy (USB drive) requirements, refer to Paragraph 57 of Part I of this RFP. The USB drive should contain the entire Technical Proposal in PDF, plus the main text of the proposal in Microsoft Word 2010, and any supporting calculations and estimates in Microsoft Excel 2010 or later version.

Technical 2 PROPOSAL SUBMISSION LETTER

(One (1) form should be completed per Bidder.)

[Date]

[Position, Department]

Client Address: [Address]

Attn: [Name]

We, [Bidder's name], have examined, understood and checked the Bid Documents for and have ascertained that they contain no errors or other defects. We have initialled every page of the Final PPP Agreement as evidence of our acceptance of their terms.

We, the undersigned, offer to [undertake the Public Service Activity] in accordance with the PPP Agreement and our Proposal (including this letter) for the financial offer stated in our Financial Proposal submitted in a separately sealed envelope.

We agree to abide by this offer until [six (6) months] after the Proposal Submission Deadline, and it shall remain binding upon us and may be accepted by the Public Private Partnership Directorate General ("PPPDG") at any time before that date.

[We undertake that, if our Proposal is accepted, our bid vehicle will within [ten (10)] Business Days of such acceptance⁴ be incorporated to become the Preferred Bidder or as otherwise required by the PPPDG.]⁵

In submitting this Proposal, we confirm there has been no material change to the information provided by us, or if applicable, by any of our Members, in the response to the Invitation to Pre-qualify, except for those that have been approved by the PPPDG (or deemed approved by the PPPDG pursuant to Section C.4) during the bidding process as follows:

- [Indicate "nil" or indicate the changes of the Bidder's Members]

We accept that we are fully responsible for all costs associated with our participation in this transaction process. We understand that the PPPDG is not bound to accept any offer it may receive.

Name:

Signed:

In the capacity of: Authorized Representative

Duly authorised to sign tenders for and on behalf of:

⁴ The date of "acceptance" is the the date of the announcement of the Preferred Bidder.

⁵ This paragraph is required if the Bidder is a consortium.

PPP Guidelines - Appendix

Address:

Name of Witness:

Address of Witness:

Signature of Witness:

Technical 3 ORGANIZATIONAL STRUCTURE AND BUSINESS ARRANGEMENT OF THE BIDDER

(One (1) form should be completed per Bidder, listing all the Members of the Bidder. Add/delete rows as appropriate. Bidder is also to include a diagram of the organizational structure proposed for this Project)

Structure and Business Arrangement of [Bidder’s name]

No.	Bidder’s Member Company/Business Name	Country of Registration	Principal Business	Roles / Responsibilities within the Consortium
1				
2				
3				
4				
5				
6				
7				
8				
9				
10				

Technical 4 CORPORATE HISTORY AND PROFILE

(Each Member of the Bidder to complete one (1) form.)

Corporate Profile of [name of Bidder’s Member company/business]

Company/Business Name	
Registered Address	
Principal Address for Doing Business	
Telephone	
Fax	
E-mail	
Representation Address in Ethiopia	
Telephone	
Fax	
E-mail	
Type of Organisation: Single Proprietorship, Partnership, Corporation, Joint Venture, Other (Specify)	
Date of Incorporation/ Registration	
Country and Location of Incorporation/Registration	
Description of Principal Business	
Name of Directors	
Name of Chief Executive Officer	
Name and Address of Auditors	
Name and Address of Legal Counsel	

Company History	
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Technical 7 CONFIRMATION OF DISCLAIMER OF RELATIONSHIPS

(Each Member of the Bidder to complete one (1) form.)

[Date]

[Position, Department]

Client Address: [Address]

Attn: [Name]

Confirmation of Disclaimer of Relationships

By letter dated [insert relevant date], [Name of the Member company] submitted to the PPPDG a *Disclaimer of Relationships Prior to Proposal Submission* as required of it under paragraph 8 of the RFP.

As part and condition of the Bidder’s Proposal, [Name of the Member company], as a Member of the Bidder, hereby re-confirms or modifies its previous *Disclaimer of Relationships Prior to Proposal Submission*.

[Name of the Member company] of [address] hereby confirms that none of its shareholders, directors, employees, agents and advisors have any financial or business relationships with the PPPDG, any member of staff of the PPPDG, any other member of the Government, or any advisor employed by any of the above organisations or Governments in relation to [undertaking the Public Service Activity], apart from those listed below:⁶

No.	Name and Position	Description of the nature of relationship in detail.
1		
2		
3		

[Name of the Member company] further confirms that no conflict exists that would prevent [Name of the Member company] from contracting with the PPPDG either on its own account or as a member of a consortium.

[Name of Member Company] further confirms and warrants that all information presented by it in this disclaimer is to the best of its knowledge true and correct in every particular.

Signed:

Date:

Position:

Company:

BEFORE ME

⁶ State “nil” if there is no relationships to disclose and delete the table. Delete or add rows as required.

COMMISSIONER FOR OATHS OR NOTARY PUBLIC

Technical 8 FINANCIAL PROFILE

(Each Member of the Bidder to complete one (1) form, followed by audited financial statements for FY [Financial Year] for each Member firm.

Only where the FY of a Member ends after [Date], the Member is allowed to provide the financial information and audited financial statements for FY [Year-Year]. In that case, adjust the following table accordingly.)

Financial Profile of [name of Bidder’s Member company/business] for FY [Financial Year]

Parameter	FY Year (MM/YY- MM/YY)¹	FY Year (MM/YY- MM/YY)¹	FY Year (MM/YY- MM/YY)¹
Gross Revenues (US\$ million)			
Net Income before Interest, Taxes & Depreciation (US\$ million)			
Gross Interest Payable (US\$ million)			
Net Income after Tax (US\$ million)			
Long Term Debt ² (US\$ million)			
Total Liabilities ³ (US\$ million)			
Total Contingent Liabilities (US\$ million)			
Cash Flow from Operations ⁴ (US\$ million)			
Debt Service Coverage ⁵			
Debt to Equity Ratio ⁶			
Total Asset (US\$ million)			
Total Tangible Asset ⁷ (US\$ million)			

Parameter	FY Year (MM/YY- MM/YY) ¹	FY Year (MM/YY- MM/YY) ¹	FY Year (MM/YY- MM/YY) ¹
Total Intangible Asset (US\$ million)			
Tangible Net Worth ⁸ (US\$ million)			
Shareholders' Equity ⁹ (US\$ million)			

¹ Specify the month and year of the financial year.

² Liabilities to be paid in more than one year.

³ Total Liabilities = Current Liabilities + Long Term Liabilities.

⁴ Excluding discontinued operations.

⁵ (Net income + interest on long-term debt + depreciation)/obligatory debt service payments.

⁶ long-term debt (over one year) / shareholders' equity.

⁷ Total tangible assets = total assets – intangible assets).

⁸ Tangible net worth = total assets – intangible assets – total liabilities

⁹ Shareholders' equity = total assets – total liabilities.

Technical 9 RELEVANT EXPERIENCE

(Each Bidder should provide up to [five (5)] most relevant experiences using the form below to provide details. Each experience should be supported by up to date contact details for a reference who can independently verify the experience indicated below).

Relevant Experience of [name of Bidder’s Member Company]

Name of Project	
Country	
Type of Participation	
Period of Participation (MM/YY – MM/YY)	
General Description of Business/Project	
Description of Role Played by Bidder’s Member Company including KPIs attained, impacts achieved.	

Technical 10 CURRICULA VITAE

Proposed Position:

Name of Firm:

Name of Staff:

Nationality:

Years with Firm:

Date of Birth:

Key Qualifications:

General Qualifications	
Technical Qualification Relevant to the Proposed Position	
Countries of Experience (Years in the Country)*	
Total Number of Years of Relevant Experience**	

* List countries work experience and for each country, provide the number of years worked in parenthesis, e.g. Ethiopia (4); South Africa (3).

** Should be in the same or a comparable position to the position the individual is proposed for.

Work Experience / Employment History

Date (Year-Year)	Position and Department/ Division	Firm/ Organization	Country

--	--	--	--

Education (Starting from the most recent)

Degree	Subject Area	Institution	Location (City, Country)	Year Completed

Technical 11 INITIAL STAFF REQUIREMENTS

Category	Full Time		Part Time		Total	
	Foreign	Local	Foreign	Local	Foreign	Local

Technical 12 STANDARD LANGUAGE OF BID BOND

[Position, Department]
Client Address: Address

Attn: Name

Bid Bond

No. _____

Date:

We, [name of bank], hereby establish this Bank Guarantee in favour of the Public Private Partnership Directorate General, hereinafter called "PPPDG" as follows:

1. Whereas [Name of Bidder] has submitted a Proposal to [undertake Public Service Activity], and [Name of Bidder] is required to deposit with the PPPDG a guarantee in accordance with the terms and conditions set forth in the Request for Proposal ("RFP") in the amount of [Amount] [Ethiopian birr].
2. We hereby unconditionally and irrevocably guarantee as primary obligor the payment to the PPPDG on its first demand, without whatsoever right of object on our part and without the necessity of a previous notice or of judicial or administrative procedures and without it being necessary to prove to us the defects of short-comings of debts of the [Name of Bidder], the amount of [Amount] [Ethiopian birr] in the event that:
 - [Name of Bidder] withdraws its Proposal during the Proposal Validity Period or any Extended Proposal Validity Period to which the Bidder has agreed;
 - [Name of Bidder]'s Proposal is found to contain any false statement or material misrepresentations;
 - [Name of Bidder] is found to have committed a corrupt practise or collusive practise in an attempt to influence the outcome of the bid process;
 - [Name of Bidder] fails to post the Preferred Bidder's Bank Guarantee within the stipulated timeframe selected as the highest ranked Bidder.

Notwithstanding any objection of [Name of Bidder] or of any other person, we shall pay you the above mentioned amount or any other amount(s) you may demand, provided that such amount(s) shall not exceed a total of [Amount] [Ethiopian birr], by transfer to your account with any bank in Ethiopia, or by any other method which is acceptable to you.

3. Any payments made upon your request shall be net and free of and without any present and future deductions such as for the payment of any taxes, executions, duties, expenses, fees, deductions or retentions regardless of the nature thereof or the authority levying the same.
4. The undertakings in this guarantee constitute direct, unconditional and irrevocable obligations on our part. We shall not be exonerated from all or any part of such obligations for any reason or cause whatsoever.

5. This Letter of Guarantee is valid as from [Date of Proposal] to [Date – [one hundred and eighty days] after the Proposal Validity Period], and we shall not cancel our guarantee within the specified period.

In witness whereof, we have caused these presents to be signed by our authorised officers and our corporate seal to be hereunto affixed.

_____ Guarantor

_____ Witness

Technical 13 STANDARD LANGUAGE OF PREFERRED BIDDER'S BANK GUARANTEE

(The amount of the bank guarantee should be [xx%] of the financial offer made by the Bidder)

[Position, Department]
Client Address: [Address]

Attn: [Name]

Preferred Bidder's Bank Guarantee

No. _____

Date:

We, [name of bank], hereby establish this Bank Guarantee in favour of the Public Private Partnership Directorate General, hereinafter called "PPPDG", as follows:

1. Whereas [Name of Bidder] has submitted a Proposal [to undertake the Public Service Activity] and been selected the first (1st)-ranked Bidder, [Name of Bidder] is required to deposit with PPPDG a guarantee in accordance with the terms and conditions set forth in the Bid Document in the amount of _____ Ethiopian birr (ETB _____).
2. We hereby unconditionally and irrevocably guarantee as primary obligor the payment to PPPDG on its first demand, without whatsoever right of object on our part and without the necessity of a previous notice or of judicial or administrative procedures and without it being necessary to prove to us the defects or short-comings of debts of the [Name of Bidder], the amount of _____ Ethiopian birr (ETB _____) in the event that:
 - [Name of Bidder] withdraws its Proposal during the Proposal Validity Period or any Extended Proposal Validity Period to which the Bidder has agreed;
 - [Name of Bidder]'s Proposal is found to contain any false statement or material misrepresentations;
 - [Name of Bidder] fails to enter into the transaction closure planning meeting with PPPDG;
 - [Name of Bidder] refuses to execute the PPP Agreement with Contracting Authority due to the fact that it refuses to accept the terms of the Final PPP Agreement, which it had earlier expressed its acceptance to in its Proposal Submission Letter and by initialling every page of the Final PPP Agreement that it submitted in its proposal to PPPDG; or
 - [Name of Bidder] is found to have committed a corrupt practise or collusive practise in an attempt to influence the outcome of the bid process.

Notwithstanding any objection of [Name of Bidder] or any other person, we shall pay you the above mentioned amount or any other amount(s) you may demand, provided that such amount(s) shall not exceed a total of _____ Ethiopian birr (ETB _____), by transfer to your account with any bank in Ethiopia, or by any other method which is acceptable to you.

3. Any payments made upon your request shall be net and free of and without any present and future deductions such as for the payment of any taxes, executions, duties, expenses, fees, deductions or retentions regardless of the nature thereof or the authority levying the same.
4. The undertakings in this guarantee constitute direct, unconditional and irrevocable obligations on our part. We shall not be exonerated from all or any part of such obligations for any reason or cause whatsoever.
5. This Letter of Guarantee is valid as from [Date – date of issue which shall be within [fifteen (15)] Business Days following the official notification from the PPPDG of Preferred Bidder Status] to [Date – [one hundred and eighty days (180)] calendar days after the Proposal Validity Period or any Extended Proposal Validity Period], and we shall not cancel our guarantee within the specified period.

In witness whereof, we have caused this Letter of Guarantee to be signed by our authorised officers and our corporate seal to be hereunto affixed.

_____ Guarantor

_____ Witness

PART V FINANCIAL PROPOSAL INSTRUCTIONS AND FORMS

Financial 1 FINANCIAL PROPOSAL INSTRUCTION

Each Bidder is required to submit a Financial Proposal that comprises the following:

- 1 Financial Proposal Submission Letter
- 2 Financial Offer
- 3 USB drive

1 FINANCIAL PROPOSAL SUBMISSION LETTER

Bidders shall provide a Financial Proposal Submission Letter using *Form Financial 2 Financial Proposal Submission Letter*. The Financial Proposal Submission Letter shall be signed by the Authorised Representative(s) of the Bidder.

In the Financial Proposal Submission Cover Letter, Bidders shall confirm their willingness to conform to the terms of the Final PPP Agreement.

2 FINANCIAL OFFER

Bidders shall provide its financial offer using Form Financial 3. Bidder's Financial Offer shall be supported with detailed financial simulations and projections in Microsoft Excel format (and included in unprotected format). The offer must be made in Ethiopian birr.

3 CD, DVD OR USB DRIVE

For the soft copy (USB drive) requirements, refer to Paragraph 57 of Part I of this RFP. The USB drive should contain the entire Financial Proposal in PDF, plus the main text of the proposal in Microsoft Word 2010 (or later format), and the unprotected Microsoft Excel format financial projections.

Financial 2 FINANCIAL PROPOSAL SUBMISSION LETTER

(One (1) form should be completed per Bidder.)

Bidder’s Address:

Date:

To:

[Position, Department]

Client Address: [Address]

Attn: [Name]

Financial Offer Letter

We, [Bidder’s name], the undersigned, offer to [undertake Public Service Activity] in accordance with the terms of the final PPP Agreement, and our Proposal (including this letter).

We hereby submit out Proposal, which includes a Technical Proposal, and a Financial Proposal, each sealed and submitted within separate envelopes.

Our Financial Proposal is for the sum of [Financial offer spelled out in writing] only [currency and financial offer in numbers].

The amount is [exclusive] of local taxes, which we have specified as the equivalent of [Amount spelled out in writing] only [currency and amount in numbers].

Commissions and gratuities, if any, paid or to be paid by us to agents relating to this:

Name and Address of Agent	Amount in [Currency]	Purpose of Commission of Gratuity
[]	[]	[]

We agree to abide by this offer for a period of [one hundred and eighty (180)] days after the Proposal Submission Deadline and it shall remain binding upon us and may be accepted by Public Private Partnership Directorate General (PPPDG) at any time before that date.

We undertake that, if our Proposal is accepted, our bid vehicle will within [ten (10)] Business Days of such acceptance be incorporated to become the [Management Contractor/Concessionaire] or as otherwise required by the PPPDG.

We understand that the PPPDG is not bound to accept any offer it may receive. We accept that we are fully responsible for all costs associated with our participation in the transaction process.

Authorized Signature:

Name and Title of Signatory:

Name of Bidding Entity:

Address of Bidding Entity:

Financial 3 FINANCIAL PROPOSAL [REVENUE AND EXPENSES] WORKSHEET

(One (1) form should be completed per Bidder.)

This Financial Form indicates any requirements for the Bidder to present financial projections supporting their Financial Offer. This may include a forecast of revenue and expenses, tariff forecasts, and other requirements as tied to the nature of the PPP project. Instructions should detail any specified assumptions or requirements in the presentation of these financial projections, so that they are comparable across all Bid Submissions.

Bidders should present a forecast of [revenue and expenses], assuming [insert assumptions as relevant].

Financial projections in Bidders' Financial Proposals should be developed in Microsoft Excel (2010 or later version) format and all relevant input and output worksheets should be unlocked and unprotected; outputs shall be prepared into a table presented below:

[Insert table]

Part 6.1: Sample PPP Agreement: Concession Agreement (Greenfield)

DRAFT FORM OF CONCESSION AGREEMENT

Between

[CONTRACTING AUTHORITY],

As the Grantor,

And

XXX LIMITED,

As the Concessionaire

Dated [Insert Date]

Table of Contents

<u>ARTICLE 1 DEFINITIONS AND INTERPRETATION</u>	5
<u>ARTICLE 2 THE CONCESSION</u>	13
<u>ARTICLE 3 CONDITIONS PRECEDENT</u>	15
<u>ARTICLE 4 ANNUITY PAYMENT</u>	18
<u>ARTICLE 5 WARRANTIES</u>	20
<u>ARTICLE 6 GRANTOR’S ADMINISTRATION OF THE PROJECT</u>	21
<u>ARTICLE 7 COORDINATING COMMITTEE</u>	23
<u>ARTICLE 8 LAND USE RIGHT</u>	24
<u>ARTICLE 9 DESIGN</u>	25
<u>ARTICLE 10 CONSTRUCTION WORKS</u>	27
<u>ARTICLE 11 TESTING AND COMPLETION</u>	33
<u>ARTICLE 12 DELAY IN COMPLETION AND ABANDONMENT</u>	35
<u>ARTICLE 13 OPERATION OF THE PROJECT HIGHWAY</u>	37
<u>ARTICLE 14 MAINTENANCE OF THE PROJECT HIGHWAY</u>	41
<u>ARTICLE 15 PROJECT HIGHWAY TOLL FEES</u>	43
<u>ARTICLE 16 LABOUR</u>	44
<u>ARTICLE 17 FINANCING OF THE PROJECT AND FINANCIAL MANAGEMENT</u>	45
<u>ARTICLE 18 TRANSFER OF THE PROJECT</u>	46
<u>ARTICLE 19 INSURANCE</u>	52
<u>ARTICLE 20 OTHER OBLIGATIONS OF THE GRANTOR</u>	54
<u>ARTICLE 21 OTHER OBLIGATIONS OF THE CONCESSIONAIRE</u>	56
<u>ARTICLE 22 OBLIGATIONS AND RIGHTS COMMON TO THE GRANTOR AND THE CONCESSIONAIRE</u>	60
<u>ARTICLE 23 FORCE MAJEURE</u>	62
<u>ARTICLE 24 TERMINATION</u>	65
<u>ARTICLE 25 COMPENSATION FOR BREACH OF THIS AGREEMENT</u>	70
<u>ARTICLE 26 LIABILITY AND INDEMNIFICATION</u>	71
<u>ARTICLE 27 ASSIGNMENT OF THE AGREEMENT AND APPROVAL BY THE GRANTOR OF CONTRACTS</u>	72
<u>ARTICLE 28 MISCELLANEOUS PROVISIONS</u>	73
<u>ARTICLE 29 GOVERNING LAW AND DISPUTE RESOLUTION</u>	75
<u>Appendix A – Site Plan</u>	77
<u>Appendix B – Project Highway Plan</u>	78
<u>Appendix C – Required Permits</u>	79
<u>Appendix D – Construction Works</u>	80

Appendix E – Form of Performance Guarantee.....80

Appendix F – Requirements for Preliminary Design.....81

Appendix G – Program of Tests82

Appendix H – Operations.....83

Appendix I – Operations and Maintenance Procedure84

Appendix J – Performance Requirements88

Appendix K – Plant, network, communication, office and other requirements to be provided at the Project Highway.....90

Appendix L – Vesting Certificate91

Appendix I – Operation Rates92

DRAFT

THIS CONCESSION AGREEMENT is entered into this _____ day of _____ 2019,

BETWEEN:

THE [CONTRACTING AUTHORITY], a public authority established under Proclamation [**Insert Proclamation**], whose head office is situated at [address] (hereinafter referred to as the “**Grantor**” which expression shall where the context so admit include its successors in title and assigns) of the first part.

AND:

XXX LIMITED, a limited liability company registered under the laws of [] with registered office located at [YYYY] (the “**Concessionaire**”, **The Operator**”, which expression, where the context so admits, shall be deemed to include its successors and assigns) of the other part.

Each referred to as a “**Party**”, and together the “**Parties**”.

WHEREAS:

The Grantor is charged with the responsibility of constructing, executing, carrying out, equipping, improving, working and developing roads in Ethiopia and may carry out any of these responsibilities through any other person authorized by it in that behalf;

The Government of Ethiopia is desirous of promoting private sector investment and participation in the development and operation of public utilities and infrastructures, as evidenced among other things by the *Public-Private-Partnership Proclamation 2018*;

In pursuance of the foregoing policy, the Grantor for itself and on behalf of the Government of Ethiopia invited proposals from interested and technically qualified private sector operators to express their interests in a Build, Operate and Transfer Concession Contract model for the development, design, engineering, financing, construction, operation and maintenance of a [insert the specifications of the road] (“**Project Highway**”) at [location of the proposed construction] (“**the Project**”);

At the end of that competitive bidding process, [name of Preferred Bidder] was declared the Preferred Bidder, and incorporated the Concessionaire under the laws of Ethiopia to execute the Project;

NOW THEREFORE, in consideration of the mutual assurances, guarantees, covenants and undertakings herein contained, the parties hereby agree as follows:

ARTICLE 1
DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this Agreement, unless the subject or context otherwise requires, the following words or expressions shall have the following meanings:

“Access Roads” means the roads and related facilities providing access to the Site;

“Annuity Payment” means the total sum payable by the Grantor to the Concessionaire as compensation for executing the Project, in accordance with Article 4.

“Associated Facilities” means the facilities reserved in the Project Highway for the Users thereof and shall include all such additional developments appurtenant to the Project Highway and incidental to its efficient operation and management;

“Bid Bond” means the security submitted by the Preferred Bidder (acting on behalf of the Concessionaire) with its proposal in order to ensure the execution of this Agreement by the Concessionaire and the fulfillment of the Conditions Precedent.

“Business Day” means any day on which banks are generally open for business in Ethiopia;

“Certificate of Final Completion” means the certificate issued or deemed issued in accordance with Article 11.4.4 of this Agreement;

“Certificate of Commencement” means the certificate to be issued by the Grantor pursuant to Article 3.2 hereof;

Commencement of Commercial Operations means the day on which the Project Highway is opened for use by the public;

Commencement of Commercial Operations Date means the date determined in accordance with Article 11.4 hereof;

Commercial Operations Period means from the Date of Commercial Operations to the last day of the Concession Period;

“Concession Period” the time period set out in Article 2.2;

“Concession Rights” means all the rights conferred and obligations imposed on the Concessionaire pursuant to this Agreement;

“Concessionaire’s Event of Default” means an event of default specified herein which may entitle the Grantor to issue a Notice of Intention to terminate this Agreement;

“Consumer Price Index” means the consumer price index prepared by the (Ethiopian) National Bureau of Statistics or any successor body;

“Construction Commencement Date” means the date for the commencement of the Construction Works as determined in accordance with Article 3.2 of this Agreement;

“Construction Completion Date” means the day upon which the Grantor issues the Certificate of Final Completion certifying that the construction of the Project Highway has been successfully completed, tested and commissioned; and is available for beneficial use pursuant to Article 11.4.4;

“Construction Contractor” means the firm of engineers selected by the Concessionaire to execute the Construction Works;

“Construction Period” shall be a period of **thirty-six (36)** months from Construction Commencement Date or such longer period as may be granted by the Grantor in writing;

“Construction Schedule” means the schedule set out in Article 10.10 hereof;

“Construction Works” means the engineering design, procurement, construction, installation, testing, smoothing, completion and commissioning of the Project Highway and its facilities and equipment in accordance with Article 10 and Appendix F;

“Consultation Period” has the meaning set forth in Article 24.3.1;

“Coordinating Committee” means the committee appointed in accordance with Article 7.1;

“Default” means a failure by a party to perform any of its obligations under this Agreement which is not excused by an act or omission of the other party in breach of this Agreement, Force Majeure or by an event as to which the other party bears the risk;

“Default Rate” means a rate of 2% per annum above the Ethiopian Inter Bank Offered Rate;

“Designated Account” means the bank account details provided to the Concessionaire by the Grantor for the payment of royalties, Toll fees, Concession Fees, and all other payment required by the Concessionaire to be made to the Grantor pursuant to the terms of this Agreement;

“Detailed Design” means the second phase of the design to be provided by the Concessionaire pursuant to Article 9;

“Dispute” means any dispute, difference, or claim of any kind or type, whether based on contract, tort, statute, regulation, or otherwise, arising out of, relating to, or connected with this Agreement or its subject matter, existence, negotiation, interpretation, validity, performance, breach, termination or enforceability (including non-contractual disputes or claims), or any operations carried out pursuant to this Agreement;

“Effective Date” means the date on which the Parties sign this Agreement;

“Environmental Contamination” means any contamination or pollution of the air, ground, or water above, under or surrounding the Project Highway or any part thereof that is not permitted by or consistent with the Laws of Ethiopia;

“Environmental Impact Assessment” means any environmental impact assessment/statement required under the Laws of Ethiopia to be filed by the owner or operator of a project expected to have significant impact on the environment;

“Equipment” means the tools, components and equipment to be used for the Construction Works, and such other appliances, gadgets, machinery, materials that will be installed by the Concessionaire for the effective operation and maintenance of the Project Highway;

“Fee Notification” means the notice indicating the rates for payment of Toll Fees by users, as published by the Grantor in accordance with Article 15.1.

“Final Completion” means that (i) the Project Highway has already reached Preliminary Completion; (ii) the Construction Works in relation to the Project Highway have been fully completed in accordance with this Agreement, and (iii) a Certificate of Final Completion for the Project Highway has been issued

“Final Completion Date” means the date on which the Certificate of Final Completion for the Project Highway is issued or is deemed to have been issued in accordance with Article 11.4.4;

“Final Maintenance Overhaul” has the meaning specified in Article 18.2;

“Financing Agreements” means any agreements entered into between the Concessionaire and any domestic and/or international lender or consortium of lenders evidencing the grant and/or disbursement of credit facility to the Concessionaire for the implementation of the Project;

“Fixed Annual Payments” has the meaning ascribed in 4.1;

“Force Majeure” means the events specified in Article 23.1 hereof;

“Grantor” includes the Grantor itself and the Grantor’s Representative;

“Grantor’s Event of Default” shall be the Grantor and/or the Grantor’s failure and/or inability to perform an obligation imposed hereunder which may cause the Concessionaire to issue a Notice of Intention to terminate this Agreement;

“Grantor’s Representative” refers to the person or group of persons appointed by the Grantor to monitor and oversee on its behalf, the design and construction of the Project Highway in accordance with approved specifications and also to inspect and undertake testing of the facilities installed in the Project Highway;

“Improper Draw” means any draw on bonds in breach of the terms and conditions of this Agreement;

“Independent Auditor” means a reputable firm of chartered accountants who are members of or recognized by the supervisory body for accountants in Ethiopia and appointed by the Grantor to audit and verify the books of accounts of the Concessionaire for the purpose of determining the Concessionaire’s turnover and the Concession fee or royalty payable under this Agreement;

“Independent Engineer” means the independent consulting engineer jointly appointed by the Coordinating Committee in accordance with the provisions of Article 7.2 hereof;

“Initial Payment” has the meaning as ascribed in Article 4.1

“Interruption” means a disruption to the performance of the Operations as a consequence of:

- (a) any act or omission by the Grantor, including but not limited to, the failure by the Grantor to fulfil its obligations under this Agreement;
- (b) any act or omission by a Relevant Authority not due to the fault or negligence of the Concessionaire; or
- (c) an event of Force Majeure;

“Land Use Right” has the meaning specified in Article 8.1(a);

"Laws of Ethiopia" means:

- (a) the Ethiopian constitution, civil code, proclamations, international treaties and conventions to which Ethiopia is a party to and all Ethiopian laws, statutes, treaties, rules, codes, ordinances, regulations, certificates, decisions, orders, memoranda, circulars, decrees, resolutions, directives, rulings, interpretations, approvals, licences, and permits of any Regulatory Authority; and
- (b) judgments, decrees, injunctions, writs, orders or like actions of any Regulatory Authority, court, arbitrator or other administrative, judicial or quasi-judicial tribunal or agency of competent jurisdiction,

As amended, supplemented, replaced, reinterpreted by a relevant Regulatory Authority or court or otherwise modified from time to time;

“Lender” means any entity or institution that has granted credit facility to the Concessionaire in connection with the financing of the Project;

“Lender Step-in Rights” means the rights accorded to a Lender in accordance with Clause 24.3.2

“Manual for Maintenance and Inspection” shall have the meaning in accordance with Article 14.1.

“Milestone Date(s)” refers to the various dates set out in the Construction Schedule pursuant to Article 10 herein;

“Notice of Intention to Terminate” means a notice issued in accordance with Article 24.3.1 hereof;

“Notice of Termination” means a notice issued in accordance with Article 24.3.2 hereof;

“Operate and Maintain” includes “management” in relation to “operate” and “repair” and “replacement” in relation to “maintain”;

Project Highway “Operation and Maintenance Procedure” means the standards and procedure for the effective operation, management and maintenance of the Project Highway as set out in Appendix I;

“Operations” means the operations listed and described in Appendix H;

“Party” or “Parties” means the Grantor, the Concessionaire and the Sponsor and its or their permitted successors or assigns;

“Performance Guarantee” means the bond provided by the Concessionaire pursuant to Article 3.4;

“Preliminary Completion” means that: (i) the Project Highway has been tested in accordance with the approved designs, drawings and technical specifications of the Project; (ii) no further Construction Works is required with respect to the Project Highway to enable the safe operation of the Project Highway; (iii) a Certificate of Preliminary Completion for the Project Highway has been issued or is deemed to have been issued;

“Preliminary Completion Date” means the date on which the Certificate of Preliminary Completion for the Project Highway is issued or is deemed to have been issued in accordance with Article 11.4.3;

“Project” means the development, designing, engineering, financing, construction, testing, commissioning, operation and maintenance of the Project Highway;

“Project Agreements” means this Agreement, the Financing Agreements and any other agreements entered into by the Concessionaire with the Grantor, or with any other persons, relating to the Project during the subsistence of this Agreement.

“Project Assets” means all physical and other assets relating to (a) tangible assets such as civil works and equipment including [foundations, embankments, pavements, road surface, interchanges, bridges, culverts, road over-bridges, drainage works, traffic signals, sign boards, kilometre-stones, electrical systems, communication systems, rest areas, relief centres, maintenance depots and administrative offices]; and (b) Project Facilities situated on the Site;

“Project Highway” means the project highway to be constructed, as described in Appendix B;

“Prudent Industry Practice” means the standard of practice attained by exercising that degree of skill, diligence, prudence and foresight which could reasonably be expected from a skilled and experienced contractor, or operator engaged in the same type of undertaking under the same or similar circumstances. With respect to the Project Highway, Prudent Industry Practice shall include, but not be limited to, compliance with the rules, regulations, guidelines, directives and standards [Ministry of Construction] Ethiopia which may be made, modified or reviewed from time to time regarding:

- (a) procurement of adequate materials, resources and supplies, to meet the Project Highway’s needs under normal conditions and reasonably anticipated abnormal conditions;
- (b) provision of sufficient, adequately experienced and trained operating personnel to operate the Project Highway properly, efficiently and within the equipment manufacturers’ guidelines and specifications and who are capable of responding to emergency conditions;
- (c) performance of preventive routine and non-routine maintenance and repairs on a basis that ensures reliable long-term and safe operation, and carried out by knowledgeable, trained and experienced personnel utilizing proper equipment, tools and procedures;
- (d) undertaking appropriate monitoring and testing of equipment to ensure equipment is functioning as designed and to provide assurance that equipment will function properly under both normal and emergency conditions; and
- (e) operation of equipment in a safe manner and in a manner safe to workers, the general public and the environment.

“Relevant Authority” means (i) any department, authority, instrumentality, agency or any other relevant entity of the Federal Government of Ethiopia from which any approval, consent, license, lease, concession or permit is to be obtained from time to time; or (ii) any authority, body or other person having jurisdiction under the Laws of Ethiopia with respect to the Concessionaire or the business being carried out by it in the Project Highway;

“Safety and Technical Guidelines” means the guidelines as established pursuant to Article 13.3”

“Site” means the parcel of land the subject of the Land Use Right and measuring approximately [...] square metres and the appurtenances thereto situate at [...], Ethiopia, the dimensions and abuttal of which are specifically described and delineated red on the site plan attached hereto as **Appendix A** including the rights of way, way leave and rights of passage delivered to the Concessionaire by the Grantor in accordance with the provisions hereof, for the construction and operation of the Project Highway and its Associated Facilities;

“Start Date” means [...] days after the signing of this Agreement

“Target Final Completion Date” means the Milestone Date set forth in Article 10.10.1 representing the intended Final Completion Date for the Project Highway as such date may be modified in accordance with the terms of this Agreement;

“Toll Fees” means such fees payable by users of the Project Highway, in accordance with the rates published in the Fee Notification;

“Transfer Committee” means the committee established in accordance with Article 18.12;

“Transfer Date” means the Business Day following the last day of the Concession Period;

“Utilities” shall include water, electricity, gas, sewerages, diesel, and telecommunications.

“Vesting Certificate” shall be as determined in accordance with Article 18.12

1.2 Interpretation

In this Agreement, except where the context otherwise requires:

- (a) any reference to "this Agreement" includes the Appendices to it, each of which forms part of this Agreement for all purposes, and where any such Appendix conflicts with a provision of this Agreement (excluding the Schedules) the relevant provision of this Agreement (excluding the Schedules) shall prevail;
- (b) a reference to an enactment or statutory provision shall include a reference to any subordinate legislation made under the relevant enactment or statutory provision and is a reference to that enactment, statutory provision or subordinate legislation as from time to time amended, consolidated, modified, re-enacted or replaced;
- (c) words in the singular shall include the plural and vice versa;
- (d) references to one gender include all genders;
- (e) a reference to an Article, paragraph or Schedule shall be a reference to an Article, paragraph, or Appendix (as the case may be) of or to this Agreement;
- (f) a reference to this Agreement and any other document referred to in this Agreement is a reference to this Agreement or such other document as amended, varied, or supplemented at any time;
- (g) if a period of time is specified as from a given day, or from the day of an act or event, it shall be calculated exclusive of that day;
- (h) if a period of time is specified as to a given day, or to the day of an act or event, it shall be calculated inclusive of that day;
- (i) a reference to a "month" shall be a reference to a calendar month;
- (j) references to any Ethiopian legal term for any action, remedy, method of judicial proceeding, legal document, legal status, court, official or any legal concept or thing shall in respect of any jurisdiction other than Ethiopia be deemed to include what most nearly approximates the Ethiopian legal term in that jurisdiction and

references to any Ethiopian statute or enactment shall be deemed to include any equivalent or analogous laws or rules in any other jurisdiction;

- (k) a reference to a "person" includes any company, partnership or unincorporated association (whether or not being separate legal personalities) and a reference to a "company" includes any company, association or body corporate, wherever incorporated;
- (l) a reference to "writing" or "written" shall include any legible reproduction of words delivered in permanent and tangible form (including email);
- (m) a reference to "includes" or "including" shall mean "includes without limitation" or "including without limitation"; and
- (n) the headings in this Agreement are for convenience only and shall not affect its interpretation.

DRAFT

ARTICLE 2 THE CONCESSION

2.1 Grant of the Concession

Subject to and in accordance with the terms and conditions set out in this Agreement, the Grantor hereby grants to the Concessionaire and the Concessionaire hereby accepts the exclusive right to develop, design, engineer, finance, construct, test, commission, operate, maintain, levy [and collect the appropriate Toll Fees from vehicle and persons liable to payment of Fees for using the Project Highway for the Concession Period], at its (the Concessionaire's) own cost and risk.

2.2 Concession Period

The Concession Period shall start on the Start Date and last until the [twenty fifth] anniversary of the Start Date, unless otherwise extended under Article 2.4.

2.3 Renewal of Concession

The Concessionaire shall notify the Grantor in writing not less than twenty-four (24) months prior to the expiry of the Concession Period if it wishes to renew the Concession Period for a further period and in accordance with the Laws of Ethiopia, such renewal of the Concession Period may be granted to the Concessionaire, upon such terms as may be mutually agreed between Parties. The Grantor shall however be under no obligation to grant a compulsorily renewal of the Concession.

2.4 Extension of the Concession Period

In case of:

- (a) any Default by the Grantor which results in unavoidable delay in the Commencement of the Concession Period; or
- (b) Force Majeure which results in unavoidable delay in the Commencement of the Concession Period.

and provided the costs, losses, damages or expenses resulting therefrom to the Concessionaire are not otherwise compensated by the Grantor or by any Insurance Proceeds which the Concessionaire is entitled to under Article 19, then the Concession Period may be mutually extended so as to place the Concessionaire in substantially the same economic position as it was prior to the occurrence of such event.

2.5 Right to develop the Project Highway

2.5.1 The Grantor has and shall retain during the Concession Period the right to develop the Project Highway. The Concessionaire shall acquire no title to, or ownership interest in all the immovable property comprising the Site.

2.5.2 Throughout the Concession Period, the Concessionaire shall not place or caused to be placed any liens, charges, claims, encumbrances, and/or security interests

on the Site or the Project Highway, except as expressly authorised by the Grantor in writing prior to the placement of such lien or encumbrance.

2.6 Transfer of the Project Highway

At the end of the Concession Period, the Concessionaire shall return possession of the Project Highway and the Site to the Grantor (or any person designated by the Grantor) in accordance with the provisions of Article 18. The Concessionaire shall indemnify, defend, and hold harmless the Grantor from and against and promptly remove and discharge any liens, charges, claims, encumbrances, and/or security interests which may have been placed on the Site during the Term.

DRAFT

ARTICLE 3 CONDITIONS PRECEDENT

3.1 The rights of the Concessionaire under this Agreement are subject to satisfaction of the Conditions Precedent, as provided in this Article 3. The Concessionaire shall within [.....] days of entering into this Agreement provide the Grantor with the following:

- (a) copies of all such required permits as listed in Appendix C unconditionally or if subject to conditions, then all such conditions have been satisfied in full and such permits are and shall be kept in full force and effect for the relevant period during the subsistence of this Agreement
- (b) copies of all duly executed Project Agreements and all major contracts necessary for execution of the Project, including Financing Agreements, bank guarantees, shareholders funding agreements and evidence of adequate equity contribution to fully finance the Project;
- (c) certified copies of the constitutional documents of the Concessionaire and resolutions of its Board and/or Shareholders duly authorising its performance of the Project;
- (d) evidence of the submission to the Grantor of all the design, architectural, structural, electrical and mechanical drawings and engineering specifications incidental to the commencement of the Construction Works.
- (e) the Performance Guarantee in favour of the Grantor, which shall be in full force and effect in accordance with Articles 3.4 - 3.5.
- (f) all insurances required in accordance with Article 18 below

3.2 Satisfaction of Conditions Precedent and Construction Commencement Date

Upon fulfillment or waiver by the Grantor of the Conditions Precedent, as the case may be, the Grantor shall within [.....] days of the satisfaction of the final Conditions Precedent issue the Certificate of Commencement to the Concessionaire. The date on the Certificate of Commencement shall be determined to be the Construction Commencement Date for the Construction Works.

3.3 Non-Fulfillment of the Conditions Precedent

If the Concessionaire does not fulfill the Conditions Precedent within the specified period, and such Conditions Precedent are not waived by the Grantor, the Grantor shall have the right to terminate this Agreement in its entirety and execute the Concessionaire's Bid Bond.

3.4 Performance Guarantee

The Concessionaire shall at its own cost and risk, provide and maintain an unconditional performance security to secure the Concessionaire's obligations pursuant to this Agreement for the Concession Period. The Performance Guarantee shall be in form of bank guarantee set out in Appendix E or any other form acceptable to the Grantor, in the amount of [...] and issued by a bank which is licensed by the National Bank of Ethiopia, or a bank licensed in a foreign jurisdiction and acceptable to the Grantor.

3.5 Execution of the Performance Guarantee

The Grantor shall be authorized to execute the performance guarantee for the purpose of:

- 3.5.1 Compensating any default or non-performance by the Concessionaire of its obligations under this Agreement, which it has failed to remedy within the period stipulated in this Agreement (in the absence of which stipulated period the Concessionaire shall have fourteen (14) days to remedy the default or non-performance)
- 3.5.2 Compensating any loss incurred by the Grantor as a result of the Operator's breach of its obligations, warranties and representations pursuant to this Agreement;
- 3.5.3 Compensating any reasonable costs incurred by the Grantor to remedy any defects on the Facility occasioned by the direct action, omission or negligence of the Operator, including latent defects discovered after the Handover date;
- 3.5.4 Compensating any loss or costs incurred by Grantor in the event of termination of this Agreement for the Grantor's fault;
- 3.5.5 Satisfying the payment of penalties to be paid by Operator in accordance with this Agreement; and
- 3.5.6 Satisfying any other payment obligation of the Operator to the Grantor as set forth in this Agreement.

3.6 Restoration of Performance Guarantee

In the event that any draw has been made on the Performance Guarantee during the Concession Period in accordance with Article 3.5 above, the Concessionaire shall ensure that the amount of the Performance Guarantee is restored to its original amount of US\$ (... million United States Dollars).

3.7 Validity Period

The Performance Guarantee shall be valid from Effective Date and remain in force until at least twelve (12) months following the Transfer Date.

3.8 Liability for Performance of Obligations

The right of the Grantor to draw upon the Performance Guarantee may be exercised without prejudice to any other rights of the Grantor under this Agreement and shall not

relieve the Concessionaire from any further liability or responsibility to the Grantor for failure to perform its obligations under this Agreement.

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ARTICLE 4⁷
ANNUITY PAYMENT

- 4.1** In consideration of the obligations of the Concessionaire under this Agreement to develop, finance, build, operate and maintain the Project Highway, the Grantor shall pay the Concessionaire the total sum of [.....] (“Annuity Payment”).
- 4.2** The Annuity Payment shall be payable from the Commencement of Commercial Operations (CCP), in [22] equal annual instalments of [.....] per annum. The first instalment shall become due one month after the first anniversary of the Start Date, following CCP. Subsequent instalments shall be payable accordingly, until the expiration of the Concession Period. For avoidance of doubt and by way of illustration, if CCP is 1st January 2019, and the next anniversary of the Start Date is 1st July 2019, the first instalment shall be due on 1st August 2019 and subsequent instalments shall be due every 1st August 2019.
- 4.3** Nothing in this Article 4 shall entitle the Concessionaire to any Annuity Payments, in the absence of a Certificate of Final Completion as provided in Clause 11.5.

OR

CONCESSION FEES

4.1 The Various Concession Fees Payable

In return for the rights granted to it under this Agreement, the Concessionaire shall pay the Grantor the following fees:

- (a) an initial payment of [.....] Ethiopian Birr to be paid on the Effective Date (the “Initial Payment”);
- (b) fixed annual payments in the amount set out below of a sum as specified in the schedule below to be paid on the first day of the first month after the Effective Date, and on or before the same date every twelve (12) months thereafter (the “Fixed Annual Payments”) for the duration of the Concession Period:

Year	Fixed Annual Payment
Year 1	
Year 2	
.....	
Year 24	
Year 25	

⁷ While Greenfield Concession transactions sometimes necessitate the payment of annuity to the Concessionaire, in some markets and for some PPPs it would be the Concessionaire paying concession fees. Thus, we have provided templates for both scenarios.

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ARTICLE 5 WARRANTIES

5.1 Concessionaire's Warranties

The Concessionaire hereby warrants that:

- (a) it has been duly established and registered under the Laws of Ethiopia and has the corporate power and authority to enter into and perform this Agreement;
- (b) the Financial Agreements have been entered into and the Concessionaire has obtained equity sufficient to allow the Concessionaire to carry out its obligations under this Agreement as they occur; and
- (c) the Concessionaire has:
 - (i) obtained all required Approvals and documentation prior to the Effective Date; and
 - (ii) submitted all requisite applications, requests and documentation for obtaining any other Approval that are necessary to commence the Construction Works; and
 - (iii) submitted the Preliminary design to the Grantor for approval in conformity with the criteria set out in **Appendix F**.

5.2 The Grantor's Warranties

The Grantor hereby warrants that:

- (a) it has the corporate power and authority to enter into and perform this Agreement; and
- (b) it has the Land Use Right to the Site for the purpose of the Concession;
- (c) it shall deliver the entire Site to the Concessionaire within thirty (30) days of the Effective Date.

**ARTICLE 6
GRANTOR'S ADMINISTRATION OF THE PROJECT**

6.1 The Grantor's Representative

- 6.1.1 The Grantor may appoint a Grantor's Representative to act on his behalf under this Agreement. In this event, he shall give seven (7) day notice to the Concessionaire of the name, address, duties and authority of the Grantor's Representative.
- 6.1.2 The Grantor's Representative shall carry out the duties assigned to him, and shall exercise the authority delegated to him, by the Grantor. Unless and until the Grantor notifies the Concessionaire otherwise, the Grantor's Representative shall be deemed to have the full authority of the Grantor under this Agreement, except in respect of Article 24.
- 6.1.3 If the Grantor wishes to replace any person appointed as Grantor's Representative, the Grantor shall give the Concessionaire not less than 7 days' notice of the replacement's name, address, duties and authority, and of the date of appointment.

6.2 Other Grantor's Personnel

- 6.2.1 The Grantor or the Grantor's Representative may from time to time assign duties and delegate authority to assistants, and may also revoke such assignment or delegation. These assistants may include a resident engineer, and/or independent inspectors appointed to inspect and/or test items of plant and/or materials.
- 6.2.2 The assistants shall be suitably qualified persons, who are competent to carry out these duties and exercise this authority.
- 6.2.3 The Grantor shall provide written notice of the names and designations of the assistants.

6.3 Delegated Persons

All these persons, including the Grantor's Representative and assistants, to whom duties have been assigned or authority has been delegated, shall only be authorised to issue instructions to the Concessionaire to the extent defined by the delegation. Any approval, check, certificate, consent, examination, inspection, instruction, notice, proposal, request, test, or similar act by a delegated person, in accordance with the delegation, shall have the same effect as though the act had been an act of the Grantor. However:

- (a) unless otherwise stated in the delegated person's communication relating to such act, it shall not relieve the Concessionaire from any responsibility under this Agreement, including responsibility for errors, omissions, discrepancies and non-compliance;
- (b) any failure to disapprove any work, plant or materials shall not constitute approval, and shall therefore not prejudice the right of the Grantor to reject the work, plant or materials; and

- (c) if the Concessionaire questions any determination or instruction of a delegated person, the Concessionaire may refer the matter to the Grantor, who shall promptly confirm, reverse or vary the determination or instruction.

6.4 Instructions

The Grantor may issue to the Concessionaire instructions which may be necessary for the Concessionaire to perform his obligations under this Agreement. Each instruction shall be given in writing and shall state the obligations to which it relates and the Article (or other provision of this Agreement) in which the obligations are specified.

6.5 Determinations

Whenever this Agreement provides that the Grantor shall proceed in accordance with this Article to agree or determine any matter, the Grantor shall consult with the Concessionaire in an endeavour to reach agreement. If agreement is not achieved, the Grantor shall make a fair determination in accordance with this Agreement, taking due regard of all relevant circumstances.

The Grantor shall give notice to the Concessionaire of each agreement or determination, with supporting particulars. Each party shall give effect to each agreement or determination, unless the Concessionaire gives notice, to the Grantor, of his dissatisfaction with a determination within 7 days of receiving it. Either party may then refer the dispute in accordance with Article 29 of this Agreement.

ARTICLE 7 COORDINATING COMMITTEE

7.1 Composition and Tenure of Coordinating Committee

Within thirty (30) days after the Construction Commencement Date, the parties shall establish a Coordinating Committee comprising three (3) representatives of the Concessionaire and three (3) representatives of the Grantor. Either party may remove or replace any of its Coordinating Committee members at any time upon giving notice to the other party. The Coordinating Committee shall develop procedures for the holding of meetings, the keeping of minutes of meetings and the appointment and operation of subcommittees if necessary. The first chairman of the Coordinating Committee shall be appointed by the Grantor. The chairman of the Coordinating Committee shall then rotate every two years (2) between the parties. Decisions of the Coordinating Committee shall require the unanimous approval of all of its members.

7.2 Functions of the Coordinating Committee

The Coordinating Committee shall be responsible for:

- (a) Appointment of the Independent Engineer, to carry out such functions as determined under this Agreement;
- (b) any matter specifically made the responsibility of the Coordinating Committee under this Agreement; and
- (c) any other matter mutually agreed to by the Parties.

7.3 Decisions of members of Coordinating Committee

The parties shall instruct their representatives on the Coordinating Committee to act in good faith in dealing with matters considered by the Coordinating Committee. Actions taken in conformance with the decision of the Coordinating Committee must also comply with the terms of this Agreement. In the event of any conflict in decision, and the decision is equally split between the Grantor's representatives and the Concessionaire's Representative, the highest ranking of the Grantor's Representatives shall exercise a casting vote.

7.4 Cost of Coordinating Committee

Relevant costs of the Coordinating Committee (except the salaries of the representatives of the Grantor) shall be borne by the Concessionaire.

7.5 Limitation on Decisions of Coordinating Committee

The decisions of the Coordinating Committee shall not release either party from any of its obligations under this Agreement or impair the rights of the parties under this Agreement.

**ARTICLE 8
LAND USE RIGHT**

8.1 Land Use Right Acquisition

The Grantor shall be responsible for:

- (a) facilitating the allocated land use right to the Site (the “Land Use Right”) by the relevant local government(s) to the Concessionaire;
- (b) liaising with the relevant local government(s) to keep the Site free from all liens and encumbrances, so that the Concessionaire has the right to the free and non-restrictive use thereof to the Site for the Concession Period, for the purposes of the Project; and
- (d) maintaining the Main Roads in such a manner that is suitable for industrial and commercial use and economically expedient.

8.2 Restrictions on Site Use

The Site is for the special use of executing the Project and shall not be used by the Concessionaire for any other purpose.

8.3 Fee for Land Use Right

The Concessionaire shall pay such compensation amount for the allocated Land Use Right, as shall be agreed with each relevant local government.

8.4 Suitability and Conditions of Site

The Concessionaire acknowledges that it has inspected and investigated the Site prior to the Effective Date.

Except for what is provided under this Agreement, the Grantor makes no representation and gives no warranty to the Concessionaire in respect of the condition of the Site. The Concessionaire shall accept the Site in its present condition and subject to all defects including subsurface soil conditions.

ARTICLE 9 DESIGN

9.1 Design Requirements

The Concessionaire shall be responsible for the preparation of the Preliminary Design in compliance with the requirements set out in **Appendix F**. The consequence and costs resulting from any errors, inconsistencies, ambiguities or omissions in the requirements set out in **Appendix F** shall be borne solely by the Concessionaire.

9.2 The Grantor's Review and Approval of Preliminary Design

The Concessionaire shall submit the Preliminary Design to the Grantor prior to the Construction Commencement Date for its review and approval.

9.3 The Grantor's Review and Verification of Detailed Design

The Concessionaire shall prepare the Detailed Design for the Project in accordance with the Preliminary Design. The Concessionaire shall submit on or prior to the Milestone Date applicable thereto the Detailed Design to the Grantor for review and approval.

9.4 Concessionaire's Right to Change Detailed Design

At any time during the Construction Works, the Concessionaire may, by notice to the Grantor, propose changes to the Detailed Design, if these changes are of a nature to:

- (a) expedite the construction;
- (b) reduce the cost of construction or that of future operation and maintenance provided, or
- (c) improve the quality of the Project Highway

The Concessionaire shall present to the Grantor all the necessary documents to support and justify the proposed changes to the Detailed Design.

The Grantor shall notify the Concessionaire, within twenty (20) days following receipt by the Grantor of notice of any such proposal from the Concessionaire of its approval or rejection of the proposed changes. The proposed changes shall be deemed approved if the Grantor does not respond within the said twenty (20) day period. The Concessionaire shall not make any such changes without the written or deemed approval of the Grantor and shall respond to any question or request for clarification raised by the Grantor. Any written or deemed approval of a change in the Design shall not result in any delay of the Construction Completion Date or extension of the Concession Period.

9.5 Responsibility of the Concessionaire

The Concessionaire shall be solely responsible for any deficiency in the design of the Project. The failure of the Grantor to object to any design, design drawing or specification or any change thereto shall not be construed as a waiver by the Grantor of

any of its rights under this Agreement or in any way relieve the Concessionaire of its obligation thereunder. In furtherance of the foregoing, the Concessionaire:

- (a) accepts that any engineering review conducted by the Grantor is solely for the Grantor's own information and that, by conducting such review, the Grantor undertakes no responsibility as to the quality of engineering or construction of the Project Highway or any component thereof;
- (b) shall in no way represent to any third party that, as a result of any review by the Grantor, the Grantor is responsible for the engineering or construction soundness of the Project Highway or any component thereof; and
- (c) shall be solely responsible for the technical feasibility, operational capability, economy and reliability of the Project Highway or any component thereof.

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ARTICLE 10 CONSTRUCTION WORKS

10.1 Principal Obligations of the Concessionaire

The Concessionaire shall be responsible for all Construction Works and shall assume all costs and all risks for the Construction Works in accordance with this Agreement. Without limiting the generality of the foregoing, the responsibilities of the Concessionaire shall include the following:

- (a) commencing the Construction Works on or prior to the applicable Milestone Date;
- (b) performing the Construction Works in accordance with the design requirements, the quality requirements set forth in Article 10.4 and in accordance with the Laws of Ethiopia;
- (c) giving priority to safety in its construction approach and activities in order to protect life, health, property and the environment;
- (d) taking all reasonable measures to minimize disruption and other inconvenience to the public and area residents and businesses during construction;
- (e) applying for and obtaining, in a timely manner, and thereafter maintaining the Approvals for the Project required to be obtained from any Relevant Authority and paying all applicable fees and costs for such Approvals;
- (f) applying for and obtaining, in a timely manner, all visas and work permits for foreign personnel and recruiting local labour, including paying all applicable fees and cost relating thereto;
- (g) appointing three (3) representatives to the Coordinating Committee in accordance with Article 7.1; and
- (h) completing the Construction Works on or prior to the applicable Milestone Dates.

10.2 Principal Obligations of the Grantor

The responsibilities of the Grantor shall include the following:

- (a) delivery of the Site in accordance with Article 5.2;
- (b) facilitating all dealings with the appropriate Relevant Authorities during the Construction Period;
- (c) facilitating Approval(s) to be obtained by or from the Grantor, in accordance with the provisions of Article 21.4

- (d) appointing three (3) representatives to the Co-ordinating Committee in accordance with Article 7.1.

10.3 Preparation of the Site

The Concessionaire shall at its own cost prepare the Site for the performance of the Construction Works.

10.4 Quality of Construction Works

The Concessionaire shall ensure that the Construction Works are performed in accordance with all requirements set forth in this Agreement, including:

- (a) the Detailed Design, and
- (b) always in a proper and workmanlike manner using new and the highest quality of materials and Equipment.

10.5 Quality Assurance and Quality Control

10.5.1 Concessionaire's Quality Assurance and Quality Control

Prior to the Construction Commencement Date, the Concessionaire shall establish a quality assurance and quality control program, to be followed by the Concessionaire. The Concessionaire shall make available to the Grantor on a continuing basis complete documentation of quality control results for the relevant aspects of Construction Works complete or in progress.

10.5.2 The Grantor's Right to Control Quality Requirements

Without affecting the Concessionaire's obligations hereunder the Grantor shall have the right within working hours to attend or examine the Concessionaire's and any construction contractor's quality control inspections and methods to confirm that the Construction Works in question comply with the quality requirements in Article 10.4. Such inspections shall not interfere with the progress of the construction. The Concessionaire shall assist in the performance of such checks.

10.5.3 Failure to Comply with Quality and Safety Requirements

If the Construction Works or any component thereof does not conform in a material way with the quality or safety requirements of this Agreement, the Grantor may give notice to the Concessionaire of such failure. If the Concessionaire fails or refuses to correct the lack of conformity within a reasonable time after the Grantor's notice, then the Grantor, except where the Concessionaire declares a dispute, shall be entitled to carry out the necessary corrective work itself or to engage a third party to do so at the risk and expense of the Concessionaire. In such case, the Concessionaire shall allow the Grantor access to the Site and to any of the Construction Works and to the land used for

Construction Works for such purpose. The Concessionaire shall reimburse the Grantor for the full cost of the corrective works carried out in pursuance of this provision.

10.6 Construction Personnel

The Concessionaire shall provide, or ensure that the Construction Contractor provides, all necessary personnel with adequate skills and any required certificates for the performance of the Construction Works.

10.7 Construction Equipment and Materials

The Concessionaire shall provide, or ensure that the Construction Contractor provides, at its own cost all equipment, materials and other such items, whether of temporary or permanent nature, required for the performance of the Construction Works.

10.8 Selection and Replacement of the Construction Contractor

10.8.1 Selection of the Construction Contractor

The Construction Contractor shall undertake the Construction Works on the basis of the construction contract approved by the Grantor on or before the Effective Date.

10.8.2 Replacement of the Construction Contractor

The Concessionaire shall have the right to terminate the construction contract and to replace the Construction Contractor. Replacement of the Construction Contractor and the construction contract shall be subject to Grantor's prior written approval.

10.8.3 Concessionaire's Responsibility for the Construction Contractor

The appointment and approval of the Construction Contractor shall not relieve the Concessionaire of any of its obligations under this Agreement. The Concessionaire shall be fully responsible to the Grantor for any acts or omissions of the Construction Contractor, its agents or any person either directly or indirectly employed by it as if such acts or omissions were the acts or omissions of the Concessionaire.

The contracts entered into with the Construction Contractor shall contain those Articles or provisions of this Agreement which are necessary to enable the Concessionaire to fulfil its obligations under this Agreement.

10.9 Drawings and Technical Details

Within one (1) month after the Final Completion Date of the Project Highway, the Concessionaire shall furnish the Grantor with ten (10) copies of all construction and "as built" design drawings of the Project Highway and technical documents including:

- (a) ten (10) copies of all equipment plans, instructions, warranties, installation records, testing reports, quality supervision and acceptable records; and

- (b) ten (10) copies of other technical documents or information relating to the Project.

10.10 Project Schedule: Milestone Dates

10.10.1 Project Implementation Schedule

The parties shall perform their obligations under this Agreement in accordance with the Milestone Dates established in the following implementation schedule.

Item	Milestone Date
Actual construction	
Testing and smoothing	
Commissioning	
Commencement of Commercial Operations	

10.10.2 Extension of Milestone Dates

The deadlines applicable to the foregoing Milestone Dates shall be extended or revised in the event of:

- (a) Force Majeure;
- (b) Protection of Archaeological and Historical Objects under Article 21.5
- (c) Default of the Grantor.

10.11 Progress Reports

10.11.1 Submission of Monthly Progress Reports

The Concessionaire shall submit to the Grantor a monthly report of the progress of the Construction Works which report shall describe in reasonable detail the Construction Works completed and in progress and such other matters as the Grantor may reasonably request. The progress reports are in addition to the information concerning the quality control program to be made available to the Grantor by the Concessionaire pursuant to Article 10.5.1.

10.11.2 Contents of Monthly Progress Reports

Without prejudice to the generality of the foregoing, each report shall include:

- (a) charts and detailed description of progress, including each stage of procurement, delivery to Site, construction and erection;
- (b) photographs showing the status and progress of construction on the Site;

- (c) safety statistics, including details of any hazardous incidents and activities relating to environmental matters; and
- (d) comparison of actual and planned progress, with details of any events or circumstances, which may jeopardize construction completion, and the measures being (or to be) adopted to overcome delays.

10.12 Monitoring and Inspection by the Grantor

10.12.1 Monitoring and Inspection of the Construction Works

The Grantor shall be entitled to monitor the Construction Works and carry out reasonable inspection in the presence of a Concessionaire's representative. Such monitoring and inspection by the Grantor shall not interfere with the progress of construction.

10.12.2 Cost of Monitoring and Inspection

All costs of such monitoring and inspection shall be borne by the Grantor. However, if the results of such monitoring and inspection reveal any material defects in the Construction Works or materials, all costs of such monitoring and inspection shall be paid for by the Concessionaire.

10.12.3 Notice of Monitoring and Inspection

The Concessionaire shall be advised by reasonable prior notice of any inspection to be carried out by the Grantor. The Concessionaire shall afford and shall cause the Construction Contractor to afford such access to the Site (including temporary office facilities), assistance and equipment as may be reasonably required by the Grantor to permit the Grantor to carry out monitoring and testing of the Construction Works with any resulting costs to be borne as provided above.

The Concessionaire shall make available and shall cause the construction contractor to make available for inspection at the Site by the Grantor copies of all plans and designs and any relevant document and information relevant to the purpose of the particular inspection. Any such inspection of confidential or proprietary information shall be subject to the confidentiality provisions of Article 16.3.

10.12.5 Concessionaire Dissatisfaction

The Concessionaire may refer any dispute or dissatisfaction with the monitoring and the attendant costs to the Coordinating Committee.

10.13 Rejection of Work, etc.

At any time prior to the Final Completion Date of the Project Highway, the Grantor shall be entitled to reject in writing any work, materials or equipment which is not substantially in accordance with this Agreement and to require the Concessionaire to correct the work or substitute proper materials and equipment, provided that the Grantor simultaneously provides the Concessionaire with the basis for its objection(s).

The Concessionaire shall be responsible for any increase in costs and delay resulting therefrom.

10.14 No Release

The failure of the Grantor to monitor, inspect or reject any part of the Construction Works shall not be construed as a waiver of any of the rights of the Grantor hereunder and shall not release the Concessionaire from any of its obligations under this Agreement. Notwithstanding the foregoing, the Grantor shall use its best efforts to notify the Concessionaire of any objection under Article 10.13 that it expects the Concessionaire to remedy as soon as possible after it discovers such a defect with the goal of minimizing the costs of such remedy.

10.15 Clearance of the Site after Completion of the Construction Works

On completion of the Construction Works (and in no circumstances later than a month thereof), the Concessionaire shall clear away and remove all surplus materials, rubbish and temporary work so as to leave the Project Highway in a clean and usable condition.

**ARTICLE 11
TESTING AND COMPLETION**

11.1 Testing

The parties shall carry out the program of tests within the time limits and according to the requirements set forth in **Appendix G** to confirm that the Project Highway meets the design standards and specifications set forth in Appendix F.

11.2 Attendance at Testing

The Independent Engineer shall be present at any testing at the Site, and the Grantor shall be entitled to have their representatives, agents and experts present at any testing at the Site.

11.3 Notice of Testing Program

No less than thirty (30) days prior to starting the testing program, the Concessionaire shall give the Grantor and the Independent Engineer notice of the testing program and of the date it proposes to commence testing at the Site. Such testing program shall indicate the items, date and time proposed for performing testing and shall otherwise be in compliance with the requirements of **Appendix G**.

The Independent Engineer shall have the right to suspend or delay a Test if it is reasonably anticipated or determined during the course of the Test that the performance of the Project Highway or any part thereof does not meet the Specifications and Standards.

11.4 Certification of Testing and Completion

11.4.1 Completion of Construction Works

The Concessionaire shall notify the Grantor and the Independent Engineer in writing as soon as the Concessionaire considers that, with respect to the Project Highway, no further Construction Works are required in accordance with this Agreement. The Concessionaire, the Grantor and the Independent Engineer shall conduct within seven (7) days after receipt of such notice a joint inspection, and the Independent Engineer shall promptly thereafter confirm that no further Construction Works are required, or will notify the Concessionaire and the Grantor in writing of works to be completed to finish the Construction Works.

11.4.2 Certificate of Testing

Upon the completion of each test, the Independent Engineer shall promptly certify that the test has been completed and shall provide both the Concessionaire and the Grantor with a copy of such certificate which shall set forth in reasonable detail the test procedures and the results of each test.

The Independent Engineer shall monitor the results of the Tests to determine the compliance of the Project Highway with the standards and specifications set out in **Appendix F**. The Grantor shall advise the Concessionaire in writing within fourteen (14) days of its comments on the results of such testing.

11.4.3 Preliminary Completion

Upon the Independent Engineer determining the tests to be successful in respect of any stretch of the Project Highway, having being satisfied that such stretch can be legally, safely and reliably placed in commercial operations, the Independent Engineer shall issue a notice to the Concessionaire and the Grantor that a Preliminary Certificate of Completion may be issued.

Within fourteen (14) days after receipt of such notice and in the absence of any adverse opinion from the Grantor, the Grantor issue a certificate (the "Certificate of Preliminary Completion") to the Concessionaire.

11.4.4 Final Completion

Within thirty (30) days of the final test, if all the Construction Works have been fully completed in accordance with this Agreement so that the Project Highway is ready for Commencement of Commercial Operations, the Independent Engineer shall give notice of such fact to the Concessionaire and the Grantor. Upon receipt of the notice, the Grantor shall within fourteen (14) days issue a certificate that the Project Highway has been finally completed (a "Certificate of Final Completion"). The Business Day after the date on the Certificate of Final Completion shall be deemed to be the Commencement of Commercial Operations Date.

11.5 No Waiver

The Grantor's inspection and acceptance of the Construction Works and the issuance of any Certificate of Preliminary Completion or Certificate of Final Completion shall not relieve the Concessionaire of liability of any type of defects or delay in the design or construction of the Project Highway subsequently discovered.

Testing Fees

- 11.6** All fees relating to the testing conducted ("**Testing Fees**"), including the payment of the Independent Engineer's Fees, shall be borne by the Concessionaire.

**ARTICLE 12
DELAY IN COMPLETION AND ABANDONMENT**

12.1 Delayed Completion Due to the Grantor

If there is any delay in the Commencement of Commercial Operation due to Default of the Grantor:

- (a) the Milestone Dates shall be appropriately extended under Article 10.10;
- (b) the Concessionaire shall be entitled to a day for day extension of the Concession Period corresponding to the delay; and
- (c) the Concessionaire shall be entitled to compensation from the Grantor sufficient to cover the increase in construction costs which may have resulted from such delay.

12.2 Duty to Mitigate Consequences of Delay

The Concessionaire shall without delay take all appropriate measures to avoid, limit or recover any delay or increased costs as referred to in Article 12.1. Failure to implement such measures shall bar the Concessionaire from seeking any remedy for such delay or incurred costs.

12.3 Liquidated Damages for Delayed Completion Due to the Concessionaire

12.3.1 Preliminary Completion

In the event that the Concessionaire fails to bring about the Preliminary Completion Date of the Project Highway by the Target Preliminary Completion Date, the Concessionaire shall pay to the Grantor liquidated damages for each day of delay occurring after the Target Preliminary Completion Date in the amount of:

- (a) [.....] Birr (Br.....,000,000.00) per day for the first thirty (30) days;
- (b) [.....] Million Birr (Br,000,00.00) per day for the following thirty (30) day period;
- (c) [.....] Million Birr (Br.....,000,000.00) per day thereafter.

12.3.2 Final Completion

In the event that the Concessionaire fails to bring about the Final Completion Date of the Project Highway by the Target Final Completion Date, the Concessionaire shall pay to the Grantor liquidated damages for each day of delay occurring after the Target Preliminary Final Completion Date in the amount of:

- (a) [.....] Birr (Br.....,000,000.00) per day for the first thirty (30) days;

- (b) [.....] Million Birr (Br,000,00.00) per day for the following thirty (30) day period;
- (c) [.....] Million Birr (Br.....,000,000.00) per day thereafter.

12.4 Abandonment

In the event the Concessionaire abandons or is deemed to have abandoned the Construction Works, or any part thereof, as provided under Article 12.5, the Concessionaire shall pay to the Grantor a sum of [.....]in liquidated damages, being the estimated cost to the Grantor of re-awarding the Concession to another concessionaire.

12.5 Deemed Abandonment

The construction of the Project Highway shall be deemed to have been abandoned if the Concessionaire:

- (a) notifies the Grantor in writing that it has terminated the Construction Works and does not intend to recommence construction;
- (b) fails to commence Construction Works on the Site within ninety (90) days from the Milestone Date applicable to the Construction Commencement Date other than by reason of Force Majeure or a Default of the Grantor;
- (c) fails to resume Construction Works within fourteen (14) days after the end of any Force Majeure, other than by reason of Force Majeure or a Default of the Grantor;
- (d) for any other reason, the Concessionaire ceases Construction Works or withdraws either directly or through action by the construction contractor, all, or substantially all personnel from the Site prior to the Final Completion Date of the Project Highway other than by reason of:
 - i. the occurrence of Force Majeure;
 - ii. the appointment of a replacement construction contractor within sixty (60) days from the date when the Construction Works ceased; or
 - iii. a Default of the Grantor; or
- (e) fails to bring about the Final Completion Date of the Project Highway within sixty (60) days after the Target Preliminary Completion Date of the Project Highway as Such date may be extended in accordance with Article 7.10.2.

ARTICLE 13 OPERATION OF THE PROJECT HIGHWAY

13.1 Principal Obligations of the Concessionaire

The Concessionaire shall be responsible for performing the Operations of the Project Highway from Commencement of Commercial Operations to the end of the Concession Period, at its (the Concessionaire's) own cost and risk.

13.2 Standards of Performance

The Concessionaire shall perform the Operations:

- (a) in a safe, efficient, effective and economic manner;
- (b) with due care and skill; and
- (c) in accordance with the Laws of and prudent industry practice.

13.3 Safety and Technical Guidelines

Not later than ninety (90) days prior to the Target Preliminary Completion Date and thereafter from time to time, the Coordinating Committee shall establish safety and technical guidelines. The Concessionaire shall operate the Project Highway in accordance with those safety and technical guidelines once they are established.

13.4 Common User Project Highway

The Concessionaire shall perform the Operations such that the Project Highway is a common user Project Highway open to any and all road users.

13.5 Non-Exclusivity

While the Concessionaire shall have the exclusive right during the Concession Period to perform the Operations in the Project Highway, it shall not have any exclusive right to determine the traffic entering or leaving the Project Highway.

13.6 Duty to Cooperate

In performing the Operations, the Concessionaire shall cooperate with the Grantor and the Relevant Authorities so as to enable the Grantor and the Relevant Authorities to perform their monitoring, supervisory and other duties relating to the Project Highway.

13.7 Performance Requirements

13.7.1 The Concessionaire shall at all times:

- (a) operate and maintain the Project Highway, modify, repair and improve the Project Highway in conformity with this Agreement, but not limited to the

specifications and standards set forth in Appendix H (“Operations Manual”), Appendix I (“Operation and Maintenance Procedure”), Appendix J (“Performance Requirements”), the Safety and Technical Guidelines, all Applicable Laws, and Prudent Industry Practice.

- (b) ensure that there is no decline in the standards of the Operations.

13.7.2 Tracking and Evaluation of Performance

The Grantor shall evaluate the Concessionaire’s performance of the Operations on an annual basis. The process of evaluation shall commence on the Commencement of Commercial Operation and shall be conducted as follows:

- (a) following the completion of each Operating Year, the Concessionaire shall provide to the Grantor a report in respect of that Operating Year which shall include, *inter alia*, a full account of its performance against the applicable Performance Requirements, an explanation of any failure to meet such Performance Requirements and any other reasonable information requested by the Grantor to enable it to make its evaluation (the “Concessionaire Report”) within ninety (90) days after the end of each Operational Year. In the event that the Concessionaire fails to provide the Concessionaire Report within the period of ninety (90) days after the end of an Operational Year, the Grantor shall give the Concessionaire thirty (30) days written notice requiring the Concessionaire to produce the Concessionaire Report. In the event that the Concessionaire fails to produce the Concessionaire Report by the expiry of the thirty (30) day period then the provisions of Article 13.7.2(e) shall apply.
- (b) the Grantor's evaluation, which shall have been ongoing during the Operating Year, shall be completed by the Grantor and the Grantor shall produce and deliver to the Concessionaire an evaluation report containing its own assessment of the Concessionaire’s performance against the Performance Requirements taking into account any Interruption, and stating whether, in its opinion, the Concessionaire has reached the Performance Requirements. (“the Grantor Report”) within thirty (30) days of the earlier of either:
 - (i) receipt of the Concessionaire Report; or
 - (ii) in the event that the Concessionaire fails to provide the Concessionaire Report upon the expiry of the thirty (30) days referred to in Sub Section (i) above.
- (c) In the event that the Grantor fails to provide the Grantor Report within the period stated in this Sub Section, the Concessionaire shall give the Grantor thirty (30) days written notice requiring the Grantor to produce the Grantor Report. In the event that the Grantor fails to produce the Grantor Report by the expiry of the thirty (30) day period then the provisions of Article 13.7.2(e) shall apply.
- (d) Within fourteen (14) days of submission by the Grantor of the Grantor Report to the Concessionaire, the Parties shall meet and agree whether the Grantor's

evaluation is accepted by both Parties, whether the Concessionaire has reached or exceeded the Performance Requirements. Any disagreement between the Parties in respect of the Grantor Report shall be resolved pursuant to the provisions of Article 29.

