Fiscal Commitment and Contingent Liability (FCCL) Management Framework for Ekiti State Government

December, 2024

Contents

1.0 Introduction ... 3

2.0 Objectives of the Framework ... 6

3.0 Scope of Framework ... 7

4.0 PPP Priority Sectors ... 8

5.0 PPP Fiscal Liabilities and Risks ... 10

6.0 Legal and Regulatory Framework ... 13

7.0 FCCL Management and PPP Project Lifecycle ... 16

8.0 Institutional Roles and Responsibilities for FCCL Management ... 19

9.0 FCCL Management During Project Development Stage ... 22

10.0 FCCL Management During Project Implementation Governance Framework for the Management of PPP Liabilities including Monitoring, Reporting, Disclosure and Accounting of Government Liabilities. ... 44

11.0 Approval Process and Governance ... 51

12.0 Institutional Responsibilities and Roles for the Management of the FCCLs of PPPs throughout the Project Lifecycle. ... 54

13.0 Conclusion ... 59

APPENDIX A ... 60

Foreword by the Director-General, Ekiti State Development and Investment Promotion Agency (EKDIPA)*

It is with great pride and a sense of responsibility that I present the Fiscal Commitments and Contingent Liabilities (FCCL) Management Framework for Ekiti State. This document represents a critical step in our journey toward strengthening fiscal discipline, enhancing economic stability, and promoting sustainable development through prudent management of public resources.

As Ekiti State continues to embrace Public-Private Partnerships (PPPs) as a key strategy for delivering infrastructure and services, it is imperative that we address the fiscal implications associated with these partnerships. Properly managing fiscal commitments and contingent liabilities is essential not only for safeguarding the financial health of the state but also for building trust among our stakeholders and ensuring that PPP projects deliver maximum benefits to the people.

The FCCL Management Framework provides a comprehensive guide for identifying, assessing, monitoring, and managing fiscal risks associated with PPP projects. It establishes clear processes and tools to ensure that our commitments are well-structured, transparent, and aligned with the overall fiscal sustainability of the state. By proactively addressing these risks, we can mitigate potential adverse impacts on public finances while unlocking the full potential of private sector participation.

This framework reflects Ekiti State's dedication to global best practices in fiscal governance. It demonstrates our commitment to ensuring that PPP projects are not only financially viable but also fiscally responsible. Moreover, it serves as a testament to our resolve to uphold accountability, transparency, and efficiency in all aspects of governance.

I extend my heartfelt appreciation to the team of experts, policymakers, and stakeholders who contributed to the development of this framework. Your efforts have laid the foundation for a robust system that will guide us in managing fiscal commitments effectively and responsibly.

As we move forward, I call on all relevant stakeholders to embrace this framework and work collaboratively to ensure its effective implementation. Together, we can strengthen Ekiti State's fiscal resilience, foster inclusive economic growth, and create a legacy of sustainable development for generations to come.

Director-General
Ekiti State Development and Investment Promotion Agency (EKDIPA)
27th December, 2024

1.0 Introduction

Ekiti State recognizes the significance of Public-Private Partnerships (PPPs) in enhancing the quality, cost-effectiveness, and timely delivery of public infrastructure. As the demand for infrastructure development continues to grow, PPPs present a valuable opportunity to bridge the infrastructure gap by leveraging private sector expertise and investment. Ekiti State acknowledges the critical role of Public-Private Partnerships (PPPs) in enhancing the quality, cost-effectiveness, and timely execution of public infrastructure projects. In light of the increasing demand for infrastructure development, PPPs provide a strategic solution to address the existing infrastructure deficit by capitalizing on the expertise and investment capabilities of the private sector. **Public-private partnerships (PPP)** offer the Ekiti State Government (EKSG) a valuable mechanism for developing infrastructure and delivering essential public services by leveraging private sector expertise, efficiency, and financing. However, PPP arrangements often involve significant fiscal commitments and potential contingent liabilities, which, if not properly managed, could pose financial risks to the state.

The importance of having a robust Fiscal Commitments and Contingent Liabilities (FCCL) Framework cannot be overstated. This framework primarily focuses on managing the long-term fiscal costs associated with Public-Private Partnerships (PPPs), including both direct and contingent liabilities that span the entire lifecycle of a PPP project. The significance of establishing a robust Fiscal Commitments and Contingent Liabilities (FCCL) Framework is paramount. This framework is primarily concerned with the management of long-term fiscal costs associated with Public-Private Partnerships (PPPs), encompassing both direct and contingent

liabilities that persist throughout the entire lifecycle of a PPP project. The Ekiti State Government (EKSG) recognizes the importance of prudent fiscal management to ensure sustainable development and maintain fiscal discipline. **A Fiscal Commitments and Contingent Liabilities (FCCL) Framework** is a primary tool for fiduciary assurance. It is a framework for the public financial management of PPPs and relates to how fiscal commitments arising out of PPPs are measured, valued, controlled, reported, budgeted for, and disclosed. The Framework serves as a comprehensive guideline for identifying, managing, and reporting fiscal commitments and contingent liabilities within the state's financial system. The framework promotes transparency, accountability, and effective risk management, ensuring that fiscal risks do not impair the state's long-term financial health.

A clear understanding of the FCCL associated with public-private partnership (PPP) projects is crucial for policy decisions and sound Public Financial Management (PFM). The Fiscal Commitment and Contingent Liability Framework for PPPs aims to ensure that PPP projects in Ekiti State are economically viable, fiscally sustainable, and managed in a transparent and accountable manner. This framework outlines the procedures for identifying, assessing, managing, and reporting fiscal commitments and contingent liabilities arising from PPP contracts. Ekiti State Government (EKSG) currently has no specific framework for managing fiscal commitments from PPP arraignments. This framework aims to address this gap.

