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- 1 **Economic Commission for Europe**
2 **Committee on Innovation, Competitiveness and Public-Private Partnerships**
3 **Working Party on Public-Private Partnerships**
4 **Fifth session**
5 Geneva, 29-30 November 2021
6 Item 3 of the provisional agenda
7 **Review of the work since the fourth session of the Working Party on Public-Private Partnerships**
8 **on 1-3 December 2020**
- 9 **Draft standard on People-first PPP/Concession Model law**
- 10 **Note by the Bureau¹**

Background

This document contains the draft standard on People-first PPP/Concession Model Law (hereinafter, the draft ‘Model Law’ or ‘law’) developed in phases with the substantive contribution of international experts.

Phase I of the draft Model Law was developed between September 2017 and May 2020 by an international Project Team² and was concluded in November 2020 by the Bureau of the Working Party warmly welcoming the draft as a good basis for going forward.

In November 2020, the Bureau requested the International Specialist Centre of Excellence on PPP Policies, Laws and Institutions to strengthen the following elements in the Phase I document:

- (a) A balanced approach to “user-pays” and “government-pays” models;
- (b) Further inclusion of the People-first PPP approaches and outcomes; and
- (c) Alignment of the definition of People-first PPPs with the UNECE Guiding Principles on People-first PPPs for the Sustainable Development Goals (SDGs).

Phase II of the draft Model Law was developed between December 2020 and July 2021 by an international group of experts³ and was concluded in September 2021 when the Bureau, taking note of the different comments on the Phase II document, requested the Bureau members from Belgium (Mr. Steven Van Garsse) and Lebanon (Mr. Ziad Hayek) to prepare a consolidated draft and to be guided by the mandate of the Committee of Innovation, Competitiveness and Public Private Partnerships (CICPPP) contained in paragraph 18, Annex II of document ECE/CECI/2021/2.

¹ The document is being circulated as received with light editing and formatting.

² The Project Team was led by Mr. Christopher Clement-Davies.

³ The group of experts was led by Mr. Marc Frilet.

The consolidated version of the draft Model Law was finalised and approved by the Bureau on 17 November 2021. The Bureau recognises that complementary work, if any, to the draft Model Law, in order to improve/finalise its presentation/streamline it, will be carried out in 2022 in time for its submission to the CICPPP.

The document is submitted to the Working Party for information.

The Bureau recommends to the Working Party to:

1. Take note of the draft Model Law; and
2. Submit it in a final version to the CICPPP for approval at its next session in May 2022.

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Preamble

The purpose of this law is to establish the legal framework for “People-first” Public-Private Partnerships (PPPs) and the contracts that give effect to them in [host country], including the rules and procedures governing their selection, preparation, appraisal, procurement and implementation, the contractual principles and institutional arrangements applicable to them, and assist in the orderly and coordinated delivery of PPPs. This law applies to PPPs, with particular emphasis on those with a “People-first” basis, but not to other types of commercial or contractual interface between public and private sectors.

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When properly structured and implemented, PPPs can fulfil a range of valuable purposes and objectives for the benefit of society and the common good. They can advance the efficient and cost-effective development, provision and operation of public infrastructure and public services, by harnessing the skills, resources, know-how and/or finance of the private sector most effectively and sustainably on a long-term basis, and structuring projects in ways that allocate the risks and responsibilities involved most appropriately over their life. This can strengthen the efficacy of project delivery (whether of design, construction, rehabilitation, operation and/or maintenance), stimulate new funding and investment opportunities, help bridge the public infrastructure and service gap, raise the quality of public services, improve the public’s access to those services, and so help to achieve wider economic, environmental and social goals. It can enable projects to go ahead when they otherwise might not, advancing job creation and skills transfer. Ultimately, this can help to foster economic growth and social development in ways that promote the United Nations Sustainable Development Goals (SDGs), leading to a better and more sustainable future for all.

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This law enshrines and gives effect to the Guiding Principles on People-first PPPs, published by the United Nations in 2019⁴ (the “People-first PPP Principles”) and other documents endorsed by the Working Party on PPPs. The law is intended to be aligned with the UNCITRAL Legislative Guide on PPPs and related Model Legislative Provisions. The People-first PPP Principles represent a new model for PPPs, designed to achieve a range of sustainable development outcomes which are critical to the SDGs and which build on the PPP attributes described above, including the following:

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- (i.) Increased access to essential services and decreased social inequality and injustice;
- (ii.) Enhanced resilience and responsibility towards environmental sustainability;
- (iii.) Improved economic effectiveness and fiscal sustainability;
- (iv.) Replicability and the development of further projects; and
- (v.) Full involvement of all stakeholders in the projects.

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PPPs structured and implemented in accordance with the provisions of this law can therefore be expected to promote those outcomes. They should thus represent enhanced “value for money” in the true sense of “value for people”, in terms of their long-term, net value for consumers, government and the wider public, considered over their life cycle in the light of all their significant impacts, for the greater good of all.

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Chapter I. General Provisions

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The Model PPP Law has drawn heavily on both the existing published UNCITRAL materials and their recent revisions as well as the UNECE Guiding Principles on People-first PPP in support of the SDGs, the UNECE Standard on a Zero Tolerance Approach to Corruption in PPP Procurement and the UNECE People-first PPP Evaluation Methodology for the SDGs.

⁴ “Guiding Principles on People-first Public-Private Partnerships in support of the United Nations Sustainable Development Goals” (ECE/CECI/2019/5).

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Article 1. Scope of the Law

1. **General.** This law establishes the legal framework for PPPs in [host country] and the contracts that give effect to them, the rules and procedures related to their selection, preparation, appraisal, procurement and implementation, and the institutional arrangements applicable to them, all in accordance with the principles of transparency, fairness, stability, proper management, integrity, completion, economy, and long-term sustainability, and the People-first Principles.

2. **All PPPs.** This law applies to all forms of PPP, as defined in this law, including those referred to or described as “concessions” or “user charge” projects, those referred to or described as “government pay” or “PFI”-type projects, other forms referred to by other labels or acronyms, and those that involve a transfer of demand risk to the private partner as well as those that do not. It also applies to all PPP projects implemented in [host country] after the date this law comes into force, whether carried out at national, federal, sub-national, regional or municipal level (except only in so far as the PPP regulations specifically provide otherwise).

Article 2. Key Terms and Definitions

In this law, the following terms and expressions shall have the meanings ascribed to them below:

- (i) **“Applicable law”** means the laws of [*host country*] in force and effect at the relevant time, including all national, regional, and local laws and regulations, and including the country’s international obligations and commitments, and any judgments, decrees, orders or injunctions of any court or tribunal having the force of law.
- (ii) **“Bidder”** means any legal entity or person (or consortium thereof) participating in a tender in accordance with its terms and organised pursuant to this law.
- (iii) **“Economic and financial viability”** means the maintenance of the commercial and financial terms as agreed for the project.
- (iv) **“Competent body”** means the government, a line ministry, or any public authority either having the legal power and authority under applicable law or specifically authorised by the government under this law or the PPP regulations to perform certain functions in the field of PPPs.
- (v) **“Contracting authority”** means any competent body having the requisite legal capacity to enter into a PPP contract pursuant to this law.
- (vi) **“Direct agreement”** means an agreement between the contracting authority and the lenders, typically together with the private partner, setting out the terms on which (amongst other things) the lenders may be entitled to exercise step-in rights, prevent a threatened termination of the PPP contract, receive payments upon its early termination and/or exercise certain other specified rights.
- (vii) **“Feasibility study”** means the report drawn up for the purposes of [preparing and] authorizing a PPP project and which will be complemented with a final assessment before project award
- (viii) **“Government”** means the government of [*enacting state*] and includes (where the context so requires) any public authority or competent body performing any function or exercising any power under this law.
- (ix) **“Identification report”** means the preliminary report that a government develops to assist in assessing whether a potential PPP should be further assessed through a feasibility study.
- (x) **“Implementing regulations”** means the regulations applicable to the selection, preparation, appraisal, procurement and/or implementation of PPPs (and other related matters) made pursuant to article 3 from time to time and having binding legal effect.

- 109 (xi.) **“Implementation resolution”** means a resolution referred to in article 13
110 confirming a formal decision by a contracting authority to implement a PPP project.
- 111 (xii.) **“Interministerial committee”** means the competent body made up of such
112 authorities and/or departments at the national, state, and/or local level as appropriate
113 for overseeing and approving key decisions and documents relating to the initiation,
114 preparation, development, procurement and/or award of PPPs.
- 115 (xiii.) **“Lender”** means any bank, financial institution or other form of lender that provides
116 (or intends to provide) financing to the private partner in connection with a PPP
117 contract, including any related commitments such as guarantees.
- 118 (xiv.) **“Official channels”** means the official journal(s) or vehicle(s) of communication
119 used by the government (or any competent body) to publish certain information
120 which it wishes to draw formally to the public’s attention, including in connection
121 with tender proceedings it is organising (such as an official gazette or the official
122 government website).
- 123 (xv.) **“Open public tender”** means and refers to a tender or selection process where the
124 contracting authority issues one or more public advertisement(s) to which in
125 principle any legal entity or person meeting the specified criteria can respond.
- 126 (xvi.) **“Partnering”** means a procedure for structured and regular exchanges between the
127 Contracting Authority and the private partner aimed at monitoring in a consensual
128 manner the implementation of the PPP project over its life;
- 129 (xvii.) **“People-first Public-private partnership”** means a type of Public-Private
130 Partnership (PPP) designed to implement the Sustainable Development Goals and
131 thereby to be “fit for purpose”. It is defined as an enhanced approach for PPPs that
132 overcomes some of the weaknesses in the way the traditional PPP model has been
133 implemented. PPPs are contract delivery tools for public infrastructure provision
134 involving initial private financing. They include two types: “government-pay PPPs”
135 which are primarily funded by taxpayers and “concessions” which are primarily
136 funded by the users of the infrastructure.
- 137 (xviii.) **“PPP contract”** means a mutually binding contract concluded between the
138 contracting authority and private partner that set(s) forth the terms and conditions
139 for implementing a PPP project, in accordance with the requirements and procedures
140 provided by this law and its Implementing Regulations.
- 141 (xix.) **“PPP guidelines”** means any PPP-related explanatory, guidance, or advisory
142 materials (or similar documents) including templates, model bidding documents and
143 contracts issued and published by the Government from time to time, which may or
144 may not have binding legal effect.
- 145 (xx.) **“Private initiator”** means any legal entity or person (or consortium thereof) that
146 submits an unsolicited proposal to implement a PPP project in accordance with
147 Article 14.
- 148 (xxi.) **“Private partner”** means any legal entity or person [(including where applicable a
149 public entity acting as a commercial entity] retained by the contracting authority to
150 implement a PPP project under a PPP contract.
- 151 (xxii.) **“Public authority”** means any local, national, or supra-national agency, authority,
152 council, ministry, municipality, department, inspectorate, committee, court, official,
153 or public or statutory person or any other executive, legislative or administrative
154 entity of the government or under its control (or, where the context so permits, any
155 combination of them), including a regulatory agency.
- 156 (xxiii.) **“Public infrastructure”** means any (tangible and/or intangible) asset(s) of public
157 interest or benefit designed and operated for the purpose of delivering (directly or
158 indirectly) public services, including physical facilities and systems.
- 159 (xxiv.) **“Public-private partnership” or “PPP”** means an undertaking meeting the criteria
160 and requirements set out in article 4.1, involving a long-term, cooperative
161 relationship between a public partner and a private partner, on the basis of a PPP

- 162 contract, with shared risks and responsibilities throughout its term, for the design,
163 development, construction, reconstruction, rehabilitation, operation and/or
164 maintenance of public infrastructure (whether new or existing) and/or the provision
165 of public services or services of general interest.
- 166 (xxv.) “**Public service**” means an activity performed to or for the benefit of the general
167 public or the public good or otherwise in the public interest which is customarily
168 provided by and/or on behalf of public authorities and/or for which a public
169 authority is primarily responsible.
- 170 (xxvi.) “**Public-private partnership unit**” or “**PPP Unit**” means the dedicated advisory
171 and administrative body in the area of PPPs established pursuant to article 9, having
172 the functions and responsibilities related to the implementation of PPPs referred to
173 therein.
- 174 (xxvii.) “**Regulatory agency**” means a public authority that is entrusted with the power to
175 issue and enforce rules and regulations governing the public infrastructure or the
176 provision of public services to which the PPP project relates.
- 177 (xxviii.) “**Stakeholder**” in relation to a PPP project, means and includes any persons who is
178 or is likely to be involved with or materially affected or impacted by the
179 implementation of the PPP project, whether directly or indirectly, positively or
180 negatively, including the contracting authority, other relevant Public Authorities or
181 Competent Bodies, the private partner, its owners, investors and lenders, contractors
182 and/or suppliers, end-users of the relevant public infrastructure and/or beneficiaries
183 of the relevant public services, the owners of property or assets affected by it, other
184 providers of relevant services, and/or households and the wider community
185 (including indigenous peoples) living in or near its place of implementation.
- 186 (xxix.) “**Sustainable Development Goals**” or “**SDGs**” means those goals and objectives
187 for sustainable economic and social development for the general good adopted and
188 published by the United Nations in the general assembly resolution 70/1
189 “transforming our world: the 2030 agenda for sustainable development”
190 (A/RES/70/1), united nations, 2015, and in the context of this law specifically refers
191 to those goals and objectives related to PPPs (including the People- first PPP
192 principles) set out therein.
- 193 (xxx.) “**Tender committee**” means the committee to be set up by the PPP Unit and the
194 contracting authority for the purpose of evaluating the bid and proposing the award
195 of the contract to the successful bidder in accordance with Article 19.
- 196 (xxxi.) “**Unsolicited proposal**” means a proposal for a PPP project submitted by the private
197 initiator upon its own initiative to the contracting authority (and/or other relevant
198 competent body) and not in response to a request or solicitation issued by the
199 contracting authority in the context of a selection procedure under this law.
- 200 (xxxii.) “**Value for Money**” and “**Value for People**”, when used in this law, mean and refer
201 to the overall, long-term, net value of a PPP project to consumers, government, the
202 host country and the broader public, taking into account the long-term quantity and
203 quality of services delivered and whole-life costs and benefits to the economy,
204 including fiscal, environmental and social costs and benefits, in line with the People-
205 first PPP principles. It may be precisely measured in accordance with any detailed
206 methodology (if any) set out in the PPP regulations. The underlying concept is that
207 the more fully a PPP project gives effect to the People-first PPP principles, the
208 higher the value for people; the higher the value for people, the higher the value for
209 money.

210 **Article 3. PPP Implementing Regulations and Guidelines**

- 211 1. **Issue.** The Government shall issue the implementing regulations required by this law
212 and may also issue and publish any PPP guidelines it considers appropriate for the

213 development of sustainable PPP projects. The Government may designate one or more
214 Competent Bodies to issue the same on its behalf.

215 2. **Purpose.** The purpose of the implementing regulations is to develop, adapt, and give
216 effect to certain aspects of the operation and implementation of this law. Implementing
217 regulations shall not contradict or supersede the provisions of this law, and in the case of any
218 discrepancy or ambiguity between them, the provisions of this law shall prevail. The purpose
219 of the PPP guidelines shall be to provide additional guidance and clarification to both public
220 and private sectors as to the interpretation and workings of this law as well as to certain aspects
221 of PPPs and their implementation but shall usually be without legally binding effect.

222 3. **Revisions and Publicity.** The PPP regulations and guidelines may be revised as
223 necessary by the Government (or any such competent body) from time to time and shall be
224 published through the official channels.

225 4. **Interpretation.** The provisions of this law should be construed in conjunction with
226 any relevant PPP regulations relating to them (if any) where the context so requires.

227 **Article 4. PPP Criteria and Fundamental Requirements.**

228 1. **PPP Requirements and Objectives.** Any PPP project undertaken in [host country]
229 shall comply with all applicable requirements of this law, including the relevant procedural
230 requirements for the selection, preparation, appraisal, procurement, and implementation of
231 PPPs. It shall also be designed and structured to accomplish the relevant public interest
232 purposes and objectives referred to in the Preamble to this law, and in particular to be
233 compatible with and give effect to the relevant People-first PPP Principles characterised by
234 five specific outcomes: access and equity; economic effectiveness and fiscal sustainability;
235 environmental sustainability and resilience; replicability; and stakeholder engagement.