- (e) In the event that either:
- (i) the Concessionaire fails to produce the Concessionaire Report further to thirty (30) days' written notice from the Grantor given in accordance with Article 13.7.2(a) above, then the Grantor Report shall be binding upon both Parties and Parties shall not be required to meet and agree the Grantor's evaluation in accordance with Article 13.7.2(d) above; or
 - (ii) the Grantor fails to produce the Grantor Report further to thirty (30) days' written notice from the Concessionaire given in accordance with Sub Section (ii) above, then the Concessionaire Report shall be binding upon both Parties and the Parties shall not be required to meet and agree the Grantor's evaluation in accordance with Article 13.7.2(d) above.

13.8 Effects of over performance or under-performance

Based on the Grantor's Report, which report has been accepted by the Concessionaire or has become binding on the Concessionaire in accordance with Clause 13.7.2 above:

13.8.1 If the Concessionaire is determined to have exceeded the Performance Requirements for a specific Operational Year,

[IN THE CASE OF ANNUITY PAYMENTS]

the Concessionaire shall be entitled to receive a payment of bonus equivalent to [0.3%] of the instalment of the Annuity Payment due to the Concessionaire for that year. The bonus will be paid along with Annuity Payment instalment due for the succeeding Operational Year.

[OR IN THE CASE OF PAYMENT OF CONCESSION FEES]

the Concessionaire shall be entitled to receive a payment of bonus equivalent to [0.3%] of the instalment of the Fixed Annual Payment payable by the Concessionaire for that year. The bonus will be deductible from the Fixed Annual Payment due for the succeeding Operational Year.

13.8.2 If the Concessionaire is determined to have performed below the Performance Requirements for a specific Operational Year,

[IN THE CASE OF ANNUITY PAYMENTS]

the Concessionaire shall pay a penalty equivalent to [0.3%] of the instalment of the Annuity Payment due to the Concessionaire for that year. The penalty shall be drawn from the Performance Guarantee.

[OR IN THE CASE OF PAYMENT OF CONCESSION FEES]

the Concessionaire shall pay a penalty equivalent to [0.3%] of the instalment of the Fixed Annual Payment payable by the Concessionaire for that year. The penalty shall be drawn from the Performance Guarantee.

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ARTICLE 14 MAINTENANCE OF THE PROJECT HIGHWAY

14.1 Manual for Maintenance and Inspection

The Concessionaire shall prepare in not later than one hundred and eighty (180) days before the Target Final Completion Date a Manual for Maintenance and Inspection of the Project Highway ("Maintenance and Inspection Manual") which shall include procedures and schedules for carrying out periodical and annual inspections, routine maintenance, major repair maintenance and annual maintenance and for adjusting and improving the inspection and maintenance program. The Maintenance and Inspection Manual shall be approved by the Coordinating Committee and shall comply with the Operations and Maintenance Procedure set out in Appendix I of this Agreement, as well as all Applicable Laws.

A copy of the Maintenance and Inspection Manual shall be delivered to the Grantor and same shall have their respective reasonable comments and suggested modifications and amendments incorporated therein. Thereafter, the Concessionaire shall not modify the Maintenance and Inspection Manual without the Grantor's prior approval, such approval not to be unreasonably withheld.

14.3 Public Safety

If the Project Highway or any part thereof breaches the applicable safety standards and regulations of Ethiopia, the Grantor may restrict access to the Project Highway until the Grantor is satisfied in its reasonable opinion that the Project Highway is safe and shall notify the Concessionaire immediately. The Grantor may direct the Concessionaire to make the Project Highway safe within the time specified in its notice. The Concessionaire shall not be entitled to any compensation whatsoever for expenses incurred by such restriction of access or operations.

14.4 The Grantor's Right of Access

The Grantor shall have access to the Project Highway at all times to monitor operation and maintenance provided that the Grantor shall not interfere with, delay or disturb the Concessionaire in performing its obligations under this Agreement.

14.7 Non Compliance with Maintenance and Inspection Manual

If upon undertaking any scheduled periodic inspection, the Grantor discovers that the Project Highway is not being maintained in accordance with the Maintenance and Inspection Manual the Grantor shall notify the Concessionaire specifying:

- (a) the maintenance works required; and
- (b) a reasonable period of time (having regard to the nature and the extent of works required) within which the Concessionaire shall ensure that remedial maintenance work is effected.

14.8 Plant, network, communication, office and other requirements to be provided at the Project Highway by the Concessionaire

The Concessionaire shall install and maintain along the Project Highway, in such quantity and quality throughout the Concession Period, plant, network, communication, office and other equipment as prescribed in **Appendix K** and as is reasonably required to maintain an efficient operation.

14.9 Project Highway Usage

Following the Construction Completion Date of the Project Highway, the Concessionaire shall ensure that the Project Highway is convenient, suitable and safe for use at all times, in accordance with the specific the Operations and Maintenance Procedure.

14.10 Operating Reports

The Concessionaire undertakes to submit to the Grantor an operating report regarding the operation of the Project Highway.

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**ARTICLE 15
PROJECT HIGHWAY TOLL FEES**

15.1 Concessionaire's Entitlement to Collect Revenue

The Concessionaire shall throughout the Commercial Operations Period be entitled to collect the only the specified Toll Fees from Users of the Project Highway in accordance with the Fee Notification published by the Grantor from time to time, and [retain such Toll Fees for its benefit] (or) [deposit such Toll Fees into the Grantor's Designated Account], The Grantor shall ensure that such Fee Notification of the rates for the Toll Fees is published at least thirty (30) days prior to the commencement of the rates published.

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ARTICLE 16 LABOUR

16.1 Concessionaire to Hire and Pay all Personnel

The Concessionaire shall be solely responsible for the selection, hiring, assignment and supervision of its personnel and for paying to them all wages, salaries, entitlements to pension contributions and other payments as required under the Laws of Ethiopia. The Concessionaire shall also be responsible for the negotiation of the employment and labour contracts in accordance with the Laws of Ethiopia.

16.2 Qualified Personnel

The Concessionaire shall employ only such persons as are properly qualified, experienced and competent to perform the work assigned to them and, where appropriate, duly licensed.

16.3 Training

The Concessionaire shall be responsible for training all its personnel.

15.4 Use of Ethiopian Labour

Except to the extent not locally available, the Concessionaire shall employ competent Ethiopian labour for the construction, operation and maintenance of the Project Highway. The Concessionaire shall use reasonable efforts to employ n nationals in management positions to the extent that there are n nationals who satisfy the requirements for such positions.

16.5 Identification of Concessionaire's Personnel

The Concessionaire shall ensure that its personnel are issued the appropriate identification documentation. Such identification documentation shall be produced to any official or authorized person who has reasonable grounds to request the identification of such personnel. Upon the termination of employment of such personnel, such identity documentation shall be returned to the Concessionaire.

ARTICLE 17
FINANCING OF THE PROJECT AND FINANCIAL MANAGEMENT

17.1 Concessionaire's Principal Obligations

The Concessionaire shall be [solely] responsible for obtaining [all the] (or) [...%] of the finance, both equity and debt, necessary to construct, operate and maintain the Project Highway for the duration of the Concession Period. The Concessionaire shall obtain the prior written approval of the Grantor, in order to levy any encumbrance on the Site, the Project or the Annuity Payments for the purpose of securing funding for the Project.

17.2 Use of Ethiopian Bank Accounts

All of the Concessionaire's transactions related to the Project that require foreign exchange including debt servicing and repatriation of income shall be effected through a foreign exchange account with a reputable bank.

Without prejudice to the generality of the foregoing and subject to any Laws of Ethiopia governing foreign exchange transaction in Ethiopia, foreign exchange from any foreign Lender and equity investor and used to pay foreign contractors or vendors for services provided or equipment or materials purchased outside Ethiopia may be paid directly to such persons without being transferred through an account in Ethiopia.

17.3 Consent to US Dollars Accounts

The Grantor shall ensure that:

- (a) the Concessionaire, the construction contractor and the Preferred Bidder receive consent, if required, for the opening and operation of, and retention of earnings in, US Dollars bank accounts inside Ethiopia, including the payment of all US Dollars received under the Financing Agreements into such accounts and withdrawals therefrom; and
- (b) the Concessionaire, the construction contractor and the Sponsors shall have permission to transfer the funds from its accounts in Ethiopia to accounts outside of Ethiopia that are necessary to implement and carry out the Project in accordance with this Agreement, including such accounts as are reasonably required under the Financing Agreement, the construction contract and insurance policies related to the Project.

17.4 Conversion of Project Income into Foreign Currency

The Concessionaire, subject to the Laws of Ethiopia, shall have the right to convert all income from the Project from Birr to foreign currency in order to pay for Project expenses and debt service, if any.

17.5 Financial Statements

The Concessionaire shall carry on its business and affairs with due diligence and efficiency and in accordance with sound financial and commercial standards and practices and shall fully account for all aspects of its business by preparing financial statements and delivering them to the Grantor as follows:

- (a) Annual audited financial statements consisting of a balance sheet and a statement of cash flow drawn up in accordance with generally accepted international accounting principles and any applicable provisions of the Laws of Ethiopia and certified by a qualified independent auditor;
- (b) A quarterly statement of the Concessionaire's cash receipts; and
- (c) Such other information on the financial position of the Concessionaire as the Grantor may from time to time reasonably request to monitor compliance with the Laws of Ethiopia and with this Agreement.

ARTICLE 18
TRANSFER OF THE PROJECT

18.1 General Scope of Transfer

On the Transfer Date, the Concessionaire shall transfer to the Grantor or any person designated by the Grantor, free of charge:

- (a) all of the Concessionaire's rights and interest in and to the Project Highway which shall all be well maintained and in good working order;
- (b) all of its right to use the Site; and
- (c) such operating manuals, operation summaries, transfer notes, design drawings and other information as may reasonably be required by the Grantor, and which have not been delivered previously by the Concessionaire in accordance with this Agreement to enable it to continue the operation of the Project Highway either directly or by any person designated by the Grantor.
- (d) all Project Assets, with exact description of their location and particulars

The Project Highway, the Project Assets and the right to use the Site shall be transferred to the Grantor free and clear of all debts, liens, encumbrances, mortgages, security interests created by the Concessionaire, and all Project Assets including the road, pavement, structure and equipment shall have been cured of all defects and deficiencies as necessary, so that the Project Highway is compliant with all specifications and standards set forth in this Agreement.

18.2 Final Maintenance Overhaul and Operational Test

18.2.1 Final Maintenance Overhaul

The Concessionaire shall carry out a Final Maintenance Overhaul of the Project Highway no earlier than six (6) months prior to the Transfer Date provided that same shall be completed no later than three (3) months prior to the Transfer Date. The precise time and contents of the Final Maintenance Overhaul shall be checked and approved by the Transfer Committee twelve (12) months prior to the Transfer Date. The Final Maintenance Overhaul shall include:

- (a) review of the standard items listed in the Maintenance and Inspection Manual;
- (b) elimination of existing defects;
- (c) inspection and repair, crack detection, test and replacement of existing defects; and
- (d) such other items reasonably required by the Grantor. The Concessionaire shall be responsible for including those items reasonably proposed by the Grantor into the Final Maintenance Overhaul schedule.

18.2.2 Failure to carry out Final Maintenance Overhaul

If the Concessionaire fails to carry out the Final Maintenance Overhaul pursuant to Article 18.2.1 above, the Grantor may do so itself at the risk and expense of the Concessionaire. The Grantor, except where a dispute is declared under Article 29, shall be entitled to draw on the Performance Guarantee to cover the costs of the Final Maintenance Overhaul in such circumstances, provided it has furnished the Concessionaire with a detailed record of the costs incurred.

18.2.3 Performance Test

After the Final Maintenance Overhaul and prior to the Transfer Date, the Concessionaire shall carry out performance tests on the Project Highway in the presence of the Independent Engineer and a representative of the Grantor. The tested performance parameters shall be in conformity with **Appendix J**.

In the event of a failure to meet the said parameters, the Concessionaire shall correct any such defects to the Project Highway and repeat the performance test. If the Concessionaire fails to correct any such defect within a reasonable period, the Grantor may do so itself at the risk and expense of the Concessionaire. The Grantor, except where a dispute is declared under Article 29, shall be entitled to draw on the Performance Guarantee to cover the costs of correcting such defects provided it has furnished the Concessionaire with a detailed record of the costs incurred.

18.4 Warranties

18.4.1 Condition of the Project Highway on the Transfer Date

The Concessionaire warrants that on the Transfer Date, the Project Highway shall:

- (a) Be in good operational condition and well maintained (ordinary wear and tear excepted); and
- (b) Meet all safety and environmental standards required by this Agreement; and
- (c) Meet the Standards set out in **Appendix F and Appendix J**.

18.4.2 Defects Liability Period

The Concessionaire further warrants that it will correct any defects in or damage to any part of the Project Highway which may appear or occur within a period of twelve (12) months after the Transfer Date due to defective materials, workmanship or design, or from any Default of the Concessionaire during the Concession Period (ordinary wear and tear excepted).

The Grantor shall give the Concessionaire notice promptly after having discovered any such defect or damage. Such notice must, in any case, have been given at the latest before the expiration of the twelve (12) months warranty period. Upon receipt of such notice, the Concessionaire shall correct the defect as soon as possible at its own cost. If the Concessionaire fails or refuses to correct a defect within a reasonable time after the Grantor's notification, then, except where the Concessionaire has declared a dispute

under Article 29, the Grantor shall be entitled to correct the defect itself or engage third party to do so. In such a case, the Concessionaire shall pay the reasonable and necessary costs of the correction and the Grantor shall be entitled to draw on the Performance Guarantee to cover such costs.

18.5 Transfer of Insurance and Contractor Warranties

The Concessionaire shall assign to the Grantor or any person designated by the Grantor at the time of transfer all unexpired guarantees and warranties, free of charge, by contractors and suppliers, and all insurance policies, binders and endorsements. Insurance premium for the insurance period after such transfer shall be paid or refunded by the Grantor.

18.6 Technology Transfer

At the Transfer Date, the Concessionaire shall transfer and assign, including by way of licence or sub-licence, to the Grantor or any person designated by the Grantor, free of charge, all technology and know-how used at the time of transfer and required to operate and maintain the Project Highway.

18.7 Personnel

Six (6) months prior to the end of the Concession Period, the Concessionaire shall submit a list of the personnel currently employed by the Concessionaire at the Project Highway giving details of the qualifications, position and income of each employee.

The Concessionaire shall also indicate which employees will be available for employment by the Grantor after the Transfer Date.

The Concessionaire shall grant the Grantor reasonable access to the Project Highway to interview and assess such personnel. The Grantor shall select the personnel it wishes to employ to operate and maintain the Project Highway after the Transfer Date at its sole discretion and shall not be obliged to employ all or any of the personnel previously employed by the Concessionaire.

18.8 Cancellation of Contracts, Assignment

Subject to Articles 18.5 and 18.6, if required by the Grantor, equipment contracts, supply contracts and all other contracts entered into by the Concessionaire and subsisting at the time of the transfer shall be canceled by the Concessionaire. The Grantor shall not be indemnified and held harmless by the Concessionaire in respect of same. Otherwise, the Concessionaire shall endeavour to assign such contracts to the Grantor or any person designated by the Grantor.

18.9 Removal of Objects Owned by the Concessionaire

The Concessionaire shall at its own cost remove all objects owned by the Concessionaire from the Site within thirty (30) days after the Transfer Date unless otherwise mutually agreed by the parties. The objects to be removed shall be limited to the personal items

of the Concessionaire's employees and articles having nothing to do with the operation and maintenance of the Project Highway and shall not include the equipment, tools, spare parts, design drawings and technical information of the Project Highway listed in the inventories to be transferred or otherwise necessary for the operation and maintenance of the Project Highway. If the Concessionaire fails to remove such objects within the said time, the Grantor may remove and transport same, after giving the Concessionaire notice of its intention, to a suitable location for safe storage. The Concessionaire shall bear the reasonable cost and the risk of such removal, transportation and storage.

18.10 Assumption of Risk

Until the Transfer Date, all risks shall lie with the Concessionaire for loss of or damage to the whole or any part of the Project Highway, unless loss or damage is due to a Default of the Grantor.

18.11 Transfer Costs and Approvals

The transfers and assignments of the Project Highway and related contractor warranties, technology and supply contracts to the Grantor or any person designated by the Grantor pursuant to Articles 18.1 through 18.6 shall be without the payment of any compensation or purchase price by the Grantor to the Concessionaire.

The Concessionaire and the Grantor shall each be responsible for its own costs and expenses, incurred in connection with the transfers and assignments to the Grantor or any person designated by the Grantor. The Grantor shall at its own cost obtain or effect all Approvals and take such other action as may be necessary for such transfers and assignments and shall pay all duties, taxes, charges and the like payable in respect of such transfers and assignments.

If the Concessionaire fails to transfer in compliance with the required scope and contents of this Article 18, the Grantor shall be entitled to draw upon the Performance Guarantee in respect of the expenses or loss incurred thereby.

18.12 Transfer Committee and Transfer Procedure

18.12.1 Twelve (12) months prior to the end of the Concession Period, the Grantor and the Concessionaire shall establish a committee (the "Transfer Committee") comprising three (3) representatives of the Concessionaire and three (3) representatives of the Grantor. The Transfer Committee shall meet regularly and may meet at any time agreed by the parties and agree on:

- (a) detailed procedures for the transfer of the Project Highway,
- (b) a Final Maintenance Overhaul program,
- (c) tests after the Final Maintenance Overhaul,

- (d) a detailed list of the structures, equipment, facilities, items and Project Assets to be transferred, and
- (e) measures to be taken to publicize the transfer to third parties.

At the time of such meetings, the Concessionaire shall submit the names of its representatives in charge of the transfer, and the Grantor shall inform the Concessionaire of the names of its representatives in charge of the transfer;

The Transfer Committee shall meet in the third (3rd) month prior to the transfer in order to prepare the transfer.

- 18.12.2 Upon the Transfer Committee confirming that the Concessionaire has conformed with all the requirements for the Transfer and handing over actual or constructive possession of the Project Highway to the Grantor or its designated representative, the Grantor shall issue within three (3) months of the Transfer Committee's confirmation, a certificate in the form set forth in Appendix L (the "Vesting Certificate"). This will constitute evidence of divestment of all rights, title and lien in the Project Highway by the Concessionaire, and their vesting in the Grantor.

18.13 Effect of Transfer on this Agreement

Except as otherwise provided in this Agreement, the obligations and the rights of the Concessionaire under this Agreement shall terminate as from the Transfer Date, and the Grantor or any person designated by the Grantor shall take over the operation of the Project and any other rights or obligations arising out of the terms of this Agreement which either expressly or implicitly survive termination of this Agreement.

ARTICLE 19 INSURANCE

19.1 Obtaining and Maintenance of Insurance Policies

The Concessionaire, at its sole cost and expense, shall throughout the duration of this Agreement, obtain and maintain with an insurance company(ies) to be approved by the Grantor the policies of insurance in the amounts set forth herein and during the periods mentioned herein; provided, however, that such amounts may be changed from time to time with the prior written consent of the Grantor.

[insert amounts of insurance]

19.2 Insurance during Concession Period

From the Start Date until the Transfer Date, the Concessionaire shall at its own expense keep the Project Highway insured to the full value thereof against damage from all normal risks applicable to project highways the nature of which is similar to the Project Highway.

19.3 Market Practice

The Concessionaire shall maintain the aforementioned insurance with reputable insurers of adequate financial strength and experience to the extent that the insurance policies can be subscribed on reasonable economic terms and rates.

19.4 Certificate of Insurance

- (a) Every certificate of insurance issued pursuant to Article 19.2 of this Agreement shall have the Grantor's name and that of the Concessionaire endorsed on it as "Joint Loss Payee".
- (b) The Concessionaire shall cause its insurers or agents to provide the Grantor with certificates of insurance evidencing the policies and endorsements obtained pursuant to Article 19.2. Failure by the Concessionaire to obtain the insurance coverage or certificates of insurance required by Article 19.2 shall not in any way relive or limit the Concessionaire's obligations and liabilities under any provision of this Agreement. If the Concessionaire shall fail to procure or maintain any insurance required pursuant to this Article 19.2, then the Grantor shall have the right to procure such insurance and shall be entitled to offset the premium paid for such insurance by drawing on the Performance Guarantee.

19.5 Application of Insurance Monies

The Concessionaire and the Grantor shall be joint beneficiaries of the proceeds of insurance taken out hereof. It is further agreed that the proceeds of the insurance policies taken out under shall be applied to the reinstatement or restoration of the Project Highway.

19.6 Insurance Reports

The Concessionaire shall provide the Grantor with copies of any underwriters' reports or other reports received by the Concessionaire from any insurer, provided that the Grantor shall not disclose such reports to any other person except as necessary in connection with administration and enforcement of this Agreement; or as may be required by any Relevant Authority and shall use and internally distribute such reports only as necessary in connection with the administration and enforcement of this Agreement.

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**ARTICLE 20
OTHER OBLIGATIONS OF THE GRANTOR**

20.1 Compliance with the Laws of Ethiopia

The Grantor shall at all times observe and comply with the Laws of Ethiopia.

20.2 Tax Preference

The Grantor shall assist the Concessionaire obtain and enjoy tax preferences it may be entitled to in accordance with the Laws of Ethiopia. The Grantor shall assist the Concessionaire to obtain permissions for other tax preferences in relation to the performance of this Agreement to the extent permitted at any time by applicable Ethiopian tax laws and regulations and by the relevant Ethiopian taxation authority.

20.3 Obtaining and Maintaining Approvals

The Grantor, upon proper and timely request from the Concessionaire, shall use its best endeavours to assist the Concessionaire in obtaining, maintaining and renewing all Approvals from Relevant Authorities.

20.4 The Grantor's Responsibility

The Grantor shall be responsible for the acts, commissions and omissions of the officials and employees under its control or supervision.

20.5 Utilities

The Grantor shall ensure that all Utilities, such as electricity and water, necessary for the construction, operation and maintenance of the Project Highway are made available to the Concessionaire in a timely manner and at fair rates on terms no less favourable to the Concessionaire than those generally available to commercial customers receiving service substantially equivalent to that being provided to the Concessionaire. Except as otherwise provided herein, the Grantor shall at its own cost connect and extend such Utilities to the boundary of the Project Highway.

20.6 Non-Interference

Subject to the provisions of this Agreement, the Grantor shall not intervene in the construction, operation and maintenance of the Project Highway, save as may be necessary to protect public health and safety and for the discharge of its statutory duties. At the request of the Concessionaire, the Grantor shall use its best efforts to alleviate any interference with the Project by third parties which may arise.

20.7 No Interruption by the Grantor and/or other Relevant Authorities

Subject to the provisions of this Agreement, the Grantor undertakes not to do, and shall make reasonable endeavours to ensure that no other Relevant Authority does any act

which would prevent or adversely affect the Construction Works, the operation and maintenance of the Project Highway or impede the Concessionaire or its nominee's collection of approved charges from Users of the Project Highway, save as may be necessary on grounds of national security or public safety.

If any operation or action is to be carried out at the Project Highway by any Relevant Authority on the ground of national security or public safety, which said action will prevent or adversely affect the Construction Works, or the operation and management of the Project Highway or impede the Concessionaire and/or its nominee's collection of approved charges from users of the Project Highway, the Grantor shall give the Concessionaire 14 (fourteen) days prior written notice to enable the Concessionaire to discuss and agree with the particular Relevant Authority the methods for carrying out such operation or action with the least possible disruption to the Construction Works, operation and maintenance of the Project Highway.

The obligation of the Grantor to give notice in the preceding paragraph is conditional upon the Grantor having any prior knowledge or notice of such operation or action.

If any operation, action or interruption by the Grantor and/or any Relevant Authority delays completion of the Construction Works, or impedes the Concessionaire's operation of the Project Highway, the Grantor's Representative shall, in consultation with the Concessionaire, determine the appropriate time period by which the Construction Completion Date and/or the Concession Period shall be extended and the quantum of compensation payable to the Concessionaire for costs it may incur and/or damages it may suffer in relation thereto.

20.8 Improper Draws against Performance Guarantee

In the event that the Grantor draws against the Performance Guarantee respectively provided by the Concessionaire pursuant to Article 3.5 of this Agreement and it is subsequently determined that the Grantor was not entitled to do so, then the Grantor shall repay such amount promptly to the Concessionaire together with all costs and expenses incurred by the Concessionaire in connection with such drawing plus interest thereon from the date of the draw to the date of repayment at the Default Rate.

**ARTICLE 21
OTHER OBLIGATIONS OF THE CONCESSIONAIRE**

21.1 Change of Ownership; Restrictions on Transfer of Shares

21.1.1 Restrictions on Transfer of Shares

Subject to the following provisions, the Concessionaire shall not procure or effect any change in or transfer of shares or other interests in the Concessionaire's registered capital without the prior written approval of the Grantor.

21.1.2 Exception to Restrictions on Transfer of Shares

No shareholder in the Concessionaire shall transfer any shares or interests owned by him in the Concessionaire's registered capital for a period of five (5) years after the Final Completion Date of the Project Highway, except for:

- (a) a transfer required by the Laws of Ethiopia or by order of court, tribunal or Relevant Authority with appropriate jurisdiction;
- (b) a transfer resulting from the creation or enforcement of a security interest in or over any shares or interests in accordance with the Financing Agreements; or
- (c) a transfer to which the Grantor has given its prior written approval.

21.1.3 Required Provisions in Articles of Association

The Concessionaire shall make appropriate provisions in its Articles of Association to ensure that appropriate legends appear on all share or interest certificates of the Concessionaire to put prospective purchasers on notice of the restrictions on the transferability of such shares or interests and shall not register or give effect to any transfer of shares or interests that are not in compliance with such restriction.

21.2 Compliance with the Laws of Ethiopia

The Concessionaire shall at all times in the performance of its obligations under this Agreement observe and comply with the Laws of Ethiopia.

21.3 Environmental Protection

21.3.1 Concessionaire's Responsibility

The Concessionaire shall keep the Site (including the soil, ground or surface water and air) and the surrounding environment free and clear of Environmental Contamination attributable to the construction, operation and maintenance of the Project Highway in compliance with the environmental requirements set forth in –

- (a) this Agreement; and
- (b) the Laws of Ethiopia.

21.3.2 Exceptions to the Concessionaire's Responsibility

The Concessionaire shall not be responsible for any contamination or pollution of the air, ground or water (above, under or surrounding the Site):

- (a) existing on or prior to the Effective Date;
- (b) attributable to any Default of the Grantor;
- (c) without the fault or private of the Concessionaire or his agent, attributable to a third party; and
- (d) Force Majeure

The Grantor agrees to indemnify the Concessionaire for any damage caused to the Concessionaire or any claims arising out of such pre-existing conditions or attributable to such Default.

21.4 Approvals

Subject to the provision of Article 21.3, the Concessionaire shall at its own cost obtain and maintain all Approvals as may be necessary for the construction, operation and maintenance of the Project Highway and which are required to be or can be obtained in the name of the Concessionaire.

21.5 Protection of Archaeological and Historical Objects

The Concessionaire shall take effective measure to protect archaeological relic, fossils, antique tombs and sites, historical pieces of art and any other objects or archaeological, geological and historical interest discovered during the construction, operation and maintenance of the Project Highway. The concessionaire shall, promptly following such discovery, give notice to the Grantor of the discovery and the protective measures taken or proposed. Upon receipt of such notice, the Grantor shall within seven (7) days approve the protective measures taken or proposed by the Concessionaire or give written instructions of further measures requested. The Concessionaire shall implement such requested measures with all due diligence.

All costs arising from such protective measures shall be borne by the Grantor including the costs of any unavoidable delay to the Construction Works. Any delaying effect on the Project Schedule caused by such measures shall be compensated by an appropriate extension of the Construction Period or the Concession Period or both.

21.6 Ethiopian Services and Goods

21.6.1 Use

The Concessionaire shall use Ethiopian services and goods whenever they are competitive in terms of quality, warranty, service, relevant expertise, procurement, delivery schedule and price and shall ensure that its contractors and sub-contractors observe this provision.

21.6.2 Competitive Bidding

The Concessionaire shall include Ethiopian contractors in invitations for competitive bidding for contracts if they produce services and goods of the kind and quality required and shall require their contractors to do the same with respect to sub-contracts. When evaluating bids for contracts generally, the Concessionaire shall take into account the extent to which the bidders use Ethiopian services and goods. The Concessionaire shall be responsible for the observance of these provisions by its contractors and their sub-contractors.

21.6.3 Future Concessions

When evaluating bids from the Concessionaire or any affiliate of the Concessionaire for future concessions, the Grantor may take into account the extent to which the Concessionaire has complied with the provisions of this Article 15.7 in developing, constructing and operating the Project Highway.

21.7 Coordination of Project Documents

The Concessionaire shall ensure that the Financing Agreements, any agreement among the shareholders of the Concessionaire, the Concessionaire's Articles of Association, the insurance policies related to the Project and any other agreements entered into by the Concessionaire in relation to the Project are consistent with the provisions of this Agreement.

21.8 Taxation, Customs Duty and Charges

The Concessionaire shall pay all taxes, customs duties and charges in accordance with the Laws of Ethiopia.

The Grantor shall use its best endeavours to secure for the Concessionaire fiscal incentives including but not limited to tax holidays and exemptions from tariffs, customs duties and charges in accordance with the Laws of Ethiopia.

21.9 Responsibility for Contractors and their Employees and Agents

21.9.1 Concessionaire's Contractors

The Concessionaire's employment of contractors including but not limited to Construction Contractor, equipment suppliers shall not relieve the Concessionaire from any of its obligations under this Agreement and the Concessionaire shall be fully responsible to the Grantor for any acts or omissions of the contractors, their agents or any person either directly or indirectly employed by them as if such acts or omissions were the acts or omissions of the Concessionaire.

21.9.2 Contracts with Contractors

Any contract entered into with contractors shall contain those Articles of this Agreement which are necessary to enable the Concessionaire to fulfill its obligations under this Agreement.

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ARTICLE 22

OBLIGATIONS AND RIGHTS COMMON TO THE GRANTOR AND THE CONCESSIONAIRE

22.1 Rights to Documents

22.1.1 Grantor Documents

Documents and computer programs provided by the Grantor to the Concessionaire, or which are developed mainly on the basis of such documents and computer programs, shall be the property of the Grantor. The same shall apply to all copies of such documents and computer programs. Such documents, computer programs or copies thereof shall not be used by the Concessionaire other than for the purposes of the Project. Such documents, computer programs or copies thereof shall be returned to the Grantor at the expiry of the Concession Period, unless otherwise agreed upon between the Grantor and the Concessionaire.

22.1.2 Concessionaire Documents

Documents and computer programs provided by the Concessionaire or which are developed mainly on the basis of such documents and computer programs, shall be the property of the Concessionaire. The same shall apply to all copies of such documents and computer programs. Such documents, computer programs or copies thereof shall not be used by the Grantor other than for the purposes of the Project. The Grantor or any person designated by the Grantor shall be entitled to copies of, and fully paid, royalty-free license to use, such documents, computer programs and copies only in connection with the operation and maintenance of the Project Highway after the transfer of the Project Highway to the Grantor or such person designated by the Grantor in accordance with the provisions of Article 13.6 hereof.

22.1.3 Compliance

The parties shall ensure that all those who have access to such documents, computer programs and copies thereof shall comply with the provisions of this Article 16.2 and with the confidentiality provisions of Article 16.3 hereof.

22.2 Confidentiality

All information and documents (whether financial, technical or otherwise) obtained by either party or its employees, contractors, consultants or agents which are not published or otherwise publicly available shall be kept confidential and not disclosed to third parties or the public for a period of five (5) years from the last day of the Concession Period without the prior written approval of the other party except as required under the Laws of Ethiopia. This prohibition shall not prevent either party, with the consent of the other, from issuing press releases containing non-sensitive information in relation to the progress of the Project.

22.3 Obligation to Cooperate

The parties shall mutually cooperate with each other in order to achieve the objectives of this Agreement. Whenever a consent or approval is required by one party from the other party, such consent or approval shall not be unreasonably withheld or delayed.

22.4 Declaration Against Improper Payments

22.4.1 Declaration of the Concessionaire

The Concessionaire represents, warrants, covenants and declares that:

- (a) neither it nor its representatives have offered any government official or official or employee of the Grantor or any other Relevant Authority any unlawful consideration or commission (in the form of a bribe or kick-back) for this Agreement nor has it or its representatives exerted or utilised any unlawful influence to secure or solicit this Agreement;
- (b) it shall not contract, or allow any of its contractors to subcontract, any portion of the work for the Project to any person known by it to be an official or employee of the Grantor or any other Relevant Authority or a member of the immediate family (spouse, parent, child or sibling) of any such official or employee who is directly or indirectly involved in contract awards or supervision of the Project or to any company or enterprise in which any or such persons is an executive or officer or substantial owner without the prior written consent of the Grantor after full disclosure of the relevant facts; and
- (c) if any commission has been or will be paid by the Concessionaire or any of its shareholders directly to any person, company or enterprise, whether resident in Ethiopia or outside Ethiopia, in connection with soliciting or securing this Agreement, the Concessionaire shall disclose to the Grantor the identity of the payee, the amount paid, and the nature of the service rendered.

22.4.2 Declaration of the Grantor

The Grantor represents, warrants, covenants and declares that:

- (a) neither it nor its representatives have solicited or received any unlawful consideration or commission (in the form of a bribe or kick-back) nor has it or its representatives exerted or utilised any unlawful influence in connection with awarding this Agreement to the Concessionaire;
- (b) it shall not knowingly permit any work related the Project to be contracted to any of its officials or employees, or any member of the immediate family (spouse, parent, child or sibling) of any such official or employee, who is directly or indirectly involved in contract awards or supervision of the Project or to any company or enterprise in which any or such persons is an executive or officer or substantial owner without the prior written consent of the Grantor after full disclosure of the relevant facts.

ARTICLE 23 FORCE MAJEURE

23.1 Definition

Force Majeure shall mean any event or circumstance which is beyond the control of the party seeking to rely on such event or circumstance, which shall include:

- (a) lightning, earthquake, flood, storm, typhoon or tornado;
- (b) act of war, invasion, armed conflict or act of foreign enemy, blockage, riot, terrorism or exercise of military power;
- (c) national, regional or industry-wide strike, or
- (d) the temporary requisition of the Project Highway by the Grantor or any other Relevant Authority; and
- (e) other events, which could not reasonably have been foreseen by that party at the date of this Agreement, the consequences of which could not reasonably have been avoided by that party, and which prevents that party from performing any of its obligations under this Agreement.

23.2 Exceptions Applicable to the Concessionaire

The Concessionaire shall not have the right to claim any of the following events or circumstances to be an event or circumstance of Force Majeure:

- (a) any delay:
 - i. in performance by any contractor or subcontractor of the Concessionaire, including the Construction Contractor, or any direct or indirect sub-contractor to either of them; or
 - ii. in the delivery of equipment and machinery for the Project Highway, except and to the extent that such delay is itself caused by an event which satisfies the criteria set out in Article 23.1.1 in relation to both the Concessionaire and the relevant contractor or sub-contractor;
- (b) any defects in any materials, equipment, machinery and spare parts for the Project Highway; or
- (c) breakdown or ordinary wear and tear of materials, equipment, machinery or spare parts of the Project Highway.

23.4 Notice of Force Majeure

The party claiming to be affected by Force Majeure shall promptly, when it becomes aware of the Force Majeure, give notice and describe in detail the Force Majeure

occurrence and effect of such Force Majeure to the other party in writing, including the dates of commencement and estimated cessation of such Force Majeure and its effects on the party's obligations under this Agreement. The party claiming Force Majeure shall also provide such evidence as the other party may reasonably request.

23.5 Suspension of Performance Due to Force Majeure and Costs

Either party shall be entitled to suspend performance of all or part of its obligations under this Agreement (except for payment obligations) to the extent that such party is impeded, wholly or in part, in carrying out its obligations under this Agreement by Force Majeure.

23.6 Extension Due to Force Majeure

In the event that the Construction Completion Date is delayed due to an event of Force Majeure, and/or the Concessionaire is unable to perform its obligations during the Concession Period, the Grantor agree to extend the Construction Completion Date and/or the Concession Period by such period that the Force Majeure subsists.

23.7 Costs

In case of Force Majeure, each party shall cover its own costs resulting from the Force Majeure.

23.8 Duty to Mitigate and Resume

The parties in consultation with each other shall use reasonable efforts to mitigate the effects of any Force Majeure. The party claiming Force Majeure shall resume the performance of its obligations under this Agreement as soon as practicable after the Force Majeure ceases.

23.9 Continuing Force Majeure

If any event of Force Majeure continues for longer than 3 months, the Concessionaire and the Grantor shall enter into discussions in order to agree on a mutually satisfactory solution. If the Concessionaire and the Grantor fail to reach a mutually satisfactory solution within 30 days of the commencement of such discussions, the provisions of Article 29.3 shall apply prior to either party issuing a Notice of Intention to terminate this Agreement.

In the event that this Agreement is terminated as a result of the Concessionaire's inability to perform its obligations hereunder due to a continuing Force Majeure, and/or the Independent Engineer or the Panel of Experts, as the case may be, certifies that restoration is not feasible, or the Concessionaire and the Grantor are unable to agree on terms on which to continue this Agreement, the Grantor shall pay the Concessionaire such sums of money that aggregate the Concessionaire's investment in the Project and subject to any claims of the Grantor or that of the Lenders determinable by the Independent Engineer or the Panel of Experts within 30 days from the date the Notice

of Termination is issued, depending on the nature of the Force Majeure and the length of time that it continues unabated.

23.10 Force Majeure and Insurance

To the extent that the consequences of an event of Force Majeure relied upon by the Concessionaire fall within the terms of the insurance cover required by Article 19, the Concessionaire shall forthwith make the appropriate claims thereunder and shall apply the proceeds as required by Article 19.

23.11 Damage to the Project Highway

If an event of Force Majeure causes material damage to the Construction Works or the Project Highway and such damage is either not within the terms of the insurance cover required by Article 19.2 or the insurance proceeds available are less than 50 percent of the total costs of repairing such damage, the Concessionaire shall not be obliged to complete or cause to be completed, the construction or repair of the Project Highway unless the Independent Engineer certifies that the repair is feasible and the parties agree on a solution that will allow the Concessionaire to recover the costs of the additional works necessary together with a reasonable return on its investment over the remainder of the Concession Period.

23.12 Force Majeure and the Independent Engineer

Upon the occurrence of such Force Majeure, the parties shall promptly obtain the opinion of the Independent Engineer as to whether such repair is feasible and shall enter into discussions to reach a mutually satisfactory agreement. If the Concessionaire and the Grantor fail to reach a mutually satisfactory solution within 30 days of the commencement of such discussions, the provisions of Article 29 shall apply, prior to either party issuing a Notice of Intention to terminate this Agreement.

ARTICLE 24 TERMINATION

24.1 Termination by the Grantor

Each of the following, to the extent it is not caused by a Default of the Grantor or by Force Majeure, shall, if not cured within the time period permitted (if any), be a Concessionaire Event of Default and shall entitle the Grantor to issue a Notice of Intention to Terminate immediately:

- (a) the Concessionaire fails to pay the royalties and or deposit the Fees in the Grantor's Designated Account as required under Article 15 and does not effect the payment or deposit same in the Grantor's account within fifteen (15) days of receipt of a demand notice from the Grantor;
- (b) the Concessionaire abandons or is deemed to have abandoned the construction of the Project Highway as provided in Article 12;
- (c) the Concessionaire abandons the operation of the Project Highway for a period of seven (7) consecutive days without the prior written consent of the Grantor;
- (d) the Concessionaire fails to provide the Performance Guarantee as required under Article 3.4;
- (e) the Concessionaire goes into liquidation or becomes insolvent under the Laws of Ethiopia;
- (f) a receiver or receiver/manager is appointed for any of the assets of the Concessionaire or, under a judicial order, execution is levied against the assets of the Concessionaire to the extent that the Concessionaire is prevented or unable to operate the Project Highway for a period of 30 days;
- (g) any representation or warranty made by the Concessionaire in this Agreement proves to have been materially incorrect when made such that the Concessionaire's ability to perform its obligations under this Agreement is materially adversely affected;
- (h) any failure of the Concessionaire to manage, operate and maintain the Project Highway in accordance with this Agreement which substantially adversely affects the service provided by the Grantor, directly or through the Grantor, to users of the Project Highway and the Concessionaire has failed to remedy such failure within thirty (30) days of receipt of written notice from the Grantor; or
- (i) failure of the Concessionaire to perform any other of its obligations under this Agreement amounting to a material breach of this Agreement and the Concessionaire fails to remedy such breach within thirty (30) days of receipt of written notice form the Grantor specifying such breach and requiring the Concessionaire to remedy same.

24.2 Termination by the Concessionaire

Each of the following, to the extent it is not caused by a Default of the Concessionaire or by Force Majeure, shall, if not cured within the time period permitted (if any), be a Grantor Event of Default and shall entitle the Concessionaire to issue a Notice of Intention to Terminate immediately:

- (a) any representation or warranty made by the Grantor in Article 5.2 proves to have been materially incorrect when made such that the Grantor's ability to perform its obligations under this Agreement is materially adversely affected;
- (b) the failure of the Grantor to perform any other of its obligations under this Agreement which amounts to a material breach of this Agreement and the Grantor fails to remedy such breach within thirty (30) days of receipt of written notice from the Concessionaire specifying such breach and requiring the Grantor to remedy same.

24.3 Notice of Intention to Terminate and Notice of Termination

24.3.1 Notice of Intention to Terminate

Any notice of intention to terminate shall specify, in reasonable detail, the Concessionaire Event of Default or the Grantor Event of Default (as the case may be) giving rise to such notice (each a "Notice of Intention to Terminate"). Following the issuing of a Notice of Intention to Terminate, the parties shall consult for a period (the "Consultation Period") of:

- a) In the case of the Concessionaire's failure to bring about the Final Completion Date of the Project Highway within sixty (60) days of the Target Preliminary Completion Date (as such date may be extended in accordance with Article 12), twenty-one (21) days provided that, during this period, the Concessionaire continues to use all reasonable efforts to procure Final Completion of the Project Highway as promptly as possible; and
- b) In all other cases, seven (7) days, or such longer period as the parties may agree in writing as to what steps shall be taken with a view to preventing termination of this Agreement. If the Concessionaire and the Grantor agree on such steps to be taken and/or the Concessionaire or the Grantor (as the case may be) remedies the Event of Default within the relevant Consultation Period or such longer period as may be agreed by the parties, then the Notice of Intention to Terminate shall immediately and automatically cease to have any effect.

24.3.2 Lender Step-in Rights

In the event of a Concessionaire Event of Default, the Grantor shall at the time of serving the Notice of Intention to Terminate on the Concessionaire equally serve the Notice of Intention to Terminate on any Lender approved by the Grantor, in order to enable the Lender exercise the right to remedy the default, and by itself or through another party nominated by it, step into the Concessionaire's role to conclude execution of the Project ("Lender Step-in Rights"). The Lender shall exercise such Lender Step-in Rights during

the Consultation Period Upon substitution of the Concessionaire under and in accordance with this clause, the Lender or its nominated party substituting the Concessionaire shall be deemed to be the Concessionaire under this Agreement and shall enjoy all rights and be responsible for all obligations of the Concessionaire under this Agreement as if it were the Concessionaire.

24.3.3 Notice of Termination

Subject to Article 24.4, upon expiration of the Consultation Period and unless a) the parties shall have agreed otherwise; or b) the failure giving rise to the Notice of Intention to Terminate has been remedied, the party having given the Notice of Intention to Terminate may terminate this Agreement by delivering a notice to this effect to the other party (a “Notice of Termination”), whereupon this Agreement shall immediately terminate.

24.4 Rights of the Grantor

24.4.1 The Grantor’s (or any person designated by the Grantor’s) Right to Operate the Project Highway

- a) Upon the occurrence and continuance of a Concessionaire Event of Default which materially adversely affects the Concessionaire’s ability to operate and maintain the Project Highway in accordance with this Agreement and unless a Notice of Termination is issued, the Grantor or any person designated by the Grantor shall have the right, but under no circumstance the obligation, to take over the operation of the Project Highway in place of the Concessionaire in order to continue the operation of the Project Highway or complete any necessary repairs so as to assure uninterrupted availability of the Project Highway for the use of the public.
- b) In the event of the Grantor taking the step set out in the preceding paragraph, the Concessionaire hereby undertakes to cooperate with the Grantor or any person designated by the Grantor.
- c) In no event shall the Grantor’s election to operate the Project Highway be deemed to be a transfer of the Concessionaire’s obligations under this Agreement.
- e) During any period when the Grantor or any person designated by the Grantor is operating the Project Highway, the Concessionaire shall not be liable to pay for the operating costs incurred by the Grantor or any person designated by the Grantor after the date when the Grantor or any person designated by the Grantor took over the operation of the Project Highway. The Grantor shall not be liable to make any further payments to the Concessionaire after the occurrence of a Concessionaire Event of Default until the same is remedied by the Concessionaire, and the Concessionaire has resumed or assumed the operation of the Project Highway.

- f) The Grantor shall have the right at any time to withdraw from the operation of the Project Highway in which case the Concessionaire shall resume full operational responsibility therefore until either party issues a Notice of Termination.

24.4.2 The Grantor's Right to Terminate at any time after the issuance of the Notice of Intention to Terminate

The Grantor may, at any time after the issuance by it of a Notice of Intention to terminate following a Concessionaire Event of Default, terminate this Agreement by issuing a Notice of Termination, provided that it pays the Concessionaire all accrued and outstanding Annuity Payments to the Concessionaire, less all penalties and liquidated claims levied on such sums.

24.5 Consequences of Termination in General

24.5.1 End of Rights and Obligations

Upon termination of this Agreement, the parties shall have no further obligations hereunder, subject:

- (a) to any rights and obligations which accrued prior to the termination; and
- (b) Articles 1, 15, 18.4, 28, 29.

24.5.2 Transfer of Rights and Assets

Forthwith on termination of this Agreement:

- (a) the Concessionaire shall relinquish any Right to Use, possess or have access to the Site or the Rights of Way;
- (b) if termination occurs prior to the Construction Completion, the Concessionaire shall transfer to the Grantor such parts of the Construction Works that have been completed and such materials on the Site necessary for the purposes of completing the Construction Works at a value to be mutually agreed by the parties discounted by the cost of awarding a new contract;
- (c) if the Grantor so elects, the Grantor may purchase from the Concessionaire at its book value, assets, materials, plant, machinery, equipment, vehicles, spare parts and other movable property procured by the Concessionaire in connection with the Construction Works or the operation of the Project Highway; and
- (d) the Concessionaire shall deliver to the Grantor all as-built drawings, operation and maintenance manuals and quality assurance manuals relating to the Project Highway.

24.5.3 Compensation Payments

Any compensation amount payable by the Grantor to the Concessionaire shall be payable at least 30 days after the date of termination of this Agreement, or after the amount of the compensation has been agreed or determined, where this Agreement is continuing.

24.6 Use of Certain Insurance Proceeds

Whenever this Agreement is terminated following a Force Majeure, and the Grantor is obligated to pay compensation to the Concessionaire, and insurance proceeds are available in connection with the insurance policies to which the Concessionaire is entitled or should be entitled pursuant to this Agreement with respect to the Project Highway, such proceeds shall, if not used to effect a restoration or make repairs to the Project Highway, be used to pay the following items in the following order of priority:

- (a) to the payment of all indebtedness secured by the Lenders in the Financing Agreements;
- (b) to reduce the compensation amount, if any, payable by the Grantor to the Concessionaire;
- (c) to the Concessionaire

24.7 Other Remedies

The right of a party to terminate this Agreement, as provided herein, does not preclude that party from exercising other remedies that are provided herein or are available at law. Remedies are cumulative, and the exercise of, or failure to exercise, one or more remedies by a party shall not limit or preclude the exercise of, or constitute a waiver of, other remedies by that party.

**ARTICLE 25
COMPENSATION FOR BREACH OF THIS AGREEMENT**

25.1 Compensation

Subject to the other provisions of this Agreement, each party shall be entitled to compensation, payable by the party breaching this Agreement, for any loss, costs and expenses which a party has suffered as a result of this Agreement not being observed in whole or in part by the party breaching this Agreement.

25.2 Exemptions

A party shall not be liable for a failure to perform any of its obligations if it proves that the failure was due to Force Majeure in accordance with Article 23 or to any other event as to which the aggrieved party bears the risk.

25.3 Measures to Mitigate the Loss

A party suffering or threatened with loss as a result of a breach of this Agreement by the other party shall take such actions as are reasonable to mitigate or minimize the loss resulting from the breach. If a party fails to take such measures, the party in breach may claim a reduction in the compensation in the amount by which such loss should have been mitigated or minimized.

The aggrieved party shall be entitled to recover any expenses reasonably incurred in attempting to mitigate or minimize such loss from the other party.

25.4 Loss Due in Part to the Aggrieved Party

Where the loss is due in part to an act or omission of the aggrieved party or to another event as to which the aggrieved party bears the risk, the amount of compensation shall be reduced to the extent that these factors have contributed to the loss.

25.5 No Consequential Damages

Unless otherwise provided in this Agreement, neither party shall be liable to the other party for any indirect, special, incidental, consequential or punitive damages with respect to any claim arising out of, under or in connection with this Agreement, whether based upon contract, tort including negligence, strict liability or otherwise unless a party's behaviour amounts to gross misconduct.

ARTICLE 26
LIABILITY AND INDEMNIFICATION

26.1 Cross Indemnity

Each party shall indemnify, defend and hold harmless the other party from and against all liabilities, damages, losses, expenses and claims of any nature whatsoever for death, personal injury and for damage to or loss of an property arising out of or in any way connected with the indemnifying party's default in the performance of this Agreement except to the extent that such death, personal injury, damage or loss is attributable to a negligent or intentional act or omission of the party seeking to be indemnified.

26.2 Liability and Indemnification

The parties hereto undertake and agree to hold harmless and indemnify each other in full from and against all liabilities, damages, losses and expenses incurred as a consequence of third party claims, to the extent that a third party claim is not caused by the negligence, default or omission of a party hereto in the performance of its obligations under this Agreement.

26.3 Environmental Contamination

The Concessionaire shall be liable for, and shall defend, indemnify and hold the Grantor harmless from and against, all liabilities, damages, losses, expenses and claims from Environmental Contamination caused by the construction, operation and maintenance of the Project, except when such liabilities, damages, losses, expenses or claims are solely attributable to the Default of the Grantor.

26.4 Joint Responsibility

Except as otherwise provided in this Agreement, in the event that any loss or damage referred to in Articles 26.1 and 26.2 is caused only in part by the Default of the Grantor and in part by the Default of the Concessionaire, each party shall be liable to the other only in proportion to its relative degree of responsibility.

26.5 Defence of Claims

The party entitled to indemnification in respect of any claim brought against it shall promptly give notice to the other party that such claim has been brought. The indemnifying party may give notice to the other party accepting liability to indemnify and giving reasonable instructions as to how and by which party the claim is to be defended. Until receipt of such notice, the indemnified party may take all reasonable steps in defence of the claim. Upon receipt of such notice, if any, the indemnified party shall follow the instructions given by the indemnifying party.

ARTICLE 27

ASSIGNMENT OF THE AGREEMENT AND APPROVAL BY THE GRANTOR OF CONTRACTS

27.1 Assignment by the Grantor

Nothing in this Agreement shall prevent the Grantor from merging or consolidating with any other governmental ministry, parastatal, department, authority or agency of the Federal Republic of Ethiopia provided that the surviving entity:

- (a) has the capability and authority to assume all rights, obligations and responsibilities assumed by the Grantor; and
- (b) assumes and becomes fully liable to perform the Grantor's obligations under this Agreement.

27.2 Assignment by the Concessionaire

The Concessionaire shall not, without the prior written consent of the Grantor, transfer all, or any of its obligations under this Agreement.

The Concessionaire shall not create or allow to be created any other security interest, lien, mortgage or encumbrance in respect of its rights and interests under this Agreement or any other Project Document or in the Project Highway without the prior written consent of the Grantor.

27.3 Approval of Contracts

The Concessionaire shall not enter into any contract or commitment whatsoever requiring payments or granting any right in relation with the Project which may produce any effect after the end of the Concession Period, without the prior written approval of the Grantor. Change and amendment to contracts approved by the Grantor shall be similarly subject to the Grantor's prior written approval.

27.4 Approval Procedure

The Concessionaire's request for approval of contracts shall include the relevant information on the proposed contractors, the subject matter of the contract, the draft of the proposed contract, the method applied for selecting the proposed contractor and the use of Ethiopian labour, service and goods in accordance with this Agreement. The Grantor shall notify the Concessionaire of its decision within thirty (30) days after its receipt of the Concessionaire's request. If the Grantor fails to act within such thirty (30) day period, the request shall be deemed to be approved.

**ARTICLE 28
MISCELLANEOUS PROVISIONS**

28.1 Entire Agreement

This Agreement constitutes the entire understanding between the parties regarding the Project and supersedes all previous written and oral representations, agreements or arrangements regarding the Project.

28.2 Amendments and Variations

Any amendment, addition or variation to this Agreement shall be valid and binding only if in writing and only if signed by the authorised representatives of both parties.

28.3 Severability

If any part or parts of this Agreement shall be declared invalid by any competent arbitration tribunal or court, the other parts shall remain valid and enforceable.

28.4 Several Obligations

The duties, obligations and liabilities of the parties under this Agreement are intended to be several and not joint or collective. Nothing contained in this Agreement shall be construed to create an association, trust, partnership or joint venture among the parties. Each party shall be liable individually and severally for its own obligations under this Agreement.

28.5 Notices

Unless otherwise stated, notices to be given under this Agreement shall be in writing and shall be given by hand delivery, recognized courier, mail, telex or facsimile transmission and delivered or transmitted to the parties at their respective addresses set forth below:

The Grantor:

.....

The Concessionaire:

.....

or such other address, telex number or facsimile number as may be notified by that party to the other party from time to time, and shall be deemed to have been made or delivered:

- (a) in the case of any communication made by letter, when delivered by hand, by recognized international courier or by mail (registered, return receipt requested) at that address;

- (b) in the case of any communication made by telex or facsimile, when transmitted properly addressed to such telex number or facsimile number; and
- (c) in the event that a party changes its address and/or attention, it shall notify the other party in writing prior to adoption of the new address and/or attention.

28.6 Costs and Expenses

Unless otherwise provided for in this Agreement or otherwise agreed by the parties, each party shall bear its own costs incurred in connection with the negotiation, completion and performance of this Agreement.

28.7 Non-Waiver

None of the provisions of this Agreement shall be deemed waived by either party except when such waiver is given in writing. The failure by either party to insist upon strict performance of any of the provisions of this Agreement or to take advantage of any of its rights under this Agreement shall not be construed as a waiver of any such provisions or the relinquishment of any such rights for the future.

ARTICLE 29
GOVERNING LAW AND DISPUTE RESOLUTION

29.1 Governing Law

This Agreement shall be governed by and interpreted and construed in accordance with the Laws of Ethiopia.

29.2 Dispute Notice

In the event that there arises a Dispute, the Party wishing to declare a Dispute to the other Parties shall do so by a written notice stating the issue(s) in dispute (a "Dispute Notice").

29.3 Good Faith Attempt at Settlement by Negotiations

For a period of not less than thirty (30) days from the service of a Dispute Notice, the parties to the Dispute shall attempt in good faith to settle the Dispute by negotiations among the designated or authorised representatives of each Party. Any agreement reached between the parties to the Dispute in accordance with this Article 29.3 shall be confirmed by entry by the parties into a binding settlement agreement. In the event the parties to the Dispute are unable to reach an agreement within thirty (30) days of service of the Dispute Notice (or within such longer period of time as the parties to such Dispute may agree in writing), then any party to the Dispute may refer the Dispute to arbitration in accordance with Article 29.4.

29.4 Arbitration

29.4.1 Any Dispute which is not resolved amicably by conciliation, as provided in Clause 29.3, shall be finally decided by reference to arbitration by an arbitral tribunal constituted in accordance with Clause 24.4.2. Such arbitration shall be held in accordance with such rules as may be mutually agreed by the Parties.

- 29.4.2 There shall be a Board of three arbitrators, of whom each Party shall select one, and the third arbitrator shall be appointed by the two arbitrators so selected and in the event of disagreement between the two arbitrators, the appointment shall be made in accordance with the Rules.
- 29.4.3 The arbitrators shall make a reasoned award (the “**Award**”). Any Award made in any arbitration held pursuant to this Article 29 shall be final and binding on the Parties as from the date it is made, and the Concessionaire and the Authority agree and undertake to carry out such Award without delay. The Parties undertake as a general principle to keep confidential all awards and orders in the arbitration, as well as all materials created for the purpose of the arbitration and documents produced by another Party in the arbitration not otherwise in the public domain, save and to the extent that a disclosure may be required of a Party by legal duty, to protect or pursue a legal right or to enforce or challenge an award in bona fide legal proceedings before a state court or other judicial authority.
- 29.4.4 In the event that the Party against whom the Award has been granted challenges the Award for any reason in a court of law, it shall make an interim payment to the other Party for an amount equal to 75% (seventy five per cent) of the Award, pending final settlement of the Dispute. The aforesaid amount shall be paid forthwith upon furnishing an irrevocable Bank Guarantee for a sum equal to the aforesaid amount. Upon final settlement of the Dispute, the aforesaid interim payment shall be adjusted and any balance amount due to be paid or returned, as the case may be, shall be paid or returned with interest calculated at the rate of 10% (ten per cent) per annum from the date of interim payment to the date of final settlement of such balance.
- 29.4.5 The legal place (or seat) of the arbitration shall be Addis Ababa (Ethiopia), or any other place agreed by the Parties. The language to be used in the arbitral proceedings shall be English.

29.5 Performance during Dispute Resolution

The Parties shall continue to perform all of their obligations under this Agreement and shall benefit from all their rights while negotiating under Article 29.3 or settling their Dispute under Article 29.4.

29.6 Waiver of Sovereign Immunity

To the extent that the Grantor may claim for itself or its assets or revenues immunity from suit, execution, attachment or other legal process, the Grantor agrees not to claim and hereby irrevocably waives such immunity.

IN WITNESS WHEREOF, the parties, intending to be legally bound, have caused this Agreement to be signed by their duly authorized representatives on the dates first above written.

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Appendix A – Site Plan

Appendix B – Project Highway Plan

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Appendix C – Required Permits

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Appendix D– Construction Works

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Appendix E – Form of Performance Guarantee

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**Appendix F – Requirements for Preliminary Design
(Based on Technical Proposal)**

Appendix G – Program of Tests

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Appendix H – Operations

During the Concession Period, the Concessionaire shall perform the following Operations on the Premises:

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Appendix I – Operations and Maintenance Procedure

OPERATION AND MAINTENANCE

- A- The Concessionaire shall operate and maintain the Project Highway by itself, or through O&M Contractors and if required, modify, repair, improve to the Project Highway to comply with specifications and Standards and other requirements set forth in this Agreement, Prudent Industry Practice. Applicable laws and Applicable Permits and manufacturer's guidelines with respect to toll systems, and more specifically;
1. Permitting safe, smooth and uninterrupted flow of traffic during normal operating conditions;
 2. Charging, collecting and retaining the Fees in accordance with this Agreement;
 3. Minimizing disruption to traffic in the event of accidents or other incidents affecting the safety and use of the Project highway by providing a rapid and effective response and maintaining liaison procedures with emergency services;
 4. Undertaking routine maintenance including prompt repairs of potholes, cracks, concrete joints, drains, lime making, lighting and signage;
 5. Undertaking major maintenance such as resurfacing of pavements, repairs to structures, repairs and refurbishment of tolling system and hardware and other equipment;
 6. Carrying out periodic preventive maintenance to Project Highway including tolling system;
 7. Preventing with the assistance of concerned law enforcement agencies unauthorized entry to and exit from the project Highway;
 8. Preventing with the assistance of the concerned law enforcement agencies encroachments on the project Highway including Site and preserve the right of way of the Project Highway;
 9. Maintaining a public relations unit to interface with and attend to suggestions from users of the Project Highway, the media, government agencies, and other external agencies, and
 10. Adherence to the safety standards set out in the Safety and Technical Guidelines
- B- Not later than forty five (45) days before the beginning of each Accounting year the Concessionaire, shall in consultation with the Independent Consultant prepare and provide to the Grantor, its proposed programme of preventive and other scheduled maintenance of the Project Highway subject to the minimum maintenance requirements set forth in the Maintenance and Inspection Manual necessary to maintain the project Highway at all times in conformity with the Specifications and Standards (the "Maintenance Programme"). Such Maintenance Programme shall include but not be limited to the following:

- Intervals and procedures for carrying out of inspection of all elements of the Project Highway
 - Criteria to be adopted for deciding maintenance needs;
 - Preventive maintenance schedule;
 - Intervals at which the Concessionaire shall carry out periodic maintenance;
 - Intervals for major maintenance and the scope thereof; and
 - Lane closures schedule for each type of maintenance (length and time)
- C- Maintenance shall include replacement of equipment/consumables, horticultural maintenance and upkeep of all Project Assets in good order and working condition. Maintenance shall not include the extension of any existing pavements, bridges, structures and other civil works unless part of the Project.
- D- The Concessionaire shall keep the carriageways, rest areas and other Project facilities and Toll Plazas in a clean, tidy and orderly condition free of litter and debris
- E- During the Operations Period, the Concessionaire shall not carry out any material modifications to the Project Highway save and except where such (i) modification is required by Prudent Industry Practice; or (ii) modification is necessary for the Project Highway to operate in conformity with the specifications and standards prescribed under this Agreement. Provided that the Concessionaire shall notify the Grantor of the proposed modifications along with details thereof at least fifteen days before commencing work on such modifications and shall reasonably consider such suggestions as Grantor may take within 15 (fifteen) days of receipt of such details by the Grantor.
- F- The Concessionaire shall be responsible for the maintenance of the approach roads and underpasses up to 100 meters from the project Highway in accordance with Prudent Industry Practice.
- G- Safety, Vehicle Breakdown and Accident
- In the case of unsafe conditions, vehicle breakdowns and accidents, the Concessionaire shall follow the relevant operating procedures, which shall include the setting up of temporary traffic cones and lights as well as the removal of obstruction and debris expeditiously. Such procedures shall be in accordance with Applicable Laws, Applicable permits and provisions of this Agreement.
 - The Concessionaire shall ensure that any diversion or interruption of traffic is remedied without delay. The Concessionaire's responsibility for rescue operations on the project Highway shall be limited to the removal of vehicles or debris or any other obstruction, which may endanger or interrupt the smooth traffic flow on the Project Highway.
 - The Concessionaire shall ensure that safety standards specified in the Safety and Technical Guidelines are strictly complied with in the event of any lane closure or diversion of traffic. Compliance will be monitored by the Independent Engineer and a breach by the Concessionaire of its obligations in

respect of this Schedule identified by the Independent Engineer shall be notified immediately and is required to be cured within 24 hours of its notification notwithstanding inspection, reporting procedures outlined elsewhere in this Agreement. In addition, each notified breach shall lead to the award of a penalty point to the Concessionaire. A total of five penalty points in any continuous period of 365 days shall constitute a Material Breach of this Agreement.

H- Emergency De-commissioning

- If, in the reasonable opinion of the Concessionaire there exists an emergency which warrants decommissioning and closure to traffic of whole or any part of the Project Highway, the Concessionaire shall be entitled to de-commission and close the whole or the relevant part of the Project Highway to traffic for so long as such emergency and the consequences thereof warrant, provided however that such emergency decommissioning will be notified to the Grantor, who may issue directions to the Concessionaire for dealing with such situations and the Concessionaire shall abide by such directions.
- The Concessionaire shall re-commission the Project Highway or the affected part thereof as quickly as practicable after the circumstances leading to its de-commissioning and closure have ceased to exist.

I- The Concessionaire shall not close any lane of the Project Highway for undertaking maintenance or repair works except with the prior written approval of the Grantor. Such approval shall be sought by the Concessionaire through a written request to be made at least 7 (seven) days before the proposed closure of lane and shall be accompanied by particulars indicating the nature and extent of repair works. Within 5 (five) days of receiving such request, the Grantor, may grant permission with such modifications as it may deem necessary. Upon receiving such permission, the Concessionaire shall be entitled to close the lane in accordance with such permission and re-open it within the period stipulated in such permission. For any delay in re-opening such lane during the first Operations year, the Concessionaire shall pay Damages to the Grantor calculated at the rate of [..... Birr], per day or part thereof for every stretch of 100 (one hundred) meters or part thereof in each lane until such time the stretch has been re-opened for traffic. These damages shall be applicable in the first year of Commercial Operations and shall be revised in each subsequent Commercial Operations year. Provided, however, that these provisions shall not apply to Emergency decommissioning under Clause I

J- Save and except as otherwise be expressly provided in this Agreement, if the Project Highway including Construction Works or any part thereof shall suffer any loss or damage during the Concession Period, from any cause whatsoever, the Concessionaire shall at its cost and expense rectify and remedy such loss or damage or forthwith in a manner so as to make the Project Highway conform in every respect to the Specifications and Standards, quality and performance as prescribed by this Agreement.

- K- In the event Concessionaire does not maintain and /or repair the Project Highway or a part thereof up to and in accordance with the specifications and standards in this Agreement and/or in accordance with the Maintenance Programme and the Maintenance and Inspection Manual, and fails to commence remedial works within 30 (thirty) days of receipt of notice in this regard from the Grantor, the Grantor shall, without prejudice to its rights under this Agreement, including Termination thereof, be entitled to undertake the repair and maintenance of the Project Highway at the risk and cost of the Concessionaire and to recover the same from the Concessionaire. The Grantor shall have the right to recover the same directly from the Performance Guarantee or any unpaid Annuity Payment that has accrued.
- L- The Concessionaire shall not be considered in breach of its obligations under this Agreement if any part of the project Highway is not available to traffic on account of any of the following for the duration thereof:
- An event of Force Majeure:
 - Failure of the Grantor to perform its obligations under this Agreement; or
 - Compliance with a request from the Grantor or the directions of any Governmental Agency the effect of which is to close all or any part of the Project Highway.
 -

Notwithstanding the above, the Concessionaire shall keep all unaffected parts of the Project Highway open to traffic and use provided they can be safely operated and kept open to traffic.

MONITORING AND SUPERVISION DURING OPERATION

- A- The Concessionaire shall undertake periodic (at least once every calendar month but once every week during monsoons) inspection of the Project Highway to determine the condition of the Project Highway including its compliance or otherwise with the Maintenance and Inspection Manual, the Maintenance Programme, specifications and standards established in this Agreement and all maintenance required and shall submit reports of such inspection (“Maintenance Report”) to the Grantor and the Independent consultant.
- B- The Independent Consultant shall review the Maintenance Reports and inspect the Project Highway at least once a month during the Commercial Operation Period and make out an inspection report of such inspection (the “O&M Inspection Report”). The Independent Consultant shall send a copy of its O&M Inspection report to the Grantor and the Concessionaire. The Concessionaire shall within 30 (thirty) days of the receipt of the O&M Inspection Report remedy the defects and deficiencies, if any, set forth in such O&M Inspection Report and submit its report in respect thereof to the Independent Consultant and the Grantor within the said 30 (thirty) days period. Where the remedying of such defects or deficiencies is likely to take more than 30 (thirty) days in accordance with Prudent Industry Practice, the Concessionaire shall undertake the works in accordance with such practice and submit progress reports of such works every fortnight. The O&M Inspection report may also require the Concessionaire to undertake such tests without any delay and furnish a copy of the results thereof to the

Independent Consultant and the Grantor along with a written statement specifying in reasonable detail the measures, if any, that it proposes to undertake for curing the defaults or deficiencies indicated in such results. Such inspection or submission of O&M Inspection Report by the Independent Consultant or submission of O&M Inspection Compliance Report by the Concessionaire shall not relieve or absolve the Concessionaire of its obligations and liabilities hereunder in any manner whatsoever.

- C- The Grantor may inspect the Project Highway at any time for a review of the compliance by the Concessionaire with its maintenance obligations under this Agreement.

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Appendix J – Performance Requirements

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Appendix K – Plant, network, communication, office and other requirements to be provided at the Project Highway

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Appendix L – Vesting Certificate

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Appendix I – Operation Rates

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Part 6.2: Sample PPP Agreement: Concession Agreement (Brownfield)

DRAFT FORM OF CONCESSION AGREEMENT

between

**[CONTRACTING AUTHORITY],
as the Grantor,**

and

**XXX LIMITED,
as the Concessionaire**

Dated [Insert Date]

Table of Contents

1.	<u>ARTICLE I – DEFINITIONS AND INTERPRETATION</u>	4
2.	<u>ARTICLE II – CONCESSION</u>	9
3.	<u>ARTICLE III – TERM</u>	10
4.	<u>ARTICLE IV – CONCESSION FEES</u>	11
5.	<u>ARTICLE V – FACILITY FEES</u>	12
6.	<u>ARTICLE VI – CONDITIONS PRECEDENT</u>	13
7.	<u>ARTICLE VII – OTHER OBLIGATIONS OF THE CONCESSIONAIRE</u>	15
8.	<u>ARTICLE VIII – OBLIGATIONS OF THE GRANTOR</u>	21
9.	<u>ARTICLE IX – REPRESENTATIONS AND WARRANTIES</u>	22
10.	<u>ARTICLE X – LIABILITY AND INDEMNIFICATION</u>	23
11.	<u>ARTICLE XI – PERFORMANCE SECURITY</u>	24
12.	<u>Article XII – INSURANCE</u>	25
13.	<u>ARTICLE XIII – FORCE MAJEURE</u>	26
14.	<u>ARTICLE XIV – POLITICAL EVENT</u>	28
15.	<u>ARTICLE XV – TERMINATION OF AGREEMENT</u>	28
16.	<u>ARTICLE XVI – HANDBACK</u>	31
17.	<u>ARTICLE XVII – ASSIGNMENT OF AGREEMENT</u>	32
18.	<u>ARTICLE XIII – SUBSTITUTION OF CONCESSIONAIRE</u>	33
19.	<u>ARTICLE XIX – GRANTOR’S STEP-IN RIGHT</u>	33
20.	<u>ARTICLE XX – GOVERNING LAW AND DISPUTE RESOLUTION</u>	34
21.	<u>ARTICLE XXIII – MISCELLANEOUS PROVISIONS</u>	37
	Annexure 1 – Site	40
	Annexure 2 – Facility	41
	Annexure 3 – Scope of Works	42
	Annexure 4 – Business Plan	43
	Annexure 5 – Key Performance Indicators	44
	Annexure 6 – Facility Fees	45
	Annexure 7 – Facility Services	46
	Annexure 8 – Effective Date Certificate	47

THIS CONCESSION AGREEMENT (this “**Agreement**”) is made and entered into this [.....] day of [...], 2019 between:

THE [CONTRACTING AUTHORITY], a public authority constituted under the laws of Ethiopia, whose head office is situated at [address] (hereinafter referred to as the “**Grantor**” which expression shall where the context so admit include its successors in title and assigns) of the first part.

AND

XXX LIMITED, a limited liability company registered under the laws of [Ethiopia] with registered office located at [YYYY] (the “**Concessionaire**”, which expression, where the context so admits, shall be deemed to include its successors and assigns) of the other part.

each referred to as a “**Party**”, and together the “**Parties**”.