2.0 Objectives of the Framework

i. Prudent Risk Management: To identify, assess, and manage fiscal risks from contingent liabilities that may arise from PPP contracts.

ii. Transparency: To promote clear reporting and full disclosure of the state's fiscal commitments and contingent liabilities to ensure accountability.

iii. Sustainability: To maintain fiscal discipline by ensuring that the state’s commitments under the PPP arrangement and potential obligations do not jeopardize the long-term fiscal stability of the State.

iv. Accountability: To hold relevant agencies and officials accountable for financial decisions and commitments in respect of the PPP contracts.

v. Compliance with Regulations: To align PPP projects with relevant laws, including Nigeria's PPP Regulatory Framework, Ekiti State Laws, Nigeria's Fiscal Responsibility Act and international best practices.

3.0 Scope of Framework

3.1 This framework applies to all PPP projects initiated or entered into by Ekiti State Government, covering the following:

a) Fiscal Commitment: These include the State's financial obligations under PPP contracts, such as direct payments, availability payments, subsidies, or revenue guarantees and any legally bidding expenditure plans.
b) Contingent Liabilities: Potential obligations that may arise under specific conditions in PPP agreements, such as minimum revenue guarantees, compensation payments, or obligations linked to project failure, force majeure, or contract termination.
c) Risk-sharing Arrangements: Any fiscal risks borne by the state, such as cost overruns, demand risks, and operational risks transferred to the private sector.

4.0 PPP Priority Sectors

Ekiti State has several priority sectors for Public-Private Partnership (PPP) initiatives to drive economic growth and development. The key sectors include:

i. Agriculture: The state offers numerous opportunities for PPPs in agribusiness, aiming to enhance productivity and value addition in the agricultural sector.

ii. Infrastructure: This encompasses projects in power, housing, real estate, road, water, transportation, health care facilities, energy, and urban development, focusing on improving the state's physical infrastructure to support economic activities.

iii. Knowledge Economy: PPPs are sought to improve educational facilities and services, enhancing the quality of education and expanding access for residents. It includes Information technology and innovation such as Ekiti Knowledge zone project

iv. Hospitality and Tourism- This sector focuses on the hospitality and tourism industry, which encompasses a wide range of services aimed at providing travellers and guests with quality experiences.

The Ekiti State Government has officially released a comprehensive list of Public-Private Partnership (PPP) projects that focus on some of the priority sectors above. These projects are identified as critical for the development of the State. These PPP Pipeline Projects are designed to be implemented over a minimum period of five years, allowing for a structured and sustained approach to development. These projects are spread across key infrastructure sectors of Ekiti State including:

- Agriculture – 2 projects
- Infrastructure – 7 projects

- Knowledge Economy – 3 projects
- Hospitality and Tourism – 2 projects

The table appendix E presents a snapshot of the current PPP project pipeline in Ekiti State.

5.0 PPP Fiscal Liabilities and Risks

Public-Private Partnerships (PPPs) can provide various qualitative and quantitative benefits; however, they also have fiscal implications that need to be considered. It's important to understand that PPPs are not "cost-free" for governments. While these partnerships are seen as a way to leverage financial resources from the private sector, the government takes on a fiscal commitment throughout the life of the contract as outlined in the PPP agreement.

5.1 Public liabilities under PPP - In a PPP arrangement, the government typically bears some risk, which can result in ongoing fiscal commitments (FC) that can either be **contingent liabilities (CL) or actual direct liabilities**.

i. A **direct liability** refers to a specific and quantifiable commitment to pay or fulfil a funding obligation for a specific feature, phase, or item in a public-private partnership (PPP) project that is essential for its development, operation, or completion. A key characteristic of direct liabilities is that the occurrence of the payment obligation is certain, although there may be some uncertainty regarding the amount. Examples of such direct liabilities include:
    a. Providing the land needed for the project.
    b. Upfront "viability funding gap" payments, where the government contributes capital to ensure that a project, which is economically desirable but commercially unattractive, can move forward.
    c. Annuity or availability payments, in which a regular payment is made throughout the life of the project, contingent upon the availability of the service provided.

ii. **A contingent liability (CL)** is an obligation that arises from a specific, uncertain future event—an event that may or may not happen and is beyond the government's control. For contingent liabilities, the occurrence of the trigger event, the amount owed, and the timing of any payment may all be unknown or impossible to determine definitively. Examples of such liabilities include guarantees related to specific risk factors, such as exchange rates,

inflation, prices, traffic, force majeure, termination payments, and credit guarantees, among others.

Fiscal Commitments are primarily detailed in PPP agreements, but they can also be implicit. For instance, a letter of support may act as a guarantee for stakeholders. Additionally, politically or socially sensitive projects might be assumed to receive government assistance during financial difficulties.

Even though direct liabilities are often considered more predictable than contingent liabilities, there can also be some uncertainty with respect to certain components. For example, the project agreement of a toll road project may include a service payment defined as an annual payment to be made by the government to the concessionaire based on the availability indicators set out in the agreement. This service payment can change due to a change in several factors - inflation, exchange rate, local interest rate, change of scope, increase of road size, and other components – which may lead to change in the amount and/or timing of payments. Hence, direct liabilities can also carry a significant amount of uncertainty.

5.2 Other fiscal risks

Fiscal risks are factors that cause deviations from expected fiscal outcomes, arising from uncertain events or macroeconomic shocks that trigger Contingent Liabilities. These liabilities are considered fiscal risks by definition. Direct liabilities can also be subject to fiscal risks due to uncertain parameters. In the context of PPP agreements, other sources of fiscal risks beyond direct or contingent liabilities should be considered.

