



**EBONYI STATE GOVERNMENT OF NIGERIA**

## **PUBLIC-PRIVATE PARTNERSHIPS GUIDELINES**

### **Disclosure framework**

**Ebonyi State Office of Public Private Partnership**

December, 2024

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## List of abbreviations

|        |                                                   |
|--------|---------------------------------------------------|
| KPI    | Key Performance Indicators                        |
| PPP    | Public Privat Partnership                         |
| OPPP   | Office of Public Private Partnerships             |
| RFB    | Request for Bids                                  |
| RFQ    | Request for Qualifications                        |
| SPC    | Special Purpose Company                           |
| VfM    | Value for Money                                   |
| EBBPP  | Ebonyi State Bureau of Public Procurement         |
| EBOPPP | Ebonyi State Office of Public Private Partnership |

# **1. Introduction**

## **1.1 Background**

- 1.1.1. *The Ebonyi State Public Private Partnership Law, 2021 established the Office of Public Private Partnership (OPPP) to enhance Infrastructure and service Development and for other Connected Purposes.*
- 1.1.2. The *Guidelines* presented in this document are firmly grounded in the policy and legal framework that has been put in place by the Government for the implementation of PPP projects.

## **1.2 This document**

- 1.2.1. The Ebonyi State Public-Private Partnership Guidelines consist of a Main Document and a set of Annexes.
- 1.2.2. This document presents the disclosure framework. It consists of three sections (in addition to the present introductory section).
  - (a) Section 2 presents overall guidelines for the disclosure of information about PPP projects.
  - (b) Section 3 contains templates for the disclosure of information.
  - (c) Section 4 contains sample contractual clauses to be inserted in the PPP agreement in order to ensure the cooperation of the Private Party in making available disclosure information, while also protecting the Private Party's interests in the confidentiality of some information.

## **2. Disclosure Guidelines**

### **2.1 Introduction**

- 2.1.1. The Government of Ebonyi State seeks to provide accurate and timely information on its activities to the public and other interested parties. This policy reflects the government's initiative to promote an efficient, effective, transparent, and accountable government, and to empower its citizens to scrutinize effectively and participate in government decisions that affect them. This annex sets out guidelines for the disclosure of information in public-private partnerships (PPPs).
- 2.1.2. These guidelines are in line with the government's commitment to achieve the Sustainable Development Goals (SDGs) by 2030. Goal 16 of the SDGs explicitly aims to "build effective, accountable and inclusive institutions at all levels." In addition, transparency and accountability remain key principles in achieving the targets related to income, poverty, water, education, energy, and cities, all of which are directly related to the provision of public services that can be accessed universally. The role of PPPs in the provision of these services will be critical and is acknowledged in Goal 17 of the SDGs, which seeks to "encourage and promote effective public, public-private and civil society partnerships, building on the experience and resourcing strategies of partnerships."
- 2.1.3. The legal framework for PPPs in Ebonyi State is anchored primarily in the Ebonyi State Public Private Partnership Law, 2021. The *Law* states that PPPs shall be governed by principles of transparency, equal access to information, and a level playing field for all bidders. It further states that the Contracting Authority shall be accountable to the users of the infrastructure or service to be provided under a project. The *Law* mandates the Ebonyi State Office of Public Private Partnership to develop open, transparent, efficient, and equitable processes for managing the identification, development, procurement, and implementation of PPPs.
- 2.1.4. The Ebonyi State Office of Public Private Partnership is confident that transparency and accountability are fundamental to fulfilling its PPP development mandate. It also believes that transparency is essential for increasing public awareness about PPPs, and increasing the public dialogue on PPPs, and is critical for enhancing good governance,

accountability, and promoting engagement with stakeholders. This will in turn enable interested members of the public to understand better and engage in informed discussions about PPPs and over all strengthen development outcomes.

2.1.5. Therefore, the Office of Public Private Partnership desires to enhance its PPP frameworks through building systems of transparency and accountability, including processes conducive to disclosure, and embedding disclosure in routine PPP practice.

2.1.6. Since PPP disclosure is an evolving area in Uganda, these Guidelines will be revisited and revised every two to three years, if and as required.

## **2.2 Application**

2.2.1. These Guidelines will apply to all PPP projects initiated under the PPP Law 2021 and any privately initiated PPP projects.

## **2.3 Specific Disclosures**

2.3.1. Specific disclosures will consist of the elements included in paragraphs 2.3.2 to 2.3.12 below and will follow Table1 and the template provided in Section 3. Confidential information as provided under subsection 2.4 will be redacted before publication.