WHEREAS:

The Government of Ethiopia is desirous of promoting private sector investment and participation in the development and operation of public utilities and infrastructures, as evidenced among other things by the *Public-Private-Partnership Proclamation 2018*;

In pursuance of the foregoing policy, the Grantor for itself and on behalf of the Government of Ethiopia invited proposals from interested and technically qualified private sector operators to express their interests in a Lease Concession Contract model for the rehabilitation, operation and maintenance of a [specifications of the Facility] at [location of the Facility] (“the Project”);

At the end of that competitive bidding process, [name of Preferred Bidder] was declared the Preferred Bidder, and incorporated the Concessionaire under the laws of Ethiopia to execute the Project;

NOW, THEREFORE, in consideration of the mutual promises and agreements of the Parties herein expressed, as well as other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the Parties, intending to be legally bound hereby, agree as follows:

1. ARTICLE I – DEFINITIONS AND INTERPRETATION

1.2 Definitions

In this Agreement, unless the subject or context otherwise requires, the following definitions shall apply:

Affiliate	means any person who is directly or indirectly controlled by another person; for the purpose of this definition, control means the possession, directly or indirectly, of the power to direct the management and policies of a person whether through the ownership of voting shares, by contract or otherwise;
Adverse Site/Ground Conditions	means such condition of the Site upon the expiration of the Term, in which the Site is not at par with or above the specifications indicated in the Technical Scope Document.
Agreement	means this Concession Agreement
Bid Bond	means the security submitted by the Preferred Bidder with its proposal in order to ensure the execution of this Agreement and fulfillment of the Conditions Precedent.
Business Day	means any day that is not a Saturday, not a Sunday and not a day observed as an official holiday in the Republic of Ethiopia;
Business Plan	means the written plan as indicated in Annexure 4 prepared by the Concessionaire and approved by the Grantor, for the implementation of the Project;
Concessionaire Rights	means the rights granted by the Grantor to the Concessionaire under Article 2 of this Agreement,, and the resulting obligations thereof;
Conditions Precedent	means the conditions set out in Article 6;
Construction Standards	means all standards applicable in the Republic of Ethiopia concerning construction works and the quality of construction material;

Date of Agreement	means the date of the execution of this Agreement by the Grantor and the Concessionaire;
Effective Date	means the date on which all the conditions precedent contained in Article 6 are fulfilled or waived, as the case may be, as evidenced by the execution by the Parties of an Effective Date Certificate;
Effective Date Certificate	shall have the meaning as indicated in Article 6.4, and included in this Agreement as Annexure 8
Emergency	means a condition, situation or occurrence whereby the security of the Facility is at risk or where bodily injury or death to the users of the facility or damage to the property of such users is likely to occur;
Environmental Audit Report	means the written report prepared by the Concessionaire identifying and specifying all Environmental Damages existing at the Site prior to the Effective Date in accordance with the relevant Environmental proclamation in Ethiopia.
Facility	means the part of the Site as designated in the Annexure 2;
Facility Fees	means the fees approved by the Grantor to be charged by the Concessionaire for the Facility Services, as prescribed in Annexure 6
Facility Services	means the services to be provided by the Concessionaire at the Facility as set forth in Annexure 7;
Financing Agreement	means any agreement as may be entered into between the Concessionaire and one or more Lenders on or prior to the Effective Date in respect of the debt financing provided to the Concessionaire for the execution of the Project, and any agreement representing the refinancing thereof;
Financing Plan	means the written plan for the financing of the Project prepared by the Concessionaire, which written plan shall specify, among other things, (i) the sources and uses of all such financing, (ii) the total estimated cost for the Project, (iii) the timing and amount of all equity and debt funding of the Concessionaire, including, without limitation, the amount of any equity to be contributed by the Shareholders to the Concessionaire listed at paragraph 9.1.1.4 on the Effective Date, and (iv) the aggregate number of voting shares of the

	Concessionaire to be outstanding on the Effective Date and (vi) each Shareholder's respective percentage of voting shares;
Handback Certificate	has the meaning ascribed in Article 16.4
Handback Costs	has the meaning ascribed in Article 16.2
Handback Date	means the Business Day following the last day of the Term
Handback Inspection	has the meaning ascribed in Article 16.4
Handback Period	has the meaning ascribed in Article 16.1
Handback Plan	has the meaning ascribed in Article 16.1
Handback Requirements	has the meaning ascribed in Article 16.3
Key Performance Indicators	means those targets, parameters and other indicators of performance of the Project as listed in Annexure 5;
Operation and Maintenance Manual	means the manual to be prepared by the Concessionaire, which manual shall prescribe procedures, schedules, plans, instructions and timelines for the operation and maintenance of the Facility;
Per Annum	means every twelve months period during the term, calculable from the Effective date to the eve of the Effective date in the first twelve months period, and subsequently calculable from the anniversary of the Effective date to the eve of the next Anniversary of the Effective Date
Permit	means any administrative act, resolution, authorization, consent, approval, license, decision, permit, exemption, waiver, certification or registration from a Public Authority necessary for the implementation of the Project;
Person	means any natural or legal person;
Performance Security	means the security to ensure the performance of the Concessionaire as defined in paragraph 11.1.
Political Event	shall have the meaning as ascribed in Article 14.1
Project	Means the rehabilitation, operation and maintenance of the Facility, in accordance with the terms of this Agreement;
Public Authority	means any institution, agency, ministry, municipality or other Person that exercises executive,

	administrative, legislative or judicial authority in the territory of the Republic of Ethiopia;
Rehabilitation Works	means the extent of improvements and construction that will be made on the Facility, as provided in the Scope of Works;
Request for Proposals (“RFP”)	means the Request for Proposals tender dossier issued on [...] by the Grantor;
Scope of Works	is as indicated in Annexure 3
Shareholders	means the shareholders of the Concessionaire listed at Article 9.1(d)
Site	means the site identified and described at Annexure 1;
Term	means the term of this Agreement as specified in Article 3, subject to any extension and/or earlier termination in accordance with this Agreement;
Termination Date	means the date of the termination of this Agreement;

1.3 Annexes

1.3.1 The following Annexes to this Agreement including any amendment thereto shall form an integral part of the Agreement:

- Annexure 1 Site
- Annexure 2 Facility
- Annexure 3 Scope of Works
- Annexure 4 Business Plan
- Annexure 5 Key Performance Indicators
- Annexure 6 Facility Fees
- Annexure 7 Facility Services
- Annexure 8 Effective Date Certificate

1.3.2 Any references to the Annexures shall be to Annexures to this Agreement, unless otherwise stated.

1.4 Headings and Articles

1.4.1 The headings of articles of this Agreement are inserted for convenience of reference only and shall not in any way affect the interpretation of this Agreement.

1.4.2 Any references to articles or paragraphs shall be articles or paragraphs of this Agreement, unless otherwise stated in this Agreement.

1.5 Successors and Permitted Assigns

1.5.1 References to any Party or Person in this Agreement include references to its successors and permitted assigns.

1.6 Order of Precedence

1.6.1 Any inconsistency or incompatibility between or among the provisions of this Agreement, the RFP, and/or the proposal of the Preferred Bidder submitted in response to the RFP shall be resolved by giving precedence in the following order:

1.6.1.1 the Agreement;

1.6.1.2 the RFP; and

1.6.1.3 the proposal in response to the RFP.

1.6.2 In the event of an inconsistency or incompatibility between the provisions of this Agreement and its Annexes, this Agreement shall prevail.

2 ARTICLE II – CONCESSION

2.1 Grant of Concessionaire Rights

2.1.1 The Grantor hereby grants to the Concessionaire the exclusive right and imposes on the Concessionaire the obligations, for the Term and subject to the terms and conditions of this Agreement as follows:

- (i) to occupy, operate, manage, maintain, equip and to undertake such necessary rehabilitation/improvements on the Facility in accordance with the specifications of the Scope of Works and at the Concessionaire's costs
- (ii) to provide the Facility Services at the Concessionaire's cost for the duration of the Term, and
- (iii) to collect the Facility Fees in consideration for the provision of the Facility Services in accordance with this Agreement, at the Concessionaire's costs.

2.1.2 The Grantor further grants to the Concessionaire a leasehold in the Site and the Facility for the duration of the Term for the purpose of implementing the Project.

2.1.3 The Concessionaire shall, during the Term, have the exclusive right to exercise the Concessionaire Rights. The Grantor undertakes not to sell, assign or otherwise transfer, whether for consideration or not, any of the Concessionaire Rights or any of the obligations of the Concessionaire under this Agreement to any other Person, except in accordance with the provisions of this Agreement.

2.2 Property Title

2.2.1 Site

The Grantor has, and shall retain, good and valid title to the immovable property comprising the Site, which includes of the Facility and all the improvements made by the Concessionaire on the Facility during the Term. The Concessionaire shall acquire no title to, or ownership interest in, the Site or the Facility. As of Handback Date, the Concessionaire shall return possession of the Site and the Facility to the Grantor and shall indemnify, defend, and hold harmless the Grantor from and against and promptly remove and discharge any such liens, charges, claims, encumbrances, and/or security interests which may have been placed on the Site or the Facility during the Term.

2.2.2 Site Conditions

Where Adverse Site/Ground Conditions are discovered at the Site at the expiration of the Term, the Concessionaire shall bear any costs required to address such Adverse Site/Ground Conditions. The Concessionaire shall also be liable for damages caused by these Adverse Site/Ground Conditions on the Site.

3 ARTICLE III –TERM

The Term shall be a period of [Fifteen (15) years] from the Effective Date. The Term may be extended in accordance with applicable law and upon such terms and conditions as agreed in writing between the Grantor and the Concessionaire. Either Party shall give notice to the other Party in writing of its desire to renew this Agreement no less than [three (3) years] prior to the expiry of the Term.

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4 ARTICLE IV – CONCESSION FEES

4.1.1 In consideration for the Concessionaire Rights granted to the Concessionaire by the Grantor, the Concessionaire shall pay the Grantor Concession Fees of [..... Birr], for each year of the concession Term.

4.1.2 Payment of concession fees for any year will be due after the anniversary of the Effective Date for that year and following the preparation of the audited financial report for the Facility, but in no case any longer than three (3) months after the anniversary of the Effective Date.

4.1.3 The payment shall be made in such mode as directed by the Grantor.

4.1.4 Nothing in this Article 4 shall be interpreted as making the Grantor liable to partake in any losses resulting from the Concession.

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5 **ARTICLE V – FACILITY FEES**

5.1 **General Framework**

5.1.1 The Concessionaire shall only charge the Facility Fees (“the Fees”) in consideration for the provision of Facility Services.

5.1.2 The Concessionaire shall be entitled, and shall be wholly and exclusively responsible to bill, collect, receive, deposit, and retain all of the Fees during the Term and shall assume all risks associated therewith, including risks of non-payment. All the Fees shall be charged and collected in Ethiopian Birr.

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6 ARTICLE VI – CONDITIONS PRECEDENT

6.1 Fulfillment of the Conditions Precedent

The effectiveness of the rights and obligations of the Parties shall be subject to the fulfillment of the Conditions Precedent. Both Parties shall complete their respective Conditions Precedent within [...] days of the Date of Agreement unless the Parties have agreed to extend the deadline or a Party has waived in writing one or more Conditions Precedent required to be fulfilled by the other Party.

6.2 Concessionaire Conditions Precedent

The Concessionaire shall deliver the following to the Grantor:

- a) the Financing Plan, the Business Plan, and the Environmental Audit Report;
- b) copies of all duly executed project agreements and all major contracts necessary for execution of the Project, including Financing Agreements (as approved by the Grantor), bank guarantees, shareholders funding agreements and evidence of adequate equity contribution to fully finance the Project;
- c) the Performance Security in favour of the Grantor, which shall be in full force and effect in accordance with Article 11 below;
- d) to the Grantor certificates of insurance and other documentation reasonably requested by the Grantor evidencing that the Concessionaire has obtained insurance coverage on the Site for the duration of the Term, in accordance with Article 12 below; and
- e) payment of the Concession Fees for the first year.

6.3 Grantor Conditions Precedent

The Grantor shall deliver to the Concessionaire physical possession of the Site and the Facility

6.4 Effective Date Certificate

Upon the fulfillment or waiver, as the case may be, of the Conditions Precedent, the Parties shall sign a certificate (“Effective Date Certificate”) confirming that all of the Conditions Precedent set forth in this Article have been fulfilled or waived and setting forth the Effective Date on the Effective Date Certificate.

6.5 Non-Fulfillment of the Conditions Precedent

6.5.1 If the Concessionaire does not fulfill its Conditions Precedent and such Conditions Precedent are not waived by the Grantor, the Grantor shall have the right to terminate this Agreement in its entirety and execute the Concessionaire’s Bid Bond.

6.5.2 If the Grantor does not fulfill its Conditions Precedent and such Conditions Precedent are not waived by the Concessionaire, the Concessionaire shall have the right to terminate this Agreement in its entirety. In such event, the Grantor shall return the Bid Bond to the Concessionaire. This however shall not affect any commitment made or

obligation incurred by the Concessionaire as part of the tendering process leading up to the entering into this Agreement by the Parties.

6.6 No Liability

If this Agreement is terminated in accordance with this Article, neither Party shall be liable to the other except as provided in paragraph 6.5 above.

6.7 Transition

During the period between the Date of Agreement and the Effective Date, the Grantor agrees to provide reasonable access to the Site to the Concessionaire to undertake surveys and to perform any other activities required to fulfill the Conditions Precedent. The Concessionaire shall comply with applicable safety and security standards and shall not impede, hinder, interfere with or otherwise delay the traffic at or around the Site.

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7 ARTICLE VII – OTHER OBLIGATIONS OF THE CONCESSIONAIRE

7.1 Permits

The Concessionaire shall be responsible, at its own cost and risk, for obtaining all Permits required for the Project, for the duration of the Term.

7.2 Site

7.2.1 The Concessionaire shall be responsible, at its own cost and risk, for the removal of all structures, buildings and other impediments hindering the execution of the Project on the Site, in so far as such removal is in accordance with the Scope of Works and the Business Plan

7.2.2 The Concessionaire shall give access to the Site to the Grantor or its representatives for the purpose of observing the activities of the Concessionaire and ensuring the Concessionaire's compliance with its obligations under the Agreement. The Grantor shall comply with applicable safety and security standards and shall not impede, hinder, interfere with or otherwise delay the execution of the Project or the operations of the Facility.

7.2.3 The Concessionaire shall undertake, at its own cost and risk, all necessary surveys and investigations on the Site for the purpose of the Project. The Grantor shall have no liability whatsoever in respect of surveys and investigations carried out or work undertaken by the Concessionaire. Upon Termination Date, the Concessionaire shall provide copy of all surveys conducted on the Site to the Grantor.

7.2.4 The Concessionaire shall comply with applicable law concerning the handling and protection of archaeological and cultural heritage discoveries and shall assume all liability with respect to any non-compliance thereof.

7.2.5 If the Concessionaire is required under applicable law to take remedial measures in respect of any Environmental Damage at the Site which existed prior to the Date of Agreement and that is identified in the Environmental Audit Report, the Concessionaire shall take such remedial measures and the Grantor shall be liable for the reasonable, documented costs incurred by the Concessionaire as a result of having to take such remedial measures.

7.2.6 The Site shall be freely accessible by the general public, provided that the Concessionaire shall be entitled to take, at its own cost and risk, any measures which are necessary to prevent danger to the safety of persons and to the Site, including that of the Facility.

7.3 Rehabilitation Works

7.3.1 Works Standards

The Concessionaire shall carry out, at its sole cost and risk, the Rehabilitation Works in accordance with the Scope of Works, and all applicable laws and Construction Standards.

7.3.2 The Scope of Works

The Scope of Works shall be as captured in Schedule ..., and shall include the detailed engineering designs for the Rehabilitation Works.

7.3.3 Completion of Rehabilitation Works

The Concessionaire shall complete the Rehabilitation Works before the expiration of the Term, and shall ensure that upon the expiration of the Term, the Site and the Facility are returned to the Grantor in accordance with the specifications in the Scope of Works and the Business Plan.

7.3.4 Penalties

Failure of the Concessionaire to complete the Scope Works in accordance with this Agreement prior to the expiration of the Term shall be deemed as a material breach of this Agreement, which shall entitle the Grantor to immediately draw upon the Performance Security, and does not exclude the Grantor from invoking other remedies for Breach under this Agreement.

7.3.5 Variations

7.3.5.1 Any variation to be implemented in the Scope of Works shall be agreed in writing by Parties.

7.3.5.2 The Concessionaire shall implement any variation requested by the Grantor. The Grantor shall bear the reasonable and documented costs of any variation so requested by the Grantor and implemented by the Concessionaire.

7.3.5.3 The Grantor may approve a variation requested by the Concessionaire. In such event, the Concessionaire shall bear all costs associated with the implementation of the variation.

7.4 Operation and Maintenance of the Facility, and Provision of Facility Services

7.4.1 Facility Services

7.4.1.1 For the duration of the Term, the Concessionaire shall be responsible for the Operation and Maintenance of the Facility, and shall provide, at its own cost and risk, the Facility Services in accordance with its the Key Performance Indicators, this Agreement, and all applicable laws and standards.

7.4.1.2 The Concessionaire shall charge the Fees for the Facility Services which shall be as set forth in Annexure 6, and in accordance with the terms and conditions included therein. The Concessionaire shall not make any increases in the Fees, unless agreed to in writing by the Grantor. Value added taxes and other taxes shall be added as required to the accounts rendered to the Concessionaire's customers.

7.4.2 Operation and Maintenance Manual

7.4.2.1 An Operations and Maintenance manual detailing procedures and performance of the Facility shall be prepared by the Concessionaire during the Term.

7.4.2.2 The Concessionaire shall submit to the Grantor the Operations and Maintenance Manual not later than one hundred and eighty (180) days prior to the completion of the Term.

7.4.3 Equipment

The Concessionaire shall, at its sole cost and risk, procure, provide and maintain in good working order any equipment of a sufficient quantity and quality as necessary for the operation of the Facility and the provision of the Facility Services.

7.4.4 Emergencies

The Concessionaire agrees that any Public Authority may take such steps as it deems necessary to mitigate or prevent any Emergency, including, without limitation, the closure or suspension of operations at the Facility. The Concessionaire shall in good faith and with due diligence render all assistance as may be required by any such Public Authority.

7.4.5 Utilities and Operations Services

7.4.5.1 Throughout the Term, the Concessionaire shall, at its own cost and risk, and in accordance with applicable laws, ensure that the Facility is continuously supplied with sufficient (i) potable water, (ii) electric power, (iii) waste-water disposal, (iv) telecommunication services and (v) waste collection services.

7.4.5.2 The Concessionaire shall also be responsible, at its own cost and risk, for securing the provision of all services with respect to the operation of the Facility, including, but not limited to fire-prevention and fire-fighting arrangements, rescue and paramedic services, and security services.

7.4.6 Environment

The Concessionaire shall take all steps necessary and as required by applicable law to protect the Environment at the Site and to limit damages and nuisance to people and property resulting from pollution and other environmentally harmful results of the operation of the Facility and the provision of the Facility Services.

7.4.7 Maintenance

7.4.7.1 The Concessionaire shall maintain the Site and the Facility for the duration of the Term, at its own cost and risk. Maintenance shall include the making good by repair or replacement of any defect of any part of the Facility and any physical damage to any part of the Facility that may appear during the Term. The Concessionaire shall keep a complete record reflecting all maintenance and repair works executed during the Term.

7.4.7.2 In the case of a default by the Concessionaire in maintaining the Facility as per paragraph 7.4.7.1 above, the Grantor shall be entitled to carry out such maintenance. All documented costs incurred by the Grantor in doing so shall be compensated by the Concessionaire. The Grantor may draw upon the Performance Security to satisfy such payment obligation of the Concessionaire.

7.4.7.3 The Concessionaire shall keep an incident register, which shall include the date and time of an incident, a description of the incident and any action taken by the Concessionaire in respect thereto.

7.4.8 Tracking and Evaluation of Performance

7.4.8.1 The Grantor shall evaluate the Concessionaire's performance of the Facility on an annual basis. Such evaluation shall commence on the first anniversary of the Effective Date.

7.4.8.2 To enable the Grantor to perform such evaluation, the Concessionaire shall provide to the Grantor an evaluation report within thirty (30) days of every anniversary date, which shall include, inter alia, a full accounting of its performance against the applicable Key Performance Indicators, and a reasonably sufficient explanation of any failure to meet such Key Performance Indicator and any other information requested by the Grantor to enable it to perform such evaluation (the "**Concessionaire Report**"). If the Concessionaire fails to achieve the Performance Requirements for reasons not attributable to the Concessionaire, the Concessionaire shall notify the Grantor in writing of the same and the Concessionaire shall document the details of such failure. In the event that the Concessionaire fails to provide the Concessionaire Report within the specified period, the Grantor shall give the Concessionaire fifteen (15) days written notice requiring the Concessionaire to provide the report.

7.4.8.3 Upon its receipt of the Concessionaire Report, the Grantor shall within 15 days analyze the same and prepare an evaluation report containing its own assessment of the Concessionaire's performance against the Key Performance Indicators (the "**Grantor Report**"). In making such evaluation, the Grantor shall take into account any Disruption and Suspension occasioned by the Grantor. The Grantor shall produce and deliver the Grantor Report within fifteen (15) days of the earlier of (i) receipt of the Concessionaire Report; or (ii) in the event that the Concessionaire fails to provide the Concessionaire Report, upon the expiry of the fifteen (15) days referred to in (b) above.

7.4.8.4 Within fifteen (15) days of the submission by the Grantor of the Grantor Report to the Concessionaire, the Parties shall meet and agree whether the Grantor's evaluation is accepted by both Parties and whether the Concessionaire has reached or exceeded the Key Performance Indicators. Any disagreement between the Parties in respect of the Grantor Report shall be resolved pursuant to Article 20.

7.4.9 Penalties

In the event that the Concessionaire is in default with the provision of Facility Services or any other services required pursuant to the present Agreement, or fails to provide Facility Services in accordance with the Key Performance Indicators, the Concessionaire shall pay penalties in the amount of [..... Birr] for each day of such default. The Grantor shall submit invoices to the Concessionaire for each day for which penalties are payable. Such invoice shall be due and payable by the Concessionaire upon receipt. If the

Concessionaire shall not have paid all or any part of the penalties invoiced by the Grantor, the Grantor may draw upon the Performance Security to satisfy such payment obligation of the Concessionaire.

7.5 Subcontracting

7.5.1 In the fulfillment of its obligations pursuant to this Agreement, the Concessionaire shall have the right to utilize, and entrust performance of any part of such responsibilities, obligations or services to, third party subcontractors.

7.5.2 The Concessionaire shall be wholly responsible for the acts, defaults and negligence of its subcontractors and their agents or employees, as if they were the acts, defaults or negligence of the Concessionaire.

7.5.3 The Concessionaire shall maintain a registry of all subcontractors and copies of all subcontracts to which the Grantor shall have full access for the purposes of enforcing compliance by the Concessionaire with this Agreement and oversight by the Grantor of the execution of the Project.

7.5.4 Unless the Grantor otherwise agrees in writing, the Concessionaire shall not grant any rights or enter into any contracts in connection with the Facility, the Site, or the Facility Services whose duration extends after the Termination Date.

7.6 Reporting

7.6.1 Quarterly Financial and Operations Reports

The Concessionaire shall, by the [forty-fifth (45th) day] after the end of each calendar quarter during the Term, provide to the Grantor a detailed report containing (a) the Concessionaire's financial results with respect to all operations related to the Facility during the preceding calendar quarter, and, in the case of the first such report, the period from the Effective Date to the end of the first calendar quarter after the Effective Date, and (b) details of the performance at the Facility over the preceding calendar quarter. For the purposes of such reports, the Concessionaire shall regularly monitor operations at the Facility, including, without limitation, the volume of traffic.

7.6.2 Disruption and Suspension

The Concessionaire shall provide the Grantor with immediate written notice of any disruption or suspension of operations on the Facility, or any other disruption or suspension in the execution of the Project at, or the closure of, the Facility or parts thereof. The Concessionaire shall, within twenty four (24) hours of any disruption or suspension of Facility Services or any part of the Project, or the closure of, the Facility or parts thereof, provide the Grantor with a report detailing the circumstances of such disruption, suspension or closure. The Grantor shall have the right to request from the Concessionaire any and all information it deems necessary or reasonable relating to any disruption or suspension of Facility Services or the execution of the Project, or the closure of, the Facility or parts thereof, such requests to be complied with by the Concessionaire within ten (10) days following the receipt thereof.

7.6.3 Annual Financial Statements

The Concessionaire shall not later than on the last Business Day of each [insert month] during the Term, submit to the Grantor a copy of its audited financial statements for the immediately preceding financial year. The financial statements shall be prepared in accordance with the International Financial Reporting Standards (IFRS) and presented in Ethiopian Birr.

7.7 Equity Retention

7.7.1 For the duration of the Term, the Shareholders shall continue to hold in the aggregate at least 51% of the total number of the Concessionaire's shares.

7.7.2 Any transfer or other disposition of the shares of the Concessionaire shall be subject to the written approval of the Grantor. Such approval shall not be required if and to the extent that the Shareholders may need to pledge or otherwise encumber such shares for the purpose of financing the execution of the Project or the transfer or other disposition of the shares is one between the Shareholders.

7.8 Distributions

The Concessionaire shall not make any payments, whether in respect of debt, equity or otherwise, to any Shareholder or any Affiliate thereof, unless (a) the Rehabilitation Works have been completed, (b) the Performance Security, to the extent required to be in effect under the terms of this Agreement, is in full force and effect as required by this Agreement, and (c) the Concessionaire is not in default under this Agreement or any other agreement entered into by the Concessionaire in connection with the Project.

7.9 Appointment of Auditor

The Concessionaire shall, at its own cost and risk, retain a certified and independent accountant, acceptable to the Grantor, as auditors of the Concessionaire.

7.10 Single Purpose

For the whole duration of the Term, the Concessionaire shall not engage in any business or activity, whether in or outside the Republic of Ethiopia, other than the business and activity set forth in this Agreement, unless expressly permitted in writing by the Grantor.

7.11 Payments

The Concessionaire shall be responsible for the payment of any due liability or commitment of the Concessionaire that arises on or after the Effective Date in connection with the performance of its obligations under this Agreement. The Grantor shall not be liable in any form for such liabilities and commitments of the Concessionaire.

7.12 Inspections

The Concessionaire shall permit the Grantor, during normal business hours and upon giving a forty-hour (48) hours' notice, to inspect the books, plans, financial records and other records and documents belonging to or kept by or on behalf of the Concessionaire with respect to the Project.

7.13 Facility Name

The Grantor reserves the exclusive right to name the Facility. If at any time during the Term, the Grantor decides, in its sole discretion and cost, to change the name of the Facility, the Grantor shall not need to consult with, or obtain the consent or approval of, the Concessionaire.

7.14 Restricted Activities

7.14.1 During the Term, the Concessionaire shall not establish any casino activities at the Facility or otherwise permit any gambling, whether organized or sponsored by the Concessionaire or any other Person, to occur within the Facility or otherwise on the Site.

7.14.2 The Concessionaire shall not permit the sale of any illegal material within the Facility or otherwise on the Site.

7.14.3 The Concessionaire shall not permit any other hazardous activities, including the storing and use of toxic, flammable or explosive substances, at the Facility and on the Site.

7.15 Subsidiaries

The Concessionaire shall not establish any subsidiary company or otherwise make any equity or debt investment in any other Person, or enter into any joint venture or other commercial arrangement with any other Person, except as specifically contemplated by this Agreement, without the prior written consent of the Grantor.

8 ARTICLE VIII – OBLIGATIONS OF THE GRANTOR

8.1 The Grantor shall not take any action, which would interrupt or hinder the execution of the Project, the operation and maintenance of the Facility, the provision of the Facility Services, and the collection of Fees by the Concessionaire, unless otherwise allowed under this Agreement or required under applicable law. In the event of an unauthorized interruption by the Grantor, Grantor shall compensate the reasonable, documented costs incurred by the Concessionaire as a result of such event.

8.2 The Grantor shall not

8.2.1.1 modify any of the Fees or establish any tariff, fee, levy, tax or charge at or in respect of the Facility, or the Facility Services unless required under applicable law, or

8.2.1.2 otherwise interfere with the Concessionaire's collection of the Fees during the Term other than as provided in this Agreement.

8.3 The Grantor shall

8.3.1.1 ensure that the Concessionaire shall have quiet enjoyment of the Site and the Facility for the duration of the Term, and

8.3.1.2 ensure that from the Effective Date, no part of the Site shall be disposed of and that no right or interest shall be granted in any part of the Site, other than in accordance with this Agreement.

8.3.1.3 ensure that the access roads to the Site on the Date of Agreement are maintained in accordance with applicable laws and standards. Except for any closure that may result from the effects of any Emergency, Force Majeure or necessary repair work, the Grantor shall ensure that the access roads to the Site be kept open and in good condition at all times during the Term.

9 ARTICLE IX – REPRESENTATIONS AND WARRANTIES

9.1 The Concessionaire hereby represents and warrants, as of the Date of Agreement, that:

9.1.1.1 this Agreement has been duly executed by it, is legally valid and binding upon it, and does not require any further approval or consent or registration in any form in order to give full force and effect thereto;

9.1.1.2 it has the financial capacity to implement the Project and fulfill its obligations in accordance with the terms of this Agreement and applicable law;

9.1.1.3 there are no proceedings, actions or claims, pending or threatened, against or otherwise involving the Concessionaire that would prejudice, in any way, its ability to fulfill its obligations under: (a) this Agreement or (b) any of the other agreements or arrangements to be entered into by it with respect to the Project;

9.1.1.4 the Shareholders of the Concessionaire are: [...];

9.1.1.5 the implementation of the Project shall conform in all material respects with this Agreement, the Scope of Works, the Business Plan, all applicable laws and standards; and

9.1.1.6 all physical works shall be free from substantial defects and deficiencies of any kind, shall be designed and constructed in accordance with applicable Construction Standards and shall result in a complete and fully-functional Facility.

9.2 The Grantor hereby represents and warrants, as of the Date of Agreement, that:

9.2.1.1 this Agreement has been duly executed by the Grantor, is legally valid and binding upon the Grantor, and, except as specifically provided herein, does not require any further approval or consent or registration in any form in order to give full force and effect thereto;

9.2.1.2 the Grantor is not aware, of any proceeding, action or claim, pending or threatened, involving or otherwise affecting, the public tender process pursuant to which the Concessionaire was awarded this Agreement;

9.2.1.3 the Grantor has legal title to the Site and the Facility, in each case free and clear of any liens or other encumbrances of whatsoever nature; and

9.2.1.4 no part of the Site has been disposed of after the Bid Submission Date other than in accordance with this Agreement.

10 ARTICLE X – LIABILITY AND INDEMNIFICATION

10.1 Third Party Liability

10.1.1 The Concessionaire shall indemnify the Grantor for any Loss of any kind incurred by the Grantor by reason of any injury or death to, or any damage or destruction of any property or rights of, any Person to the extent such Loss arises out of or as a consequence of the execution of the Project including, without limitation, the failure to perform Facility Services in accordance with the Standards. The Concessionaire shall not be liable to the extent such Loss is caused by the gross negligence of, or willful misconduct by the Grantor or an event of Force Majeure, an Emergency or a Political Event or is directly attributable to any action taken by the Concessionaire upon the express written instructions of the Grantor.

10.1.2 The Grantor shall indemnify the Concessionaire for any Loss of any kind whatsoever suffered or incurred by the Concessionaire by reason of any injury or death to, or any damage or destruction of any property or rights of, any Person to the extent such Loss is directly attributable to the acts or omissions of the Grantor, except to the extent such Loss is caused by or is primarily attributable to the gross negligence of, or willful misconduct by, the Concessionaire or any contractor of the Concessionaire, or an event of Force Majeure or an Emergency.

10.2 Breach of Obligations

10.2.1 The Concessionaire shall indemnify the Grantor for any Loss incurred by the Grantor by reason of any breach by the Concessionaire of any of its representations, warranties, or obligations in this Agreement, except to the extent such Loss is primarily caused by, or is primarily attributable to, the gross negligence of, or willful misconduct by, the Grantor or any Emergency, Political Event or event of Force Majeure.

10.2.2 The Grantor shall indemnify the Concessionaire for any Loss of any kind whatsoever suffered or incurred by the Concessionaire by reason of any breach by the Grantor of any of its obligations in this Agreement, except to the extent such Loss is caused by, or is primarily attributable to, the gross negligence of, or willful misconduct

by, the Concessionaire or any contractor of the Concessionaire or any Emergency or event of Force Majeure.

10.3 Environmental Liability

10.3.1 The Grantor shall be liable for any Environmental Damage at the Site which results in liability under applicable law and which existed prior to the Date of Agreement and which was identified as such in the Environmental Audit Report.

10.3.2 The Concessionaire shall be liable for any Environmental Damage which results in liability under applicable law and which is caused by the Concessionaire following the Date of Agreement.

10.4 Third Party Claims

The Concessionaire shall indemnify the Grantor for any Loss incurred by the Grantor by reason of any claim or action by (a) a Person employed at or in connection with the Facility on or after the Effective Date or by any Person acting on behalf of or in place of any such employee or by any Person based upon any act or omission of any such employee or (b) any Person based upon any liability, obligation or commitment of the Concessionaire or any contractor of the Concessionaire, whether for services rendered or goods delivered by such Person or otherwise, in connection with the Facility, except to the extent such Loss is solely caused by an act or omission of the Grantor.

10.5 Liability Limitations

10.5.1 No Party shall be entitled to be indemnified more than once under this Agreement for the same Loss.

10.5.2 No amount shall be payable by a Party pursuant to this Article in respect of consequential damages.

10.5.3 The amount of any Loss to be indemnified pursuant to this Article shall be reduced by (a) the value of any benefit realized, directly or indirectly, by the indemnified Party as a result of such Loss; and (b) the amount of any insurance proceeds received by the indemnified Party in respect of such Loss. If such proceeds are received by the indemnified Party following an indemnification payment in respect of the relevant Loss, the indemnified Party shall pay to the indemnifying Party an amount equal to the lesser of (i) the amount of such proceeds and (ii) the amount of the indemnification payment made by the indemnifying Party.

11 ARTICLE XI – PERFORMANCE SECURITY

11.1 Performance Security

11.1.1 The Concessionaire shall, at its own cost and risk, provide and maintain an unconditional Performance Security to secure the Concessionaire's obligations pursuant to this Agreement, for the duration of the Term. The performance security shall be in form of bank guarantee in favor of the Grantor in the amount of [...] and issued by a bank

which is licensed by the Central Bank of Ethiopia or bank licensed in a foreign jurisdiction and acceptable to the Grantor.

11.2 Execution of Performance Security

11.2.1 Grantor shall be authorized to execute the performance security for the purpose of:

11.2.1.1 Compensating any loss incurred by Grantor as a result of the Concessionaire's breach of its obligations, warranties and representations pursuant to this Agreement;

11.2.1.2 Compensating any reasonable costs incurred by the Grantor to remedy any physical works defects, including latent defects;

11.2.1.3 Compensating any loss or costs incurred by Grantor in the event of termination of this Agreement for Concessionaire's fault, including costs for the retendering of the Concession;

11.2.1.4 Compensating any loss or costs incurred by Grantor as a result of the exercise of Grantor's step-in right pursuant to this Agreement;

11.2.1.5 Satisfying the payment of penalties to be paid by Concessionaire in accordance with this Agreement; and

11.2.1.6 Satisfying any other payment obligation of the Concessionaire to the Grantor as set forth in this Agreement

11.2.2 The Grantor shall notify the Concessionaire in writing of any execution of the Performance Security and the reasons for such execution.

11.2.3 In the event of the execution of the Performance Security by the Grantor, the Concessionaire shall, within 15 (fifteen) days from the day of the execution of the Performance Security, restore the Performance Security to the amount that existed at the time of the Effective Date, and as required by this Agreement.

11.2.4 The execution of the Performance Security by the Grantor shall be without prejudice to other legal remedies to which the Grantor is entitled pursuant to this Agreement and under applicable law.

12 ARTICLE XII – INSURANCE

12.1 Insurance Policies

The Concessionaire, at its own cost and risk, shall obtain and maintain in force for the entirety of the Term adequate insurance policies for the Facility, issued by an insurance company licensed by the Central Bank of Ethiopia or an insurance company licensed in a foreign jurisdiction and acceptable to the Grantor, which shall include:

12.1.1.1 Broad form property insurance to cover the Facility;

- 12.1.1.2 All risk builder risk insurance;
- 12.1.1.3 Third-party liability insurance for the operation of the Facility, and the construction of the Facility, including personal injury and property damage to third-parties;
- 12.1.1.4 Professional errors and omissions coverage for the design and construction of the Facility;
- 12.1.1.5 Terrorism coverage; and
- 12.1.1.6 Business interruption coverage for the Facility.

12.2 Grantor as Beneficiary

The Grantor shall be named as an additional insured in all insurance policies required under this Article.

12.3 No Liability to Grantor for Failure to Insure

The Grantor shall not bear any risk or responsibility for the failure of the Concessionaire to obtain or maintain any or all of the insurance policies required to be obtained or maintained under this Agreement and shall not be liable to the Concessionaire for uninsured losses.

12.4 Changes

The Concessionaire shall notify the Grantor in writing of any changes in either the insurance policies or insurance policy limits obtained by the Concessionaire pursuant to this Agreement. Such written notice shall be delivered to the Grantor at least thirty (30) days prior to such change.

12.5 Waiver

At any time during the Term, if and to the extent any insurance policy that the Concessionaire is obligated to obtain and maintain under this Agreement shall become unavailable to the Concessionaire on commercially reasonable terms, then the Concessionaire may submit to the Grantor a written request to waive compliance by the Concessionaire with such obligation. Such request shall state in reasonable detail the basis for the request and include all supporting evidence relating thereto and the terms of the requested waiver.

13 ARTICLE XIII – FORCE MAJEURE

13.1 Definition of Force Majeure Event

A Force Majeure Event shall mean any event beyond the reasonable control of either the Grantor or the Concessionaire, the occurrence of which could not have been reasonably foreseen by the Grantor or the Concessionaire, as the case may be, including, but not limited to, a Political Event, war whether declared or not, revolution, riot, insurrection, strikes but excluding strikes by employees of the Concessionaire, or any

subcontractor thereof, unless such strike is part of a general strike in the Republic of Ethiopia or a general strike in the corresponding sector of the Republic of Ethiopia, invasion, armed conflict, hostile act of a foreign enemy, blockade, embargo, act of terrorism, sabotage, radiation, biological or chemical contamination, ionizing radiation, explosion, fire, epidemic, landslide, lightning, earthquake, or any other natural disaster of any kind and any other similar event.

13.2 Reporting Force Majeure Event

13.2.1 Upon occurrence of a Force Majeure Event, but not later than twenty-four (24) hours after such event has become known or should have become known to the Party affected by a Force Majeure Event (“Affected Party”), the Affected Party shall report such event in writing to the other Party. The report shall include at a minimum the following information:

13.2.1.1 the nature and extent of the Force Majeure Event with evidence in support thereof;

13.2.1.2 the estimated duration and the effect or probable effect which such Force Majeure Event is having or will have on the Affected Party’s performance of its obligations under this Agreement;

13.2.1.3 the measures which the Affected Party is taking or proposes to take for alleviating the impact of such Force Majeure Event.

13.2.2 The Affected Party shall not be entitled to any remedy under this Agreement in respect of a Force Majeure Event unless it has reported to the other Party the occurrence of the Force Majeure Event in accordance with this Agreement.

13.3 Effect of Force Majeure Event

13.3.1 Upon the occurrence of a Force Majeure Event any deadlines which must be complied with pursuant to this Agreement and which cannot be complied with because of the Force Majeure Event shall be extended for a period of time equal in length to the duration of the Force Majeure Event.

13.3.2 If a Force Majeure Event shall prevent the total or partial performance of any of the obligations of either Party under this Agreement, then the Affected Party shall be excused from whatever performance is prevented thereby and the other Party shall not be entitled to terminate this Agreement except as otherwise provided in Article XV(1) of this Agreement.

13.3.3 The Affected Party shall use commercially reasonable efforts to continue to perform its obligations under this Agreement and to minimize any adverse effects of such Force Majeure Event.

13.4 Compensation

Neither Party shall be entitled to claim any compensation or payment from the other Party due to the occurrence of a Force Majeure Event or the termination of this Agreement due to a Force Majeure Event.

14 ARTICLE XIV – POLITICAL EVENT

14.1 Political Event

A Political Event shall mean (i) any taking of property comprised in the Site by a Public Authority, (ii) any revocation or other withdrawal of any Permit other than in accordance with the provisions thereof or any agreement relating thereto or in accordance with applicable law, (iii) any introduction or modification of any tariffs, fees, levies, taxes or other charges collected or authorized to be collected at or in respect of the Facility Services other than in accordance with this Agreement or with the prior written consent of the Concessionaire, and (iv) any failure of the Grantor or any Public Authority to grant, maintain, renew or accept any Permit other than in accordance with the applicable law or in a manner consistent with any Permit or agreement relating thereto, provided that such event materially and adversely changes the legal, economic or commercial position of the Concessionaire or the Project from what it was on the Date of Agreement.

14.2 Notice

If any Political Event shall occur, the Concessionaire shall give written notice to the Grantor within thirty (30) days of the occurrence of such Political Event or of the Concessionaire becoming aware of such Political Event. The written notice shall contain reasonable particulars of such Political Event to the knowledge of the Concessionaire and its likely legal, economic and commercial consequences to the Concessionaire and a request to remedy the Political Event.

14.3 Excuse of Performance

If a Political Event delays or otherwise prevents the total or partial performance of any of the obligations of the Concessionaire under this Agreement, then the Concessionaire shall be excused from whatever performance is so affected and the Grantor shall not be entitled to terminate this Agreement except as otherwise provided in Article XV(1) of this Agreement. Notwithstanding the Political Event, the Concessionaire shall use its best efforts to continue to perform its obligations under this Agreement and to minimize any adverse effects of such Political Event.

15 ARTICLE XV – TERMINATION OF AGREEMENT

15.1 Termination due to Force Majeure Event or Political Event

15.1.1 If a Force Majeure Event or a Political Event shall occur and continue for an uninterrupted period of at least one ninety (90) days and which prevents the total or

partial performance of any of the obligations of either Party under this Agreement, then either Party shall have the right to terminate this Agreement.

15.1.2 The respective Party shall notify the other Party in writing of its decision to terminate this Agreement, which termination shall be effective ten (10) Business Days after delivery of such notice to the other Party.

15.2 Termination by Grantor

15.2.1 The Grantor shall have the right to terminate this Agreement upon the occurrence of any of the following events:

15.2.1.1 the Concessionaire does not perform any or all of the Facility Services during any continuous period of at least forty eight (48) hours, unless such non-performance of Facility Services is permitted or required by this Agreement or is otherwise authorized in writing by the Grantor;

15.2.1.2 the Concessionaire fails to meet one or more of the Key Performance Indicators for a continuous period of sixty (60) days, unless such non-performance of Facility Services is permitted or required by this Agreement or is otherwise authorized in writing by the Grantor;

15.2.1.3 the Concessionaire has not completed such Rehabilitation Works during the Term and in accordance with the Scope of Works or Business Plan, unless otherwise authorized in writing by Grantor;

15.2.1.4 the Concessionaire is in default or otherwise in breach of its obligations under any financing agreement related to the Project;

15.2.1.5 the Concessionaire fails to resolve or have resolved in its favor any action for the bankruptcy, dissolution and/or liquidation of the Concessionaire within thirty (30) days of the commencement thereof;

15.2.1.6 the Concessionaire receives a court order to be placed into bankruptcy or to commence liquidation procedures;

15.2.1.7 the Concessionaire is in default or otherwise breaches any of its obligations, warranties and representations under this Agreement or any other agreement entered into by the Concessionaire in connection with the Project, which breach or default has continued unremedied for sixty (60) days or more after delivery of notice of such breach or default by the Grantor to the Concessionaire.

15.2.2 The Grantor shall terminate this Agreement by delivering to the Concessionaire a written notice, which termination shall be effective ten (10) Business Days after delivery of such notice to the Concessionaire.

15.3 Termination by Concessionaire

15.3.1 The Concessionaire shall have the right to terminate this Agreement if the Grantor commits a breach or is in default in respect of the performance of any of its

obligations, representations or warranties under this Agreement, which breach or default has continued unremedied for sixty (60) days or more after delivery of written notice of such breach or default by the Concessionaire to the Grantor.

15.3.2 The Concessionaire shall terminate this Agreement by delivering to the Grantor a written notice, which shall be effective ten (10) Business Days after delivery of such notice to the Grantor.

15.4 Effects of Termination

15.4.1 Upon the Termination Date:

15.4.1.1 this Agreement shall cease to have effect, except for the following provisions, which shall continue to apply: Articles X.1, X.3, XI, XV, XVI, XX, XXI, XXII, XXIII;

15.4.1.2 the Concession and the Concessionaire Rights shall terminate;

15.4.1.3 the Concessionaire shall immediately vacate the Site, the Facility and surrender to the Grantor, at no cost or expense to the Grantor, possession and/or ownership of the Site, the Facility, all machinery, installations, equipment and any other movable or intellectual property, owned or leased by the Concessionaire for the purpose of operating the Facility, and all documents or data relating specifically to the improvements on the Site and the operation of the Site, the Facility and the Commercial Premises which are in the ownership, possession or control of the Concessionaire;

15.4.1.4 the Grantor shall have the right to (i) enter and take immediate operational control of the Facility and the Site (ii) assume possession of all machinery, installations, equipment and any other movable or intellectual property, owned or leased by the Concessionaire for the purpose of operating the Facility;

15.4.1.5 the Grantor shall have the right to execute the Performance Security as provided for in this Agreement.

15.4.2 If the Concessionaire fails to surrender possession of the Site and the Facility in accordance with this Article, the Concessionaire shall pay to the Grantor any and all losses incurred by Grantor as a result of such failure. The Grantor may draw on the Performance Security to satisfy any such payment obligations of the Concessionaire.

15.5 Termination Compensation

15.5.1 In the event of a termination of this Agreement by the Grantor pursuant to paragraph 2 of this Article, other than for a Force Majeure Event or a Political Event,

15.5.1.1 the Grantor shall not be liable for compensating any losses incurred by the Concessionaire or for compensating or otherwise paying any outstanding financial obligations of the Concessionaire;

15.5.1.2 the Concessionaire shall compensate all losses incurred by the Grantor.

15.5.2 Notwithstanding paragraph 15.5.1.1 of this Article, in the event that the Concessionaire has completed all Rehabilitation Works in accordance with the Scope of Works and Business Plan, the Grantor shall compensate the Concessionaire for, whichever is the lesser amount, (a) the reasonable and documented costs of the physical works, excluding any cost-overruns, and subject to deduction of depreciation based on a straight-line depreciation method and any losses incurred by the Grantor as a result of the termination of this Agreement, or (b) the amount outstanding of the principal of any physical works related financing agreement as approved by the Grantor, excluding any fees, penalties or other payments incurred by the Concessionaire in relation to the termination of any and all physical works related financing agreement.

15.5.3 In the event of a termination of this Agreement by the Concessionaire pursuant to paragraph 15.5.3 of this Article, other than for a Force Majeure Event, and in the event of a termination of this Agreement by either party for a Political Event,

15.5.3.1 The Grantor shall compensate all losses incurred by the Concessionaire;

15.5.3.2 The Concessionaire shall not be liable for compensating any losses incurred by the Grantor.

16 ARTICLE XVI – HANDBACK

16.1 Handback Plan

One hundred and eighty (180) days before the Termination Date (Handback Period), the Concessionaire shall submit to the Grantor, for its approval, a Handback Plan, which shall include (i) the procedure for the transfer of the Site, the Facility and any related movable and intellectual property from the Concessionaire to the Grantor, (ii) a detailed inventory of all movable and intellectual property to be transferred from the Concessionaire to the Grantor and (iii) the exact Handback Date, which shall be on or before Termination Date.

16.2 Handback Costs

Each Party shall be responsible for its own costs and expenses incurred in order to effect the transfer of the Site, the Facility and any related movable and intellectual property from the Concessionaire to the Grantor in accordance with this Article XVI.

16.3 Handback Requirements

The Concessionaire shall ensure, at its own cost and risk, that, on the Handback Date, the Site, the Facility and all related movable and intellectual property are in accordance with the standards and conditions set forth in this Agreement. The Site, the Facility and any related movable and intellectual property shall be transferred to the Grantor free and clear of any claims, entitlements or encumbrances of third parties.

16.4 Handback Inspection

On the Handback Date, the Grantor and the Concessionaire shall jointly inspect the Site and the Facility to verify if both the Site and the Facility fulfill all standards and conditions set forth in this Agreement. In the event that both parties agree that such standards and

conditions are satisfied, the Grantor shall deliver to the Concessionaire a Handback Certificate confirming the completion of the Handback. In the event that the Grantor claims that such standards and conditions have not been satisfied, the Grantor shall, within five (5) Business Days from the inspection, deliver to the Concessionaire a written report setting forth all deficiencies identified during the inspection. The Concessionaire shall have sixty (60) days following receipt of such report to complete, at its own cost, all works and repairs needed to remedy the deficiencies identified by Grantor. The Concessionaire shall, to the extent possible and at its own cost and risk, continue to provide Facility Services and to operate and maintain the Facility during such time that it is completing the required works and repairs. If the Concessionaire fails to remedy the deficiencies within the specified period of time, the Grantor shall be authorized to undertake all works and repairs and the Concessionaire shall be obligated to compensate to Grantor all reasonable and documented costs incurred due to such works and repairs. The Grantor may draw upon the Performance Security to satisfy such payment obligation of the Concessionaire.

16.5 Termination of Contracts

On or before Handback Date, the Concessionaire shall terminate all contracts entered into with third parties related to the Site, the Facility and any related movable and intellectual property, unless the Grantor accepts to assume any or all of such contracts.

16.6 Termination of Concession

As of Handback Date, the Concession and the Concessionaire Rights under this Agreement shall cease to exist, and the Concessionaire shall vacate the Site and the Facility and shall cease any operations and services at the Site and the Facility.

16.7 Latent Defects

The Concessionaire shall, at its own cost and risk, be responsible for rectifying any latent defects arising in any portion of the Facility constructed during the last three (3) years of the Term and shall remedy any such defect regardless of its scope and quantity. The Concessionaire shall also be responsible for rectifying any physical damage caused by the Concessionaire's works to remedy such defect for a period of two (2) years after the Term. In the case of a default by the Concessionaire in carrying out any such works and repairs, the Grantor shall be authorized to undertake all works and repairs and the Concessionaire shall be obligated to compensate to Grantor all reasonable and documented costs incurred due to such works and repairs. The Grantor may draw upon the Performance Security to satisfy such payment obligation of the Concessionaire.

17 ARTICLE XVII – ASSIGNMENT OF AGREEMENT

17.1 Assignment

The Concessionaire may not without the prior written consent of the Grantor, assign or transfer (a) this Agreement or any other agreement executed in connection with the Project to which it is a party, (b) any of its rights or obligations under this Agreement or any other agreement executed in connection with the Project to which it is a party.

17.2 Creation of Security

For the purpose of financing the Project, the Concessionaire may assign or create security over its rights under this Agreement, any other agreement relating to the Project to which it is a party, any of its moveable or intellectual property or the Fees or any of its other rights or assets. Notwithstanding the foregoing provisions, the Concessionaire may not assign or create security or a lien over the Site, the Facility or any other immovable property of the Grantor without the prior written consent of the Grantor.

18 ARTICLE XIII – SUBSTITUTION OF CONCESSIONAIRE

18.1 The Concessionaire may

enter into an agreement with its lenders providing for the substitution of the Concessionaire by a Person appointed by the Concessionaire's lenders in the event of the Concessionaire's default under this Agreement or a Financing Agreement provided that Person:

18.1.1.1 is validly established and registered under the laws of Ethiopia as a business organization and has the capability to enter into such agreements as may be required to give effect to the substitution;

18.1.1.2 has the financial and technical capability sufficient to perform and assume the obligations of the Concessionaire under this Agreement and is acceptable to the Grantor;

18.1.1.3 has the capability to pay those financial obligations which the Grantor is entitled to receive from the Concessionaire before or at the time of such substitution; and

18.1.1.4 it meets all legal eligibility requirements set forth under applicable law.

18.2 If expressly required by the Concessionaire's lenders,

the Grantor shall enter into a direct agreement with them confirming their right of substitution as per this Article.

19 ARTICLE XIX – GRANTOR'S STEP-IN RIGHT

19.1 Authorization to Step-in

If the Grantor reasonably believes that it needs to take any action in connection with the provision of Facility Services or the operation of the Facility because of a failure by the Concessionaire to perform its obligations under this Agreement or due to a serious and urgent risk that arises to the health or safety of persons or property, the environment, or to national security, or to discharge a legal obligation, then the Grantor shall be entitled to take action in accordance with the provisions of this Article.

19.2 Notification

19.2.1 If Grantor decides to take action in accordance with this Article, it shall immediately after making such decision notify the Concessionaire in writing of:

19.2.1.1 the action it wishes to take;

19.2.1.2 the reasons for taking such action;

19.2.1.3 the date when Grantor wishes to commence such action;

19.2.1.4 the period of time, which must be a fixed period of time, (“Step-in Period”) which it reasonably believes will be necessary for such action; and

19.2.1.5 to the extent practicable, the likely effect of such action on the Concessionaire and its obligations under this Agreement during the Step-in Period.

19.2.2 Following the delivery of such notice, the Grantor shall be authorized to take such action as notified and any ancillary action as it reasonably believes is necessary. The Concessionaire shall give all reasonable assistance to the Grantor in the conduct of such action.

19.3 Consequences of Step-in

19.3.1 If the action taken by the Grantor is as a result of a breach by the Concessionaire of any of its obligations under this Agreement, then:

19.3.1.1 the Concessionaire shall be relieved from such obligations during the Step-in Period;

19.3.1.2 the Concessionaire shall compensate the Grantor for all costs and losses incurred as a result of the action; and

19.3.1.3 the Grantor shall not be liable for any compensation of losses incurred by the Concessionaire as a result of the action.

19.3.2 If the action taken by the Grantor is not as a result of a breach of any of its obligations, then:

19.3.2.1 the Concessionaire shall be relieved from such obligations during Step-in Period; and

19.3.2.2 the Grantor shall compensate the Concessionaire for any loss incurred due to such action.

20 ARTICLE XX – GOVERNING LAW AND DISPUTE RESOLUTION

20.1 Governing Law

This Agreement shall be governed by and interpreted and construed in accordance with the Laws of Ethiopia.

20.2 Dispute Notice

In the event that there arises a Dispute, the Party wishing to declare a Dispute to the other Parties shall do so by a written notice stating the issue(s) in dispute (a "Dispute Notice").

20.3 Good Faith Attempt at Settlement by Negotiations

For a period of not less than thirty (30) days from the service of a Dispute Notice, the parties to the Dispute shall attempt in good faith to settle the Dispute by negotiations among the designated or authorised representatives of each Party. Any agreement reached between the parties to the Dispute in accordance with this Article 20.3 shall be confirmed by entry by the parties into a binding settlement agreement. In the event the parties to the Dispute are unable to reach an agreement within thirty (30) days of service of the Dispute Notice (or within such longer period of time as the parties to such Dispute may agree in writing), then any party to the Dispute may refer the Dispute to arbitration in accordance with Article 20.4.

20.4 Arbitration

20.4.1 Any Dispute which is not resolved amicably by conciliation, as provided in Clause 20.3, shall be finally decided by reference to arbitration by an arbitral tribunal constituted in accordance with Clause 20.4.2. Such arbitration shall be held in accordance with the UNCITRAL Arbitration Rules (the "**Rules**"), or such other rules as may be mutually agreed by the Parties.

- 20.4.2 There shall be a Board of three arbitrators, of whom each Party shall select one, and the third arbitrator shall be appointed by the two arbitrators so selected and in the event of disagreement between the two arbitrators, the appointment shall be made in accordance with the Rules.
- 20.4.3 The arbitrators shall make a reasoned award (the “**Award**”). Any Award made in any arbitration held pursuant to this Article 20 shall be final and binding on the Parties as from the date it is made, and the Concessionaire and the Authority agree and undertake to carry out such Award without delay. The Parties undertake as a general principle to keep confidential all awards and orders in the arbitration, as well as all materials created for the purpose of the arbitration and documents produced by another Party in the arbitration not otherwise in the public domain, save and to the extent that a disclosure may be required of a Party by legal duty, to protect or pursue a legal right or to enforce or challenge an award in bona fide legal proceedings before a state court or other judicial authority.
- 20.4.4 In the event that the Party against whom the Award has been granted challenges the Award for any reason in a court of law, it shall make an interim payment to the other Party for an amount equal to 75% (seventy five per cent) of the Award, pending final settlement of the Dispute. The aforesaid amount shall be paid forthwith upon furnishing an irrevocable Bank Guarantee for a sum equal to the aforesaid amount. Upon final settlement of the Dispute, the aforesaid interim payment shall be adjusted and any balance amount due to be paid or returned, as the case may be, shall be paid or returned with interest calculated at the rate of 10% (ten per cent) per annum from the date of interim payment to the date of final settlement of such balance.
- 20.4.5 The legal place (or seat) of the arbitration shall be Addis Ababa (Ethiopia), or any other place agreed by the Parties. The language to be used in the arbitral proceedings shall be English.

20.5 Performance during Dispute Resolution

The Parties shall continue to perform all of their obligations under this Agreement and shall benefit from all their rights while negotiating under Article 20.3 or settling their Dispute under Article 20.4.

20.6 Waiver of Sovereign Immunity

To the extent that the Grantor may claim for itself or its assets or revenues immunity from suit, execution, attachment or other legal process, the Grantor agrees not to claim and hereby irrevocably waives such immunity.

21 ARTICLE XXIII – MISCELLANEOUS PROVISIONS

21.1 Primacy of this Agreement

This Agreement shall govern all aspects of, and all contractual relationships relating to, the Project. Each Party shall ensure that the execution by such Party after the Date of the Agreement of any other agreement relating to the Project will not cause such Party to be in breach of its obligations under this Agreement.

21.2 Entire Agreement

This Agreement represents the entire agreement between the Parties in relation to the Project and supersedes any or all previous agreements or arrangements between the Parties in respect of the Project.

21.3 Confidentiality

Each Party shall keep in confidence all non-public drawings, records, data, books, reports, documents and information, whether technical, commercial or financial in nature, supplied to it by or on behalf of the other Party relating to the Project and shall not disclose the same in any manner without the prior agreement in writing of the other Party other than

21.3.1.1 in the case of the Concessionaire, as reasonably necessary to its advisors, consultants, Affiliates, insurers, contractors or lenders for the purpose of seeking financial and other assistance for the purpose of performing its obligations hereunder; or

21.3.1.2 in the case of the Grantor, as reasonably necessary to its officers, advisors, consultants, insurers, agents and any Public Authority for the purpose of performing its obligations hereunder or as may otherwise be reasonably deemed to be in the public or national interest or be required by law.

Nothing in this Article shall limit the Grantor's right to use such documents and information in circumstances where this Agreement has been terminated in accordance with this Agreement. Each Party shall be liable for any breach of the confidentiality undertaking contained in this Article and the impermissible disclosure of confidential information by any of its Affiliates, consultants, advisors or agents.

21.4 Amendments

Any amendment to this Agreement shall be binding only if in writing and signed by a duly authorized representative of each of the Parties.

21.5 Default Interest

Any Party in default of payment of any amount due under this Agreement to the other Party shall pay interest thereon at a rate of [...] *plus three per cent (3%) per annum*. Such interest shall be computed on a daily basis from the due date until the relevant amount together with accrued interest is fully paid by the defaulting Party.

21.6 No Third Party Beneficiaries

This Agreement is made exclusively for the benefit of the Grantor and the Concessionaire, and no third party shall have any rights hereunder or be deemed to be a beneficiary hereof, except as may be expressly provided herein.

21.7 Severability

21.7.1 If any provision of this Agreement is or becomes wholly or partly invalid, illegal or unenforceable, then the validity, legality and enforceability of the remaining provisions shall continue in force unaffected and the Parties shall negotiate as soon as possible in good faith a replacement provision that is legally valid and that as nearly as possible achieves the objectives of the invalid, illegal or unenforceable provision.

21.7.2 A replacement provision shall apply retroactively as of the date that the replaced provision had become invalid, illegal or unenforceable. If the Parties cannot reach agreement on a replacement provision, any Party may invoke the dispute resolution procedure set forth in this Agreement.

21.8 Taxes

21.8.1 All payments due under this Agreement shall be made without deduction or withholding of any kind, including for or on account of any taxes. If the Grantor or the Concessionaire, as the case may be, is required by applicable law to deduct or withhold any taxes therefrom, then the Grantor or the Concessionaire, as the case may be, shall make such deduction or withholding from its payment and shall increase such payment to such amount as may be necessary to enable the Grantor or the Concessionaire, as the case may be, to receive the full amount it would have received had such payment been made without deduction or withholding of such Taxes. If the Grantor or the Concessionaire, as the case may be, shall make any deduction or withholding from amounts paid hereunder, it shall promptly forward to the Grantor or the Concessionaire, as the case may be, official receipts or other evidence establishing payment of such amount.

21.8.2 The Concessionaire shall pay all taxes and administrative fees that may become due under applicable law upon the execution of this Agreement.

21.9 Notices

21.9.1 Any notice or correspondence to be given hereunder shall either be delivered personally or sent by registered mail or facsimile transmission. The addresses for service of the Parties shall be those provided below, or such other address as any Party may notify in writing to the other Party for this purpose.

To the Grantor:

[insert address]

Attention: [Insert Name of Contracting Authority's representative]

To the Concessionaire:

[insert address]

Attention: [Insert name of Concessionaire's representative]

21.9.2 A notice shall be deemed to have been duly given if:

21.9.2.1 personally delivered, at the time of receipt;

21.9.2.2 sent by registered mail, on the third Business Day following the date of posting; and

21.9.2.3 sent by facsimile transmission, upon receipt of confirmation of delivery.

21.9.3 All notices, correspondence or other communications between the Grantor and the Concessionaire in respect of this Agreement and the Project shall be in English.

21.10 Limitation of Liability

Whenever the present Agreement requires the compensation of losses, neither Party shall be liable to the other Party for any consequential loss unless otherwise provided in this Agreement.

21.11 Disclaimer

The Concessionaire acknowledges that prior to the execution of this Agreement, the Concessionaire has made an independent evaluation of the Project, including the scope of the works and services to be provided, the Site, the Facility, any project specifications and related standards, local conditions, possible demand and all information provided by the Grantor, and has determined to its satisfaction the nature and extent of difficulties, risks and hazards as are likely to arise or may be faced by it in the course of the performance of its obligations under this Agreement. The Concessionaire acknowledges and accepts the risk of inadequacy, mistake or error in or relating to any of the matters set forth in the tender documents and any other information made available by Grantor with respect to the Project and agrees that the Grantor shall not be liable for the such tender documents and information in any manner whatsoever to the Concessionaire or any other person.

ANNEXURE 1

SITE

DRAFT

ANNEXURE 2

FACILITY

DRAFT

ANNEXURE 3
SCOPE OF WORKS

DRAFT

ANNEXURE 4
BUSINESS PLAN

DRAFT

ANNEXURE 5
KEY PERFORMANCE INDICATORS

DRAFT

ANNEXURE 6
FACILITY FEES

DRAFT

ANNEXURE 7
FACILITY SERVICES

DRAFT

ANNEXURE 8
EFFECTIVE DATE CERTIFICATE

DRAFT

IN WITNESS whereof this Agreement has been signed in two (2) original copies on the date first above written.

[GRANTOR'S FULL NAME]

REPRESENTATIVE

2nd REPRESENTATIVE

[CONCESSIONAIRE'S FULL NAME]

REPRESENTATIVE

2nd REPRESENTATIVE

DRAFT

Part 6.3: Sample PPP Agreement: Management Contract Agreement

Dated [Date]

[Contracting Authority]

and

[XXX]

MANAGEMENT CONTRACT

TABLE OF CONTENTS

<u>1. DEFINITIONS AND INTERPRETATION</u>	4
<u>2. NATURE OF AGREEMENT</u>	8
<u>3 SERVICES</u>	11
<u>4 CONTRACT MONITORING</u>	12
<u>5 PERSONNEL</u>	13
<u>6 THE OPERATOR’S GENERAL OBLIGATIONS</u>	16
<u>7 CONTRACTING AUTHORITY RESPONSIBILITIES</u>	20
<u>8 COMPENSATION</u>	21
<u>9 REPORTING</u>	23
<u>10 LIMITATIONS ON AUTHORITY</u>	26
<u>11 FORCE MAJEURE</u>	27
<u>12 TERMINATION</u>	28
<u>13 INSURANCE</u>	31
<u>14 CHANGE IN LAW</u>	33
<u>15 INDEMNIFICATION AND LIABILITIES</u>	34
<u>16 LIMITATION OF LIABILITY</u>	35
<u>17 CONFIDENTIALITY</u>	36
<u>18 TITLE, DOCUMENTS AND DATA</u>	37
<u>19 GOVERNING LAW AND DISPUTE RESOLUTION</u>	38
<u>20 MISCELLANEOUS PROVISIONS</u>	40
<u>Schedule 1 - Description of Facility</u>	45
<u>Schedule 2 - Description of Services</u>	46
<u>Schedule 3 - Key Performance Targets</u>	47
<u>Schedule 4 - Operator’s Key Personnel</u>	48
<u>Schedule 5 - Training for Contracting Authority’s Personnel</u>	49
<u>Schedule 6 - Letter of Award</u>	50
<u>Schedule 7 - Letter of Acceptance</u>	51
<u>Appendix 1 – Form of Performance Security</u>	52

This Agreement is made and entered into this [Date] by and between:

- (1) **Contracting Authority**, a [state details] with its offices situated at [insert address] (hereinafter called “Contracting Authority” which expression shall where the context so admit include its successors in title and assigns) of the first part.

And

- (2) **[Name of Company]** a company incorporated under the laws of [...], and having its registered office at [Address] represented by its [Position], [Name] (Hereinafter referred to as “**The Operator**”, which expression, where the context so admits, shall be deemed to include its successors and assigns) of the other part.

each referred to as a “**Party**”, and together the “**Parties**”.

WHEREAS:

- A. The Contracting Authority owns [insert nature of facility] (“the Facility”), and is desirous of improving the technical expertise applied in the operation and management of the facility.
- B. Following a [type of procurement process e.g. *competitive bidding process*] by the Contracting Authority, the Operator was determined to possess the requisite technical and financial capability, experience, professional and managerial competence to [insert scope of services e.g. *operate, maintain and manage the Facility, and provide ancillary services*].
- C. The Parties having complied with all due process requirements under the law have agreed to execute this Management Contract subject to the terms and conditions hereinafter contained.

NOW, THEREFORE, in consideration of the mutual covenants, undertakings and conditions set forth below, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

Unless otherwise required by the context in which a defined term appears, the following terms shall have the meanings specified in this clause 1.1. Terms that are defined in other clauses shall have the meanings given to them in those clauses.

"Affiliate" means, in respect of a Person, any other Person which controls (directly or indirectly) the first-named Person, or any other Person which is controlled (directly or indirectly) by such first-named Person, or any other Person which is under common control with such first-named Person, including, where a Person is a company, the ultimate holding company of such Person, any holding company of such Person and any subsidiary (direct or indirect) of such holding company.

"Agreement" means this document together with the Schedules hereto and any extensions, renewals or amendments of this document as indicated in this document, or as agreed to in writing by the Parties.

"Applicable Law" means all laws, treaties, ordinances, decrees, statutes, rules, guidelines and regulations of any national, state, municipal, regional or other governmental body, instrumentality, agency or other authority having jurisdiction over the Parties or the performance of any of their obligations under this Agreement. Any reference to an Applicable Law shall include all statutory and administrative provisions consolidating, amending or replacing such Applicable Law and shall include all rules and regulations promulgated thereunder.

"Approval" means any approval, consent, exemption, licence, order or permit of or from any Relevant Authority required for the due performance by either Party of any covenant or obligation hereunder.

"Bankruptcy" means, in respect of a Party, the inability of such Party to pay its obligations as they come due, winding-up (excluding a solvent winding up for the purposes of a corporate restructuring), dissolution, administration or liquidation, the making by it of any arrangement or composition with its creditors (excluding a solvent winding up for the purposes of a corporate restructuring) or the taking of possession by an encumbrancer of, or the appointment of a liquidator (other than in respect of a solvent liquidation), a receiver, administrative receiver, compulsory manager or similar officer over, the whole or any substantial part of its property or assets or its ceasing or threatening to cease to carry on business or the commencement of any procedure analogous with any of the above procedures is completed and not dismissed within 60 days in respect of a Party.

"Best Endeavours" means that, where this Agreement requires a party to use its best endeavours in relation to an obligation, that party shall take all those steps in its power which are capable of producing the desired results, being steps which a prudent, determined and reasonable person, acting in his own interests and desiring to achieve what result, would take".

"Business Day" means any day of the week other than a Saturday or Sunday that is not an Ethiopian national holiday or a day on which banks are authorized by law or executive order to be closed in the Federal Democratic Republic of Ethiopia.

"Change in Law" means:

- (a) the adoption, enactment, promulgation, repeal, amendment, reinterpretation, change in application, change in interpretation or modification of any Applicable Law, by any Relevant Authority after the execution date of this Agreement; or
- (b) the imposition of any material condition not required as of the date hereof in connection with the issuance, renewal or modification of any Approvals, by any Relevant Authority; or
- (c) the change or modification of any Approvals by the Relevant Authority or the imposition of other obligations imposing a cost on The Operator after the execution date of this Agreement.

"Conditions Precedent" means those conditions precedent listed in clause 2.44.1.

"Contract Year" means a calendar year beginning [insert start month and date] and ending [insert start month and date].

"Designated Bank Account" has the meaning set forth in clause 8.4.1.

"Effective Date" has the meaning set forth in clause 2.4.

"Facility" means the property of the Contracting Authority as fully described in Schedule 1

"Force Majeure Event" shall mean any event that (a) renders it impossible for the affected Party to comply with its obligations under this Agreement, (b) is beyond such Party's reasonable control and not due to its fault or negligence and (c) could not have been prevented or avoided by such Party through the exercise of due diligence. Subject to the satisfaction of the foregoing conditions, Force Majeure shall include without limitation: (i) severe, adverse weather conditions such as storms or floods; (ii) earthquakes; (iii) wars (declared or undeclared), civil disturbances, revolts, insurrections, public disorder, riots or sabotage; (iv) strikes or other labour disputes in Ethiopia that are not due to the breach of any labour agreement by the Party claiming Force Majeure; (v) fires; (vi) actions or omissions by a Governmental Authority that were not induced or promoted voluntarily by the affected Party or were not caused by a noncompliance with its obligations under this Agreement or Applicable Law; (vii) Change in Law; (viii) the inability by the affected Party, despite its reasonable efforts, to timely and correctly obtain any permit that enables such Party to meet its obligations under this Agreement; or (ix) pollution that was not caused by the noncompliance of the Party claiming Force Majeure with its obligations under this Agreement or Applicable Law.

"Handover Date" means the date on which the Facility and all the property, assets, data and other matters concerning the Facility is returned to the Contracting Authority by the Operator.

“Key Performance Targets” means the key performance targets set out in the Table of Schedule 3.

“Letter of Award” refers to the letter dated [insert date] from the Contracting Authority, awarding the Project to the Operator as contained in Schedule 6.

“Letter of Award” refers to the letter dated [insert date] from the Operator, accepting the award of the Project by the Contracting Authority, as contained in Schedule 7.

“Long Stop Date” has the meaning set forth in clause 2.4.2

“The Operator” means [Name of Company] Limited

“Operating Manuals” means the operating data, design drawings, specifications, vendors' manuals, warranty requirements, procedures (including those for maintenance of the Facility and environmental and safety compliance), and similar materials with respect to the operation, management and maintenance of the Facility.

“Performance Security” means the security to ensure the performance of the Concessionaire as defined in paragraph 6.1111.1.

“Person” means any individual, partnership or corporation, wherever organised or incorporated, and all other juridical recognised entities, including the Government, other governments, governmental bodies and associations whether or not incorporated, and any reference to such Person shall include references to their respective successors and permitted assigns.

“Procedures Manual” has the meaning set forth in clause 9.1.

“Project” means the grant of the operation, management and maintenance of the Facility by the Contracting Authority to the Operator, in accordance with the terms of this Agreement.

“Public Service Activity” means any activity the government has decided to perform for the reason that it has deemed to be necessary in the general interest of the public and considered that private initiative was inadequate for carrying it out.

“Reference Rate” means the Ethiopian Interbank Offered Rate for Birr deposits, applicable from the due date for payment and thereafter on the first day of each succeeding calendar month, plus 1%.

“Relevant Authority” means any department, authority, instrumentality, agency or any other relevant entity from which any Approval is to be obtained from time to time and any authority, body or other Person having jurisdiction under Applicable Law with respect to Parties or the performance of any of their obligations under this Agreement.

"**Secret Profit**" means any pecuniary advantage realised by the Operator with regards to the Facility, without the prior approval in writing of the Contracting Authority.

"**Services**" means those services listed as such in Schedule 2.

"**Term**" has the meaning set forth in clause **Error! Reference source not found..**

"**Transaction Advisor**" means [Name of Transaction Advisor] appointed pursuant to the [details of appointment].

1.2 Interpretation

In this Agreement, unless the context otherwise requires:

- 1.2.1 words importing the singular include the plural and vice versa;
- 1.2.2 words importing a gender include every gender;
- 1.2.3 references to any document (including this Agreement) are references to that document as amended, consolidated, supplemented, novated or replaced from time to time, and to all annexures, schedules, attachments, supplements and the like which form part thereof;
- 1.2.4 references to clauses and schedules are references to clauses of and schedules to this Agreement;
- 1.2.5 headings are inserted for convenience only and shall not affect the interpretation or construction of this Agreement;
- 1.2.6 if any provision in a definition is a substantive provision conferring rights or imposing obligations on a Party, notwithstanding that it is only in clause 1.1, effect shall be given to it as if it were a substantive provision in the body of this Agreement;
- 1.2.7 where any term is defined within the context of any particular clause in this Agreement, then, unless it is clear from the clause in question that the term so defined has limited application to the relevant clause, the term so defined shall bear the meaning ascribed to it for all matters in terms of this Agreement, notwithstanding that that term has not been defined in clause 1.1; and
- 1.2.8 a reference to an enactment or other statutory provision includes a reference to the enactment or statutory provision as modified or re-enacted or both from time to time before the date of this Agreement, and any subordinate legislation made under the statutory provision (as so modified or re-enacted) before the date of this Agreement.

2. NATURE OF AGREEMENT

2.1 Purpose

This Agreement is to govern the operation, maintenance and management of the Facility by the Operator, on behalf of the Contracting Authority.

2.2 The Agreement

This Agreement consists of the terms and conditions set forth in all its clauses and the following schedules, which are incorporated and made part of this Agreement by this reference and are included in any reference to this Agreement:

- a) Schedule 1 - Description of Facility
- b) Schedule 2 - Description of Services;
- c) Schedule 3 - Key Performance Targets;
- d) Schedule 4 – List of Operator’s Key Personnel; and
- e) Schedule 5 - Training for Contracting Authority’s personnel;
- f) Schedule 6 - The Letter of Award
- g) Schedule 7 - The Letter of Acceptance

If the terms and conditions of the clauses of this Agreement vary or are inconsistent with any portion of the schedules, the terms of the clauses of this Agreement shall prevail and be given priority, and the provisions of the schedules shall be subject to the terms of the clauses.