Fiscal risks can arise from provisions in PPP agreements controlled by the government, such as project scope changes that impact costs. Additionally, risks may stem from outside liabilities, like a decrease in user-based revenues that affects funding but not the government's fixed obligations to private partners. Uncertainty and unpredictable outcomes complicate the estimation and management of these fiscal costs.

It is important to understand that government commitments to public-private partnerships (PPPs) are fundamentally different from public debt and require a distinct management approach. When a government borrows money, it must utilize those funds effectively and is obligated to repay the debt, regardless of the success of the projects they financed. In contrast, government liabilities associated with PPPs are typically non-recourse or limited recourse. These liabilities are structured as performance-based payments for the services provided, and for the assets or infrastructure that have been developed or made available for use.

6.0 Legal and Regulatory Framework

In Ekiti State, several laws and regulations govern the Public-Private Partnership (PPP) FCCL to ensure transparency and accountability. The relevant laws and regulations relating to the framework in Ekiti State include the following:

i. **Ekiti State Public-Private Partnership Law 2020** - Ekiti State Public-Private Partnership Law 2020 provides the legal foundation for all PPP activities within the state. Section 4 of the law states that "*The Agency may, with the approval of the Governor, make regulations generally for the purpose of this Law and in particular, without prejudice to the generality of the foregoing provisions, make regulations:"* It establishes the regulatory framework for how the government can partner with private entities for the delivery of public infrastructure and services. This law mandates the creation of a PPP Unit or Agency responsible for overseeing and managing PPP projects.

ii. **ii. Ekiti State Fiscal Responsibility Law** – The Law emphasizes the need for prudent management of public finances. The law contains important elements that border on FCCL such as guidance on preparation/adjustment of the Medium-Term Expenditure Framework (MTEF) and the Annual budget in Ekiti State. It also defines the aggregate expenditure ceiling for each financial year. All these have an impact on PPPs. In addition, the law established the Fiscal Responsibility Commission to monitor and enforce its provisions. The FCCL framework will have to comply with the requirements of the MTEF to ensure adherence to the provision of the FRL

iii. **Ekiti State Public Procurement Law 2020** - This law regulates public procurement activities in general. It governs the procurement processes for public projects, including those under PPP arrangements. It ensures that all procurement procedures for PPPs are transparent, competitive, and fair. Part VI-VIII of the State Public Procurement Law correlates with Part IV of the PPP Re-enactment Law. For instance, section 24 of

the Procurement Law is connected with section 14 of the PPP law which applies specifically to procurement of PPPs.

iv. **Ekiti State Freedom of Information Law (FOI Law) 2011** - The Ekiti State FOI Law provides the public with the right to access government-held information, including information related to PPP projects. Section 2 (1) of the Law requested that "subject to the provision of this Law but notwithstanding anything contained in any other Law or Regulation, every citizen of Ekiti State of Nigeria, has a legally enforceable right to, and shall, application be given access to any record under the control of a government or public institution."

v. **Ekiti State Audit Law** - The Audit Law ensures that all financial transactions, including those related to PPP projects, are subject to independent audits. These audits must be published to provide transparency on how public and private funds are being utilized in PPP agreements. This law helps ensure that any discrepancies or inefficiencies in PPP management are detected and addressed transparently.

vi. **Ekiti State Public Finance Management Law 2020**- The law is extensive on public finance management in Ekiti State. section 85 of the Law stated that "*The Commissioner for Finance may make regulations concerning any matter for the purpose of giving effect to the provision of this Law".* This law provides for the control and management of public finances, including those involved in PPP projects. This is to ensure that public resources are used responsibly. Apart from establishing the Debt Management Office, the law also sets out the State's budget process.

vii. **Ekiti State Bonds, Notes, and Other Securities Issuance Law, 2011** - This law empowers the State to establish a Debt Service Fund for the purpose of accumulation of monies to make the required payments and meet obligations on principal and/or interest for all liabilities and debt obligations of the State.

viii. **Ekiti State Debt Management Office Law, 2020** - The law established the Debt Management Office (DMO) to, among

other things, maintain a reliable database of all debt securities, loans, taken or guaranteed by the Government or any of its agencies and all contingent liabilities related to it, and to ensure that charge of grant, guaranteed debt and contingent liabilities are registered and updated regularly. Section 2(l, m) states that the DMo shall

a. prepare a schedule of any other Government obligation such as trade debt and other contingent liabilities and provide advice on policies and procedures for their management;
b. ensure that charge of grant, guarantee debt and contingent liabilities are registered and updated regularly.

The function of the DMO as it stated above will require all PPP projects' liabilities and Fiscal Commitments to be included in the database of the State DMO.

7.0 FCCL Management and PPP Project Lifecycle

7.1 Structure of the FCCL Management

The management of the FCCL is integral to the entire lifecycle of a Public-Private Partnership (PPP) project including PPP development, approval, and implementation processes. The figure 7.1 below describes the PPP Project Planning and Budgeting, Procurement and Approval Process Cycle as contained in the PPP Manual of Ekiti State and the accompanying figure 7.2 delineates the management of the FCCL during the development and implementation phases of a PPP project. The functions to be carried out are contextualized within the broader framework of the PPP project development and implementation process.