236 2. **PPP Main Characteristics.** A PPP project involves a contract structured around
237 functional specifications and performance indicators, providing for a fair allocation or sharing
238 of risks and rewards between the parties based on the common objective of best serving the
239 public interest during the project life cycle. The private partner's compensation is provided
240 either by the contracting authority (often called "Public-Payment PPPs") or by the end users
241 (often called "Concessions") or possibly through a combination of the two. The term of the
242 project is established in such a way that the private partner may amortize applicable costs and
243 make a reasonable profit. PPP projects may involve the creation of tangible or intangible
244 assets that support the delivery of a Public Service.

245 3. **PPP Criteria.** Any PPP undertaken shall meet the following criteria and/or have the
246 following features (as the same may be further elucidated or explained in the PPP regulations
247 and/or PPP guidelines). It shall:

248 (a) Be long-term in nature (in accordance with Article 8) and implemented on the
249 basis of a contract or contracts.

250 (b) [Have a minimum initial estimated value (if any) established and calculated in
251 accordance with the relevant criteria and methodology set out in the PPP regulations (but
252 subject always to paragraph 3 below)].

253 (c) Involve the design, development, construction, reconstruction/rehabilitation,
254 operation and/or maintenance of public infrastructure and/or relate to the provision of public
255 services or similar services of general interest.

256 (d) Involve the long-term participation of a private partner on a risk-bearing basis,
257 and a sharing or allocation of project-related risks as between the public and private partners
258 throughout its term.

259 (e) Involve an element of private finance.

260 (f) Be implemented in accordance with the terms of the contract relating to it,
261 which shall include appropriate functional specifications and performance indicators.

262 **Article 5. Authority to award and enter into PPPs**

- 263 1. **General.** Any public authority having the legal right to develop, procure and
264 implement projects involving assets and/or services of the kind comprised in PPPs, in sectors
265 in which PPPs are permitted under Article 6 below, and to enter into contracts with private
266 sector persons in connection therewith, shall be deemed to have the power and authority under
267 this law to award and enter into PPPs, except to the extent that this law, any other applicable
268 law or the PPP regulations specifically provide otherwise.
- 269 2. **Authorisation Mechanism.** The Government shall be entitled, within the scope of its
270 existing competence and powers, to vest the specific power and authority under this law to
271 award and enter into PPPs in certain designated public authorities or competent bodies, and
272 to modify or cancel the same, as it deems necessary and appropriate from time to time.

273 **Article 6. Applicable Sectors and Activities for PPPs**

- 274 1. **Permitted Sectors and Activities.** PPPs may be undertaken in all sectors engaged in
275 Public Service activity.
- 276 2. **Prohibited Sectors and Activities.** PPPs may not be undertaken in the following
277 sectors or areas of activity (except where and to the extent that PPP regulations may provide
278 otherwise):
- 279 • [list any that might be excluded]

280 **Article 7. Parties to a PPP Contract**

- 281 1. **Main Parties.** The parties to a PPP contract are the contracting authority and the
282 private partner.
- 283 2. **Acknowledgments.** It is acknowledged that, as parties to the PPP contract, the
284 contracting authority may represent or include more than one public authority and that the
285 private partner may have more than one owner or stakeholder.
- 286 3. **Additional Parties.** The parties to a PPP contract may agree to include other parties
287 to the contract where they deem it necessary to do so.

288 **Article 8. PPP Term**

- 289 1. **[Minimum Term.** Every PPP contract shall have a minimum term of [] years (or
290 such other minimum term (if any) as may be determined in accordance with the PPP
291 regulations)].
- 292 2. **Duration.** The PPP contract shall set forth its duration, which shall take into account
293 the purposes and objectives of the PPP project identified as part of its appraisal and approval
294 process. It will also take into consideration the project business case, including the
295 depreciation period for any permanent physical assets built or rehabilitated by the private
296 partner in the PPP project, and any relevant policies concerning the competition and market
297 structures for the infrastructure or service sector concerned, as reflected in any applicable
298 laws.
- 299 3. **Extension of Term.** In exceptional circumstances specified in the PPP contract (or
300 permitted by applicable law), the duration of the PPP contract may be extended in accordance
301 with its terms for any necessary time period(s), if any, provided for therein, but subject always
302 to any relevant conditions or restrictions in the PPP regulations. The duration of the PPP
303 contract may also be extended in exceptional circumstances, or circumstances which arise by
304 the contracting authority acting in the public interest but in contravention of the PPP contract,
305 when such circumstances lead to a substantial impact on the economic/financial terms
306 specified in the financial and business models that formed the basis for the PPP contract

307 award. The implementing regulations may specify an appropriate methodology and principles
308 for determining any such extension.

309 4. **Asset Ownership Unaffected.** Where the private partner is permitted by the terms of
310 the PPP contract to own any assets comprised within the PPP project outright and indefinitely,
311 that right of ownership may continue beyond the end of the term of the PPP contract.

312 **Chapter II. Institutional Arrangements and Roles**

313 *Consider including provisions in the law dealing with the respective powers, roles and*
314 *responsibilities of different ministries and government bodies (including where appropriate*
315 *parliamentary bodies) relating to the selection, preparation, approval, procurement and*
316 *implementation of PPPs. These provisions may need to provide for the interface between them*
317 *and any relevant procedures and processes involved. The purpose of such provisions, where*
318 *they are necessary, is to provide administrative clarity and to help ensure that PPPs (and any*
319 *government programmes for them) are properly integrated with the wider public investment*
320 *process and other relevant decision-making or regulatory mechanisms and plans. In*
321 *particular, they should be fully integrated with the country's wider strategic vision for*
322 *infrastructure development, its long-term planning and prioritization processes and*
323 *associated budgeting arrangements. These should include the country's long-term*
324 *sustainable development and SDG plans (such as nationally determined contributions for*
325 *carbon emissions under the Paris Climate-Change Agreement). Fiscal sustainability is*
326 *always a critical aspect of these projects, and specific administrative or budgeting provisions*
327 *may need to be included to provide for it.*

328 *Some countries choose to give a single public authority (such as a Commission or Cabinet of*
329 *Ministers) overall responsibility for managing and running the entire PPP system. This may*
330 *then become the "supreme authority" for all its purposes. This can offer certain advantages*
331 *in terms of coherence, coordination and "single-point responsibility", which can facilitate*
332 *decision-making processes and avoid conflicts or competition between different ministries or*
333 *projects in the PPP area. Whether it is politically or constitutionally workable is another*
334 *question. Line ministries may not be happy with the new tier of authority over their powers*
335 *that it can represent.*

336 *The processes involved should be transparent and participatory. Accountability for decision-*
337 *making at different stages and levels should always be clear, tied as appropriate to the*
338 *challenge/ redress of grievance mechanisms. Budgeting mechanisms and procedures-both*
339 *long and short term-need careful thought in this context; public sector undertakings and*
340 *liabilities, including contingent liabilities, need to be properly accounted for and budgeted. A*
341 *contingency fund may have to be put in place. This all tends to call for particular focus on the*
342 *role of the Ministry of Finance (or other budget authority, such as a supreme audit institution)*
343 *to safeguard public finances and the application of fiscal rules. The role of sector regulatory*
344 *bodies may also need to be allowed for.*

345 *To this end, a People-first PPP institutional framework is created under Article 9 to organize*
346 *in an orderly and coordinated manner the implementation of the four main People-first PPP*
347 *phases:*

- 348 1) *An identification phase leading to the selection and establishment of People-first*
349 *PPP projects to be prepared by the relevant Contracting Authority.*
- 350 2) *A preparation and preliminary evaluation phase enabling the Contracting*
351 *Authority to identify the economic, fiscal, environmental, financial, legal, and*
352 *social justifications for developing the project under a People-first PPP delivery*
353 *form.*
- 354 3) *A procurement and contracting phase including the signature and approval of the*
355 *People-first PPP contract.*
- 356 4) *An implementation and operation phase including partnership provisions aimed at*
357 *monitoring and implementing smoothly the People-first PPP contract.*

Article 9. Public-Private Partnership Unit and Administrative Coordination

1. **Creation of an Interministerial Committee.** The Government shall establish an interministerial committee (or equivalent body) and determine its organisational and management structure and its operational regulations.

2. **Interministerial Committee Structure.** The interministerial committee shall be comprised of [*the host country specifies the relevant ministries or authorities*]. The chair of the interministerial committee shall be [*state position*], who shall be responsible for organising and coordinating the activities and operations. The interministerial committee may utilize appropriate support staff with a view to enabling it to perform its functions and responsibilities effectively and efficiently. A record of its composition and staffing shall be kept up to date at all times and publicly available.

3. **Interministerial Committee Functions and Responsibilities.** The interministerial committee's functions and responsibilities [shall/may], subject to the PPP regulations, include the following:

(a) Establish the government's overall policy on PPP, guided by the Government's wider infrastructure development strategy, SDG compliance priorities and socio-economic growth plans.

(b) Coordinate and promote PPP activity across the relevant Ministries.

(c) Facilitate integrated PPP activity in accordance with applicable national, regional, sectoral, and other infrastructure and service plans.

(d) Oversee and give effect to the Government's PPP policies.

(e) Review and approve proposed policy and strategy changes and refinements relating to PPPs as required by the Government.

(f) Facilitate the coordination of aspects of PPPs as may be provided for in this law or the PPP regulations, such as to coordinate the activities of the public authorities responsible for issuing approvals, licences, permits, or authorisations required for the implementation of PPPs in accordance with relevant statutory or regulatory provisions under applicable; and

(g) Assist with the constructive resolution of problems and issues during the implementation of PPPs.

4. **Creation of PPP Unit.** The Government shall establish the PPP Unit and determine its organisational and **management** structure and its operational regulations.

5. **PPP Unit Structure.** The PPP Unit shall report functionally to the [interministerial committee]. The director of the PPP Unit shall be [*state position*], who shall be responsible for organising and coordinating its activities and day-to-day operations. The PPP Unit shall be appropriately staffed based on a range of skills, expertise, and experience (including a grasp of the People-first Principles), with a view to enabling it to perform its functions and responsibilities effectively and efficiently. Appropriate skills, expertise and experience may include but shall not be limited to competency in PPPs, public infrastructure and service procurement, engineering, economic and financial modelling, public accounting, and budgeting, social and/or environment impact, and public administration. Staff members may be drawn from both the public and private sectors. A record of its composition and staffing shall be kept up to date at all times and publicly available.

6. **PPP Unit Functions and Responsibilities.** The PPP Unit's functions and responsibilities shall include the following:

(a) Propose methodologies, procedures and guidelines for structuring and implementing PPPs, including the dissemination of international best practice and methodologies and tools facilitating the initiation and the development of sustainable PPPs.

- 407 (b) Generally, facilitate the preparation, appraisal, award, and implementation of
408 PPPs in accordance with the requirements of this law and People-First Principles and
409 methodologies.
- 410 (c) Assist in implementing and giving effect to the Government's PPP policies.
- 411 (d) Review and comment on proposed policy and strategy changes and
412 refinements relating to PPPs as required by Government.
- 413 (e) Prepare (or assist in preparing) official documentation describing the
414 methodologies, procedures and guidelines referred to above, including for the purposes of
415 their publication, and assist with regularly up-dating them.
- 416 (f) Prepare standard bidding and contract documents for use by contracting
417 authorities.
- 418 (g) Identify potential improvements and refinements to the structuring and
419 implementation of PPPs, including those related to the People-first Principles and/or the most
420 common issues preventing the development of PPP projects, and make recommendations
421 accordingly.
- 422 (h) Exercise such powers of appraisal and approval (and/or coordination of
423 approvals), if any, over aspects of PPPs as may be provided for in this law or the PPP
424 regulations.
- 425 (i) Review and confirm the proper completion of the feasibility study (and other
426 key reports and studies) for individual PPPs and the conformity of preparation work with the
427 law's requirements and procedures, as provided for in this law or the PPP regulations.
- 428 (j) Assist contracting authorities with the coordination and development of
429 individual PPP projects and PPP-related activities.
- 430 (k) Maintain an up-to-date registry of all PPP projects, containing relevant details
431 of their registration and that of the related PPP contracts.
- 432 (l) Act as a point of contact and source of information for parties implementing
433 or seeking to implement PPPs (whether public or private); provide guidance, advice,
434 consultations and/or clarifications to them as necessary.
- 435 (m) Assist with the quantitative and qualitative assessment of projects, including
436 the potential impact of PPP projects (including any contingent liabilities) on public
437 obligations and/or public debt.
- 438 (n) Organize and provide training for public sector staff involved in PPPs
439 (including educational sessions and workshops).
- 440 (o) Keep track of the monitoring and oversight by contracting authorities of the
441 implementation of PPPs for which they are responsible.
- 442 (p) Advise the Government on administrative procedures related to PPPs.
- 443 (q) Organise, collate, and continually refine and develop a knowledgebase
444 (including an electronic database) of PPP-related know-how, information, guidelines,
445 assessments, research, studies, precedents, model clauses, opinions, methodologies, and
446 other documentation to aid the regular progress of PPPs and the PPP sector in [host country].
- 447 (r) Ensure that elements of the documentation referred to in this Article are
448 publicly available and/or published as required or appropriate.
- 449 (s) Assist with the constructive resolution of problems and issues during the
450 implementation of PPPs ("trouble-shooting").
- 451 (t) Assist generally with the promotion of PPPs in [host country] and public
452 education on the subject.
- 453 (u) Such other functions (if any) as may be provided for in the PPP regulations.

454 7. **No Conflict.** Any such roles and responsibilities should, however, be defined and
455 allocated to the PPP Unit in ways which at all times avoid any potential conflicts of interest
456 between them.

457 **Article 10. Information about PPPs**

458 1. **Comprehensive PPP System Information.** The PPP Unit shall be responsible for
459 preparing, collating, refining, maintaining and (subject to any confidentiality restrictions)
460 publishing up-to-date information about PPPs in such form as it may deem helpful and
461 informative to all stakeholders, other participants in the PPP industry and the general public,
462 and as may be reasonably required to promote the effective operation of the PPP system in
463 [*host country*] and the clarity and transparency of its workings, or as may otherwise be
464 required by Applicable law. All such information shall be subject to a presumption of
465 transparency and disclosure to the general public.

466 2. **Matters Included.** Such information may include the contents of PPP policy papers,
467 the PPP regulations, the PPP guidelines and practice notes, appraisal and evaluation criteria
468 and procedures (including fiscal transparency considerations), the progress of PPPs being
469 implemented, results of tenders, material contractual terms (subject to any confidentiality
470 restrictions), recommended contractual terms and conditions, the “pipeline” of future PPP
471 projects being planned or considered, the conclusions reached in reviews, studies and reports,
472 the strategic, environmental and social impact assessments for PPPs, and any other matters it
473 considers appropriate.

474 3. **Specific PPP Information.** Each contracting authority shall be responsible for
475 collecting, making available and where necessary publishing, such information concerning
476 any PPPs it is implementing or plans to implement as may be required from time to time by
477 the Government or otherwise pursuant to the PPP regulations or Applicable law, including
478 information necessary to ensure that the stakeholders relevant to any such PPP (including
479 local communities) are able to respond to the plans and proposals for it in a timely manner in
480 accordance with their rights under Applicable law.

481 4. **Tender Information.** Where tenders for PPPs take place in accordance with this law,
482 such information containing such detail as the PPP regulations may specify concerning the
483 relevant pre-qualification or tender requirements and results, the names and identities of any
484 pre-qualified, short-listed, preferred or winning bidders, and (where applicable) the grounds
485 on which they have been selected, shall be posted on the official web-site of the contracting
486 authority and published as required through the official channels without delay, during or
487 following the relevant stage(s) of the tender.