### **2.3.2. Basic project information**

.Basic project information along with estimated dates for key milestones will be provided within some days following the OPPP's registration of the project .Basic project information will include the project name, location, sector, name of sponsoring agency, estimated project value (with breakdown of costs), project need, technical description of assets and services to be provided, estimated demand to be served annually, rationale for selecting the project for development as a PPP (including cost-benefit analysis), projected policy outcomes of the project (including links to the Preliminary Economic Cost-Benefit Analysis report), and name and contact information of the Project Officer in- charge of the project.

- 2.3.3. **Project progress tracking.** Actual dates of achievement of key milestones will be provided within some days of project registration and within some days of each status change.
- 2.3.4. **Project Feasibility Study Report.** The Feasibility Study (including the preliminary environmental and social impact assessment, but with financial models and / or financial information which may have an impact on the ability of the government to negotiate with private parties redacted) will be disclosed before or at the time of publication of the Request for Pre-qualification (RPQ) documents. The complete Feasibility Study will be disclosed within some days of execution of the project agreement (commercial close).
- 2.3.5. **Procurement information.** Dates and summary procurement information (including the Project Information Memorandum) and key documents will be provided during the procurement process. The RFQ list of short-listed bidders, and award will be published immediately after approval of the procuring entity. The full Request for Bids (RFB) and award document will be disclosed publicly within some days of execution of the PPP agreement (commercial close). Where the Contracting Authority uses the restrictive bidding or direct procurement procedures, the Contracting Authority shall also disclose there as ones for doing so.
- 2.3.6. **Project summary.** Summary information on the PPP contract will be provided within some days of execution of the PPP agreement (commercial close). The project summary will include basic information on the PPP agreement, project scope, project value, parties to the PPP agreement, project risk matrix, amount and types of government support provided to the project, information on tariffs and pricing, termination clauses, duration of the contract, hand back provisions, and key performance indicators with target levels.
- 2.3.7. **Project documents.** Key project documents (including the redacted PPP agreement) will be disclosed within some days of execution of the project agreement (commercial close).
- 2.3.8. **Financial information.** Information on the financing structure (equity- debt ratio, debt and equity providers, share capital, shareholders,

ownership, and so forth) of the project will be provided within some days of financial close.

- 2.3.9. **Renegotiations.** Summary information relating to each renegotiation will be published within some days of signature of the renegotiated contract. The redated renegotiated agreement will also be published.
- 2.3.10. **Performance information.** Information on the performance of the private party on key performance indicators against agreed target levels will be published within one year of financial close of the project, with annual updates. Performance information will also include, among others, information on construction milestones, key financial information of the project, and details relating to performance failures. Performance information will be updated annually, consistent with the project's contract management framework. Performance assessments, such as audit reports and/or audited financial statements, extracts from the private party reports (special purpose company self- reporting), and extracts from independent expert reports will be disclosed annually.
- 2.3.11. **Unsolicited proposals.** Basic information related to unsolicited proposals will be disclosed within some days of the Contracting Authority's decision on accepting the proposal. Information on the objective of the proposed project, services to be provided, proposed location, estimated capital cost, name of the proponent, details of the public interest test, or other rationale will be provided for the same, as well as the Project Feasibility Study Report, further procurement, and bidding process details and special conditions and advantages provided to the proponent, if any.
- 2.3.12. **Projects that do not reach financial close.** Where the execution of the project agreement is reached (commercial close) but the project eventually does not reach financial close, a summary explanation of the reasons there of will be provided.

**Table1: Summary of Specific Disclosures**

| NO<br>.                                                                     | DOCUME<br>NT              | CONTENTS                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      | CREATOR               | APPROVER | TIME                                                                                                                                                                    |
|-----------------------------------------------------------------------------|---------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------|----------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <i>Disclosure of information at project initiation, updated there after</i> |                           |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |                       |          |                                                                                                                                                                         |
| 1.                                                                          | Basic project information | <p>Project name</p> <p>Location</p> <p>Sector Sponsoring agency/department</p> <p>Estimated value (with break- down of costs)</p> <p>Project need</p> <p>Projected policy outcomes of the project</p> <p>Description of asset and services to be provided</p> <p>Rationale for selecting the project for development as a PPP (including cost-benefit analysis)</p> <p>Estimated demand to be served annually</p> <p>Links to preliminary cost- benefit analysis</p> <p>For unsolicited proposals, the name of proponent, details of the public interest test, or other rationale will be provided for the same, and special conditions and advantages provided to the proponent, if any.</p> | Contracting Authority | OPPP     | <p>Within some days following the OPPP's approval of the project</p> <p>For unsolicited projects, upon the Contracting Authority's decision to accept the proposal.</p> |

|    |                           |                                                                                                     |                                                                                                                                                                             |                             |                                                                                                                                                                                            |
|----|---------------------------|-----------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 2. | Project progress tracking | A section on the web-based platform that will reflect actual dates of achievement of key milestones | OPPP from registration of PPP project until execution of project agreement (commercial close); Contracting Authority after commencement of operations until end of contract | OPPP/ Contracting Authority | Within some days from project registration; and within some days of each status change.<br><br>For unsolicited projects, upon the Contracting Authority's decision to accept the proposal. |
|----|---------------------------|-----------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