2.3 Other Documents

The i) Operating Manuals to be prepared by the Operator and provided to the Contracting Authority within thirty (30) days of the takeover of the Facilities by the Operator, ii) The Procedures Manual to be prepared by the Operator in accordance with clause 9.1; and iii) the Technical and Financial proposals submitted by the Operator in the competitive bidding process for the award of this Project shall be deemed to form and be construed as an integral part of this Agreement.

2.4 Effective Date

2.4.1 This Agreement shall become effective upon fulfilment or waiver of the following Conditions Precedent (the “**Effective Date**”):

- a) all Approvals, if any, are obtained, in full force and effect and are not subject to onerous conditions;
- b) each Party has been duly authorised to enter into this Agreement;
- c) all insurances are in place as is required pursuant to clause 13.
- d) The Performance Security is in place as provided in clause 6.11
- e) The Facility has been shown to the Operator by the Contracting Authority at the Operator's own cost and the Operator has gained access to those places and/or sites where the services procured shall be delivered

2.4.2 All of the Conditions Precedent must be fulfilled or waived, as the case may be, by no later than [...] (or such other date as may be agreed in writing by the Parties) – the “**Long Stop Date**” –, failing which the Contracting Authority shall be entitled to issue a Notice of intention to terminate, and thereafter the provisions of clause 12.1 shall apply.

2.4.3 The Parties shall use all reasonable endeavours to procure the timely fulfilment of each of the Conditions Precedent and each Party is obliged to notify the other in writing as and when it has fulfilled or waived those Conditions Precedent which are to be fulfilled (or are able to be waived) by such Party.

2.4.4 In the event that this Agreement is terminated as a result of the failure to fulfil or waive all of the Conditions Precedent by the Long Stop Date, then neither Party shall have any liability to other Party unless, and only to the extent, that the non-fulfilment of any of the Conditions Precedent was as a result of that Party's failure to use all of its reasonable endeavours to timeously fulfil or procure the timeous fulfilment of such Condition Precedent.

2.5 Term

2.5.1 This Agreement shall come into effect on the Effective Date and shall continue in effect for a period of [Number of years] years from the Effective Date (the “**Term**”) unless terminated earlier in accordance with clause 12.

2.5.1 The Term shall extend on a day by day basis:

2.5.1.1 if a Party is unable to perform any of its obligations under this Agreement as a result of a Force Majeure event and is relieved of performance in terms of the provisions of clause 11; and/or

2.5.1.2 for so long as the Contracting Authority requires the Operator to continue to provide some or all of the Services following the termination of this Agreement in accordance with clause 12.5.2.

2.5.2 Except for the limited cases set out in clause 2.5.1, the Term shall only be extended or renewed in accordance with the Applicable Law, including the relevant processes on extension or renewal of contracts.

2.6 Relationship of the Parties

2.6.1 The Operator has been retained by the Contracting Authority as an independent contractor to operate, maintain and manage the Facility on behalf of the Contracting Authority, in accordance with this Agreement. Neither the Operator nor any of its employees, subcontractors or agents shall be deemed to have any other status, except where the Contracting Authority otherwise expressly permits the Operator in writing to act on behalf of Contracting Authority.

2.6.2 All employees, representatives or subcontractors engaged by the Operator in connection with the performance of this Agreement are under the complete control of The Operator and are not deemed to be employees of Contracting Authority, and nothing contained in this Agreement or in any subcontract awarded by The Operator is to be construed to create any contractual relationship between any such employees, representatives or subcontractors and Contracting Authority.

2.7 The Operator to operate and manage the Facility at its own risk

2.7.1 The Operator shall access and use the Facility at its own risk and responsibility, and shall promptly replace or repair (as appropriate) any such equipment or facilities that are lost or damaged in the course of their use by the Operator, its agents, contractors and/or subcontractors.

2.7.2 The Operator shall be responsible for the security of the Facility and safety of personnel and will only allow access of the Facility to those persons duly permitted to enter the Facility.

3 SERVICES

3.1 Scope of Services

- 3.1.1 The Contracting Authority appoints the Operator to operate, maintain and manage the Facility on its (Contracting Authority's) behalf and to provide turn-key services in relation to the [Public Service Activity], as more fully set out in Schedule 2 (the "Services").
- 3.1.2 The Operator shall at all times as of Effective Date and for the duration of the Term provide the Services in accordance with the terms and conditions of this Agreement, and to the standards in clause 3.2.

3.2 Standards for Performance of the Services

The Operator shall perform the Services in a prudent, reasonable, and efficient manner and in accordance with (i) technical standards and specifications as contained in the Operating Manuals, the Procedures Manual and applicable vendor warranties, (ii) the Key Performance Targets (iii) all Applicable Laws, (iv) Good Industry Practice, and (v) all insurance policies specified in clause 13 of this Agreement.

4 CONTRACT MONITORING

4.1 Monitoring and Inspection of Operations

The Contracting Authority shall be entitled to monitor activities at the Facility and carry out intermittent inspection in the presence of the Operator's representative. Such monitoring and inspection by Contracting Authority shall not interfere with the progress of operations.

4.2 Monitoring and Inspection of Works

The Contracting Authority shall be entitled to monitor any physical works undertaken by the Operator at the Facility for its own operations or on behalf of the Contracting Authority. Such inspections and monitoring by Contracting Authority shall not interfere with the progress of works or operations.

Cost of monitoring and inspection

All costs of such monitoring and inspection shall be borne by the Contracting Authority. However, if the results of such monitoring and inspection reveal any material defects in works, materials or operations, all costs of monitoring and inspecting the repair of the defects shall be paid by the Operator.

Notice of monitoring and inspection

The Contracting Authority shall provide the Operator with reasonable prior notice of any inspections to be carried out. The Operator shall ensure access to the Facility by the Contracting Authority.

5 PERSONNEL

5.1 The Operator's Personnel Standards

The Operator shall provide, as reasonably necessary, all labour and professional, supervisory and managerial personnel as are required to perform the Services. Such personnel shall be qualified to perform the duties to which they are assigned. All individuals employed by the Operator to perform the Services shall be employees of the Operator, and their working hours, rates of compensation and all other matters relating to their employment shall be determined solely by The Operator. The Operator shall:

- 5.1.1 Provide suitably qualified, trained, experienced and competent personnel for the proper performance of the Services; the names and positions of key personnel is set out in Schedule 4. The Operator shall not remove or replace such key personnel without Contracting Authority's prior approval, which approval shall not be unreasonably withheld, conditioned or delayed (The Contracting Authority shall either approve or refuse to approve a request by the Operator under this clause 5.1.1 within thirty (30) days of receipt of the request, failing which the request shall be deemed approved);
- 5.1.2 Identify the needs and requirements for the training of the Operator's workforce and establish proper and adequate training in all relevant disciplines and activities (including appropriate emergency measures) for all personnel;
- 5.1.3 On being given reasonable notice by the Contracting Authority, make suitably qualified and experienced personnel available for consultation (whether in person or by telephone or other means);
- 5.1.4 In the event of an emergency provide, in a timely manner, such other personnel, technical assistance, know-how and information as may be required under the circumstances;
- 5.1.5 Comply with all Applicable Laws with respect to labour matters, hiring personnel, and employment policies;
- 5.1.6 The Operator also shall act in a reasonable manner that is consistent with the intent and purpose of this Agreement and with the Operator's acknowledgment (hereby given) that the Operator has no authority to enter into any contracts with respect to labour matters that purport to bind or otherwise obligate Contracting Authority.

5.2 Conduct of Personnel

- 5.2.1 The Operator shall at all times maintain the highest standards of discipline, professionalism and good order amongst its personnel and the personnel of its subcontractors working at the Facility, and shall establish and operate all appropriate disciplinary procedures in respect thereof. The Operator shall at all times be responsible and liable for the welfare

and all acts or omissions of its personnel and that of personnel of its subcontractors working at the Facility.

- 5.2.2 The Operator shall, upon the Contracting Authority's written instruction, remove from the Facility any person employed by him or by its Subcontractors who in the opinion of Contracting Authority (acting reasonably) misconducts himself or is incompetent or negligent. The Contracting Authority may require the Operator to replace any of its personnel so removed, in which case the Operator shall replace such person(s) as soon as reasonably practicable with suitably qualified, experienced and competent person(s). The cost and expenses associated with such removal and/or replacement shall be borne by the Operator.

5.3 Training of The Operator's and Contracting Authority's personnel

- 5.3.1 The Operator shall provide all training for its personnel necessary to achieve and maintain the standards for performance of the Services, as set out in clause 3.2.
- 5.3.2 The Operator shall provide the training set out in Schedule 5 to designated members of the Contracting Authority's personnel.

5.4 Appointment of Subcontractors

- 5.4.1 The Operator may subcontract any of the Services under this Agreement to a suitably qualified subcontractor provided that it has first obtained the Contracting Authority's approval in writing (such approval not to be unreasonably withheld or delayed). The Contracting Authority shall either approve or refuse to approve a request by the Operator under this clause 5.4.1 within thirty (30) days of receipt of the request, failing which the request shall be deemed approved.
- 5.4.2 The Operator shall be responsible for the observance by subcontractors of the terms and conditions of this Agreement.
- 5.4.3 Notwithstanding the other provisions of this clause 5.4, subcontracting by the Operator shall not relieve the Operator of any of its obligations under this Agreement and the Operator shall be responsible for the acts, omissions and defaults of its subcontractors as fully as if they were acts, omissions or defaults of the Operator or the Operator's personnel.

5.5 Health, Safety, Security and Environment

- 5.5.1 Without limiting the generality of clause 3.2, the Operator will carry out the Services in compliance with all applicable health, safety, security and environment laws and standards, and will, to the extent within its reasonable control, ensure that all plant and equipment is operated in a manner that does not compromise the (i) health and safety of any employee, agent, contractor or visitor of the Operator or the Contracting

Authority, or the general public and (ii) within the design limits of the Facility, the environment.

- 5.5.2 The Operator shall maintain a health, safety, security and environment policy and shall use its Best Endeavours to comply with such policy in its provision of the Services.
- 5.5.3 The Operator shall put in place, maintain and use its Best Endeavours to comply with adequate emergency procedures which shall take account of the potential for emergencies within Facility.
- 5.5.4 Each Party shall use its Best Endeavours to take and implement all practicable procedures and precautions to prevent exposure of persons or property to any hazard arising in relation to the Facility.

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6 THE OPERATOR'S GENERAL OBLIGATIONS

6.1 Access and use of the Facility at the Operator's own risk

- 6.1.1 The Operator shall access and use the Facility at its own risk and responsibility, and shall promptly replace or repair (as appropriate) any such equipment or facilities that are lost or damaged in the course of their use by the Operator, its agents, contractors and/or subcontractors.
- 6.1.2 The Operator shall be responsible for the security of the Facility and safety of personnel and will only allow access to areas of the Facility to those persons suitably qualified to enter such areas.

6.2 Tests and Inspections

- 6.2.1 The Operator shall carry out all tests and/or inspections of the Facility or spare parts in accordance with the Operating Manuals, or as may be necessary to ensure the safe, reliable, efficient, and optimal operation of the Facility, or as may otherwise be directed by the Contracting Authority (in this latter case the tests and/or inspections will be carried out at Contracting Authority's cost and expense).
- 6.2.2 The Contracting Authority or its authorised agent is entitled to attend any test at its own expense.
- 6.2.3 The Operator shall give reasonable advance notice of any test and/or inspection that the Operator proposes to carry out and of the place and time of such test and inspection. The Operator shall use reasonable endeavours to obtain from any relevant third party or manufacturer any necessary permission or consent to enable the Contracting Authority's inspector to attend the test and/or inspection.
- 6.2.4 If any spare parts or the Facility fails to pass any test and/or inspection, the Operator shall either rectify or replace those spare parts or repair the Facility and will repeat the test and/or inspection upon giving Notice under clause 6.2.3 at Contracting Authority's cost and expense.

6.3 No effect on obligations

Neither the performance of a test and/or inspection of spare parts or the Facility, nor the attendance by Contracting Authority's inspector will release the Operator from any other responsibilities under this Agreement.

6.4 Compliance

The Operator shall comply with all Applicable Laws in the operation, maintenance and management of the Facility and the performance of the Services. The Operator shall apply for and obtain, and Contracting Authority shall assist the Operator in obtaining, all Approvals (and renewals of the same) required to allow the Operator to do business or perform the Services in the jurisdictions where the Services are to be performed. The Operator shall provide all reasonably necessary assistance to Contracting Authority, to enable the Contracting Authority secure such Approvals (and renewals of the same) that

the Contracting Authority is required to obtain from or file with any governmental agency regarding the Facility. The Operator also shall file such reports, notices, and other communications as may be required by any Relevant Authority regarding the Facility.

6.5 Operating Records and Reports

The Operator shall maintain, at a location acceptable to the Contracting Authority, the Facility operating logs, records, and reports that document the operation and maintenance of the Facility, all in such form and substance as is satisfactory to the Contracting Authority. The Operator shall maintain current revisions of drawings, specifications, lists, clarifications and other materials related to operation and maintenance of the Facility. The Operator shall provide the Contracting Authority reasonably necessary assistance in connection with Contracting Authority's compliance with reporting requirements under Applicable Laws or any other agreement to which Contracting Authority is a party relating to the Facility. Such assistance shall include providing reports, records, logs and other information that Contracting Authority may reasonably request as to the Facility or its operation.

6.6 No Liens or Encumbrances

The Operator shall maintain the Facility free from and clear of all liens, charges, claims, encumbrances, and/or security interests on the Facility resulting from any action of the Operator or work done at the request of the Operator during the term.

6.7 Emergency Action

If an emergency endangering the safety or protection of persons or the Facility occurs or the Facility or major Facility equipment suffers an unplanned outage (or the Operator reasonably believes that such an occurrence is imminent), the Operator shall promptly notify the Contracting Authority and take all necessary action to attempt to prevent or mitigate any such outage, threatened damage, injury or loss. The Operator shall make reasonable efforts to minimize any costs associated with remedial action in case of such an emergency.

6.8 Action in Extraordinary Circumstances

In the event that:

- (a) the Facility or major Facility equipment suffers an unplanned outage (or the Operator reasonably believes that such an occurrence is imminent), or an emergency endangering the safety or protection of persons or the Facility occurs, and
- (b) The Operator has made reasonable, but unsuccessful, efforts to notify and communicate with Contracting Authority regarding such occurrence or imminent occurrence, including written or verbal communication (as circumstances warrant) to the person to be notified under clause 20.7 then:
 - i. The Operator shall take all necessary actions to prevent or to mitigate such unplanned outage;
 - ii. make reasonable efforts to minimize any costs associated with such remedial action; and

- iii. continue to attempt to notify and communicate with the Contracting Authority regarding the occurrence and the remedial action.

6.9 The Operator to enter into contracts as principal

- 6.9.1 Except as provided for in Clause 6.10, all contracts, agreements and arrangements entered into by the Operator in performing the Services must be entered into by the Operator as principal and not as the agent of Contracting Authority.
- 6.9.2 The Operator must use its reasonable endeavours to ensure any agreement entered into by The Operator as principal will contain an express provision awarding Contracting Authority the benefit of any warranties as to performance or fitness for purpose contained in that agreement.

6.10 The Operator to enter into contracts as agent

- 6.10.1 For the purchase of spare parts for the Facility and operating equipment for use within the Facility, and other items as expressly agreed in writing with Contracting Authority, the Operator is permitted to enter into contracts as an Agent of the Contracting Authority. Services for which the Operator may act as an agent of Contracting Authority are to be expressly agreed by parties in writing.

6.11 Performance Security

- 6.11.1 The Operator shall, at its own cost and risk, provide and maintain an unconditional performance security to secure the Operator's obligations pursuant to this Agreement for the Term. The performance security shall be in form of bank guarantee set out in Appendix A or any other form acceptable to the Contracting Authority in the amount of [...] and issued by a bank which is licensed by the National Bank of Ethiopia or bank licensed in a foreign jurisdiction and acceptable to the Contracting Authority.
- 6.11.2 The Performance Security shall be discharged within 30 (thirty) calendar days of the Handover Date, upon due confirmation by the Contracting Authority, that the Facility and all items concerning the Facility have been fully returned to the Contracting Authority. In the event of any dispute by the Contracting Authority regarding the state of the Facility, or other assets concerning the facility, such dispute shall be resolved in accordance with clause 19.
- 6.11.3 The Contracting Authority shall be authorized to execute the performance security for the purpose of:
 - 6.11.3.1 Compensating any loss incurred by the Contracting Authority as a result of the Operator's breach of its obligations, warranties and representations pursuant to this Agreement;
 - 6.11.3.2 Compensating any reasonable costs incurred by the Contracting Authority to remedy any defects on the Facility occasioned by the direct action,

omission or negligence of the Operator, including latent defects discovered after the Handover date;

- 6.11.3.3 Compensating any loss or costs incurred by Contracting Authority in the event of termination of this Agreement for the Operator's fault;
- 6.11.3.4 Satisfying the payment of penalties to be paid by Operator in accordance with this Agreement; and
- 6.11.3.5 Satisfying any other payment obligation of the Operator to the Contracting Authority as set forth in this Agreement

6.11.4 The Contracting Authority shall notify the Operator in writing of any execution of the performance security and the reasons for such execution.

6.11.5 In the event of the execution of the performance security by the Contracting Authority, the Operator shall, within 15 (fifteen) days from the day of the execution of the performance security, restore the performance security to the amount that existed at the time when the performance security was executed and as required by this Agreement.

6.11.6 The execution of the performance security by the Contracting Authority shall be without prejudice to other legal remedies to which the Contracting Authority is entitled pursuant to this Agreement and under applicable law.

6.12 The Operator to rectify failure

If the Operator fails to perform the Services in accordance with this Agreement, without prejudice to the Contracting Authority's remedies under this Agreement, the Operator must make good its failure at its own cost to the extent that its failure was not as a result of an act, omission or breach of Contracting Authority or a matter not covered as a Force Majeure under clause 11.

7 Contracting Authority Responsibilities

7.1 Information

The Contracting Authority shall provide the Operator with all vendor manuals, spare parts lists, Facility data books and drawings regarding the Facility which the Contracting Authority possesses or is entitled to access. Subject to the standards of performance set forth in clause 3.2, The Operator shall be entitled to rely upon such information in performance of the Services. Contracting Authority shall also provide the Operator with copies of any documents that define the Facility operating requirements.

7.2 Overhaul of Major Equipment and Capital Improvements

The cost of all major equipment teardowns and overhauls and all capital improvements shall be the responsibility of the Contracting Authority. The Operator shall promptly notify the Contracting Authority in writing of any such required teardowns and overhauls of major equipment or capital improvements, which the Operator believes are necessary or advisable. This notification shall be accompanied with a proposed schedule for completing such repairs or improvements and documentation showing that such equipment has been well maintained by the Operator to the extent possible. If the Contracting Authority has consented in writing to reimburse The Operator for such costs, The Operator shall schedule, coordinate, contract and oversee the performance of such activities. (The Contracting Authority shall either approve or refuse to approve a request by the Operator under this clause 6.2 within thirty (30) days of receipt of the request, failing which the request shall be deemed approved) The Operator shall be responsible for monitoring and enforcing contract compliance by the contractor performing such work and shall use its Best Endeavours to enforce any warranties given by such contractor.

8 COMPENSATION

8.1 Fixed yearly rates per [type of service]

8.1.1 As compensation to the Operator for operating, maintaining and managing the Facility and for providing the Services, the Operator shall be paid by the users of the Services, including Donors and the Contracting Authority, the following yearly rates per [type of service] received at the Facility:

	[Year/Month/Day/Hour]	[Year/Month/Day/Hour]
Fixed rate		
Variable rate		

The above fixed rates per [service] have already been adjusted for inflation and consequently no further yearly increase to adjust the rates to take into account prevailing rates of inflation will be allowed.

8.1.2 Subject to clause 8.2, no additional operating fees or compensation shall be payable by the Contracting Authority to the Operator.

8.2 Renegotiation of Compensation

8.2.1 If for two consecutive quarters:

- (a) The Operator’s revenues derived under clause 8.1 fall below quarterly budgeted revenues to operate, maintain and manage the Facility and provide the Services; or
- (b) the prevailing official inflation rate in Ethiopia, exceeds significantly the inflation rate used to set the fixed rates under clause 8.1 so that the Operator incurs a loss;

Parties shall hold discussions to explore renegotiating in good faith an increase of the yearly fixed and variable rates per [service] set out in clause 8.1 for the remaining period of the Term.

8.3 The Operator to recoup windfall gains

Subject to the further particulars set out in clause 8.4, the Operator shall be entitled to retain for its own account [.....] per cent (..%) of any revenue derived from the sums received under clause 8.1 which are above the annual budgeted revenues to operate, maintain and manage the Facility and provide the Services. The remaining [.....] (...%) of any such revenue shall be for the account of Contracting Authority.

8.4 Windfall gains to be deposited into a designated bank account

8.4.1 The Operator shall deposit, within sixty (60) days after the end of each quarter in a Contract Year, [Contracting Authority’s portion] percent (...%)

of any windfall gains (as such gains have been defined in clause 8.3) for that quarter in a Contract Year into a designated account maintained by it with a bank in Ethiopia approved by the Contracting Authority (the “Designated Bank Account”).

- 8.4.2 At the end of the Term, the Operator shall transfer all the monies remaining in the Designated Bank Account, with any interest that has accrued thereon, to the Contracting Authority.

8.5 **Secret Profit**

The Operator shall not make any Secret Profit from its access to or management of the Facility. Where such secret profit is discovered by the Contracting Authority, the Contracting Authority reserves the right to immediately terminate this Agreement, recover all such Secret Profit, and apply such other legal remedies as are available.

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9 REPORTING

9.1 Procedures Manual

There shall be a manual prepared by the Operator, which shall include procedures for (i) reporting and correspondence pursuant to this Agreement, (ii) procurement and contracting, and (iii) accounting, bookkeeping and record-keeping ("**Procedures Manual**"). The Procedures Manual shall govern the administrative and management activities of the Operator for the Term of this Agreement, subject to such revision and amendment as agreed in writing by the Contracting Authority and the Operator. The Operator shall submit a draft of the Procedures Manual for the Contracting Authority's approval within one (1) month from the Effective Date. The Contracting Authority shall either approve or provide its comments within thirty (30) days of receipt of the draft Procedures Manual (failing which the request for the approval shall be deemed granted). The Operator shall submit the final copy of the Procedures Manual within thirty (30) days of receipt of the Contracting Authority's approval or comments.

9.2 Operating Data and Records

- 9.2.1 In addition to monitoring and recording operating data for safe operation and maintenance of the Facility in accordance with this Agreement, the Operator shall monitor and record all operating data and information that:
- (a) The Contracting Authority needs to report to any Person or entity under any agreement it has with that Person;
 - (b) The Contracting Authority needs to report to any Relevant Authority or other Person or entity under Applicable Laws; and
 - (c) The Contracting Authority requests in writing.
- 9.2.2 The Operator shall maintain records relating to the Facility and the performance of the Services during the Term and shall permit the Contracting Authority access to such records on the Contracting Authority's request. On termination of this Agreement, the Operator shall deliver all such records held by it to the Contracting Authority.
- 9.2.3 Each Party shall afford the other Party reasonable access to such records, where necessary, to enable that Party to discharge any legal obligation or duty.
- 9.2.4 The Operator will retain such other records not belonging or returned to the Contracting Authority, but associated with all matters, transactions, communications and payments pertaining to the Facility, for a minimum of [number of years/duration] years after the end of the Term.

9.3 Accounts and Reports

The Operator shall, during the term of this Agreement, furnish or cause to be furnished to the Contracting Authority the following reports concerning the Facility operations and the Services:

- (a) Monthly Reports: Within ten (10) Business Days following the last calendar day of each month, the Operator shall submit a progress report, in detail acceptable to the Contracting Authority, covering all activities during such month with respect to operations and maintenance (including information regarding the extent of services provided, hours of operation, safety statistics, compliance with Approvals, accidents and emergencies), capital improvements, labour relations, other significant matters, and Services. The monthly report shall include a comparison of such items to the corresponding values for the preceding month and for the corresponding portion of the previous Contract Year, a listing of any significant operating problems along with immediately planned remedial actions, and a brief summary of major activities planned for the next reporting period. It shall also include a full accounting of its performance against the applicable Key Performance Targets, and a reasonably sufficient explanation of any failure to meet such Key Performance Target.
- (b) Annual Reports: Within sixty (60) days after the end of each Contract Year, The Operator shall submit:
- (i) an annual report describing, in detail substantially similar to that contained in the monthly reports referred to in clause 9.3(a), the Facility activities, a full accounting of its performance against the applicable Key Performance Targets, and a reasonably sufficient explanation of any failure to meet such Key Performance Target, the annual environmental monitoring activities as agreed between The Operator and the Contracting Authority, and operating data for such Contract Year. The annual report shall present a comparison of such Facility and environmental monitoring activities and with those achieved during the preceding Contract Year (if applicable) and an explanation of any substantial deviations. Within thirty (30) days after submission of each annual report, The Operator shall meet with the Contracting Authority to review and discuss the report and any other aspects of Facility operations that the Contracting Authority may wish to discuss;
 - (ii) an audited set of accounts prepared in accordance with generally accepted international accounting principles and practices.

Within thirty (30) days of the receipt by the Contracting Authority of the Operator's Annual Report to the Contracting Authority, the Contracting Authority shall provide to the Operator its written evaluation of the Annual Report. Within fifteen (15) days of the submission of the evaluation by the Contracting Authority to the Operator, Parties shall meet and agree whether the Contracting Authority's evaluation is accepted by both Parties and whether the Operator has reached or exceeded the Key Performance Targets. Any disagreement between the Parties in respect of the evaluation shall be resolved pursuant to Article 19.

- (c) Incident Reports: Incident reports for any incident of unplanned maintenance and/or unplanned expenditure incurred by The Operator which occurs during the preceding month shall be provided within ten (10) Business Days following the last calendar day of each month; and
- (d) Litigation: Upon obtaining knowledge thereof, the Operator shall promptly notify the Contracting Authority in writing of: (i) any litigation, claims, disputes or actions, threatened or filed, concerning the Facility or the Services; (ii) any refusal or

threatened refusal to grant, renew or extend (or any action pending or threatened that might affect the granting, renewal or extension of) any Approval relating to the Facility or the Services; and (iii) any dispute with any Relevant Authority relating to the Facility or the Services.

- (e) **Other Information:** The Operator shall promptly submit to the Contracting Authority any material information concerning new or significant aspects of the Facility's activities and, upon the Contracting Authority's request, shall promptly submit any other information concerning the Facility or the Services.

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10 LIMITATIONS ON AUTHORITY

10.1 General Limitations

Notwithstanding any provision in this Agreement to the contrary, except upon the prior express approval of the Contracting Authority in writing, the Operator and any employee, representative, contractor or other agent of the Operator are prohibited from taking the specified actions with respect to the matters indicated below.

- 10.1.1 Disposition of Assets: Sell, lease, pledge, mortgage, convey, or make any license, exchange or other transfer or disposition of any or all of the Facility, or of any other property or assets of the Contracting Authority;
- 10.1.2 Contract: Make, enter into, execute, amend, modify or supplement any contract or agreement (i) on behalf of, in the name of, or purporting to bind Contracting Authority or (ii) that prohibits or otherwise restricts the Operator's right to assign such contract or agreement to Contracting Authority at any time;
- 10.1.3 Lawsuits and Settlements: Settle, compromise, assign, pledge, transfer, release or consent to the compromise, assignment, pledge, transfer or release of, any claim, suit, debt, demand or judgment against or due by, the Contracting Authority, or submit any such claim, dispute or controversy to arbitration or judicial process, or stipulate in respect thereof to a judgment, or consent to do the same;
- 10.1.4 Liens: Create, incur or assume any lien upon the Facility; and
- 10.1.5 Transactions on Behalf of Others: Engage in any other transaction on behalf of Contracting Authority or any other Person or entity not expressly authorized by this Agreement or that violates Applicable Laws or this Agreement.

10.2 Execution of Documents

Any agreement, contract, notice or other document that is expressly permitted hereunder (or under written approval of Contracting Authority) to be executed by the Operator shall be executed by the authorized representative of the Operator or, subject to prior Notice to Contracting Authority, by such other representative of the Operator who is authorized, and empowered by the Operator to execute such documents.

11 FORCE MAJEURE

11.1 Effect of a Force Majeure Event

- 11.1.1 Subject to clause 11.2, a Party claiming Force Majeure (“Affected Party”) shall be relieved from the duty to perform its obligations under this Agreement (other than an obligation to make a payment when due and payable) and any liability for failure to perform such obligations, in whole or in part, under this Agreement to the extent such non-performance is caused or prolonged by the occurrence of a Force Majeure Event.
- 11.1.2 Provided the Affected Party has complied with Clause 11.2, the Term shall be extended day-for-day for each day that a Party is hindered, delayed or prevented from performing its obligations under this Agreement as a result of a Force Majeure Event occurring and continuing.

11.2 Notification Obligations

- 11.2.1 The Affected Party shall give notice to the other Party of any event constituting a Force Majeure Event as soon as reasonably practicable after the Affected Party first learns of the Force Majeure Event. Such notice shall include particulars of the event constituting a Force Majeure Event, of its effects on the Party claiming relief and the remedial measures proposed, including estimated time to restore the situation, if appropriate. The Party affected by a Force Majeure Event shall give the other Party regular reports on the progress of those remedial measures and such other information as the other Party may reasonably request.
- 11.2.2 The affected Party shall give Notice to the other Party of (i) the cessation of the relevant event constituting a Force Majeure Event, and (ii) the cessation of the effects of such event constituting a Force Majeure Event, as soon as reasonably practicable after becoming aware of each of (i) and (ii) above.

11.3 Responsibilities of the Parties

The Affected Party shall, as soon as practicable after the commencement of the Force Majeure Event, use its Best Endeavours to expeditiously remedy and mitigate the effects of Force Majeure Event and to minimize the interruption of performance of its affected obligations.

12 TERMINATION

12.1 Immediate Termination by Contracting Authority

12.1.1 Contracting Authority may terminate this Agreement immediately upon:

- a) non-fulfilment or non-waiver of the Conditions Precedent by the Long Stop Date;
- b) Bankruptcy of The Operator; or
- c) upon the occurrence of a Force Majeure Event that is not remedied within one hundred and twenty (120) days of its initial occurrence.

12.2 Termination with Notice by the Contracting Authority

12.2.1 The Contracting Authority may terminate this Agreement upon ten (10) days prior Notice to The Operator if:

- a) The Operator violates, or consents to a violation of, any Applicable Laws, where the violation has or may have a material adverse effect on the maintenance or operation of the Facility or Contracting Authority's interests; or
- b) The Operator is in material breach or default in respect of the performance of any of its obligations, representations or warranties under this Agreement, which breach or default has continued unremedied for thirty (30) days or more after delivery of written notice of such breach or default by the Contracting Authority to the Operator.

12.3 Other Termination upon Notice by Contracting Authority

12.3.1 The Contracting Authority may terminate this Agreement with sixty (60) days prior Notice to the Operator, upon:

- a) a sale or transfer by Contracting Authority of its shares or rights in the Facility or a sale or transfer of all or substantially all of the assets; or
- b) a determination by the Contracting Authority that, for any reason, it no longer intends to continue operation of the Facility.

12.4 Termination by the Operator

Subject to clause 12.5, The Operator may terminate this Agreement upon fifteen (15) days prior Notice to Contracting Authority:

- a) In the event of the Contracting Authority's failure to make payments under this Agreement; or
- b) Upon the occurrence of a Force Majeure Event that is not remedied within one hundred and twenty (120) days of its initial occurrence.
- c) The Contracting Authority is in material breach or default in respect of the performance of any of its obligations, representations or warranties under

this Agreement, which breach or default has continued unremedied for sixty (60) days or more after delivery of written notice of such breach or default by the Operator to the Contracting Authority.

12.5 Facility Handover upon Termination

- 12.5.1 Upon the termination date, the Operator shall hand over or deliver to the Contracting Authority or the Contracting Authority's appointee, all funds (if any) held by The Operator as agent or trustee for Contracting Authority in relation to its role as the Operator, together with all books, records and inventories and all property (including spare parts and consumables) of the Contracting Authority relating to the operation and maintenance of the Facility. Pending such transfer, the Operator shall hold its rights and interests thereunder in trust for and to the order of the Contracting Authority.
- 12.5.2 Where this Agreement is terminated other than pursuant to the Operator's breach of its terms, the Operator shall, if required by Contracting Authority, continue to provide the Services for a period specified by Contracting Authority whilst a successor to the Operator is installed. During such period, The Operator shall continue to act in all respects in accordance with this Agreement and shall be paid operating fee for such Services.
- 12.5.3 Nothing in this clause 12 shall absolve the Operator from providing services for which it has already been paid, under this Agreement. In the event of any outstanding Services upon termination, the Contracting Authority is at liberty to elect that the Operator completes said services, at no cost to the Contracting Authority, or the Operator returns the payment for such services to the Contracting Authority.

12.6 Facility Condition at End of Term

- 12.6.1 Upon expiration or termination of this Agreement, the Operator shall remove its personnel from the Facility. The Operator shall leave the Facility in (at the minimum) as good the condition as it was on the Effective Date, normal wear and tear excepted. For the avoidance of doubt the Operator shall be required to repaint both the inside and outside of the Facility. A joint inspection by the Parties shall be carried out to confirm same.
- 12.6.2 All special tools, improvements, inventory of supplies, spare parts, safety equipment, Operating Manuals and Procedures Manual, operating logs, records and documents maintained by The Operator pursuant to clause 9.2 or created in the course of its performance of Services will be handed over to the Contracting Authority and will become or remain the property of the Contracting Authority at no additional cost.
- 12.6.3 The Contracting Authority shall also have the right, at its sole discretion, to assume and become liable for any contracts or obligations that the Operator may have undertaken with third parties in connection with the Services. The Operator shall use Best Endeavors to effect the assumption

of the contracts. The Operator agrees to indemnify and hold harmless the Contracting Authority for all liabilities arising out of events and obligations arising from the assumption of contract rights and obligations, after the date of such assumption.

- 12.6.4 The Operator shall use its Best Endeavours to cooperate with the Contracting Authority (or a succeeding operator) to assure that the operation, maintenance and management of the Facility is not disrupted.

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13 INSURANCE

13.1 Coverage

The Operator shall maintain during the term of this Agreement the insurance described below with insurance companies acceptable to the Contracting Authority and with limits and coverage provisions not less than the limits and coverage provisions set forth below:

- a) General Liability Insurance: Liability insurance on an occurrence basis against claims for personal injury (including bodily injury and death) and property damage, up to a total amount of [insert limit].
- b) Property Insurance: Property insurance covering the loss or damages to the Facility and the pharmaceutical commodities stored in the Facility up to a total amount of [insert limit].
- c) Automobile Liability Insurance: Automobile liability insurance against claims for personal injury (including bodily injury and death) or property damage arising out of the use of all owned, leased, non-owned and hired motor vehicles, including loading and unloading, and containing appropriate no-fault insurance provisions where applicable, up to a limit of [insert limit].
- d) Workers' Compensation Insurance: Workers' compensation insurance as required by the Applicable Laws, including employer's liability insurance for all employees of the Operator.
- e) Excess Liability Insurance: Excess liability insurance on an occurrence basis covering claims in excess of the underlying insurance described in the foregoing sub-clauses a), c) and d).
- f) The amounts of insurance required in the foregoing sub-clauses a), c), d) and e) may be satisfied by the Operator by purchasing coverage in the amounts specified or by any combination thereof, so long as the total amount of insurance meets the requirements specified. Upon mutual agreement of the Contracting Authority, the Operator may provide equivalent self-insurance in lieu of the requirements set forth in this clause.
- g) All policies of liability insurance to be maintained by The Operator shall provide for waivers of subrogation in favour of Contracting Authority. These policies shall include the following:
 - (i) a severability of interests or cross liability clause;
 - (ii) insurance shall be primary and not excess to or contributing with any insurance or self-insurance maintained by Contracting Authority; and
 - (iii) Contracting Authority named as an additional beneficiary.

All policies of insurance required to be maintained pursuant to this clause 0 shall include a provision that bars any cancellation or reduction in coverage in a manner that affects the interests of the Contracting Authority, without sixty (60) days prior Notice to Contracting Authority, except for termination for non-payment of premium which shall require ten (10) days prior Notice to Contracting Authority. Contracting Authority has the option in placing the coverages listed above and naming the Operator as an additional beneficiary.

13.2 Certificates

On or before Effective Date the Operator shall furnish certificates of insurance to the Contracting Authority evidencing the insurance required pursuant to this Agreement. Each Party shall cooperate with the other to ensure collection from insurers for any loss under any such policy.

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14 CHANGE IN LAW

If after the Effective Date, there is a Change in Law which affects either Party's obligations or rights under this Agreement, then the affected Party shall give Notice to the other Party upon its discovery of such Change in Law and the affected Party shall be entitled to submit a request for a variation of this Agreement in order to provide for the impact that such Change in Law may have on its obligations in terms of this Agreement or its ability to fulfil such obligations which is brought about by the Change in Law.

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15 INDEMNIFICATION AND LIABILITIES

15.1 Indemnification

- 15.1.1 Indemnification by The Operator: The Operator shall indemnify, defend and hold harmless the Contracting Authority, its officers, directors, employees, agents, Affiliates and representatives (the "**Contracting Authority Indemnified Parties**"), from and against any and all claims (in whatever form and to the fullest extent permitted by law) arising out of or in any way connected with, any negligence, fraud or wilful misconduct of the Operator or anyone acting on the Operator's behalf or under its instructions, in connection with this Agreement and the Operator's obligations thereunder.
- 15.1.2 Indemnification by Contracting Authority: The Contracting Authority shall indemnify, defend and hold harmless the Operator, its officers, directors, employees, agents, Affiliates and representatives (the "**The Operator Indemnified Parties**") from and against any and all claims (in whatever form and to the fullest extent permitted by law) arising out of or in any way connected with, but only to the extent of, any gross negligence, fraud or wilful misconduct of the Contracting Authority or anyone acting on Contracting Authority's behalf or under its instructions (other than the Operator and its suppliers, subcontractors, vendors, and their subcontractors and vendors and any employee or agent of the foregoing), in connection with this Agreement and the Contracting Authority's obligations thereunder.

15.2 Environmental Liability

- 15.2.1 The Operator Liability: The Operator shall not be responsible for claims directly or indirectly related to hazardous materials present at the Facility before the Effective Date. The Contracting Authority shall defend, indemnify and hold the Operator harmless against such claims, except to the extent such claims arise from the Operator's gross negligence or intentional acts.
- 15.2.2 Contracting Authority Liability: Contracting Authority shall not be responsible for claims directly related to hazardous materials at the Facility arising out of the gross negligence or intentional acts of the Operator. This provision of this Agreement shall not be construed to require the Operator to take corrective action with respect to any hazardous materials at the Facility before the Effective Date.
- 15.2.3 Governmental Actions: If action is required at the Facility to comply with any applicable environmental laws during the term of this Agreement, Contracting Authority shall be responsible for the costs of compliance. Costs for such compliance shall only be incurred by The Operator only with Contracting Authority's prior written approval, unless a Relevant Authority requires The Operator to incur such costs and expenses prior to obtaining such written approval. Contracting Authority shall either approve or refuse to approve a request by the Operator under this clause 15.2.3 within thirty (30) days of receipt of the request, failing which the request shall be deemed approved.

16 LIMITATION OF LIABILITY

16.1 Limitations of Liability

- 16.1.1 No Party shall be entitled to be indemnified more than once under this Agreement for the same Loss.
- 16.1.2 No amount shall be payable by a Party pursuant to this clause in respect of consequential damages.
- 16.1.3 The amount of any Loss to be indemnified pursuant to this clause shall be reduced by (a) the value of any benefit realized, directly or indirectly, by the indemnified Party as a result of such Loss; and (b) the amount of any insurance proceeds received by the indemnified Party in respect of such Loss. If such proceeds are received by the indemnified Party following an indemnification payment in respect of the relevant Loss, the indemnified Party shall pay to the indemnifying Party an amount equal to the lesser of (i) the amount of such proceeds and (ii) the amount of the indemnification payment made by the indemnifying Party.
- 16.1.4 Survival: The Parties further agree that the liabilities, waivers and disclaimers of liability, indemnities, releases from liability, and limitations on liability expressed in this Agreement shall survive termination or expiration of this Agreement.

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17 CONFIDENTIALITY

17.1 The Operator

The Operator and its employees, contractors, consultants and agents shall hold in confidence any information supplied to the Operator by the Contracting Authority or others acting on its behalf or acquired by the Operator in relation to Facility during the performance of Services. The Operator further agrees to require its contractors, consultants and agents to enter into appropriate nondisclosure agreements relative to such information, prior to the receipt thereof.

17.2 Contracting Authority

The Contracting Authority and its employees, contractors, consultants and agents shall hold in confidence any information marked as confidential supplied to the Contracting Authority by the Operator or others acting on its behalf. Contracting Authority further agrees to require its contractors, consultants and agents to enter into such appropriate nondisclosure agreements relative to such information, prior to their receipt thereof.

17.3 Exception

The provisions of this clause 17.3 shall not apply to information that was in the public domain, was already in the receiving Party's possession, or was received lawfully and free of any obligation to treat it as confidential.

17.4 Required Disclosure

If a receiving party or any of its respective representatives is required by Applicable Law to disclose any of the information that is otherwise required to remain confidential pursuant to this clause 17, the receiving Party will notify the other Party promptly in writing.

18 TITLE, DOCUMENTS AND DATA

18.1 Documents

All materials and documents prepared or developed by the Operator, its employees, representatives or contractors in connection with the Facility or performance of the Services, including all manuals, data, maintenance records, drawings, plans, specifications, reports and accounts, shall become the Contracting Authority's property when prepared, and the Operator, its agents, employees, representatives, or contractors shall not use such materials and documents for any purpose other than performance of the Services, without the Contracting Authority's prior written approval. The Contracting Authority shall either approve or refuse to approve a request by the Operator for a waiver under this clause 17.1 within thirty (30) days of receipt of the request, failing which the request for the waiver shall be deemed approved. All such materials and documents, together with any materials and documents furnished to the Operator, its agents, employees, representatives, or contractors by Contracting Authority, shall be delivered to the Contracting Authority upon expiration or termination of this Agreement and before final payment is made to the Operator.

18.2 Review by Contracting Authority

All materials and documents referred to in clause 18.1 hereof shall be available for review by the Contracting Authority (including its agents or advisors) at all reasonable times during development and promptly upon completion. All such materials and documents required to be submitted for approval from Contracting Authority shall be prepared and processed in accordance with the requirements and specifications set forth in the Procedures Manual. However, the Contracting Authority's approval of materials and documents submitted by the Operator shall not relieve the Operator of its responsibility regarding the correctness thereof or of its obligation to meet all requirements of this Agreement.

18.3 Proprietary Information

Where materials or documents prepared or developed by the Operator or its agents, employees, representatives or contractors contain proprietary information, systems, techniques, or know-how acquired from third parties by the Operator or others acting on its behalf, such third parties shall retain all rights to use or dispose of such information, provided, however, that Contracting Authority shall have the right to the same, to the extent necessary for operation or maintenance of the Facility.

19 GOVERNING LAW AND DISPUTE RESOLUTION

18.1 Governing Law

This Agreement shall be governed by and interpreted and construed in accordance with the Laws of Ethiopia.

18.2 Dispute Notice

In the event that there arises a Dispute, the Party wishing to declare a Dispute to the other Parties shall do so by a written notice stating the issue(s) in dispute (a "Dispute Notice").

18.3 Good Faith Attempt at Settlement by Negotiations

For a period of not less than thirty (30) days from the service of a Dispute Notice, the parties to the Dispute shall attempt in good faith to settle the Dispute by negotiations among the designated or authorised representatives of each Party. Any agreement reached between the parties to the Dispute in accordance with this Article 18.3 shall be confirmed by entry by the parties into a binding settlement agreement. In the event the parties to the Dispute are unable to reach an agreement within thirty (30) days of service of the Dispute Notice (or within such longer period of time as the parties to such Dispute may agree in writing), then any party to the Dispute may refer the Dispute to arbitration in accordance with Article 18.4.

18.4 Arbitration

18.4.1 Any Dispute which is not resolved amicably by conciliation, as provided in Clause 18.3, shall be finally decided by reference to arbitration by an arbitral tribunal constituted in accordance with Clause 18.4.2. Such arbitration shall be held in accordance with the UNCITRAL Arbitration Rules (the "**Rules**"), or such other rules as may be mutually agreed by the Parties.

- 18.4.2 There shall be a Board of three arbitrators, of whom each Party shall select one, and the third arbitrator shall be appointed by the two arbitrators so selected and in the event of disagreement between the two arbitrators, the appointment shall be made in accordance with the Rules.
- 18.4.3 The arbitrators shall make a reasoned award (the “**Award**”). Any Award made in any arbitration held pursuant to this Article 18 shall be final and binding on the Parties as from the date it is made, and the Concessionaire and the Authority agree and undertake to carry out such Award without delay. The Parties undertake as a general principle to keep confidential all awards and orders in the arbitration, as well as all materials created for the purpose of the arbitration and documents produced by another Party in the arbitration not otherwise in the public domain, save and to the extent that a disclosure may be required of a Party by legal duty, to protect or pursue a legal right or to enforce or challenge an award in bona fide legal proceedings before a state court or other judicial authority.
- 18.4.4 In the event that the Party against whom the Award has been granted challenges the Award for any reason in a court of law, it shall make an interim payment to the other Party for an amount equal to 75% (seventy five per cent) of the Award, pending final settlement of the Dispute. The aforesaid amount shall be paid forthwith upon furnishing an irrevocable Bank Guarantee for a sum equal to the aforesaid amount. Upon final settlement of the Dispute, the aforesaid interim payment shall be adjusted and any balance amount due to be paid or returned, as the case may be, shall be paid or returned with interest calculated at the rate of 10% (ten per cent) per annum from the date of interim payment to the date of final settlement of such balance.
- 18.4.5 The legal place (or seat) of the arbitration shall be Addis Ababa (Ethiopia), or any other place agreed by the Parties. The language to be used in the arbitral proceedings shall be English.

18.5 Performance during Dispute Resolution

The Parties shall continue to perform all of their obligations under this Agreement and shall benefit from all their rights while negotiating under Article 18.3 or settling their Dispute under Article 18.4.

18.6 Waiver of Sovereign Immunity

To the extent that the Grantor may claim for itself or its assets or revenues immunity from suit, execution, attachment or other legal process, the Grantor agrees not to claim and hereby irrevocably waives such immunity.

20 MISCELLANEOUS PROVISIONS

20.1 Assignment

Neither Contracting Authority nor The Operator may assign their rights or obligations under this Agreement without the prior written approval of other Party hereto. The relevant Party shall either approve or refuse to approve a request by the other Party under this clause 20.1 within thirty (30) days of receipt of the request, failing which the request shall be deemed approved.

Provided that where the request to assign is approved, the Parties shall not be relieved of the assigned right or obligation in this Agreement and shall be held liable for the acts of the assignees.

20.2 Access to Facility

20.2.1 On or before the Effective Date, the Contracting Authority shall appoint and notify the Operator of the name and contact details of the Contracting Authority's Designated Representative. The Contracting Authority may from time to time appoint some other person as Contracting Authority's Designated Representative in place of the person previously so appointed and must give prior Notice to the Operator. The Notice will include the name of such other person, their contact details and the date on which such person will assume the role of the Contracting Authority's Designated Representative.

20.2.2 The Contracting Authority, through its Designated Representative(s) shall have access at all times to the Facility and any documents, materials and records and accounts relating to Facility operations for purposes of inspection and review. Upon the request of the Designated Representative, the Operator shall make available to the Designated Representative and Contracting Authority such information.

20.2.3 During any such inspection or review of the Facility, the Designated Representative(s) shall abide as reasonably feasible with the Operator's safety and security procedures and conduct the inspection and review in a manner which causes minimal interference with the Operator's activities. The Operator agrees to cooperate fully with the Designated Representative(s) in providing requested information and documentation pertaining to the Facility or its Services.

20.2.4 The Designated Representatives for the Contracting Authority is provided below:

[.....]

20.3 Entire Agreement

This Agreement contains the entire agreement between the Parties and supersedes all prior agreements, whether oral or written, between the Parties with respect to the subject matter of this Agreement. Neither Party will be bound by or be deemed to have made any representations, warranties, commitments or other undertakings with respect to the subject matter of this Agreement that are not contained in this Agreement.

20.4 Amendments

No amendments or modifications of this Agreement shall be valid unless evidenced in writing and signed by duly authorized representatives of both Parties.

20.5 Survival

Notwithstanding any provisions herein to the contrary, the obligations set forth in clauses 6.11, 12, 15, 15, 16, and 19 shall survive in full force despite the expiration or termination of this Agreement.

20.6 No Waiver

It is understood and agreed that any delay, waiver or omission by any Party with respect to enforcement of required performance by the other Party under this Agreement shall not be construed to be a waiver by the Party of any subsequent breach or default of the same or other required performance on the part of other Party.

20.7 Notices

All notices and other communications (collectively "**Notices**") required or permitted under this Agreement shall be in writing and shall be given to each Party at its address or fax number set forth in this clause 20.7 or at such other address or fax number as hereafter specified as provided in this clause 20.7. All Notices shall be (i) delivered personally or (ii) sent by fax, electronic mail, telegraph, registered or certified mail (return receipt requested and postage prepaid), or (iii) sent by a nationally recognized overnight courier service. Notices shall be deemed to be given; (i) when transmitted if sent by fax, electronic mail, or telegraph (provided the transmittal is confirmed), or (ii) upon receipt by the intended recipient if given by any other means. Notices shall be sent to the following addresses:

To The Operator:
[Name and Address]
ATTN:
Tel:
E-Mail:

To Contracting Authority:
[Contracting Authority and Address]
ATTN:
Tel:
E-Mail:

20.8 Delayed Payment Interest

Any amount owed to either Party under this Agreement by the other Party which remains unpaid more than thirty days (30) days after the date such amount is due and payable shall begin to accrue interest at the Reference Rate commencing on the thirty-first (31) day after such due date.

20.9 Fines and Penalties

If during the term of this Agreement any Relevant Authority or agency assesses any fines or penalties against the Operator or Contracting Authority arising from the Operator's failure to operate and maintain the Facility in accordance with Applicable Laws without Contracting Authority's prior written consent, such fines and penalties shall, subject to the limitations set forth in Clause 16, be the sole responsibility of the Operator.

20.10 Representations and Warranties

Each Party represents and warrants to the other Party that:

- a) such Party has the full power and authority to execute, deliver and perform this Agreement and to carry out the transactions contemplated hereby;
- b) to the best of such Party's knowledge, the execution, delivery and performance by such Party of this Agreement, does not and will not materially conflict with any legal, contractual, or organizational requirement of such Party; and
- c) there are no pending or threatened legal, administrative, or other proceedings that if adversely determined, could reasonably be expected to have a material adverse effect on such Party's ability to perform its obligations under this Agreement.

20.11 Counterparts

The Parties may execute this Agreement in counterparts, which shall, in the aggregate, when signed by both Parties constitute one instrument. Thereafter, each counterpart shall be deemed an original instrument.

20.12 Partial Invalidity

If any term, provision, covenant or condition of this Agreement is held by a court of competent jurisdiction and or an Arbitration Tribunal to be invalid, void or unenforceable, the rest of this Agreement shall remain in full force and effect and in no way be affected, impaired or invalidated.

20.13 Captions

Titles or captions of clauses contained in this Agreement are inserted as a matter of convenience and for reference, and do not affect the scope or meaning of this Agreement or the intent of any provision hereof.

20.14 Currency

Except where otherwise expressly provided, all amounts of money in this Agreement are denominated in the currency of the Ethiopian Birr.

20.15 Vendor's Warranties

For the Contracting Authority's benefit, The Operator shall obtain from sellers of equipment, material, or services (other than the Services), warranties against defects in materials and workmanship to the extent such warranties are reasonably obtainable, and, to the extent of any such warranties actually obtained, the Contracting Authority releases

the Operator from any further liability arising in respect of such equipment, material or services (other than the Services) to the extent such liability is covered by any such warranty. The Operator itself shall not be liable for any such warranties or for any defects or damage caused by such equipment, material or services (other than the Services). Upon the Contracting Authority's request, the Operator agrees to take such steps as are necessary and use its Best Endeavours to enforce said warranties. Each such warranty shall be enforceable by the Contracting Authority for the Contracting Authority's benefit or assignable by the Operator to Contracting Authority without any further action or consent by or on the part of any third party. Unless otherwise requested, the Operator shall administer such warranties and immediately notify the Contracting Authority of any defects discovered or suspected that may be covered by such warranties. When requested, the Operator shall assign any such warranty to the Contracting Authority and assist the Contracting Authority with the administration and enforcement of such warranty, or, if such warranty is not assignable to the Contracting Authority, assist the Contracting Authority with the administration and enforcement of such warranty.

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IN WITNESS WHEREOF, the Parties to this Agreement have respectively executed this Agreement the day and year first above written.

SIGNED, SEALED AND DELIVERED BY:

.....

For and on behalf of the
[Contracting Authority]
Ethiopia

[Name]

IN THE PRESENCE OF:

Signature : _____

Name:
DESIGNATION
ADDRESS:

THE COMMON SEAL OF Messrs [Name of Company] Limited
is hereunder affixed in the presence of

DIRECTOR

SECRETARY

Schedule 1 - Description of Facility

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Schedule 2 - **Description of Services**

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Schedule 3 - Key Performance Targets

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Schedule 4 - Operator's Key Personnel

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Schedule 5 - **Training for Contracting Authority's Personnel**

The Operator will provide the following training to designated Contracting Authority's personnel whose overall object is to support Contracting Authority's ability to develop the required capacity to operate facilities such as the Facility in accordance with internationally accepted standards, and to develop the capacity to eventually take over the operation, maintenance and management of the Facility themselves. The Operator will be required to provide avenues for integrating training of the personnel into day-to-day activities. Training would cover:

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Schedule 6 - Letter of Award

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Schedule 7 - Letter of Acceptance

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Appendix 1 – Form of Performance Security

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Part 7: Executive Memo for Approval of the Feasibility Study & Tender Documents



MEMORANDUM TO THE PUBLIC PRIVATE PARTNERSHIP BOARD

(PPP BOARD)

BY THE

[CONTRACTING AUTHORITY]

AND

[ADVISOR(S)]

ON THE

[PROJECT NAME/NAME OF TRANSACTION]

FOR 'IN-PRINCIPLE' APPROVAL

OF

FEASIBILITY STUDY REPORT

[Date]

MEMORANDUM FOR PPP BOARD APPROVAL

[The Memo distills the main findings of the Feasibility Study, for the review and approval of the Public Private Partnership Board.]

S/N	Item	Description	Comments from the PPP Board
1	General		
1.1	Name of the Project.		
1.2	Solicited or Unsolicited Proposal.		
1.3	Type of PPP Model (i.e. BOT, BOOT, etc.).		
1.4	Location (Region, city).		
1.5	Contracting authority.		
	Originating Public Entity (if different from Contracting Authority).		
1.6	Transaction Advisor (as applicable).		
1.7	Risks transferred to Private Party (e.g. Financing, construction, maintenance and/or operation of the project).		
1.8	Risks retained by Contracting Authority/Public Entity.		
2	The Project		
2.1	Scope of Project.		
2.2	Rationale for the Project: Describe the objectives and what the project is expected to accomplish.		
2.3	Project Outcomes: List out the anticipated quantifiable outcomes from the project and indicate the Key Performance Indicators associated with evaluating these outcomes.		
2.4	Possible alternatives, if any, for project delivery.		
2.5	Estimated total project cost with break-down under major heads of expenditure. Include the basis of cost estimation.		
2.6	Phasing of investment.		
3	Project Due Diligence		
3.1	Technical feasibility. A summary of the technical solution for the delivery of the		

	project to achieve the specified outcomes.		
3.2	Demand Assessment. A summary of the current and forecast demand for the Public Service Activity to be delivered by the project.		
3.3	Legal and regulatory due diligence. A summary of the legal and regulatory framework to deliver the project as a PPP and as well to monitor the project over the PPP Term.		
3.4	Economic assessment (EIRR, ENPV). A summary of the economic net benefit of the project.		
3.5	Socio-environmental due diligence. A summary of the socio-environmental impact of the proposed project, along with a description of the current baseline conditions.		
3.6	Stakeholder consultations. A summary of stakeholder feedback from the proposed project.		
3.7	Project risk allocation. A list of all identified project risks and the proposed allocation and mitigation measures for each of the anticipated parties to the PPP.		
3.8	Financial feasibility (NPV & FIRR) and Value for Money assessment. A summary of the financial feasibility, along with the key assumptions and inputs informing the results.		
4	Implementation Arrangements		
4.1	Detailed of proposed economic support (i.e. grants, subsidies).		
4.2	Affordability, fiscal risk, contingent liability issues.		
	Description of Contract Management Framework.		
4.3	Capacity assessment and ability of Contracting Authority to procure, implement,		

	manage, enforce, monitor and report on the PPP.		
4.4	Project Implementation Schedule.		
4.5	Financing Arrangements.		
5	Procurement Route		
5.1	Justification and description of the chosen procurement structure.		
6	Other		
6.1	Remarks, if any.		
7	Annexes		
7.1	Site/Layout/Preliminary Design, as relevant.		
7.2	Risk Matrix.		
7.3	Full Feasibility Report.		
7.4	Other supporting annexes, as relevant.		

CONCLUSIONS AND RECOMMENDATIONS OF THE PPP BOARD:

For and on behalf of the **PPP Board**

NAME & TITLE

Appendix E Phase 4 Tender and Award

- 1. Part 1: Sample Confidentiality Agreement**
- 2. Part 2: Template RFP Evaluation Report**
- 3. Part 3: Notification Letter for Preferred Bidder**
- 4. Part 4: Fiscal Affordability Forms at Award / Commercial Close / Signature Approval Stage**

Part 1: Sample Confidentiality Agreement

CONFIDENTIALITY AGREEMENT

THIS CONFIDENTIALITY AGREEMENT (“this Agreement”) is made this ____ day of *[Date]*,

BETWEEN:

The *[Public Private Partnership Directorate General (“PPPDG”)]*, with offices located at *[Address]*;

AND

[NAME OF RECIPIENT] _____ of
[INSERT ADDRESS OF RECIPIENT] _____ (“the Recipient”).

WHEREAS, the *[PPPDG]* has solicited a Request for Expression of Interest (REOI) for the *[Transaction Name]* under a *[PPP Agreement model]* and has received EOI submissions from several interested parties;

WHEREAS, *[the PPPDG]* has invited the Recipient, and the Recipient has agreed to participate in the evaluation of the proposals received by *[the PPPDG]* either as an evaluator or as an observer;

WHEREAS, in the course of performing the evaluation of EOI submissions the Recipient may have access to valuable and very confidential information;

AND WHEREAS, *[the PPPDG]* is desirous of protecting itself from the consequences of unauthorized or improper disclosure of the aforementioned information;

NOW THEREFORE, in consideration of the premises and covenants herein contained, and other good and valuable consideration, the sufficiency of which is hereby acknowledged, and intending to be legally bound, the parties hereby agree as follows:

1. In consideration of being permitted to participate in the evaluation of the EOI submissions received from interested operators for *[Transaction Name]* under a *[PPP Agreement model]* in Ethiopia (“the EOI Submissions”) – as well as the evaluation of the Proposals to be received in the subsequent stage (“Proposals”) – the Recipient agrees to, at all times, hold in the strictest confidence any Confidential Information disclosed to him/her or received by him/her in the course of the evaluation of the EOI Submissions and Proposals. Recipients shall not, directly or indirectly, use, disseminate or disclose any Confidential Information to any unauthorized person or source, being any persons other than *[the PPPDG]* and the transaction advisor *[Name of Transaction Advisor]* and persons working for them on the EOI Submissions and Proposals. Recipient acquires no interest or right in any Confidential Information, which shall remain the exclusive property of *[the PPPDG]*. Recipient shall not remove any tangible information, document, or other materials made available to him or her without the *[the PPPDG]*’s written permission. Recipient shall not, photocopy, photograph, duplicate or otherwise record any information to which he/she may have access during the course of

evaluation of the EOI Submissions and Proposals as he/she ceases to participate in the evaluation of the EOI Submissions and Proposals return immediately any and all records, notes, and other written, printed or other tangible materials in its possession pertaining to the Confidential Information.

2. Recipient agrees not to disclose to any Unauthorized Person, its participation in the evaluation of the EOI Submissions and Proposals.
3. For purposes of this Agreement, the words "Confidential Information" shall mean all EOI Submissions and Proposals, evaluation criteria, evaluation results and outcome, data, materials, products, technology, computer programs, specifications, manuals, operating plans, software, marketing plans, financial information, and other information disclosed or submitted, orally, in writing, or by any other media, to Recipient, in connection with the evaluation of the EOI Submissions and Proposals, "Confidential Information" also includes information which, by the nature of the circumstances surrounding the disclosure, ought in good faith to be treated as confidential. For the purposes of this Agreement, "Confidential Information" does not include information that:
 - (i) is lawfully in the public domain at the time it is transmitted;
 - (ii) is disclosed by Recipient with the prior written approval of **[the PPPDG]**;
or
 - (iii) is required to be disclosed by law or by a court of competent jurisdiction.
4. Recipient understands and acknowledges that any disclosure or misappropriation of any Confidential Information in breach of this Agreement may cause **[the PPPDG]** irreparable harm, the amount of which may be difficult to ascertain, and therefore agrees that **[the PPPDG]** shall have the right to apply to a court of competent jurisdiction for relief and remedy as **[the PPPDG]** shall deem appropriate.
5. This Agreement shall be governed by and construed in accordance with the laws of Ethiopia. Recipient agrees that in the event of any breach or threatened breach by Recipient, **[the PPPDG]** may obtain, in addition to any other legal remedies which may be available, such equitable relief as may be necessary to protect **[the PPPDG]** against any such breach or threatened breach.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year first above written.

For and on behalf of [the PPPDG]

PPP Guidelines - Appendix

By: _____

Signature

Print Name

Title

By: **Recipient**

By: _____

Signature

Print Name

Part 2: Template RFP Evaluation Report

Strictly confidential

[Project title]

[RfQ/RfP – stage in process]

Evaluation Report



[Date]

Table of contents

[Adjust TOC for RfQ/RfP detail – illustration based on RfP]

SECTION 1	Executive summary
SECTION 2	Evaluation Criteria and Approach
SECTION 3	Membership of Evaluation Committee
SECTION 4	Summary of the Evaluation
SECTION 4A	Completeness and substantial responsiveness
SECTION 4B	Technical
SECTION 4C	Financial
SECTION 5	Detailed Evaluations <i>[Adjust for no. of bidders][With RfQ list]</i>
SECTION 5A	Bidder #1
SECTION 5B	Bidder #2
SECTION 5C	Bidder #3
SECTION 5D	Bidder #4
SECTION 6	Recommendations
SECTION 7	Next steps
ANNEXES	1. Evaluation guidelines
	2. Evaluation forms
	3. Evaluator confidentiality agreements

SECTION 1

Executive summary

Executive summary

1. Introduction

2. Evaluation

3. Recommendation

SECTION 2

Evaluation criteria and approach

Main evaluation criteria and approach

- 1. Background**
- 2. Evaluation Plan and Process**
- 3. Criteria used**

SECTION 3

Membership of Evaluation Committee

1. Membership of Evaluation Committee

SECTION 4

Summary of the evaluation

Summary evaluation

SECTION 4A

Completeness and substantial responsiveness

SECTION 4B

Technical Evaluations

SECTION 4C

Financial Evaluations

SECTION 5

Detailed Evaluations- x Consortia/Bidders

Detailed Evaluations

SECTION 5A

Bidder/Consortium #1

1. Completeness and substantial responsiveness

2. Technical Results

Criteria	Score	Detail
----------	-------	--------

3. Financial Results

SECTION 5B

Bidder/Consortium #2

1. Completeness and substantial responsiveness

2. Technical Results

Criteria	Score	Detail
----------	-------	--------

3. Financial Results

SECTION 5C

Bidder/Consortium #3

1. Completeness and substantial responsiveness

2. Technical Results

Criteria	Score	Detail
----------	-------	--------

3. Financial Results

SECTION 5D

Bidder/Consortium #4

1. Completeness and substantial responsiveness

2. Technical Results

Criteria	Score	Detail
-----------------	--------------	---------------

3. Financial Results

SECTION 6

Recommendation

Recommendation

Rank	Bidder/Consortium	Score
1		
2		
3		
4		

SECTION 7

Next Steps

ANNEXES

Evaluation Material

2. Evaluation Guidelines

3. Evaluation Forms

4. Evaluator Confidentiality Agreement

Part 3: Notification Letter of Preferred Bidder

[Date]

[Preferred Bidder]

Attention: Name of Representative of Preferred Bidder

RE: Notification of Success in the Financial Bid Opening for [Project Name]

We are pleased to inform you that, following the Financial Bid Opening that took place on [Date], [Preferred Bidder] has been approved as the **First-ranked Bidder** for the following project;

SN	[Project Name]	Bid Value [Currency]
1	Project Name	[Currency]

Please be informed that you have xx (xx) business days to post a Preferred Bidder's Bank Guarantee as stated in *paragraph xx of Section xx* of the Request For Proposal (RFP). The Preferred Bidder's Bank Guarantee should be posted on or before [Date].

Please ensure that the language of the Preferred Bidder's Bank Guarantee conforms to that of the one in the RFP issued on [Date].

Congratulations.

[PPPDG]

Part 4: Fiscal Affordability Forms at Award / Commercial Close / Signature Approval Stage

FISCAL AFFORDABILITY FORMS

For submission to the MFO Debt Management Directorate at Award/Commercial Close/Signature Approval Stage

Cover Sheet

Name of the Project on the contract:	
Brief Project Outline:	
Name of the Partner company:	
Responsible entity / contracting authority:	
Sector:	
Proposed Date of contract signature:	
Date of Commissioning/PPP start:	
Length of the Contract:	
Total Investment value:	
Investment grant/subsidy:	
Public payments: Availability, operating subsidy, etc.	
Guarantees: By type (specific risk, payment, other)	
Mechanism for restoring the financial equilibrium of the project:	
Observations:	
Main budgetary commitments:	
Main budgetary risks:	

Detailed

PPP Guidelines - Appendix

		NPV	Years													
Revenue																
PPP fees	Concession fee - Upfront															
	Concession fee - fixed annual															
	Concession fee - Variable															
	Revenue sharing															
	Other															
Total																
Expenditure																
Government commitments:																
Capital:	Investment grants															
	Repayments/refunds															
	Other															
Total																
Annual payments:	Availability payments															
	PSO/subsidy payments															
	Other															
Total																
Contingent Liabilities:	Guarantees - specific risk															
	Guarantees - other															
	Termination - Government default															
	Termination - Private Party default															
	Other															
Total																

Notes:

Estimates will arise as outputs to the financial model and PPP options analysis which may have been revised during the tender process prior to commercial close.

Where multiple guarantees/ payment mechanisms etc. list separately.

NPV= Net Present Value of the cash flows over the duration of the contract (Using government borrowing discount rate)

Appendix F Priority Sector Guidance

This section provides guidance specific to the priority sectors identified for the country, including how sector-specific issues and risks should be addressed throughout the PPP lifecycle.

- 1. Energy Sector Guidelines**
- 2. Transport Sector Guidelines**
- 3. Water Sector Guidelines**
- 4. Industrial Parks Sector Guidelines**
- 5. Public Housing Sector Guidelines**
- 6. Health Sector Guidelines**

Part 1. ENERGY SECTOR GUIDELINES

This section provides guidance specific to the energy sector, and is structured as follows:

- **Preface**
- **PPP Primer and Phases in PPP Development**
- **Phase I: PPP Project Identification and Screening**
- **Phase II: PPP Appraisal & Preparation**
- **Phase III: Structuring and Drafting the Tender and Contract Documents**
- **Phase IV: Tender & Award**
- **Phase V: PPP Contract Management & Performance Reporting**

PREFACE

The power sector in Ethiopia is organised as a centralized electricity supply system. **The Ministry of Water, Irrigation and Energy (MOWIE)** is responsible for setting sector policy and overall supervision. The state-owned entity **Ethiopian Electric Power (EEP)** is responsible for power generation and transmission. Another state owned entity, **Ethiopian Electric Utility (EEU)** is responsible for electricity distribution and retail functions. A new regulator, the **Ethiopian Energy Authority (EEA)**, with the responsibility of licensing and assisting in setting the consumer tariff, has been established under the authority of MOWIE.

The overarching law on Energy in Ethiopia is the Energy Proclamation No. 810/2013 which defines energy as “electric power generated from hydropower, solar, wind, geothermal or other sources”. Most notably, the Energy Proclamation prescribes that the generation, transmission, distribution/sale, import or export of electricity for commercial purposes (or other energy-related services) may only be undertaken upon obtaining a license issued by EEA. The Energy Proclamation also provides conditions for renewal, suspension and revocation of licenses. The Investment Proclamation No. 769/2012 also contains provisions that specifically affect this sector. In this regard, article 6(1) of the Investment Proclamation exclusively reserves the transmission and distribution of electrical energy through the national grid to the government. There is no similar restriction to any other power activities such as power generation.

The Geothermal Resources Development Proclamation No. 981/2016 (the “GRDP”) was passed, to support the generation and delivery of electricity from geothermal energy for local consumption and export. The GDPR provides that the government may in partnership with other investors undertake geothermal operations for the country’s economic and social development.

The MOWIE is the Federal Government Ministry primarily responsible for the Ethiopian energy sector. The MOWIE makes and oversees the implementation of policies for the Energy Sector.

Established by Regulation No. 308/2014, the Ethiopian Energy Authority (EEA) is the primary regulator for the electricity sector. The EEA is responsible for issuing licenses to electricity sector operators, reviewing the national grid related tariff, setting standards, approving electric power purchase and network service agreements, and overall supervising the activities within the sector. The Authority is accountable to MOWIE.

The EEU was established by EEU Establishment Council of Ministers Regulation No. 303/2013 as a public enterprise, to undertake the power distribution activities of the former Electricity Power Corporation (EEPCo), which includes the construction and maintenance of electricity distribution networks. The EEU is also mandated to initiate electric tariff amendments and implement same.

The EEP was established by EEP Establishment Council of Ministers Regulation No. 302/2013 as a public enterprise, to undertake the power generation, transmission and substation activities of the former Electricity Power Corporation (EEPCo). The EEP is also mandated to engage in feasibility studies, design and survey of electricity generation and transmission facilities. The EEP is the Contracting Authority responsible for signing and implementing a PPP Agreement.

Globally, planning in the electric power sector is carried out on the basis of a Least Cost Expansion Plan looking forward between 20 – 30 years. This planning philosophy is aimed at determining the lowest cost path for long-term expansion of the generation, transmission and distribution systems adequate to supply the load forecast within a set of technical, economic and political constraints. Every new project is conceived and developed to serve future demand, typically in five-year bands. EEP is currently developing a power expansion plan with the support of a consultant. Like all electricity sector power expansion plans, this would need to be continuously updated to reflect changing demand and supply profiles of the country (at half-decade intervals).

At present there is no set methodology to set consumer tariffs, as such there is no basis to determine if current consumer tariffs are cost reflective. Revenue collected is allocated 60 percent to EEP and 40 percent to EEU, independent of cost of service or revenue requirements. Total system losses are estimated northwards of 30 percent, but this figure is not known with any degree of certainty.

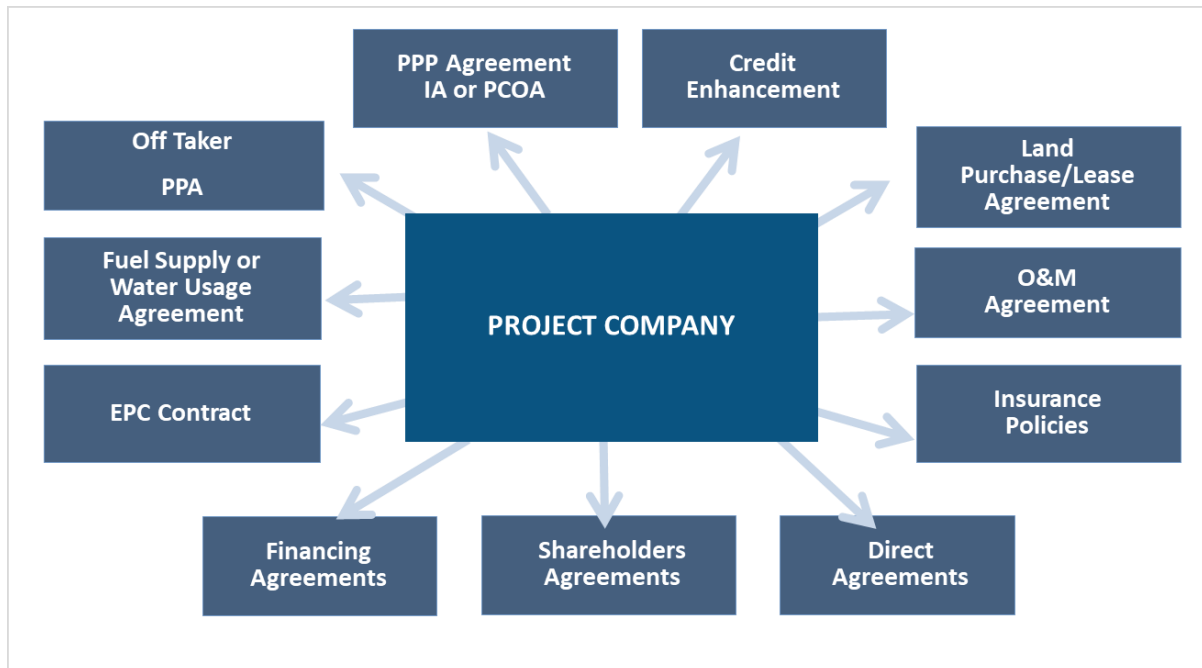
An amended Energy Proclamation, yet to come into effect, requires EEA prepares a framework for procurement of power generation projects. Based on the current legal framework in the country, any procurement of power on a PPP basis, however, would be governed by the PPP Proclamation. Any amendment to the Energy Proclamation would need to be in line with the PPP Proclamation regarding the initiation, structuring, procurement and implementation of PPP projects.