Figure 7.1 – PPP Project Planning and Budgeting, Procurement and Approval Process Cycle Lifecycle

Step 1
Identification and screening of PPP projects by EKDIPA

Step 2
Prioritization of PPP projects by EKDIPA and development of PPP Project Pipeline

Step 3
Submission of PPP pipeline by EKDIPA to Ministry of Budget, Economic Planning and Performance Evaluation for fiscal consideration and inclusion in budget consideration

Step 4
Approval of Pipeline by EKDIPA Board

Step 5
Approval of PPP Projects Pipeline by State Executive Council

Step 6
Appointment of Transaction Adviser by EKDIPA

Step 7
Preparation of Outline Business Case by EKDIPA with support from MDA and Transaction Adviser

Step 8
Approval of the Outline Business Case by the EKDIPA Board

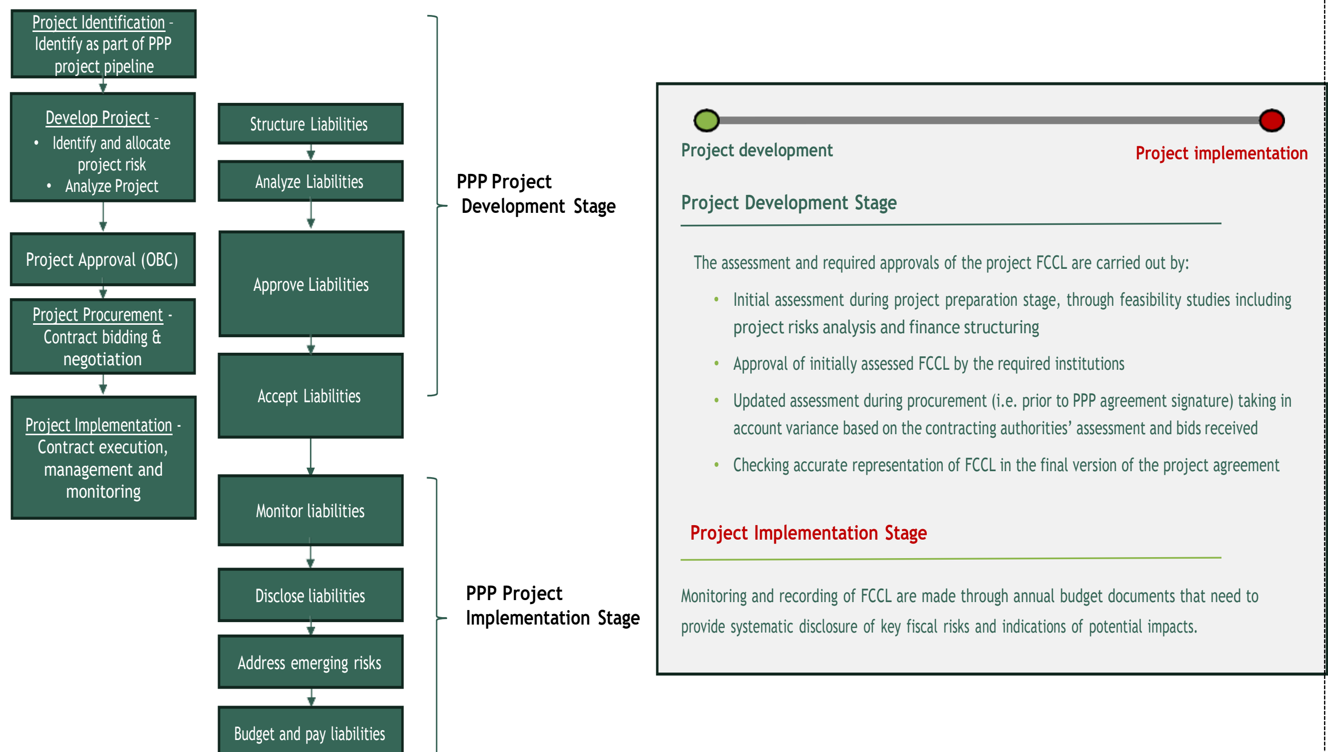
Step 9
Selection of private developer through an open competitive tender process

Step 10
EKDIPA Board approves the FBC and secures approval from ExCo

Step 11

MDA and EKDIPA as witnessing parties to PPP contracts with preferred bidders

Figure 7.2 FCCL Management Across Project Lifecycle



At the project development stage, from project identification up to contract execution, the assessment and required approvals of the project FCCL are carried out by:

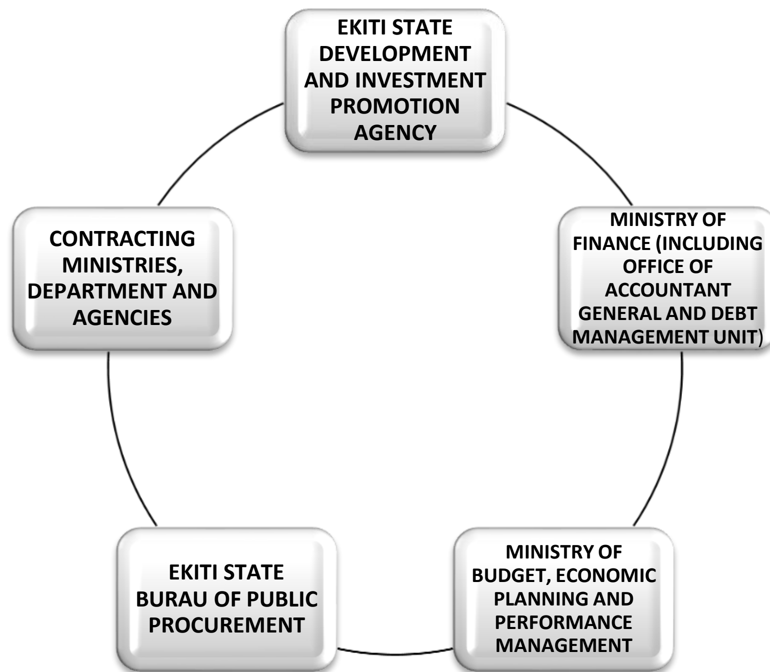
- Initial assessment during the project preparation stage, through feasibility studies including project risk analysis and finance structuring
- Approval of initially assessed FCCL by the required institutions
- Updated assessment during procurement (i.e. before PPP agreement signature) considering variance based on the CA's assessment and bids received from the private partner
- Checking accurate representation of FCCL in the final version of the project agreement

Section 9.0 provides technical guidance on FCCL management during the project development stage.