488 5. **Maintenance of Information.** The contracting authority shall maintain any PPP-
489 related information published on its official website for such period(s) of time and with such
490 public accessibility as may be required by the PPP regulations.

491 6. **Private Partner’s Information.** The private partner under any PPP shall be
492 responsible for preparing, collating, providing and where necessary publishing such
493 information relating to such PPP as may be required by relevant regulations or Applicable law
494 or otherwise under the terms of the PPP contract.

495 **Chapter III. Initiation and Preparation of PPPs**

496 **Article 11. Initiating, Identifying and Preparing PPPs**

497 1. **General.** All work of defining, preparing, appraising, and approving PPPs (including
498 those based on unsolicited proposals) shall be carried out in accordance with the procedures
499 and methodology referred to in this law and/or specified in the PPP regulations.

500 2. **Initiation of PPPs.** A proposed PPP may be initiated by either the contracting
501 authority or (in the case of unsolicited proposals) its private initiator.

- 502 3. **Setting Up a PPP Project Team.** The contracting authority shall set up a project
503 team comprising a range of skills, expertise, and experience (including a grasp of the People-
504 first Principles), with a view to enabling it to perform its functions and responsibilities
505 effectively and efficiently. Appropriate skills, expertise and experience may include but shall
506 not be limited to competency in PPPs, programming public infrastructure and services,
507 procuring construction and/or service contracts, public administration, and comprehension of
508 this law and its implementing regulations and/or guidelines, including the role of the
509 interministerial committee and PPP Unit.
- 510 4. **Responsibility for Identification and Detailed Preparation of a PPP Project.** The
511 identification and detailed work of preparing any PPP (including one proposed by a private
512 initiator) shall be carried out or managed by the contracting authority, except where and to
513 the extent (if any) that this law or the PPP regulations provide otherwise.
- 514 5. **Meaning and Scope of Identification and Detailed Preparation.** In this law, the
515 expression “identification and preparation” refers to the action of starting the process of
516 defining and assessing a potential PPP and seeking any preliminary approvals and consents
517 needed under this law to progress it further, whilst the expression “detailed preparation of a
518 PPP project” refers to and includes the detailed work of documenting, describing and
519 specifying it, and setting out its principal scope, characteristics and features (including its Key
520 Performance Indicators (KPIs)), in sufficient detail for it to be appraised in accordance with
521 this law, to form an adequate basis for detailed proposals by bidders or a private initiator, and
522 for the procedures hereunder for approving and awarding it to be applied. The detailed aspects
523 of such work (including documentation requirements and applicable appraisal criteria used in
524 accordance with Article 12) and the steps and procedures applicable to them (including review
525 and approval requirements) shall be set out in the PPP regulations and may differentiate
526 between different types or scale of PPP and different project characteristics. For the avoidance
527 of doubt, “preparation” shall not typically involve the work of final and definitive design of a
528 PPP project which accompanies its actual implementation, which is generally carried out by
529 the private partner).
- 530 6. **Identification Report.** The contracting authority shall develop an identification
531 report. An identification report shall include but not be limited to:
- 532 (a) A summary of the scope of the proposed infrastructure and/or services to be
533 improved or created, including their main functionalities and characteristics, including as
534 applicable an assessment of issues that may arise over the life of the project such as proposed
535 technological solutions becoming obsolete and/or socio-economic conditions evolving such
536 that they would impact the project as contemplated
- 537 (b) The project’s relative priority with respect to other public infrastructure and
538 service obligations.
- 539 (c) Identification of the range of PPP delivery options with factors which would
540 justify the choice between a PPP delivery or traditional public procurement, including but
541 not limited to anticipated cost, complexity, capacity to deliver, sustainability, and social and
542 economic benefits.
- 543 (d) The project’s principal anticipated technical and economic features and needs,
544 including an order of magnitude of costs, revenues (if any), funding and financing
545 requirements, and the market for the project.
- 546 (e) The acceptability of the proposed infrastructure and/or services to users, local
547 communities, and other stakeholders, [including the main conditions for public acceptance];
548 and
- 549 (f) Any other relevant preliminary information deemed prudent for identifying
550 and/or summarising the proposed project.
- 551 7. **Identification Report Approval.** The Identification Report shall be submitted to the
552 PPP Unit for its review and approval including an indicative assessment of whether it has
553 been prepared in [general] accordance with the requirements of this law [and other applicable
554 regulations and requirements], whether the proposed project is deemed worthwhile and

555 appropriate to be carried out as a PPP, and whether PPP is the anticipated best option by
556 comparison with other procurement methods.

557 8. **Feasibility Study.** Except to the extent the PPP regulations provide otherwise, the
558 detailed preparation of a PPP project shall include a comprehensive (preliminary) feasibility
559 study and cost-benefit analysis, covering its material elements and aspects, including in
560 particular those referred to in the relevant appraisal criteria set out in Article 12 and showing
561 how those criteria will be satisfied.

562 9. **Studies to be included.** As part of or in addition to the (preliminary) feasibility study,
563 the work of preparing a PPP project shall:

564 (a) Further elaborate, develop, and detail applicable items contained in the
565 Identification Report.

566 (b) Assess its anticipated social, economic, and environmental impact, its “value
567 for people” and long-term sustainability (including the extent to which it gives effect to the
568 People-first PPP Principles).

569 (c) Without limiting the sub-para (b) above, assess its capital and operating costs,
570 affordability, and long-term sustainability (including fiscal sustainability, budgetary
571 implications and any public-sector contingent liabilities).

572 (d) Assess the extent to which it will improve the quality and efficiency of the
573 public services to which it relates.

574 (e) Identify how the PPP project aligns with the Government’s wider sector
575 objectives, plans and strategies for infrastructure and/or service delivery.

576 (f) Identify the technical requirements and expected inputs and deliverables,
577 including any options relating to technological solutions and their long-term adaptability and
578 affordability.

579 (g) If practicable at this stage, identify the anticipated key performance indicators
580 (“KPI”) and the indicative payment terms.

581 (h) Identify relevant stakeholders, any stakeholder consultations to be carried out,
582 any known stakeholder issues and any stakeholder input or suggestions put forward, with
583 particular emphasis on environmental and social impact and any vulnerable or marginalized
584 persons or groups.

585 (i) Consider the extent to which the project activities can be performed by a
586 private partner under a contract with the contracting authority.

587 (j) Assess the project’s legal, regulatory, and institutional basis and viability.

588 (k) Identify the licences, permits or authorisations that may be required in
589 connection with the approval or implementation of the PPP project.

590 (l) Identify conditions of land use and related issues concerning expropriation or
591 resettlement as applicable.

592 (m) Identify and assess the main project risks and describe the proposed risk
593 allocation under the PPP contract, together with any steps or options to address or mitigate
594 them.

595 (n) Identify any proposed forms of Government support and guarantees needed for
596 the implementation of the PPP project, and their budgetary implications.

597 (o) Determine whether PPP is the best option for carrying out the project in
598 comparison with other procurement methods.

599 (p) Determine the capacity of the contracting authority to enforce the PPP contract
600 effectively, including the ability to monitor and regulate project implementation and the
601 performance of the private partner.

602 (q) Describe the preferred choice of procurement process and tender structure.

603 (r) Include any other relevant background studies, taking account where
 604 appropriate of any other PPP project or public service with which the proposed PPP is closely
 605 associated or linked.

606 (s) In the case of Concessions, particular attention may need to be paid to the
 607 following (but without limiting their applicability to other types of PPP as well):

608 (i.) the potential impact of long-term economic and societal changes, including
 609 potential changes to individual behaviour, on the scope and pricing of the
 610 Public Service

611 (ii.) the possible development of other public services that may compete with
 612 the Concession project.

613 (iii.) the acceptability of the proposed PPP Public service to end users, including
 614 the necessity for project promotion and communications strategies that
 615 demonstrate the long-term benefits to end users.

616 (iv.) the different categories of users, if any, and their specific needs for service
 617 delivery (e.g., vulnerable or economically disadvantaged groups, priority
 618 users, the necessity for different prices for the service without infringing
 619 on the equality of treatment of users and non-discrimination principles,
 620 etc.).

621 (v.) [methods for adapting the public service to future needs and affordability
 622 considerations, taking account of the possibility of substantial changes to
 623 the economic or political landscape over the life of the project and the need
 624 to resolve resulting issues and maintain the continuity of the public service.

625 (vi.) [mechanisms for optimising the long-term service provision and
 626 relationship between the main parties to the PPP, including their
 627 organisation and staff.]

628 (vii.) [mechanisms for reverting the public service to the contracting authority in
 629 order to maintain the public service and if justified by the public interest].

630 (viii.) means of maintaining the financial and economic equilibrium e in the event
 631 of exceptional circumstances.

632 (ix.) Selection of a procurement process that is most likely to realize a project
 633 that delivers an essential public service adapted to the needs and
 634 affordability constraints of the end users for the life of the project.

635 10. **Review and Approval.** The compliance of such feasibility study and other studies
 636 and reports with the relevant appraisal criteria and approval procedures referred to herein shall
 637 be subject to review and approval by the PPP Unit.

638 11. **Preliminary Studies.** The work of preparing a PPP project and assessing its
 639 feasibility may include other reports prepared and review procedures applied at earlier stages
 640 of preparation than the comprehensive feasibility study referred to in paragraph 9. The
 641 appraisal criteria to be applied at any such earlier stage shall be derived from the appraisal
 642 criteria set out in Article 12, adjusted as necessary and appropriate to suit the more preliminary
 643 nature of the information available at such stage.

644 12. **Consultations.** The work of preparing a PPP project shall be subject at the relevant
 645 stages to all requirements for formal consultation with stakeholders, other relevant authorities
 646 and the general public, including public hearings where appropriate, as may be required
 647 pursuant to applicable law or the PPP regulations and/or as envisaged by the People-first PPP
 648 principles. The consultation process shall be structured to enable a genuine dialogue to take
 649 place concerning all significant issues of concern to stakeholders, and available remedies to
 650 be pursued, and to allow suggestions from third parties for improving the PPP project to be
 651 put forward. Key points raised by stakeholders shall be accurately recorded and responded to
 652 as appropriate.

653 13. **Changes during Preparation.** A proposed PPP may be re-designed, changed or
 654 revised as often and in as many ways as necessary during its preparation under this Chapter III

655 in order to ensure that it is fully compliant with the requirements of this law, including in
656 particular Article 4, this Article and the appraisal criteria and review and approval procedures
657 set out in Article 12.

658 **Article 12. Appraisal and Approval Procedures**

659 1. **PPP Compliance.** Any PPP implemented pursuant to this law (including pursuant to
660 an unsolicited proposal) must comply with the requirements of Article 4 and the applicable
661 appraisal criteria and approval procedures laid down for this purpose in this law and the PPP
662 regulations.

663 2. **Approval.** The PPP Unit shall be responsible for reviewing and approving proposed
664 PPPs (and the preparation work carried out for them) submitted to it by contracting authorities
665 in accordance herewith, [and for advising [the relevant competent body] as to whether a
666 proposed PPP meets the appraisal requirements set forth herein]. In particular, it shall be
667 responsible for:

668 (a) Ascertaining whether a proposed PPP is worthwhile being carried out as a PPP
669 project and is expected to meet the purposes and objectives set out for it.

670 (b) Confirming that the PPP project has been prepared in accordance with the
671 requirements of Article 11.

672 (c) Confirming that the PPP project meets the specific appraisal criteria applicable
673 to it.

674 (d) Reviewing the contracting authority's capability for carrying out the proposed
675 PPP and making appropriate recommendations.

676 (e) Reviewing and approving the draft tender documents prepared by the
677 contracting authority to ensure conformity with the approved proposal.

678 3. **Appraisal Criteria.** The appraisal criteria applicable to any proposed PPP (and
679 referred to in Article 11) shall include such of the following as may be appropriate for this
680 purpose:

681 (a) The PPP project's compliance with the criteria and requirements set out in
682 Article 4.

683 (b) In particular, the PPP project's anticipated socio-economic and public-service
684 net benefits and "value for people" (including inclusivity and accessibility) and the extent to
685 which they satisfy and advance the People-first PPP Principles and the wider public good.

686 (c) The extent and urgency of the need and demand for the PPP project.

687 (d) The PPP project's alignment with the Government's wider sector objectives,
688 plans and strategies for infrastructure and economic development and achievement of the
689 SDGs.

690 (e) Its economic and financial viability.

691 (f) Its technical feasibility and strengths (including implementation timescales);

692 (g) Its legal, regulatory, and institutional viability, including the procedures to be
693 used for selection of a private partner and their timing.

694 (h) Its environmental and social sustainability and impact manageability, taking
695 account of its long-term resilience and adaptability.

696 (i) The cost-effectiveness, acceptability, and affordability of the PPP project for
697 both users (including vulnerable groups), on the one hand, and the host country from a
698 budgeting/fiscal and sustainable debt perspective, on the other (including considerations
699 relating to government debt and contingent liabilities).

700 (j) The need and scope for any anticipated public sector payments, finance,
701 guarantees or other support for the PPP project.

702 (k) The appropriateness of the PPP project's proposed (preliminary) risk-
703 allocation and incentive profile.

704 (l) The cost effectiveness and value-for-money/ value for people of implementing
705 the project on a PPP basis relative to other procurement methods.

706 (m) Generally, the extent to which the PPP project is expected to meet the purposes
707 and objectives set out for it in the documents drawn up as part of its definition and preparation
708 under Article 11.

709 (n) Any other relevant requirements of Applicable law relating to public
710 investments.

711 (o) Any other appropriate criteria arising from Article 11, and consistent with the
712 foregoing as may be specified from time to time in the PPP regulations.

713 4. **Matters included in Appraisals.** In appraising the PPP project, due regard shall be
714 had (inter alia) to the contents of the feasibility study and any related reports prepared under
715 Article 11 and the extent to which it/they demonstrate(s) compliance with the applicable
716 appraisal criteria, as reviewed and certified by the PPP Unit. Due regard shall also be had to
717 the results of all public consultations and/or public hearings which have taken place at that
718 stage of the appraisal process in relation to the PPP project in accordance with Article 11.9.

719 5. **Detailed Procedures in PPP Regulations.** The detailed procedures applicable to the
720 proposed PPP during its identification, detailed preparation and appraisal and approval under
721 this Chapter shall be set out in the PPP regulations and shall include (amongst other things)
722 relevant timescales, documentation and reporting requirements notification and publicity
723 requirements, relevant formalities, the relative weightings and priority of applicable criteria
724 and tests, formal review and approval requirements and appeal procedures.

725 6. **Responsibility for Accuracy and Publicity of Process.** The Government shall be
726 responsible for determining, revising (as necessary) and publishing all appraisal criteria and
727 approval procedures, and ensuring that the PPP regulations accurately reflect them at all times.

728 **Article 13. PPP Implementation Resolutions**

729 1. **Issue of Resolution.** Where a proposed PPP has complied with the applicable
730 appraisal criteria and approval procedures referred to above, and a decision has accordingly
731 been made by the contracting authority to implement it, a formal resolution to that effect shall
732 be issued by the contracting authority ("implementation resolution").

733 2. **Contents.** An implementation resolution shall (subject to the PPP regulations) include
734 the following information and components:

735 (a) The name and official address of the contracting authority responsible for the
736 PPP project.

737 (b) A clear description of the public infrastructure and/or public services the
738 subject matter of the PPP project.

739 (c) The PPP project's principal commercial, financial and economic
740 characteristics and features.

741 (d) A summary of the material conclusions reached about the PPP project,
742 identifying the key criteria applied in reaching them, including in particular the extent to
743 which the PPP project is expected to satisfy and advance the People-first PPP principles, the
744 public benefits or goods expected to result therefrom, and the principal results of the
745 feasibility study.

746 (e) The rationale for implementing the project as a PPP, as opposed to any other
747 form of procurement, and justifying the proposed PPP structure as the most appropriate basis
748 for implementing it.

749 (f) The anticipated (approximate) amount and nature of any private financing
750 expected to be used.