I. PPP PRIMER AND PHASES IN PPP DEVELOPMENT

Privately developed and operated power plans are commonly referred to as Independent Power Producers. These IPPs, governed by intricate contractual frameworks, are the most common forms of PPP in the power sector. IPPs are in line with the definition of PPP given in the PPP legal framework (article 5 of the Proclamation). Globally, these models have been tested and

determined to result in the effective delivery of privately produced power into electricity markets. The figure below depicts contractual relationships common to most IPPs.

Figure 1: Contractual Relationships Common to IPPs



Development and construction of power plants require significant capital investment. Capital expenditure is spread over a longer period of time, typically from **3 years to 10 years** depending upon the technology and regulatory environment. The development phase can also stretch from one year to several years depending on factors such as the legal framework and availability of financing. Projects in developments are typically planned to start generating power, and earning revenue in 3 to 10 year horizons. Projects are also structured to recover the capital over a longer period of time, typically 20 to 30 years.

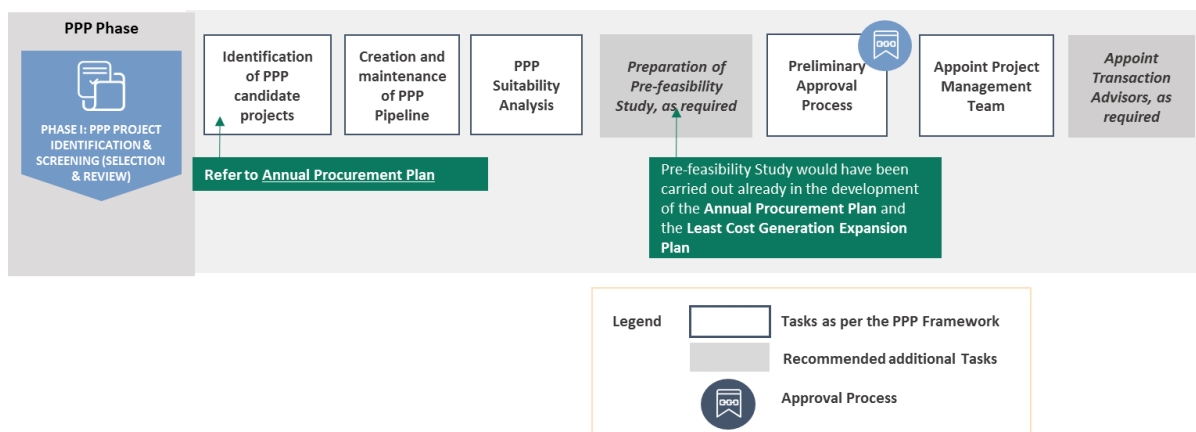
This is a unique profile for public infrastructure, and thus attracts a unique kind of investor willing to wait for long periods to start recouping investments. However, in electricity markets with clear guiding policies and well established rules ensuring a level playing field, private investors have successfully developed IPPs at their own risks.

These unique elements of the power sector impose special considerations when developing and appraising PPP projects in the power sector. These considerations are elaborated within the context of the PPP legal framework in Ethiopia.

II. PHASE I: PPP PROJECT IDENTIFICATION AND SCREENING



PPP Project Screening



EEP, as the Contracting Authority for energy projects, can identify power projects in Ethiopia. The current project development process involves EEP submitting identified projects to MOWIE for review and approval. MOWIE, after completing its internal review and approval process, forwards the approved projects to the Planning and Development Commission (PDC) for its review and incorporation into the five-year national plan. This five-year national plan is reviewed by MOF for budgetary allocations.

The Least Cost Expansion Plan⁸ is expected to be the central point of reference for planning in the power sector in Ethiopia. In other countries where PPPs have been integrated into the power sector, the preparation of the Least Cost Expansion Plan outlines the prioritisation of electricity infrastructure projects. At any point in time in any given country, there are a wide range of generation projects that could be developed. These projects will use a range of fuel sources and technologies. They will require varying investments in other sub-sectors in the electricity value chain, such as in transmission infrastructure and in fuel transportation and processing infrastructure. The potential projects may offer different patterns of availability and reliability, and will undoubtedly have different costs. In order for the power sector planner to make informed decisions about when which of the projects are to be developed, it will need to analyse the options over a long time horizon and identify the type and quantum of investments as well as recurring costs that will need to be made in order to meet the projected electricity demand at the least cost over the time horizon under study, taking into account related policy objectives such as security and reliability of supply, environmental sustainability, logistic constraints and use of indigenous resources. The Least Cost Expansion Plan provides the logical framework for this analysis.

The Least Cost Generation Expansion Plan which is a component of the Least Cost Expansion Plan is the starting point for identification of PPP projects. Following the preparation of the Least Cost Generation Expansion Plan, MOWIE should prepare an Annual Procurement Plan for five-year periods.

For illustration purposes, a sample Annual Procurement Plan is presented in Table E-1. The Annual Procurement Plan will outline the sequence of projects to be delivered over the planning

⁸ The Least Cost Expansion Plan is a method used to select the most cost-effective measures for meeting projected increases in demand for electricity

horizon. The Annual Procurement Plan in Table 1 assumes that 24 months are required to complete procurement and financing.

Table 1: Sample Annual Procurement Plan

DESCRIPTION	START YEAR	COMPLETION YEAR	CONSTRUCTION PERIOD (MONTHS)
Project 1	2018	2021	12
Project 2	2018	2022	24
Project 3	2018	2023	36
Project 5	2018	2023	36
Project 7	2018	2024	48
Project 10	2018	2024	48
Project 11	2018	2025	60
Project 16	2018	2026	72
Project 6	2019	2024	36
Project 12	2019	2025	48
Project 15	2019	2025	50
Project 18	2019	2026	60
Project 4	2020	2023	12
Project 14	2020	2025	36
Project 17	2020	2026	48
Project 8	2021	2024	12
Project 9	2021	2024	18
Project 13	2022	2025	12
Project 19	2023	2026	18
Project 20	2023	2026	12

The steps leading to production of an **Annual Procurement Plan** are summarised below:

Step 1: Site Identification / Concept

- Identification of potential sites and technologies
- Funding of early stage project development
- Development of rough technical concept

Step 2: Pre-Feasibility Study

- Assessment of different technical options for sites and technologies
- Approximate cost/benefits analysis of each potential site and technology
- Identify permitting needs
- Market Assessment – Power and energy demand forecast

Step 3: Least Cost Expansion Plans

- Prepare least cost generation expansion plan
- Prepare least cost transmission line expansion plan
- Prepare distribution expansion plan
- Identify other infrastructure needs such as fuel supply

Step 4: Feasibility Study

- Technical and financial evaluation of preferred option
- Detailed geological studies
- Refine cost estimates and carry out financial and economic analysis

Step 5: Refine Least Cost Expansion Plans

- Refine least cost generation expansion plan using updated information/data
- Refine least cost transmission line expansion plan

Step 6: Update Annual Procurement Plans

In carrying out this Annual Procurement Plan, MOWIE would undertake a pre-feasibility and a detailed technical and financial feasibility for power projects. These studies should provide MOWIE the information to complete the PPP Suitability Application to be submitted to the PPPDG to assess the candidate PPP projects.

In addition to the conventional feasibility information, which would have been covered in the studies leading to the Annual Procurement Plan, two additional criteria are worth evaluating before the PPPDG can conclude that specific projects are candidate PPPs. These are:

1. Suitability Analysis
2. Revenue Requirement

Suitability Analysis

The suitability analysis is carried out to ensure that the project is suitable for private sector finance. The size of investment, construction duration and complexity are key factors in determining the suitability for project finance. A due diligence to determine if similar type, size and complexity of projects have been implemented successfully and the lessons learned during these implementation is key aspect of this suitability analysis. Complex projects may require adopting innovating solutions to make them suitable for private sector investment. However, innovative project structures often require longer time to develop and may be less competitive. The table below can be utilized by the Contracting Authority to assess the suitability of power projects for private finance.

Table 2: Suitability Criteria

Suitability Criteria	Yes/No	Comments
Long term predictable demand for service		

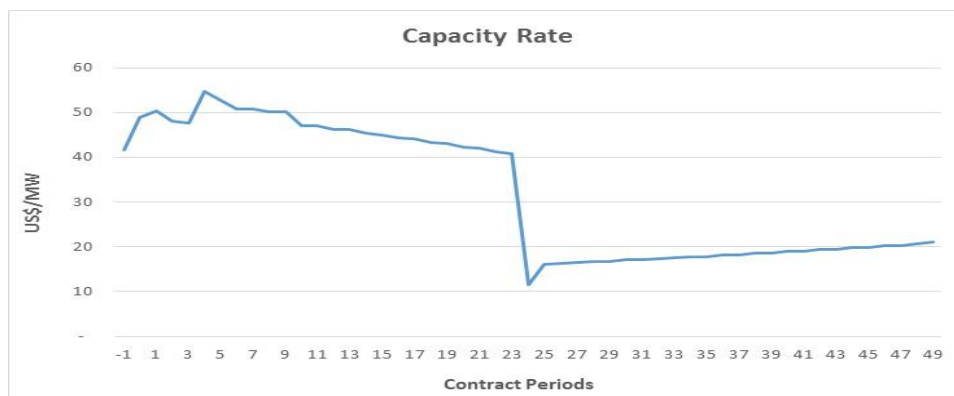
PPP Guidelines - Appendix

Credible long term load profile for new facility		Are there reliable load forecast underlying demand
Credible off-taker with ability to pay		Is the prospective off-take creditworthy
Ability to allocation risk effectively		
Potential for performance related payment		Can a PPA be structured for the IPP
Sufficient private capital at risk		Are credible private parties interested
Clear ring-fenced risks for both parties		Does legal framework allow proposed PPA form
Project Complexity – risks are manageable		
Investment Requirements		Are the investment requirements are modest and financeable in a reasonable time frame
Environment and social impact		Does project likely to encounter opposition from public Does project require significant settlement or loss of agricultural land
Proven Technology		Are there any risks due to unproven technology
Meets government objectives and policies		
Strategic importance		Does implementation as IPP is consistent with the stated policy and government objectives
Unsuitability Criteria		
Project size		Does the project yield Value for Money
Project complexity		Have similar projects been implemented successfully
Contracting Authority institutional capacity		Can Contracting Authority implement project

Revenue Requirements

Financing terms for private investors are typically more stringent than financing terms for Public Entities. The project must generate enough revenue to pay its all costs. The revenue requirements of an IPP will be higher during earlier years post commissioning as the debt has to be paid over a shorter period of time (e.g. 10 years). For this reason, it is very important to understand the implication of these on the consumer tariff. EEP will have only a couple of years (construction period) to prepare for increased financial liability. Necessary plans and approvals should be in place to ensure availability of sufficient funds to EEP before launch of an IPP. Any possibility of payment default under the PPA must be averted for the success of subsequent projects and achieving better tariff through continued competition and reduction of risk.

For illustration, the graphic below shows capacity rate for a medium size hydro project in Africa. The resulting per unit cost of energy based on revenue requirements of the project range from 13 cents/kWh (in 2nd year) to 4 cents/kWh (in year 12) on the basis of estimated average load factor. The horizontal axis shows six monthly periods.



The steps to preparing PPP pipeline for power generation projects are summarised below.

- Step 1 SUTIABILITY ANALYSIS**
 - Carry out suitability analysis for each project in annual procurement plan
 - Refine the annual procurement plan by identifying projects which are found unsuitable for private investment
- Step 2 REVENUE REQUIREMENTS**
 - Calculate revenue requirements for each year of PPA life using private sector financing terms
 - Carry out sensitivity analysis to establish revenue requirements range for possible cost savings and cost overrun scenarios
- Step 3 EVALUATE IMPACT ON END CONSUMER TARIFF**
 - Determine the impact of each project and combined effect of each project on end consumer tariff
 - Carry out an affordability assessment
 - Work out any gap funding or subsidies required to keep the end consumer tariff affordable if any required
- Step 4 PREPARE PRELIMINARY PPP PIPELINE (ANNUAL PROCUREMENT PLAN)**
 - Screen projects based on analysis carried out in Step 3
 - Finalise the preliminary PPP annual procurement plan
- Step 4 OBTAIN APPROVALS**

- Obtain approval from Ministry of Finance and National Bank of Ethiopia including provision of any gap funding and/or subsidies as applicable
- Obtain approval from Ethiopian Energy Agency (Regulator)

Step 5 PREPARE ANNUAL IPP PROCUREMENT PLAN

The PPPDG may engage the services of an advisor for these activities.

Unsolicited Proposals

The private sector may also submit unsolicited proposals for the development of projects that may have been overlooked by MOWIE. Additionally to the evaluation criteria for USP presented in the General Guidelines, energy sector USP should be screened using the same criteria which was used to screen the projects in the Annual Procurement Plan, i.e. the project fits in Least Cost Expansion Plan and is affordable. In addition, these projects should be tested against “**avoided cost**” adjusted for private sector financing terms.

Due to complex nature of power system and its implications over a wide range of aspects including economic, environmental, regulatory, technical, operational, social, as well as potential interdependencies with other complementary sectors, EEP and MOWIE should not undertake development of any projects not included in the Least Cost Expansion Plan.

KEY CONCEPTS AND DEFINITIONS

Avoided Cost

- The avoided cost means the cost that the utility would have incurred in implementing this project in the public sector and which would be *avoided* by implementing as an IPP. Basically, the utility would work out how much it would cost them to build and operate; adjust it for private sector financing; and compare this against the proposal.
- The concept of *avoided cost* is widely used to justify the cost of unsolicited proposal, and was part of the Public Utility Regulatory Policies Act PURPA in the U.S.
- In a competitive process, a comparison is available to establish the lowest cost. In the case of an unsolicited proposal there is no reference to validate if the price is appropriate.

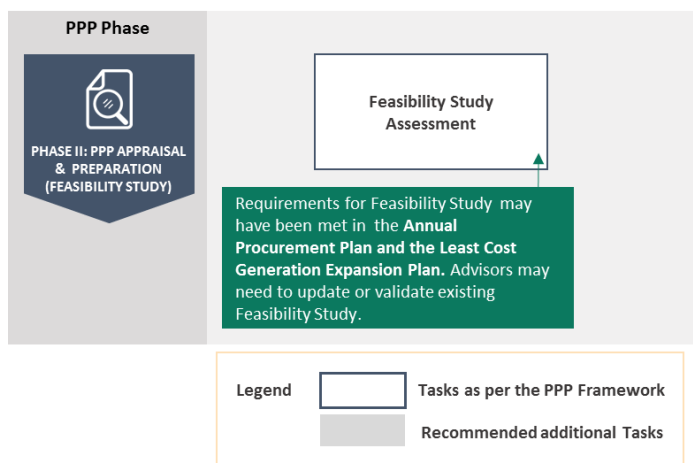
Levelized Cost

- In relation to IPP with the perspective of off-taker, what matters the most is cost of electricity it will be obliged to pay over the life of the PPA. Different projects and different proposals for same tender will have varying tariff making it difficult to compare projects or proposals. As the energy production may vary, simple net present value of all costs is not enough for determining the least expansive proposal/project. The Levelized Cost of Energy (LCOE) is a useful indicator that allows a fair comparison of different technologies, different life spans, different project size (capacity and energy), different capital cost, different operating costs and regimes, risk and different return expectations. In nutshell, it represents the average revenue per unit of electricity generated (in today's money) that would be required to recover the costs of building and operating a generating plant during the life of the plant and to account for anticipated duty (utilization or dispatch of a plant). It is equal to net present value of project revenue requirements over the life of the PPA divided by the net present value of the energy produced over the life of the PPA.

$$LCOE = \frac{\sum_{t=1}^n \frac{CP_t + EP_t + O_t}{(1+r)^t}}{\sum_{t=1}^n \frac{E_t}{(1+r)^t}}$$

- CP_t = Capacity payment in year t
- EP_t = Energy Payment in year t
- O_t = Other costs such as start-up costs and pass through costs paid in year t
- E_t = Energy generated in year t
- r = Discount rate
- n = Term of the PPA

III. PHASE II: PPP PROJECT APPRAISAL AND PREPARATION



PPP Appraisal and Preparation

IPPs are funded predominantly using project finance. Project Finance is the financing of projects based on a non-recourse or limited recourse financial structure, where the project debt and returns are paid solely from the revenues generated by the project without any recourse (or very limited recourse) to owners/sponsors.

The most important task in this type of financing arrangement is to ensure that the project’s isolated cash flow is adequately protected and not exposed to undue risks. Therefore, the relationship between project risks and project cash flow must be thoroughly understood and analysed to ensure a project’s success – and specifically, a balanced risk allocation which safeguards the project cash flows.

Under the project appraisal and preparation phase, key components of the project structure should be interrogated to clearly outline anticipated cash flows and project risks. This interrogation should be done as part of updating the Feasibility Study carried out during the process to develop the Annual IPP Procurement Plan. The updated Feasibility Study will present the final project structure as well as the tender document appropriate for the IPP.

A Project Management Team should be appointed as per the procedures outlined in the PPP Proclamation (article 14). The Project Management Team shall develop a Terms of Reference for the update of the Feasibility Study. The procedures to be carried out for the update of the Feasibility Study should be consistent with the procedures described in the general guidelines manual. In some instances, additional considerations or sub-procedures shall be adopted to address idiosyncrasies in the power sector.

Table 3: Feasibility Study Procedures

	Feasibility Study Procedures	Additional Considerations
1	Developing Service Outcome levels for the PPP Project	<ul style="list-style-type: none"> ▪ Setting the Parameters for Performance and Operation
2	Designing the stakeholders consultation plan	<ul style="list-style-type: none"> ▪ Early sensitization of developer community ▪ Securing support from DFIs and ECAs
3	Project Affordability Analysis	<ul style="list-style-type: none"> ▪ Market Attractiveness ▪ Cost Reflective Tariff
4	Project Demand Analysis	
5	Technical Feasibility Analysis	<ul style="list-style-type: none"> ▪ Project development risk <ul style="list-style-type: none"> - Completion risk - Resource concerns - Technology Specifics and Logistics
6	Project Financial Analysis	
7	Project Economic Feasibility Analysis	
8	Legal and Institutional Analysis	<ul style="list-style-type: none"> ▪ PPP Regulations ▪ Corporate legal framework
9	Project Environmental Impact Assessment	<ul style="list-style-type: none"> ▪ International standards for safeguards
10	Project Risk Analysis	
11	Project Risk Allocation Structure	
12	PPP Value for Money Analyses	
13	Market Testing	

Developing Service Outcome Levels for the PPP Project

Setting Parameters for Performance and Operation

These are different IPP technologies with different performance and operational characteristics. Part of setting the service outcomes levels is to accurately define performance levels, design standards and personnel requirements for the adopted technology. Failure to do so could result in attracting an inappropriate operator resulting in:

- The IPP failing to produce electricity consistently at designed/required levels – poor engineering and/or poor construction and/or poor operation & maintenance
- The IPP failing to meet the design efficiency or unable to maintain the efficiency
- Poor management and maintenance practices
- Unavailability of skilled staff and technical resources
- Higher operation and maintenance costs – error in estimates or higher inflation
- Unavailability of replacement parts during the life of plant at reasonable cost
- Technology becoming obsolete over time

Designing the Stakeholders Consultation Plan

Early Sensitization of IPP Developer Community

In order to effectively manage development risks, IPP developers must be able to identify and analyze project opportunity risks from project inception. This will require prospective developers to be a part of the project investigations early. This means having access to non-confidential components of the Feasibility Study. The process for power developers deciding to partake in competitive bids can involve several internal and external consultations (with partners, suppliers, financiers, etc.). These consultations are necessary to reach a positive conclusion on participating in competitive decisions.

The preparation of competitive bids is an expensive proposition. Credible developers often decline participation in competitive bids due to uncertainty about the transparency in the process. The PPPDG can minimize uncertainty in the procurement process by publicizing, its activities, to the extent approved by the PPPDG, and clearly establishing the rules that will govern the procurement.

The Ethiopia PPP legal framework (article 12.1 of the PPP Proclamation) allows the PPPDG to provide relevant information as part of promoting PPPs. The PPPDG can make a determination as to what information to share to encourage developer appetite for the new IPPs.

Securing Support from Development Finance Institutions and Export Credit Agencies

One of the significant problems faced in emerging markets is the lack of access to capital (equity and debt) on reasonable terms. Although several IPPs have been developed in Sub-Saharan Africa, very few off-takers or sovereigns have an investment grade credit rating. In spite of this, the vast majority of the capital made available to finance IPPs in those countries has been invested or lent on reasonable terms.

One of the keys to the availability of debt on reasonable terms has been the availability of third party credit support and risk mitigation tools from development finance institutions (DFIs), multi-lateral development banks (MDBs), export credit agencies (ECAs), and political risk insurers. Therefore, it is important that these institutions are involved at right stage in the development of an IPP project. Most multi-lateral development banks tends to get involved at very early stage in the development phase; long before the launch of procurement process. ECAs prefer to get involved when technologies and source of equipment are identified. With the approval of the PPPDG, the Project Management Team must engage with DFIs, ECAs and other multi-laterals during the project preparation and appraisal stage.

Project Affordability Analysis

Market Attractiveness. Power produced by IPPs is ultimately destined to end users. Growing demand, affordability and willingness and ability to pay are major considerations for an IPP developer. Obligations of an off-taker, such as a utility, may be guaranteed through various instruments such as sovereign guarantee or Partial Risk Guarantee (PRG) from International Financial Institutions (IFIs), however, while such instruments are key for project financing, developers and creditors are not attracted to projects where the likelihood of calling guarantee instruments are high. Experience has taught that the chances of utility default significantly increases if utility does not collect enough revenue to pay for its bills. In the update of the Feasibility Study, the Project Management Team must carry out a robust affordability and willingness to pay analysis.

Cost reflective consumer tariff. There is general agreement that appropriate tariffs are essential for any rapid development of electricity supply. IPP developers would like to see that off-takers remains solvent and generate sufficient revenues to settle its obligations. While government subsidies may provide short-term comfort, IPP developers do not consider these as long term viable solutions. Therefore, in countries where consumer tariff is subsidised by the government through direct or indirect subsidy, investors would like to see a commitment and firm plan to move towards cost reflective tariff for sustainable operation of the power sector. This is a critical factor that must be addressed in a Feasibility Study to structure a Power IPP.

Technical Feasibility Analysis

Project Development Risk

This is the risk that the power PPP project is unable to achieve financial close and commence construction. There are several factors that can lead to the failure to achieve financial close, including:

- Completion risk
- Performance and operations risk
- Resource risk
- Technology Specifics

1. Completion Risk. The risk that the construction is not completed or not completed in time and within budget. The contributing reasons are:

- Delays or failure to get construction permits
- Unexpected underground conditions
- Soil contamination and other environmental issues
- Archeological discoveries
- Unproven technology
- Poor performance of contractor or bankruptcy of contractor
- Plant fails to meet the performance standards (capacity and heat rate)
- Construction costs overrun
- Delays in completion (poor scheduling or failure of major components etc.)
- Gaps between the requirements of the construction contract and other agreements

The Technical Feasibility procedure should anticipate such complications consider and carry out an exhaustive analysis under each of the listed headings.

2. Resource Concerns. The risk that the fuel will be available in required quantities and specifications during the entire economic life of the IPP. In the case of hydro power project, the availability of water at right time, in sufficient quantities, and seasonal variations over

the life of the project. The effect of climate change, while difficult to estimate is generally agreed to be imminent. Study of historical hydrology data over a longer period of time provide basis for estimating the potential over a longer period of time but uncertainty over shorter periods remains high. These uncertainties highlight the risks to developers and the project feasibility must provide compelling evidence and information to allow private investors gain the confidence to develop the IPP. A detailed technical feasibility, carried out by credible advisors is an essential requirement. The Project Management Team must be mindful of the potential for this significant risk when developing the Terms of Reference for the Feasibility advisors.

- 3. Technology Specifics.** For fossil-fuel based IPPs, the availability and supply logistics of fossil fuel largely dictates location of the plant. Solar IPPs have more flexibility in location, however rely on sun irradiation and so can only produce power during day time when sun irradiation is high. Wind power forms have their own characteristics as those depend on the flow of wind. Modern wind turbines require specific transportation infrastructure to transport the large size turbine blades. As solar power plants and wind power forms cannot produce power “on demand” they pose a unique challenge in electricity grid reliability and operation. The fossil fuel power plants offer most flexible operating regime as these are designed and built to produce “on demand” to meet the grid specific characteristics. Unlike fossil fuel and other renewable power projects such as solar and wind, each hydro power plant is unique. These are uniquely designed and built to site specific conditions, require substantial capital investment but have a very low operating costs and long life. There are also substantial uncertainties associated with the geology and hydrology. These are some of the considerations for different power plant technologies. The feasibility procedure should include a careful examination of Technology Specifics and Logistics.

Legal and Institutional Analysis

PPP Regulations

The regulatory framework pertaining to the rules and regulations in the power sector and fundamental to an IPP. This framework is how developers identify the procedures that must be followed and the costs of operating in an environment. A stable, simple, flexible, transparent and fair legal and regulatory framework will foster the right environment for an IPP. A well tested and stable regulatory environment is preferable over a changing or under development environment. The level of ease to do business and efforts required to obtain permits and approvals is a key consideration at early stages of development. Due to the long gestation periods of IPPs, developers seek assurances that their investments and interests will not be compromised by changes in regulatory environment. A thorough assessment of the legal and regulatory framework is one of the critical requirements in developing the Feasibility Study for an IPP. In the scope of work for the Feasibility advisors, the Project Management Team must ensure that a clear scope for elaborating on the evolution of the legal and regulatory framework is included.

Corporate Regulations

A valid legal basis in the form of regulations or proclamation or laws for followings is in place.

- the legal and regulatory framework governing the electricity sector

- permission to own and operate a power generation business by private sector entities including use of natural resources such as water
- the legal and regulatory framework governing the supply, processing, and transportation of the primary fuel (in case of thermal plants), riparian rights or water usage rights (in case of hydroelectric projects), or the primary energy source (in case of projects fuelled by other primary energy sources such as geothermal etc.)
- the corporate laws that governs the organization of the Project Company and the relationship of the shareholders in the project company
 - permission to establish corporate entities owned by foreign persons and permission to appoint foreign nationals as directors in corporate entities
- matters related to spatial planning, land use, building and construction and similar permits, and obtaining title (or another form of right to use) to the land required for the project
- employment and collective bargaining matters
 - a clear policy in respect of work permits to foreign nationals and assurance to issuance of work permits to corporate entities owning power projects
- laws regulating taxation, import and export
 - permission to import plant and machinery for incorporation in to the plant including spare parts
 - permission to import and export temporary equipment
 - applicable taxes and duties and the availability of tax concessions if any
- Laws and regulations governing foreign investment and financing
 - Permission to conversion of local currency into foreign currency (usually USD) and assurance of availability and access to foreign currency
 - Permission to pay debt service (interest, fees and repayment etc.) to foreign banks and lending agencies
 - Permission to repatriate the equity capital and profits (dividends)
- dispute resolution
 - permission for arbitration under international rules (most commonly used arbitration rules are International Chamber of Commerce Arbitration Rules – ICC Arbitration Rules and United Nations Commission on International Trade Law Arbitration Rules – UNCITRAL Arbitration Rules) at a venue outside Ethiopia
 - the enforcement of foreign arbitral awards and the extent to which the sovereign may waive sovereign immunity against judgements and enforcements, and the attachment of its assets;

- Acknowledgement of lender's rights in particular enforcement of security and step in rights
- the legal and regulatory framework governing the insurance placement during construction and operation – ability to place insurance in international markets is required

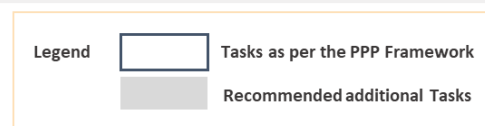
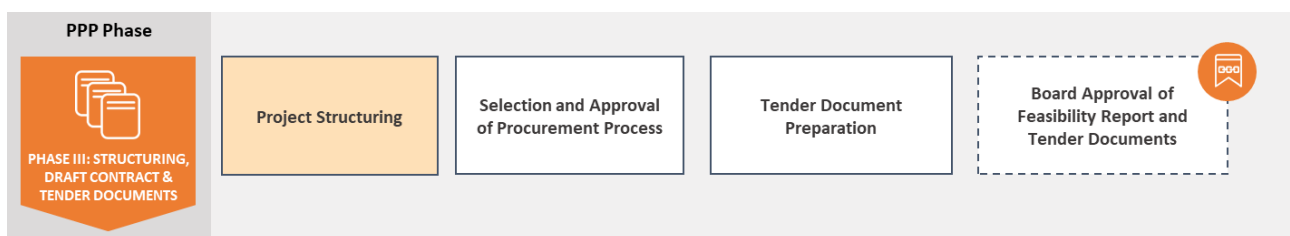
These considerations should be addressed during the legal and institutional analysis. Credible IPPs and their financiers will expect PPP project structures, legal and corporate regimes comparable to other international experiences.

Project Environmental Impact Assessment

International Standards for Safeguards

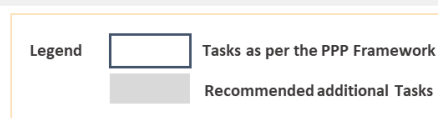
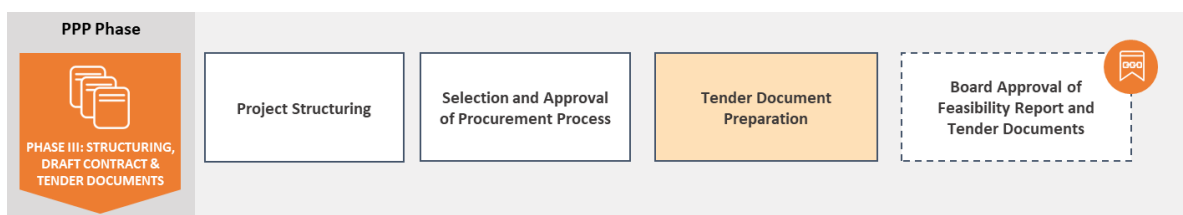
Most IPPs rely on international lending to develop projects. Many of these international lenders would require stringent standards for environmental and social impact assessment. Often, the requirements are IFC performance standards for environmental and social sustainability. The compliance level for environmental and social impact assessment during the Feasibility Procedure should be for IFC performance standards. This impact assessment should also be in compliance with the requirements provided in the Ethiopian legal framework (Environmental Impact assessment Proclamation 299/2002).

IV. PHASE III: STRUCTURING AND DRAFTING THE TENDER AND CONTRACT DOCUMENTS



Project Structuring and Selection of Procurement Process

Following the updated Feasibility Study, the Project Management Team would have identified the appropriate structure for the power PPP. The Feasibility should also indicate the appropriate procurement process, from among the options allowed under the Ethiopia PPP legal framework, as elaborated in the general guidelines.



Tender Document Preparation

Power PPPs stand on an intricate web of interconnected agreements and security instruments. The project agreements and financing agreements together provide an interdependent contractual fabric with back-to-back provisions to allocate risks, rights and responsibilities to the parties best able to manage those risks.

The procedures for structuring and drafting the tender and contract documentation for a power PPP shall be consistent with the procedures illustrated in the general guidelines. For power PPP projects, there are specific considerations that relate to the PPP documentation package (the “Security Package”), i.e. the collection of agreements that give rise to a bankable IPP.

The key agreements included in the Security Package are:

- Implementation Agreement (IA) or Put Call Option Agreement (PCOA)
- Power Purchase Agreement (PPA)
- Direct Agreements
- Fuel Supply Agreement or Water Usage Agreement (as applicable); and
- Credit enhancement instruments such sovereign guarantee and PRG

There may be additional agreements required depending upon the project such as land lease agreement etc. The underlying philosophy is building the Security Package is to arrange a compendium of project agreements that adequately allocates project risk consistent with the project structure design in Phase II.

Sector Specific Contract Guidance

PPP Agreement (IA or PCOA)

The PPP Agreement is the key agreement governing the relationship between government and the Project Company. A PPA guarantees an IPP a market as an incentive for availability and generation services. PPAs are long-term, usually ranging from an average of 20 to 30 years. PPA creates the revenue stream against which financing is obtained and from which investment returns are realised after paying for the operating costs. There are four broad types of PPAs

- Purchase and sale of capacity and energy – most commonly used for dispatchable power plants
- Purchase of energy – typically used for non-dispatchable power plants such as renewable projects (solar and wind)
- Tolling Agreement – used where buyer is able to provide fuel
- Contract for Differences (CfD) – Trading markets

The PPA is the most important agreement for developer as well as the Contracting Authority. PPAs covers these three stages of the project life cycle:

- Development Phase - The provisions provide some of the risks mitigation for off-taker as well as developer.
 - Off-taker gets assurance that the plant will be developed within certain period. Assurance is backed by development security provided by the developer
 - Developer gets assurance that electricity will be sold at specified rates once project is completed – revenue certainty
- Construction Phase - This part of the PPA defines rights and obligations of the parties during construction of the project.

- Specifications and scope of the power plant
- Interconnection
- Commissioning procedures
- Testing procedures
- Coordination procedures
- Commissioning tests
- Liquidated damages – delay and shortfall in performance
- Buyer needs to decide the level of control it wants which need to be included in the PPA- Black box or detailed intervention
- Operation Phase - Stipulates the rights and obligations after construction completion
 - Sale and purchase of capacity and energy
 - Dispatch and measurements of capacity and energy
 - Invoicing and payments
 - Adjustment in tariff
 - Emergency procedures
 - Outage planning etc.

Typical PPA Pricing Structures

PPAs either have a two-part or one-part tariff.

Two-Part Tariff

It is common practice to use two-part tariff. The examples of dispatchable power plants include fossil fuel and large hydro power plants.

Payments to IPP consists of following main components:

- a. Capacity Payment for a billing period;
- b. Energy Payment for a billing period; and
- c. Other Charges (Supplemental Charges such as start-up costs and pass through)

Payments to Off-taker consist of:

- a. Liquidated Damages

The Capacity Payment is meant to cover the fixed costs of the IPP such as debt service, equity return, tax and similar costs and fixed operation and maintenance costs. The capacity payment denominated in \$/MW/hour is paid on the basis of actual capacity made available per hour by the IPP.

The Energy Payment covers the costs that IPP incurs on delivering the net energy to off-taker and that vary with the production level. Energy Payment is proportional to the level of net energy dispatched by off-taker and measured at delivery points. Energy Payment for fossil fuel plants is comprised of fuel cost and variable operations and maintenance cost whereas for hydro power plants the Energy Payment will include variable operation and maintenance costs and variable water charges if any.

It is customary to include minimum take or pay provision for power plant that uses natural gas as fuel. The reason is that most gas suppliers require commitment to take certain amount of gas in a year. An IPP will pass this obligation to the off-taker under the PPA, as the off-taker is in control of dispatch. Take or pay provision only includes payment of the fuel component of the tariff. It is also customary to get a credit of this payment in following years to the extent the dispatch was more than minimum required under the PPA. Minimum take or pay provision are not customary for IPPs based on fossil fuels other than natural gas and dispatchable hydro power plants.

One-Part Tariff

One-part tariffs are commonly used for non-dispatchable plants such as renewables power generation (solar and wind etc.). The tariff is denominated in cents/kWh and is paid on the basis of actual delivered energy measured at the delivery points. Typically, there are take or pay obligations associated with these one-part tariffs.

Unless tariff are denominated in hard currency such as USD or Euro, the tariff is adjusted for exchange rate variations. The intent is to protect IPP from exchange rate loss. The operating costs (fixed and variable) are also adjusted for inflation. Fuel component of the tariff is only adjusted for variations in the fuel price. The water charges if any are adjusted for variations in water costs under respective agreement.

Many of the Heads of Terms in the PPA Agreement will be consistent with those in other PPP agreements (as presented in Table 5-2 in the General Guidelines). Specific Heads of Terms that are standard for most PPAs are elaborated below.

Table 4: Terms in the PPP Agreement

PPA Agreement Heads of Terms	Description and Purpose
Acquisition of Site and Permits and Licenses	This section is meant to cover the procedures, rights and obligations in respect of acquiring land for the project and obtaining all required permits and licenses. Typical topics covered include government support to obtain permits in a timely manner, security protection arrangements, immigration controls etc.

Foreign Currency Exchange and Transfer of Funds	This section is meant to allow the project company to freely buy the foreign currency and assures availability of the same as well as permission to maintain offshore bank accounts. Other provisions such as repatriation of profits and payment of debt service to foreign banks etc. are also included.
Assignment and Security	The lenders will have security over the project company and its assets. This section covers the government rights and relationship with lenders in respect of financing, security enforcement and refinancing.
Restrictions on Transfer of Shares and Assets	This section is the cover any restrictions on transfer of shares and company assets. It is not uncommon to restrict transfer of shares owned by initial shareholders for certain period of time.
Guarantee	Commitment to provide sovereign guarantee and form of the guarantee (if applicable)

V. PHASE IV: TENDER & AWARD



The tender and award process for a power PPP will follow the procedures outlined in the general guidelines. Due to special characteristics for how power projects are structure, the PPPDG may opt to allow Exceptions, available to all bidders, during the tender process.

Exceptions

Exceptions are often unavoidable when procuring power PPPs. This is because often tender processes cannot adequately account for the complexity of projects and market conditions. Exceptions may have an associated cost which may not be immediately obvious and exceptions may make comparison of bids difficult. Exceptions can be categorised in three categories:

1. Exceptions to technical requirements
2. Exceptions to the draft agreements
3. Exceptions to tender rules.

The tender process outlined in the general guidelines allows for an Early Market Engagement/Sounding and consultations with bidders during the tender process. The objective of these consultations should be to accommodate as much comments as are reasonably possible to structure the tender process in a manner to result in few exceptions. An effective consultation process goes long way towards eliminating or reducing the exceptions.

The PPPDG will need to decide if exceptions will be allowed during the process. This decision should be made following the Feasibility Study and Project Structuring and in consultation with the feasibility advisor.

If exceptions are allowed, then what type of exceptions are allowed. As an example, if the PPPDG is confident that the project agreements are bankable then it may decide to not allow any exceptions to the terms of the agreements. Similarly, it may decide to not allow any exceptions to certain technical parameters. In either case the rules in this regard should be clearly stated in the tender documents. In the event the PPPDG decides to allow any type of exceptions then the tender documents should require bidders to clearly and specifically identify each exception they wish to take in their technical proposal.

- Exceptions to the terms of project agreements should be noted by marking up the project agreements and these should be explained by bidders in an explanatory note to be provided. The PPPDG should retain the right to reject a technical proposal on the basis of the nature or the number of exceptions taken by a pre-qualified bidder.
- If the PPPDG decides to open the financial proposal accompanying a technical proposal containing exceptions, it will not constitute an acceptance of the exceptions.
- Preferably, the PPPDG should simultaneously negotiate exceptions with a couple of bidders. Any adjustment to tariff or cost to off-taker should be made to account for any variations in costs due to finally agreed position on exceptions. Every effort should be made to conclude these discussions within time frame stipulated in the tender documents.
- The financial bids should be re-ranked after such adjustments if any. It is recommended that no bid award is announced unless all exceptions are negotiated and resolved.
- The PPPDG should not entertain any exception or additional comments that are not included in the exceptions/comments set forth in the technical proposal.
- The PPPDG would need to secure approval of the PPP Board to procure a tender that allows for extensions. During such procurements, the PPPDG would need to have the authority to do the following:
 - Refuse to negotiate exceptions and discard proposals that contain significant exceptions.
 - Engage in negotiations – even by extending the negotiation period – if those negotiations are warranted.
 - In the event negotiations take longer time than specified in the tender documents, the base date for the costs and any adjustments in tariff due to delay should be agreed prior to bid award.

Commercial Parameters

The ultimate objective of a competitive tender process is to secure firm price of electricity and introduce the benefits of private sector efficiency in the power sector. However, in many developing and emerging economies, due to exogenous factors, adjustments in tariff following selection of the preferred bidder, may be inevitable.

The PPPDG, in conjunction with the Contracting Authority, should anticipate and allow for tariff adjustment in some situations (e.g. underground conditions). No adjustment should be allowed

for costs which are in control of developer such as development costs, EPC Cost, project administration, financing costs (some exceptions) and O&M cost etc.

The PPPDG, in consultation with the Contracting Authority and the Transaction Advisor, can make a determination on the best strategy to take into account market conditions and complexity of the project. Adjustment in tariff may be allowed for financing costs only. There are two considerations in relation to financing costs.

- First, there is no precedence of power project financing in Ethiopia. In absence of any precedence, the bidders may struggle to estimate the financing costs which may lead to poor competition, if bidders are not informed that adjustments will be allowed for financing costs. In theory bidders can engage lenders and submit bids with fully underwritten financing. However, this would require significant expense prior to bid submission.
- Secondly, interest rate for financing has two components; one is the base rate such as LIBOR or EURIBO, and the second is the margin. The base rate is almost certain to change between the time a bid is submitted and financial close. At financial close the Project Company buy fixed rate swaps to hedge the risk of variable rate. However, prior to financial close the Project Company cannot procure fixed rate swaps and would remain exposed to base rate changes. In view of these realities the PPPDG and Contracting Authority may consider providing adjustment in tariff for financing cost which will be fixed at financial close. It may be possible to disallow any adjustment in tariff for financing costs after few rounds of successful project closings, when the market has several examples of financing costs.

VI. PHASE V: PPP CONTRACT MANAGEMENT & PERFORMANCE REPORTING



Post-award contract management and performance monitoring would follow the same procedures outlined in the PPP General Guidelines.

LESSONS LEARNED: SOUTH AFRICA

- South Africa is the largest economy of Africa. During first decade of this century, the economy of South Africa was growing at fast pace due to high demand of commodities worldwide. Accordingly the electricity demand was sharply trending upward. The government of South Africa fearing power shortages, decided to involve private sector in power generation by procuring peaking capacity to supplement its large coal fired base capacity then in operation. In 2007, the ministry of energy started procurement through a competitive process. One of the largest global power company was awarded the project. Soon after award of the project, it became apparent to government that the project structure and agreements were not bankable and needed to be modified to secure financing for the project. Over next year or so the parties extensively negotiated the agreements.
- Finally, all agreements including loan agreements were signed. On other hands the IPP also placed an order for combustion turbines to ensure the compliance with the tight construction time line and paid advance payment to the manufacturer. As part of the condition precedents, the lenders legal counsel opined that the project is at a very high risk of litigation as significant changes were made after the tender award. All stockholders finally realised that the risk was real and the costs arising from any such litigation could be high. Eventually, after a lot of deliberation, the parties agreed to cancel the project. The flawed and incomplete pre-launch preparations caused significant financial as well as precious time lost.

LESSONS LEARNED: PAKISTAN

An Example of Successful IPP Program:

- Like any conventional state owned utility, Water and Power Development Authority (WAPDA), the vertically integrated national utility was responsible for generation, transmission and distribution of electricity until end of last century. WAPDA was unable to raise enough cash to invest in new projects in 1980s. During 1980s the load shedding reached 8 to 10 hours in a day. The country decided to welcome the first IPP in developing world. Necessary regulations and policy for IPP were introduced in 1986. A 1290 MW project started in 1987 and achieved financial close in 1994. The project was successfully completed in 1997. The development cost was in excess of \$50 m. The agreements and risk allocation developed for the project became benchmark and were widely adopted for subsequent development of IPPs across the globe. The government decided to embark on an ambitious IPP program founded on the success and lessons learned from this project. A task force was formed to design a new energy policy with an aim to:
 - Eliminate the load shedding in three years;
 - Significantly reduce development time by avoiding the prolonged negotiations;
 - Provide a clear path for investors; and
 - To minimize the cost of generation;

- As recommended by the task force, a revised energy policy was announced in April 1994. The installed capacity in 1994 was about 12,000/- MW and the revised policy aimed at adding additional 3,000 MW by end of 1997. The policy was implemented and administered through one window operation. The implementation agency received 127 project proposals totalling 26,000 MW. By 1998, 19 projects totalling 3,454 MW achieved financial close, of which 14 projects totalling 3,021 MW entered into commercial operation while remaining 5 were under construction. Fearing overcapacity, remaining projects were not contracted. The success of this policy was result of preparedness, one window operation, clarity and government support and will.

Part 2. TRANSPORT SECTOR GUIDELINES

This section provides guidance specific to the transport sector – covering road, rail, logistic centers and inland ports, and airports/aviation – and is structured as follows:

- I. Preface**
- II. PPP Primer and Phases in PPP Development**
- III. Phase I: PPP Project Identification and Screening**
- IV. Phase II: PPP Appraisal & Preparation**
- V. Phase III: Structuring and Drafting the Tender and Contract Documents**
- VI. Phase IV: Tender & Award**
- VII. Phase V: PPP Contract Management & Performance Reporting**

This section is followed by a Glossary for the transport sector guidelines.

General Discussion

For the purpose of these guidelines, the transport sector includes the following priority subsectors as per the GTP and the PPP Policy:

- 1. Roads:** The Ethiopian Roads Authority (ERA) is the Contracting Authority responsible for the development, maintenance and operations of the federal roads network.
- 2. Railways:** The Ethiopian Railway Corporation (ERC) is the Contracting Authority responsible for the ambitious plan to develop a national railway network.
- 3. Logistics Centers/Inland Ports:** The Ethiopian Shipping and Logistics Service Enterprise is the Contracting Authority for PPPs relating to shipping and logistics, while the Ethiopian Maritime Affairs Authority (EMAA) acts as the regulatory entity during project implementation.
- 4. Airports/Aviation:** Ethiopian Airlines would be the responsible Contracting Authority for the development of PPP initiatives in the aviation sector. The Ethiopian Civil Aviation agency (ECAA) will act as regulator focused mainly on safety and ensuring performance indicators are met.

The development of the transport sector and its subsectors is guided by Ethiopia's Growth and Transformation Plan (GTP) and specific sub-sector programs and strategies. The sector is regulated by a legal and regulatory framework for the transport sector as a whole and by sub-sector specific regulations.

The transport legal and regulatory framework consists of general transport regulations applicable to all transport modes with the exception of aviation, as well transport-specific regulations. The Transport Proclamation⁹ defines transport as “*any transport service undertaken on road, railway and water by motor power carriers*” and applies to:

- The use of any road within Ethiopia, vehicle using the roads and their drivers;
- The use of any railways within Ethiopia, trains using the railways and their operators; and
- Ethiopian ships and seafarers; and
- All matters related to land and water transport.

Ministry of Transport

As per Article 24 of the proclamation no. 916/2015 E.C the Ministry of Transport has the following specific powers and duties;

- Ensure that transport infrastructures are constructed, upgraded and maintained;
- Set standards for transport infrastructures; determine the usage, maintenance, and administration system of transport infrastructures and ensure their implementation;
- Ensure that the provision of transport services is integrated and are in line with the country's development strategies;
- Ensure the establishment and implementation of regulatory frameworks to guarantee the provision of reliable and safe land, air, and water transport services;
- Identify and implement measures that enables to mitigate the impact of transport infrastructures and services on climate change;
- Regulate maritime and transit service;
- Formulate standards for tube line transport infrastructure and services, and ensure implementation of same;
- Ensure utilization, expansion, and reinforcement of advanced technologies and practices in the countries transport infrastructures and services;
- Follow up the activities of the Ethio-Djibouti Railways in accordance with the agreements concluded between the two countries.

Key Issues to Consider:

- Experience of Bidders. Broadly, the experience requirements for transport PPPs typically include:
 - Experience in delivering and managing PPP projects in the respective sub-sector;
 - Construction experience in the respective sub-sector (as applicable); and
 - Operations and maintenance experience in the respective sub-sector.
- One of the key risks concerning transport projects, across all modes of transport, is **demand**. The demand needs to generate sufficient revenue to cover the financing and operational costs. Transport PPPs are challenging because of the high costs profile, thus the project structuring should make provisions for Government support and incentives such as subsidies or tax exemptions at a level that is acceptable and affordable to the

⁹ Proclamation No. 468/2005, dated 6 August 2005

government. Actual demand may be more or less than what was forecasted. This risk can be fully transferred to the private sector, however this will come at a price and it is questionable whether this will lead to an optimal risk allocation and thus an optimal value for money.

- Based on lessons learned, a **Minimum Revenue Guarantee** can be included in the contract as a mitigation measure for demand risk. This contractual provision implies that if actual traffic is below a predefined threshold, the project company will be compensated by the government for the difference. If for example the threshold is set at 70% of the estimated traffic for a given year and actual traffic is 65%, the project company will receive a one-off payment from the government based on the 5% difference multiplied with the respective rates of the different demand categories.
- The threshold is typically set such that the project company always generates sufficient income to meet the operating and maintenance expenses as contracting authorities would not want the project company to face funding issues for operations and maintenance, and most of the debt service. Debt providers should be exposed to a certain level of demand risk so they are motivated to monitor the demand risk.
- If such a guarantee is provided it is typically matched with a **Benefit Sharing** provision. Such a provision implies that if actual demand exceeds a predefined threshold, the excess revenues will be shared according to a pre-agreed formula. For example, if the upper band is set at 120% and actual demand is 130% of the estimated demand, the 10% excess will be shared 50-50 (or any ratio as agreed upon in the contract). This is to avoid a situation whereby the project company will enjoy excessive profits at the expense of the user.
- Due to the difficulties with forecasting traffic demand and the high costs involved for all parties when it goes wrong, private sector companies are reluctant to accept the transfer of such risks and the PPP market tends to work on a government pay basis using availability payments or other mechanisms. The detailed Roads section includes a discussion on government and hybrid payment mechanisms.
- Government-pays PPP contract can include some element of demand risk mitigation. In such contracts excess demand can lead to an increase in maintenance costs. For example, in a hypothetical PPP contract periodic maintenance is anticipated to commence after Year 7. However, due to excess demand, asset utilization is significantly higher in the first 5 years, causing periodic maintenance to commence in Year 5 rather than say year 8. In such contracts, there could be a provision that states that if demand exceeds a certain X value of the estimated traffic, the government will provide financial support for the extra costs for maintenance. Such a mechanism would take into account the fact that excessive demand would have increased annual revenues for the operator in calculating the impact of the maintenance costs.

ROADS¹⁰

PREFACE

Legal, Regulatory and Institutional Framework

Ethiopian Roads Authority

The Ethiopian Roads Authority (ERA), re-established as a regulatory Federal Government institution in July 8, 2011 under regulation 247/2011, is tasked with managing the country's roads. Its responsibilities include developing and administering highways, certifying the standard of road construction and creating proper conditions on which the road network is promoted. The proclamation also authorizes ERA to manage weigh bridges. ERA is the Contracting Authority which will enter into a PPP Agreement with the private sector.

Ministry of Transport

The role and objectives of the Ministry of Transport are explained in the first section of the Transport Guidelines.

I. PPP PRIMER AND PHASES IN PPP DEVELOPMENT

Roads are by far the dominant mode of transport infrastructure using the PPP model. For privately financed road infrastructure development, including rehabilitation, the most distinctive feature is the **cost recovery mechanism**. The basic cost recovery options are:

1. **User charges.** The user is charged a fee for the use of the infrastructure. In case of roads this fee is commonly referred to as 'tolls'.
2. **Shadow tolls.** Shadow tolls are periodic payments from a public authority to the private company based on the actual usage of the infrastructure.
3. **Unitary payments.** Unitary payments are periodic payments upon operations from a public authority to the private company. There are various options to define these payments; the most common option is *availability or annuity payment* whereby the payment is based on the level of availability of the infrastructure. Alternatively, the payment scheme could also be defined through so-called Output and Performance Road Contracting (OPRC) principles. Annuity based PPPs in the road sector are mainly applied in Europe (approximately 28% of the implemented road PPPs in Europe was based on availability payments), as well as in India.

Consequently, there are essentially two basic PPP models for road projects involving capital investments: (i) User Pay Road PPP contracts and (ii) Government Pays Road PPP contracts:

- **User Pay Road PPP contract:** The best known PPP arrangement is a Design Build Finance and Operate (DBFO) arrangement also known as a Build Operate Transfer (BOT) arrangement. This arrangement implies that a private company is responsible for the design, construction, financing and the operations of infrastructure for a given period of

¹⁰ Sources: World Bank: Highway Toolkit; PPP Knowledge Lab: Roads

time. Operations include the right (concession) to charge users a fee for the use of the infrastructure. For road infrastructure, this will normally be done through tolls.

- **Government Pay Road PPP:** If the PPP arrangement does not include the right to levy and retain user charges, the arrangement is commonly referred to as a Design Build Finance Maintain (DBFM) arrangement. This arrangement implies that a private company is responsible for the design, construction, financing and maintenance of infrastructure for a given period of time. The costs are reimbursed by the public authority based on a predefined payment schedule (availability payments or shadow tolls).

The different cost recovery mechanisms differ significantly in their cash flow profiles for both the private and public sector. Whereas upon public delivery the government reimburses almost immediately the costs made by a private contractor for building the road and maintaining it, upon BOT, the private company is to receive its income from user fees i.e. tolls. Depending on the financial appraisal he will be able to either pay a concession fee if he expects income to exceed his costs or require a subsidy often referred to as a viability gap financing (VGF) if he expects income from user charges to be insufficient to recover costs.

Availability (or unitary) payments: In the case of *availability (or unitary) payments*, revenues for the private company are fixed as they do not depend on the actual intensity of infrastructure use. Therefore, the private sector faces no demand risk.

Shadow tolls: In the case of *shadow tolls*, the income for the private sector depends on the actual infrastructure use. Therefore, the private company does incur demand risk. Since users have access to the infrastructure 'free of charge', the demand risk is predominantly related to the uncertainty of traffic forecasts (these are mainly driven by macroeconomic and regional economic conditions and do not include the uncertainty on the user's willingness to pay).

The use of *shadow tolls* should be carefully considered. Shadow tolls impose demand risk on the private company; this risk is only to a marginal extent within the control of the company. Normally when a company is subject to demand risk, and when demand turns out to be less than expected, the company will try to increase revenues. This may be achieved through revising pricing strategies or by increasing marketing efforts. However in the case of a road with shadow toll, there is no direct pricing, and traffic will only be influenced marginally by increased marketing efforts. In this case, traffic volumes are determined only by macroeconomic and regional economic conditions.

The fact that the company is exposed to demand risk, which it does not control will be priced accordingly at the beginning of the PPP contract. Shadow tolls also impose demand risk on the public sector. After all, the contracting authority faces uncertain expenditures because payments to the private company may increase or decrease over time due to traffic growth or decline.

Real tolls: In the case of *real tolls* the demand risk is related to the macroeconomic and regional economic conditions and to the user's 'willingness to pay'. The 'willingness to pay' will depend on the benefits of the infrastructure to the respective users. An important benefit to consider is (value of) time. For example: the freight traffic business values time dearly (time is money in freight transport). Therefore, if a freight transport operator has limited alternatives for transporting goods from A to B, the operator is probably willing to pay a fee for the use of infrastructure, if it saves time. However, a leisure traveller will value time gains and losses less.

Therefore, if the leisure traveller has other alternatives (e.g. other means of transportation or a different road) to arrive at his destination, he will be less willing to pay a fee for infrastructure use.

The use of *real tolls* does not automatically imply that demand risk is transferred to the private company. Following negotiations between the public authority and the private company, the public authority may offer to mitigate the company’s demand risk by providing guarantees. This will reduce the risk profile for the private company and consequently reduce its cost of capital, hence improving the financial performance of the project. However, the use of guarantees also has a cost, which the public sector will need to consider. Demand risk will be allocated to the public sector when the private company collects the tolls on behalf of the government. The private company will then transfer the collected revenues to the public authorities.

It is also possible to have an arrangement whereby the government awards a government-pays PPP for the development and management of road infrastructure and collects tolls in order to generate funding for the availability payments/unitary charges to the private developer.

The government can also opt to limit the PPP to the operations and management of the road infrastructure. The development of the road can be implemented through conventional procurement supported by budgetary resources or financial support from development partners. The operations and maintenance of the road can be arranged through a PPP. This arrangement can include the collection of tolls or can be based on government payments. In the case of the latter, the payments are typically based on predefined service levels and are known as Performance Based Management (PBM) contracts.

The different forms of PPPs presented here are in line with the PPP legal framework on more specifically article 5 of the PPP Proclamation.

II. PHASE I: PPP PROJECT IDENTIFICATION AND SCREENING



Key Issues to Consider:

1. Whether there is consistency with Ethiopia’s development objectives

The development objectives for the road sector in Ethiopia are reflected in the 5-year Road Sector Development Program (RSDP). Any initiatives for road PPPs, including unsolicited proposals, need to be aligned with the RSDP. The PPP Suitability Application should therefore indicate how the proposed road project will contribute to the RSDP.

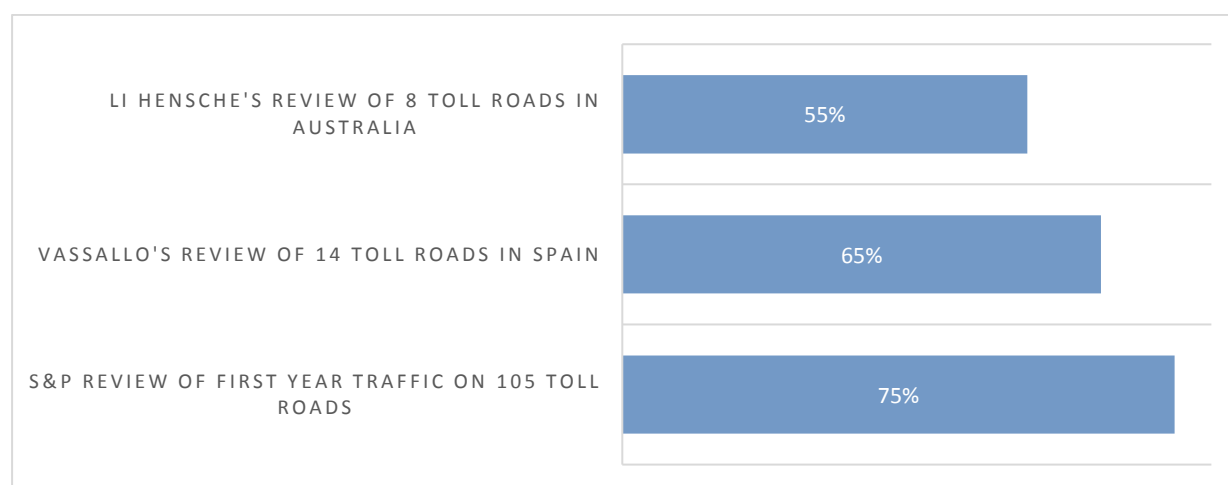
2. Whether there is sufficient demand for the project outputs

The PPP Suitability Application should include a tentative demand assessment in terms of expected Annual Average Daily Traffic (AADT) for the coming 30 years. This initial demand analysis will have to take into consideration:

- Whether the project is a Greenfield or Brownfield project;
- Current demand, preferably based on traffic counts;
- Composition of traffic, i.e. the share of small, medium and large vehicles;
- Nearby competing alternatives and expected developments in the region that may impact demand; and
- Expected growth in the economy and population as the main drivers for traffic growth.

Due care should be given to *optimism bias*. International experiences demonstrate that traffic forecasts for road PPPs are commonly overstated.

Figure 2: Actual Traffic as a Percentage of Forecast



3. Whether the project will provide substantial benefits to the public; whether the private sector should undertake the Public Service Activity; and whether the project is expected to transfer meaningful and appropriate risks to a private sector partner

Typical economic benefits for road projects include: travel time reduction and a reduction in vehicle operating costs due to reduced congestion or improved connection and improvements in the road condition. In addition, the wider economic benefits need to be assessed, reflecting the impact of the improvement in the accessibility and connectivity of the impacted region on the economic growth potential in the region.

The envisaged economic benefits in terms of reduction in travel time and vehicle operating costs have to be multiplied with the expected use of the road infrastructure; these benefits must offset the economic costs of the development and management of the road asset.

Upon project identification, it is sufficient at this stage to provide a qualitative description of the expected economic benefits which will need to be further substantiated upon project appraisal.

4. Whether a project is likely to deliver Value for Money

Value for money in the case of road PPPs is reflected in the reduced risk of cost overruns and delays as well as efficiency gains leading to lower life cycle costs. This value for money is driven by a transfer of the design, construction and operational risk along with the use of private finance which provides an incentive to the private developer to deliver the project on time and within budget.

Upon project identification and in the absence of empirical data on the benefits from PPP vis-à-vis conventional delivery schemes in the Ethiopian context, reference can be made to international experiences.

5. Whether sufficient financial resources, including government support, are expected to be available for the project

Financial resources refer to both the private capital required for the implementation of the project and the possible financial support from the government.

Government Financial Support may be required for the following reasons:

- To fund the development of the project i.e. ensuring a thorough and appropriate appraisal and feasibility assessment of the project and an efficient and effective tender process;
- To provide financial support to the implementation of a user pays road PPP. If the proceeds from user charges/tolls are not sufficient to recoup the investment, the government may consider the use of Viability Gap Financing;
- If shadow tolling is adopted
- To provide financial support through periodic availability payments (also known as annuity or unitary payments) in the case of government-pays road PPPs.

Furthermore, financial support may be required by means of government guarantees for various risks, though this is to be identified and appraised upon project structuring.

6. Whether the Contracting Authority has sufficient capacity and resources to appropriately prepare and implement the project

The PPP Suitability Application should cover project planning, including an estimate of the required capacity and resources for the development of the project. This must include internal resources and the required budget for any consulting services for project preparation and transaction advisory.

For road PPPs, appropriate resources need be allocated to: (i) Traffic analysis; (ii) Design and cost estimates; (iii) Financial modelling, (iv) Legal and regulatory due diligence, (v) Environmental and social impact analysis, and (vi) Transaction Advisory and contract management.

7. Is the output or services from the project affordable to users/customers?

For user charge PPPs i.e. toll roads, specific attention must be given to willingness to pay. Reference can be made to international benchmarks of toll rates and current toll rates for the Addis Ababa – Adama Expressway. Based on the traffic forecast and the assumed toll rates, a tentative indication can be provided on the revenue potential of the project.

8. Is the project large enough to justify transaction costs, i.e. above USD 50 million, and of a “bankable” size?

It is recommended for road PPPs that the size of the project is large enough for the value for money potential to offset the transaction costs which are commonly higher for PPP projects

than for conventional projects. The size of the project could refer to the capital value of the project and a threshold of USD 50 million should be taken into consideration.

However, for possible O&M arrangements that do not require substantial investments and still may be suitable for PPP, it is recommended to consider the *length of the road* under consideration and apply a minimum of *50km*.

9. Are the environmentally and social impacts of the project acceptable and can they be mitigated using Ethiopian and international standards?

The PPP Suitability Application needs to indicate whether any major environmental and/or social issues are envisaged for the proposed road PPP. In particular issues regarding *Right of Way* need to be flagged including land acquisition and possible encroachment issues.

10. Is the project replicable or scalable?

Road PPPs are very suitable for replication. The PPP Suitability Application should indicate whether the proposed PPP project is envisaged to be replicated.

11. Can appropriate and relevant project risks be allocated to the private sector?

For road PPPs it is assumed that appropriate and relevant project risks can be allocated to the private sector in view of international experiences with road PPPs

III. PHASE II: PPP PROJECT APPRAISAL AND PREPARATION



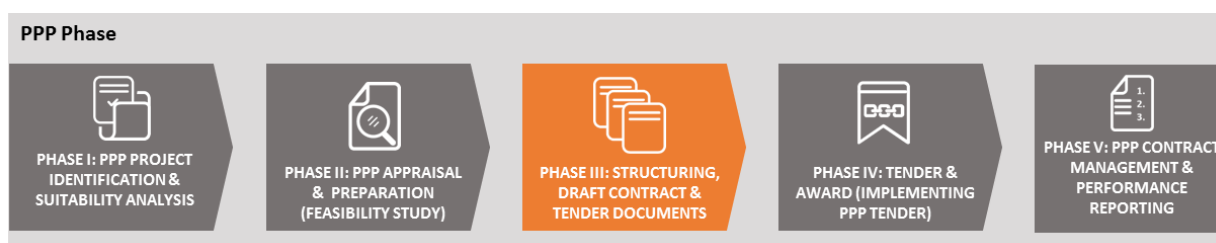
With regard to the scope of work for the Feasibility Study the following specificities apply to the roads sector:

<p>Demand analysis</p> <ul style="list-style-type: none"> ▪ Traffic counts ▪ Willingness to pay surveys ▪ Network analysis 	<p>Economic analysis based on HDM methodology</p>	<p>Design taking into account Ethiopian Highway Design Manual</p>	<p>Land acquisition plan including need for resettlement</p>
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Furthermore, specific care is to be given to the regulatory framework for tolling. This includes addressing the following issues (including but not limited to):

- What kind of tolling system is appropriate (open or closed)
- Vehicle classification
- Toll rate setting including:
 - Escalations (e.g. inflation)
 - Discounts (e.g. frequent users, local traffic, time of day,)
 - Exemptions (e.g. emergency vehicles, military vehicles)
- Toll collection technologies (e.g. cash, pre-paid, post-paid)

IV. PHASE III: STRUCTURING AND DRAFTING THE TENDER AND CONTRACT DOCUMENTS



Key Issues to Consider:

The typical PPP experience requirements for the roads sector include the following:

- Equity share in road PPP project by a consortium member or affiliated company at least [5]%; and
- Size of project in km or lane km at least [0.5] times the size of the project at hand; and/or
- Value of the project in monetary terms at least [0.5] times the value of the project at hand.

Specifically, for roads due care is to be given to the risk of vehicle overloading. This risk refers to the risk that trucks are carrying more weight than allowed. Normally it is the government’s responsibility to provide appropriate regulation for vehicle loading and enforce these

regulations. If for some reason it becomes apparent that the actual weight is exceeding the maximum weight allowed and consequently maintenance cost will increase it is not uncommon that the private company will be compensated for the additional maintenance costs.

Performance Standards

PPP-type contracts give rise schematically to three types of requirements corresponding to the different project stages:

- Quality requirements for the construction, reconstruction and rehabilitation phases;
- Performance requirements throughout the maintenance and operation phase;
- Hand-back requirements which concern returning the conceded facility to the conceding authority on expiry of the concession contract.

These requirements are not independent. There should be continuity and coherence between the quality requirements for the works and performance requirements (e.g. the level of evenness required during construction or rehabilitation should be at least equal to that required regarding the performance of the road pavement in service). It should also be underlined that, as much as possible, with regard to the initial quality or performance, the requirements regarding results should be given priority compared to the requirements concerning the means and method of execution. This is further elaborated below:

- **The design of the contract should stimulate the operator to perform well.** The operator's incentives to perform well present a powerful aid to respecting quality requirements (at the construction stage) and performance requirements at the operation and maintenance stage. Contracts that follow this objective can lead to major savings in supervision work.
- **Type of contracts encouraging better performances.** It is essential, when organizing the project and the contract, to ensure that the operator has a real interest in improved quality of works and improved performance.

The following examples illustrate this principle:

- When the public authorities wish to entrust both road rehabilitation and maintenance to the private sector, they would be strongly advised to include them in the same contract and entrust them to the same contractor. Thus, any defect in the quality of the rehabilitation work will result in additional costs for the operator, which provides an incentive tied to performance.
- With sufficiently lengthy maintenance contracts (i.e. 5 years, for example) work defects may eventually become visible. Of course, the optimum period to be considered should also take into account other elements such as: the advantage of experimenting with shorter contracts during the launching phase of a PPP policy, etc.
- For toll motorways, it is advantageous that the concessionaires of service areas (service stations, shops, restaurants, hotels, etc.) be sub-contractors of the conceding authority, which will have a direct interest in the quality of the services provided and greater regulation/oversight.

- Being given a choice of toll payment means (cash, credit cards, electronic tolling, etc.) is well perceived by users. The operator will be encouraged to increase this variety and to develop new techniques if it collects tolls itself. This will not be the case if the sums collected are handed back to the conceding authority. In the first case, as expected, one primary concern for toll managers is to actively fight against fraud at the toll barrier.
- The possibility of extending the contract if performance is achieved also encourages the private sector to perform works and services well.

PERFORMANCE INDICATORS FOR MAINTENANCE WORKS

The choice of the performance indicators should take two key concerns into consideration: (i) to provide an adequate level of service to users; and (ii) to preserve the road heritage. This choice should also take into account their intended use.

Depending on the contracts, not respecting the required performance levels may be penalized in different ways, including:

- Financial penalties;
- Formal summons to carry out improvement works, and in the case of default, having the works carried out by a contractor chosen by the road authorities, at the operator's expense; and
- Financial penalties up to a certain level, followed formal summons to carry out the works.

Two types of performance indicators are used:

- **Global indicators**, combining several elementary indicators, which aim to provide global information on the quality of the road. Even if they are used as performance indicators in some contracts, these indicators are better adapted to the global assessment of the quality of the networks, useful to the public authorities for determining the resources/interventions to be devoted to the roads.
- **Elementary indicators**, relative to certain specific characteristics (i.e. evenness, skid resistance, cracking, etc.), which, if not respected, incur penalties or formal summons to carry out the necessary improvement works. This second category of indicator should be given priority in contracts.

The Pavement

Unpaved Roads

The wide variety of local situations (depending on the nature of the soil, the climate, and the road environment, the characteristics of the convoys likely to travel on the pavement, etc.) mean that the performance criteria will necessarily vary. The main types of deterioration are as follows:

- Deformation, due to materials being worn away under traffic (gravel loss);
- Rutting or subsidence/settling;

- Potholes;
- Corrugation; and
- Ravines forming due to water flowing down the pavement.

These may be characterized by direct or indirect measures through their consequences on traffic conditions. Performance-based maintenance contracts for **earth roads in Chad** provide a good example; they use the following indicators:

- Traffickability in all weathers for light vehicles, at an average speed depending on the season (dry or wet) to be specified in the contract;
- Width of corrugation (e.g. maximum < 4 cm; average, per 50-m section, < 3 cm);
- Depth of rutting (e.g. maximum < 5 cm; average, per 100-m section, < 3 cm);
- Total pavement distress surface area, such as potholes, sandy pockets and gravel pockets (e.g.: < 60 m² per km; and unit surface areas of these distresses < 1 m²);
- Tolerance over the useful pavement width for traffic (e.g.: 20 cm less than the pavement width specified in the contract);
- Tolerance on the height of the pavement axis (e.g. 3 cm less than the theoretical vertical alignment, except during periods when re-graveling work is no longer possible).

Paved Roads

Quantitative Indicators: Internationally, there is a general consensus on the choice of key indicators which should respond to the dual objective of maintaining the quality of service to the user and preserving the road assets. The measurement methods have also been subjected to many comparative tests (particularly concerning evenness and skid resistance) which are the basis of a fairly wide international consensus. Despite this, the contract will have to be very precise in determining tests and measurement methods. Of course, the precise choice of these methods as well as the thresholds to be established, are to be decided upon by the relevant advisors/specialists.

The following table lists the most frequently used indicators for flexible pavements.

Unit indices	Surface/ quality of use	Asset preservation
Evenness	●	
Skid resistance	●	
Macrotexture	●	
Rutting	●	
Raveling	●	
Potholes	●	●
Cracking	●	●
Deflection		●

For concrete pavements, evenness, skid resistance, macrotexture, cracking, faulting, and pumping are the most frequently used indicators. Other quantitative indicators may be added, such as:

- Maximum height of water accumulation after a storm; and
- Maximum level difference between the pavement edge and the shoulder.

Qualitative Indicators. Those most frequently mentioned in contracts are the following:

- Pavement cleanliness, free of gravel, debris and slippery matter;
- Rapid treatment of areas made slippery by accidental spills; and
- Acceptable wear of marking products (paint).

Roadside ancillaries

Some examples of quantitative indicators include: maximum height of grass on the verges; top of the embankment and ditches; minimum height between the road surface and the lowest branch of any tree; and maximum water flow of a drainage system. The other indicators are qualitative and generally concern the following:

- Efficient drainage systems both on the surface and underground channels;
- Shoulders in good condition, with no signs of erosion and with a sufficient slope;
- Preserving the grass cover in grassy areas;
- Caring for plants and trees in planted areas;
- Pruning trees overhanging the pavement and felling those likely to fall down;
- Keeping signing, reflectors and safety barriers in good condition;
- Cleanness of roadside and amenities; and
- Good condition of safety equipment.

Bridges, Tunnels, Retaining Walls, Drainage Structures

Routine maintenance can be performance-based according to quantitative and qualitative indicators (e.g. condition of safety equipment, aesthetics of retaining walls, efficiency of drainage systems, etc.). In most cases, the interval between two sets of major maintenance works is longer than the usual term of a performance contract. Thus, these works cannot be generally included in the contract, except as initial rehabilitation at the beginning of the contract or as additional services at the public authority's request during the contract.

For long contracts, these works are usually included, in which case, it is desirable to stipulate in the contract the frequency of inspection visits which the operator should undertake (e.g. a brief visit every year and a more detailed visit every five years). The observations collected during these visits should be described in detailed reports available to the road authorities.