*Disclosure of information during procurement*

|    |                                               |                                                                                                                             |                       |      |                                           |
|----|-----------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------|-----------------------|------|-------------------------------------------|
| 3. | Feasibility Study Report (partially redacted) | Salient information about the project, including the environmental and social impact assessments; financial models redacted | Contracting Authority | OPPP | Before or with the publication of the RPQ |
|----|-----------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------|-----------------------|------|-------------------------------------------|

|    |                              |  |                       |      |                                               |
|----|------------------------------|--|-----------------------|------|-----------------------------------------------|
| 4. | RFQ                          |  | Contracting Authority | OPPP | Following approval for publication of the RFQ |
| 5. | List of short-listed bidders |  | Contracting Authority | OPPP | As soon as short-listed bidders are notified  |

|    |           |  |                       |      |                                                                           |
|----|-----------|--|-----------------------|------|---------------------------------------------------------------------------|
| 6. | Full RFB  |  | Contracting Authority | OPPP | Within some days of execution of the project agreement (commercial close) |
| 7. | Bid award |  | Contracting Authority | OPPP | Following approval for publication                                        |

*Disclosure of information following execution of project agreement (commercial close)*

|    |                 |                                                                                                                                                                                                                                                                                                                          |                       |      |                                                                                                                                   |
|----|-----------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------|------|-----------------------------------------------------------------------------------------------------------------------------------|
| 8. | Project summary | Project scope<br>Parties to the PPP agreement<br>Project risk matrix<br>Government support<br>Project value, tariffs, and pricing<br>Termination clauses<br>Hand back provisions<br>Key performance indicators with agreed target levels<br>Duration of project<br>Implementation structure (SPC and any subcontractors) | Contracting Authority | OPPP | Within some days of execution of the project agreement (commercial close)<br><br>This will apply to unsolicited projects as well. |
|----|-----------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------|------|-----------------------------------------------------------------------------------------------------------------------------------|

| NO  | DOCUME NT                                                           | CONTENTS                                                                                                                                | CREATOR               | APPROVER | TIME                                                                                                                          |
|-----|---------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------|-----------------------|----------|-------------------------------------------------------------------------------------------------------------------------------|
| 9.  | Complete Feasibility Study Report                                   | Salient information about the project                                                                                                   | Contracting Authority | OPPP     | Within some days of execution of project agreement the (commercial close)                                                     |
| 10. | Financial structure of the project                                  | Equity-debt ratio of the project<br>Debt and equity providers<br>Share capital<br>Share- holders with proportion held and voting rights | Contracting Authority | OPPP     | Within some days of financial close<br><br>This will apply to unsolicited projects as well.                                   |
| 11. | Project documents                                                   | Including the following:<br>Redacted PPP agreement<br>VfM report for the project                                                        | Contracting Authority | OPPP     | Within some days of execution of the project agreement (commercial close)<br>This will apply to unsolicited projects as well. |
| 12. | Renegotiations and renegotiated agreements and associated documents | Summary information on each renegotiation<br>Redacted renegotiated clause(s) in the PPP agreement                                       | Contracting Authority | OPPP     | Within some days of signature of the renegotiated contract<br><br>This will apply to unsolicited projects as well.            |

|                                                          |                                                                                                                    |                                                                                                                                                                                                                                                                                                                                                            |                                                                       |      |                                                                                                                    |
|----------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------|------|--------------------------------------------------------------------------------------------------------------------|
| 13.                                                      | Where execution of project agreement (commercial close) takes place but the project does not reach financial close | Summary explanation of why financial close did not take place                                                                                                                                                                                                                                                                                              | Contracting Authority                                                 | OPPP | Within some days of the decision                                                                                   |
| <i>Performance disclosure throughout contract period</i> |                                                                                                                    |                                                                                                                                                                                                                                                                                                                                                            |                                                                       |      |                                                                                                                    |
| 14.                                                      | Performance information                                                                                            | <p>Performance of the private party on key performance indicators against agreed targets (including information on construction milestones, Key financial information, and Information on performance failures, if any)</p> <p>Audit reports</p> <p>Audited financial statements Private party reports</p> <p>Extracts from independent expert reports</p> | <p>Contracting Authority</p> <p>Audit report provided by the OPPP</p> | OPPP | <p>Within one year of financial close, updated annually</p> <p>This will apply to unsolicited projects as well</p> |

*Note:* CA = Contracting Authority; ESIA = Environmental and Social Impact Assessment; PPP = Public-Private Partnership; Office Of Public Private Partnership (OPPP); RFB=RequestforBids; RFQ=Request for Qualifications; SPC= special purpose company; VfM=value formoney.