751 (g) The anticipated (approximate) amount and nature of any public funding or
752 other public support (such as guarantees) expected to be used, together with the anticipated
753 amount of any sovereign debt or contingent liabilities which may be implied by the private
754 financing of the project.

755 (h) The procedures to be used for selection of the private partner and their
756 anticipated timing.

757 (i) A summary description of the consultation procedures held pursuant to Article
758 11.9, the material issues raised, and the conclusions reached in response to them, as well as
759 of the mechanisms available to stakeholders for addressing objections and grievances to the
760 PPP project.

761 (j) Any other matters which the contracting authority considers relevant.

762 3. **Publication and Copies.** After a project feasibility study has been appraised and
763 approved, the project shall be registered on the official list of approved PPP projects and the
764 implementation resolution shall (subject to any exceptions permitted by this law) be published
765 on the official website of the contracting authority and in the official channels. In the case of
766 an unsolicited proposal, it shall also be notified and copied to the private initiator. Where a
767 competitive tender is being held pursuant to Chapter IV, a copy of the implementation
768 resolution shall be included with the tender documents released to bidders.

769 **Article 14. Unsolicited Proposals**

770 1. **Initiation.** A private initiator seeking to implement an unsolicited proposal for a PPP
771 may at any time define and submit its proposal in preliminary form to the relevant contracting
772 authority (and any other competent body authorised by the PPP regulations to receive such
773 proposals), which shall have a discretionary power to consider and review it. An unsolicited
774 proposal shall only be deemed eligible for consideration and review if it does not already
775 appear in selection procedures that have been announced or a plan or pipeline of future PPPs
776 developed on behalf of the contracting authority or the Government and if it is considered of
777 public interest.

778 2. **Preliminary.** The proposed preliminary unsolicited proposal shall describe the
779 proposed PPP project (including in terms of the infrastructure, technology, and scope of the
780 public service it involves) in sufficient detail to enable it to be given a preliminary review by
781 the contracting authority (and any such other competent body) and shall be accompanied by
782 all documents necessary for this purpose. The contracting authority (and any such other
783 competent body) shall carry out any preliminary review of the proposal that it decides to make,
784 reach a preliminary decision about whether it is considered to be potentially in the public
785 interest and intends to proceed further with it, and notify the private initiator accordingly.

786 3. **“Open Door”.** The private initiator may enter into discussions and an exchange of
787 information at any time regarding the proposed PPP with the relevant contracting authority.

788 4. **Preparation.** Following a preliminary decision of the contracting authority to proceed
789 further with the unsolicited proposal, the detailed work of preparation of the PPP project shall
790 then be carried out in accordance with the requirements of Article 12, by the private initiator,
791 with the possible support of the contracting authority (to be given at its sole discretion). To
792 this end, the contracting authority shall invite the private initiator to submit as much
793 information on the proposed PPP as is necessary to allow the contracting authority (and
794 any other relevant competent body) to make a proper evaluation of the private
795 initiator’s qualifications and the technical and commercial feasibility of the PPP
796 project, and to determine whether the PPP project is likely to be successfully
797 implemented in the manner proposed on terms acceptable to the contracting authority
798 (and any other relevant competent body). For this purpose, the private initiator shall,
799 if and to the extent reasonably required by the contracting authority, submit a technical
800 and commercial conceptual study, and satisfactory information regarding the concept,
801 technology and public service contemplated in the proposal, and any other assessments
802 reasonably necessary including preliminary social or environmental impact studies.

803 5. **Protection of Private Initiator’s Rights.** In considering an unsolicited proposal, the
 804 contracting authority shall consider the intellectual property, trade secrets or other exclusive
 805 rights contained in, arising from, or referred to in the unsolicited proposal. When the decision
 806 to proceed has been made, the contracting authority shall not make use of information
 807 provided by or on behalf of the private initiator in connection therewith other than for the
 808 evaluation of that proposal, except with the consent of the private initiator, and shall, if the
 809 proposal is rejected, return to the private initiator all documents prepared and submitted by it
 810 during the evaluation process.

811 6. **Review, Appraisal, and Implementation.** When in the opinion of the contracting
 812 authority all the requirements of the preparation phase have been complied with in accordance
 813 with Article 12 and are duly contained in the feasibility study, it shall submit the report to the
 814 PPP Unit for approval under the same conditions as the ones applicable to any other PPP
 815 project.

816 7. **Implementation Resolution and Conditions of Conclusion of a PPP Contract.**
 817 After the PPP Unit’s approval has been received, the award of the PPP contract for the
 818 unsolicited proposal by the contracting authority shall be subject to testing the potential
 819 competition for the relevant PPP project by organising a competitive tendering procedure in
 820 accordance with Article 21, where required by the provisions thereof.

821 Chapter IV. Selection of Private Partner

822 *The selection of the private partner shall be made in accordance with transparent and*
 823 *effective competitive procurement procedures except where this law specifically provides*
 824 *otherwise. The fundamental principles behind a transparent and effective competitive*
 825 *procurement process under this law include:*

826 (a) *Open access to public procurement.*

827 (b) *Equal treatment of candidates and bidders and the pursuit of a fair and*
 828 *credible outcome.*

829 (c) *Transparency and confidentiality of procedures.*

830 (d) *Free competition.*

831 (e) *“Value for People and Society”, comprising the fundamental principle of*
 832 *“Value for Money” (economy and efficiency), alignment with the UN SDGs, and taking into*
 833 *account, in addition, the satisfaction of the users of the service during the project life cycle*
 834 *and the contribution of the project to economic development in accordance with the*
 835 *government’s objectives; and*

836 (f) *Realizing a fair allocation of risks and rewards over the life of the project.*

837 Article 15. Procedures for Selection of Private Partner

838 1. **Competitive Tenders Standard.** The contracting authority shall select the private
 839 partner for a PPP project on the basis of a competitive tender as set out in Articles 15 – 20,
 840 save only where applicable law permits otherwise, including in the case of unsolicited
 841 proposals under Article 21 (to the extent provided therein) and direct negotiations as set out
 842 in Article 22.

843 2. **Existing Procurement Laws.** The public procurement laws and regulations in force
 844 in [*host country*] [shall/shall not] apply to the award of PPPs, except where and to the extent
 845 that this law (or any subsequent law) specifically provides otherwise.

846 3. **Detailed PPP Tendering Procedures.** The detailed procedures and requirements
 847 (including any specific approval powers) applicable to competitive tenders for PPPs, the
 848 nature of the processes involved (e.g. whether paper, electronic or otherwise), the contents of
 849 the procurement notices, the pre-qualification and selection of the private partner and the
 850 contents of the tender documents shall be as set out in the PPP regulations, shall be designed
 851 to promote effective and fair competition leading to sustainable long-term outcomes, and shall

852 be governed by the fundamental principles of transparency, equal treatment, non-
853 discrimination, and efficient use of resources (including the cost and expense of bidding).

854 4. **Applicable Criteria.** The tender criteria and evaluation methodology applicable to
855 the pre-qualification and selection of the private partner and award of the PPP contract shall
856 be as set out in the tender documents and may include any of the following, as the contracting
857 authority considers relevant for the particular PPP project:

858 5. **Pre-Qualification / Selection:** relevant experience and track-record, technical and
859 professional proficiency and capabilities, financial and human resources, appropriate
860 (dedicated) managerial and organizational capacity and skills covering the full range of
861 relevant PPP tasks (including environmental responsibilities), ethical standards, legal capacity
862 and standing, solvency, structure of consortium, relative consortium strengths.

863 6. **Tender Evaluation and Contract Award:** value propositions, technical quality
864 (including soundness and innovativeness) of proposal, quality of services and measures to
865 ensure their continuity, operational feasibility, relevant environmental and socio-economic
866 criteria, risk allocation, pricing terms (including the value of the proposed tolls, and tariffs,
867 fees or contracting authority payments, as the case may be, evaluated on an appropriate basis),
868 other commercial terms, costs (whether capital or operational), the nature and extent of any
869 public sector support sort, qualifications to terms and conditions of contract, structure and
870 quality of management team, strengths of financial plan and availability of committed finance;
871 together with such other matters as may be specified in the PPP regulations from time to time.
872 The tender criteria and evaluation methodology shall be clear, transparent, non-
873 discriminatory, reasonably appropriate for each PPP and consistent with the criteria applied
874 and conclusions reached in appraising and approving the PPP project pursuant to Article 12
875 (as reflected in its implementation resolution).

876 7. **Non-Discrimination.** The contracting authority shall not discriminate as between
877 local and foreign bidders for or participants in PPP projects or accord them unequal treatment,
878 in connection with the award or subsequent implementation of any PPP, save only to the
879 extent (if any) otherwise permitted under the PPP regulations or Applicable law.

880 **Article 16. Tender Process and Procedures: General**

881 1. **Choice of Tender Process.** The detailed aspects of the tender process to be used for
882 the award of each PPP shall be set out in the tender documents prepared and made available
883 to potential bidders in accordance with Article 17. They shall also be summarised in the public
884 announcement of the tender.

885 2. **Open and Closed Tenders.** An open public tender shall ordinarily be used, with or
886 without a pre-qualification stage, and involving either a one- or two-stage structure (following
887 any pre-qualification). Alternatively, a closed tender may be used, but only in exceptional
888 cases of national defence or national security, or such other exceptional circumstances as may
889 be provided for herein, where the use of an open public tender could reasonably be expected
890 to give rise to serious concerns about state secrets, government confidentiality and/or other
891 demonstrable adverse consequences for the national interest and therefore the feasibility of
892 the processes involved.

893 3. **Competition under Closed Tenders.** Where a closed tender is used, the contracting
894 authority shall nevertheless take all reasonable steps to structure and organise it in a way
895 which fosters genuine competition and shall invite offers from as many different sources as is
896 practicable in the circumstances.

897 4. **Eligible Participants.** Participants in tenders can in principle be any persons with
898 legal capacity (whether domestic or foreign) under Applicable law, including companies,
899 partnerships and natural persons, or combinations or consortia of such persons, but subject
900 always to any relevant restrictions under this law or the PPP regulations as to such
901 participation.

902 5. **Consortium Qualifications.** Where bidding consortia participate, the information
903 required from them to demonstrate their requisite qualifications shall relate to each

904 consortium as a whole, as well as to individual members. The contracting authority shall
905 consider the capabilities of each of the consortium members and assess whether the combined
906 qualifications of all of them are adequate to meet the needs of all phases and aspects of the
907 PPP project.

908 **6. Decisions Compliant with Tender Documents.** Decisions by the contracting
909 authority concerning pre-qualification, selection or rejection of bidders and award of the PPP
910 contract shall be made on the basis of applying only those criteria, requirements and
911 procedures set forth in the relevant tender documents.

912 **7. Communications with Bidders.** The tender documentation shall provide as
913 necessary for the organisation of transparent communication processes and methods with
914 bidders, allowing as required for (inter alia) conferences, meetings and procedures for written
915 communication, provision of comments on and proposed amendments to the tender
916 documents (including the draft PPP contract), discussions of and modifications to technical
917 requirements and specifications, discussion of risk allocation and commercial terms,
918 clarification of financing proposals and other matters.

919 **8. Tender Security.** The tender documents may require the provision of tender security,
920 such as bid bonds, by the bidders, in an amount and on terms which are reasonable in the
921 circumstances. In that event, the tender documents shall precisely specify the circumstances
922 in which any such tender security may be forfeited by bidders. A bidder shall not forfeit its
923 bid security in any circumstances other than those specified.

924 **9. Certain Procedural Aspects.** No bidder may participate in more than one pre-
925 qualification or tender submission, except where and to the extent that the tender documents
926 so permit (including, for example, in the case of sub-contractors). Pre-qualification or tender
927 submissions may be changed or revoked at any time before the relevant deadline for their
928 submission in accordance with the relevant tender procedures.

929 **10. Final Clarifications and Negotiations.** The tender documents may (or may not)
930 allow for a final process of clarification or negotiation between the public and a bidder of
931 certain aspects of the most favourable bid, judged by the relevant evaluation criteria and
932 methodology, including amendments to the terms and conditions of the draft PPP contract,
933 provided that any final amendments to the bid or the draft PPP contract are consistent with
934 the overall tender and evaluation process, and would not have led to the selection of a different
935 bidder if they had been made or agreed to at an earlier stage.

936 **11. Exceptional Procedures.** It is acknowledged that the tender documents may contain
937 specific provisions modifying aspects of the tender procedure otherwise applicable in specific
938 circumstances, such as (a) where only a single bidder prequalifies or submits a compliant
939 expression of interest or bid (e.g. by allowing the contracting authority to re-tender the PPP
940 project or alternatively proceed with it on the basis of direct negotiations where it is satisfied
941 that the process has already been sufficiently competitive), or (b) qualifying or restricting the
942 right and ability of different bidders to combine together during the tender process for the
943 purposes of submitting a joint bid. The PPP regulations may also provide specifically for
944 situations of this kind.

945 **12. Confidentiality.** Subject and without prejudice to Article 10, the contracting authority
946 and the tender committee shall treat all proposals submitted in tender procedures conducted
947 in accordance with this law in such a manner as to avoid the unnecessary disclosure of their
948 content to competing bidders or to any other person not authorized to have access to this type
949 of information. Any discussions, communications, and negotiations between the contracting
950 authority and/or the tender committee and a bidder shall be confidential (subject as aforesaid).
951 Unless required by law or by a court order, during any such tender procedures no party thereto
952 shall disclose to any other person any technical, price or other confidential information in
953 relation to such discussions, communications, and negotiations without the consent of the
954 other party.

955 **13. Records.** The contracting authority shall keep an appropriate record of information
956 pertaining to the selection and award proceedings for the PPP project in accordance with the
957 requirements of the PPP regulations.

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Article 17. Tender Documents, Requirements, and Information

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1. **Contents of Tender Documents.** The contracting authority shall prepare the tender documents for any tender held in accordance herewith, which shall contain such information as may be required by the PPP regulations for the relevant tender structure being used, including as appropriate the following.

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(a) A description of the envisaged PPP and the public infrastructure, facility, or services to which it relates.

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(b) An indication of other essential elements of the PPP project that need to be identified at the relevant stage of the tender process, such as the services to be delivered by the private partner, the financial and commercial arrangements envisaged by the contracting authority (such as payment mechanisms and funding sources) and the nature and extent of any public sector support to be provided to the PPP project.

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(c) A comprehensive and precise description of the applicable tender procedures.

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(d) Project functional requirements and key performance indicators (“KPIs”), as appropriate, including the contracting authority’s requirements regarding safety and security standards, environmental protection, and the People-first Principles.

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(e) A draft of the PPP contract or, where preparing a full draft would not be practicable in the circumstances, a summary containing the main proposed terms and conditions and reflecting the allocation of key risks, including an indication of which terms, if any, are deemed to be non-negotiable.

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(f) The detailed tender criteria and methodology, including relative importance or weighting, to be applied to the pre-qualification (if any) of bidders, the evaluation of bids and proposals and the final selection of the private partner and award of the PPP contract; and any relevant thresholds, if any, set by the contracting authority for identifying non-responsive proposals.

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2. **Full Data.** The contracting authority shall provide in the tender documents (and/or in any supporting documents or data-room organised in connection therewith) all such information in its possession relating to the proposed PPP and the assets it will comprise, on a fully transparent basis, as can reasonably be considered to be necessary to enable bidders to participate effectively and on a properly-informed basis in the tender (or the relevant stage thereof), but subject always to any applicable confidentiality restrictions (if any).

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3. **Amendments to Tender Documents.** The contracting authority may, save where this law or the PPP regulations provide otherwise, and whether on its own initiative or as a result of a request for clarification by a bidder, review and, as appropriate, revise or amend any element of the tender documentation or the request for proposals during the tender process, including the draft PPP contract, provided it notifies all bidders of any such amendments without delay. The deadline for the submission of proposals shall be prolonged as necessary to allow time for any such amendments and any responses to them. The contracting authority shall indicate in its record of the selection proceedings to be kept pursuant to this law the justification for any such revision or amendment.

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4. **Review of Tender Documents.** The tender documents and any amendments thereto shall be subject to the review and approval of the PPP Unit as provided in Article 12.2.