During the project implementation stage, monitoring and recording of FCCL are made through annual budget documents that need to provide systematic disclosure of key fiscal risks and indications of potential impacts. Section 3.3 provides technical guidance on FCCL monitoring and reporting.

8.0 Institutional Roles and Responsibilities for FCCL Management

8.1. Primary Stakeholders for the FCCL Management in Ekiti State



Ministry of Finance – shall be responsible for fiscal planning, budget preparation, and managing public debt. This ministry leads efforts to ensure prudent fiscal policies and efficient resource allocation. The Ministry of Finance shall also have the following oversight function for the financial management of FCCL in the State:

i. The Debt Management Office under the Ministry of Finance shall maintain a centralized register of Fiscal Contingent and Commitment Liabilities arising from PPP transactions.
ii. The Fiscal Contingent and Commitment Liabilities should require the approval of the Debt Management Office in the State Ministry of Finance before launching the tender process for the PPP by the contracting MDAs

8.2 Institutional Framework for FCCL Management

The Ministry of Finance is primarily responsible for overseeing the FCCL. However, the governance and institutional framework, which includes specific functions necessary for managing direct and contingent liabilities throughout the lifecycle of a PPP project, is a shared responsibility as highlighted in the table below:

Function	Objectives	Role/ Responsibility
Preparing	Develop a bankable project design that aligns government risks with good risk allocation principles, minimizing costs and fiscal impact.	**Contracting Authorities / EKDIPA:** Project feasibility analysis and implementation plans.
Analyzing	To guide decision-making and support monitoring and budgeting for liabilities post-approval.	**Contracting Authorities / KADIPA / Project Delivery Team** Fiscal risk assessments and other tools for analyzing liabilities.
Approving	To ensure government resources (liabilities) are focused on policy priorities, demonstrate value for money, and align with good fiscal management.	**State ExCo** Centralized approval to ensure PPPs align with government priorities, provide value for money, and adhere to good fiscal management. **Ministry of Budget, and Economic Planning, DMO, MoF** Allocated the overall responsibility of approving the FCs and contingent liabilities before submission for approval.
Accepting	To clarify the government's commitment to its liabilities (i.e. financial obligations), and to ensure the executed contract is consistent with earlier analysis and approval	**Contracting Authorities, EKDIPA, DMO, MoF, MoJ:** Involves the government executing formal instruments such as project agreements, issuing letters of support or performance undertakings to guarantee that they will honour its obligations and commitments.
Monitoring	To provide the information needed to disclose, act on emerging issues and, if necessary, budget for liabilities	**Contracting MDA, DMO, MOB, EKDIPA:** To help government track its exposure to fiscal risks from year to year, and improve its ability to act to reduce the cost and/or likelihood of an event triggering a payment.
Budgeting and paying	To ensure resources are available to make payments promptly when required, improving credibility and clarity as to how costs of liabilities will be borne, and mitigating the fiscal impact.	**Contracting MDA, MOB, MoF, DMO:** Establishing a well-defined system for budgeting and paying for liabilities will ensure the government has the resources available to meet its obligations and mitigate the fiscal or budgetary impact of contingent liabilities.

Function	Objectives	Role/ Responsibility
Disclosing	To improve accountability for decision-makers, and increase transparency of the government's commitments to third parties (such as credit agencies and lenders).	**FRC, DMO, EKDIPA, MOB:** Reporting on exposure to liabilities through the budget and government accounts to increase transparency and improve the accuracy and completeness of information available to external parties.
Mitigating	To help reduce the cost to government of bearing contingent liabilities by reducing the likelihood or cost of the occurrence of those liabilities.	**Contracting MDA, MoF, DMO, EKDIPA, MOB, FRC:** Continuous monitoring of exposure to contingent liabilities from PPP projects, and actively managing that exposure where possible, by identifying and acting on emerging issues.

An adequate identification and assessment of FCs and risks during the project development stage will allow the government to be well informed when it makes decisions regarding the financial structure, risk allocation, and approval of the project.

9.0 FCCL Management During Project Development Stage

Guidance for Assessment and Management of Fiscal Commitments and Contingent Liabilities arising from PPP Projects

9.1 Overview

The purpose of the technical guidance is to:

i. Review Risk Develop an analytical process to identify, assess and monitor FCCL during the project life cycle of PPP projects
ii. Detail a methodology for implementing the tools involved in the management of FCCL including tools for the identification and quantification of FCCL.

9.2 Risk Assessment and Management

Risk is a hazard, danger, chance of loss or injury: the degree of probability of loss; a person, thing or factor likely to cause loss or danger. Risk Assessment and Management in Fiscal Commitment and Contingent Liability (FCCL) of Public-Private Partnerships (PPPs) focuses on identifying, analyzing, mitigating, and monitoring financial risks associated with government obligations in PPP projects. Effective FCCL risk management ensures fiscal sustainability while protecting public resources and delivering value for money. See Appendix D for a case example of FCCL risk management.

Risk (expected loss) = (Probability of Adverse event) x (Impact due to event)

9.3 Various Risks over the PPP Project Life Cycle

Public-Private Partnership (PPP) projects entail various risks throughout their life cycle. These risks can be broadly categorized into key stages of a PPP project: Development, Construction, Operations, and

Termination/Transfer. Understanding these risks is essential for effective planning, allocation, and mitigation strategies.