## **2.4 Confidential Information**

- 2.4.1. Section 58 (4) of the EBPPRM Law, 2020 provides that the procuring entity shall treat all proposals and any negotiations on selection procedure as confidential and avoid the disclosure of their contents to competing consultants.
- 2.4.2. Section 68 (7)(c) of the EBPPRM Law 2020 provides that All public officers shall handle public procurement and disposal of assets by receiving strict confidentiality until the completion of a contract.
- 2.4.3. For the purposes of this Framework, the following elements will be considered as confidential. However, these elements will be reviewed and updated every two to three years.
  - (a) Bids or proposals submitted by bidders
  - (b) Trade secrets and any other proprietary information protected by law
  - (c) Technology relating to the security of the state.

## **2.5 Method of Disclosure**

- 2.5.1. All information and documents will be published on a web-based platform owned and administered by the OPMP, and any other media platforms as identified in the Law. To ensure wider public engagement, the Ebonyi State Bureau of Public Procurement will make efforts to disseminate summarized and simplified project information in local languages using offline methods such as posters.

## **2.6 Responsibilities for Disclosure**

- 2.6.1. The onus for information collection, generation, and data entry onto the web-based platform will be on the Contracting Authority and the OPMP. The responsibility for approving and publishing information lies with the OPMP, inline with Table 1.
- 2.6.2. The Contracting Authority will carry out data entry of all information and documents on the web-based platform so as to leave at least seven days within the given time lines for the OPMP to validate, approve and publish the information.

## **2.7 Approval of Information for Publication**

- 2.7.1. All information shall be approved by the Director of the EBPPA or any official designated by him/her for publication.

## **2.8 Standard Contractual Clauses**

- 2.8.1. A section/chapter entitled “Transparency and Information Disclosure” will be included in all draft contractual documentation included in the RFB and in all PPP agreements to be signed by the contracting authorities, at the national and country government levels.
- 2.8.2. The section/chapter mentioned in 2.8.1. above will contain clauses pertaining to the proactive disclosures to be carried out by the public entity, including disclosure of summary project and contract information, project documents, procurement information including procurement documents, and ongoing performance information disclosure.
- 2.8.3. The section/chapter mentioned in 2.8.1. above will also contain the obligation of the private entity to provide documents and information as and when required and in the format required by the public entity as part of its sanctionable service obligations should there be a failure to provide information on the part of the private party.
- 2.8.4. The section/chapter mentioned in 2.8.1 will include a subsection dealing with confidential information and will list the items of confidential information in a schedule along with the date up to which the information will be considered confidential, where applicable.
- 2.8.5. The contract will be structured in a way such that confidential information can be easily removed before publication of the project agreement.
- 2.8.6. Sample disclosure clauses for use in all draft project documents included in the RFB and in all project agreements are provided in Section 4 and its schedules.

## **3. Template for Disclosure**

### **3.1 Disclosure during the project identification, development, and procurement stages**

#### **BASIC PROJECT INFORMATION**

(disclosed at the project inception phase within some days following the OPPP's approval of the project)

- Project name
- Location
- Sector
- Sponsoring agency/department
- Estimated project value (with break down of costs)
- Project need
- Projected policy outcomes of the project
- Description of asset and services to be provided
- Rationale for selecting the project for development as a PPP (including cost benefit analysis)
- In case of unsolicited projects, the rationale is the same

#### **ACTUAL PROJECT MILESTONES**

(within some days from project registration; and within some days of each status change; and for unsolicited projects, upon Contracting Authority's decision to accept proposal)

- Project proposal registered
- Project proposal screened
- Project proposal approved
- Project Feasibility Study underdevelopment
- Project Feasibility Study approved
- Request for Qualifications (RFQ)
- Request for Bids (RFB)
- Award
- Execution of project agreement (commercial close)
- Financial close
- Commencement of construction or development
- Completion of construction or development
- Commissioning
- Contract expiry

PROCUREMENT DOCUMENTS

- Feasibility Study Report (*with redacted financial models—before or with the publication of the RPQ; complete— within some days of execution of the project agreement (commercial close)*)
- RFQ(*following approval and publication*)
- Short-listed bidders (*as soon as short-listed bidders are notified*)
- RFB (*within some days of execution of the project agreement (commercial close)*)
- Award (*following approval for publication*)

3.2 Disclosure following signature of contract

PROJECT SUMMARY  
(*within some days of execution of project agreement (commercial close)*)