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Article 18. Tender Committee

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1. **Formation and Structure.** The contracting authority and the PPP Unit (and/or another competent body where the PPP regulations so require) shall form a tender committee for the purposes of conducting the PPP tender, evaluating tender bids and proposals, communicating with bidders, and determining the preferred or winning bidder. The composition, powers and procedures of the tender committee shall be determined in accordance with the PPP regulations (including a mechanism for addressing any conflicts of interest of its members).

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- 1008 2. **Members.** The tender committee shall have an odd number of members [with a
1009 portion or all its members being independent of the PPP project team]. The contracting
1010 authority (and/or other competent body, as aforesaid) shall appoint its chairman. Other
1011 members shall be appointed as required by the PPP regulations but may include such
1012 independent consultants and experts as may be deemed necessary.
- 1013 3. **Minutes.** The tender committee shall keep minutes of all its meetings, which shall be
1014 subject to the approval of all members present and signed by the chairman and secretary of
1015 the committee.
- 1016 4. **Records.** The tender committee shall document the tender process and evaluation in
1017 reasonable detail and give reasons for its selection and award decisions.
- 1018 5. **Interpretation.** References in this Chapter IV to the contracting authority may be
1019 construed as including references to the tender committee where the context so requires.

1020 **Article 19. Tender Stages**

- 1021 1. **Tender Stages.** A tender shall include the following stages, subject to and in
1022 accordance with the PPP regulations:
- 1023 (a) Tender announcement and request for expressions of interest and/or pre-qualification
1024 submissions;
 - 1025 (b) Expressions of interest and/or pre-qualification submissions and short-listing of
1026 bidders;
 - 1027 (c) Formal invitation to tender (one or two-stage);
 - 1028 (d) Preparation and submission of tender proposals (one or two-stage);
 - 1029 (e) Evaluation of tender proposals and selection of the winning or preferred bidder;
 - 1030 (f) Finalisation of the terms and conditions of the PPP contract and all other required
1031 aspects of the PPP project with the winning or preferred bidder; and
 - 1032 (g) Award and conclusion of the PPP contract.
- 1033 2. **Tender Announcement.** A tender announcement shall be followed by a request for
1034 expressions of interest and/or prequalification and subsequently (unless a single-stage tender
1035 is used) an invitation to tender, which shall each contain all information reasonably required
1036 to enable bidders to participate in that stage of the tender.
- 1037 3. **Single-Stage Tenders.** A single-stage tender may be used where the PPP regulations
1038 so permit, combining the pre-qualification and tender submission stages into one.
- 1039 4. **Closed Tender Exceptions.** A closed tender may be held where this law and the PPP
1040 regulations so permit, without the need for any tender announcement stage, tender participants
1041 being informed about the tender by written notice.
- 1042 5. **Pre-Qualification Procedure.** For the purpose of limiting the number of suppliers or
1043 contractors from which to request proposals, the contracting authority may engage in pre-
1044 qualification proceedings with a view to identifying bidders that are suitably qualified to
1045 implement the envisaged PPP. In that case, the following provisions shall apply (subject to
1046 the PPP regulations):
- 1047 (a) The invitation to participate in the pre-qualification proceedings shall be
1048 published in accordance with the requirements of the PPP regulations, containing all such
1049 information required thereby as may be necessary to enable bidders to submit responsive
1050 applications by the specified deadline.
 - 1051 (b) The contracting authority shall make a decision with respect to the
1052 qualifications of each bidder that has applied for pre-qualification, based on the criteria
1053 specified in the invitation to participate, and shall then invite all pre-qualified bidders to
1054 submit proposals for the PPP in accordance with the tender procedures and requirements.

1055 (c) Where the contracting authority has reserved the right in the invitation to
1056 participate to request proposals from only a limited number of bidders that best meet the pre-
1057 qualification criteria, it shall rate the bidders accordingly and draw up a short-list of bidders
1058 that will be invited to submit proposals, up to the maximum number specified (but at least
1059 three, if possible). Those bidders shall then be invited to submit proposals for the PPP project
1060 in accordance with the tender procedures and requirements.

1061 6. **Contents of the Request for Proposals.** The contracting authority shall provide a
1062 set of the request for proposals and related documents to each bidder (or pre-qualified
1063 bidder, as the case may be) invited in accordance with this law to submit proposals for
1064 the PPP project that pays the price, if any, charged for those documents. The request
1065 for proposals shall contain all such information as may be required by Article 17.1 and
1066 the PPP regulations to enable bidders to submit responsive proposals for the PPP
1067 project in accordance with the tender procedures and requirements by the deadline for
1068 submission of the same.

1069 7. **Comparison and Evaluation of Offers or Proposals.** The contracting authority
1070 shall compare and evaluate each offer or proposal submitted for the relevant PPP in
1071 accordance with the evaluation criteria set forth in the tender documents, any relative
1072 weight accorded to each such criterion or the descending order of importance of the
1073 same. For this purpose, the contracting authority may establish thresholds with respect
1074 to the technical, financial, commercial, and quality aspects of the offers or proposals.
1075 Offers or proposals that fail to achieve the thresholds shall be regarded as non-
1076 responsive and rejected from the procedure.

1077 8. **Two-Stage Request for Proposals.** The contracting authority shall adopt a tender
1078 structure involving a two-stage request for proposals where the PPP Unit) assesses that
1079 discussions with bidders are needed to refine aspects of the description of the subject-matter
1080 of the procurement and to formulate them with the requisite detail, in order to obtain the most
1081 satisfactory solution to its procurement needs. In that case, the following provisions shall
1082 apply (subject to the PPP regulations):

1083 (a) Prior to issuing its final request for proposals, the contracting authority shall
1084 issue an initial request calling upon the bidders to submit, in the first stage of the procedure,
1085 their initial proposals and comments relating to project specifications, performance
1086 indicators, financing requirements or other relevant characteristics of the PPP project and the
1087 main contractual terms proposed by the contracting authority.

1088 (b) The contracting authority may convene meetings and hold discussions or
1089 dialogue with bidders whose initial proposals have not been formally and properly rejected
1090 as non-responsive or unacceptable. Discussions may concern any aspect of the initial request
1091 for proposals or the initial proposals and accompanying documents submitted by the bidders.

1092 (c) Following examination of the proposals received, the contracting authority
1093 may review and, as appropriate, revise the initial request for proposals by deleting, adding to
1094 or modifying any aspect of the initial project specifications, performance indicators,
1095 financing requirements or other characteristics of the PPP project, including the main
1096 contractual terms, and any specified criteria for evaluating and comparing proposals and
1097 ascertaining the successful bidder. Any such deletion, modification or addition shall be
1098 communicated in the invitation to submit final proposals.

1099 (d) In the second stage of the proceedings, the contracting authority shall invite
1100 the bidders to submit final proposals with respect to a single set of project specifications,
1101 performance indicators or contractual terms in accordance with the tender procedure.

1102 (e) The contracting authority shall rank all responsive proposals on the basis of
1103 the evaluation criteria set out in the tender documents and invite the bidder that has attained
1104 the highest rating for final negotiation of the terms of the PPP contract (but excluding any
1105 terms, if any, that were stated to be non-negotiable in the final request for proposals).

1106 (f) If it becomes apparent to the contracting authority that the negotiations with
1107 the bidder invited will not result in a contract, the contracting authority shall inform the bidder
1108 of termination of the negotiations and give the bidder reasonable time to formulate its best
1109 and final offer. If the contracting authority does not find that offer acceptable, it shall reject

1110 that offer and invite for negotiations the other bidders in the order of their ranking until it
1111 arrives at a PPP contract or rejects all remaining proposals. The contracting authority shall
1112 not resume negotiations with a bidder with which negotiations have been terminated pursuant
1113 to this paragraph.

1114 9. **Competitive Dialogue.** The contracting authority may adopt a tender structure
1115 involving a request for proposals with dialogue (“competitive dialogue”) where it is not
1116 feasible for it to formulate a detailed description of the proposed PPP needed for the purposes
1117 of an open public tender in accordance herewith, and it assesses that dialogue with bidders
1118 is needed to achieve the most satisfactory solution to its procurement needs. In that case, the
1119 following provisions shall apply (subject to the PPP regulations):

1120 (a) The contracting authority shall invite each bidder that presented a responsive
1121 proposal in accordance with the initial tender invitation (subject to any applicable maximum)
1122 to participate in the dialogue. The contracting authority shall ensure that a sufficient number
1123 of bidders, and if possible, not less than three, is invited to participate in order to ensure
1124 effective competition.

1125 (b) The dialogue shall be conducted by the same representatives of the contracting
1126 authority concurrently.

1127 (c) The contracting authority shall clearly identify those aspects of the PPP project
1128 and the tender documents and process that are to be the subject of the dialogue.

1129 (d) During the course of the dialogue, the contracting authority shall not modify
1130 any material aspect of the proposed PPP, any pre-qualification or evaluation criteria, any
1131 minimum requirements, any element of the description of the PPP project contained in the
1132 request for proposals, or any term or condition of the procurement process that is not itself
1133 subject to the dialogue.

1134 (e) Any requirements, guidelines, documents, clarifications, or other information
1135 generated during the dialogue that is communicated by the public authority to a bidder shall
1136 be communicated at the same time on an equal basis to all other bidders, save only to the
1137 extent it contains information which is exclusive to the relevant bidder and its disclosure
1138 would breach any applicable confidentiality restrictions.

1139 (f) Following the dialogue, the contracting authority shall request all bidders who
1140 have not withdrawn from the process to present their best and final offers with respect to all
1141 aspects of their proposals. The request shall be in writing and shall specify the manner, place,
1142 and deadline for presenting best and final offers. Unless the PPP regulations and the tender
1143 documents otherwise permit, no negotiations shall take place between the contracting
1144 authority and the bidders with respect to their best and final offers.

1145 (g) The winning bidder shall be selected from amongst the best and final offers
1146 submitted in accordance with this procedure, on the basis of the offer that best meets the
1147 needs of the contracting authority as determined in accordance with the applicable tender
1148 evaluation and selection criteria set out in the tender documents.

1149 **Article 20. Conclusion of the PPP Contract**

1150 1. **Winning Bidder.** The winning bidder shall be the bidder who has submitted the most
1151 favourable compliant bid according to the evaluation criteria and methodology laid down in
1152 the tender documents. A formal announcement and publication of the identity of the winning
1153 bidder shall be made by the contracting authority promptly following determination of the
1154 same.

1155 2. **PPP Contract Signatories.** The conclusion of the PPP contract shall not take place
1156 before the expiry of [fourteen days] from the date of publication of the identity of the winning
1157 bidder, inter alia to permit available procedures to be invoked for challenging the
1158 determination of the same where it is alleged that the procurement requirements of this law
1159 have not been met. The PPP contract shall be entered into by the contracting authority with
1160 the winning bidder (or with another private legal entity established by it for this purpose),
1161 which shall become the private partner in the PPP project for the purposes of this law. Any

1162 such other private legal entity or SPV established by the winning bidder shall meet any formal
1163 or substantive requirements for such entity specified by the tender documents or otherwise
1164 agreed with the contracting authority.

1165 3. **Publication of Contract Award.** The contracting authority shall give notice of the
1166 contract award on its official website and publish the award through the official channels in
1167 accordance with the requirements of Article 10.4. The notice shall identify the private partner
1168 and include a summary of the essential terms of the PPP contract (subject to any applicable
1169 confidentiality restrictions).

1170 4. **Public Disclosure of PPP Contracts.** Each PPP contract entered into pursuant to this
1171 Article shall also be subject to such public disclosure (but subject always to any applicable
1172 confidentiality restrictions) as may be provided for pursuant to this law (including Article 10)
1173 or the PPP regulations.

1174 **Article 21. Conclusion of PPP Contract for Unsolicited Proposals**

1175 1. **Testing Competition.** Following a final decision by the contracting authority to
1176 implement an unsolicited proposal for a PPP project pursuant to Article 14 (either on the
1177 original or on any modified terms permitted thereby), the contracting authority shall, except
1178 in the circumstances set forth in Article 22, promptly initiate a competitive tendering
1179 procedure for the proposed PPP in accordance with this law, provided always that it considers
1180 that (a) the proposed PPP can be implemented without the use of unique intellectual property,
1181 trade secrets or other exclusive rights owned or possessed by the private initiator; and (b) that
1182 the proposed concept or technology involved is not truly unique or new.

1183 2. **Requirements for Tendering Procedure.** If the contracting authority initiates a
1184 competitive tendering procedure in accordance with paragraph 1 above, it shall publish its
1185 implementation resolution for the PPP project on its website and the official channels in
1186 accordance with Article 13, together with a summary and description of the proposed PPP
1187 and its principal objectives, and any relevant documentation, inviting any third parties to
1188 submit expressions of interest in implementing the PPP project within a specified period of
1189 time.

1190 3. **Exceptions: Contract with Private Initiator.** If the contracting authority does not
1191 consider that conditions (a) and (b) in the proviso to paragraph 1 have been met, or if no third
1192 party submits an expression of interest by the specified time limit referred to in paragraph 2,
1193 in circumstances where the contracting authority is satisfied that all reasonable steps have
1194 been taken to attract competing proposals, the contracting authority and the private initiator
1195 may proceed with the award of the PPP project and enter into a PPP contract for this purpose,
1196 subject to any direct negotiations permitted by Article 22 and the PPP regulations (and any
1197 specific procedure for this situation they may contain, including the need for any further
1198 approvals).

1199 4. **Re-Testing Competition.** If the contracting authority is not satisfied that all
1200 reasonable steps have been taken to attract competing proposals, it shall be entitled to extend
1201 the time period for submitting third party expressions of interest, modify the documentation
1202 summarising and describing the proposed PPP as appropriate, and invite further expressions
1203 of interest.

1204 5. **Tendering Proceedings.** If any third parties submit expressions of interest by the
1205 specified time limit(s) referred to above, the contracting authority shall organise tender
1206 proceedings for the PPP project in accordance with this law.

1207 6. **Participation of Private Initiator in Tender.** The private initiator shall be invited to
1208 participate in any tender proceedings for the PPP project organised by the contracting
1209 authority, which may offer the private initiator any appropriate incentive, benefit, or
1210 compensation (if any) as may be provided for in the PPP regulations, in consideration of its
1211 development and submission of the proposal, including:

1212 (a) Cash compensation (in a pre-agreed amount) for reasonable and documented costs
1213 and expenses incurred by it in connection with the development of the unsolicited

1214 proposal before the start of the tender proceedings, up to any specified maximum;
1215 and/or

1216 (b) [Where applicable, an adjustment to the evaluation score of the private initiator under
1217 the tender documentation (in an amount pre-determined before issue of the tender
1218 documents)].

1219 7. **Publication and Disclosure of Contract.** Each PPP contract entered into pursuant to
1220 this Article shall be subject to the publication and public disclosure provisions of Article 20.

1221 **Article 22. Direct Negotiations**

1222 1. **Exceptions to Tendering Procedures.** The contracting authority may enter into a
1223 PPP contract with the private partner without conducting a competitive tendering process in
1224 accordance with this law (fully or at all, as the case may be), on the basis of direct negotiations
1225 between them, in and only in the following exceptional circumstances:

1226 (a) [Where only a single bidder has pre-qualified and/or submitted a compliant bid
1227 in a tender process organised under Article 19];

1228 (b) Where paragraph 3 of Article 21 so permits;

1229 (c) [when there is an urgent need for ensuring continuity in the provision of the
1230 service and engaging in the competitive tendering procedures set forth in this Chapter would
1231 be impractical, provided that the circumstances giving rise to the urgency were neither
1232 foreseeable by the contracting authority nor the result of dilatory conduct on its part];

1233 (d) Where the use of the competitive tendering procedures set forth in this law is
1234 not appropriate for the protection of the essential security interests of the state; or

1235 (e) Where it has been clearly established to the proper satisfaction and confirmed
1236 by the contracting authority (and any competent body authorized by the PPP regulations for
1237 this purpose), following presentation of a thorough report to that effect by an independent
1238 expert, that there is only one source capable of implementing the PPP project as the private
1239 partner (such as in the case of indispensable patented technology or unique intellectual
1240 property, trade secrets or know-how, or other exclusive rights owned or possessed by such
1241 source), such that a competitive tender would not be feasible.