1. Development Stage Risks - this stage involves conceptualizing, planning, and structuring the PPP project. Key risks include:

- Feasibility Risk - the project may not be technically, financially, or environmentally viable.
- Political and Regulatory Risk - changes in government, policies, or regulations may affect the project. Examples include approvals, land acquisition issues, or changes in taxation.
- Demand Risk - overestimating the demand for the services the project will provide, leading to potential revenue shortfalls.
- Financial Risk - difficulty in securing financing or unfavorable financing terms due to market conditions or lack of investor confidence.
- Stakeholder Risk - resistance from stakeholders (e.g., communities, environmental groups, or interest groups) may delay or derail the project.
- Planning and Design Risk - poor or incomplete project design may lead to technical or operational inefficiencies.

2. Construction Stage Risks -this stage involves the actual building of infrastructure and commissioning of the project. Risks include:

- Construction Risk - delays, cost overruns, or substandard quality due to poor management, unexpected site conditions, or contractor inefficiencies.
- Land Acquisition Risk - delays or disputes related to acquiring the necessary land.

- Environmental and Social Risk - environmental harm, non-compliance with regulations, or social resistance (e.g., displacement of communities).
- Resource Risk - shortages or cost increases for materials, equipment, or labour.
- Legal/Contractual Risk - disputes arising from unclear or unfavourable contract terms.

3. Operational Stage Risks

This stage involves the delivery of services or utilities as agreed in the PPP contract. Risks include:

- Demand and Revenue Risk - actual demand for services may fall short of projections, reducing revenue.
- Operational Performance Risk - the private partner may fail to meet performance standards or provide services at agreed levels.
- Market Risk - changes in market conditions (e.g., inflation, interest rates, or currency fluctuations) may affect the project's profitability.
- Maintenance Risk - insufficient maintenance may lead to asset deterioration, reducing service quality or necessitating costly repairs.
- Regulatory Risk - changes in laws, tariffs, or standards may increase costs or reduce revenue.
- Technological Risk - advances in technology may render the project obsolete or less competitive.

4. Termination/Transfer Stage Risks - this stage involves the conclusion of the contract and the transfer of assets to the public sector or another entity. Risks include:

- Residual Value Risk - the asset may not meet the expected value or quality at the end of the contract.
- Handover Risk - challenges in transitioning operations or ownership back to the public sector, including disputes over asset conditions.
- Contract Closure Risk - unresolved disputes or financial issues may delay or complicate contract termination.
- Long-Term Environmental Liability - the public sector may inherit liabilities for environmental damage caused during the project's operation.

5. Cross-Cutting Risks (Applicable across the life cycle)

- Force Majeure Risk - natural disasters, pandemics, or other unforeseen events may disrupt the project.
- Reputational Risk -negative public perception due to project failures, delays, or controversies.
- Corruption and Governance Risk - poor governance or corruption may lead to inefficiencies, cost overruns, or unfair allocation of risks.
- Currency and Exchange Rate Risk - especially significant in PPP projects with foreign financing or revenue tied to foreign exchange.

9.4 Risk Mitigation Strategies

Risk mitigation strategies include action to reduce the likelihood of risk materializing, with whomever the risk resides. It involves the assessment of the consequences to the risk-taking contracting party, it materializes. Some of the risk mitigation strategies include:

i. Risk Elimination: if the risks are too high, should the project be undertaken?
ii. Risk Reduction: e.g. clear specification, quality feasibility studies
iii. Risk Transfer through contracts:
    a. Between government departments and private developers;
    b. Between private developer and sub-contractors, suppliers, insurers, users
iv. Allocating Risk to the Party Best Placed to deal with it
    a. Political force majeure/change in law – Government
    b. Land Acquisition

9.5 Risk Identification and Allocation

Risk allocation is a centrepiece of structuring a PPP agreement. The basic principle is that each risk should be allocated to the party best able to manage it. Risks may be allocated to one party or shared in a specified way. During the preparation of a PPP project, the assessment and allocation of project risks should be completed. The Contracting MDA or EKDIPA should create a risk matrix and a risk register, documenting the evaluation of the likelihood and impact of each risk at the OBC stage. These should be periodically assessed by the Contracting MDA.

Risk Identification involves comprehensive reviews to identify potential fiscal risks in PPP contracts. Contingent and direct liabilities can be identified through the use of the following analytical tools:

- **Risk Registers**
- **Project Fiscal Risk Matrix (PFRM)**

Risk allocation involves the clear allocation of risks between the public (EKSG) and the private partners in the PPP contract. The government can:

- Transfer risks to the private partner where they are better placed to manage them (e.g. construction risk);
- Retain risks that are beyond private control (e.g. political or regulatory risks);
- Avoid assuming excessive contingent liabilities without corresponding mitigation measures.

i. Comprehensive Risk Assessment: For each PPP project, the state will conduct a detailed risk assessment, identifying the types of risks (construction, operational, demand, financial) and the likelihood of their materialization.

ii. Risk Allocation: Risks will be allocated to the party best able to manage them. For instance:
    a. Construction and operational risks: Typically allocated to the private partner.
    b. Political and regulatory risks: Often retained by the state.
    c. Demand risks: Depending on the nature of the project, these could be shared or fully transferred to the private partner.

Evaluating the fiscal implications of a Public-Private Partnership (PPP) agreement requires identifying and allocating project risks, defining the payment mechanism, and determining the financial obligations and rights of all parties involved. In practice, the necessary base information can be found in the risk analysis and risk matrix included in the relevant feasibility studies. For ongoing projects, this information should be derived from a review of project agreements, letters of support, guarantee instruments, and other pertinent project documentation.

PPP project agreements, letters of support and other forms of explicit government support provide the baseline information on FCCL arising from PPP projects. They contain the core financial provisions, namely: the payment mechanism and allow adjustments to availability payments; tariff-based payments; guarantees and trigger conditions; and termination payments.

However, the project documentation may not explicitly contain all risks and therefore their fiscal impact is not fully understood. For instance, a government may take revenue risk and pay the concessionaire an availability payment. In this case, the contract provides the terms of the availability payment yet does not set out the effects of, for instance, real demand falling below expectations. Hence, the risk matrix complements the contract agreement in identifying FCs and fiscal risks.