PERFORMANCE INDICATORS FOR OPERATION

The choice of these indicators should be adapted to the road characteristics (i.e. motorway or ordinary road; toll road or free road) and to its function (e.g. urban or inter-city road). The requirement level should remain reasonable, as any additional expense will ultimately be paid by the user or from the budget. The most common requirements typically include the following:

- Maximum rate of road unavailability: This indicator may be combined with other conditions relative to road availability. For example, the obligation for a motorway to maintain one lane in service in both directions, except under exceptional circumstances; the obligation, in case the road is completely closed, to have planned and prepared temporary replacement route markings, etc.
- These requirements may vary based on traffic levels, or according to the season or the time of day.
- Maximum rate of unavailability of equipment, such as lighting, variable message panels, emergency telephone network, traffic surveillance camera, etc.
- Maximum time for repairing faulty equipment.
- Maximum time for warning of and arriving on the scene of an accident. Time allowed for setting up warning devices for users and signing to protect damaged vehicles and emergency service staff.
- Quality of information to users, which comprises two components:
 - Forecast information, concerning, by definition, what is foreseeable, i.e., construction/maintenance sites, demonstrations, traffic conditions, etc. It may use many supports: press, radio, information panels, etc. The internet is playing an increasingly important role in this type of information.
 - Real-time information, available to users through variable message panels or specialist radio. Performance can be measured by the relevance, precision and frequency with which this information is updated.
 - Considerable progress has been made in the field of real-time information, mainly due to on-board information which enables the condition of the network to be visualized at any time from within a vehicle. Such possibilities will only be fully effective if the operators provide relevant information at all times. This is a very new category of performance which may be required of operators.
- Toll-related performances, which may concern the flexibility with which collection systems adapt to users' requests (i.e. payment in cash, by credit card, by special card, non-stop tolling, etc.) the maximum length of queues, graft levels, which are a permanent worry to toll motorway operators, and the reliability of electronic payment systems.
- It is best to create incentives where it is to the operator's advantage to increase toll receipts. An operator paid on the amount of receipts will be incentivized to tackle the issue of fraud.
- The operator must facilitate traffic conditions and reduce the average duration of traffic jams. Traffic congestion indicators may include the average transit speeds of a light vehicle on given road sections, for example.

- Safety indicators may include the average number and seriousness of accidents per km of road.

Hand-over Requirements

Two categories of requirements may be imposed when handing back the road to the authorities at the end of the contract: (i) maintaining service quality performance up to and including the last day of the contract; and (ii) the residual life span of the various road components.

In all cases, hand-over should be preceded by a period of assessment and concertation between the road authorities and the operator lasting several months for a short contract and several years for a long contract.

Service Quality Performance

The main objective is to ensure maintenance and service quality performance up to the last day of the contract. It is recommended to plan a general audit several months before the end of the contract and summon the operator to carry out all the necessary repairs and corrections in good time.

Residual Life Span

This problem arises in very different terms depending on the duration of the contract, the nature of the pavement, whether or not there are any large bridges or tunnels, the nature of operating equipment, etc. Each case is a special case which requires individual examination. The sole aim of the following comments is to help with this examination, and not to provide ready-made solutions.

- Short contracts:
 - The optimum sequence of rehabilitation or pavement strengthening work, general surfacing work, installing safety equipment, may in this case be planned and determined in the contract.
- Long contracts. The question of the residual life span should be examined item by item:
 - **Surfacing (surface coating or asphalt):** The average life span for such surfacing, depending on the traffic and local conditions, is known. To preserve a minimum life span after handing back the road, it is necessary to stipulate a minimal residual life span to the operator, e.g., 2 years for surface coatings and 3 years for asphalt.
 - **Structure of flexible pavements:** Deflection measurement allows a reasonable approximation of the residual pavement life to be obtained. A measurement campaign made a few years prior to completion of the contract may enable an agreement to be found on the necessary strengthening measures in order to achieve the residual life span imposed by the contract (e.g. 10 to 15 years).
 - **Concrete pavements:** This problem is complex for two reasons: (i) the life span of concrete pavements is of the same order of greatness as those chosen for concessions (30-35 years). (ii) Regardless of the chosen technique (they have

considerably diversified in recent years) the cost of work necessary to prolong the life span of a concrete pavement is always very high. It is not possible to recommend general rules for the clauses relating to requirements for residual lifespans which should be closely examined, case by case, as supported by advisors/specialists.

- **Bridges:** For the structure itself, standards always provide for very long conception and design lifespan, much greater than concession periods usually last. The only obligation the operator must comply with is to ensure correct maintenance, as verified through an audit before hand-over. It will be necessary, in this audit, to pay particular attention to the condition of equipment (i.e. expansion joints, supports, safety barriers).
- **Tunnels:** As above, with particular attention should be paid to the condition of equipment (i.e. ventilation, lighting, warning systems, emergency telephone network, etc.), with consideration to the lifespans determined by the suppliers.
- **Safety or operating equipment:** For all safety and operating equipment, it is best to stipulate a residual lifespan, based on normal lifespans as determined by the suppliers.

VII. PHASE IV: TENDER & AWARD



No sectoral specificities.

I. PHASE V: PPP CONTRACT MANAGEMENT & PERFORMANCE REPORTING



Post-award contract management and performance monitoring would follow the same procedures outlined in the PPP General Guidelines.

RAILWAYS¹¹

PREFACE

Legal, Regulatory and Institutional Framework

For PPP rail projects, the Ethiopian Railway Corporation (ERC) would be the designated Contracting Authority. The Railway Transport Administration Proclamation No.1048/2017 dated 26 July 2017 applies to railway infrastructure built in Ethiopia; railway transport services provided in Ethiopia; and railway work carried out in Ethiopia, with the exception of:

- Privately-owned railway infrastructure that exists solely for the use by the infrastructure owner for its own freight operation;
- Railway infrastructure built and operated at an amusement park; and
- Railway work or a railway infrastructure which has a rail gauge less than 1,435 millimeters.

To engage in railway works, a person shall be registered in the railway works professional registry book and have a valid competency license (sections 10 and 11). The purpose of the Proclamation is mainly institutional; it is not meant to deal with operational issues and therefore does not contain any provisions dealing with the way transport is authorized either by way of authorization, license or contract. Furthermore, no infrastructure manager shall apply tariff and condition for the infrastructure service without submitting and obtaining approval from the Ministry (section 16).

Railway Transport Administration

The Proclamation 1048/2017 indicates the Ministry of Transport shall “*promote private sectors participation in railway infrastructure construction and railway transport service as determined by relevant law; provide license for new railway infrastructure construction and expansion carried out by private investors*” (section 36);

The Ethiopian Railway Corporation Establishment Council of Ministers Regulation No 25/1992 creates the Ethiopian Railway Corporation, a public enterprise under the supervision of the Ministry of Transport in charge of:

- building railway infrastructure;
- operating cargo railway transport services;
- operating passenger railway transport services;
- engaging in other related activities necessary for the attainment of its purposes.

Ethiopian Railway Corporation

The Ethiopian Railways Corporation (ERC) was established in 2007, replacing the Franco-Ethiopian railway which is no longer operational, with the objective of creating a modern railway network.

¹¹ Sources:

The United Nations Economic Commission for Europe (UNECE): Standard on PPPs in Railways (Draft, 2018)
 PPP Knowledge Lab: Rail
 PPIAF: Railway Reform Toolkit
 World Bank: A Railway Concessions Toolkit (2003)

ERC operates both passenger and freight transport. ERC is the Contracting Authority which will enter into a PPP Agreement with the private sector.

I. PPP PRIMER AND PHASES IN PPP DEVELOPMENT

In the past few decades, the private sector has participated increasingly in the construction and operation of railway infrastructure, in particular high-speed lines, railway lines for freight transport and rail technology worldwide. In all these sub-sectors, PPPs can open up possibilities to build and operate efficient rail systems with modern and clean technology. Railway projects providing for shared use of rail tracks may lead to efficiency gains and an increased revenue basis for states and private investors, and make investment in PPP schemes more attractive.

However, railway PPPs are by no means a guarantee for success. For instance, 11 out of 12 selected railway concessions in Sub-Saharan Africa are in financial distress and only one (1) railway concession is delivering a satisfactory operational performance.

Figure 3: Performance Review of Railway Concessions in Africa

Concession	Countries	Year	Operational Performance	Financial Performance	Cancelled
Sitarail	Cote d'Ivoire – Burkina Faso	1995			
Camrail	Cameroon	1999			
CEAR	Malawi	2000			
RSZ	Zambia	2002			X
Madarail	Madagascar	2003			
Transrail	Senegal, Mali	2003			
CCFB	Mozambique	2005			X
Transgabonais	Gabon	2005			
Nacala	Mozambique	2005			
KRC - URC	Kenya - Uganda	2006			
TRC	Tanzania	2007			X
SNCC	DR Congo	2011			

	Good
	Fair
	Poor
	Distress

Source: World Bank

Such poor performance is not unlikely, given the high risk profile of rail infrastructure. In particular, the **construction risk** and **demand risk** are above average for transport infrastructure. Research has illustrated that actual costs for rail projects are on average 45% higher than the estimated costs and actual traffic 39% lower than estimated.

It is therefore of the utmost importance that railway projects are well prepared including a detailed analysis of all risks and uncertainties, and an assessment of contingencies in the cost estimates and traffic forecasts.

Type of Possible PPPs:

The following main models for PPP can be identified:

- Integrated Build Operate Transfer (BOT) concession
- Vertically Separated Railway

- Split Model
- Management Concession

1. Integrated BOT Concession

The BOT concession implies that the governments award a contract to a private entity that encompasses the right to build and operate the railway and levy user charges to recover its costs. In the railway sector such arrangements have been applied in Latin America. In Africa, this concept has been applied for the Uganda and Kenya Railways Concession – though for railway rehabilitation. In regulatory terms, this arrangement is referred to as a vertically integrated railway.

The concessionaire is responsible for arranging finance to invest both in the railway infrastructure as well the rolling stock. Finance includes equity contributions from the shareholders of the concessionaire as well as debt facilities from banks or possible issuance of bonds. Debt is to be serviced from income from operations after payment of operational expenditures and taxes. What is left is returned to the shareholders as dividend, who expect a return on their investment.

Consequently, the concessionaire bears all associated risks: the construction risk, demand risk, financing risk and operational risk.

The concessionaire can be selected following a competitive tender based on the lowest tariff or the highest concession fee offered. The concept of concession fees has been applied often in previous concessions for Sub-Saharan Africa railways, however experience has shown that the concession fee has to be recovered from tariffs, implying a cost to the user, leading to either (i) higher tariffs and a less competitive service or (ii) reduced profitability, rendering the proposition less attractive to prospective bidders and capital providers. Therefore, this award criterion is not preferred.

2. Vertically Separated Railway Concession

In a vertically separated railway the development and management of the railway infrastructure is separated from the train operations – this is the case in Europe. The infrastructure manager, which has mainly devolved from existing railway enterprises, is responsible for financing the infrastructure development and receives from the train operating company (TOC) a track access charge (TAC) to service the infrastructure debt, pay maintenance costs, and return dividends.

Typically, main attributes of this structure are:

- The infrastructure manager is responsible for infrastructure maintenance, sustaining capital investment and growth investment;
- The TAC is adjusted to reflect additional investments and is typically charged as a function of usage by TOC(s);
- TOC(s) are responsible for providing equipment and operating services.

Consequently, both infrastructure manager and TOC are exposed to uncertainty of demand next to the obvious operational risks. The infrastructure manager also bears the construction and the financing risk (excluding rolling stock).

3. Split Model

The Split Model assumes a direct, lease contract format running between the Concessionaire or TOC and the multi-government agency or multiple agencies funding the initial capital investments in the railway.

An affermage concession is essentially a lease contract whereby the concessionaire pays a lease for the use of the asset. For instance, this arrangement was used for the railway concessions for Cote d'Ivoire-Burkina Faso and in Cameroon, which were awarded in the 1990s. Since the concessionaire is responsible for operating the railway as well as the rolling stock, this is still to be considered a vertically integrated railway from a regulatory perspective.

It implies that the asset is financed by the government through sovereign lending or otherwise without the intermediation of an infrastructure manager. The debt can be serviced through the proceeds of the lease.

Main elements of the structure advocated here are:

- The government directly finances initial investment in the railway but has no other operational role(s);
- The Concessionaire is responsible for infrastructure maintenance, sustaining capital investment and growth investment;
- The Concessionaire is responsible for providing equipment and operating services;
- The Concessionaire is to recover the costs of the lease through income from operations.

Thus the Concessionaire does not bear the initial construction or financial risks, though only the operational and demand risks and the risk associated with providing sustaining capital.

4. Management Concession

As a more conventional approach it could also be considered to limit private sector participation to operations and management of the railway. This option encompasses the following features:

- The government funds all required investments for both the railway infrastructure and the rolling stock;
- The government awards a contract for the construction of the railway;
- The government awards a contract for the management and operations of the railway through a management concession;
- The government reimburses the Concessionaire periodically based on pre-defined performance indicators;
- The government receives the income from operations in order to service the financial obligations arising from the funding of the required investments and to service the management concession fees;

Consequently, the governments are exposed to the full risk exposure of the project including the construction and demand risk, whereas the Concessionaire is only exposed to the performance risk, which is limited in view of the absence of private finance.

The different forms of PPPs presented here are in line with the PPP legal framework on more specifically article 5 of the PPP Proclamation.

II. PHASE I: PPP PROJECT IDENTIFICATION AND SCREENING



Key Issues to Consider:

1. Whether the project is consistent with Ethiopia's development objectives

The development objectives for the railway sector in Ethiopia are reflected in the National Railway Master Plan as developed by the Ethiopian Railway Corporation (ERC) ERC has identified eight major routes that will comprise the national rail network for a total of close to 5,000 km:

- Addis Ababa-Modjo-Awash-Dire Dawa – Dewanle (656 km)
- Modjo-Shasheme/Hawasa-Konso-Weyto (905 km)
- Addis Ababa-Ijaji-Jimma-Gurafarda –Dima (740 km)
- Ejaji-Nekemt-Asossa-Kurmuk (460 km)
- Awash-Kombolcha-Mekelle-Shire (757 km)
- Fenoteselam-Bahirdar-Wereta-Weldia-Semera-Elidar (734 km)
- Wereta-Azezo-Metema (244 km)
- Adama-Indeto-Gasera (248 km)

Alongside the rail network, ERC has identified other rail sector projects including transport service projects (for operational railroads), urban light rail and metro project in Addis Ababa, rail side businesses and Transit Oriented Development (TOD).

2. Whether there is sufficient demand for the project outputs

The PPP Suitability Application is to include a tentative demand assessment for the possible use of proposed railways or related development for the coming 30 years. This initial demand analysis will have to consider:

- Whether the project is a greenfield or brownfield project;
- Current demand in particular transport of goods;

- Composition of traffic i.e. passengers and goods;
- Nearby competing alternatives and expected developments in the region that may impact demand;
- Expected growth in the economy being the main drivers for demand growth.

Due care is to be given to *optimism bias*. International experiences demonstrate that traffic forecasts for rail PPPs are commonly overstated.

3. Whether the project will give substantial benefit to the public; if private sector is preferred to undertake the Public Service Activity; and if the project is expected to be able to transfer meaningful and appropriate risks to a private sector partner

Typical economic benefits for railway projects include reduction in transportation costs. In addition, the wider economic benefits need to be assessed reflecting the impact of the improvement in the accessibility and connectivity of the impacted region on the economic growth potential in the region. This includes:

- Safety
- Local pollution
- Greenhouse gas emissions
- Road congestion reduction because of modal shift
- Road maintenance cost reduction due to modal shift

Upon project identification it is sufficient to give a qualitative description of the expected economic benefits which need to be further substantiated upon project appraisal.

4. Whether a project is likely to deliver Value for Money

Rail PPPs are perhaps the best example of how and why PPPs are an effective tool for government. Rail systems, while long lasting and offering significant direct and indirect development opportunity, are prohibitively expensive. That cost is a very real barrier to accessing their benefits, and PPPs, with their ability to be privately financed, can bring these major undertakings that are otherwise too costly, within reach. PPPs in Rail therefore offer real development potential and can be a financing solution that also delivers critical updates and advances to aging rail infrastructure or and help governments better achieve their development goals.

However, rail systems are inherently complex. There are multiple operational systems, from safety to signaling and security, and virtually all lines intersect or interact with road networks, other rail lines (e.g. passenger and/or cargo), and interface with other uses along the route and at its terminus. The project is therefore complex, with many moving parts, and the risk allocation is similarly complex:

- *Will the private partner or the public entity bear the risk of policing the system? Who will monitor ticketing and fare enforcement?*

- *What occurs when the service is delayed because of another mode of public transport or a line blockage?*
- *Who bears the risk when governmental inspector identifies a safety issue and must halt the system?*
- *What if local or regional leaders increase a tax such that the fare is now insufficient to cover the cost of operations?*
- *What if a permit isn't issued and there is now delay in delivering the system for service?*
- *Who bears the risk that demand – traffic levels may not be sufficient to cover operating and finance costs*
- *Who bears the cost of routine maintenance to avoid the risk of having a stranded or unusable asset?*

Rail project risks such as these must be thoroughly identified and catalogued, and then carefully negotiated and apportioned in order for the PPP to remain viable. The PPP Suitability Application needs to indicate how the Public Entity envisages Value for Money taking into account the complexity of rail PPPs but also taking into account the potential for more effective project delivery and improved quality of services.

5. Whether sufficient financial resources, including government support, are expected to be available for the project

Financial resources refer to both the private capital required for the implementation of the project and the possible financial support from the government.

Private capital will have to come through a combination of equity and debt. Equity refers to the paid-capital by investors and debt refers to the loans from banks. It is to be noted that there are limitations to available capital for PPP in Ethiopia. So the public entity proposing the PPP needs to give some indication of the availability of private capital including non-recourse financing. Some informal sounding of financial institutions is encouraged.

Government Financial Support may be required for the following reasons:

- To fund the development of the project i.e. ensuring a thorough and appropriate appraisal and feasibility assessment of the project and an efficient and effective tender process;
- To provide financial support to the implementation of a rail PPPs. If the proceeds from user charges are not sufficient to recoup the investment, the government may consider the use of Viability Gap Financing;

Furthermore, there may be a need for financial support by means of government guarantees for various risks, though this is to be identified and appraised upon project structuring.

6. Whether the Contracting Authority has sufficient capacity and resources to appropriately prepare and implement the project

The PPP Suitability Application needs to include a project planning including an estimate of the required capacity and resources for the development of the project. This needs to include internal resources and also the required budget for any consulting services for project preparation and transaction advisory.

Specifically for rail appropriate resources need be allocated to:

- Demand analysis
- Design and cost estimates
- Environmental and social impact analysis

7. Is the output or services from the project affordable to users/ customers?

For rail PPPs specific attention is to be given to willingness to pay. Distinction is to be made between passenger services and cargo services as they are a different group of customer. Reference can be made to international benchmarks of rates albeit adjusted for the specific context in Ethiopia.

Based on the traffic forecast and the assumed rates, a tentative indication can be given of the revenue potential of the project.

8. Is the project large enough to justify transaction costs, i.e. above USD 50 million, and of a “bankable” size?

It is recommended for rail PPPs that the size of the project is large enough for the value for money potential to offset the transaction costs which are commonly higher for PPP projects than for conventional projects.

The size of the project could refer to the capital value of the project and a threshold of USD 50 million should be taken into consideration. However, for possible O&M arrangements that do not require substantial investments and still may be suitable for PPP, it is recommended to consider the **length of the railway under consideration** and apply a minimum size of **50km**.

9. Are the environmentally and social impacts of the project acceptable and can they be mitigated using Ethiopian and international standards?

The PPP Suitability Application needs to indicate whether any major environmental and or social issues are envisaged for the proposed rail PPP. In particular issues regarding **Right of Way** need to be flagged including land acquisition and possible encroachment issues.

10. Is the project replicable or scalable?

In theory rail PPPs are suitable for replication, however given the magnitude of rail projects, it is unlikely that there will be a large number of rail PPPs. So this criteria is less eminent for rail PPPs.

11. Can appropriate and relevant project risks be allocated to the private sector?

For rail PPPs it is assumed that appropriate and relevant project risks can be allocated to the private sector in view of international experiences with rail PPPs.

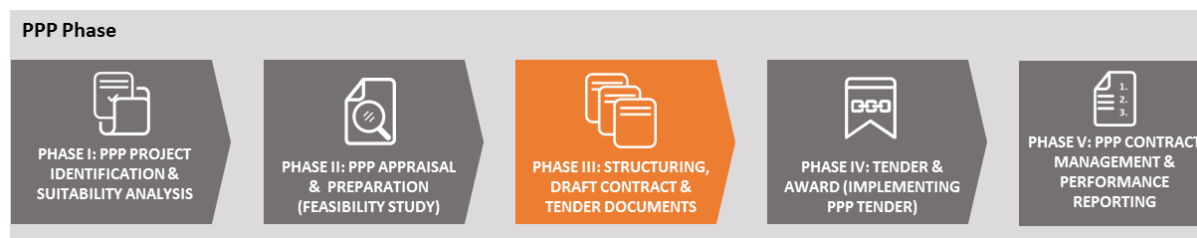
III. PHASE II: PPP PROJECT APPRAISAL AND PREPARATION



With regard to the scope of work for the Feasibility Study the following specificities apply to the railway sector:

<p>Demand analysis</p> <ul style="list-style-type: none"> ▪ Including high volume container and bulk cargo along traffic corridors and from relevant sea ports ▪ Including demand of competing and connecting roads for assessing modal shift 	<p>Design based on standard gauge</p>	<p>Land acquisition plan including need for resettlement</p>
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IV. PHASE III: STRUCTURING AND DRAFTING THE TENDER AND CONTRACT DOCUMENTS



Key Issues to Consider:

The typical PPP experience requirements for the railway sector include the following:

- Equity share in rail PPP project by a consortium member or affiliated company at least [5]%; and
- Size of project in km at least [0.5] times the size of the project at hand; and/or
- Value of the project in monetary terms at least [0.5] times the value of the project at hand.

The agreement provides for the operation of rail services as a public service obligation. The agreement could have appropriate provisions to govern the mode of operation of such services but could also call for the conclusion of additional specific agreements between the State and the operator that provide for the payment of contributions by way of compensation.

It is desirable to provide for the maintenance of separate cost accounting on public service activities, with the preparation modalities specified in an annex, stipulating that the data included therein are information items available to the conceding authority but not enforceable against it.

It may be noted that passenger transport services may be operated as a public service obligation and in the event of a shortage of locomotives the operator could claim compensation for the entire shortfall, and not just the coverage of the operating costs borne by it.

The nature of the PPP must be set out:

- *Is it a right and obligation to renew, maintain, and operate the Below Rail Infrastructure for freight?*
- *Is it a right to operate freight services?*
- *Is it a right and obligation to renew, maintain, and operate the Below Rail Infrastructure for rail passenger services?*
- *Is there an obligation to provide third-party access to the Below Rail Infra-structure and does the access include international services, domestic services, freight and/or passenger services?*
- *What property rights are included? Can property or property rights be re-moved from the concession if such removal is for public good?*

- *Is the Concessionaire allowed to exploit the track area, e.g., through telecoms cables or cell-net masts? If so, is the revenue received considered regulated or unregulated income?*

Other key issues that need to be addressed in the PPP or Concession agreement include the following¹²:

- *Will the private sector party be a Project Company? Initially, this might mean that the party uses its own contractors and their subcontractors to supply services on its behalf. Usually, a Project Company is a company set up for a single purpose. After operations and maintenance costs are met, company revenues are used to pay off debt, pay interest on the debt, and pay a dividend on equity. The company may apply revenues towards increasing and/or improving assets used in connection with the concession, but would not be expected to acquire assets for any other purpose.*
- *Does the public sector intend to create both a Concessionaire and the executed Concession Agreement, followed by a competition to divest the concession company to the private sector (namely with the benefit of the Concession Agreement)?*
- *Will the public sector contracting party be a Ministry, a government agency, or a state-owned company, such as a railway holding company? If it is a Ministry, state guarantees will not be needed as they would be if the contracting party were a state-owned entity.*
- *Will the assets to be used for the concession be transferred to the Concessionaire or will the transfer include only the rights to use the assets? As a corollary, where only the rights to use are transferred, will any new assets developed by the Concessionaire be transferred immediately to the Authority, with a continuing right for the Concessionaire to use them?*
- *Will the concessioned railway assets be a subset of the host country's railway system? Will the railway, subject of the Concession Agreement, be used primarily for freight, or must the Concessionaire allow infrastructure access to rail passenger traffic?*
- *Will the Concession Agreement require some infrastructure development or refurbishment and some new equipment (New Upgrades) followed by a full operational phase during which the Full Service is provided?*
- *Will operational obligations start as soon as the concession term commences?*
- *Should any land development associated with the concession occur through an associated Property Development Agreement? The agreement would benefit the public sector through a share of the proceeds from development because, in most economies, commercial and other property markets significantly deviate from the*

¹² The World Bank Railway Reform: Toolkit for Improving Rail Sector Performance. 2017
<http://documents.worldbank.org/curated/en/529921469672181559/text/69256-REVISED-ENGLISH-PUBLIC-RR-Toolkit-EN-New-report-date-2017-12-27.txt>

infrastructure development cycle. A Property Development Agreement avoids the risk of failure to realize the full market value of development rights.

- *Should the Ministry retain the right to revoke air rights or rescind access to land that is not essential to railways operation, without compensating the Concessionaire? If the Ministry retained this right, the Concessionaire could not exploit its monopoly position in lineal infrastructure, for example, in relation to creating crossings over or under the infrastructure.*
- *Will the New Upgrades be wholly or partly financed by limited-recourse debt, or leasing arrangements?*
- *Should Future Upgrade costs be covered by retentions from the Concessionaire's revenue stream, except and to the extent provided for in the Concession Agreement? When the Agreement is executed, Future Upgrades may be as yet unidentified and emerge only as the host country economy grows.*
- *Should any tariff increases be permitted before the New Upgrades have been completed?*
- *Should the Concession Agreement permit derogation in standards to reflect the existing state of infrastructure and equipment until the New Upgrades are completed?*
- *The Concession Agreement should set out a safety regime if state law does not provide a safety regime for railways. This regime may be superseded when a statutory regime is adopted in the host country. If state law does require a safety regime, is there a regulator or other independent party to supervise the regime? Investors and Lenders may be nervous if the regime is applied by the entity entering into the Concession Agreement. The eventual objective should be economic regulation if market forces prove an in-sufficient economic incentive, and safety regulation through an independent regulator. There is some advantage to a strong link between economic and safety regulation to ensure that the safety regulation does not stand in the way of 'the good' by enacting a safety requirement for 'the best', which might be commercially infeasible. For the purposes of the Guide, and illustrative purposes only, it is assumed that there is a Railway Safety Board within the host country's Transport Regulatory Commission.*
- *Will international third-party access be required as soon as the State has signed cross-border agreements with governments of adjacent countries?*
- *If there is to be third-party international access, would it be useful to adopt the working assumption for the Concessionaire that the treaty rules will follow a precedent?*
- *If Border Crossing Points must be expanded and updated as a Future Upgrade but are as yet unknown because they will depend upon treaties with adjacent states, should the state pay capital costs of Border Crossing Points?*
- *When will an environmental audit be carried out? Both public and private sectors should understand the status of pre-existing environmental conditions before the*

tendering process commences. The worst scenario would be if the environmental audit is carried out after concession rights are already granted and in effect.

V. PHASE IV: TENDER & AWARD



No sectoral specificities

VI. PHASE V: PPP CONTRACT MANAGEMENT & PERFORMANCE REPORTING



Post-award contract management and performance monitoring would follow the same procedures outlined in the PPP General Guidelines.

LOGISTICS CENTERS AND INLAND PORTS

PREFACE

Legal, Regulatory and Institutional Framework

The provisions of multimodal transport of goods Proclamation 548/2007 apply to all multimodal transport contracts upon the conclusion of which a multimodal transport document is issued. This regulates the multimodal transport documents¹³ and the responsibility and liability of the multimodal transport operator and shipper.

Ethiopian Shipping and Logistics Service Enterprise

The Ethiopian Shipping and Logistics Service Enterprise is the Contracting Authority for PPPs relating to shipping and logistics. Established under Regulation No. 255/2011, this public company is the result of a merger between Ethiopian Shipping Lines, Maritime and Transit Services Enterprise and Dry Port Enterprise. The company, which is under the Ministry of Transport, is in charge of providing sea, transport and logistics services to exporters and importers.

Maritime Affaires Authority

The Maritime Sector Administration Proclamation No. 549/2007 provides for the Maritime Affaires Authority, an autonomous public authority having its own judicial personality. The Maritime Affaires Authority issues license to persons desiring to engage in multi modal transport business, renew such license and supervise their operation. Its purposes are:

- *To ensure that the transport operations and movement of goods in import and export of the country are economical; plan, coordinate and enforce such operation;*
- *To reduce the transit time of import export of goods, and coordinate the concerned Government bodies to care for goods at port.*
- *To seek ways and means for the promotion and development of multimodal transport, marine transport, in-land water transport and ensure the availability of uninterrupted resource of skilled man power in the maritime sector for the Country.*
- *To implement obligations and rights of Ethiopia under international maritime conventions.*

I. PPP PRIMER AND PHASES IN PPP DEVELOPMENT

For the purpose of this section inland ports or logistic centers are referred to collectively as ‘dry ports’.

A dry port generally provides a wide variety of services to its customers. Generally, services include container handling and storage, container stripping and stuffing, break-bulk cargo handling and storage, bulk cargo handling and storage, customs inspection and clearance, container light repairs, freight forwarding and cargo consolidation services, and banking or insurance or financial services. All these services require separate sets of infrastructure,

¹³ Multimodal transport document means “a document, which evidences a multimodal transport contract, the taking in charge of the goods by the multimodal transport operator, and an undertaking by him to deliver the goods in accordance with the terms of that contract”.

facilities, and equipment, which could be managed by a single private sector partner or multiple private sector partners.

When applying PPP models to dry ports, one has to identify the characteristics of dry port projects, such as:

- High investment in both construction and operation and maintenance;
- The private operator generates the revenues directly from users (mostly local exporters, shippers, forwarders, seaport operators), not from the government repayment or contributions;
- Heavy reliance on the strong connectivity in terms of transport infrastructure, the range of transport and shuttle services to seaports (by railway, inland water way or road);
- Connections to the industrial zones and local markets.

Type of Possible PPPs:

Based on international experiences four main PPP models can be identified. The differences between the PPP models are mainly found at the level of the involvement of the private sector in investment and ownership. The sub division is made according to the level of risk transfer from public entities to private players.

	Private investment	Private ownership	Sub-division
Contracting out	No/minor private investment	No private ownership involved	<ul style="list-style-type: none"> ▪ Management contract, O&M, turnkey, DB, DBOM ▪ Leasing contract
Inland terminal concession	Significant private investment in superstructures	No private ownership	
Field concession	The private bears most of the investment (infra and superstructures)	No private ownership after the contract termination	<ul style="list-style-type: none"> ▪ BOT / DBFMO, BOOT ▪ BTO ▪ BROT
Privatised ownership	Part of whole investment	Part or whole of the ownership is privatised	<ul style="list-style-type: none"> ▪ BOO ▪ Divestiture

Contracting out means that the government bears the whole investment and maintains the ownership of the project. The government outsources one or a bundle of tasks to the private contractors in order to utilize the expertise of the private sector, such as designing, construction, operation and maintenance. The risks of cost overrun, low quality, and late delivery of such tasks are transferred to the private sector. Example of this is design build (DB), design build operation maintenance (DBOM). Under a management contract, the private entity is hired by the public authority to manage the terminal operations. In a leasing contract, all public infrastructure and superstructures are leased to a private entity. This private actor will manage the terminal, collect the user fee and pay the leasing fee to the public actor without making significant investments. The advantage of the contracting out model is that the government maintains most control over the facility as in the traditional publicly-owned projects. The government will utilize the expertise of the private sector in the task that they contract out. The biggest drawback is that the government has to fund the project by themselves and assumes most of the risks. The debt of capital investment will be accountable in the public books, and the government has to bear any losses linked to ICD operations while also keeping any profits made.

When using a **terminal concession**, the public sector has the ownership of the dry port. In this model, the public sector invests in the basic infrastructure and transport connections to the dry port. The public sector owns the dry port-related land and is responsible for dry port planning. The private actor bears significant investments in terminal superstructure, handling equipment and warehouses and might also take part in infrastructure investments such as additional railways to connect to the national railway system. The agreement is often awarded to the private sector in the form of concession, or infrastructure leasing where the operation is given to the private actor for a specific period of time (10–30 years). The private party, or the concessionaire in this case, pays concession fees to the public party and transfers all facilities to the public sector at the end of the concession term. This model shares similarities with the landlord model in the port sector.

Under a terminal concession, the government retains the whole ownership of the dry port and acts as a landlord. Therefore, the government keeps control over the design, planning, and operation of the facility. The commercial risks, operations and maintenance tasks are transferred to the private actor. The public party sets the concession duration, the minimum throughput and key performance indicators. The private sector also feels more attracted by this model since their investment will concentrate in the capital goods and assets that generate revenues, such as handling equipment, storage facilities, etc. In the case the operator does not perform well, or the market fails, the contract might end up with a lose-lose situation instead of a win-win. The win-lose scenario is possible if the operator benefits from the monopolistic position and high tariffs without making efforts to improve the terminal throughput.

In a **field concession**, a private actor assumes the entire project investment in exchange for the right to operate the dry port. The ownership still belongs to the public sector at the end of the contract. The private party receives a concession from the public authority to finance, design, construct and operate the terminal. The private player collects the user fees to recover its investments and to generate revenues. The public sector guarantees the transport infrastructure connections to the dry port such as railways, inland waterways and seaport planning to assure the feasibility of the project. The ownership of the dry port will be transferred to the public player after construction or at the end of the contract. This category includes build-operate-transfer (BOT), build-transfer-operate (BTO), build-own-operate-transfer (BOOT) and other variations, which apply to Greenfield projects and BROT (Build, rehabilitate, operate, transfer) for brownfield projects. The field concession relieves the government from the investment burden, but creates more complexity in terms of project control. The public actor loses the control over what should be built, how long it will take, and how it will perform. The worst case that might happen is that the private party constructs the facility too slow and even goes bankrupt, and the social benefits are threatened.

In the **privatized ownership model**, the private player is a full or partial facility owner. There are two main PPP schemes belonging to this category, include build-own-operate (BOO) and divestiture. The former is similar to the field concession model, but the ownership stays with the private actor after the end of the contract. The latter implies that the public partly or fully sells the existing terminal to the private sector. The privatized ownership category does not require public funding while most of the risks are transferred to the private sector. However, government control is limited to the role of regulator. This could be considered as the intermediate step towards full terminal privatization.

PPP Guidelines - Appendix

The different forms of PPPs presented here are in line with the PPP legal framework on more specifically article 5 of the PPP Proclamation.

II. PHASE I: PPP PROJECT IDENTIFICATION AND SCREENING



Key Issues to Consider:

1. Whether the project is consistent with Ethiopia’s development objectives

There is no specific master plan for the development of inland ports/dry ports or logistic centres. The appropriate policy contact is provided by Ethiopia’s Growth and Transformation Plan (GTP). In view of the importance of connectivity the proposed projects also need to take into account the Road Sector Strategy and the proposed railway network development.

One of the most critical issues is the connectivity of the dry port with a sea port. A dry port will not be of use unless it is integrated with a multi-modal transport system that saves cost and time in the overall movement of goods between origin and destination. It should be the responsibility of the public sector to provide such access by creating rail heads and road links. Furthermore, the proposed project needs to address the identified bottlenecks and problems including:

- Imbalance regarding empty containers (since Ethiopia imports more than it exports, containers come in full and leave empty);
- Containers issues with bulk at Djibouti;
- Truck overloading (since the truck load allowed on roads is higher in Djibouti than in Ethiopia);
- Lack of truck rest areas.
- Lack of ICT infrastructure;
- Lack of cold chain facilities;
- Congestion and delay at the port of Djibouti;
- Lack of integrated transport network.

2. Whether there is sufficient demand for the project outputs

The PPP Suitability Application is to include a **tentative demand assessment** for the possible use of the inland port. The demand risk is particularly strong in the case of Greenfield projects, where the absence of historical data complicates demand estimates. Demand risk in a transportation project is related to the pricing or tariff through the price elasticity of demand. In port projects, demand risk becomes a central issue for all the stakeholders including the public sector, the private sector partner and the project sponsors. How this risk is to be allocated/shared amongst those parties will underpin the project’s attractiveness to investors

and the bankability of any proposed structure. Location, standard and capacity of facilities, efficiency and pricing are the base factors in attracting the usage which is expected from domestic and international markets. In projects where the public sector is investing in infrastructure, they expect the private sector to assume the entire demand risk. Demand risk can be shared between the public sector and the private sector partner by guaranteeing minimum traffic to the private sector partner.

The PPP Suitability Application is to include a tentative demand assessment for the possible use of proposed dry port for the coming 30 years. This initial demand analysis will have to take into consideration:

- Whether the project is a greenfield or brownfield project;
- Connection to the transport network;
- Current demand of the linked sea port(s);
- Proximity to industrial zones or other clusters of industrial activities;
- Nearby competing alternatives and expected developments in the region that may impact demand;
- Expected growth in the economy being the main drivers for demand growth

The location of the port is critical for its viability. Due care is to be given to optimism bias.

3. Whether the project will give substantial benefit to the public, if private sector is preferred to provide the service and if the project is expected to be able to transfer meaningful and appropriate risks to a private sector partner

Typical economic benefits include a reduction of the logistic costs because of improved efficiency of transporting and handling cargo.

Upon project identification it is sufficient to give a qualitative description of the expected economic benefits which need to be further substantiated upon project appraisal.

4. Whether a project is likely to deliver Value for Money

The PPP Suitability Application needs to indicate how the Public Entity envisages Value for Money taking into account the logistic concept and location but also taking into account the potential for more effective project delivery and improved quality of services.

5. Whether sufficient financial resources, including those required for expected government support, are expected to be available for the project.

Financial resources refer to both the private capital required for the implementation of the project and the possible financial support from the government.

Private capital will have to come through a combination of equity and debt. Equity refers to the paid-capital by investors and debt refers to the loans from banks. It is to be noted that there are limitations to available capital for PPP in Ethiopia. So the public entity proposing the PPP needs

to give some indication of the availability of private capital including non-recourse financing. Some informal sounding of financial institutions is encouraged.

Government Financial Support may be required for the following reasons:

- To fund the development of the project i.e. ensuring a thorough and appropriate appraisal and feasibility assessment of the project and an efficient and effective tender process;
- To provide financial support to the implementation of logistics center and inland ports PPPs. If the proceeds from user charges are not sufficient to recoup the investment, the government may consider the use of Viability Gap Financing;

Furthermore, there may be a need for financial support by means of government guarantees for various risks, though this is to be identified and appraised upon project structuring.

6. Whether the Contracting Authority has sufficient capacity and resources to appropriately prepare and implement the project.

The PPP Suitability Application needs to include a project planning including an estimate of the required capacity and resources for the development of the project. This needs to include internal resources and also the required budget for any consulting services for project preparation and transaction advisory.

Specifically for ports appropriate resources need be allocated to:

- Demand analysis
- Design and cost estimates
- Environmental and social impact analysis

7. Is the output or services from the project affordable to users/ customers?

For Logistics and Inland Ports PPPs specific attention is to be given to willingness to pay. Reference can be made to international benchmarks of rates albeit adjusted for the specific context in Ethiopia.

Based on the demand forecast and the assumed rates, a tentative indication can be given of the revenue potential of the project.

8. Is the project large enough to justify transaction costs, i.e. above USD 50 million, and of a “bankable” size?

Dry ports are typically less capital intense projects than roads and definitely railway projects. However, they are very much suitable for PPP despite the fact that the required investments may be less than USD 50 million. This is because dry ports can be replicated allowing for standardization and reduction in transaction costs over time. Therefore it is suggested to reduce the **minimum threshold to USD 10 million** subject to the condition that the proposed project is part of a program of dry ports.

9. Are the environmentally and social impacts of the project acceptable and can they be mitigated using Ethiopian and international standards?

The PPP Suitability Application needs to indicate whether any major environmental and or social issues are envisaged for the proposed dry port. In particular issues regarding land acquisition and possible encroachment issues.

10. Is the project replicable or scalable?

Dry ports are typically less capital intense projects than roads and definitely railway projects. However, they are very much suitable for PPP despite the fact that the required investments may be less than USD 50 million. This is because dry ports can be replicated allowing for standardization and reduction in transaction costs over time. Therefore it is suggested to reduce the minimum threshold to USD 10 million subject to the condition that the proposed project is part of a program of dry ports.

11. Can appropriate and relevant project risks be allocated to the private sector?

For dry port PPPs it can be assumed that appropriate and relevant project risks can be allocated to the private sector in view of international experiences with dry port PPPs.

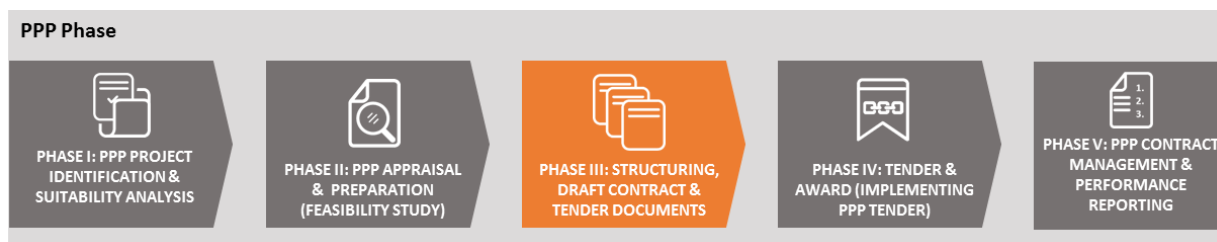
III. PHASE II: PPP PROJECT APPRAISAL AND PREPARATION



With regard to the scope of work for the Feasibility Study the following specificities apply to inland ports:

<p>Demand analysis</p> <ul style="list-style-type: none"> ▪ Including cargo volumes at relevant sea ports ▪ Including demand of connecting roads for assessing modal shift ▪ Including demand for economic investments and movement of produce within the region 	<p>Selection of location based on multi-criteria analysis</p>	<p>Design includes outline for service concept</p>	<p>Land acquisition plan including need for resettlement</p>
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IV. PHASE III: STRUCTURING AND DRAFTING THE TENDER AND CONTRACT DOCUMENTS



Key Issues to Consider:

The typical inland port experience requirements for the Logistics and Inland Ports sector include the following:

- Equity share in port PPP project by a consortium member or affiliated company at least [5]%; and
- Size of project in **TEU capacity or in area size** [0.5] times the size of the project at hand; and/or
- Value of the project in monetary terms at least [0.5] times the value of the project at hand.

Draft heads of agreement for a dry port PPP project should have clauses reflecting upon the public sector land ownership structure. Some of the key considerations in the Draft heads of agreement regarding public sector land ownership structure could be:

- Public sector shall make unencumbered and litigation free land available to the private sector partner before the signing of the Agreement.
- Public sector shall transfer the interest in the land to the project company by way of a long-term lease valid through the Project term upon condition that the private sector partner shall pay an annual lease fee to the public sector.
- The project company shall have the rights to mortgage the land for achieving financial closure for the project.
- The private sector partner shall manage the operation and maintenance of such land and infrastructure during the Project term. Upon termination of the Contract, the lease shall become null and void and the land shall be transferred back to the public sector.

The development of a dry port usually requires large investments in utilities, infrastructure, facilities and equipment. The Table below provides details of the facilities and equipment required for providing comprehensive service offerings by a dry port.

Dry Port Facilities and Services

Facilities & Equipment	Services Provided	Transport Mode
<ul style="list-style-type: none"> ▪ Container Yard (CY) ▪ Container Freight Station (CFS) ▪ Access roads, Railway link or sidings, Inland Water Transport (IWT) berths ▪ Break-bulk receiving and storage area ▪ Bulk receiving and storage area ▪ Administrative office with space for banks, forwarders and cargo agents ▪ Customs office ▪ Container light repair facility ▪ Secure fence and entry point ▪ Cargo handling equipment (RTGs, RMGs, reach-stackers, empty lifters, forklifts, container chassis, prime movers etc.) 	<ul style="list-style-type: none"> ▪ Container handling and storage ▪ Container stripping and stuffing ▪ Break-bulk cargo handling and storage ▪ Bulk cargo handling and storage ▪ Customs inspection and clearance ▪ Container light repairs ▪ Freight forwarding and cargo consolidation services ▪ Banking / insurance / financial services 	<ul style="list-style-type: none"> ▪ Line-haul: Rail (most), Road (some) and IWT (some) ▪ Local feeder: Road ▪ Inland Water Transport (where applicable)

Besides the facilities and equipment listed above, a dry port requires capital investment in utilities and infrastructure including rail heads and internal/external rail links that would be used by the private sector partner for smooth operation and management of the facilities and equipment. A list of such utilities and infrastructure including rail heads and internal/external rail links is provided below.

Dry Port Utilities and Infrastructure

Utilities and Infrastructure		
<ul style="list-style-type: none"> ▪ Power infrastructure including sub-stations 	<ul style="list-style-type: none"> ▪ Water supply and sewerage system 	<ul style="list-style-type: none"> ▪ Solid Waste Management (SWM) system
<ul style="list-style-type: none"> ▪ Drainage network 	<ul style="list-style-type: none"> ▪ Internal roads 	<ul style="list-style-type: none"> ▪ Telecommunication infrastructure (including OFC / Mobile Tower)
<ul style="list-style-type: none"> ▪ Street lights 	<ul style="list-style-type: none"> ▪ Green / Open area 	<ul style="list-style-type: none"> ▪ Rail heads and internal/external rail links

The Draft heads of agreement for a dry port PPP project should have clauses reflecting upon the “Combined capital investment” structure. Some of the key considerations in the Draft heads of agreement regarding the “Combined capital investment” structure may include the following:

- *Private sector partner shall plan and design the project facilities and equipment as well as the utilities and infrastructure including rail heads and internal/external rail links.*

- *Public sector shall finance and develop the utilities and infrastructure including rail heads and internal/external rail links as per the approved plan.*
- *Public sector shall be responsible for investment and development of transport linkages to the dry port including rail heads and feeder roads.*
- *Operation and maintenance of the utilities and infrastructure created by the public sector shall be the responsibility of the private sector partner.*
- *Operation and maintenance of the rail heads shall be the responsibility of the private sector partner.*
- *Operation and maintenance of internal/external links shall be the responsibility of the public sector and authorized government agency.*
- *Private sector partner shall finance and develop facilities and utilities as per the approved plan and then operate and maintain those facilities and utilities throughout the concession period.*
- *Ownership of the project's facilities and equipment shall remain with the public sector.*

The demand risk is particularly strong in the case of Greenfield projects, where the absence of historical data complicates demand estimates. Demand risk in a transportation project is related to the pricing or tariff through the price elasticity of demand. In port projects, demand risk becomes a central issue for all the stakeholders including the public sector, the private sector partner and the project sponsors. How this risk is to be allocated/shared amongst those parties will underpin the project's attractiveness to investors and the bankability of any proposed structure. Location, standard and capacity of facilities, efficiency and pricing are the base factors in attracting the usage which is expected from domestic and international markets. In projects where the public sector is investing in infrastructure, they expect the private sector to assume the entire demand risk. Demand risk can be shared between the public sector and the private sector partner by guaranteeing minimum traffic to the private sector partner.

Pricing of the services or tariff is a crucial factor on which volume of traffic in a dry port depends. The lower the tariff rates the higher will be the traffic volume and vice versa. Responsibility for setting tariffs and charges in a dry port project determines the attractiveness of the project to investors. A project would be more attractive to investors if the private sector partner has the rights to set tariffs and user charges for services provided by them. It is recommended that the private sector partner have the flexibility to set various tariffs and user charges for services to be provided by the dry port. This is more so required when the private sector partner is taking the entire demand risk.

There are several options for allocation of revenue rights in a PPP project. In one approach, revenue rights entirely lie with the private sector partner whereas in another approach, revenue rights entirely lie with the public sector. In the latter case, the public sector bears the demand risks and makes a fixed periodic payment to the private sector partner. However, between these two extremes, lie two approaches designed to share revenue risk, namely revenue-sharing model and least present value approach.

The Draft heads of agreement for a dry port PPP project should have clauses reflecting upon the following key consideration:

- *Private sector partner shall operate and maintain the project assets until termination of the contract as per the service level requirements agreed in the contract.*
- *Private sector partner shall bear the demand risks of the project.*
- *Private sector partner shall have the rights to establish tariff in accordance with the applicable laws and customer contracts if any in such a manner that tariffs are competitive with other dry ports in the region.*
- *Private sector partner shall have rights over revenue generated from the project assets.*
- *Percentage of revenue sharing will be the bid parameter and the private sector partner with highest revenue share shall be selected as the preferred bidder. Selected private sector partner shall pay – i) fixed amount as lease rentals as decided by the public sector and ii) fixed percentage of revenue share as quoted by him in its proposal.*

A dry port generally provides a wide variety of services to its customers. Generally, services include container handling and storage, container stripping and stuffing, break-bulk cargo handling and storage, bulk cargo handling and storage, customs inspection and clearance, container light repairs, freight forwarding and cargo consolidation services, and banking or insurance or financial services. All these services require separate sets of infrastructure, facilities, and equipment, which could be managed by a single private sector partner or multiple private sector partners.

A Multiple concessionaire model is widely used in brownfield projects that require expansion or addition of facilities and equipment. In a Greenfield project, Single concessionaire model is preferred.

Every dry port has a dedicated customs examination area where containers and bulk goods are placed for examination by the customs. The basic function of a dry port is to receive import containers arriving on trains, to unload and stack them, inform the importer, carry out the customs examination, and after completion of the paperwork, load the container onto a road vehicle for delivery to the importers' premises. For exports, containers usually arriving by road vehicle are stacked and upon completion of export customs formalities, are dispatched by rail to the sea port with a combined transport document (CTD) issued by the shipping line or multi-modal transport operator. All paperwork is completed at this point and the exporter or importer needs to do nothing at the sea port.

Traditionally, when goods crossed territory of one or more states in the course of international carriage by road, the customs authorities in each state applied national control and procedures. These varied from state to state but frequently involved inspection of the load at each national frontier and imposition of national security requirements, resulting in considerable expenses and delays. Multi-modal transport system in a dry port aims at reducing transit time and cost. However, potential benefits of multi-modal transport system will not be realized until customs procedures are simplified.

The basic custom transit procedures (subject to national law) involve the use of national documentation and national guarantees to ensure payment or any import duties and taxes chargeable. Customs inspection is necessary for national security reasons. Therefore, it is suggested that responsibility of customs procedures in a dry port remains with the public sector due to security and other concerns. The private sector partner, on behalf of the public sector,

should be responsible for levying and collection of any duties, tariff or charges for customs clearances as per a country’s law and regulations. Revenue from customs fees/charges shall remain with the public sector.

The Draft heads of agreement for a dry port PPP project should have clauses reflecting upon the “Complete handover” structure. Some of the key considerations in the Draft heads of agreement regarding the “Complete handover” structure may include the following:

- *Private sector partner shall hand back the peaceful possession of the dry port area including entire project assets (infrastructure and utilities and facilities and equipment) in good condition subjected to normal wear and tear to the public sector upon termination of the contract.*
- *Private sector partner upon its cost shall transfer any rights, titles, and interests in any project asset to the public sector and execute such deeds and documents as may be necessary for the purpose.*
- *Public sector shall not have any obligations to the third party including any compensation obligations.*
- *Public sector shall appoint an independent expert sufficiently in advance of the termination date to perform hand-back inspection, estimate hand-back investment requirement, prepare hand-back program, monitor the activities of the private sector partner and issue a hand-back certificate to the private sector partner.*
- *Revenue rights shall remain with the private sector partner during hand-back period.*
- *Private sector partner shall adhere to the hand-back program and shall be responsible for investment.*
- *Failure to make required hand-back investment shall result in forfeiting of the Performance Security upon in case of termination due to natural expiry of the contract. In case of termination due to event of default, hand-back investment shall be deducted from the termination payments.*

V. PHASE IV: TENDER & AWARD



No sectoral specificities.

VI. PHASE V: PPP CONTRACT MANAGEMENT & PERFORMANCE REPORTING



Post-award contract management and performance monitoring would follow the same procedures outlined in the PPP General Guidelines.

AVIATION¹⁴**PREFACE****Legal, Regulatory and Institutional Framework**

The civil aviation proclamation 548/2007 dated 12 February 2009 applies to:

- Civil aerodromes in Ethiopia;
- Air services and general aviation services operators established or operating in Ethiopia;
- Any aircraft registered by the Authority; and
- Any foreign aircraft within the Ethiopian territory.

The provision and operation of air services is governed by a regime of licenses granted to applicants by the Ethiopian Civil Aviation Authority. For PPP projects in the aviation sector, Ethiopian airlines is considered to be the Contracting Authority, the Ethiopian Civil Aviation Authority as the regulator managing and governing licensing regime for applicants in the sector. The operational regime is therefore an authorization regime and not a contractual regime. In this respect, article 59 onwards provides that no air operator may engage in air services without having a valid license issued by the Ethiopian Civil Aviation Authority. The following air service licenses may be issued: (i) air transport service license; (ii) aerial work service license; and (iii) private air service license.

No air carrier may engage in air transportation unless it has in force a currently effective tariff covering the rates and conditions for the transportation to be provided (section 64).

Ethiopian Civil Aviation Authority

The Ethiopian Civil Aviation Authority is an autonomous Public Office with its own legal personality and accountable to Ministry of Infrastructure, that is regulated by the Ethiopian civil aviation authority re-establishment proclamation no. 273/2002. The Authority has the following objectives:

- to promote and maintain an efficient and economical civil air transport and general aviation service system and to facilitate the provision of secure and safe air transportation;
- to develop domestic and international air transportation networks and to ensure a reliable and long lasting air transport system;
- to control and ensure the safe and efficient use of Ethiopian airspace;
- to apply and enforce all laws, regulations and directives relating to civil aviation and international conventions and agreements to which Ethiopia is a party.

Ethiopian Airlines

¹⁴ Sources:

International Civil Aviation Organization: Airports Economics Manual (2013)

International Civil Aviation Organization: Manual on Privatization of Airports and Air Navigation Services (2012)

World Bank: Investment in Air Transport Infrastructure; Guidance for developing private participation (2010)

PPP Knowledge Lab: Airports

In July 2017, the Ethiopian Airlines Group has merged with the Ethiopian Airports Enterprise to create the Aviation Holding Group.

This Holding Group includes the following departments:

- Ethiopian Airports Enterprise
- Passenger Airline
- Cargo Airline & Logistics Company
- Ethiopian Aviation Academy
- Ethiopian Inflight Catering Services
- Ethiopian MRO Services and
- Ethiopian Hotel & Tourism Services.

I. **PPP PRIMER AND PHASES IN PPP DEVELOPMENT**

Type of Possible PPPs:

The private investment models in airports range from the greatest involvement of the private sector, as full privatizations or sale of shares, to the more traditional PPP approach through a concession agreements, up to the lightest participation through short term management contracts. There are basically four different forms: management contract, lease (which is sometimes called concession), transfer of minority ownership, and private sector ownership and/or operation of parts of the activities of an airport.

Management contract

Under this option, the management of an airport or a group of airports is transferred to a private entity for a limited period of time for a fee or pre-determined payment terms. The private entity can be a local/national concern, or an international airport managing group, or a consortium associating various interests of which the former two may be part. The airport (or group of airports) benefits from professional management, but development of airport facilities may not be included in the contract.

Lease or concession

Airport leases/concessions can be short-, medium-, or long-term. Under this option, an airport or a group of airports is transferred for management and development to a private entity or consortium for a fixed period. In almost all cases, the responsibility for expansion and development of airports rests with the lessee or concessionaire, under conditions that are either listed in the contract or are dependent on traffic growth. The payment terms of leases or concessions vary widely. In some cases, it is all down payment, while in other cases it is partly down payment and partly annual payment, or only annual payment. One of the most common forms is the Build-Operate-Transfer (BOT) scheme, an ownership and management system under which a private entity obtains the right to finance, build and operate a certain facility, including land and/or buildings, over a long period of time, and on expiry of the right returns it to the owner. Many variants of this scheme have come into existence

When giving airports in concession to a company or a consortium, a number of aspects have to be considered in order to obtain the best results. Factors to be considered include:

- The aeronautical and non-aeronautical services to be transferred to the private sector and those that will remain in the hands of the government should be identified, as well as the standards to be applied for the desired quality of the services provided;
- Master plans and investment plans for airport concessions should be sufficiently flexible to enable their revision based on demand, taking into account government requirements, compliance with applicable international standards, and user needs. Such plans must give priority to the cost-effectiveness of concessions;
- The adequacy between the duration of the concession and the magnitude of the investment made;
- The contract between the government and the private airport operator must be the result of a competitive open bidding process that guarantees an efficient concession process, where all the required conditions, assessment formulae, and criteria used for awarding the contract are established with absolute transparency and are known to all stakeholders;
- The concession system should be based on the government and the private sector assuming their respective risks in the implementation of airport projects;
- Airport concession contracts should allow for some flexibility in order to adjust to new market conditions resulting from an evolving air transport industry and the long duration of concession contracts; and
- Measures should be taken to prevent the problems that have arisen with some concession contracts in relation to the timely payment of concession fees, delayed investments, definition of competencies, and management coordination.

Transfer of minority ownership

Under this option, minority ownership of an airport or a group of airports is transferred to the private sector, usually through the sale of shares to a strategic partner or through share flotation. It is sometimes a first stage or tranche of a full or multi-step privatization process to ensure a smooth transition during which the business can accommodate the market conditions.

Private sector ownership and control

Under this option, majority or full ownership of the airport is transferred to a private entity, including nonprofit corporations or trusts.

Private sector ownership and/or operation of parts of the activities of an airport

This option refers to the ownership and operation of certain facilities or services at an airport, for example a passenger terminal, or a cargo warehouse, or security services. The activities of the operator are regulated by a contract that, from a legal point of view, is similar to a commercial concession agreement. Where a part of an airport (such as a passenger terminal) is privately owned and operated, measures need to be taken to ensure that the privatized element of the airport makes a proper contribution to the costs of operating the rest of the airport, for instance by payment of a significant concession or lease fee.

The different forms of PPPs presented here are in line with the PPP legal framework on more specifically article 5 of the PPP Proclamation.

II. PHASE I: PPP PROJECT IDENTIFICATION AND SCREENING



Key Issues to Consider:

1. Whether the project is consistent with Ethiopia’s development objectives

There is no specific master plan for the development of airports. The appropriate policy contact is provided by Ethiopia’s Growth and Transformation Plan (GTP). In view of the importance of connectivity the proposed projects also need to take into account the Road Sector Strategy and the proposed railway network development.

It should be emphasized that the combination of successfully relating airport plans to regional development plans, recognizing and displaying sensitivity to environmental concerns, and presenting well researched economic impact analyses, provide useful planning and management tools which may encourage investment. This also produces a clear message to public authorities, business partners and investors, which may trigger further investment with consequential benefits for the economy of Ethiopia.

2. Whether there is sufficient demand and traffic forecasts for the project outputs

Sound traffic forecasts are essential to any airport infrastructure development project and it’s financing. The main purpose of such forecasts is to identify air traffic developments and to establish the associated capacity requirements of the airport. The forecasts should cover the planned life of the project concerned and should include forecast annual volumes of international and domestic scheduled and non-scheduled aircraft movements and passenger and cargo traffic. They should also include, where relevant, general aviation and exempted flights. Distribution of traffic by month and day (and, if required, within the day) would also be required in order to recognize traffic trends and peaking patterns, as would data relating to aircraft types expected to be operated.

For guidance on the preparation of traffic forecasts, reference is made to the ICAO *Manual on Air Traffic Forecasting* (Doc 8991).

During the planning and throughout the implementation of an airport investment project, it may often be desirable and advantageous for an airport without sufficient expertise in the planning field to obtain the services of one or more outside consultants. In so doing, however, it is important that every effort be made to ensure the consultant selected is thoroughly knowledgeable in the area of expertise required. Under normal circumstances, it is also desirable that the consultant not be affiliated with a major bank, investment bank, contractor or a manufacturer of airport equipment, as this could possibly influence any technical specifications drawn up by the consultant or prepared on the basis of the consultant’s report. Airport management should also work closely with the consultant, regularly monitor the work

and carefully review the resultant report, assessing, for example, whether it is realistic and whether national and local circumstances have been fully taken into account.

Due care is needed for considering a hub concept for an airport. An airport does not become a hub just by being blessed with a privileged geographical location, or by investing heavily in infrastructure. To be a hub, an airport needs to be chosen by an airline that wants to base its operations there. For that to happen, an airport needs an important concentration of origin and destination (O&D) traffic of high-yield passengers to subsidize the lower yield connecting traffic. In other words, passengers have the option to take direct flights, and choose routes connecting through hubs due only to lower fares. Passengers are generally willing to pay a premium for the convenience of direct flights. Airlines cannot operate profitably by transporting the majority of their passengers connecting at lower fares. And the large network of routes generated by the demand of the O&D traffic is what makes it an ideal connection center for passengers coming from other airports. Without a great deal of the traffic generating or ending at the airport, and without an airline arriving to exploit that traffic, the airport will never be a hub.

Another common belief is that any available runway (even an abandoned airport) can be converted into a cargo hub. The great majority of world air cargo is shipped in the baggage hold of passenger aircraft. It is actually the passenger network system that allows cargo owners and shippers to distribute goods to a variety of destinations. The economies of scale required to make a cargo-only airport feasible are present at a handful of airports worldwide—most of which process cargo that is mainly origin and destination. While some perishable goods are often air shipped in large volumes, generating substantial full freighter activity, this is not enough to support the operation of an entire facility. Unless there are substantial levels of imports or exports originating from or destined for a particular airport, or a significant value added at the facility (such as logistics services or some industrial input) the presence of better infrastructure is not enough to develop a cargo airport.

Also due care is needed for the concept of a low cost carrier (LCC) airport. The LCC formula is based mainly on short haul flights, low-cost facilities, high volumes of traffic, and minimum time on the ground, among other features. For example, flights over five hours create problems for LCCs due to longer turnarounds, the need for in-flight catering, and in particular crew requirements (such as the need to station crew at one end of the segment). Unless they come in large volumes, LCCs are not great clients to airports: they need low-cost facilities because they spend little time on the ground, they don't spend on aircraft parking fees, avoid using boarding bridges, and hardly consume in-flight catering. Their passengers do not spend much money at the airport, and there is limited dwell time since they don't connect. Ultimately, LCCs need a defined market— passengers traveling between city pairs—on a high load factor basis throughout the year. Unless the airport can offer large volumes of traffic, the derived revenues from hosting a few LCC flights may be of marginal importance.

3. Whether the project will give substantial benefit to the public, if private sector is preferred to provide the service and if the project is expected to be able to transfer meaningful and appropriate risks to a private sector partner

An economic impact assessment of a major airport investment project identifies the cumulative economic effects of the project. It goes beyond the projected or existing generation of revenues and employment, and assesses the wider contribution made or

expected to be made to the national, regional or local economic development. The results of such assessments are often used in the decision-making process of determining the economic viability of an investment in aviation infrastructure.

The airport's contribution to the economy can be assessed on the basis of the following factors from which direct, indirect and induced economic activities can be derived: sales revenues, labor income, tax revenues, capital investment and employment. Accordingly, economic impact assessments can be designed to collect information on a wide range of economic activities taking place both on-site and off-site the airport, in the surrounding region, or even throughout the country.

Economic impact assessments include information on the number of jobs directly provided by the airport operator, air carriers and other airport-related employers, such as the air navigation services provider, and companies dealing with procurement and aircraft servicing, maintenance and repair. Direct and indirect employment could represent a sizeable labor income and constitute a major segment of the region's or the country's economy.

Beyond the direct and indirect economic impacts of the airport on the economy concerned, there is the induced impact created by spending labor income from direct and indirect economic activities. For an airport of a medium to large scale input-output models are applied to identify the multiplier effects throughout input-providing and consumer industries. An economic impact assessment can reveal benefits from tourism and various related activities to the economy concerned. Economic activities attributable to the tourism industry that are highly dependent on air transport services can be accounted for as catalytic demand effects when applying an extended approach of an economic impact assessment.

An economic impact assessment can reveal the share generated by air transport services and multiplier effects in the country's Gross Domestic Product (GDP). The knowledge of the contribution made by an airport to the GDP may positively influence the decision-making process regarding investment in additional capacity or infrastructure.

While the preceding paragraphs have focused on the potential benefits of new or expanded airport development, it should be recognized that such projects often involve certain disadvantages. For example, the specialized equipment needed for security and baggage handling may have to be imported, causing concerns regarding the balance of payment in the national accounts of a developing economy. Construction projects may strain limited supplies of national human, physical and financial resources, thereby delaying or postponing other projects. Also, the project may place demands on other infrastructure (such as air navigation systems, access roads and power supply) in excess of their capacity, leading to reduced services to other users or other costly expansion. Moreover, the project may pose environmental and ecological problems, such as pollution from aircraft noise and other emissions. The determination and, where possible, the quantification of some of these disadvantages must be addressed separately, while some others will be analyzed in a complementary environmental impact assessment.

4. Whether a project is likely to deliver Value for Money

When fiscal space is tight, government budgets are stretched and the economy has seen better days, there is a temptation to “sell” high value state assets in an effort to “release” value. An airport is a prime target with good revenues, access to foreign exchange, and a golden future. It is tempting for decision makers to want to sell off an airport. This may not be the wrong decision, but this is the wrong reason to make that decision. Careful analysis is needed. In particular, would the government be better serviced by a share in revenues instead of an outright sale (not to mention control and incentive issues)?

Some see airport PPPs as a way to offload the difficult and expensive challenges of an airport to the private sector. While PPPs are a good way to get more help resolving such issues, it is worth remembering that the government never steps out of the airport, it merely brings in a partner.

In parallel with designing and implementing a PPP, airport authorities are often tempted to enter into other commercial arrangements for different airport services (such as fuel farms, parking, and duty free) in an effort to maximize control and revenues earned from the airport. In other cases, the PPP takes time to arrange, and the airport authority feels the need to pursue, such other commercial arrangements to avoid the appearance of inactivity. But this is not in the airport authority’s interests. A PPP operator can deliver comprehensive airport services more efficiently than can numerous individual service providers. By splitting out services, the airport authority will make less off of those services and will achieve less efficiency. The eventual PPP operator will have challenges managing these separate arrangements, and may have to buy them out, which will reduce the revenues available for the airport authority and may undermine the continuity of the entire project.

It is commonly believed that after the airport terminal expansion is completed, passenger traffic will increase. But this belief is not necessarily related to capacity concerns. It is a response to wishful thinking: that because there has been an investment, a return may follow. Traffic will increase only if an investment solves an operational restriction on the airside (runways, taxiways, and apron). Stylish new terminal buildings will not alone increase traffic because passengers are not motivated by an airport to travel, but rather by business, tourism, or a visit to friends and relatives. The traffic is the response to the market needs, and it exists apart from the airport infrastructure. Investments in airport terminals are driven primarily by the need to provide a good level of service to users (passengers and airlines), and at the same time they serve as a source of national pride.

Public sector airport authorities are often specifically focused on airport functions and their management. This may limit attention to the commercial returns available for airports and associated businesses. Yet PPPs leverage heavily off these commercial revenues. Developing the commercial side of the airport is important to improve the quality of service for the passengers, and to mobilize finance for infrastructure. Decision makers need to understand this dynamic, the detail of how those revenues will be made, and when they should be shared with the government.

The potential for non-aeronautical revenues can transform a marginally profitable airport into a gold mine, but beware the tendency to focus on retail, hotels, conference centres, car parks, or property development. The government needs, first and foremost, a well-run airport. The investor needs to be looking at operating the airport first and making this extra

money later. A focus on non-aeronautical operations—in particular during the bidding criteria—can result in the selection of less proficient airport operators, or bids that have not planned well for high-quality airport services.

5. Whether sufficient financial resources, including those required for expected government support, are expected to be available for the project.

Financial resources refer to both the private capital required for the implementation of the project and the possible financial support from the government.

Private capital will have to come through a combination of equity and debt. Equity refers to the paid-capital by investors and debt refers to the loans from banks. It is to be noted that there are limitations to available capital for PPP in Ethiopia. So the public entity proposing the PPP needs to give some indication of the availability of private capital including non-recourse financing. Some informal sounding of financial institutions is encouraged.

Government Financial Support may be required for the following reasons:

- To fund the development of the project i.e. ensuring a thorough and appropriate appraisal and feasibility assessment of the project and an efficient and effective tender process;
- To provide financial support to the implementation of a rail PPPs. If the proceeds from user charges are not sufficient to recoup the investment, the government may consider the use of Viability Gap Financing;

Furthermore, there may be a need for financial support by means of government guarantees for various risks, though this is to be identified and appraised upon project structuring.

6. Whether the Contracting Authority has sufficient capacity and resources to appropriately prepare and implement the project.

The PPP Suitability Application needs to include a project planning including an estimate of the required capacity and resources for the development of the project. This needs to include internal resources and also the required budget for any consulting services for project preparation and transaction advisory.

The type of experts generally used in an airport investment project are:

- Economists trained in evaluating the costs and benefits of investments;
- Financial advisors with an expertise in airport financing to assist in negotiating with banks and other fund providers (they should be independent of the entity providing the loan);
- Attorneys with expertise in drafting documents related to airport investment projects; and
- Project management companies, generally engineering companies with expertise in planning and construction.

7. Is the output or services from the project affordable to users/ customers?

In many airport PPPs, reforms and upgrades of facilities and services will also mean an increase in fees and charges to airlines, passengers, and cargo. When developing regulation, the expectations of private investors for return on investment should be balanced against the concerns of the users regarding cost.

In an effort to attract investment, some governments may allow the private partner to increase fees and charges prior to any reforms. This encourages bidders to increase their offers for the acquisition of shares or decrease government concession fees, transferring the benefit of lower sale prices or concession fees from the user to the government. Curbing the desire to protect users from higher fees and charges is a challenging equilibrium for the government when designing the deals.

8. Is the project large enough to justify transaction costs, i.e. above USD 50 million, and of a “bankable” size?

It is recommended for airport PPPs that the size of the project is large enough for the value for money potential to offset the transaction costs which are commonly higher for PPP projects than for conventional projects.

The size of the project could refer to the capital value of the project and a threshold of USD 50 million should be taken into consideration. However, for possible O&M arrangements that do not require substantial investments and still may be suitable for PPP, it is recommended to consider the handling capacity of the airport or the respective facility.

9. Are the environmentally and social impacts of the project acceptable and can they be mitigated using Ethiopian and international standards?

For both brownfield and Greenfield airport PPP projects, environmental issues must not be neglected. For brownfield projects, environmental audits are recommended to establish a baseline to cut off responsibility between the grantor and the new investor for pre-existing environmental liabilities. For Greenfield projects, there are numerous other issues that must be addressed at the start. Who owns the land on which the airport is to be constructed? Are there rights of way that need to be considered? Is ownership of land by a private investor possible, or even necessary, in an airport project?

Airport construction raises significant environmental and other permitting issues surrounding noise and air pollution. Local residential populations may not react positively to the possibility of construction of a new airport in their region given the potential for noise pollution and the reduction of property value. At the same time, it should be noted that the location of a new airport can significantly improve land values, in particular in developing countries where the location of jobs and transportation may involve more complex, socio-political issues

10. Is the project replicable or scalable?

Whatever the form of ownership and control that the State has selected, the management of airports can be done either on an individual airport basis, on an airport system basis, on an airport network basis, or on a combination of these. An airport system is composed of two or

more airports serving the same major metropolitan area and operated under a single ownership and control structure. An airport network is a group of airports within the country operated under a single ownership and control structure; it can include all airports serving the territory of Ethiopia or only some of these airports.

There are arguments in favour of operating and managing a group of airports within an airport network, a form of organization that is common at a national level. Smaller airports may derive some benefit within a common ownership, which could include cross subsidization. Other arguments point to, inter alia: the advantages for the government having a national air transport system in achieving its national development objectives; the advantages in terms of economies of scale; the easier access of all airports to capital markets; and the better management of capacity and use of resources throughout the network. In summary, an airport network can be a valuable method of collectively managing airports that, taken individually, would not be viable.

Arguments against cross subsidization are based on the fact that airport charges should be cost-related, that users should not be charged for facilities they do not use, and that only those facilities used for international air services should be included in the cost basis for charges. In that sense, cross subsidies from profitable to non-profitable airports within a network are questionable, although it is recognized it may be the only way to maintain airports that serve, for example, isolated regions.

Opponents to the network approach also point out that if subsidies are to be provided for national planning purposes, these should rather come from the government than from users of other airports.

11. Can appropriate and relevant project risks be allocated to the private sector?

For airport PPPs it can be assumed that appropriate and relevant project risks can be allocated to the private sector in view of international experiences with dry port PPPs.

III. PHASE II: PPP PROJECT APPRAISAL AND PREPARATION



With regard to the scope of work for the Feasibility Study the following specificities apply to aviation:

<p>Demand analysis</p> <ul style="list-style-type: none"> Identification of catchment area 	<p>Design includes outline for service concept</p>	<p>Land acquisition plan including need for resettlement</p>
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For highly complex PPP projects, specialist consultants and transaction advisers should be appointed to evaluate the project and prepare a feasibility report which covers traffic and revenue forecasts, estimates for capital expenditure on infrastructure, operational cost

estimates, financial and economic analysis, value for money analysis and a risk assessment with adequate risk mitigation mechanisms.

With regard to airports specific attention is to be given to price regulation.