1242 2. **Procedures Applicable to Direct Negotiation.** The detailed procedures,
1243 requirements, and conditions applicable to any such direct negotiations, including in the case
1244 of unsolicited proposals under Article 21.2, shall be specified in the PPP regulations,
1245 including in relation to any approvals required for the use of the same, the monitoring by and
1246 reporting of their progress and the terms and efficacy of any PPP project implemented as a
1247 result.

1248 3. **Further Steps.** Where a PPP contract is negotiated on the basis of such direct
1249 negotiations, the contracting authority shall (except where a closed tender is necessarily
1250 required):

1251 (a) Cause a notice of its intention to commence negotiations in respect of a PPP
1252 contract to be published in accordance with the PPP regulations.

1253 (b) Engage in negotiations with as many persons as the contracting authority
1254 judges capable of carrying out the project as circumstances permit.

1255 (c) Establish appropriate evaluation criteria against which proposals shall be
1256 evaluated and ranked.

1257 4. **Publication and Disclosure of Contract.** Each PPP contract entered into pursuant to
1258 this Article shall be subject to the publication and public disclosure provisions of Article 20.

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Article 23. Review and Challenge Procedures

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1. **Remedies for Public Authority Breach.** Any bidder or potential private partner that claims it has suffered or may suffer loss or injury as a result of any alleged breach or non-compliance of a decision or action of the contracting authority or other competent body of or with the requirements of this law, the PPP regulations or any other relevant applicable law, in connection with the selection, preparation, appraisal, procurement or implementation of a PPP project, may challenge the decision or action concerned and pursue any available remedies in accordance with the relevant review and appeal procedures provided by this law or otherwise under Applicable law. The PPP regulations may provide specifically for such procedures.

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2. **Grievance Procedures to provide for Effective Challenge.** Any such procedures specifically provided by the PPP regulations shall aim to ensure (inter alia) that any such decision or action can be effectively challenged and reviewed without delay and, if possible, before it is carried into effect in relation to the relevant PPP, and that powers to take appropriate interim or interlocutory measures and steps are accordingly available, with a view to correcting the alleged breach or non-compliance and mitigating the loss or injury concerned at the earliest possible stage. Such measures and steps may (subject to their terms) include the power to open up, review, revise and/or annul any decision, certificate, approval, document, order or resolution made or given hereunder, and/or to suspend or cancel any procedure or course of action being followed under this law. Such procedures may also (subject as aforesaid) include the power to award compensation or damages to the person suffering loss or injury and even to cancel or set aside a PPP project altogether in appropriate circumstances specified therein.

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3. **Other Procedures to allow for Interim Measures.** The PPP regulations shall aim to ensure that the detailed procedures drawn up under this law, shall provide for sufficient time, following the taking of key decisions or the issue of key approvals or resolutions thereunder, to allow for the interim or interlocutory measures to be taken.

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Chapter V. PPP Contracts

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A private partner's obligation to develop, finance, construct, rehabilitate, maintain and/or operate public infrastructure and/or services in a PPP project calls for a number of special rights and obligations not usually applicable to many other types of contracts between public and private sectors. As a result, PPP contracts often contain contractual and legal conditions designed to reflect their special circumstances and facilitate their success.

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Article 24. Main Terms and Conditions of PPP Contracts

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1. **Contract Terms as agreed by the Parties.** PPP contracts shall contain such terms, consistent with the implementation resolution and tender documents for the relevant PPP, as the parties to them may deem appropriate and agree between them, or as may otherwise be prescribed by law (expressly or by implication), including terms relating to the following:

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(i.) Recitals identifying the key premises upon which the parties are entering into the PPP contract.

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(ii.) The parties to the PPP contract.

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(iii.) The subject matter of the PPP contract, including the nature and scope of works to be performed and services to be supplied and the public infrastructure and/or the public services to which it relates.

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(iv.) The (relevant) technical and economic characteristics and requirements of the public infrastructure comprised in the PPP project.

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- 1305 (v.) The specific rights and obligations of the parties in relation to the PPP project's
1306 implementation, including the nature and extent of exclusivity, if any, of the
1307 private partner's rights.
- 1308 (vi.) Identification of the applicable contract documents, including an order of
1309 precedence where needed.
- 1310 (vii.) Any conditions precedent to the parties' rights and obligations (in whole or
1311 part).
- 1312 (viii.) The duration of the PPP contract and any mechanism for extending it (subject
1313 to Article 8).
- 1314 (ix.) Applicable performance levels, volumes and/or standards for the works, good
1315 and/or services to be provided by the private partner, including Key
1316 Performance Indicators (KPIs) and where applicable guarantees and any
1317 obligations of the private partner to modify public service levels to meet actual
1318 demand and ensure their continuity and provision under essentially the same
1319 conditions for all users.
- 1320 (x.) The rights of the contracting authority to monitor the project and ensure that
1321 the project is being properly operated and/or that the services are being
1322 delivered to the stated requirements.
- 1323 (xi.) Applicable performance penalties and other remedies payable by the private
1324 partner for failing to meet the requisite performance levels, volumes and/or
1325 standards.
- 1326 (xii.) Where applicable, the private partner's rights (if any) to charge third parties
1327 (including end users) for its works, goods and/or services, any conditions
1328 applicable thereto (such as the amounts and methods of payment), any
1329 mechanisms for revising or modalities for varying them, and provision for any
1330 public subsidy where applicable.
- 1331 (xiii.) Any payments (if any) to be made to the private partner by the contracting
1332 authority and/or any other public authority for its works, goods and/or services
1333 (such as availability payments, "shadow tolls", output-based payments, other
1334 types of performance-based payment, off-take payments or otherwise), the
1335 methods and formulae for calculating them, any other conditions applicable
1336 thereto, any mechanisms for revising or modalities for varying them, and any
1337 relevant cost breakdowns and the applicable payment procedures;
- 1338 (xiv.) Any payments to be made by the private partner to the contracting authority
1339 (or the Government) for the PPP project (whether lump sum, regular, periodic
1340 or otherwise), including PPP fees and (where applicable) revenue sharing,
1341 and/or its obligations to collect tariffs on behalf of the Government.
- 1342 (xv.) Any requirements relating to the incorporation of the private partner (including
1343 a special-purpose vehicle formed in accordance with this law) and its corporate
1344 structure, requisite parties, and capitalisation, and to subsequent changes to
1345 them.
- 1346 (xvi.) Right of the contracting authority to review and approve certain contracts to be
1347 entered into by the private partner, or aspects therefor, such as contracts
1348 between the private partner and its major contractors and/or shareholders
1349 and/or affiliates.
- 1350 (xvii.) The nature of and responsibility for funding and/or financing the PPP project
1351 (whether by means of public support, private finance, debt, equity and/or other
1352 sources).
- 1353 (xviii.) Responsibility for obtaining relevant licenses, permits and consents from other
1354 public authorities and/or assisting with the processes involved.
- 1355 (xix.) Coordination of activities comprised in the PPP project with other public
1356 authorities.

- 1357 (xx.) Procedures for regular interfacing and co-operation between the parties, with
1358 a view to promoting collaboration and the amicable resolution of potential
1359 differences and disputes.
- 1360 (xxi.) Requirements for regular interfacing and consultation with project
1361 stakeholders, including those impacted by or making use of the project.
- 1362 (xxii.) Applicable design and construction (or reconstruction/ rehabilitation)
1363 obligations, requirements, and procedures (including where applicable
1364 procedures for the review and/or approval of plans and designs, resolving
1365 issues, testing and final inspection, approval and acceptance of the facility, and
1366 any requirements for the expansion or extension of an existing facility).
- 1367 (xxiii.) Applicable operational and maintenance obligations, requirements, and
1368 procedures.
- 1369 (xxiv.) Time periods for performance of specific obligations (and any mechanisms for
1370 extending them).
- 1371 (xxv.) Procedures for determining or certifying completion of specific obligations.
- 1372 (xxvi.) Identification of the respective physical assets and/or real property rights
1373 including responsibilities for acquisition, transfer, use and maintenance of the
1374 same for the PPP project and access to it, including any easements.
- 1375 (xxvii.) Responsibilities for protecting and securing the PPP project and the site.
- 1376 (xxviii.) The nature and allocation of property rights and interests relating to the PPP
1377 project, the site and the assets it comprises (including any assets which the
1378 private partner may be allowed to own outright or indefinitely).
- 1379 (xxix.) The nature of any supporting infrastructure, transport linkages and/or utility
1380 supplies, and responsibility for their provisions and maintenance.
- 1381 (xxx.) Development and use of facilities ancillary or incidental to the PPP project and
1382 any revenues generated from them.
- 1383 (xxxii.) Employment and labour-related (including “local content”) requirements.
- 1384 (xxxiii.) Requirements to comply with applicable laws.
- 1385 (xxxiv.) The monitoring, review, inspection and approval rights and powers of the
1386 contracting authority throughout the term of the PPP contract.
- 1387 (xxxv.) Information-provisions and the extent of the private partner’s obligation to
1388 provide the contracting authority and/or other competent body with reports and
1389 other information on the PPP project including any applicable procedures.
- 1390 (xxxvi.) Obligations of each of the parties to engage with stakeholders and address their
1391 legitimate grievances through appropriate grievance mechanisms.
- 1392 (xxxvii.) Sub-contracting and the private partner’s responsibility and liability for its sub-
1393 contractors.
- 1394 (xxxviii.) Remedies available in the event of default by either party, including any “step-
1395 in rights” (as defined in Article 29) granted to the contracting authority.
- 1396 (xxxix.) Any “step-in rights” (defined as aforesaid) granted to the private partner’s
1397 lenders.
- 1398 (xl.) The private partner’s rights to grant financial security interests in and over its
1399 PPP-related assets and rights.
- 1400 (xli.) Ownership and use of intellectual property.
- 1401 (xlii.) Transfer of assets and ownership and any provisions relating to their re-transfer
1402 as appropriate at the end of the contract term.
- 1403 (xliii.) The rights and obligations of the parties with respect to confidential
1404 information and the disclosure of project information.

- 1405 (xliii.) Mechanisms and procedures for exempting the parties from liability and/or
1406 providing appropriate protection and/or compensation (including by
1407 modifying the PPP contract) to allow for the impact of events beyond the
1408 control of the affected party, such as force majeure, change in law and other
1409 exceptional events.
- 1410 (xliv.) Any variation (and related cost adjustment or recovery) mechanisms and
1411 procedures for making of other amendments to the PPP contract.
- 1412 (xlv.) Termination of the agreement, including grounds for termination, procedures,
1413 the effect of lender step-in rights, and provision for any compensation
1414 payments.
- 1415 (xlvi.) Appropriate steps to be taken with a view to minimizing the adverse impact of
1416 any early termination on the continuity of public service provision in
1417 connection with the PPP project.
- 1418 (xlvii.) Responsibilities relating to expiry of the term, including any hand-over of the
1419 PPP project assets (except where the private partner owns them outright) and
1420 related training and transfer obligations, and where appropriate
1421 decommissioning and associated financing responsibilities.
- 1422 (xlviii.) Insurance requirements (including if relevant insurance relating to climate-
1423 change events).
- 1424 (xlix.) Environmental and social obligations, including any specific requirements
1425 relating to the SDGs and the People-first PPP principles, together with
1426 obligations to manage, monitor and report on relevant impacts and to
1427 implement corrective actions as necessary throughout the life of the project.
- 1428 (l.) Governing law and dispute-resolution and/or avoidance/settlement
1429 mechanisms, including any arbitration provisions and procedures.
- 1430 (li.) Liability and indemnities.
- 1431 (lii.) Waivers of sovereign immunity.
- 1432 (liii.) Representations and warranties.
- 1433 (liv.) Such other terms as the parties may agree.
- 1434 2. **Available Contract Structures.** The parties to a PPP contract shall be entitled to
1435 agree on such contractual and commercial forms and structures as seem to them most
1436 appropriate for the PPP project concerned, and which they consider to be best suited to give
1437 effect to its principal characteristics and features, including any which are known and used as
1438 a matter of recognized international best practice.

1439 **Article 25. Amendment and Termination of PPP Contracts**

- 1440 1. **Termination of Contract.** The PPP contract shall terminate upon the expiry of its
1441 term (subject to any provisions **expressed** to survive termination). An early termination may
1442 occur where the agreement so permits [(inter alia in the circumstances referred to in Article
1443 24)] and in accordance with Applicable law.
- 1444 2. **Amendments and Termination by Agreement.** The parties may amend or vary any
1445 terms of the PPP contract or terminate it by mutual consent at any time, but subject always to
1446 its provisions, the terms of any direct agreement and any conditions or restrictions under
1447 Applicable law or the PPP regulations, including as to any further consents or authorisations
1448 required.
- 1449 (a) [*ALTERNATIVE 1*: In particular, any amendment or modification (other than
1450 one already provided for in clear and precise terms in the contract) which would materially
1451 alter any of the [fundamental or essential elements or aspects] of the PPP project or its terms
1452 and conditions, and which played a significant part in either its appraisal and approval under
1453 Article 12 and/or the decision to award the project to the private partner pursuant to any

1454 competitive tendering process held under this law, shall require the approval or endorsement
 1455 of the competent body designated for this purpose (if any) herein or in the PPP regulations
 1456 before such amendment or modification becomes effective. Such approval or endorsement
 1457 may be subject to further specific conditions (including in certain cases even the re-tendering
 1458 of the PPP contract). The basis on which any such competent body may give or withhold its
 1459 approval or endorsement, and specify further conditions, shall be set out or reflected in the
 1460 PPP regulations.]

1461 (b) [ALTERNATIVE 2: In particular, any amendment or modification (other than
 1462 one already provided for in clear and precise terms in the contract) which would render the
 1463 contract substantially different in character from the one initially concluded shall require the
 1464 approval or endorsement of the competent body designated for this purpose (if any) herein
 1465 or in the PPP regulations before such amendment or modification becomes effective. An
 1466 amendment or modification shall be deemed to be substantial where it meets one or more of
 1467 the following conditions:

1468 (i.) The total value of the remuneration of the private partner resulting
 1469 from the amendment or modification would exceed [] per cent of
 1470 the total value of all remuneration which the private partner is
 1471 expected and entitled to receive from the PPP project over its term,
 1472 assessed on a comparable, present value basis. Where several
 1473 successive amendments or modifications are made, such value shall
 1474 be assessed on the basis of the net cumulative value of the successive
 1475 modifications, over a period of [] [months/years].

1476 (ii.) The amendment or modification shall not introduce conditions which,
 1477 had they been part of the initial contract award procedure for the PPP
 1478 project, would have allowed for the admission of bidders other than
 1479 those initially selected or for the acceptance of a proposal other than
 1480 that originally accepted or would have attracted additional
 1481 participants in the contract award procedure.

1482 (iii.) The modification extends the scope of the works to be carried out
 1483 and/or services to be supplied by the private partner under the contract
 1484 by more than [] per cent.

1485 (iv.) Where a new private partner replaces the one to which the contracting
 1486 authority had initially awarded the contract in other cases than those
 1487 provided for under this law].

1488 3. **Unilateral Termination.** Where it so provides, the PPP contract may also be
 1489 terminated unilaterally, by written notice from one party to the other, upon the occurrence of
 1490 certain specified events (such as material unremedied breach of contract, insolvency, certain
 1491 types of change in law or prolonged force majeure) and subject to the satisfaction of any
 1492 relevant specified conditions specified in the agreement, such as the lapse of certain time
 1493 periods, compliance with applicable procedures or, where Applicable law so requires, the
 1494 decision of a competent court or tribunal.

1495 4. **Termination Compensation.** Where the PPP contract so provides, either party shall
 1496 be entitled to compensation from the other upon its early termination for any reason, in an
 1497 amount and on a basis calculated in accordance with its terms and applicable law. Due
 1498 consideration shall be given by the parties concluding a PPP contract to the principles upon
 1499 which any such compensation should be calculated, which may include or take account of (by
 1500 way of illustration and without any double counting) any of the following:

1501 (a) The fair, and where applicable non-amortized, value of any assets transferred
 1502 to the contracting authority.