In addition, fiscal risks may also result from risks not identified or not allocated in the contract. The most obvious is the risk that the private partner does not have the managerial capacity to implement the project or face the stipulated risks, culminating in its bankruptcy and potentially the failure of the project. Project finance solutions, with limited or no

recourse to the assets of the borrower, require a careful assessment of the capital and private-sector guarantees needed for sound project execution to spread the risk among multiple investors, insurers, and diverse financial entities.

Changes to the project and the contract, especially if not triggered by the private partner, can generate a fiscal risk. When negotiating and agreeing to such changes, the private partner always has greater leverage than the CA as the project incumbent. The two most common sources for such changes are as follows:

- Fiscal costs related to changes in scope or policy changes introduced by the government during the term of the contract. Typical examples for this are: (1) transferring some cost overruns to the government when the government asks for changes in project design, or (2) renegotiating the contract when the government decides to change the user-fee structure in response to lower-than-expected demand. It is key to understand the FCCL impact of such government-initiated changes on PPPs and conduct the cost-benefit analysis of initiating such changes in this context.
- Fiscal costs triggered by exogenous changes resulting, for example, from technological improvements, demographic movements, or changes in consumers' preferences. The government must manage the consequences of exogenous changes continuously and proactively to mitigate the impact on projects and provide solutions to challenges.

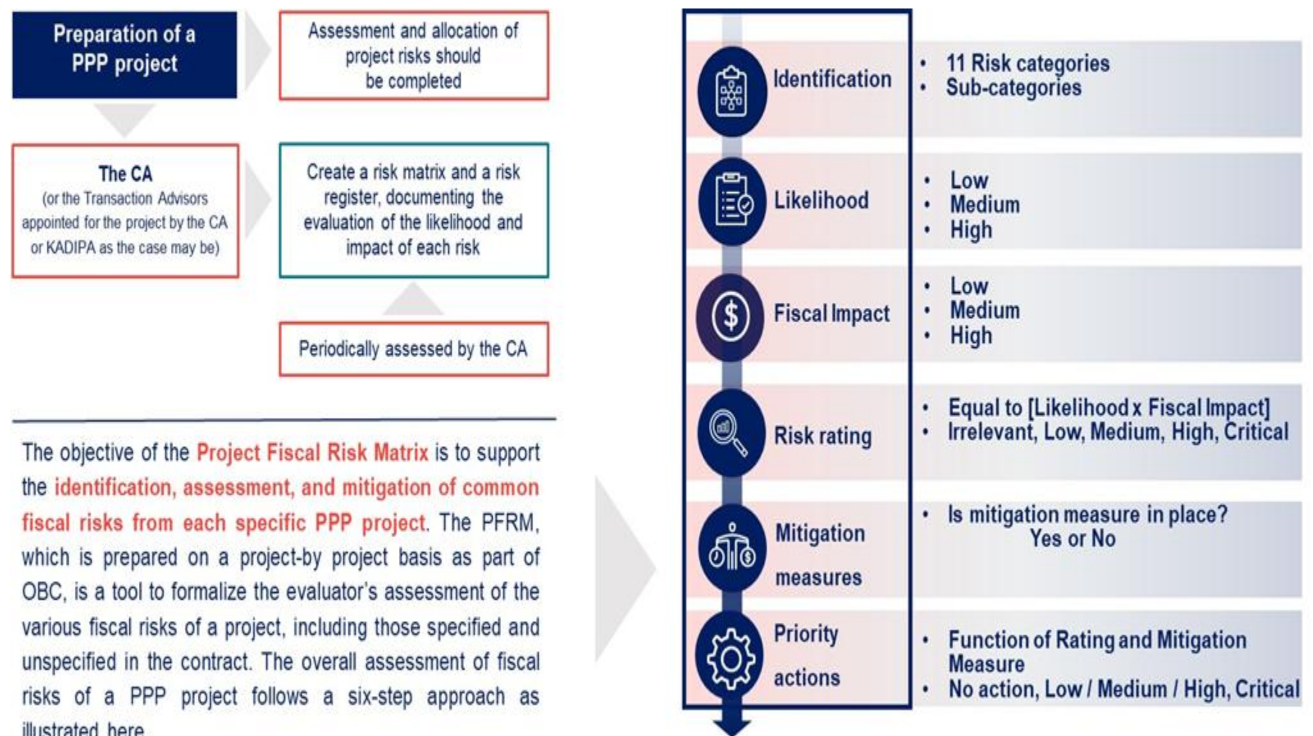
9.5.1 Project Fiscal Risk Matrix (PFRM)

The contracting MDAs make use of the **Project Fiscal Risk Matrix (PFRM)** to create a risk matrix and a risk register, documenting the evaluation of the likelihood and impact of each risk at the OBC stage.

A Project Fiscal Risk Matrix (PFRM) is a tool for identifying, analyzing, allocating, and managing fiscal risks in projects, especially Public-Private Partnerships (PPPs). It offers a clear overview of risks, their likelihood, impact, responsible parties, and mitigation strategies, helping governments maintain fiscal discipline and sustainability by addressing project uncertainties.

The Project Fiscal Risk Matrix (PFRM) aims to identify, assess, and mitigate common fiscal risks associated with specific PPP projects. Prepared individually for each project, the PFRM formalizes the evaluator's assessment of both specified and unspecified fiscal risks. The evaluation follows a structured six-step approach.

Figure 9.5 Assessment of Fiscal Risks



The PFRM should be prepared as per the provisions of this section as part of the OBC preparation under Step 7 as illustrated in the Figure 7.1: PPP Project Planning and Budgeting, Procurement and Approval Process Cycle lifecycle as per PPP Manual.