- Project scope
- Parties to the PPP agreement: name of authority, name of representative, address, telephone, fax, e-mail, private party: name of company or consortium, name of representative, address, telephone, fax, e-mail
- Financial structure (figure showing debt/ equity/ proportion/ providers) (provide link to company registry)
- Links to project documents

| RISK | DESCRIPTION | ALLOCATION |
|------|-------------|------------|
|      |             |            |

RISKS

GOVERNMENTSUPPORT

Guarantees

Grants

Availability/ annuity payment schedule

Land leases, as set transfers

Other support

Revenue share, if any

## TARIFFS

Tariffs and pricing

## TERMINATION PROVISIONS

| PARTY | BRIEF DESCRIPTION OF EVENT OF DEFAULT |
|-------|---------------------------------------|
|-------|---------------------------------------|

## RENEGOTIATIONS

| RENEGOTIATION<br>1 | RENEGOTIATION<br>2 | RENEGOTIATION<br>3 | RENEGOTIATION 4 |
|--------------------|--------------------|--------------------|-----------------|
|                    |                    |                    |                 |

## PERFORMANCE INFORMATION

(within one year of financial close; updated annually)

| KEY<br>PERFORMANCE<br>INDICATORS | Year1                 | Yearn                 |
|----------------------------------|-----------------------|-----------------------|
|                                  | Target<br>Achievement | Target<br>Achievement |
|                                  |                       |                       |

### Performance failures

| YEAR                                       |  |
|--------------------------------------------|--|
| Category of failure                        |  |
| Number of events                           |  |
| Penalty or abatement provided in contract  |  |
| Penalty or abatement imposed               |  |
| Penalty paid or abatement effected: Yes/No |  |

### Performance assessments

Links to audit reports and/ or audited financial statements, extracts of special purpose Company reports, extracts of independent expert reports

## Schedule[]

### *Format for submission of summary project information for disclosure*

#### PPP AGREEMENT INFORMATION

*(submitted within some days of execution of the project agreement (commercial close) and updated at financial close and in case of any change)*

- Public authority: name of authority, name of representative, address, telephone, fax, e-mail
- Private party: name of company or consortium, name of representative, address, tele phone, fax, e-mail
- Financial structure (figure showing debt/equity/proportion/providers) (provide link to company registry) (to be provided within some days of financial close)
- Copies of project documents

#### RISKS

| RISK | DESCRIPTION | ALLOCATION |
|------|-------------|------------|
|      |             |            |

#### GOVERNMENT SUPPORT

##### Guarantees

Grants

##### Availability/annuity payment schedule

Land leases ,asset transfers

##### Other support

Revenue share ,if any

#### TARIFFS

Tariffs and pricing

#### TERMINATION PROVISIONS

| PARTY | BRIEF DESCRIPTION OF EVENT OF DEFAULT |
|-------|---------------------------------------|
|-------|---------------------------------------|

|                |  |
|----------------|--|
| Concessionaire |  |
| Authority      |  |

Hand back terms and conditions

## RENEGOTIATIONS

RENEGOTIATION1   RENEGOTIATION2   RENEGOTIATION3   RENEGOTIATION4

|  |  |  |  |
|--|--|--|--|
|  |  |  |  |
|--|--|--|--|

## Schedule[]

### *Format for submission of performance information for public disclosure*

#### PERFORMANCE INFORMATION

(key performance indicators and target summary to be submitted within some days of financial close and achievement and performance failure information to be updated annually)

| KEY<br>PERFORMANC<br>E<br>INDICATORS | Year1  |                 | Yearn  |             |
|--------------------------------------|--------|-----------------|--------|-------------|
|                                      | Target | Achieveme<br>nt | Target | Achievement |
|                                      |        |                 |        |             |

|                                            |  |
|--------------------------------------------|--|
| Category of failure                        |  |
| Number of events                           |  |
| Penalty or abatement provided in contract  |  |
| Penalty or abatement imposed               |  |
| Penalty paid or abatement effected: Yes/No |  |

**Performance assessments** Extracts of special purpose company reports

## Schedule[]

### *Payment deductions for non compliance with the obligation to provide information*

| Period of delay in compliance | Payment deduction |
|-------------------------------|-------------------|
|                               |                   |
|                               |                   |
|                               |                   |