1503 (b) Appropriate compensation for the value of equity investments in the PPP
 1504 project and/or the returns expected by equity investors over the term of the agreement.

1505 (c) Amounts necessary to discharge outstanding debt obligations at the time of
 1506 termination.

1507 (d) Compensation for costs and losses suffered by either party as a result of early
1508 termination, including lost profits.

1509 (e) The amount of any outstanding liabilities of either party at the time of its
1510 termination.

1511 The parties to the PPP contract shall be entitled to agree such terms for the payment of such
1512 compensation as seem to them most appropriate in all the circumstances, and which are
1513 consistent with Applicable law and any relevant constraints it may impose, such as the need
1514 to avoid unjust or undue enrichment or any disproportionate penalties for breach of contract.

1515 5. **Other Termination Steps.** The PPP contract may provide, as appropriate, for
1516 any of the following upon or following its termination or expiry:

1517 (a) Mechanisms and procedures for the transfer of assets to the contracting
1518 authority.

1519 (b) The compensation to which the private partner may be entitled in respect of
1520 assets transferred to the contracting authority or to a new private partner or purchased by
1521 the contracting authority.

1522 (c) The transfer of technology required for the operation and maintenance of the
1523 PPP project.

1524 (d) The training of the contracting authority's personnel or of a successor private
1525 partner in the operation and maintenance of the PPP project.

1526 (e) The provision, by the private partner, of continuing support services and
1527 resources, including the supply of spare parts, if required, for a reasonable period after the
1528 transfer of the PPP project to the contracting authority or to a successor private partner.

1529 (f) Mechanisms and procedures for the decommissioning of the PPP project,
1530 including the preparation of a decommissioning plan, the parties' respective obligations
1531 for carrying it out and their financial obligations in that respect.

1532 **Article 26. Property and Related Matters**

1533 1. **Provision of Necessary Property.** The contracting authority shall be responsible for
1534 ensuring the effective provision to the private partner of any and all existing land, buildings,
1535 facilities, structures, parcels or plots of land, easements, rights of access and egress, and all
1536 other real property-related assets, which are needed by it for the purpose of implementing the
1537 PPP project (whether or not owned or controlled by the contracting authority), in accordance
1538 with the requirements of the PPP contract, except where such assets have already been
1539 acquired by the private partner or the PPP contract provides otherwise.

1540 2. **Rights of Access.** The contracting authority shall also make available to the private
1541 partner, or, as appropriate, assist it to enjoy the right to enter upon, transit through, do work
1542 or fix installations upon property of third parties, as appropriate and required for the purpose
1543 of implementing the PPP project in accordance with Applicable law.

1544 3. **Transfer of contracting authority Property.** The contracting authority shall be
1545 entitled to transfer to the private partner the use and occupation (with or without ownership)
1546 of any available real property in its possession and/or under its control or operational
1547 management and which it is not precluded by law from transferring, including public
1548 infrastructure and any related land, buildings or similar property, which is needed for the
1549 purposes of the PPP project, in accordance with the terms of the PPP contract and any related
1550 documents.

1551 4. **Third Party Property.** Where any property or assets referred to above are in the
1552 ownership or possession of third parties, the contracting authority shall (or shall procure that
1553 any other relevant public authority shall) either:

1554 (a) Acquire or obtain the same by agreement with the relevant third parties;

1555 (b) Arrange for their compulsory acquisition or alienation in accordance with
1556 Applicable law (and subject always to the requirements thereof, including as to appropriate
1557 planning, consultation, compensation, relocation, and monitoring duties); and/or

1558 (c) Otherwise acquire or procure such other legal rights over and to such assets in
1559 accordance with Applicable law as may be necessary for the purposes of the PPP project and
1560 the discharge of its responsibilities under this Article 26.

1561 5. **Grant of Legal Interests and Rights.** The parties to the PPP contract shall be entitled
1562 to grant each other such legal interests and rights, consistent with Applicable law and the
1563 terms of the PPP contract, in or related to any property the subject matter of the PPP project,
1564 as may be necessary to implement the PPP project. Such interests and rights may include (for
1565 example) outright ownership, leases, sub-leases, licenses, easements, rights of use and such
1566 other rights and interests as the parties may agree. All such rights and interests shall be
1567 provided or allowed for as appropriate under the terms of the PPP contract and/or any related
1568 agreements.

1569 6. **“Back-to-Back” Interests and Rights.** The private partner shall be entitled to grant
1570 third parties equivalent or similar interests and rights in or related to any property to in this
1571 Article to those granted to it hereunder (including sub-contracts, sub-leases, sub-licenses, etc.)
1572 as may be necessary to implement the PPP project and permitted by the terms of the PPP
1573 contract and Applicable law.

1574 7. **Identification of Assets.** The PPP contract may, if appropriate, identify which assets
1575 comprised in the PPP project are or shall be public property and which are or shall be the
1576 property of the private partner, and provide for the specific treatment thereof during its term
1577 or upon its termination or expiry. In particular, it may identify which assets belong in the
1578 following categories: (a) assets, if any, that the private partner is required to return or transfer
1579 to the contracting authority or another entity; (b) assets, if any, that the contracting authority
1580 may, at its option, purchase from the private partner; and (c) assets, if any, that the private
1581 partner may retain or dispose of.

1582 **Article 27. Types of Payment under PPP Contracts**

1583 1. **Payments to Private Partner: General.** The PPP contract may provide for such
1584 payments to be made to and/or levied and retained by the private partner, for the performance
1585 of its responsibilities, in such form and amounts and subject to such conditions as may be
1586 agreed by the parties to the PPP contract and not prohibited by Applicable law. These may
1587 include (as applicable to Concession style and/or Public-Payment style PPPs, as the case may
1588 be):

1589 (a) Payments from end users, such as tolls, tariffs, fees, and other forms of usage
1590 or “direct user” payments, subject to any applicable legal or regulatory restrictions.

1591 (b) Payments from the contracting authority to the private partner, such as
1592 availability payments, other performance-based payments, shadow tolls, capacity payments,
1593 off-take payments, subsidies, and other forms of regular or periodic payment or “revenue
1594 stream”, subject to any applicable legal or regulatory restrictions.

1595 (c) Any other legally available and permissible forms and types of payment.

1596 The PPP contract may provide as appropriate for the methods and formulas for the
1597 establishment and adjustment of any such payments.

1598 2. **Payments to contracting authority.** The PPP contract may also provide that the
1599 private partner shall make certain payments to the contracting authority, such as PPP fees,
1600 rents, royalty payments, revenue, or profit shares, whether lump-sum or periodic, or such other
1601 form of payment consistent with Applicable law as may be agreed by the parties to the PPP
1602 contract.

1603 3. **Combinations of Payment.** The PPP contract may provide for a combination of any
1604 of the types or forms of payment referred to above.

1605 **Article 28. Liability of Parties to the PPP Contract**

- 1606 1. **General.** The parties to the PPP contract shall have such liability for any breach of its
 1607 provisions and be subject to such remedies (including damages and penalties) as may
 1608 be provided for under its terms and/ or Applicable law.
- 1609 2. **Sub-Contracts.** The private partner shall be entitled to sub-contract, sub-lease, or
 1610 sub-license its rights and obligations under the PPP contract to third parties in
 1611 accordance with the terms of the contract and shall have such liability for the acts and
 1612 omissions of any such third parties as may be provided thereunder.

1613 **Article 29. Step-in Rights and Substitution of Parties to the PPP**
 1614 **Contract**

- 1615 1. **Step-In Rights Permitted.** The parties to the PPP contract shall be entitled to include
 1616 provisions in the contract and/or any related documents (including in a “direct agreement”
 1617 with the lenders) which allow the contracting authority and/or the lenders, in specifically-
 1618 defined circumstances and subject to Applicable law, temporarily to take over and manage,
 1619 in whole or part, the operation of the facility and/or provision of the services comprised in the
 1620 PPP project (“step-in rights”) during the term of the PPP contract, to ensure their continued
 1621 operation and/or provision, and the effective functioning of the PPP project, subject to the
 1622 agreed conditions and procedures. Such conditions and procedures may (inter alia) require the
 1623 parties to take all reasonable care to exercise any step-in rights in such a way as to avoid or
 1624 minimise any material adverse impact on the provision of any relevant public services to end
 1625 users or their use of any relevant public infrastructure.
- 1626 2. **Lenders’ Associated Rights.** It is acknowledged that the lenders’ step-in rights under
 1627 their direct agreement may include:
- 1628 (a) The right to prevent any threatened termination of the PPP contract by the
 1629 contracting authority from proceeding for specified periods of time and subject to specified
 1630 conditions;
- 1631 (b) The right to substitute the private partner, in whole or part, temporarily with
 1632 another legal person, who shall be entitled to exercise the rights and obliged to perform the
 1633 duties of the private partner under the PPP contract for a period of time, without transferring
 1634 the PPP contract to another party;
- 1635 (c) The right to replace the private partner altogether with another private partner
 1636 on behalf of the lenders for the duration of the PPP contract term, and to transfer the PPP
 1637 contract (and all the rights and obligations thereunder) to it; and/or
- 1638 (d) The right to be paid termination compensation payments directly from the
 1639 contracting authority in satisfaction of amounts owing to them in relation to the PPP project.
- 1640 3. **No Further Tender.** It shall not be necessary for the contracting authority to hold any
 1641 further public tender where any such step-in or substitution rights are exercised, provided that
 1642 the relevant requirements and procedures are complied with.

1643 **Chapter VI. Support, Protections and Guarantees**

1644 **Article 30. Protection of Parties’ Interests under the PPP Contract:**
 1645 **Miscellaneous**

- 1646 1. **Exclusivity.** The contracting authority may grant the private partner exclusive rights
 1647 to perform the activities specified in the PPP contract (subject always to Applicable law), in
 1648 order to strengthen the technical, financial, and/or economic viability of the PPP project and
 1649 facilitate the achievement of its objectives, including the public benefits envisaged for it.
- 1650 2. **Licences and Permits.** The private partner shall have primary responsibility for
 1651 obtaining and maintaining the necessary licences and permits for the PPP relating to its own

1652 activities, in accordance with Applicable law. The contracting authority shall provide all
1653 appropriate assistance to the private partner in connection therewith, including assistance with
1654 coordinating and facilitating their application and grant, and shall obtain or provide any
1655 relevant licences or permits in accordance with their terms for which it is itself responsible.

1656 3. **No Undue Interference.** The contracting authority shall not take any steps or
1657 measures which would have the effect of unduly interfering with, obstructing or prejudicing
1658 the private partner's freedom to control and manage the assets and activities comprised in the
1659 PPP project and to exercise its rights and perform its obligations thereunder, including its
1660 rights to receive and enjoy the revenues and returns on investment properly derived therefrom,
1661 save only as permitted by the express terms of the PPP contract and/or Applicable law.

1662 4. **Adequate Returns from Payments.** The parties to the PPP contract shall be entitled
1663 to agree on and include such payment terms, and such mechanisms for revising and adjusting
1664 them from time to time, as can be reasonably expected to provide adequate compensation and
1665 returns to the private partner (and its investors and lenders) for its (and their) costs, expenses,
1666 investments and commitments in connection with the implementation of the PPP project,
1667 based upon the efficient performance of the private partner in accordance with the contract's
1668 terms.

1669 5. **Exceptional Events.** PPP contract may also contain such provisions as the parties
1670 thereto may agree identifying or listing certain types of "special event", including changes in
1671 law, *force majeure*, or other exceptional events, which may trigger certain consequences
1672 under the contract designed to protect the party affected by such event and compensate it for
1673 the costs or losses sustained as a result, including financial or economic costs or losses, such
1674 as:

1675 (a) Relief from liability of a party prevented from performing its obligations under
1676 the agreement.

1677 (b) Amendments to the terms of the PPP contract, including (by way of
1678 illustration) amendments changing the scope of work, the time for performance, applicable
1679 standards or the contract's duration.

1680 (c) Adjustments to charging and payment rates, amounts, and levels.

1681 (d) Obligations to provide financial compensation.

1682 (e) Unilateral rights of early termination of the PPP contract and the payment of
1683 related compensation.

1684 6. **Essential Shareholders.** Except as otherwise provided in the PPP contract (but
1685 subject always to the PPP regulations), a controlling interest in the private partner or the
1686 interest of a shareholder whose participation therein is reasonably deemed to be essential for
1687 the successful implementation of the PPP project, may not be transferred to third parties
1688 without the consent of the contracting authority. The PPP contract shall set forth the
1689 conditions under which the consent and approval of the contracting authority may be given.

1690 **Article 31. Government and Public Support for PPPs**

1691 1. **General and Specific Forms of Support.** The contracting authority and/or the
1692 Government shall be entitled to provide, contribute, or make available to or for the benefit of
1693 any PPP such forms and means of public support, assets and/or commercial or financial
1694 commitments, as may either be generally permitted or available under applicable law and/or
1695 as the PPP regulations may specifically provide for from time to time, such as:

1696 (a) Any of the forms of payment provided for in this law.

1697 (b) Construction and/or operational grants.

1698 (c) Subsidies.

1699 (d) Contributions of physical assets and property.

1700 (e) Guarantees and incentives, including guarantees of PPP revenues, whether
1701 from end users, off-takers or otherwise.

1702 (f) Guarantees of minimum quantities of off-take or consumption by the
1703 contracting authority.

1704 (g) State or municipal financial guarantees.

1705 (h) Loans and other forms of funding or investment.

1706 (i) Compensation or direct responsibility for certain types of costs and risks.

1707 (j) Tax and customs benefits and exemptions.

1708 (k) Other guarantees and/or indemnities and/or incentives.

1709 2. **Support to be Compliant.** Any such support, assets and/or commitments must be
1710 consistent with the appraisal and approval criteria applied under Article 12, the
1711 implementation resolution, and the tender documents for the PPP project for which they are
1712 to be used. The terms and conditions applicable to any such support, assets and/or
1713 commitments shall be set out in the PPP contract (and/or in any related agreement).

1714 **Article 32. Protection of Public Service Provision and Contract** 1715 **Equilibrium in Concessions**

1716 *A Concession shall be based on a series of contractual clauses and underlying legal*
1717 *requirements that are designed where necessary to maintain a fair equilibrium between the*
1718 *respective rights and obligations of the parties under the concession contract throughout the*
1719 *life of the project.*

1720 1. **Conditions for the operation of Concessions.**

1721 (a) Equality of treatment for the users, continuity of the public service, and-if
1722 justified by the public interest-the adaptability of the public service to the needs of the project
1723 and users over time may be provided for as appropriate in the contract. More particularly:
1724

1725 (i.) **Equality of treatment.** All users of the service in equivalent
1726 circumstances should be offered the same service on the same basis and
1727 for the same price without discrimination.

1728 (ii.) **Continuity.** The private partner should ensure the continuous delivery of
1729 the public service in accordance with the applicable performance
1730 parameters, save only where exceptional circumstances specified in the
1731 contract (such as force majeure) permit otherwise. A failure to do so may
1732 give rise to contractual and/or statutory remedies, including a right of the
1733 contracting authority temporarily to step in and take over the operation of
1734 the facility in order to ensure such delivery.

1735 (iii.) **Adaptability.** The private partner may be given certain obligations in the
1736 contract to change and adapt the public services as necessary in response
1737 to changing public needs during the term of the project, and/or to make
1738 proposals for the same to the contracting authority for its consideration.
1739 The terms of the contract may entitle the contracting authority, when public
1740 interest justifies it, to impose such unilateral changes and adaptations
1741 unilaterally, but subject to the economic equilibrium safeguards and
1742 mechanisms and other relevant conditions set out in the contract's terms
1743 (such as extensions of deadlines and/or increases in tariffs) and/or
1744 otherwise provided by applicable law.