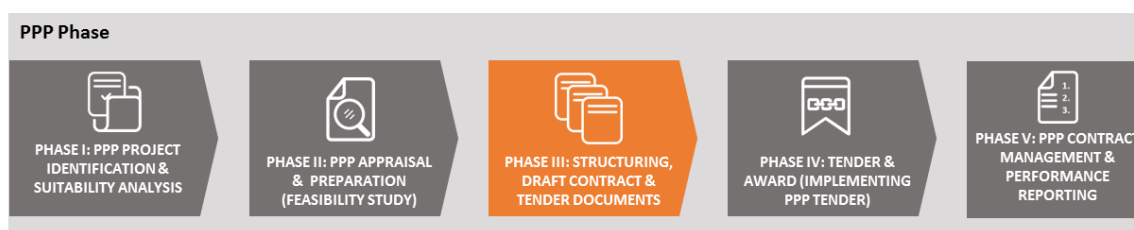
In almost all countries where private participation or privatization in the provision of airport services has taken place, regulatory authorities have been established to ensure that dominant position is not abused, especially in the case of aeronautical charges. For example, in the United Kingdom, aeronautical charges are controlled by the Civil Aviation Authority. The control is exercised by applying a Retail Price Index (RPI) minus X formula (i.e. the charges are capped on an annual basis according to a percentage X, set by the authority, usually less than general inflation). The X factor is adjusted every five years, taking into account, inter alia, major investment projects. The Civil Aviation Authority is also required to refer the rates for review by the Competition Commission.

In some other countries, similar formulae with more parameters, including growth in traffic, have been adopted. For example, Vienna Airport takes a tariff basket approach in which inflation and traffic are the guiding parameters. In Portugal, the tariff basket includes airport costs, traffic growth, commercial income and inflation. In South Africa, an RPI minus X formula is used to adjust aeronautical charges, and guidelines have been provided to the Regulating Committee in regard to the valuation of X which differs from airport to airport. In Colombia, a system of indexing has been provided which takes into account a number of parameters.

In some countries, specific provisions exist to cap aeronautical charges for a limited number of years. In Argentina, aeronautical charges were frozen for five years. However, in Canada, no defined mechanism has been established, and the airport operators and the airlines are left to settle the issue through consultation. The government considers that as major airports and air navigation services are managed by not-for-profit corporations, the opportunity for abuse of dominant position does not exist.

The logic behind such RPI minus X provisions is that certain airport costs do not increase in the same proportion as the rate of inflation or they remain unaffected.

VII. PHASE III: STRUCTURING AND DRAFTING THE TENDER AND CONTRACT DOCUMENTS



Key Issues to Consider:

The typical inland port experience requirements for the railway sector include the following:

- Equity share in port PPP project by a consortium member or affiliated company at least [5]%; and
- Size of project in number of passengers per year or terminal capacity [0.5] times the size of the project at hand; and or

- Value of the project in monetary terms at least [0.5] times the value of the project at hand

Airport revenues

Airport revenues can be separated into two distinct sources: aeronautical and non-aeronautical. Aeronautical revenues, also known as air-side revenues, are all those associated with the essential services provided by an airport, namely the provision of runways and taxiways (landing fees), the provision of a parking stand at the apron (aircraft parking fees), the provision of a boarding bridge (boarding bridge fees) and the facilitation of a terminal building (passenger facility/service charge).

Non-aeronautical revenues, also known as land-side revenues, can be further divided in two subgroups: commercial revenues (from the rental of spaces or collection of royalty payments from retailing, duty free shops, food and beverage, aircraft parking, advertising, etc.) and ancillary revenues (collected as access charges to service providers at the airport, such as in-flight catering companies, ramp handling companies, fueling companies, rental of spaces to airlines, etc.).

Each of these revenue streams require varying degrees of regulation. Aeronautical services are the most heavily regulated. While strict regulation limits the potential for improved efficiency of aeronautical revenues, these fees are generally US dollar based, making for valuable foreign exchange revenues.

By contrast, non-aeronautical revenues face regulation depending on the service. Generally, commercial services are the least regulated given that market forces act as a regulator. That said, some of these services, like parking, can be considered a public access issue and as a result are regulated carefully. Ancillary services are also generally subject to some type of regulation in order to ensure that the access cost are capped, as they are transferred to the airlines.

Given the complexities of the revenue landscape, regulation must be well defined and provide investors with a clear expectation of how fees and charges will evolve throughout the term of their involvement. This will include the definition of regulatory targets and the criteria for adjusting fees and charges year after year. Regulation may assume that commercial activities will compensate for the overall airport expenses (single till regulation) or that only the aeronautical revenues shall support the airport operation and development (dual till regulation).

Functions

Operation of airport facilities

This function covers the operation of the passenger and freight terminals, including air bridges, and runways, taxiways and aprons including ramp equipment, buses and other airport vehicles, and automobile parking. This function usually has a large staff for the various operating, cleaning, guarding and other functions involved, with certain services often provided through subcontractors.

Engineering, construction works and maintenance

This function provides maintenance services for airport installations and equipment, and also performs civil engineering work at the airport. Maintenance ensures that airport buildings and installations are kept fully operational; it includes the internal equipment of the air terminal (e.g. baggage conveyor belts, moving stairways, passageways, heating and air conditioning systems, power supply) and the external equipment (e.g. runway lighting, instrument landing system, telecommunication and meteorological equipment), as well as airport vehicles (e.g. buses, firefighting and apron vehicles) and ground-handling equipment (ground power units, aircraft stairs, and cargo and baggage handling equipment).

Engineering and construction services are often performed by outside consultants or contractors at airports that have not reached a size that enables them to efficiently use such services on a permanent and continuous basis.

Engineering includes the definition of new projects and programmes, including preliminary and final project specifications. An essential responsibility is to define the master plan for the development of the airport to its optimal capacity so as to efficiently meet growing traffic volumes. This would include the location of additional runways and passenger terminals, in the medium and long term, consistent with the planning and development objectives. The construction works department carries out part or all of the tasks, such as management of the operations, planning and supervision of the construction works, related to the ground facilities and the air terminals.

Marketing

This function is aimed at promoting the airport to the aircraft operators and the general public as well as to potential users of airport services. This involves identifying typical features of the airport's customers and their requirements, public and media relations, operating guided tours, dealing with complaints, preparing brochures describing the airport for the public, and maintaining the airport's website.

Ground handling

This function concerns only those airports that provide all or part of the ground-handling services at the airport. The function may be separated into terminal handling (passenger check-in, baggage and freight handling, flight plan processing) and apron handling (aircraft handling, cleaning and servicing). If it is not organized as a separate function, it could be included under "operation of airport facilities". This function generally requires a large number of personnel, which can be partly or wholly subcontracted.

Air traffic operations

Concerned with the movement of aircraft within the airport and its vicinity, air traffic operations include air traffic control and related associated procedures, firefighting and rescue services, meteorological services, and the operation of pilot briefing offices, which are usually also responsible for the provision of aeronautical documentation and information. These services are often the responsibility of the government.

Security, immigration, health and customs

All these services are required and generally provided by the government. They should be accorded the full cooperation of airport management. At some airports, an airport police or security force may be responsible for certain or all airport security functions.

Performance Indicators

A range of possible performance indicators are in use in various jurisdictions, which may be of use in developing a performance management system, are listed here below.

Safety

Runway accidents and incursions are primary safety concerns for airports. A runway incursion is often defined as any occurrence at an airport involving an aircraft, vehicle, person or object on the ground that creates a collision hazard or results in a loss of separation with an aircraft taking off, intending to take off, landing, or intending to land. Potential indicators include:

- runway accidents per thousand operations;
- fatal runway accidents per thousand operations;
- accidents per thousand hours worked;
- runway incursions per thousand operations; and
- bird strikes per thousand operations.

Quality of service

Quality of service can be measured from aircraft operators' and from end-users' perspectives. Potential indicators include:

- airport average daily capacity (aircraft movements per day);
- number of delays by cause; and
- average delay per flight.
- Passenger surveys on quality of airport services:
 - time at security queues;
 - percentage of time out-bound and in-bound baggage system available during hours of operation;
 - ease of finding one's way;
 - accuracy of screen information;
 - cleanliness of washrooms; and
 - overall passenger satisfaction.

Productivity

Productivity performance indicators look at the relationship of airport output (for example, number of aircraft movements, number of passengers and tonnage of cargo handled) to inputs (for example, employees, gates and airport facilities). Potential indicators include:

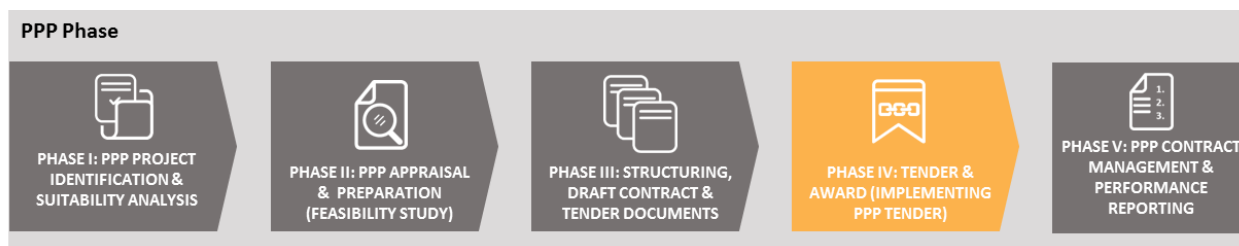
- aircraft movements per employee;
- aircraft movements per gate;
- passengers per employee; and
- tonnage of cargo per employee.

Cost-effectiveness

Cost-effectiveness performance indicators measure the financial cost (for example, total airport costs, facility costs and operating costs) of input required to produce an output (for example, aircraft movements, passengers and cargo handled). Potential indicators include:

- total costs per aircraft movement;
- total costs per passenger;
- total costs per 1,000 air traffic units; and
- staff costs as a percentage of turnover.

VIII. PHASE IV: TENDER & AWARD



No sectoral specificities

12. PHASE V: PPP CONTRACT MANAGEMENT & PERFORMANCE REPORTING



Post-award contract management and performance monitoring would follow the same procedures outlined in the PPP General Guidelines.

BEST PRACTICE CASES: ROADS

International experiences indicate that using PPP for road development has mixed results as illustrated by the following examples:

- Portugal
- Spain
- United Kingdom
- Mexico
- India

(i) ***Portugal***

In 1972, the first concession for a tolled motorway was granted with the creation of the private company Brisa. Following the 1974 Carnation Revolution, however, the government took majority ownership of Brisa, effectively making it a state-owned enterprise. Until the 1990s, Brisa was the sole motorway concessionaire in Portugal. During this decade, the Portuguese government decided to privatize Brisa and increase the number of private companies participating in highway infrastructure concessions to promote competition and industry development. Since then, the Portuguese government has used PPPs extensively to develop and manage its National Motorway System. A key driver of the decision to implement PPP arrangements in earnest was compliance with European Union (EU) convergence criteria, which places limits on public debt and budget deficits. This pressure makes the use of PPPs, in which the private partner assumes real risk, quite attractive because its associated debt is moved off the public sector's balance sheet. Other drivers cited include the following:

- Make public funds available for investment in other areas.
- Facilitate execution of the National Road Plan.
- Improve public safety.
- Increase private sector capacity and competition.

(ii) ***Spain***

Private sector involvement in developing and managing highway infrastructure in Spain dates to 1960. At that time, the concession for the Guadarrama Tunnel was granted, based on legislation passed in 1953 allowing private entities to construct toll ways for a maximum term of 75 years. New legislation was passed in 1960 to grant the public sector more flexibility in concession arrangements to improve their attractiveness to the private sector. Two concessions were quickly granted under this framework: the Cádiz Bay Bridge, toll-free since 1982, and the Cadí Tunnel, now operated by the Autonomous Community of Catalonia.(b) In 1964, Spain developed a plan for a National Expressway System, which projected the construction of about 3,000 kilometers (km) of expressways by 1980. Subsequently, several concessions were established to begin development of this system. To facilitate rapid construction, specific legislation was passed for each concession, and in many cases,

beneficial terms were granted to the private developers. In 1972, Spain recognized the need for a general legal and regulatory framework to serve as the foundation for future concession arrangements. Building on its own experience as well as that of other countries, Spain passed Law 8/1972 to provide this basis. It served this purpose until 2003, when Law 13/2003 modified the original framework to accommodate contemporary circumstances and practices such as the clarification of the allocation of concession risks. Law 30/2007 was also enacted recently to address all public sector contracts, but it has a section for contracts for public works concessions.

Similar to Portugal, the resurgence of PPP activity in Spain is driven by EU convergence criteria. The other principal driver cited was that the nation's infrastructure requirements exceed its public funding capacity. One public official's opinion on PPPs is that these arrangements are primarily tools to develop infrastructure, and the approach is no better or worse than any other.

Although real tolls is the dominant cost recovery mechanism, Spain also applied alternative cost recovery mechanism such as shadow tolls and availability payments.

The reduced appetite for real toll PPPs is predominantly driven by the economic crisis that has impacted Spain significantly and has already led to some road PPP bankruptcies.

First Spanish Road Concessionaire Files For Bankruptcy

The concessionaire of the Madrid-Toledo highway (AP-41) has become the first of Spain's troubled road concessionaires to file for bankruptcy.

The AP-41 concessionaire is one of several concessionaires whose revenues have been hit by lower-than-expected traffic levels and soaring land expropriation costs.

Source: Infranews 14 May 2012

(iii) United Kingdom

Increased private participation in infrastructure provision and management began in the United Kingdom in the 1980s. The momentum from this decade continued into the following one when in 1992 the national government began the Private Finance Initiative (PFI). Her Majesty's (HM) Treasury issued and has administered the policy since its inception. To some, the terms PFI and PPP are synonymous. PFI, however, is a specific U.K. policy to increase private participation in infrastructure financing and provision, which obviously generated various PFI programs in the United Kingdom. Total PFI activity to date approaches £60 billion. The first three highway PPPs were concession arrangements—Queen Elizabeth II Bridge, Second Severn Crossing, and M6 Toll—with real tolls used to secure the private financing. Beginning in 1996, new PPP contracts eliminated real tolls and made road use free at the point of use to drivers. Consequently, PPP contractors have secured financing for capital costs while the government has paid PPP contractor service charges from budgetary funds. Original drivers of the PFI policy include the following:

- An infrastructure deficit, created by years of underinvestment, which exceeded available public sector funding

- Dissatisfaction with the results of conventional construction contracts (cost overruns, schedule slippage, high asset life-cycle costs)
- Desire to transfer more of the risk to the private sector
- Desire to get better value for public sector expenditures

Unlike Portugal and Spain, the United Kingdom is not part of the Eurozone, so it is not bound to meet EU convergence criteria. Thus, the pressure to move liabilities off the public sector balance sheet is a less urgent issue.

(iv) **Mexico**

In the same spirit of privatization that swept through Mexico in the early 1990's, the government decided to increase the road network by authorizing the sale of toll road concessions to privately owned Mexican companies.

Between 1989 and 1994, USD 13 billion were invested in the Mexican Private Toll Road Program. The program awarded 53 concessions for the construction, operation and collection of tolls of approximately 5,500 km of roads. By 1995, 44 were in full or partial operation, representing over 90% of the total kilometers of the concessions. The investment was financed by local commercial bank debt, concessionaire equity and federal and state government grants and equity contributions.

The concessions were originally granted for a period of 15 years, but later extended to 30 years, and specified the work to be undertaken, operational standards, required maintenance, fees payable to the government and the tolls to be charged. Upon termination of the concession, the right to operate and collect tolls would return to the government, nonetheless, the ownership of the project remained in government hands throughout the term of the concession. In order to reduce risk to the concession-holders, the government guaranteed a minimum usage level on the new highways¹⁵.

However, a combination of macroeconomic and project-specific factors, including the Mexican Peso crisis of December 1994 and miscalculation of investment costs and operating income, led to an unsustainable set of operating conditions. By 1997, the government cancelled 23 of the 53 concessions, recovering the right to operate, maintain and exploit these roads, while absorbing USD 7.3 billion in bank loans and short-term borrowings. The scale of buying out the combined debt and taking over the roads for all 23 concessionaires was so large that it represented 1% of the national debt and required its own government organization to manage.

Among the main factors that affected the viability of the program were the frequent cost overruns and construction delays. Information deficiencies, problems with securing right of way, unanticipated design changes, local community resistance, among others, resulted in

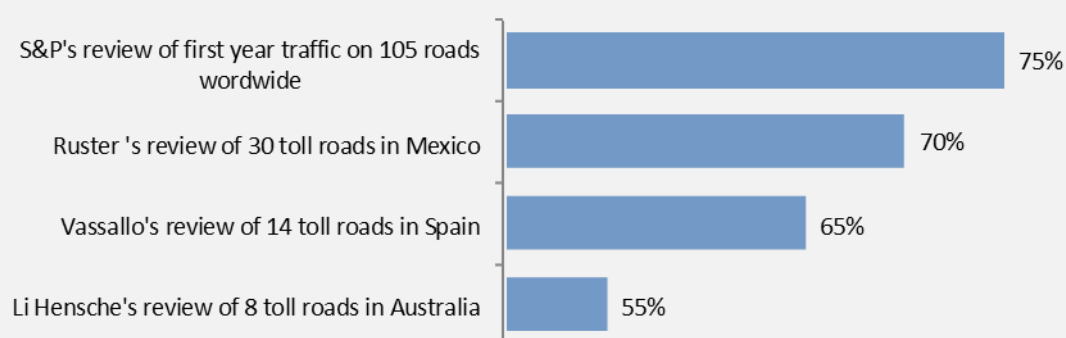
¹⁵ According to the Ministry of Communications and Transport (SCT) this practice has been eliminated. After the Peso crisis, commercial and public transport fell dramatically and toll receipts averaged 4 billion, about half of those of 1989, leaving the government with a formal obligation to losing concession holders.

an increase in the average cost per kilometre of new highway from \$1.7 million to \$2.8 million. In addition, traffic shortfalls and higher than expected operations and maintenance expenditures caused the actual project revenues to be on average 30% below the original estimates. Carlos Ruiz Sacristan, former Communications and Transport Minister, admitted that the government’s estimates of traffic and revenue flows were overly optimistic: “Some started falling behind in 1993 and 1994”, he explained. “Then with the crisis in 1995 and 1996, things only got worse.”¹⁶

It is to be noted that Mexico is not an exception in this respect. Optimism bias in traffic forecast is more common than uncommon as illustrated by international research.

Demand risk in toll roads¹⁷

Actual demand as percentage of forecast



The financial structure of the projects also contributed to their downfall. High debt to value ratios in combination with short-term commercial bank loans characterized by high floating interest rates further hampered the profitability of the projects.

The Ministry of Communications and Transport also blamed the poor performance of the concessions on the high tolls charged to motorists, redirecting traffic flows from the toll roads to parallel freeways and back roads¹⁸. Faced with crushing debt estimates and diminishing traffic flows during the 1995 recession, the concessionaires kept the tolls high in an attempt to recover their investment. After the government bailout in 1997, tolls on the newly state-owned highways were reduced and average of 17% for cars, 27% for buses and 37% for commercial trucking. As a result, traffic in the 23 highways increased on average 21.1% for cars, 15% for buses and 39.5% for commercial trucks during the first two quarters of 1998 when compared to the same period in 1997. President Ernesto Zedillo referred to these actions during his 1997-98 Union Address: “With these, the government is meeting its objectives of guaranteeing the optimal maintenance of the infrastructure recovered and increasing its utilization for the benefit of a larger number of users.”

A good example of the problematic of toll road concessions is the Cuernavaca-Acapulco turnpike included in the bailout package. Poor planning and inaccurate costing estimates

¹⁶ Laura Carlsen, “Highway Rescue or Highway Robbery,” Business Mexico, October 1997

¹⁷ Vassallo 2007, Standards & Poor 2005, Li & Hensche 2009, Ruster 1997

¹⁸ Under the concession agreement, a parallel alternative to each highway was required.

inflated the project budget of the *Autopista del Sol*, as it is known, by 275%¹⁹. To make matters worse, steep tariffs explain a road free of any congestion. At 8.25 US cents per kilometer, tolls for this road are about five times higher than comparable turnpikes in the United States.

(v) **India**

National highways in India are the arterial roads that run through the width and breadth of the country connecting state capitals, ports, industrial and tourist centers, and adjacent countries. The National Highways, with a total length of 65,659 km, account for just 2% of the 3.3 million km road network, but carry 40% of the total traffic. In spite of the fact that National Highways have played a key role in the economic growth of the country, the Central Government has not been able to allocate sufficient budgetary resources to meet roadway needs due to competing demands from other sectors, especially the social sector. The Government of India, which has jurisdiction over the National Highways network regarding its development and maintenance, has sought the involvement of the private sector through the PPP route to meet the galloping resource requirements and overcome the inefficiencies in the traditional public procurement system.

The Central Government of India has undertaken the ambitious National Highways Development Program (NHDP) to upgrade the National Highways in seven phases. The Government of India in January 1999 formally launched NHDP to develop the Golden Quadrilateral network (the National Highways network connecting the four metro cities of Mumbai, Chennai, Kolkata, and Delhi) under NHDP Phase I and north–south and east–west (NSEW) corridors under NHDP Phase II. The National Highways Authority of India (NHAI) was mandated to implement this program, which was estimated to cost 540 billion Indian Rupee (in 1999 prices, approximately USD 12 billion). NHAI planned private sector participation in certain stretches of the National Highways network under the NHDP project and anticipated private investments to the tune of INR 40 billion (in 1999 prices). NHAI involved the private sector in the NHDP projects through the two PPP models: BOT (Toll) and BOT (Annuity).

The scope of NHDP has been further expanded when the Government of India included five more phases (i.e., NHDP Phase III to NHDP Phase VII) to the program under the government’s ambitious plan to upgrade the National Highways in a phased manner.

This has made India to the largest PPP market to date driven predominantly by the road PPPs and facilitated by an efficient and effective PPP framework. The PPP framework includes:

(i) **Policy Pillar**

- a. Periodic Five Year Plan clearly indicate PPP targets per sector
- b. Guidance is provided by Guidelines and Model Concession Agreements

¹⁹ Andrew Watson, “The Road Ahead”, *Business Mexico*, November 2002

- c. Various state level PPP Laws (Infrastructure Acts) or PPP policy statements

(ii) Institutional Pillar

- a. Department for Economic Affairs coordinates and support PPP
- b. Most States established PPP Cells
- c. PPP Approval Committee
- d. Panel of Transaction advisors for expert support
- e. Nationwide Training program developed

(iii) Financial Pillar

- a. India Infrastructure Development Fund for project preparation
- b. Viability Gap Fund
- c. Fiscal incentives
- d. India Infrastructure Finance Company Ltd providing long-term debt
- e. Several state specific funds to facilitate PPP

Source: Financing Road Projects in India Using PPP Scheme - Satyanaryana N. Kalidindi

The principal mechanism employed by NHA in the construction of these highways was engineering procurement construction (EPC) under a public sector financing scheme. A smaller number of projects were implemented using two forms of private sector financing scheme, namely BOT and annuity concession schemes. Based on a review in 2007 conducted by PwC comparing the different delivery schemes it was concluded that:

- The performance of BOT is far superior to other forms of contract in terms of cost effectiveness and delivery time. At the time of the completion, construction costs were 30% lower than EPC and 57% lower than annuity schemes. BOT construction was completed one month earlier than the original schedule, in sharp contrast to the average 16-month delays in EPC contract and 3-month delays in annuity contracts.
- Annuity contracts were less impressive but still performed better than the EPC contracts, being completed 13 months faster on average. Construction costs were 18% higher than with EPC finance, but this was due to the inclusion of O&M costs, which often exceed 20% of the construction costs if a concession period of 12 years is taken into consideration.
- EPC contracts exhibited the poorest performance. Particularly problematic was the delay in delivery time, of 16 months on average from the original schedule. Furthermore, the contractors charged NHA 20% more than the original contract prices through changes to the original contracts. This figure coincides with the

UK government finding that contractors generally charge 20% more than the original contract prices.

In conclusion, roads are well suited for private financing through PPP as illustrated by the numerous international experiences. The critical question concerns, which cost recovery mechanism to apply, reflecting the allocation of demand risk. Most common cost recovery mechanism is tolling through a BOT arrangement. However, the consequent demand risk is not to be underestimated and may require government support through Minimum Revenue Guarantees (MRG) or Viability Gap Financing (VGF). Furthermore it is to be noted that road PPP could benefit significantly from standardization, which implies that it is advisable to develop road PPPs through a program and not as ad-hoc projects.

BEST PRACTICE CASES: RAILWAYS

Railways

International experiences indicate that using PPP for road development has mixed results as illustrated by the following examples:

- Australia
- EU
- United States
- Russia

(i) Australia

Railways in Australia were originally built as separate rail networks in each state, often using different track gauges. Several years of reform resulted in a national network with a mixture of public and private ownership. Most public rail networks are still owned by provincial governments, but some provincial rail networks are now managed by the national infrastructure manager. Australia also has private railways linking coal and iron ore mines to ports. There are about 10 freight carriers of significant size and about the same number of infrastructure managers for freight. Most networks are interconnected with other networks.

The Australian Constitution provides all parties with access to strategic assets. Railway infrastructure was designated as a strategic asset in the 1980s. This has transformed the Australian rail sector. Australia has introduced open access for freight railways built for common use, even if these are in private ownership. For example, the Australian Competition Tribunal in 2010 decided that third parties should be allowed to use some of the lines owned by two major iron ore companies. The third parties would, in practice, be smaller mining companies for whom it would not be economical to build their own lines. The tribunal did not, however, require open access for other rail lines owned by big mining companies.

Some railways have vertical separation of infrastructure²⁰, while others have retained vertical integration. The isolated mining railways discussed above, however, remain vertically integrated. Most carriers and some infrastructure owners are in private sector ownership.

Infrastructure charges vary between infrastructure managers and lines/trains, but there are common rules:

- (i) Discrimination is not allowed—infrastructure companies must charge the same for the same service.
- (ii) Charges can vary between an established floor (based on marginal cost) and an established ceiling (based on total cost).

²⁰ Vertical separation of infrastructure is where the ownership and management of railway infrastructure is separate from the ownership and management of train operators.

(iii) Within this range, rates may be negotiated.

(ii) **European Union**

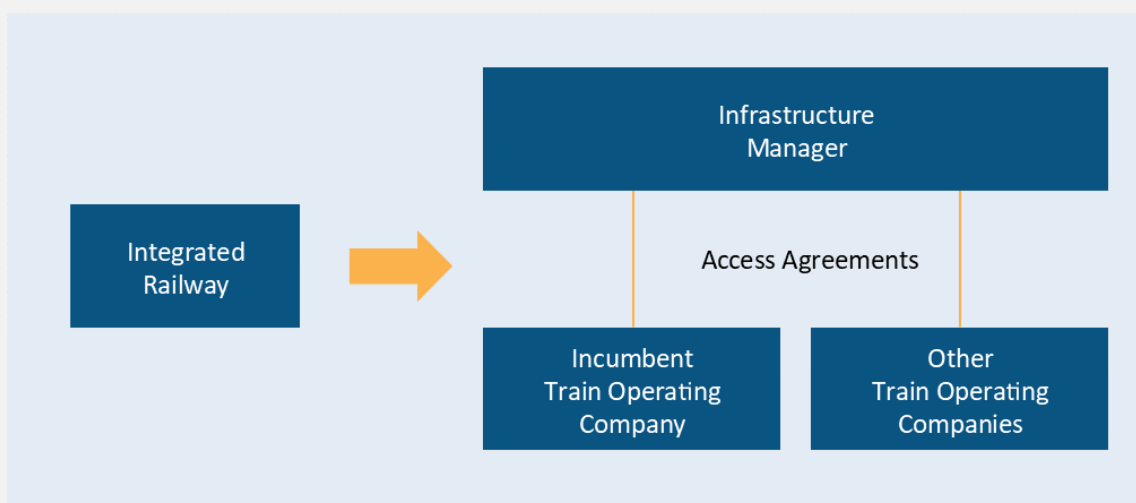
Railways in most of the EU are predominantly for passengers but, in some countries in Eastern Europe and Scandinavia, freight is also important. EU countries have traditionally had state-owned railways, although some countries also have privately owned industrial lines. Operational integration within each network is provided by the infrastructure manager. There is coordination at EU level on technical standards and corridor development, but not on operational planning and control.

All EU countries are required by common agreement to provide open access to new rail carriers (using their own locomotives and wagons) that provide freight and international passenger services. The EU plans to liberalize domestic passenger services and some countries have already done so.

To ensure that there is no discrimination in favour of national operating companies, the following requirements are in place:

- (i) All countries are required to set up infrastructure entities with decision-making powers that are independent of any carrier using that infrastructure.
- (ii) Some countries have set up completely separate infrastructure companies. Where they have been separated in this way, infrastructure companies have, except temporarily in the United Kingdom (UK), remained under state ownership.
- (iii) Some countries have privatized freight companies and franchised passenger services—others are planning to do so.

Vertical Separation Structure of Railways



Vertical separation may be within a holding company, as in Germany where the infrastructure company and national carriers (one for each market sector) are subsidiaries of the holding company. Some countries, including all three Baltic states (Estonia, Latvia, and Lithuania), have established state-owned holding companies with infrastructure and operating subsidiaries.

Most countries in the EU have made reforms in line with the requirements set out in the EU law (which applies to all member states). New companies entering the market include both national carriers from other countries in the EU and private companies. The number of companies with freight licenses is less than 25 in most countries but over 300 in Germany, though not all of these actually provide services.

Evidence is unclear on the impact complete vertical separation (companies under completely different ownership) has on competition and growth. The key issue is how the complex relationship between infrastructure and operating companies is managed. Countries that have open access have experienced faster traffic growth than those that have not.

Almost all railway infrastructure in Europe is state owned and managed. In the UK, infrastructure was privatized in 1996, but private ownership of infrastructure was abandoned in 2001, mainly because of the difficulty of aligning the incentives of private infrastructure owners with state policy and the commercial requirements of carriers. In Estonia, private ownership was also introduced but abandoned in 2004 partly because the access charging policy provided inadequate returns to investors.

New line construction is largely limited to high-speed lines in Western Europe, and attempts to build these using public–private partnerships have met with limited success so far because they are rarely profitable and it is difficult to separate the revenue streams of these new lines from those of the existing network to which they are usually connected.

Every country in the EU is required to establish a regulatory body that is independent of both the railway industry and government. Independent regulation is important to give new entrants confidence that the rules will not be changed by government in response to political expediency. The regulatory body sets rules to ensure that the overall national system works efficiently and fairly. To retain their licenses, all entities in the industry must abide by these rules. The precise role of the regulatory body differs between countries, but a key function under open access arrangements is to ensure that access to infrastructure is provided under arrangements that are non-discriminatory and do not favour the national carrier.

Infrastructure tariffs—also referred to as access charges—constitute what the infrastructure manager charges carriers to use the track, stations, depots, and other facilities. According to EU rules, these must cover at least the marginal costs of providing and operating the infrastructure and related services (such as dispatching, train inspection) and may in addition include a mark-up to reflect different railway market sectors' ability to pay. In practice, many countries, particularly in Eastern Europe, do not differentiate charges between market sectors, and this may have contributed to traffic decline in markets with limited ability to pay.

Another requirement in the EU is that passenger and freight be established as separate businesses where they remain within the national carrier. This is particularly important in Eastern Europe where profits from freight have in the past been used extensively to cross-

subsidize passenger services. Such cross-subsidies are no longer permitted under EU rules.

(iii) **United States**

The freight railways of the United States (US) consist of seven large Class I railways (including two Canadian-based railways that operate in the US) and several hundred smaller railways (mainly short lines connecting industries to the Class I railways). The freight railway industry in Canada has a similar structure with two major national vertically integrated railways. There is coordination at the national level on technical standards but not on operational planning and control: each railway is responsible for its own network and coordinates with other railways at boundaries.

All railways in North America are vertically integrated, as they used to be in all countries in the world and still are in most. Competition in freight is provided by overlapping rail networks, other modes of transport, and source competition. Freight railways in North America are privately owned, and ownership crosses international frontiers. Passenger railways are all loss making and are publicly owned.

To give investors in private and largely unsubsidized freight railways the best chance of recovering their costs and to ensure that there are adequate incentives to invest, they are not required to provide open access. Third party access (known in the US as trackage rights) is sometimes permitted but is not automatically available by law to all licensed carriers. The terms of access, including infrastructure charges, are usually negotiated between the railways buying and selling access rights and generally remain confidential. Trackage rights access may also be imposed by the regulator: for example, as a condition of a merger or if a shipper complains about abuse of monopoly power.

In North America, more than 60% of the freight wagon fleet is not owned by the railways themselves but by shippers or leasing companies (compared with 50% in the Russian Federation and 30% in the EU). However, these wagons are exclusively hauled by railway companies. All wagons used in North America must meet technical standards developed by a joint industry committee and can be used throughout the entire network.

(iv) **Russia**

Railways in the Russian Federation are potentially less dependent on the government for regulation and financial support than in the EU because passenger services are relatively less important.

Russian reforms were based on a similar premise to the EU: that competition between rail service providers operating over the same infrastructure should improve efficiency. Competition between rail service providers is more necessary in the Russian Federation than in the EU because there is less competition from roads, especially east of the Urals. An additional objective of reforms in the Russian Federation was to attract much-needed investment in rolling stock from the private sector.

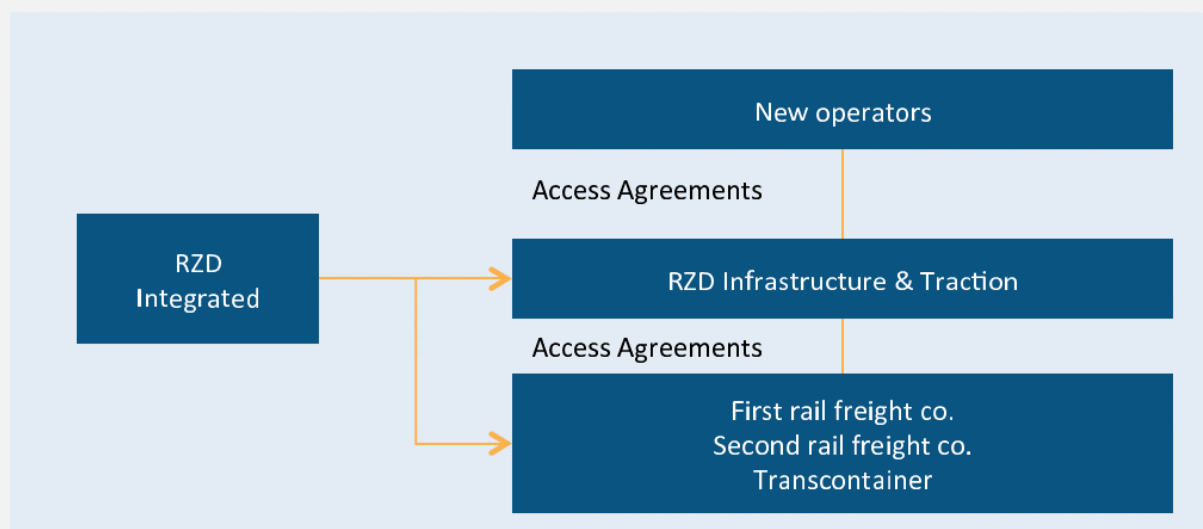
Although the original government plan was to allow private carriers providing their own traction (locomotives and drivers) as well as wagons, so far access has generally only been

permitted to operators using their own wagons. Operators are not allowed to use their own traction except for some block trains where there is a shortage of Russian Railways (RZD) locomotives. These reforms have been accompanied by the development of a competitive wagon leasing market with both shippers and operators purchasing their own freight wagons or leasing them from newly formed specialized private leasing companies.

Both infrastructure and traction are therefore treated like legal monopolies and provided by RZD. RZD has opposed allowing private companies to provide their own traction as it considers there would be a loss of efficiency and that new carriers would take away the most profitable traffic, leaving RZD to carry out its “common carrier” obligations such as carrying domestic coal at discounted tariffs. RZD insists that any new carrier should be a common carrier. So far, the government has not insisted on allowing private companies to provide their own traction.

RZD has also established several freight operating subsidiaries to which it has transferred nearly all its wagons. These include two subsidiaries with about 225,000 wagons each, providing the full range of services across the country. It has also created some subsidiaries to serve niche markets, such as TransContainer which runs intermodal services. These subsidiaries are being privatized to raise money for RZD to invest in infrastructure. The restructuring is summarized in the figure below.

Partial Separation of Infrastructure in Russia



Source: Consultant

Profits from freight have been used to cross-subsidize loss-making passenger services. In 2006, RZD formed a Rail Passenger Directorate to focus on the management of long-distance passenger services.

Local passenger entities (divisions of RZD or subsidiaries in joint ventures with municipalities) are also being created for local transport. RZD has made progress in obtaining support from federal and local governments to compensate it for loss-making suburban and long-distance services. The need for cross-subsidy from freight is therefore reducing.

In the Russian Federation, regulated tariffs have been separated into three component parts: infrastructure services, locomotive ownership and services, and wagon ownership. Shippers who provide their own wagons do not pay the wagon component of the tariff. The wagon component was designed to reflect broadly the costs of wagons (to ensure fair competition between RZD and private operators during the transition to operator-provided wagons). The wagon component is set quite low for some commodities, and this gives little incentive for private operators to provide their own wagons. The combined infrastructure and traction charge is the difference between a total tariff, based on distance and a broad commodity value classification, and an approximation of wagon costs. Infrastructure and locomotive tariff components therefore bear little relationship to costs. This reduces the effectiveness of competition in raising efficiency.

Source: Rail Infrastructure Tariffs -Enabling Private Sector Development in Mongolia's Railway Sector – Asian Development Bank

BEST PRACTICE CASES: INLAND PORTS/DRY PORTS/LOGISTIC CENTRES

Niger Dry Port

Niger is a landlocked country entirely dependent on neighboring countries for maritime access for its imports and exports. Transport costs are frequently prohibitive and constitute a major obstacle for development. Therefore, the Government of Niger (GoN) decided to structure and implement a dry port project in Dosso and Niamey Rive Droite for the country to: (i) facilitate and process international trade through strategic investment in multi-modal transportation assets and promote value-added services as goods move through the supply chain, (ii) speed up the flow of cargo between ships and major land transportation networks, which could carry goods to the rest of the country, (iii) reduce red tape and transportation costs for users in Niger, and (iv) move the time-consuming sorting and processing of merchandise inland, away from the congested seaports in Benin, Togo, Ghana, and Côte d'Ivoire, its main access to the sea.

GoN created a new Dry Port Authority in 2014. This new Authority will act as the conceding and monitoring Authority of the concession and the main interlocutor of B.A.L. (the Concessionaire). The dry port is expected to be multimodal with a connection to the new railways project between Benin (Port of Cotonou) and Niger. Construction of the railways is ongoing and the Dosso dry port platform is expected to be the largest multimodal cargo handling center for merchandise imported from Benin.

IFC proposed a transaction structure based on a 20-year concession agreement to invest in and manage the two platforms in Dosso (corridor of Benin) and Niamey Rive Droite (corridors of Togo, Ghana and Côte d'Ivoire). The concession included provisions to balance risk and protect the rights of both parties, as well as other stakeholders, including a minimum mandatory investment of \$50 million divided in four phases (BAL is offering additional social investment for a total capex up to \$78 million).

The winning bid of Bolloré Africa Logistics included an upfront fee of \$2 million and a fixed fee (land lease) payable by Sq.m. and variable fees payable per ton of cargo for an estimated minimum \$48 million over the life of the concession. The concession agreement was signed on October 28, 2014. Through this Concession, the Authority would be able to leverage between \$50 to \$78 million in private investments in operating equipment and civil works.

Source: www.ifc.org

BEST PRACTICE CASES: AIRPORTS

South Africa - Skukuza Airport

Skukuza Airport is managed by the Skukuza Airport Management Company, in conjunction with SANParks.

In 2013 SanParks announced that they have appointed Skukuza Airport Management Company to improve the airport's runway, buildings and to operate the airport for the next 10 years. In return of the investments made for improvements, Skukuza Airport Management Company can levy airport charges.

Skukuza Airport Management Company, a PPP comprising regional airline SA Airlink, Lion Sands and Federal Air and SANParks, the South African National Parks Company, was formed to oversee the refurbishment and enhancement of Skukuza Airport's runway and terminal buildings to enable airline services.

Skukuza Airport Management Company took over the operation of the Skukuza airport on 1 September 2013, and commenced with the alterations and improvements essential to bring the airport to the international standard required to allow the operation of scheduled passenger services on airline category aircraft.

Source: https://www.icao.int/sustainability/PPP%20Case%20Studies/PPP_Airport_South%20Africa.pdf

Congo

In December 2009 the Congolese Government signed a concession contract with the international EGIS Group which was awarded with the tasks of developing, operating and maintaining the following Congolese airports: Brazzaville Maya Maya Airport, Antonio Agostinho Neto International Airport and Oyo Ollombo Airport (opened in March 2013) for a period of 25 years. Since April 2011, the above mentioned airports management is conducted by the concessionaire AERCO (Aéroports de la République du Congo), a private held Company with Government participation.

Egis Avia (through its subsidiary SEGAP, jointly owned with the Marseille Provence Chamber of Commerce) and Egis Projects will be the majority shareholders and reference technical partners of the concessionaire AERCO. EGIS Group brings with it a vast range of experience in areas such as project financing and development, engineering, infrastructure and service operations. Egis is 75 per cent owned by the French "Caisse des Dépôts" and 25 per cent owned by Iosis Partenaires, (a "partner" executive and employee shareholding).

- Airport: Maya Maya Airport (ICAO: FCBB, IATA: BZV)
 - Airport modernization included, among others, a new terminal which opened in February 2014 as well as an extended runway and was funded by a \$180 million low-interest loan offered by the Export-Import Bank of China. The upgrades were performed by the Chinese construction firm Weihai International Economic & Technical Cooperative Co., Ltd.
- Airport : Antonio Agostinho Neto International Airport (ICAO: FCPP, IATA: PNR)

- The existing airport terminal was renovated in order to improve the quality of services offered to passengers. A new terminal of 20,000m² will be opened in 2015.
- Airport: Oyo Ollombo Airport (ICAO: FCOD, IATA: OLL)
- Oyo Ollombo Airport opened in 2013 and was placed in the north of the country, an area rich in mineral and agricultural resources.

Source: https://www.icao.int/sustainability/PPP%20Case%20Studies/PPP_Airport_Congo.pdf

**SECTOR GUIDELINES GLOSSARY:
ROADS**

Annual average daily traffic (AADT): A measure of total volume of vehicle traffic on a segment of road for a year divided by 365 days to produce an average.

Arterial road or arterial thoroughfare: A high-capacity urban road designed to deliver traffic at the highest possible level of service.

At-grade intersection: A junction at which two or more roads cross at the same level or grade.

Barrier toll system or open toll system: A method of collecting tolls on highways using toll barriers at regularly spaced intervals on the toll road's mainline, usually charging a flat rate at each barrier.

Bus lane: A lane restricted to buses, and sometimes certain other vehicles such as taxis.

Bypass: An auxiliary route that relieves congestion along the mainline by routing traffic around a city or congested area. Can also be used to refer to a segment of road built to reroute the mainline away from a city or congested area.

Carriageway or roadway: A width of road on which a vehicle is not restricted by any physical barriers or separation to move laterally. A roadway can comprise one or more carriageways; single carriageways may contain both directions of traffic for the roadway, while multiple carriageways can separate traffic by direction or type.

Cloverleaf interchange or cloverleaf junction: A two-level interchange in which turns are handled by eight total ramp or slip roads, four of which form loops that give the interchange the shape of a cloverleaf from the air. Each ramp allows traffic from one direction of a roadway to access only one direction of the crossroad: e.g. from northbound to eastbound while a separate ramp connects from northbound to westbound. Traffic is fully grade separated; it does not need to stop to make any of the connections between the two roadways.

Dual carriageway or divided highway: A class of highway with two carriageways for traffic traveling in opposite directions separated by a median strip or central reservation.

Electronic toll collection: A system of toll collection where a driver attaches a transponder to his or her vehicle or where a camera recognizes the vehicle registration plates. Tolls are charged automatically to the driver, either by prepaid account or by regular billing, when the vehicle passes through a toll booth or gantry.

Gantry: An overhead support for road signs or electronic toll collection systems.

Grade separation: The method of aligning a junction of two or more road axes at different heights (grades) so that they will not disrupt the traffic flow on other transit routes when they cross each other.

Guard rail, guardrail, guide rail, or railing: A system designed to keep people or vehicles from (in most cases unintentionally) straying into dangerous or off-limits areas.

High-occupancy vehicle lane or HOV lane: A lane reserved for vehicles carrying two or more passengers or other exempted vehicles.

High-occupancy toll lane or HOT lane: An HOV lane that charges a toll for vehicles that do not meet HOV regulations.

Intersection: An at-grade road junction of two or more roads either meeting or crossing.

Junction: A location where multiple roads intersect, allowing vehicular traffic to change from one road to another.

Lane: Part of a carriageway or roadway that is designated for use by a single line of vehicles, to control and guide drivers and reduce traffic conflicts.[5]

Level crossing or railroad crossing: An intersection where a railway line crosses a road.

Open road tolling: A form of electronic toll collection where tolls are collected at highway speeds without the need for tollbooths.

Overpass: A bridge, road, railway or similar structure that crosses over another road or railway.

Pothole: A depression in a road surface, usually asphalt pavement, where traffic has removed broken pieces of the pavement.

Rest area, travel plaza, rest stop, or service area: A public facility, located next to a large thoroughfare such as a highway, expressway, or freeway at which drivers and passengers can rest, eat, or refuel without exiting on to secondary roads.

Right-of-way: A type of easement granted or reserved over the land for transportation purposes, this can be for a highway, public footpath, rail transport, canal, as well as electrical transmission lines, oil and gas pipelines.[8]

Road pricing or road user charges: Direct charges levied for the use of roads, including road tolls, distance or time based fees, congestion charges and charges designed to discourage use of certain classes of vehicle, fuel sources, or more polluting vehicles.

Road surface or pavement: Durable surface material laid down on an area intended to sustain vehicular or foot traffic.

Roundabout, rotary, or traffic circle: A type of circular intersection or junction in which road traffic flows almost continuously in one direction around a central island.[9]

Rush hour or peak hour: A part of the day during which traffic congestion on roads is at its highest.

Ticket system or closed toll collection system: A toll road where motorists pay a toll rate based on the distance travelled from their origin to their destination exit. Motorists take a ticket when entering the road and pay the toll and surrender the ticket upon exiting.

Toll road, turnpike, or toll way: A road for which a fee (or toll) is assessed for passage.
Tourist road, tourist route, tourist drive, or theme route

Traffic congestion: Condition involving slower speeds and longer trip times.

Traffic light: Signalling devices positioned at road intersections, pedestrian crossings and other locations to control competing flows of traffic.

Traffic sign or road sign: A method of conveying information to people who are using a road. Depending on location, the main colour of the sign can tell the motorist what type of information is presented on the sign.

Turnaround: A type of junction that allows traffic traveling in one direction on a road to efficiently make a U-turn typically without backing up or making dangerous manoeuvres in the middle of the traffic stream.

RAILWAYS

Ballast: Aggregate stone, gravel, or cinders forming the track bed on which sleepers (ties) and track are laid to ensure stability and proper drainage

Bay platform: A platform and track arrangement where the train pulls into a siding, or dead-end, when serving the platform

Branch line: A secondary railway line that splits off from a main line

Broad gauge: Track where the rails are spaced farther apart than standard gauge, or 1,435 mm (4 ft. 8 1/2 in)

Covered goods wagon (UIC): A type of rolling stock with a flat bottom enclosed on all sides and top, which is loaded and unloaded from sliding doors on each side

Dwell time: The time a train spends at a scheduled stop without moving. Typically, this time is spent boarding or disembarking passengers, but it may also be spent waiting for traffic ahead to clear, or idling time in order to get back on schedule.

Embankment: A bank, usually of earth but sometimes of stone, constructed to form a level or minimally graded trackbed for a line of railway needing to pass over a depression in the terrain or other pre-existing surface feature. See also cutting.

Express train: A train that passes selected stations without stopping

Flying junction or flyover: A railway junction that has a track configuration in which merging or crossing railroad lines provide track connections with each other without requiring trains to cross in front of opposing traffic on the same level

Freight wagon (UIC): A rail vehicle designed for the carriage of freight

Heavy haul: Heavy freight operations

Interchange: Any track or yard where rail cars are transferred from one carrier to another

Intermodal freight transport: Moving goods by more than one type of vehicle, often achieved using shipping containers that are transferred among railroad flatcars, ships, airplanes, and tractor-trailer trucks

Interoperability: Ability of a transport network to operate trains and infrastructures to provide, accept and use services so exchanged without any substantial change in functionality or performance

Level crossing, railroad crossing, railway crossing, train crossing, or grade crossing: A crossing on one level ("at-grade intersection")—without recourse to a bridge or tunnel—generally of a railway line by a road or path

Light rail: A city-based rail system based on tram design standards that operates mostly in private rights-of-way separated from other traffic but sometimes, if necessary, mixed with other traffic in city streets. Light rail vehicles (LRVs) generally have a top speed of around 55 mph (89 km/h) though mostly operating at much lower speeds, more akin to road vehicles. Light rail vehicles usually run on trackage that weighs less per foot (due to a smaller track profile) than the tracks used for main-line freight trains; thus they are "light rail" due to the smaller rails usually used.

Narrow gauge: Comparison between standard gauge (blue) and one common narrow gauge (red) rail spacing

Railroad track where the rails are spaced less than 1,435 mm (4 ft. 8 1/2 in) apart

Open wagon (UIC): A form of freight hauling car for bulk goods

Rolling stock: In UK parlance, any railway vehicle that is not capable of moving under its own power
In US parlance, any railroad car or locomotive

Siding: A section of track off the main line. Sidings are often used for storing rolling stock or freight. A siding is also used as a form of rail access for warehouses and other businesses, where the siding often meets up with loading docks at rail car height. In the U.S. the term also covers the British term loop. Also, a passing track in the U.S.

Standard gauge: A gauge where the rails are spaced 1,435 mm (4 ft. 8 1/2 in) apart—by far the most common gauge worldwide

Tram: A city-based rail system that typically shares its operational space with other vehicles and often runs on, across, or down the center of city streets

INLAND PORT / DRY PORT

Bonded warehouse: A warehouse authorized by customs authorities for storage of goods on which payment of duties is deferred until the goods are removed.

Broker: A person who arranges for transportation of loads for a percentage of the revenue from the load.

Cargo tonnage: Ocean freight is frequently billed on the basis of weight or measurement tons. Weight tons can be expressed in terms of short tons of 2,000 pounds, long tons of 2,240 pounds, or metric tons of 1,000 kilograms (2,204.62 pounds). Measurement tons are usually expressed as cargo measurements of 40 cubic feet (1.12 cubic meters) or cubic meters (35.3 cubic feet).

Carrier: Any person or entity who, in a contract of carriage, undertakes to perform or to procure the performance of carriage by sea, inland waterway, rail, road, air, or by a combination of such modes.

Cartage: Intraport or local hauling of cargo by drays or trucks (also referred to as drayage).

Classification yard (also commonly known as a shunting yard): A railroad yard with many tracks used for assembling freight trains.

Cleaning in transit: The stopping of articles (such as farm products) for cleaning at a point between the point of origin and destination.

Clearance: The size beyond which vessels, cars, or loads cannot pass through, under, or over bridges, tunnels, highways, and so forth.

Common carrier: A transportation company that provides service to the general public at published rates.

Container: Steel or aluminum frame forming a box in which cargo can be stowed meeting International Standard Organization (ISO)-specified measurements, fitted with special castings on the corners for securing to lifting equipment, vessels, chassis, rail cars, or stacking on other containers. Containers come in many forms and types, including: ventilated, insulated, refrigerated, flat rack, vehicle rack, open top, bulk liquid, dry bulk, or other special configurations. Typical containers may be 10 feet, 20 feet, 30 feet, 40 feet, 45 feet, 48 feet, or 53 feet in length, 8 feet or 8.5 feet in width, and 8.5 feet or 9.5 feet in height.

Container freight station: A dedicated port or container terminal area, usually consisting of one or more sheds or warehouses and uncovered storage areas where cargo is loaded (“stuffed”) into or unloaded (“stripped”) from containers and may be temporarily stored in the sheds or warehouses.

Container terminal: An area designated for the handling, storage, and possibly loading or unloading of cargo into or out of containers, and where containers can be picked up, dropped off, maintained, stored, or loaded or unloaded from one mode of transport to another (that is, vessel, truck, barge, or rail).

Container yard: A container handling and storage facility either within a port or inland.

Customhouse: A government office where duties are paid, documents filed, and so forth, on foreign shipments.

Dry bulk: Loose, mostly uniform cargo, such as agribulk products, coal, fertilizer, and ores, which are transported in bulk carriers.

Feeder service: Transport service whereby loaded or empty containers in a regional area are transferred to a “mother ship” for a long-haul ocean voyage.

Foreign trade zone: A free port in a country divorced from customs authority, but under government control. Merchandise, except contraband, may be stored in the zone without being subject to import duty regulations.

Forty-foot equivalent unit (FEU): Unit of measurement equivalent to one forty foot container. Two twenty-foot containers (TEUs) equal one FEU.

Free trade zone: A zone, often within a port (but not always), designated by the government of a country for duty-free entry of any non-prohibited goods. Merchandise may be stored, displayed, or used for manufacturing within the zone and re-exported without duties being applied. Also referred to as free port.

Freight forwarder: Person or company who arranges for the carriage of goods and associated formalities on behalf of a shipper. The duties of a forwarder include booking space on a ship, providing all the necessary documentation, and arranging customs clearance.

Harbor dues (or port dues): Charges by a port authority to a vessel for each harbor entry, usually on a per gross tonnage basis, to cover the costs of basic port infrastructure and marine facilities such as buoys, beacons, and vessel traffic management system.

Inland carrier: A transportation company that hauls export or import traffic between ports and inland points.

Intermodal: Movement of cargo containers interchangeably between transport modes where the equipment is compatible within the multiple systems.

Line haul: The movement of freight over the tracks of a transportation line from one location (port or city) to another.

Longshoreman (or docker, port worker, or dock worker): Individual employed locally in a port to load and unload ships.

Lo-lo (lift-on lift-off): Cargo handling method by which vessels are loaded or unloaded by either ship or shore cranes.

Neobulk cargo: Non-, or economically not feasible, containerizable cargo such as timber, steel, and vehicles.

Pooling: Sharing of cargo or the profit or loss from freight by member lines of a liner conference.

Port dues (or harbor dues): Charges levied against a ship-owner or ship operator by a port authority for the use of a port (see also harbor dues).

Reefer: Refrigerated container or vessel designed to transport refrigerated or frozen cargo.

Stackcar: An articulated multiple platform rail car that allows containers to be double stacked.

Stacktrain: A rail service whereby rail cars carry containers stacked two high on specially operated unit trains.

Straddle carrier: Type of equipment that picks up and transports containers between its legs for movement within a container terminal.

Stripping (unstuffing): Unloading of a container.

Terminal charge: A charge made for a service performed in a terminal area typically referring to handling associated with receipt, delivery, or inspection of cargo via land-based operations.

Throughput charge: The charge for moving a container through a container yard off of or onto a ship.

Twenty-foot equivalent unit (TEU): Container size standard of twenty feet. Two twenty-foot containers (TEUs) equal one FEU. Container vessel capacity and port throughput capacity are frequently referred to in TEUs.

Warehouse (see also shed): Covered area for the reception, delivery, consolidation, distribution, and storage of cargo. *Note*: A warehouse usually points at longer term storage, whereas a shed usually is used for shorter term storage.

AIRPORTS

Revenues from air traffic operations

Landing charges (including lighting and approach/aerodrome control charges). Charges and fees collected for the use of runways, taxiways and apron areas, including associated lighting.

Passenger service charges. Passenger service charges and other charges and fees collected for the use of the passenger terminal(s) and other passenger-processing facilities (e.g. for passengers embarking or disembarking).

Cargo charges. Cargo charges and any other charges or fees collected in respect of cargo for the use of the airport's freight-processing facilities and areas.

Parking and hangar charges. Charges collected from aircraft operators for the parking of aircraft (where not included in the landing charge) and their housing in airport-owned hangars, including

any revenue from the leasing of such hangars to aircraft operators. Towing charges, if imposed, should also be included under this heading.

Security charges. Charges and fees collected for the provision by the airport of security services for the protection of passengers and other persons at the airport, aircraft and other property.

Noise-related charges. Charges collected related to the noise alleviation and prevention measures.

Emissions-related aircraft charges. Charges collected to address local air quality problems at or around airports.

Other charges on air traffic operations. All other charges and fees collected from aircraft operators for other types of facilities and services provided at the airport for the operation of aircraft.

Revenues from ground-handling charges

This refers to charges and fees collected from aircraft operators for the use of facilities and services provided by the airport for the handling of aircraft. It should be noted that at the majority of airports ground handling is largely carried out by one or more airlines or special ground-handling enterprises. In the latter case, the airport will impose concession and/or rental fees which should be recorded as revenues from non-aeronautical activities.

Revenues from non-aeronautical activities

Aviation fuel and oil concessions (including throughput charges). All concession fees, including any throughput charges, payable by oil companies or any other entities for the right to sell or distribute aviation fuel and lubricants at the airport.

Restaurants, bars, cafeterias and catering services. Charges and fees payable by commercial enterprises or other entities for the right to operate restaurants, bars, cafeterias and catering services at the airport, including aircraft catering. It would also include any revenues derived from any such activities when operated by the airport.

Duty-free shops. Charges and fees payable by a commercial enterprise or any other entity for the right to operate duty-free shop(s) at the airport, and for off-airport duty-free shops to deliver goods sold at the airport. It would also include any revenues derived from duty-free shops operated by the airport itself.

Automobile parking. Charges and fees payable by a commercial enterprise or any other entity for the right to operate automobile parking facilities at the airport. It would also include any revenues derived from such facilities when operated by the airport itself.

Other concessions and commercial activities operated by the airport. Any concession charges or fees, other than those mentioned above, payable by commercial enterprises or other entities for the right to sell goods and services (such as automobile rentals, and banking and exchange bureaus concessions) at the airport. Also included are any revenues derived from commercial activities (shops or services) operated by the airport itself and not mentioned above, as well as any public admission fees charged for entry to areas of special interest (e.g. terminal observation areas) or for guided tours within the airport area.

Rentals. Rentals payable by commercial enterprises and other entities for the use of airport-owned building space, land or equipment. Such rentals should include those payable by aircraft operators for airport-owned premises and facilities (e.g. check-in counters, sales counters and administrative offices) other than those already covered under “air traffic operations” above.

Other revenues from non-aeronautical activities. All other revenues the airport may derive from nonaeronautical activities. It would also include payments received by the airport for such services as heating, air conditioning, lighting, water, cleaning and telephone use, provided they are not included in the rental or concession fees, and for any services provided to non-aviation entities outside the airport.

Part 3. WATER SECTOR GUIDELINES

This section provides guidance specific to the water sector, and is structured as follows:

- **Preface**
- **PPP Primer and Phases in PPP Development**
- **Phase I: PPP Project Identification and Screening**
- **Phase II: PPP Appraisal & Preparation**
- **Phase III: Structuring and Drafting the Tender and Contract Documents**
- **Phase IV: Tender & Award**
- **Phase V: PPP Contract Management & Performance Reporting**

GUIDING PRINCIPLES FOR WATER PPPS

- Water PPP is not about private money. While the full concession model is working in some places it is very challenging to implement and seems unsuited to many developing countries. Many successful water PPP schemes are largely based on **public financing** (leases or hybrids), combined with efficient private operation such as the affermage schemes in Senegal and Côte d’Ivoire.
- Water PPPs are about **service quality and efficiency gains**. The biggest financial contribution from a private operator is not direct private investment, but lies in improving the financial viability of services by creating a “virtuous circle”.
- Focus on operational efficiency and customer orientation, and hold the service provider accountable for results.
- **Social considerations** needs to be incorporated explicitly in the design of PPP reforms. Water PPPs can bring significant benefits for society as a whole, but this does not mean that the poor will automatically benefit. Successful PPPs recognize the **explicit cost of social goals**, and that financing them is the responsibility of society, governments and donors – not the private sector.
- **Government’s commitment to financial viability** (sufficient tariff level and/or tax transfer).
- In addition, the National Water Strategy was prepared in 2001 and would benefit from an update that also provides a clear roadmap on how key objectives such as cost recovery tariffs and greater involvement of the private sector will be achieved.

PREFACE

The water sector is regulated by the Ethiopian Water Resources Management Proclamation No. 197/2000 dated 9 March 2000 (the “Water Proclamation”) and the Ethiopian Water Resources Management Regulations No. 115/2005. The institutional framework consists in the Supervisory Body which is the Ministry of Water, Irrigation and Electricity (MOWIE) or any organ delegated by the Ministry.

The Supervisory Body is responsible for the planning, management, utilization and protection of water resources. In that respect and among others, the Supervisory Body has the following powers:

- Issue, suspend or revoke permits (construction of waterworks ; supply of water, transfer water abstracted from a water resource or received from another supplier; release or discharge waste into water resources) and certificates of Professional Competence;
- Ensure that studies relating to water resources development, protection, utilization and control have been carried out;
- Require submission of plans and proposals from any person who apply for a permit to undertake any kind of water works and approve, reject, or amend such plans and proposals;
- Establish quality standards for surveys, design and specification of waterworks as well as standards for the construction of waterworks necessary for the development of water resources; it shall also supervise compliance of water works with the established standards.

The development of the water sector has generally been a bright spot in Ethiopia in terms of access rates. The number of people with access to safe water has improved over the past 20 plus years to 66 percent in 2009 (62 percent rural, 89 percent urban). Ethiopia has already met the MDG target of 60 percent. National targets for Ethiopia are embedded in the Universal Access Plan (UAP), an ambitious national plan launched by the Government of Ethiopia in 2005 with the objective of achieving full access to water supply and sanitation for all Ethiopians by 2012. Following the update of the Plan for Accelerated and Sustainable Development to End Poverty (PASDEP-2) in 2010, these targets were adjusted slightly to 98.5 percent coverage, and the target date extended to 2015. These are still well above the MDG targets.

The National Water Strategy sets out the following principles for the sustainability of the sector:

- Promote local artisans and the private sector to establish association for proper and sustainable O&M activities.
- Decentralize the water services, to the extent possible, to financially autonomous utilities and institutions, which may be public corporations, private firms, cooperatives or user groups.
- Ensure self-reliance, through the promotion of local self-financing of programs and projects, based on the overall socio-economic development conditions of local communities, and through appropriate incentive mechanisms.

- Promote the 'user pays' principle in accordance with the user's willingness and ability to pay for the service, based on costs of services vis-à-vis given socio-economic conditions of the beneficiaries/users.
- Promote the development of site specific water tariffs based on financial, economic, and social equality considerations.
- Set tariffs in rural areas with the aim of recovering operation and maintenance costs; while, in urban areas, aim at total cost recovery through time (which covers operation & maintenance costs, depreciation and debit servicing). Implement progressive tariff rates in the urban areas that are tied to consumption levels.
- Develop mechanisms to continuously update the pricing structure.

The PPP Proclamation (article 2(2)) defines the Contracting Authority as "Public Body or Public Enterprise which intends to enter into a Public Private Partnership Agreement with a Private Party". It must be noted that (i) "Public Body" is defined as an organ of the federal government wholly financed by the Federal Government and (ii) "Public Enterprises" as enterprises fully owned by the Federal Government. As such the Contracting Authority in the Water Sector is MOWIE or as relevant a public water utility fully owned by the Federal Government.

PPP IN AFRICA'S WATER SECTOR

- PPPs in Africa's water sector have a long history that began with Côte d'Ivoire's urban water affermage in 1959 which is generally considered a successful PPP that continues to operate to this day. Policy makers since then have benefited from the body of knowledge that has recorded the successes and failures since that first PPP was launched. The lessons learned, technology, and political realities have changed the face as well as the function of PPPs.
- Private sector participation in the water sector has proven to be an important tool in improving utility performance, leveraging finance (mostly public and some private), and stimulating a much-needed sense of competition and accountability in an otherwise monopolistic sector.
- In Africa, PPPs have focused less on mobilizing private capital, most notably with the lease/affermage arrangements in urban centres in West and Central Africa. PPPs have evolved from the urban setting to small piped water schemes with the introduction of private management and operation of small towns and rural piped water systems through lease and management contracts. Uganda and Benin have successfully implemented this model with the support of development partners. This model has the main advantage of allocating the risk of operations, revenue, and collection to local private companies, while keeping the costs of service affordable with public funding for capital development.
- The most critical and consistent contribution of PPPs in the water sector has been improving operational efficiency in terms of:
 - The reduction of non-revenue water;
 - Improvement in bill collection; and
 - Better labor productivity.

The general and sector guidelines draw from this rich body of knowledge about PPPs to inform decision-makers and practitioners in Ethiopia on implementing water PPPs.

KEY LESSONS LEARNED

- The objectives of the 1988 reform have been largely achieved: developing access through household connections and restoring the sector's financial sustainability. The government's assumptions proved to be correct: that the private operator could carry out the network expansion program efficiently and that expanding access would lead to greater revenue flow from customers and thus to gradual improvement in the sector's financial situation.
- While the financial arrangement—based on financing all investments through customer tariffs—has been remarkably successful, it may have now reached its limits. Moreover, tariffs have not been increased since 2004 (average tariff CFAF 393 per m³ or US\$0.67) and the water utility maintains that this is insufficient to finance all components of the FDE, which remain underfunded. A clearer picture of the financial situation of the sector is needed to properly understand the sector financing needs and assess the need for possible tariff increases. The government may probably need to start providing public funding for future investments.
- The presence of a well-performing private operator was a key to the success of the reform. Efficient operation, good service, and a commercial approach helped create a virtuous circle that allowed the sector to gradually become financially sustainable.
- The expansion in access to piped water was achieved largely thanks to the subsidized connection program. As the customer base and sector revenues gradually increased, so did the share of the tariff that could go to support the investment program. Even in a poor developing country, expanding access and achieving financial viability are complementary (not contradictory) objectives—as long as an efficient operator is in place.
- While water connection were subsidized on a large scale, the disconnection rate has been significant, reaching about 15 percent by 2002.
- In Côte d'Ivoire, the MIE²¹ retains full ownership of sector assets and ONEP lacks suitable tools (financial model, assets inventory) and adequate financial resources to properly carry out its mandate. In addition, the affermage contract is not strictly adhered to and explicit performance objectives are not being enforced on the private operator. The current sector institutional framework exhibits could follow other neighboring West African countries which enhanced the initial Ivorian model by creating fully autonomous asset-holding companies (sociétés de patrimoine) and enforcing performance-based incentives defined in the contract with the operating companies.
- One key to the sustainability of the PPP has probably been the private operator's promotion of local management. This underscores the importance of foreign

²¹ Ministry of Economic Infrastructure (Ministère des infrastructures économiques)

operators transferring their expertise to local staff on a large scale if they want to be accepted as long-term partners. It also shows that an African water utility, run by Africans, can perform as well as the most efficient water utilities in Western Europe or North America.

I. PPP PRIMER AND PHASES IN PPP DEVELOPMENT

An overview of the different contractual arrangements for water PPPs is presented below; the exact structure and risk allocation of a PPP will depend on the specific transaction.

- **Under a service contract model** the private party performs specific, time-bound tasks, such as supplying inputs, taking care of planning studies, computing and payroll services or public relations, construction, maintaining assets, installing meters or billing customers, usually in exchange for a fixed fee. The private sector party bears very little risk and there is very little uncertainty around the expected outputs. This model has been used across Africa in recent years such as in Angola in which the World Bank and the African development Bank has funded numerous technical assistance contract for the provincial water utilities. More and more activities have been outsourced that way to the private sector, including the task of reducing non-revenue water.
- **Under a management contract model**, a private firm is contracted by the government to provide managerial services. The contract typically requires the private party to manage a utility and provide services to the public for a given period of time. The firm is remunerated for a fixed fee which can also include a variable fee for preparing specified deliverables, such a capital investment plan, and can include a bonus payment for achieving certain pre-defined key performance indicators (KPI). The commercial risks of the operation are typically borne entirely by the public sector. More and more countries resort to this type of contractual arrangement to turnaround the financial, operational, and organisational performance of the utility. This model also facilitates the transfer of know-how and develops greater understanding of the implications of involving the private sector as part of a gradual approach to the private sector participation.
- **Under a lease model** government grants the private operator the right to operate and manage the utility for a specified period of time and a specified rent. The private-sector operator is responsible for providing the service at its own risk, including operating and maintaining the infrastructure for a given period of time. The operator is not responsible, however, for financing investment such as the replacement of major assets or expansion of the network. If payments from users cover more than the operator's remuneration, the operator is generally supposed to return the difference to the public authorities in order to cover the cost of the investments under the latter's responsibility.
- **Affermage** only differs from a lease in terms of revenue for the private sector. In both cases, the private operator collects the tariffs and pays, on top of the operation and maintenance costs, a fee to the public sector. But while this fee is fixed in the first case, it is proportional to the volume of water sold in the second case. An affermage contract is currently underway

for the provision of urban water in Senegal and Ivory Coast. A lease was signed in Yerevan, Armenia, in 2006.

- **Under the concession model** the private operator assumes commercial and operational risks and is responsible for asset replacement and network expansion. In the 1990's in Latin America this was the dominant PPP model.
- **Build-operate-transfer (BOT) contracts**, which are essentially Greenfield concessions, include take or pay provisions, i.e. revenue guarantees, that subject governments to contingent liabilities. At the end of the BOT contract term the assets are transferred to the public sector. BOTs for treatment plants constitute the bulk of the new contracts currently developed with the private sector in water.
- **A design-build-operate (DBO) model** is similar to a BOT except that financing is provided by the government and the asset is owned by the public authorities. This model combines the components of design-build – designing, permitting, procurement, construction, testing, and commissioning – with operation and maintenance (O&M) services into a single contract.

BEST PRACTICE CASE STUDIES:

Côte d'Ivoire Water Affermage

- The Government of Côte d'Ivoire successfully delegated the delivery of urban water services to the private sector under affermage contracts for over 50 years. This model has been replicated and adapted in various forms across the region and is recognised as the longest running PPP in Africa. The sectoral institutional and contractual framework, originally concluded on 1959, was last updated with the signing of a new 15-year affermage contract with SODECI²² in 2007 and the establishment of ONEP²³ in 2009. Apart from its operating responsibilities, SODECI is also in charge of managing the Water Development Fund (Fonds de développement de l'eau, FDE), initially designed to finance renewal expenditures, systems' expansion, and social connections from a portion of the water tariffs. ONEP is in charge of planning sector development in rural and urban areas, managing assets, monitoring operators, and proposing tariffs for the Government's approval. A separate National Water Fund (Fonds national de l'eau, FNE) was set up in 1987 under the Autonomous Debt Amortization Agency (now the National Investment Bank of Côte d'Ivoire) to manage the long-term debt associated with water supply investments.
- Tariffs were designed to maintain a self-financing financial strategy for sector development. Water revenues collected from customers are apportioned in three parts: (a) the SODECI tariff to cover operating costs of water supply services; (b) the FDE surcharge to finance renewal expenditures, systems' expansion, and social connections; and (c) the FNE surcharge to cover the sector's debt service. This

²² Côte d'Ivoire Water Company (Société de distribution d'eau de Côte d'Ivoire)

²³ National Water Agency (Office national de l'eau potable).

arrangement made the PPP a hybrid between an affermage and a concession. The private operator was directly responsible for deciding on investments and executing them, much as a concessionaire would be. But because the FDE was funded by revenues collected from customers, the operator did not bear the associated financial risks.

- The most notable achievement was the expansion of access to piped water. Between 1988 and 2001 active water connections grew from 213,000 to about 500,000. Most new household connections were installed under the FDE social connection program. The estimated number of people served through household connections more than doubled, increasing from about 2 million to 4.3 million, and the share of households with connections rose from 39 percent to 63 percent. Including households served by standpipes and other schemes, the total population served by SODECI about doubled, to more than 6 million, and the share of households with access to safe water rose from 65 percent to about 90 percent. Today the access rate to piped water in urban areas is estimated at 70 percent of the population, with an important disparity between Abidjan (90 percent) and other urban centers (65 percent). Government efforts to increase the water production capacity after the end of the crisis with the support of external partners, including IDA, have succeeded to close the water production deficit in Abidjan, which had reached 200,000 m³ per day in 2014. However, a portion (48 out of 354) of the other water production centers still faces significant water shortages.
- The rapid expansion from 1988 – 2001 was achieved without government funding. Almost all the investment in this period (about \$150 million) was funded from customer revenues. A virtuous circle was established in which growth in the customer base translated into growth in water billed (from about 80 million cubic meters in 1988 to 120 million in 2001) and sales revenues. This, along with the efficiency gains, allowed the sector to become entirely self-financed. Moreover, “regulation by contract,” with a dedicated government unit supervising the PPP contract, proved effective in ensuring that efficiency gains were passed on to customers; the average tariff fell in real terms during the period.
- This water PPP model is notable for its pragmatism. This long partnership evolved over time, adapting to changing government priorities. It proved surprisingly resilient during a major national crisis, at a time that several large water PPPs elsewhere in the developing world were terminated.

The Affermage Contract for Urban Drinking Water in Senegal

- The reform of the water sector in Senegal led to the development of a tripartite partnership in 1995 between the State, SONES (asset holding public company) and SDE (private sector operator). SONES is a public company in charge of asset management, investment and debt servicing linked to the State by a **30-year concession contract**. SDE is a private company, selected by tender, under an affermage and performance contract with SONES and the State that defines the

efficiency objectives (e.g. unaccounted for water, with associated penalties) and specifies the investment obligations of the two parties.