## Schedule[]

### *Confidential information*

| Clauses/schedules | Period for which information will remain confidential |
|-------------------|-------------------------------------------------------|
|-------------------|-------------------------------------------------------|

|  |  |
|--|--|
|  |  |
|  |  |
|  |  |

## 4. Sample Contractual Clauses

### Section [insert number]: DISCLOSURE REREQUIREMENTS

#### *Obligations Regarding Specific Disclosures*

##### 1. Freedom of Information

- 1.1 The [Private Party] acknowledges that the [Contracting Authority] is subject to the requirements of the the Ebonyi State Public Private Partnership law 2021 setting up OPMP and may be titled to disclose certain project-specific information without consulting or obtaining the consent of the [Private Party].
- 1.2 The [Private Party] agrees to facilitate the [Contracting Authority's] compliance with its disclosure requirements under the Freedom of Information Act 2011 and the EBPPPL 2021.
- 1.3 Where the [Contracting Authority] receives a request for information under the Ebonyi State Public Private Partnership law 2021/regulation setting up OPMP in relation to information that the [Private Party] is holding and which the [Contracting Authority] does not hold itself, the [Contracting Authority] shall refer to the [Private Party] such request for information that it receives as soon as practicable and in any event within [five] business days of receiving there quest and the [Private Party] shall
  - (a) Provide the [Contracting Authority] with a copy of all such information in the form the [Contracting Authority] requires as soon as practicable and in any event within [ten] business days (or such other period as the [Contracting Authority] acting reasonably may specify) of the [Contracting Authority's] request; and
  - (b) Provide all necessary assistance as reasonably requested by the [Contracting Authority] in connection with any such information to enable the [Contracting Authority] to respond to a request for information within the time for compliance set out in the Freedom of Information Act 2011.
- 1.4 The [Private Party] shall ensure that all information held on behalf of the [Contracting Authority] is retained during the term of this PPP agreement for at least [ ] years after the expiry or termination of the PPP

agreement and shall permit the [Contracting Authority] to inspect such information as requested from time to time.

- 1.5 Where the [Contracting Authority] receives a request for information under the Freedom of Information Act 2011 or the EBPPPL 2021, the [Contracting Authority] shall be responsible for determining at its absolute discretion whether information is exempt from disclosure under the Freedom of Information Act 2011 or the EBPPPL 2021 and for determining what information will be disclosed.

## **2. Public Relations and Publicity**

- 2.1 The [Private Party] shall not by itself, its employees or agents communicate with representatives of the press, television, radio, or other communications media on any matter concerning this PPP agreement without the prior written approval of the [Contracting Authority].
- 2.2 The [Private Party] shall procure that its sub-contractors shall not, communicate with representatives of the press, television, radio or other communications media on any matter concerning this Agreement without the prior written approval of the [Contracting Authority].
- 2.3 The [Private Party] may not represent the views of the [Contracting Authority] on any matter or use the name of the [Contracting Authority] in any written material provided to third parties, without the prior written consent of the [Contracting Authority].

## **3. Publication of PPP Project Information**

- 3.1 The parties agree that the [Contracting Authority], subject to Section 4 (Confidentiality) below, is entitled to disclose as detailed in Schedule [ ] the following information:
  - (a) Procurement documents and information;
  - (b) All project documents, including this PPP agreement and other associated documents (such as the Value for Money report);
  - (c) Summary project information asset out in Schedule [ ] of this PPP agreement;
  - (d) Performance information related to this PPP agreement.
- 3.2 The [Private Party] acknowledges that the [Contracting Authority] will publish the information mentioned in Subsection 3.1 above, subject to

Section 4 (Confidentiality), on a web-based platform owned and administered by the OPPP, and any other media platforms as identified in the Ebonyi State Public Private Partnership Law 2021.

## **4. Confidentiality**

### **Confidential Information**

- 4.1 For the purpose of this PPP agreement, confidential information means,
- (a) The subset of confidential information included in column 1 of Schedule [ ] of this PPP agreement; in each case for the periods specified in column 2 of Schedule [ ].
  - (b) Any other information (however its conveyed or on whatever media it is stored) that may fall under the definition of “confidentiality” under the Ebonyi State Public Private Partnership Law 2021, in particular where the information contains proprietary information, scientific or technical information, or information supplied in confidence by a bidder, all as specified in Ebonyi State Public Private Partnership Law 2021.
- 4.2 Without prejudice to Sections 4.3, the parties shall keep confidential all confidential information received by one party from the other party relating to this PPP agreement and any other project agreements or the PPP project and shall use all reasonable endeavors to prevent their employees and agents from making any disclosure to any person of any such confidential information.