1745 (b) **General Economic and Financial Provisions and Tariffs in Concessions.**
1746 The Project's economic and financial assumptions, and its investment and service provision
1747 requirements, as reflected in the PPP contract, should be designed in such a way as to make

1748 the PPP project practically, economically, and financially viable (including an appropriate
1749 return for the private partner). More particularly:

1750 (i) **Tariffs and Charges.** Tariffs and charges payable under the contract
1751 should be set, calculated and/or adjusted in such a way as to enable and
1752 facilitate the private partner's performance of its obligations and delivery
1753 of any public services over the life of the project.

1754 (ii) **Monitoring and restoring contractual equilibrium.** Unexpected
1755 changes in economic, political and/or financial circumstances which
1756 adversely impact the economic and financial viability of the Project
1757 (subject to any specified thresholds) may be addressed through
1758 contractual mechanisms which allow the parties to restore the economic
1759 and financial viability of the Project and provide for appropriate
1760 compensation. These events may include certain change in law, changes
1761 in the tax and/or customs regime, unforeseen economic circumstances
1762 that cause hardship, and/or events of force majeure, as the contract may
1763 provide.

1764 (c) **Maintenance programs.** The PPP Project contract may include a
1765 maintenance and monitoring programme with respect to the delivery and operation of the
1766 public service and associated assets, subject to any requisite contracting authority approval.
1767 This may require the private partner to renovate, refurbish, and/or replace the relevant
1768 infrastructure on a multiyear basis with regular programme up-dates.

1769 (d) **Cooperation.** The parties should, based inter alia on the common objective of
1770 satisfying the end users of the service, meet on a regular basis and in a structured manner to
1771 monitor the implementation of the contract and the project's practical, commercial and
1772 financial performance.

1773 (e) **Reversion of the Assets.** In order to ensure the continuity of public services
1774 to the requisite standard on a hand-over of the PPP Project to the contracting authority,
1775 whether at the end of its term or before, a PPP contract-especially one relating to a service-
1776 provision Concession-may need to contain specific provisions relating to:

1777 (i) **Asset Transfer.** The identification of all assets to be transferred to the
1778 contracting authority on a termination or expiry of the contract, including
1779 fixed assets and infrastructure, movable assets, inventory, know-how, IP,
1780 supplies and equipment necessary for the continued delivery of the public
1781 service, and the condition in which such assets must be in (typically good
1782 operating condition, free of defects and of any liens, encumbrances, or
1783 other security). The transfer and/or training of staff may also need to be
1784 provided for. The contract may also distinguish between assets to be
1785 transferred without compensation and others which the contracting
1786 authority has an option to purchase from the private partner.

1787 (ii) **Early Termination.** These provisions may also apply on an early
1788 termination of the contract before the expiry of its term, including where
1789 the contracting authority has a right of "public interest" termination,
1790 exercisable without fault on the part of the private partner.

1791 **Article 33. Protection of Lenders' and Investors' Rights and Interest**

1792 1. **General.** The PPP contract and/or any direct agreement may, for the avoidance of
1793 doubt, provide for such protections for and the rights and powers of the private partner's
1794 lenders and investors as the parties thereto may agree, consistent with Applicable law, as may
1795 be necessary and appropriate to ensure the successful financing of the PPP project.

1796 2. **Direct Agreements Permitted.** Such protections, rights and powers may (*inter alia*)
1797 set out the detailed procedures and conditions applicable to the exercise of any step-in rights
1798 and rights of substitution and/or replacement of the private partner (in accordance with Article

1799 29), together with any other specific entitlements of the lenders permitted thereby (such as
1800 direct payment of termination compensation or insurance proceeds).

1801 3. **Permitted Security.** Subject to any restrictions that may be contained in the PPP
1802 contract, the private partner may grant or create any form of security interest over any of its
1803 assets, rights and interests comprised in or related to the PPP project, which are available
1804 under Applicable law, as may be required to secure any financing needed for the PPP project.
1805 These may include (by way of illustration) property mortgages, security over movable and
1806 immovable property and over tangible and intangible assets, enterprise mortgages, fixed and
1807 floating charges, assignments, pledges of bank accounts, pledges of the proceeds of the PPP
1808 project or of receivables owed to the private partner, and other available forms of security. No
1809 such security may be created over public property, or any other property, asset or rights
1810 needed for the provision of a public service where and to the extent that such security is
1811 prohibited by Applicable law.

1812 4. **Shareholder Security.** The private partner's shareholders and other owners may
1813 grant or create any form of security interest over their shares or ownership interests in the
1814 private partner that may be available under Applicable law.

1815 5. **No Replacement of Private Partner without Consent.** Save as otherwise provided
1816 in paragraphs 3 and 4 above and in Article 29, the rights and obligations of the private partner
1817 under the PPP contract may not (subject to its terms) be assigned and transferred to any third
1818 party in place of the private partner without the contracting authority's consent. The PPP
1819 contract shall set forth the conditions under which such consent and approval may be given,
1820 including valid acceptance by the relevant third party of all obligations transferred to it, their
1821 enforceability against it and evidence of its technical, managerial and financial capability to
1822 perform them. Provided always that no such restriction shall prevent the private partner from
1823 sub-contracting or sub-leasing its rights and obligations under the PPP contract in accordance
1824 with its terms.

1825 **Article 34. Protection of End Users and the General Public**

1826 1. **Detailed PPP Procedures: End Users and the General Public.** Any detailed
1827 procedures specified in the PPP regulations relating to the selection, preparation, appraisal,
1828 procurement and implementation of PPPs shall take due and reasonable account as
1829 appropriate of the legitimate needs and best interests of members of the general public and
1830 end users of the public services to which the relevant PPPs relate and who stand to be affected
1831 by the same.

1832 2. **Grievance Procedures.** Such procedures shall provide as appropriate for the adoption
1833 of suitable mechanisms for lodging formal objections or other complaints or grievances by
1834 members of the general public and end users to or about any aspect of such implementation
1835 by which they may be materially adversely affected, including where appropriate a regulatory
1836 or parliamentary ombudsman procedure. No such mechanisms shall in any manner limit or
1837 prejudice any other rights and remedies available to such members of the general public or
1838 end users under Applicable law in relation to any PPP or its selection, preparation, appraisal,
1839 procurement or implementation. Any such procedures shall take account as appropriate of
1840 such other rights and remedies.

1841 3. **Private Partner's Operational Grievance Mechanism.** Where the PPP project
1842 involves the provision by the private partner of services to the public or the operation
1843 of infrastructure facilities accessible to the public, the contracting authority shall require
1844 the private partner to establish simplified and efficient mechanisms for handling claims
1845 submitted by the members of the public receiving the services or using the
1846 infrastructure facility, as well as other parties affected by the PPP project. The PPP
1847 contract shall provide for any such requirements. The private partner shall maintain
1848 accurate and complete records of the operation of any such mechanisms and the claims
1849 submitted and handled thereunder.

1850 4. **Public Services: Specific Provisions.** Where the PPP project involves the
1851 provision by the private partner of services to the public, the PPP contract shall, if

1852 necessary and as appropriate), set forth the nature and extent of any obligations of the
1853 private partner, over the term of the contract, to ensure:

1854 (a) Any necessary modifications of or adjustments to the services so as to meet
1855 changing demands for them.

1856 (b) The continuity of the services.

1857 (c) The provision of the services under essentially the same conditions for all
1858 users.

1859 (d) The non-discriminatory access, as appropriate, of other service providers to
1860 any public infrastructure network or system operated by the private partner in connection
1861 therewith.

1862 5. **Rules for Use of Infrastructure Facility.** Where the PPP project involves or
1863 relates to the use by third parties or members of the public of an infrastructure facility,
1864 the private partner shall have the right to issue and enforce rules governing such use of
1865 the facility, which shall be subject to any requisite approvals of the contracting
1866 authority or other relevant public authority (such as a regulatory body). The PPP
1867 contract may provide for the making of any such rules and their enforcement.

1868 **Chapter VII. Governing Law and Dispute Resolution**

1869 *PPP contracts are often long term, complex partnerships for the provision of a public service.*
1870 *PPPs should therefore set out clearly the necessary provisions to maintain the contracted*
1871 *public service for the life of the project but include provisions that allow the parties to resolve*
1872 *differences in how the project is to be delivered. In all cases, such provisions should allow*
1873 *for resolution in accordance with any stated objectives or principles of the project, the*
1874 *contractual documentation, and in the spirit of partnering and dispute avoidance where*
1875 *possible.*

1876 **Article 35. Governing Law**

1877 1. **Governing Law of PPP Contract.** The PPP contract shall, subject to Applicable law,
1878 be governed by the system of law chosen by the parties, but subject to a presumption that,
1879 save in exceptional circumstances, the law of [*host country*] shall apply. The law of [*host*
1880 *country*] shall apply where the PPP contract does not provide otherwise.

1881 2. **Governing Law of Other Contracts.** Other contracts and documents entered into in
1882 relation to the PPP project (including any direct agreement) shall be governed by the systems
1883 of law chosen by the parties to them, taking account of any Applicable law requirements.

1884 **Article 36. Dispute Resolution**

1885 1. **Dispute Resolution Mechanisms as agreed.** Any differences or disputes arising out
1886 of the contracts or documents relating to a PPP project shall be resolved or settled through the
1887 mechanisms, processes and procedures agreed by the parties thereto, but subject always to
1888 any specific requirements relating thereto under Applicable law.

1889 2. **Freedom of Choice.** The parties to such contracts and documents may (subject as
1890 aforesaid) freely choose the mechanisms, processes, and procedures for resolving such
1891 differences or disputes, including mediation, binding or non-binding expert appraisal or
1892 determination, national or international commercial arbitration or investment arbitration, and
1893 the procedural rules relating to the same.

1894 3. **Partnering.** The parties may agree on a partnering process to promote the long-term
1895 development and success of the project, which may include (for example):

1896 (a) Meetings organized on a regular basis.

- 1897 (b) Involvement of personnel with the necessary skills, specialisms, and levels of
1898 responsibility for the parties to resolve issues.
- 1899 (c) The establishment of any necessary procedures designed to foster a spirit of
1900 partnership, based on a consensus of the parties.
- 1901 (d) A duty to disclose any potential issues and discuss any actual or potential
1902 disputes during partnering meetings before any other dispute resolution steps may be taken.
- 1903 4. **Dispute Board.** The parties may agree on the establishment of a formal disputes
1904 board to promote the long-term development and success of the project, which may (for
1905 example) bring in outside experts, hold regular meetings and consider issues in dispute and
1906 facilitate their resolution.
- 1907 5. **Mediation.** The parties may agree on the establishment of a mediation process to
1908 promote the long-term development and success of the project, which may include (for
1909 example):
- 1910 (a) An optional or mandatory mediation process that may be invoked before
1911 referring a matter to arbitration.
- 1912 (b) One or more senior or other authoritative experts selected by the parties to
1913 facilitate the mediation.
- 1914 (c) The establishment of any necessary additional procedures by the facilitator(s)
1915 to structure the mediation, including the extent of due process to be used in the proceedings.
- 1916 6. **Arbitration.** The parties may also (but subject always to applicable law) agree on the
1917 use of arbitration, including domestic and/or international arbitration and related mechanisms,
1918 for the final determination/resolution of disputes, *inter alia* to enhance the long-term
1919 development and success of the project and allay any potential concerns (if any) about other
1920 available forms of judicial proceeding, which may include for example) the following:
- 1921 (a) A requirement(s) that disputes first go to a dispute board and/or mediation prior
1922 to arbitration.
- 1923 (b) Three or more arbitrators selected by the parties to conduct the arbitration.
- 1924 (c) The establishment of any necessary additional rules or procedures based on
1925 accepted international arbitration standards.
- 1926 7. **Waiver of Sovereign Immunity.** The contracting authority shall not to be entitled to
1927 any state or sovereign immunity in relation to any differences or disputes under any such
1928 contract or document which it has properly agreed to waive thereunder.

1929 Chapter VIII. Implementation and Monitoring of PPPs

1930 Article 37. Monitoring and Reporting on the Implementation of PPPs

- 1931 1. **Supervision by Contracting Authority.** Subject to the terms of the relevant PPP
1932 contract, the contracting authority shall be entitled to exercise such powers of supervision and
1933 monitoring of any PPP as may be necessary to satisfy itself that it is being implemented in
1934 accordance with its terms, including by means of regular reports, reasonable access to the site
1935 and physical assets comprised in it, access to and copies of any documentation relating to it
1936 and independent audits.
- 1937 2. **Contracting Authority Reports.** Each contracting authority shall prepare regular
1938 reports on the implementation of the PPP projects for which it is responsible, as required by
1939 the PPP regulations or otherwise by the Government from time to time, which shall be made
1940 available to the Government and copied where required to the PPP Unit. Copies of all such
1941 reports shall generally be publicly available.
- 1942 3. **Additional Information.** Each contracting authority shall also provide any additional
1943 specific information to the Government and/or the PPP Unit as it may reasonably require from

1944 time to time in relation to the implementation of any PPPs for which such contracting
1945 authority is responsible.

1946 4. **Contracting Authority Records.** Each contracting authority shall maintain accurate
1947 and complete records in reasonable detail of the procedures followed, decisions made, and
1948 conclusions reached by it in connection with the identification, selection, preparation,
1949 procurement, and implementation of any PPP for which it is responsible.

1950 **Article 38. PPP Database and Register**

1951 1. **PPP System Database.** The Government or the PPP Unit shall maintain a detailed
1952 database covering all PPPs implemented in [*host country*] [after the date of this law],
1953 containing such information as may be required by the PPP regulations. The database shall be
1954 designed to provide a reasonably comprehensive, up-to-date, and clear compendium of
1955 material information about the PPP projects that have been or are being implemented in [*host*
1956 *country*] at any one time.

1957 2. **Database Publicly Available.** The PPP database shall be publicly available, subject
1958 to any applicable confidentiality or non-disclosure restrictions permitted by the PPP
1959 regulations or Applicable law.

1960 **Chapter IX. Transitional and Final Provisions**

1961 **Article 39. Entry into Force**

1962 1. **Effective Date.** This law shall enter into force on [] but shall not (save to the extent
1963 otherwise provided herein, including under paragraph 2 or in the PPP regulations) apply to
1964 any PPPs or equivalent or similar projects implemented, or tenders or similar procedures held
1965 and substantially completed for their award, or agreements or binding commitments entered
1966 into by the contracting authority in relation to them, before that date.

1967 2. **Monitoring Antecedent Projects.** The Government shall be entitled to require that
1968 any existing PPPs (or equivalent or similar projects) implemented before the date of entry into
1969 force of this law become subject to the monitoring and reporting requirements provided for
1970 in Article 36 (but without limiting any rights of cost recovery that the parties to any relevant
1971 agreements may have as a result of meeting any such requirements).

1972 **Article 40. Legislative Acts to be Invalidated upon Entry into Force of** 1973 **this Law**

1974 1. **Invalidation.** The following legislative Acts shall be invalidated upon entry into force
1975 of this law: [*specify*]

1976 2. **Conflict with Antecedent Laws.** In the event of any conflict or inconsistency
1977 between this law and any extant prior laws relating to or applying to PPPs in [*host country*],
1978 the provisions of this law shall prevail (unless specifically provided otherwise).

1979 **Article 41. Consequential Revisions to Existing Legislation**

1980 1. **Disapplication of Specific Laws.** The provisions of the following laws shall not apply
1981 to PPPs awarded or implemented after the date of entry into force of this law pursuant to
1982 Article 38 above, subject to the additional qualifications specified below:

1983 2. [Alternative 1] **Specific Amendments to Existing Laws.** The following amendments
1984 shall be made or be deemed to have been made to the following existing laws and legislative
1985 acts in order to give effect to the provisions of this law: [*specify*]

1986 3. [Alternative 2] **Deadline for Consequential Revisions.** The Government shall,
1987 within a period of [] months from the date of entry into force of this law, amend, modify or

1988 repeal any other applicable laws relating to or affecting PPPs as necessary to bring the same
1989 into conformity with this law.

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[ENACTMENT FORMALITIES TO BE SET OUT BELOW]

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