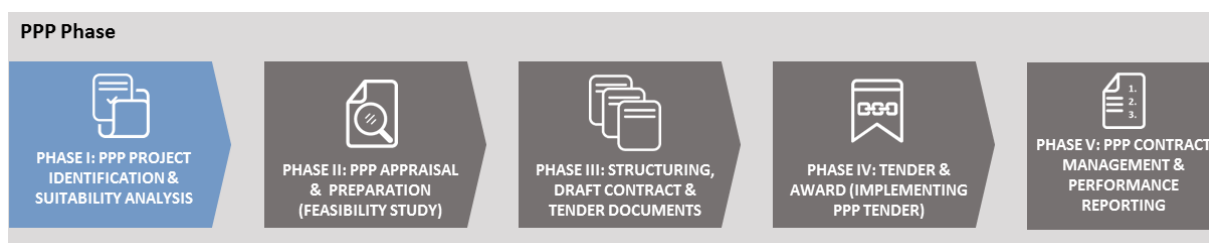
- The success of the Senegalese model, which allowed an increase in coverage from 2.8 million people in 1995 to 5 million today, can be attributed to several factors, including appropriate risk-sharing across the partners, great commitment on the part of public authorities, autonomy of SONES and regular dialogue between the stakeholders. In addition, transparency and accountability were ensured through several mechanisms:
- Regulation through a financial model of the sector shared by all involved parties.
- SDE is under a **performance contract** based on 18 criteria. Progress is reviewed every six (6) months and failures incur fines.
- All technical and financial information of the sector are available to all stakeholders.
- Civil society is involved in the regulation of the sector.

The different forms of PPPs presented here are in line with the PPP legal framework on more specifically article 5 of the PPP Proclamation.

Table 5: Forms of Private Sector Participation in the Water Sector

MODEL	ASSET OWNERSHIP	SCOPE	FINANCING	DURATION	O&M AND HR	REMUNERATION	LEVEL OF RISK
Service contract	Public	Variable: single asset (plant) or specific service within the utility	Public	1-2 years	Public workforce with private Specialists tasked with achieving specific projects and improvements.	Fixed fee (covers salaries/benefits/ expenses) which may include bonus for performance	Negligible. Fees paid cover costs and profit of private firm. Main risk is termination of contract. And lost future profit.
Management contract	Public	Variable: single asset (plant) or an entire water utility	Public	3-5 years	Public workforce with private management based on specific terms of reference	Fixed fee (covers salaries/benefits/ expenses) which typically includes bonus for performance	Low: rare to have a penalty regime while bonus linked to performance improvements
Affermage	Public	Typically an entire water utility	Public	8-15 years	Public workforce may be transferred to private management company	Affermage fee x volume of water sold	Significant: operating, commercial and shared demand risks
Lease	Public	Typically an entire water utility	Public	8-15 years	Public workforce may be transferred to private management company	Revenue from customers less lease fee paid to government	Significant: operating, commercial and shared demand risks
DBO	Public	Single asset to be built, upgraded or expanded	Public	20-30 years	Private	Availability and volumetric payment from public sector or end users	Significant: operating, commercial, and shared demand risks
BOT	Private (transferred at the end of the contract)	Single asset to be built, upgraded or expanded	Usually private, public funds may be involved	20-30 years	Private	Availability and volumetric payment from public sector or end users	Major: operating, commercial, shared demand, and financing risks
Concession	Public	An entire water utility	Private	20-30 years	Public workforce may be transferred to private management company	Revenue from customers less any concession fee	Major: operating, commercial, demand, and financing risks

II. PHASE I: PPP PROJECT IDENTIFICATION AND SCREENING



No sectoral specificities. However, at this stage it is critical to identify the key legal/regulatory issues around (i) the financial sustainability of the sector and (ii) the key objectives of government (e.g. water access rates, how subsidies will be applied and are they affordable?).

PHASE II: PPP PROJECT APPRAISAL AND PREPARATION



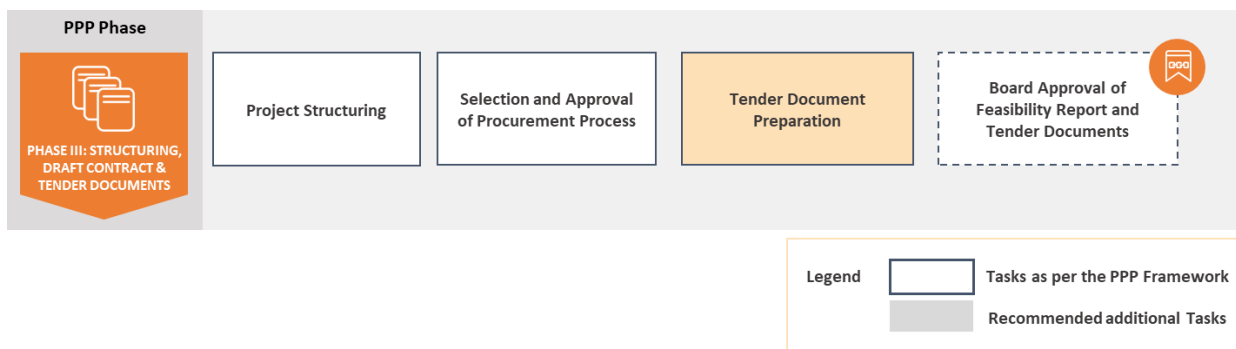
At this stage the analysis is undertaken to determine whether the tariffs are cost recovery:

- is there a tariff methodology (with automatic inflation escalation),
- what are the subsidy requirements, how is the sector funded (is it under-funded),
- is the regulator experienced / capable with a regulatory track record that instills confidence in the market on the application of the tariff regime/methodology, or must the PPP be guided by regulation by contract to ensure certainty around the tariff levels and escalation,
- what are the rights and obligations to connect and disconnect customers

III. PHASE III: STRUCTURING AND DRAFTING THE TENDER AND CONTRACT DOCUMENTS



Tender Document Preparation



Checklist of the items that contract clauses must cover in general tender documentation and draft contract documentation:

Service Contracts:

- The scope of the contract should cover very specific, targeted issues such as advisory, feasibility studies, supervision, infrastructure and equipment operation and maintenance, complex rehabilitation and repairs, water quality control, field training, energy efficiency, leakage detection and quality control;
- The scope of the contract is also applicable to highly sophisticated tool implementation, such as geographical information systems (GIS), automation and remote management and control, design of internal procedures and best practices manuals;
- The scope of the contract should be tailored for each type of water project;
- The terms of reference in the contract should be detailed and may include bonus/malus regime for non-delivered targets;
- The contract should be subject to a robust monitoring regime to ensure that performance matches the scope and expected improvement; and
- The terms of reference in the contract should consider extensive capacity building component to ensure sustainability of improvements.

Management Contracts:

- Suited to public utilities that require a full management team to turnaround the utility operational, financial and/or organisational terms;
- Terms of reference should be objective and detailed. They should include key performance indicators and could also include penalties for non-delivered targets;
- Public management should have: (i) a strong grip and leading skills; (ii) financial capacity and; (iii) provide working capital;
- The contract should ensure that the private operator has managerial control to allow him to achieve the performance targets;
- Personnel remain employees of the utility and the terms and conditions should not be altered with the introduction of the private operator, while the involvement and cooperation of the staff is key to achieve a change of the organizational culture;

- The scope of the contract should include extensive capacity building component in the terms of reference to ensure sustainability of improvements, this includes a gradual reduction in expatriate staff replaced with qualified, national staff.
- There should be a clear mechanism for day to day dialogue between parties and for resolving issues before they become disputes;
- An independent contract auditor should be in place to approve the basis for setting the performance baseline (on which the KPIs are measured); to approve the remuneration of the private operator; to monitor performance of the private operator; and to verify each party's compliance with their respective obligations under the contract; and
- The contract should include clear reporting requirements to mitigate any asymmetry of information on the performance of the utility.

Affermage-Leases:

- The contract should include a clear definition of operation and maintenance (O&M) obligations and a clear delineation of responsibilities with regard to renewal and replacement of assets;
- The contract should include specific mechanisms for identifying, carrying out and financing investments;
- The terms of reference should ensure that the private operator is not penalised for variables beyond his control (e.g. inflation, bulk water prices, etc.);
- The contract should include penalties for non-delivered targets;
- Contracts should encompass a possibility to extend the contractual period (3 to 5 years) to account for any challenges beyond the control of the private operator to attain the full objectives of the PPP;
- The public authorities need to monitor the contract objectives and performance;
- There should be a clear mechanism for day-to-day dialogue between parties and for resolving issues before they become disputes;
- The private operator can either bear the risk on volumes produced or on volumes sold; and
- The utility's public sector workers may be transferred to the private operator's special project company that signed the PPP contract provided the terms and conditions remain at least the same as those that applied prior to the transfer.

DBO and BOTs:

- Most of the considerations above apply, in addition these contracts require a strong public authority able to collaborate with the private operator in integrating the asset (e.g. water treatment plant) into the overall system; and
- The scope of the contract should consider phasing of system to size the facility in line with demand growth.

Concessions:

- The scope of the contract should ensure that the public and private partners optimize investment and operations for the duration of the contract;
- The scope of the contract should be primarily focused on the achievement of well-defined and measurable performance outputs by the private operator (rather than focused on the achievement of fulfilling a set of specified inputs);
- The scope of the concession needs to be realistic from a perspective of performance, revenue, operational costs and maintenance;
- Since the conditions will change over such a long period the concession contract should be reviewed at least every 5;
- The public authorities need to set up a proper independent tariff regulatory regime to achieve fully cost reflective tariffs, in case of any failures to achieve this objective the private operator need to be compensated for any revenue shortfalls due to an inadequate tariff;
- The contract should include penalties for non-delivered targets;
- The utility’s public sector workers may be transferred to the private operator’s special project company that signed the PPP contract provided the terms and conditions remain at least the same as those that applied prior to the transfer; and
- The public sector needs to manage and monitor the performance of the private operator.

IV. PHASE IV: TENDER & AWARD



No sectoral specificities.

V. PHASE V: PPP CONTRACT MANAGEMENT & PERFORMANCE REPORTING



Post-award contract management and performance monitoring would follow the same procedures outlined in the PPP General Guidelines.

24 Part 4. INDUSTRIAL PARKS SECTOR GUIDELINES

This section provides guidance specific to the industrial parks sector, and is structured as follows:

- **Preface**
- **PPP Primer and Phases in PPP Development**
- **Phase I: PPP Project Identification and Screening**
- **Phase II: PPP Appraisal & Preparation**
- **Phase III: Structuring and Drafting the Tender and Contract Documents**
- **Phase IV: Tender & Award**
- **Phase V: PPP Contract Management & Performance Reporting**

PREFACE

Over the past 10 years, the Government of Ethiopia (GoE) has launched its Growth and Transformation Plans (GTP I and II). GTP II set out a range of development priorities to achieve middle-income status by 2025, including a focus on fostering industrialization.

As part of this strategic plans for economic development and industrialisation, GoE has embarked on a programme to develop Special Economic Zones (SEZ), locally called Industrial Parks (IP), backed with incentives such as tax exemptions, one-stop government services and transport infrastructure, in a number of manufacturing sectors including textile, garment, leather, light and heavy industry, agro processing, and pharmaceuticals.

To date, Industrial Parks have been developed either by the public authority or a private basis.

The Government-led parks:

The government-led parks are managed through a dedicated public company – the Industrial Parks Development Corporation (IPDC). Established under regulation No. 326/2014 the IPDC is in charge of:

- Developing and administering industrial parks
- Preparing a national industrial parks master plan
- Making necessary infrastructure available to developers
- Outsourcing when deemed necessary management of industrial parks
- Promoting industrial parks

²⁴ Sources for Part 4: Abhaya K Agarwal: Potential project structuring options for developing dry ports in the Asia-Pacific region using a PPP mechanism

As such the IPDC provides services and infrastructure to private firms located inside the zones including:

- Serviced industrial land and pre-built sheds,
- Dedicated electricity generation to ensure power supplies for firms in the zones, and
- A 'one-stop shop' for firms' banking, import-export licences and customs procedures.

The IPDC also manages investment promotion to private firms, with firms screened by the Ethiopian Investment Commission (EIC). The Ethiopian Investment Board (EIB), chaired by the Prime Minister, provides overall direction and policy coordination.

There are 16 publicly owned industrial parks operating or planned by the IPDC, 2 being operational:

- 1) Bole Lemi Phase 1 was the first industrial park developed by the government. It started operations in 2015 focusing on textile and leather production for export. The second, Bole Lemi Phase 2 (186 hectares), is currently being developed in collaboration with the World Bank. It will contain, an ICT village aiming to promote growth in a new sector.
- 2) The most recently opened public sector industrial park, Hawassa, will house 15 textile and garment firms from China, India, the USA, Sri Lanka, and six Ethiopian companies. The zone has 35 factory sheds and 19 buildings. It was designed and constructed by the China Communications Construction Company. It is also Ethiopia's flagship 'eco-industrial park', mostly powered by hydro-electricity.

For the government-led industrial parks, the Ethiopian government raised finance by issuing a sovereign bond on the international capital market. A total of \$1 billion was raised through the sale of Eurobonds in December 2014, with the goal of constructing industrial zones, building sugar factories and boosting power production. As much as \$750 million of this total was earmarked for industrial park projects. The Ethiopian government has spent \$650 million so far on four industrial parks, in Bole Lemi, Hawassa, Kombolcha and Mekelle.

Among these, Hawassa Industrial Park is a flagship initiative. Construction of the park, which cost \$250 million, was financed by the Ethiopian government mainly through the funds generated from the Eurobond sale as well as other public money. The park is Ethiopia's largest textile and garment industrial park and has attracted investment from major multinationals in the garment sector, including PVH as an anchor tenant. In addition to funding the construction of the park, the Ethiopian government has financed the development of specific services, including through investment in a state-of-the-art zero-liquid-discharge common effluent treatment facility (Zhang et al., 2018). This facility is operated privately by Arvind Envisol Private Limited, an Indian sewerage treatment company. Some funding has been provided through loans from development banks for connecting infrastructure to the park. These include loans from AfDB, the World Bank and Chinese Exim Bank to finance various legs of the construction of a Hawassa–Modjo Expressway.

An alternative source of financing for zones is provided by Ethiopia's development partners under the Ethiopia Jobs Compact. This funding has been earmarked to support the creation of jobs for refugees in Ethiopia. To this end, a financing package totalling \$500 million, with contributions from the European Investment Bank (EIB), the World Bank, the UK Department for International Development (DFID) and other EU member states, will fund the construction of three industrial parks and associated infrastructure as well as training, housing and support

to help refugees settle into new communities (EIB, 2016; Humanitarian Logistics Association, 2017). These funds are being provided on the condition that one third of the 90,000 jobs expected to be created in the new industrial parks will be allocated to refugees.

The IPDC is the Contracting Authority which sign PPP agreements and implement PPP projects in the Industrial Parks sector.

The private-led parks:

In addition to the government-led industrial parks and the funding for parks under the Ethiopia Jobs Compact, the Ethiopian government has adopted an alternative model of externally financed, private sector-led zones. Many of these have benefited from Chinese funding as part of the Chinese government's strategy to develop SEZs overseas. This model involves using Chinese contractors to develop zones, with the Chinese government providing financial support to private zone developers to reduce their commercial risks. The Chinese contractor firms are chosen via competitive bidding led by the Chinese Ministry of Commerce. They are then provided with long-term loans, subsidies and grants. For example, financial support from the Chinese government is provided to cover up to 30% of pre-construction and implementation costs. Their investments are typically guaranteed by parent companies and Chinese public export banks.

The Chinese-owned Eastern Industrial Zone in Ethiopia is a good example of this approach. The zone is located in Oromia region around Dukem, a small town 35 kilometres southeast of Addis Ababa. It is best known as the site of the Huajian Group, a Chinese company that produces shoes for brands such as Guess and Calvin Klein. Huajian Group itself is now planning to invest US\$2.2 billion in an industrial zone of its own located around Lebu area in the south-western outskirts of Addis Ababa. The Modjo 'Leather City' Industrial Zone, under development by Taiwanese footwear manufacturer George Shoes, is designed to be occupied by new leather tanneries, surrounded by services and ancillary activities, including a common waste water treatment plant and centralized services for chrome recovery and by-products processing.

The Eastern Industrial Zone required an investment of \$146 million and is entirely owned and managed by Jiangsu Quiyuan Group, a private Chinese investor. The developer was officially approved by the Chinese Ministry of Commerce and entitled to financial subsidies of up to 40% of the total investment. Additional backing was provided through financial guarantees from two Chinese municipalities. The developer also received a long-term loan of \$36 million from the Exim Bank of China. The Ethiopian government supported the development of the zone by providing land on favourable lease terms as well as off-site infrastructure (and reimbursed some costs for on-site infrastructure).

However, the investment programmes for these private-led SEZs have often been disrupted because private firms have revised these following financial problems in their parent companies. This has resulted in capital restructuring, including transferring shareholder ownership to new private partners and a renegotiation of loan finance with China's Exim Bank. These issues have resulted in sharp reductions in the investment programmes for these SEZs despite their contractual obligations to maintain investment levels.

In addition, the Ethiopian SEZs programme has been affected by conflict relating to land used for SEZ development (and other industrialisation programmes). By 2017, this had escalated into civil unrest and a state of emergency.

I. PPP PRIMER AND PHASES IN PPP DEVELOPMENT

An overview of the different contractual arrangements for industrial parks PPPs is presented below; the exact structure and risk allocation of a PPP will depend on the specific transaction.

From up- to downstream, the establishment of SEZs or IPs involves:

- The definition of an economic development and the setting up of enabling legal and institutional frameworks,
- The financing, construction and maintenance of off-site infrastructure, including access roads and utility connections,
- The financing, construction, maintenance of and provision of facilities management services for on-site infrastructure including power and other utilities, internal roads and common facilities and buildings,
- The agglomeration of public services in relation to trade and investment including customs, tax, logistic and telecommunications services,
- The development and management of privately-owned industrial tools for production and services in accordance with the public policy and strategy for industrialisation.

As currently tested in Ethiopia, there are different frameworks for SEZs. The government sets the broad framework, including legislation, regulation and taxation, with individual private firms investing and operating industrial production and services in the SEZ. Where the models differ is in the allocation of responsibility, and thereby risk, between public and private for the financing, operation and management of SEZ infrastructure and facilities.

The development of external off-site infrastructure primarily involves coordination with public policy and broad national infrastructure planning. Because of this, it is typically financed in majority by public sources.

By contrast, financing and construction of on-site infrastructure and the ongoing management and operation within the SEZ has more mixed PPP models from entirely public ownership, PPPs of various types and purely private financing and ownership.

A common model of SEZ PPPs is through separate companies being formed, with both the public and the private partners being shareholders and board members. The division of shareholdings and board members typically reflects the balance of assets being put into joint venture (such as equity, debt and non-financial assets such as land), the risk each party is taking in relation to the business operations and the division of rewards, including the receipt of dividends or other income streams from the SEZ.

Prior to the 2000s, the majority of SEZs were publicly financed, with less than 25% privately owned. However, in the past two decades, there has been a notable trend towards private financing of SEZs. This is because it alleviates the burden on the public sector and because there is some evidence that private SEZs can be more effective in relation to their performance and competitiveness²⁵.

²⁵ Farole, Thomas; Akinci, Gokhan. 2011. *Special economic zones : progress, emerging challenges, and future directions*

PPPs have been the most common form of procurement of infrastructure for SEZs. They typically involve private financing, realisation and operation of the infrastructure and facilities within the SEZ combined with public financing of off-site infrastructure such as utilities and transport connections. This is usually accompanied by land ownership or concessions to secure development rights, or by either ‘build-operate-transfer’ or other management agreements. Partnerships with the private sector can add dynamism to zone development and be an important source of expertise. They also enable the transfer of project risk from the public to the private sector.

These PPP models will fit well within the rather large boundaries of the PPP Proclamation Art. 5 which defines the forms of PPP which can be contemplated and in particular those for “*the design, construction, financing, maintenance or operation of new Infrastructure Facilities*” or for “*the administration, management, operation or maintenance pertaining to new or existing Infrastructure Facilities*”²⁶.

Public management of SEZs has advantages, including that it enables closer coordination with public policy goals and allows for the easier establishment of SEZs, as the public sector is not deterred by the likelihood of operational losses in early-stage SEZs. However, where there are operational difficulties in SEZs, the responsibility for resolving them lies with the government, and this can entail unpalatable political choices.

By contrast, private management of SEZs can be more dynamic and can leverage private sector expertise, including in establishing self-funding of SEZs and in attracting private sector firms to operate in the zones. These are also typically managed through specially created legal entities or private firms entering the sector.

Finally, private firms within the SEZ are normally entirely financed by private means. This is because firms are expected to be self-financing and commercially viable as part of the fundamental design of an SEZ.

BEST PRACTICE CASE STUDIES:

Although Ethiopia already has a track record in industrial parks development and can start drawing lessons of its own experience, it is worth noting that SEZ has often played a catalytic role play in economic growth and adjustment processes.

For example, many of the zones established in the 1970s and 1980s in East Asia’s “tiger economies” were critical in facilitating their industrial development and upgrading processes. Similarly, the later adoption of the model by China, which launched IPs on a scale not seen previously, provided a platform for attracting FDI and supported the development of China’s export-oriented manufacturing sector. In Central and Latin America, countries like Panama, the Dominican Republic and Honduras used free zones to take advantage of preferential access to U.S. markets and have generated large-scale manufacturing sectors in economies that previously were reliant on agricultural commodities. In Africa, IP’s have played an important role in catalyzing export-oriented diversification in countries like Egypt, Morocco or Ghana.

²⁶ Art. 5 1/ a) & c) of the PPP Proclamation

Below is a brief description of three examples which provide different insights based on geography, ownership structure and relative achievements.

Public-Owned Industrial Park in Ghana

- From 2005, Ghana adopted a holistic approach to SEZ development. It established the Ghana Trade and Investment Gateway Project and the Ghana Free Zones Board to lead development of physical infrastructure (water, sewage, solid waste treatment, electricity and access roads) to link export processing and industrial zones. It was accompanied by the reform of 'soft infrastructure', including legal and regulatory reform and the creation of the Ghana Investment Promotion Council (GIPC) to attract private firms.
- These initiatives have supported the development of Export Processing Zones (EPZ) in Ghana. The most successful is the Tema EPZ, which hosts manufacturing, service and commercial export activities. It hosts a 'one-stop-shop' for processed exports, including a free trade zone and links to the air and sea ports, and offers factory shells, office space and land parcels. These are serviced with off-site facilities, including a reliable electrical power grid, a large water reservoir, a central sewerage system, telecommunication services and securitised enclosures. Tema EPZ has attracted more than 3,000 private investment projects valued at \$16 billion and including many export-oriented firms even if the zones continue to face challenges in relation to water and electricity supplies²⁷.
- Other parks include the zones in Ghana's central and western regions. As for Tema, these have been developed using a holistic strategy. For example, the Sekondi EPZ is close to the country's second largest seaport with a direct road link, making it ideal for heavy industrial activities and industrial mineral processing. Similarly, the Shama EPZ targets the petroleum-petrochemical sector, with 3,200 acres of seafront. These advantages have led to significant private investment in the zones, with approximately 1,000 firms operating, including a wide variety of light manufacturing firms, which offer the key advantage of being labour-intensive. They have also been a factor in recent success in Ghana in developing its oil and gas industries (Ackah et al., 2012).

PPP Industrial Park in Panama

- Panama has created several SEZs, which have attracted foreign direct investment (FDI) and created employment. One of the most successful examples is the Panama Pacifico Project, which has created 4,800 jobs and attracted international corporations including 3M, Dell, Cable & Wireless and Singapore Airlines. The SEZ was procured through a PPP that was structured by the government, with support from the International Finance Corporation (IFC) to create a special regulatory framework to manage the PPP.

²⁷ Luo, Xubei; Parish, David. 2013. *Ghana - Trade and Investment Gateway Project (GHATIG)*

- The PPP contract was awarded to London & Regional Properties, a global private real estate developer, which was given a 40-year concession in return for a commitment to invest a minimum of \$405 million. The committed investments include the building of business and industrial parks and residential and service infrastructure, including a residential neighbourhood and hotels.
- The master agreement specified the party's obligations and risks. These included issues such as categories of use, penalties for non-compliance and detail of the obligations for infrastructure development and development rights. It also included an exclusive development right for 15 years for the master developer.

Chinese-led Industrial Park in Sri Lanka

- The Sri Lankan government has sought to develop SEZs, financed by loans totalling an estimated \$25 billion from Chinese state-owned banks and with construction and operation contracts agreed with private Chinese firms. These include a \$15 billion project to build 'Port City Colombo', a financial zone in the capital. The financing includes a \$1.4 billion investment and tax breaks for the China Communication Construction Company.
- However, the project has been plagued by delays and the port has suffered from significant losses because of underutilisation, leading to the government being unable to service the related debts. Because of these difficulties, the port has been subject to the granting of 99-year leases and debt for equity swaps with the Chinese firms in exchange for debt forgiveness. This transference of assets to Chinese firms has proved politically controversial and has led to civil unrest (Lim and Mukherjee, 2018).

KEY CONSIDERATION

Foster social and economic linkage, improve technology transfer, diffusion and skills training

The international experience also indicated that the major goals of regulations of industrial parks need to be creating backward and inward linkage with the local firms and economy and building the industry on sectors/activities of regional comparative advantage. The recent recommendation regarding industrial parks regulation is also towards further balancing between the objectives of attracting FDI, increasing foreign exchange and creating higher employment, on the one hand, and creating wider economic transformation.

As in most African SEZs, the connection of Ethiopian IPs with domestic value chains might be improved. The policies and regulations in export processing zones should enable linkages between foreign and local firms. The architecture of most African SEZs is 'closed' in the sense that concern with evasion of tariffs and other taxes by local investors has led to rules that choke off purchaser-supplier relationships between firms in the zone and domestic firms outside. In addition, in many countries regulations restrict the movement of managers and workers between SEZs and the rest of the economy.

These obstacles, if confirmed in Ethiopia, should be dealt with in the IPs development going forward. It is recommended that the regulations balance between the objectives

of attracting FDI, increasing foreign exchange and creating higher employment, on the one hand, and creating wider economic transformation, on the other hand.

Given the status of industrial parks development in Ethiopia, the typical generic schemes and examples of PPP SEZs, there could be merits in exploring the further development of industrial parks in Ethiopia using the PPP framework. In order to so, we would recommend the following steps and guidelines depending on the phases of project’s development:

II. PHASE I: PPP PROJECT IDENTIFICATION AND SCREENING



Refine the process for location selection

Right locations are critical to the SEZ success and therefore require sufficient and independent consultation and demand driven market-based feasibility study. It is interesting to note, in this respect, that the Ethiopian SEZs programme has been affected by conflict relating to land used for SEZ development. Implementing PPP should help in addressing this potential lack of sufficiently deep due diligence on land location.

III. PHASE II: PPP PROJECT APPRAISAL AND PREPARATION



Increase the environmental considerations in project preparation and implementation

With regard to the environmental issues, the issue of waste and pollution management is a critical challenge, especially for those zones with a high component of steel processing and chemical usage, such as the East Industry Zone and Hawassa Industrial Park.

It is important to carry out comprehensive economic, social and environmental feasibilities during the preparation phase.

The application of PPP would also help in addressing the waste management assuming it is adequately included in the project output specifications and transferred to the private sector.

Prepare for complete and sustainable infrastructure delivery

In Ethiopia, both the public and private SEZs are focused on specific manufacturing sectors, such as textiles and apparel, leather and integrated agro-processing. Significant infrastructure is already in place or under construction, particularly on-site facilities

including electrical sub-stations, electrical installations, domestic water supply and sanitation. The zones shall also include some support services, for example training rooms for workers, customs offices, health clinics and offices for banks, greenery and other public amenities.

However, because the zones were built on agricultural land, the immediate areas around the sites lack housing and have poor educational and medical services. While there is intent to build residential and community services, reports suggest that they are unlikely to be in place when Bole Lemi Phase II begins operation.

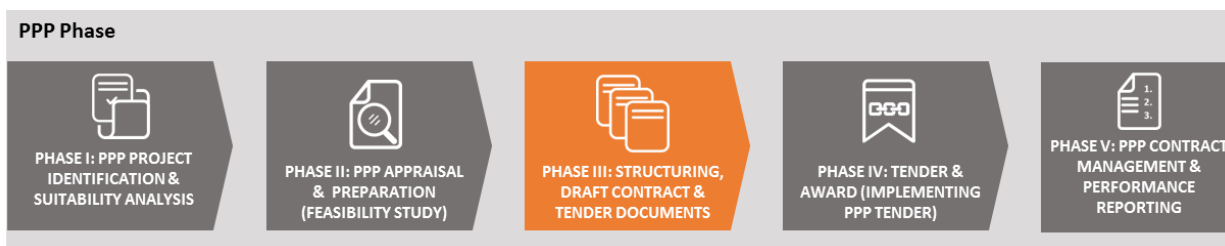
This type of planning should be thoroughly thought through at the preparation stage and the PPP process should help this happen.

Ensure consistency between spatial industrial and urban development policies

The current population of firms in Bole Lemi I and Hawassa reflects the tendency for firms of similar types to agglomerate. Bole Lemi I is entirely occupied by apparel and footwear manufacturers. Moreover, the Huajian shoe factory in Dukem, and the developing Mojo Leather District are all spaced along the Addis Ababa–Adama corridor. Because these firms require similar inputs and involve quite similar working and management practices, the proximity of the different industrial zones to each other encourages agglomeration benefits. The rapid growth of SEZs in the area around Addis Ababa points to an important complementarity between spatial industrial and urban development policies.

To be successful SEZs need to be integrated with the surrounding cities. In Addis Ababa road networks and public transportation are already stretched. In Bole Lemi Phase I, some reports²⁸ suggests it has been challenging to get workers to the site, which is not well served by public transportation, and some tenants have provided factory shuttle buses.

IV. PHASE III: STRUCTURING AND DRAFTING THE TENDER AND CONTRACT DOCUMENTS

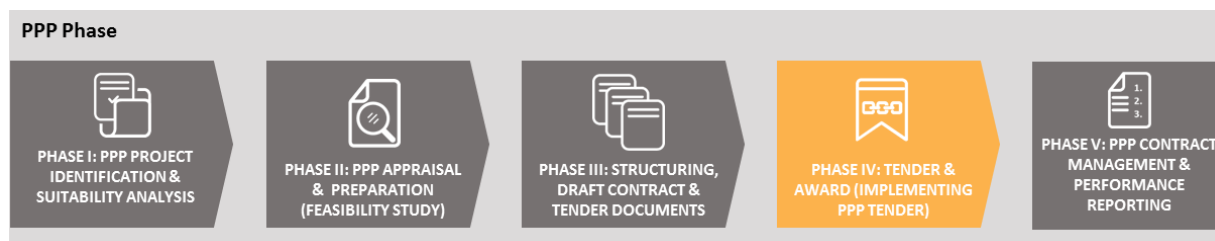


Enable legal and regulatory framework and ensure conformity and adequacy with PPP laws

One main issue is to ensure that the laws and regulations which rule the IPs development can accommodate PPP procurement. Given that the PPP framework has only been established in 2018 whereas IPs have been developed since 2015, proclamation and regulations ruling IPs need to be amended to provide for their implementation through PPP.

²⁸ Newman and Page – The case for SEZ in Africa, January 2017

V. PHASE IV: TENDER & AWARD



Reinforce the selection of industrial firms and strengthen contractual obligations

It is interesting to note that the investment programmes for the private-led SEZs have been disrupted and reduced despite contractual obligations because private firms’ parent companies have faced financial issues.

This could and should be addressed within the PPP framework by strengthening the private firms’ selection criteria and the penalty regime applied in relation to the investment obligations. These selection criteria may include:

- Proven investment capacity,
 - Demonstrated similar experiences,
 - Minimum turnover and net profit
- And minimum duration of relevant industrial activities

VI. PHASE V: PPP CONTRACT MANAGEMENT & PERFORMANCE REPORTING



Provide for a complete and appropriate institutional framework

The Ethiopian Industrial Parks Development Corporation (IPDC) was established in 2014 to build and maintain federal industrial parks. The IPDC is tasked with both pre- and post-investment services, working collaboratively with the Ethiopian Investment Commission (EIC) and Ethiopian Revenue and Custom Authority to provide a ‘one-stop-shop’ service for investors in its zones. In the publicly available literature²⁹, there are discussions about the completeness and appropriateness of the IPDC regulations and roles. One key issue is that IPDC combines planning and monitoring roles together with operations responsibilities. It would be beneficial to have separate bodies for these roles to manage potential conflicts of interest and ensure sound and effective implementation.

29 R Azmach, E. W. (2019). Regulating Industrial Parks Development in Ethiopia: A Critical Analysis. Beijing Law Review, 10, 23-60.

Part 5. PUBLIC HOUSING SECTOR GUIDELINES

This section provides guidance specific to the public housing sector, and is structured as follows:

- **Preface**
- **PPP Primer and Phases in PPP Development**
- **Phase I: PPP Project Identification and Screening**
- **Phase II: PPP Appraisal & Preparation**
- **Phase III: Structuring and Drafting the Tender and Contract Documents**
- **Phase IV: Tender & Award**
- **Phase V: PPP Contract Management & Performance Reporting**

PREFACE

Housing shortage in Ethiopia and particularly in urban areas like Addis Ababa is one of the major concerns for the Government, which estimates it to be 1.2 Million units, and increasing each year by 100,000 units.³⁰

In order to address this issue, Ethiopia has started implementing the Integrated Housing Development Programme (IHDP) in 2005. This program's initial goals were to construct 400,000 condominium units, which would generate 200,000 jobs³¹.

The Government's role in this program is to provide serviced land and infrastructure, procure the construction of units and organizes financing and allocation to population taking in account the variety of income levels. The private sector is in charge of the construction of the units.

In accordance with the Ministry of Urban Development and Construction, IHDP had achieved, at the end of 2017, the construction of 385,000 housing units, out of which 237,000 were transferred to beneficiaries. In addition, the Government claims that the programs significantly contributed to the country's economic growth providing activities for local contractors, creating jobs and developing capacities.

However, the implementation of IHDP and housing policies are facing a number of challenges including:

- The shortage of supply compared to demand and the scarcity of open land,

³⁰ Ministry of Urban Development and Construction, December 2017

³¹ The Integrated Housing Development Programme, UN Habitat (2016)

- The unaffordability of the schemes for most part of the population and the shortage of financing solutions,
- The shortage of construction materials, the poor quality of construction, especially with regard to sanitary and electrical installations, and the deficit in property management capacity over the long term,
- The lack of access to infrastructure such as local roads, water and electric power,
- The lack of provision of administrative and social services such as schools, health facilities and market places,
- The lack of definition and execution of, and therefore integration within, a global urban development program.

At this stage, housing development programs follow the traditional procurement process. The purpose of this section is to explore the potential of PPP schemes to further address the needs of affordable housing development in Ethiopia and outline the main guidelines to follow when implementing such solutions.

I. PPP PRIMER AND PHASES IN PPP DEVELOPMENT

RECOMMENDED PROCESS

Enabling the institutional and legal framework

The Ministry of Urban Development and Construction's duties include the regulation of urban development (pursuant to Urban Development Proclamation 574/2008 and Definition of Powers and Duties of the Executive Organs of the Federal Democratic Republic of Ethiopia Proclamation no. 916/2015). The Ministry has initiated the Integrated Housing Development Programme (IHDP) towards solving Ethiopia's housing challenges, by increasing housing supply, mitigating the expansion of urban slum areas and improving wealth creation. Reporting to the Ministry, the Federal Urban Planning Institute is in charge of preparing physical urban development plans whereas the Housing Development Bureau facilitates the implementation of the IHDP. Bureaus of Works and Urban Development have also been set up in each region of the country, to cater to the region's development needs

The Federal Housing Corporation, established under regulation No. 398/2017, is responsible for the administration of Government Houses.

Municipalities and City Administrations are in charge of implementing the IHDP locally. For example the Addis Ababa City Administration is responsible for (i) the design, (ii) the construction and (iii) the housing transfer and administration under the IHDP programme in the capital city³².

Current social housing programs are run by cities, which seems legitimate given the primacy of cities over urban planning. However, cities cannot yet use the

³² Condominium Housing in Ethiopia: The Integrated Housing Development Programme, UN Habitat 2011

legal framework of PPPs which only applies at the federal level. The extension of the framework to the sub-federal level for municipalities to implement PPPs as Contracting Authorities.

Allocation of serviced land within an integrated urban development plan supported by the community

The primary responsibilities of the Government in a PPP housing development scheme are to:

- Allocate parcels of land, adequately serviced in terms of infrastructure and utilities,
- Define the type and numbers of housing to meet the community needs,
- Plan for the provision of administrative and social services accordingly,
- Ensure the consistence of the project with the global urban development plan.

A capacity shortage has been identified in these respects within the existing framework. It remains to be improved to ensure the delivery of appropriate housing development through PPPs.

Type of Possible PPPs

In any PPP arrangement for public housing development, the basic allocation of responsibilities between the Government and the private sector lays on the following principles:

- On one hand, the Government assumes the responsibility of:
 - The identification of land parcels, the planning of their allocation and the processing of required approval and licenses;
 - The definition of housing output specifications including housing types and numbers, building regulations and communal facilities;
 - The setup of low cost and/or affordable housing development goals;
 - The definition and formalization of incentives or guarantees schemes to achieve these goals.
- On the other hand, the private developer undertakes within the allocated zone the design and construction of housing units and associated infrastructure and utilities, potentially with their operation and maintenance over the long term.

Based on these main principles, there is a multitude of possible PPP schemes depending on the fine tune organization between the public and private sector of the housing program design, financing, construction, commercialization and maintenance, and associated project risk allocation. The questions which need to be addressed in relation to a PPP structuring are in particular:

- To which extent the private contractor will have flexibility in the real estate program definition (constraint/restriction on type, design and number of dwellings units);
- To which extent/under which terms the private contractor will be responsible for/have the possibility of arranging the program financing;
- To which extent/under which terms the Government will support the program financing and realization – either through equity participation, subsidies, financial incentives, concessional loans, tax credit or duties exemptions;
- Will the private contractor be responsible for the dwellings commercialization and take or share the risk of them remaining unsold or not rented once built;
- Will the house beneficiaries have access to financing for the dwellings acquisition and under which terms;
- Will the contractor be responsible for the housing maintenance and facilities management over the long term?

Based on these risk allocation features, there are two typical schemes on each side of the private sector risk transfer spectrum:

- 1) In a minimum risk transfer scheme, the private developer recovers construction costs at the housing commissioning from the public authority, which takes charge of the commercialization/attribution of the dwellings to the beneficiaries potentially providing them with financing solutions.
- 2) Alternatively, the public sector scope can be restricted to the definition of housing output specifications and the provision of serviced land while the private sector will be responsible for all the program development aspects over a long period of time from design, construction, financing to commercialization and maintenance.

In between, there are blended solutions where the critical completion and financial risks, and in particular that of construction cost recovery through the housing sales or rentals, are shared between the public and private. One typical way of financially arranging the project risk sharing is through the constitution of joint venture where both the public authorities and the private developers provide equity to the vehicle constituted for the housing program development.

PPP schemes at each side of the private sector risk transfer spectrum as well as those in between could be developed within the boundaries of the legal framework (Article 5 of the PPP Proclamation) assuming that the Contracting Authorities can use it (which is not the case for municipalities as mentioned above).

LESSONS LEARNED:

As for most PPPs, but arguably even more for social/affordable housing development, their feasibility and implementation success much depend on the local conditions including the geographical and demographic landscape, the public institutional framework, the private sector capacity and the financial markets.

Therefore, in the context of Ethiopia, rather than looking at the numerous successful stories across the world, it would be best to focus on what has been achieved and the lessons learned in selected developing countries.

Nigeria

- PPP was officially adopted in housing provision in Nigeria in 2002 through the New National Housing and Urban Development Policy in order to address the over 17 million supply deficits of housing units and the need to relieve government of the financial burden associated with public housing; and to improve housing affordability for most urban residents in the country through private sector-led initiatives³³. However, evidence in the literature³⁴ shows that no significant progress has been made in affordable housing for the low-income urban residents in this country under the current PPPs arrangement. The several reasons adduced for this include lack of proper definition and monitoring, inadequate supply of land, high interest rate on housing finance, and high building standards and cost of materials, and the non-involvement of local government authorities.
- In typical PPP arrangement for housing development in Nigeria, the private sector assumes the responsibility for design, finance (all or part of it) and construction of the housing units. The public sector on the other hand would normally contribute the land, counterpart funding where necessary, determine the housing typology and the selling price. However, these responsibilities may vary from one place to another and even among projects depending on the contract arrangement. Funding of PPP housing in Nigeria is basically through loans from Federal Mortgage Bank of Nigeria (FMBN). The framework for undertaking PPP housing provision schemes in Nigeria is based on the negotiated roles for each partner organisation as indicated in 2 main project agreements: the **Memorandum of Understanding (MoU)**, which describes the roles of the partners, their equity contribution and benefits; and the **Development Lease Agreement** which formalizes the allocation of land over a given period of time for each housing scheme.

Bauchi State Program, Nigeria

- In accordance with a study carried out by the Department of Building Technology of Abubakar Tafawa Balewa University Bauchi³⁵ on the state PPP housing programs, the local government signed a MoU with 21 private housing developers for the

³³ Research Oladokun and Aluko, 2012; Aduwo, Ibem and Onyemaechi, 2017

³⁴ Ibem, 2011a; Ibem and Aduwo, 2012; Ukoje and Kanu, 2014; Taiwo, Adeboye and Aderonmu, 2014; Olofa and Nwosu, 2015

³⁵ M. Sani, A. Sani & S.U. Ahmed February 2018

construction of 5,000 units of housings across the state in 2008. The PPP arrangement shows that Bauchi State government is responsible for the provision of lands and primary infrastructure while private developers finance and build the project, and select mortgage institutes for marketing and selling of the completed housing units.

- Record shows that only 228 units (4.6%) of the housing were completed and sold in 2014. The poor performance of the scheme was related to short of finance from state government and inability of the developers to access housing loan. The study asserts that data collected and investigations demonstrate that the Government, as the initiator and client of the project, was not able to fulfil its financial obligations due to constrain in revenue and that most of the developers were not able to meet the requirement for accessing housing loan from the Federal Mortgage Bank of Nigeria (FMBN) nor to deliver on financing proposals from the mortgage institutes for the beneficiaries due to bureaucratic challenges. Lastly, it appears that the final cost of the housing units were very expensive for the middle and low income earner which were the main target of the projects
- Therefore, the study recommends that government and private housing developers involved in the Bauchi PPP housing projects should embark on comprehensive feasibility and viability analyses in order to check the strength and weakness of their contractual arrangement for the successful implementation of the scheme.

Malaysia

- The design and implementation of the Malaysia's PPP housing model are much like that of Nigeria. In both countries, the private developer undertakes all development risks (design, construction, and finance), provision of internal infrastructure, and houses for various income groups. The government, on the other hand, assumes the responsibility of allocating land to private developers, provide primary infrastructure, and specify output parameters (housing types, communal facilities, and building regulations).
- The Malaysian government began the provision of housing through PPP to cater for the housing demand of the increasing low-income population in the country during the 90s. The Kuala Lumpur City Hall (KLCH) became the first city council to adopt PPP in housing delivery and achieved the completion of 80,000 low-cost housing units within three years (Jamaluddin and Agus 1997). Since then, the private sector performance in housing delivery in Malaysia has been consistently satisfactory. In 2006, the private sector accounts for over 90% of housing provision and a greater proportion of low-cost housing in Malaysia³⁶.

³⁶ Residential Satisfaction in Low-Cost Housing in Malaysia, Salleh 2006

Kolkata, India

- In India, there have been numerous affordable housing PPP schemes. In accordance with research³⁷, the ones from the West Bengal Government for the overcrowded city of Kolkata has made significant achievements delivering thousands of dwelling units to low and middle income houses.
- Once a colonial capital, the city, now referred as the cultural capital of India is one of the world’s ten largest metropolitan areas with a population of more than 17 million people. In the late 90’s, the main public body in charge of housing, namely West Bengal Housing Board (WBHB) launched PPP schemes based on joint venture with robust and reputable contractors. To be eligible to the partnership the contractors should have a minimum net worth of US\$5 million and recently completed 500,000 square feet of building. Public equity contribution into the joint ventures depends on the output targets in terms of beneficiaries’ class and dwellings size and price, and ranges from 11% to 49.5% depending on the schemes.
- Another interesting feature of those is that each project should have a minimum prescribed share of construction dedicated to low-income group with no or reduced profit whereas the prices of high-income group apartments were set at the discretion of the private partners.

II. PHASE I: PPP PROJECT IDENTIFICATION AND SCREENING



Relevant and comprehensive project preparation including stakeholders’ market sounding

As explained and demonstrated through the presentation of PPP structures and case studies above, there is no definitive right public housing model to ensure a successful delivery. It very much depends on the local conditions for the main stakeholders: public authorities, private developers, targeted community and relevant financial institutions.

Therefore, it is highly recommended that comprehensive feasibility and viability analyses, including all stakeholders’ market sounding are carried out prior to launching any PPP housing development scheme.

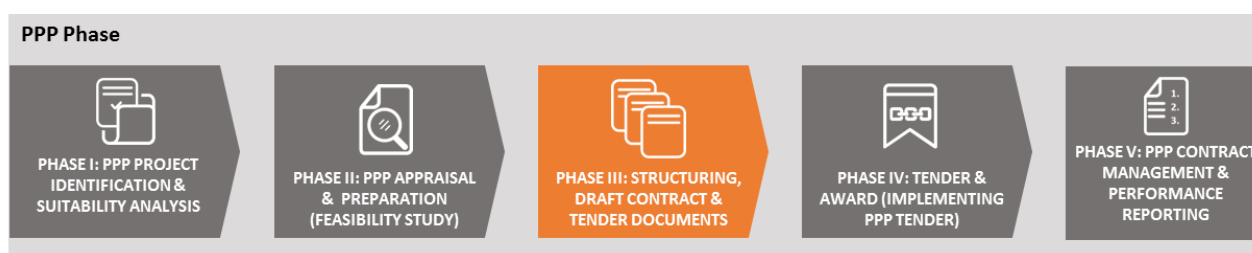
³⁷ Public-Private Partnerships for Housing Delivery in Kolkata, Urmi Segupta, University of Toronto

III. PHASE II: PPP PROJECT APPRAISAL AND PREPARATION



No sectoral specificities.

IV. PHASE III: STRUCTURING AND DRAFTING THE TENDER AND CONTRACT DOCUMENTS



Structuring

Affordable schemes responding to house buyer's demand

A key component of a successful housing delivery programme is the affordability of housing units to the target consumers and the unaffordability of the schemes for most part of the population has been identified as one of the main weakness of the current IHDP program.

By enhancing the transfer of construction risk to the private sector, PPP schemes can help in delivering affordable housing. However, it remains the Government task to define a program which parameters and output specifications (building standards, type of housing) will achieve affordability.

Availability of finance

Our high-level review indicates that IHPD real estate commercialization is impaired by the shortage of financing solutions. It will be also critical to the success of any housing PPP scheme to ensure the availability of sufficient and appropriate financing for both the developers and the users, especially given the relatively restrained Ethiopian financial markets.

PPP housing schemes systematically involve direct and/or contingent contribution from the public sector. It is therefore required that the GoE plans for this through the relevant institutions.

Tender Document Preparation

Inclusion of maintenance and facilities management

One of the main benefits of PPP schemes is to usually encompass the maintenance and lifecycle of the assets, hence ensuring these remain in good shape over the long term. Poor maintenance

and inadequate facilities management are identified issues of the current public housing development. Long term PPP contract including those responsibilities and associated risk transfer should be contemplated to help their resolution.

V. PHASE IV: TENDER & AWARD



Selection of robust developers/contractors under competitive tenders

Among all the identified issues on IHPD, the most critical is probably the poor quality of construction and the deficit in property management capacity over the long term. It is essential to select qualified developers/contractors and therefore to develop relevant criteria in this respect.

Then comes the question of local capacity shortage. The launching of well-prepared and competitive tenders for comprehensive housing development PPP including construction, operation and facilities management could open the appetite of regional and international developers and contractors and bring further capacities to meet the country’s needs.

VI. PHASE V: PPP CONTRACT MANAGEMENT & PERFORMANCE REPORTING



Consistent monitoring and relevant actions against errant developers

It is important to not only select financially sound and experienced developers but also to provide a contractual framework which includes proper financial incentives and penalty regime in case of default. It is equally essential to trigger provided sanctions if and when a developer defaults.

More generally, the provision for consistent monitoring, as a control mechanism, allows the public authority to monitor the behavior of private partners and ensures that they do not deviate from the agreements regarding agreed output and performance.

Part 6. HEALTH SECTOR GUIDELINES

This section provides guidance specific to the health sector, and is structured as follows:

- **Preface**
- **PPP Primer and Phases in PPP Development**
- **Phase I: PPP Project Identification and Screening**
- **Phase II: PPP Appraisal & Preparation**
- **Phase III: Structuring and Drafting the Tender and Contract Documents**
- **Phase IV: Tender & Award**
- **Phase V: PPP Contract Management & Performance Reporting**

PREFACE

The health sector is regulated by the Public Health Proclamation No. 200/2000 dated 9 March 2000 (the “Health Proclamation”). The Proclamation deals with the institutional framework of the health sector and the protection of public health and related control. The public health authority is the Ministry in charge of health at federal level, the Health bureau at regional level and, if any, a Health Bureau at city level. Additionally, there is a Public Advisory Board at federal and regional levels.

Ethiopia has implemented successive Health Sector Development Plans (HSDPs) since 1997. The health sector transformation plan, in line with the Growth and Transformation Plan (GTP) phase II, has set ambitious goals to improve equity, coverage and utilization of essential health services, improve quality of health care, and enhance the implementation capacity of the health sector at all levels of the system. GTP II highlights the role of the private sector in the delivery of health service will be promoted, while it will be effectively regulated to ensure the provision of good quality health service that satisfies all citizens.

As governments struggle to stretch their healthcare funding and produce better results, many are increasingly turning to PPPs with the private sector. There are four key factors driving governments worldwide to use the PPP model for health sector improvements:

- Desire to improve operation of public health services and facilities and to expand access to higher quality services
- Opportunity to leverage private investment for the benefit of public services
- Desire to formalize arrangements with non-profit partners who deliver an important share of public services

- More potential partners for governments as private healthcare sector matures

Under GTP II, the strategic directions for health sector development highlights the role of the private sector in the delivery of health service will be promoted, while it will be effectively regulated to ensure the provision of good quality health service that satisfies all citizens. The Ministry of Health considers that the following areas are prime targets for PPPs: diagnostic centres for lab and imaging services, tertiary care services, and oncology. Since a number of these potential PPP projects fall below the \$50M threshold, the Ministry of Health has also been in discussion with the Ministry of Finance to accommodate these important projects especially if a case can be made to scale them up with a viable replication model.

The PPP Proclamation (article 2(2)) defines the Contracting Authority as “Public Body or Public Enterprise which intends to enter into a Public Private Partnership Agreement with a Private Party”. It must be noted that (i) “Public Body” is defined as an organ of the federal government wholly financed by the Federal Government and (ii) “Public Enterprises” as enterprises fully owned by the Federal Government. As such the Contracting Authority in the Health Sector is the Ministry of Health or as relevant a public hospital fully owned by the Federal Government.

The Ministry of Health initiated and coordinated the development of the Public-Private Partnerships in Health (PPPH) Implementation Guidelines³⁸. This step was taken in 2016 before the current national PPP Framework was put in place. The objectives of PPPH in Ethiopia are set out as follows;

- Improve access to quality and affordable health services to the citizens of Ethiopia by allowing and enabling the private health sector to operate in a policy-supported partnership with the public health sector.
- Create effective platforms to nurture untapped opportunities, facilitate exchange of technology, knowledge, and practices between the public and private sectors;
- Avail comprehensive tertiary health services for the short term and long term redirection and attraction of medical tourism respectively;
- Encourage the private sector for a high-end diagnostic services (laboratory and imaging services), high-end clinical services such as organ transplantation, cardiac and orthopedic care, hemo-dialysis, radiotherapy, neurosurgery and rehabilitation medical services and others unmet needs driven by PPPH projects in the premises of the public health facilities;
- Guide the existing partnership to fully complement government public health programs in terms of coverage, standardization of services, and improvement of service quality.

The guidance was aligned with the guiding principles and values stipulated in the Strategic Framework for PPP in the health sector in Ethiopia (2013). This 2013 PPPH framework lays out in general the boundaries and priorities for partnership in health and is designed for use in particular by public and private partners who plan to engage in PPPH and by the public in general. More specifically, the document is meant to provide general guidance to establishing,

³⁸ The Ministry of Health initiated and coordinated the development of the Public-Private Partnerships in Health (PPPH) Implementation Guidelines with the assistance of USAID.

implementing, mainstreaming, coordinating, monitoring and evaluating partnerships between the Government of Ethiopia and the private health sector.

These health sector PPP Guidelines will refer to the 2016 PPPH Guidelines to identify key issues and procedures.

I. PPP PRIMER AND PHASES IN PPP DEVELOPMENT

Key Issues to Consider:

Since the 1990s the **Infrastructure-based model** has become the most common form of healthcare PPP and has been implemented on a global scale—including in Australia, Canada, Egypt, Italy, Japan, South Africa and across Latin America. Outside of Egypt and South Africa there are few examples in Africa. The key issues to consider for this type of PPP include:

- **Clearly defined incomes make it easier to obtain the required political backing:** The on time and within budget reputation of this model makes it easier to measure success and gain the political and public backing that is often lacking in health PPPs. It allows the public sector to continue to focus its efforts on managing healthcare delivery, and not affect health care worker jobs, and transfers the risk and responsibility for facility construction to the private.
- **Few incentives for private partner to invest in innovative design:** Since the incentive systems for this type of PPP focus on cost and on-time delivery they favour large facilities based on standard or pre-existing models. Government needs to emphasise project design, and its impact on service delivery, during the bidding process, otherwise there are few incentives for the private partner to invest in innovative design since they are not involved in patient care once the facility is operational.
- **Risk of building a white elephant:** There is a risk that new facilities are built but they are not aligned with demand for services, rather they are built for political reasons. This phenomenon tends to be more common with Infrastructure-based PPPs compared to those that include clinical service delivery, where the private partner has an incentive to link capacity with future service demand. Governments risk over-investing in facilities, and could face long-term contractual payments for facilities that are no longer needed.

Discrete Clinical Services PPPs have been widely implemented globally including Africa, this is largely due to the lower risk profile and lower cost of these projects, and it could pave the way for more complex PPPs. The key issues to consider for this type of PPP include:

- **Offers a means to stimulate competition among private sector operators:** in nascent health PPP markets government may need to consider offering incentives, such as volume guarantees, to attract new entrants. Over time, stimulating competition among the private sector can expand access, increase efficiency, encourage innovation and result in long-term savings for the government.
- **Effective model to address constraints in the public provision of discrete services:** These specific constraints in public healthcare delivery include lack of access to trained staff, or appropriate technology and medical equipment. This asset-light PPP model provide a proven solution for countries that do not have sufficient government capacity or regulatory infrastructure to manage more complex PPP models. The flexibility of the model offers a solution to a range of other health service delivery needs. A word of

caution, the most cutting-edge (and usually more expensive) equipment may not be necessary to achieve considerable improvements in quality of care. The government needs to ensure that the new technologies are aligned with local need, government financial limits and long term management capacity.

- **Demonstrate lower costs and improved quality:** Success of the PPP will usually rest on the private partner's ability to deliver clinical services at a lower cost while maintaining or exceeding quality of care. Health services such as diagnostics or dialysis offer a relatively low risk, asset-light, lower capital cost opportunity to demonstrate the private sector's ability to positively impact healthcare delivery. The PPP must include clearly defined metrics, transparent monitoring and evaluation, and publicly available outcomes.

The **Integrated PPP** is the most complex and least common model. The Lesotho Hospital PPP was the first of its kind in Africa and due to its complexity there are few examples in Africa. The key issues to consider for this type of PPP include:

Take stock of government capacity: While this model has the highest potential to improve clinical performance it is highly complex, and governments will need to take stock of their political support and capacity to manage such projects.

To manage hospital volumes and cost, an effective referral management system is needed: There is a general tendency to go straight to a hospital to seek care, hospitals are not designed and are too expensive to treat all patient volumes. Effective primary care services and robust referral management should be integrated into the PPP contract. Hospitals are better placed to manage patient care and patient volumes driven by secondary and tertiary care.

Clinical quality and performance standards must be identified and maintained: A robust framework for any PPP is important, although more so for the Integrated PPP model to ensure its enforcement. To support PPP contract management, which is often a challenge for many governments, national or international hospital accreditation agencies can be used to identify appropriate clinical standards and to perform periodic reviews.

Stakeholder buy-in is critical to success: Integrated PPPs represent a major shift for the public healthcare providers as they come under private management. There is high potential of resistance to change due to: new human resource and performance management practices to the project that are significantly different from public management norms, and greater use and enforcement of performance management standards, timekeeping and reporting. Sufficient time must be spent to work with key stakeholders in a collaborative manner early on in the process, including identifying and implementing key training to ensure a successful transition.

Status of personnel as public or private employees: A key decision concerns whether healthcare staff will transition from public to private employment as part of the project, or whether the staff will be comprised of a mix of both. The path typically depends on the local context and each project must consider the most effective solution for its situation depending on factors such as the availability and skillsets of providers in the region, existing union and civil service employment contracts, and potential impact on recruitment and retention caused by potential wage differentials and employment expectations between the private and public employers.

In general, successful health public-private relationships are rooted in the following considerations:

- Undertake a careful assessment of which type of PPP meets the government's vision for the private sector's role in the health sector. There are different PPP arrangements in health that can be implemented, including the construction of health facilities, outsourcing non-clinical services including catering and cleaning services, as well as arrangements with private laboratories for the provision of capital intensive equipment or the outsourcing of the day to day hospital management to the private sector, among others.
- Start with a pilot PPP project that is modest in scale and relatively straightforward to replicate which generates deal flow and interest from credible private partners. For example, delivering imaging or lab services separately or together as part of a Diagnostic center.
- Strike a balance between providing a public service and generating a return on investment for the private sector partners.
- Consider the fiscal impacts of health PPPs, tools such as the IMF's PPP Fiscal Risk Assessment Model (PFRAM) support the all critical fiscal assessment of PPP projects.
- Implement a robust monitoring and evaluation framework under the PPP, with adequate baselines and key performance indicators to ensure that the performance specifications can be tracked.

PPPs can be applied across many areas of health infrastructure and services, and typically seek to capture private sector capital and expertise to improve the provision of a public service. By making capital investment more attractive to the private sector, well-structured PPPs can mobilize private investment into public service delivery, within a risk sharing mechanism. Since PPPs are highly complex undertakings it is important to ensure that project outcomes support larger health system goals, and that PPP facilities and services are integrated into the wider health system.

The models that have shown the most promise in healthcare PPPs in developing countries are focused discrete clinical service like laboratory, diagnostic, dialysis and other specialist services. Once a track record has been established a country can gradually move to more complex PPPs that are also more capital intensive like hospital facility PPPs.

Type of Possible PPPs

Governments play a central role in the provision and regulation of health care. However, there is an increasing recognition that, on their own, governments cannot deliver enough services to achieve universal health coverage and meet their populations' needs. Governments everywhere are grappling with rising healthcare costs and increased demand for healthcare services in the face of ongoing budget constraints. All players in the health area, including the private sector, will need to be involved if countries are to deliver universal health coverage and meet Sustainable Development Goal (SDG)³ on Health. PPPs in healthcare provide opportunities for governments to leverage private sector resources and expertise, to enable investment in large-scale projects that advance national and local public health goals, such as improving quality of service delivery, and expanding access to care.

The private sector already plays a substantial role in the financing and implementation of health services across the African continent. An estimated 60 percent of health care financing in Africa comes from private sources, and about 50 percent of health expenditures goes to private providers, according to the World Bank Group’s IFC.




The majority of facility-based PPPs bundle these functions into three models as presented in Figure 1:

- Infrastructure-based model – to build or refurbish public healthcare infrastructure
- Discrete Clinical Services model – to add or expand service delivery capacity
- Integrated PPP model – to provide a comprehensive package of infrastructure and service delivery

Government’s decision of which model to pursue is driven largely by local health needs and environmental (e.g., political, social) factors. The threshold of risk and responsibility that the government seeks to allocate—and that the private partner is willing to accept—are also major determining factors. Discrete Clinical Services models are beginning to gain traction in Sub-Saharan Africa as an ‘asset light’ option, and are less complex to implement than the other two models.




The different forms of PPPs presented here are in line with the PPP legal framework on more specifically article 5 of the PPP Proclamation.

Table 6: PPP Models

			
PPP Model type	Infrastructure-based model	Discrete Clinical Services model	Integrated PPP model
PPP model components	Infrastructure + financing + nonclinical services + clinical support services (as relevant)	Clinical services	Infrastructure + financing + nonclinical services + clinical and clinical support services
Private partner responsibilities	Private partner is contracted to design, build, finance and maintain facilities. Delivery of nonclinical services can be included (e.g., laundry, cafeteria). More advanced projects include delivery of clinical support services (e.g., lab, radiology)	Private partner is contracted to deliver discrete clinical services (e.g., clinical support services, specialty care services)	Private partner is contracted to design, build, finance, operate facilities and deliver nonclinical and clinical services.
Common PPP model names	Design Build Finance Maintain (DBFM), Design Build Finance Maintain Operate (DBFMO), Design Build Operate Transfer (DBOT), Private Finance Initiative (PFI), Infrastructure PPP, Accommodation model	Operation management (O&M) contracts	Design Build Operate Deliver (DBOD), Clinical services PPP, Integrated PPP, Public Private Integrated Partnerships (PPIP), Alzira model
Healthcare delivery impact	Lower		Higher

The figure below presents a typical allocation of risk for these 3 PPP models.

Table 7: Typical Allocation of Risks and Responsibility across the PPP Models³⁹

	 Infrastructure based model	 Discrete Clinical Services model	 Integrated PPP model
Types of risk			
Planning/design risks			
Land acquisition and planning	Public	Public	Public
Design	Shared	Private	Private
Changes in planning/approvals	Varies	Varies	Varies
Construction risks			
Construction	Private	Private	Private
Cost overruns	Private	Private	Private
Completion delays	Private	Private	Private
Latent defects	Varies	Varies	Varies
General risks			
Force majeure	Shared	Shared	Shared
Changes in legislation/guidelines	Shared	Shared	Shared
Financing	Private	Private	Private
Operational risks			
Operating and maintenance costs	Private	Private	Private
Equipment	Varies	Private	Private
Demand for services	Public	Public	Varies
Labor and staff issues	Public	Shared	Private
Clinical performance failures	Public	Private	Shared

³⁹ Source: Health and Economics Analysis for an evaluation of the Public Private Partnerships in health care delivery across EU, European Union

LESSONS LEARNED:

The Queen Mamohato Memorial Hospital PPP, Maseru, Lesotho

- The Government of Lesotho faced an urgent need to replace the deteriorating 450-bed Queen Elizabeth II Hospital (the main public hospital in the country). Through a transparent competitive tender process the government contracted Tsepong (a consortium headed up by South African healthcare provider Netcare) in 2008 to:
 - Construct a new 425-bed Queen Mamohato Memorial Hospital (390 public + 35 private beds);
 - Renovate 3 strategic primary health care clinics in the greater Maseru area
 - Manage facilities and equipment; and
 - Deliver all clinical care services for 18 years (including 3-year construction period).
- The remuneration of Tsepong is based on an annual fixed service payment of USD 32.6 million (paid as a unitary charge) for delivery of all services, escalated only by inflation annually. Tsepong can also earn a profit from running a 35-bed private patient unit within the hospital. The project raised USD 120 million (85% debt + 15% equity) and construction of the hospital began on March, 2009. It was successfully completed and commenced operations in October 2011.
- In terms of access, according to the official data the national hospitalization rate was 3.2% of the population each year, which means that previously the hospital could treat only 64,000 patients on annual basis. However, the new hospital is designed to treat all patients who present at the hospital and filter clinics, which is up to a maximum of 20,000 in-patient admissions and 310,000 outpatient attendances annually.
- In terms of affordability according to IFC's assessment, the Lesotho project was affordable for the government, on an operational cost comparison; the government does not pay much more for the PPP than it used to spend on the operation of the Queen Elizabeth II. Yet it is receiving vastly improved facilities, medical services and patient care. The project has also ensured maximum risk transfer to the private operator, protecting the government from most of the financial, operational, and legal risks inherent in a project of this nature. However, the project has been subject to criticism due to the cost of the unitary charge in relation to the national health budget. Critics have pointed out that the annual budget for the Queen Elizabeth Hospital and the filter clinics in 2007-08 was less than USD 17 million.
- The Lesotho PPP structure was the first 'integrated' PPP hospital project in Africa, and one of only a handful of similar projects worldwide. Even in its early stages the project was subject to criticism. Yet, this project demonstrated that it is possible in a low-income country (with deteriorated health facilities, lack of equipment, shortage of staff and inefficient management) to embark on a very ambitious project that is attractive to private investors and affordable for the government and patients, who can benefit from high-quality health services.

Romania Dialysis PPP

- Romania's national health system could not keep up with the growing demand for dialysis services: there a backlog of patients and a critical shortage of trained personnel and existing facilities were outdated and inadequate.
- In 2003, the Government of Romania began a pilot program to convert dialysis clinics at eight public hospitals (covering 25% of the country's dialysis patients) to private management and operation to address unmet demand, aging facilities, shortage of trained staff, and lack of national standards.
- Under the PPP contract, the private operator assumed full responsibility for renovating and equipping facilities; purchasing, maintaining and operating the equipment; procuring all medical supplies; recruiting, training, and managing staff; and treating public patients according to new dialysis standards. Under the PPP:
 - Private operators receive per treatment payments, with full responsibility over facilities, staff and treatment
 - New best-practice national standards developed and implemented
 - Possibility to open NEW centers after 3 years of operation of the existing ones
- The tender resulted in the award of the eight centers to four major international companies. An independent evaluation of the project—which served one in four dialysis patients in the country— showed that the privately-managed clinics delivered higher-quality and less expensive care to the public than their publicly-managed counterparts.
- The PPPs generated investment of US\$41 million (including US\$36 million from the private sector) in dialysis treatment and clinics. According to the evaluation undertaken by the World Bank Group the PPP project:
 - Resulted in savings of US\$4.5 million for the national health programme (when compared with similar public centers).
 - Led to improved service quality and facilities.
 - Paved the way to set up national performance and quality dialysis services.
 - Led to government replicating the model to more than 30 centers nationwide.
 - Paved the way to introduce the private sector into this field, more than 85% of dialysis centers in Romania are privately operated.

II. PHASE I: PPP PROJECT IDENTIFICATION AND SCREENING



No sectoral specificities.

III. PHASE II: PPP PROJECT APPRAISAL AND PREPARATION

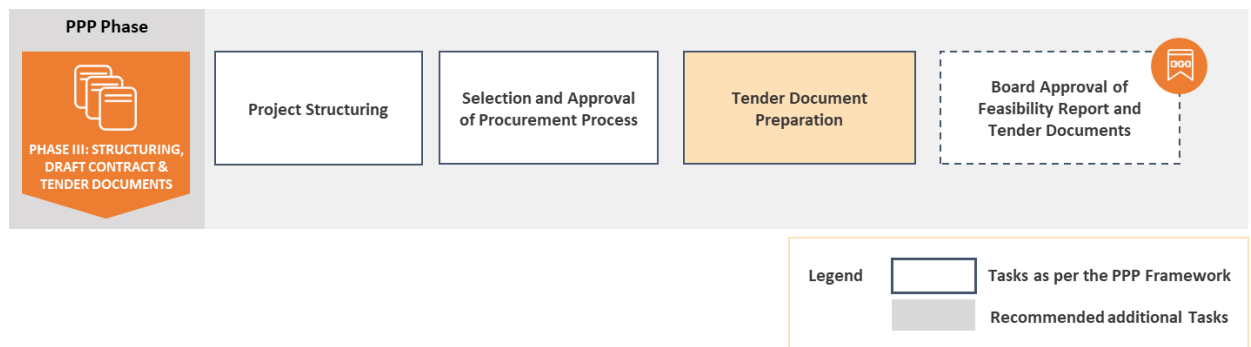


No sectoral specificities.

IV. PHASE III: STRUCTURING AND DRAFTING THE TENDER AND CONTRACT DOCUMENTS



Tender Document Preparation



Checklist: Contract Clauses in the General Tender Documentation and Draft Contract

While the tendering process is broadly similar across all sectors, the contractual clauses need to be tailored to each sector. In the case of healthcare PPPs, the contract employs a direct

relationship between payment and performance: payment amounts, timing and triggers are used as tools to incentivize the private partner and align behavior with desired outcomes.

Payments to the private partner under a health PPP generally fall under four categories:

- **Availability payment:** payment for making the hospital available to the contracting authority. The payment is usually fixed, paid quarterly or annually, and covers the capital expenditures, operating expenditures, debt and profit.
- **Service payment:** variable payment based on the type and volume of services/procedures performed by the private partner.
- **Capitation:** variable payment on a per-person basis to manage the overall health of a population.
- **Payment penalties:** a reduction or delay in payment if contract terms, such as pre-agreed key performance indicators (KPI), and expectations are not met.

PPP contracts generally specify a single payment mechanism to cover both the infrastructure and services provided. In some cases, a mix of payment streams is used to separate the infrastructure portion of the project from the variable costs of service delivery. Typically, the public sector will not make any payments until key terms in the contract—such as completion of construction—are met. This arrangement incentivizes the private partner to ensure on-time completion of the activities, and meet performance and quality standards outlined in the contract.

Projects that include clinical service delivery involve much more complex arrangements, with payments and payment amounts linked to delivery of services across large populations and/or achievement of better health outcomes. For example, the Integrated PPP model implemented in Maseru, Lesotho is based on a unitary payment arrangement that encompasses both the availability payment and service payment to the private partner. The annual unitary payment for capital and operating expenses from the government is based on set inpatient/outpatient volumes and it is adjusted annually for inflation. There is an incremental payment for additional volumes. The revenue from co-located facilities are shared.

The following section provides a checklist of items to cover across the three most common PPP models in healthcare.

Infrastructure-based model

- Over the term of the contract management responsibility for the land and facility (ies) is transferred to the private partner. At the end of the contract term all facilities revert to government responsibility.
- At a minimum, the private partner takes on the risk of design and construction, cost overruns, delay in expected completion of the project and maintenance costs. As most payment under this model is provided upon completion of construction (typically 18 to 24 months after the contract is initiated), the private partner is incentivized to complete construction and/or renovation on-time and within budget.

Moreover, because its capital is at risk, the private partner has strong incentives to continue to perform well throughout the life of the contract.

- The private partner is remunerated for the cost of construction via an amortized annual payment over the term of the contract along with an annual maintenance contract payment. This structure makes the project more affordable since it allows the private partner to take advantage of long-term debt financing opportunities.
- Projects that bundle operation of nonclinical services into the contract transfer additional risks and responsibility to the private partner for the cost and operation of these services. Nonclinical services often include: housekeeping, utilities management, information management, grounds maintenance, reception, parking, waste management, laundry and catering or cafeteria services. They are paid for usually covered through a single annual payment as these costs can be quantified relatively easily. At least every five years these service costs are re-assessed against the value achieved at regular intervals during the term of the contract.

Discrete Clinical Services PPPs

- The range of contracts vary and cover a broad variety of services, including laboratory, diagnostic, dialysis and other specialist services. The contracts typically focus on the number of services provided or patients reached.
- The contracts are performance-based and incorporate requirements such as maintenance or replacement of clinical equipment. While these contracts are less complex in nature they nonetheless still require a robust monitoring framework and performance regime driven by pre-agreed key performance indicators.
- Given the lower capital investment requirements the term of these PPPs are up to 10 years. The term should align with the lifecycle of clinical equipment, but can become longer-term as contracts are extended. The advantage of longer terms is that they leverage greater private investment to allow for more time to recoup the investment.

Integrated PPP model

- As the most complex of all PPP models it aims to improve public health services while remaining cost neutral to both the government (e.g., a similar budget outlay), and to patients, who incur the same or lower out-of-pocket payments as they would in a public hospital, but for improved services.
- The private partner is responsible for all facets of delivering patient care services as outlined in the contract. This typically includes delivering all care within the hospital and refurbishment and management of a small number of referral clinics, giving them ability to coordinate care and manage referrals.
- The contract can take a step further and include all primary care and referral clinics in the health district in the PPP contract. This approach requires greater community and political buy-in since it allows the private partner to have a greater role over the spectrum of services and referrals in that district.

- The private partner is also responsible for managing all ancillary support services, including, but not limited to, delivery of clinical and nonclinical support services (laboratory, radiology, housekeeping, cafeteria, etc.) and determining and managing equipment and patient systems required to provide care. The human resources for most or all care services and support services is typically staffed and managed by the private partner.
- To manage the components of financing, design, construction and service delivery the model includes a comprehensive set of agreements between the parties. The contracts need to be flexible enough to address key changes, such as shifts in demographics and service delivery needs, over the length of the contract. The private operator is not only responsible for assuming the risk for delays and cost overruns in the construction phase (as with other types of PPPs), but also for service delivery risks. These risks include managing fluctuations in service demand, attaining strict service quality standards and managing human resources.

V. PHASE IV: TENDER & AWARD



No sectoral specificities.

VI. PHASE V: PPP CONTRACT MANAGEMENT & PERFORMANCE REPORTING



Post-award contract management and performance monitoring would follow the same procedures outlined in the PPP General Guidelines.