### **Permitted Disclosure**

- 4.3 Confidential information may be disclosed if:
- (a) Disclosure of such confidential information is reasonably required by any person engaged in the performance of its obligations under the PPP agreement for the performance of those obligations;
  - (b) A party can demonstrate that such confidential information is already, or becomes, generally available in the public domain legitimately otherwise than as a breach of this clause;
  - (c) Such disclosure is necessary to enable a determination to be made under clause [insert reference to Dispute Resolution clause] or in connection with a dispute between the [Private Party] and any of its subcontractors;

- (d) Such disclosure is required pursuant to (i) any statutory or legal obligation, (ii) any order of a court of competent jurisdiction, (iii) a parliamentary obligation placed upon the party making the disclosure, (iv) the rules of any regulated stock exchange, or (v) any order from a governmental or regulatory authority concerned;
- (e) The confidential information is already lawfully in the possession of the receiving party, prior to its disclosure by the disclosing party;
- (f) The confidential information is provided to:
  - (i) Each party's own professional advisers or insurance advisers; and/or
  - (ii) The lenders or the lenders' professional advisers or insurance advisers or, where it is proposed that a person should or may provide funds (whether directly or indirectly and whether by loan, equity participation, or otherwise) to the [Private Party] to enable it to carry out its obligations under the PPP agreement, or may wish to acquire shares in the [Private Party] in accordance with the provisions of this PPP agreement to that person or their respective professional advisers, but only to the extent reasonably necessary to enable decision to be taken on the proposal; and/or
  - (iii) International or bilateral financial institutions involved in the PPP project as lenders, political risk insurers, or guarantors;
- (g) The disclosure of such confidential information by the [Contracting Authority] relates to the design, construction, operation, and maintenance of the PPP project and any disclosure of other confidential information as may be reasonably required for the purpose of conducting a due diligence exercise, to any proposed new private partner, its advisers, and lenders, should the [Contracting Authority] decide to retender the PPP agreement or undertake any market testing;
- (h) Such disclosure is required for any registration, filing, or recording of the required permits and property registration in connection with the PPP project;
- (i) The disclosure of confidential information by the [Contracting Authority] to any other relevant authority or the irrespective advisers or to any person engaged in providing services to the [Contracting

Authority] is necessary for any purpose related to or ancillary to the PPP agreement

- (j) Such disclosure is necessary for the purpose of:
  - (i) The financial audit of the [Contracting Authority's] or the [Private Party's] accounts by statutory bodies such as the Office of the Auditor General;
  - (ii) Any examination pursuant to [insert reference to any auditing obligations for public contracts] of the performance audit with which the [Contracting Authority] has used its resources;
  - (iii) Complying with a proper request from either party's insurance adviser or insurer on placing or renewing any insurance policies or in relation to any insurance claimed; or
  - (iv) (Without prejudice to the generality of clause 4.3 (d), compliance with [insert reference to any laws requiring disclosure (for example, environmental laws)]).

4.4 When disclosure is permitted under clauses 4.3(a), (c), (f), (g), and (i) above, the party providing the information shall ensure that the recipient to the information shall be subject to the same obligation of confidentiality as that contained in this PPP agreement. The [Private Party] shall expressly inform any person to whom it discloses any information under this clause of the confidentiality restrictions set out in this clause and shall procure its compliance with the terms of this clause as if it were party to this PPP agreement and the [Private Party] shall be responsible for any breach by any such person of the provision so this clause.

4.5 The provisions of Section 4.3 are not applicable to [insert relevant exceptions for specific project] (for example information related to defense, security and international relations as specified in Section 32 of the Freedom of Information Act 2011).

### **Confidential Information Related to End Users**

4.6 Where the [Private Party], in carrying out its obligations under the PPP agreement, is provided with personal information relating to [end users (for example, road users, patients)], the [Private Party] shall not disclose or make use of any such information otherwise than for the purpose for which it was provided, unless the [Private Party] has obtained the prior written consent

of that [end user] and has obtained the prior written consent of the [Contracting Authority].

- 4.7 No later than [ ] days following termination or expiry of this agreement, the [Private Party] shall ensure that all documents and/or computer records in its possession, custody, or control, which contain personal information relating to [end users], including any documents in the possession, custody, or control of a sub-contractor, are delivered to the [Contracting Authority].

## **5. Reporting Obligations, Provision of Information, and Documents**

### **Obligation to Disclose Information, Documents, and Records upon Request**

- 5.1 (a) The [Private Party] shall provide to the [Contracting Authority] all information, documents, records, and the like in the possession of, or available to, the [Private Party] as may reasonably be requested by the [Contracting Authority] for the purpose of complying with any of its statutory reporting obligations, including but not limited to its reporting obligations under the Ebonyi State Public Private Partnership Law 2021, Ebonyi State Public Procurement and Related Matters Law 2020, Freedom of Information Act 2011, Infrastructure Concession Regulatory Commission Act (ICRCA) 2005, and [ ].
- (b) To this end, the [Private Party] shall ensure that all such information in the possession of any sub-contractor or other counter party to any project agreement shall be available to the [Contracting Authority] and the [Private Party] has included, or shall include, appropriate provisions to this effect in all project agreements.

### **Project Information**

- 5.2 (a) The [Private Party] shall provide to the [Contracting Authority] summary project information as set out in Schedule [ ] of this PPP agreement within [seven] business days after signature of this PPP agreement and an updated version including information on the financial structure as described in Schedule [ ] of this PPP agreement within [seven] business day after [insert definition for financial close].
- (b) In the event of any relevant change of the project information described in Subsection (a), the [Private Party] shall provide to the [Contracting Authority] the updated information and copies of the updated documents [ ] business days after the relevant change has occurred.
- (c) In the event of renegotiation, the [Private Party] shall provide to the

[Contracting Authority] information on the renegotiation as well as copies of the renegotiated PPP agreement within [seven] business days after signature of the renegotiated PPP agreement.

### **Performance Information**

- 5.3 The parties agree that the [Private Party] shall provide to the [Contracting Authority] information relating to performance as set out in Schedule [ ] of this PPP agreement with in one year of [insert definition for financial close]. This will include information on the performance of the private party on key performance indicators against agreed target levels, as well as copies of performance assessments (such as audit reports and/or audited financial statements, extracts from the private party reports (special purpose company self-reporting), and extracts from independent expert reports). This information will be updated annually each year during the term of this PPP agreement on [ ].

### **Calculation of Equity Internal Rate of Return**

- 5.4 The [Private Party] shall provide to the [Contracting Authority] each year during the term of this [Concession Agreement] on [ ] and on [ ] a calculation of the actual equity internal rate of return and any other financial information submitted to any other authority including any regulators.

### **Audited Financial Statements**

- 5.5 The [Private Party] shall provide to the [Contracting Authority] audited financial statements annually and no later than [180] days after the end of the fiscal year of the [Private Party].

### **Enforcement of Reporting and Information Obligations**

- 5.6 The parties agree that the scope of services under this PPP agreement includes obligations of the [Private Party] to provide information as set out in [Section/ Subsection [ ]] of this Agreement to the [Contracting Authority] and that any breach of this obligation shall be a failure in performance of the service triggering deductions in accordance with the payment mechanism as set out in Schedule [ ] of this PPP agreement.

## Schedule I

### *Format for submission of summary project information for disclosure*

PPP Agreement Information (submitted within [seven] business days of execution of the project agreement (commercial close) and updated at financial close and in case of any change)

- Contracting Authority: name of authority, name of representative, address, telephone, fax, e-mail
- Private party: name of company or consortium, name of representative, address, telephone, fax, e-mail
- Project value
- Project scope
- Term
- Key performance indicators with agreed target levels
- Financial structure (figure showing debt/equity/proportion/providers) (provide link to company registry) (to be provided within [seven] business days of financial close)
- Copies of project documents (including the PPP agreement and the value for money report)
- Implementation structure (SPC and any sub-contractors)

## RISKS

| RISK | DESCRIPTION | ALLOCATION |
|------|-------------|------------|
|      |             |            |

## GOVERNMENT SUPPORT

### Guarantees

Grants

### Availability/ annuity payment schedule

Land leases, as set transfers

### Other support

Revenue share, if any

## TARIFFS

Tariffs and pricing

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## **TERMINATION PROVISIONS**

| PARTY          | BRIEF DESCRIPTION OF EVENT OF DEFAULT |
|----------------|---------------------------------------|
| Concessionaire |                                       |
| Authority      |                                       |

Hand back terms and conditions

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## **RENEGOTIATIONS**

**RENEGOTIATION1   RENEGOTIATION2   RENEGOTIATION3   RENEGOTIATION4**

|  |  |  |  |
|--|--|--|--|
|  |  |  |  |
|--|--|--|--|

## Schedule[]

*Format for sub mission of performance information for public disclosure*

PERFORMANCE INFORMATION (key performance indicators and target summary to be submitted within one year of financial close and achievement and performance failure information to be updated annually)

|    |  |  |
|----|--|--|
|    |  |  |
| Pe |  |  |
|    |  |  |

|                                            |  |
|--------------------------------------------|--|
| Category of failure                        |  |
| Number of events                           |  |
| Penalty or abatement provided in contract  |  |
| Penalty or abatement imposed               |  |
| Penalty paid or abatement effected: Yes/No |  |

|                         |                                                                                                                                                                          |
|-------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Performance assessments | Copies of audit reports and/or audited financial statements, extracts from the Private party reports (SPC self-reporting), and extracts from independent expert reports) |
|-------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

## Schedule[]

*Payment deductions for non-compliance with the obligation to provide information*

| Period of delay in compliance | Payment deduction |
|-------------------------------|-------------------|
|                               |                   |
|                               |                   |
|                               |                   |

## Schedule[]

*Confidential information*

| Clauses/schedules | Period for which information will remain confidential |
|-------------------|-------------------------------------------------------|
|                   |                                                       |
|                   |                                                       |
|                   |                                                       |



**Chief Elechi N. Elechi**

Hon. Commissioner

Ministry of Trade and Investment