Six-step Approach to Project Fiscal Risk Matrix (PFRM)

- Identification of Fiscal Risks
- Assessment of Likelihood Risks
- Estimation of Fiscal Impact of Risks
- Determination of Risk Rating
- Risk Mitigation Measures
- Risk Prioritization

a. Identification of Fiscal Risks

The identification of fiscal risks focuses on those risks that may have significant fiscal implications.

In doing so, it looks into both contractual risks and other risks not allocated directly by contract (for example, risks arising from the governance structure, legal framework, or government institutional capacity). It does not assess all of the potential risks that can arise during the project cycle

Based on the World Bank's PPP Fiscal Risk Assessment Model (PFRAM 2.0) instrument, 11 major categories of risks to be captured in the Project Fiscal Risk Register (PFRR). The main risk categories are presented in the table below. A detailed questionnaire for assessment of this risks and sub-risks by the contracting MDA (or evaluator) is attached in Appendix A

Risk Identification Analysis across 11 Major Categories

S/N	Risk Category	Coverage for Analysis
1.	Governance risk	Source of the project, MoFs capacity to manage fiscal risk, transparency in assessment and disclosure of information.
2.	Construction risk	Land, environment, social, licensing, design, =failure, defects in assets transferred to private party, procurement, input costs, exchange rates
3.	Demand (usage risk)	Demand/ volume of service, government's ability to influence demand
4.	Operation and performance risks	Information access, technical innovation, human resources, changes to input costs
5.	Financial risks	Availability of funding, refinancing, interest rate volatility, exchange rates
6.	Force Majeure risk	Additional costs to rectify
7.	Material adverse government action risk	Costs to address risks related to political/institutional action
8.	Change in law risk	Costs of complying with new regulations
9.	Rebalancing financial equilibrium risk	Rebalancing contracts for macro-economic changes
10.	Renegotiation risk	Possibility of renegotiation
11.	Contract termination risk	Triggers and costs of termination

At the early stage of the project design, and when preparing the draft contract, it is recommended that the contracting MDA should:

i. Review the major risk categories

ii. Identify the important fiscal risks from the project that should be covered in the PPP agreement or the legal framework;

iii. Starts establishment of Project Fiscal Risk Register

9.5.2 Project Fiscal Risk Register

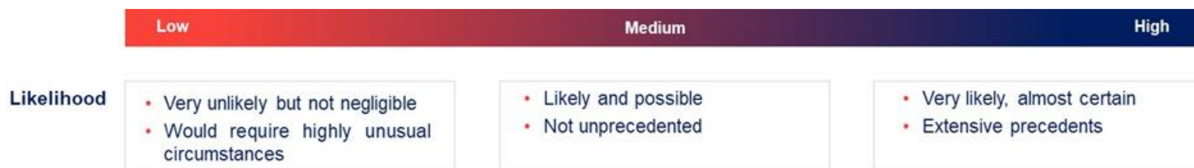
Risk Identification		Allocation	Likelihood	Fiscal Impact		Rating	Mitigation
Category	*Event type*	*Govt/Private/ Shared*	*Probability of occurrence*	*Base Costs*	*Cost of occurrence*		*Measures and costs*
Governance	Risk A						
	Risk B						
Construction	Risk A						
	Risk B						
	Risk C						
Demand	Risk A						
Operation	Risk A						
	Risk B						

Risk allocation is at the heart of PPP structuring. Risks may be allocated to either the Government or the private partner or shared. The more the risk is borne by the private partner, the less its occurrence will impact the Government purse. In its project risk assessment, the evaluating contracting MDA should primarily focus on those borne by the Government or shared.

b. Assessment of Likelihood Risks

Once the relevant risks associated with a Public-Private Partnership (PPP) project have been identified, the evaluator is responsible for conducting a thorough assessment of the likelihood that these risks might materialize over time. By evaluating these factors, the

evaluator clarifies the probability of risks, helping stakeholders make informed decisions about risk management and project planning. Start by categorizing risks as low, medium, or high as described below:



c. Estimation of Fiscal Impact of Risks

This assessment examines the potential fiscal impact of a specific risk in a comprehensive manner from a qualitative standpoint. It aims to provide detailed information to facilitate the evaluation of the risk level, categorizing it as low, medium, or high. For instance, this qualitative assessment could be made by comparison with the State GDP or with the project costs. The fiscal implication of governance risk materializing would be reflected also in terms of the government's loss of reputation, efficiency, availability and transparency. The table below is an illustration of fiscal impact scale rating.

Fiscal impact assessment of identified risks

Scale	Value	Fiscal Impact
Low	< 0,1% of GDP or < 5% of CAPEX	• Impact on government deficit and debt lower than X % of GDP (accumulated construction cost of the asset) • Minimal damage to government's reputation, service availability, and operation
Medium	0,1%-0,2% of GDP or 5%-25% of CAPEX	• Impact on government deficit and debt between X% and Y% of GDP (accumulated construction cost of the asset) • Limited damage to government's reputation, service availability, and operation
High	>0,2% of GDP or >25% of CAPEX	• Impact on government deficit and debt above Y % of GDP (accumulated construction cost of the asset) • Significant damage to government's reputation, service availability, and operation

Source: PFRAM 2.0 User Manual

d. Determination of Risk Rating

The evaluation of overall risk involves a comprehensive analysis of both the qualitative likelihood of an event occurring and its potential fiscal impact. This combined assessment is critical in determining what is often referred to as the *severity of the risk*. To accurately gauge this severity, we compare the likelihood—essentially the probability of the risk materializing—with the fiscal implications that would arise should it occur. This comparative analysis allows us to assign a risk rating, which informs decision-making and prioritization. The specific methodology used in this assessment is illustrated in the table below, highlighting the correlation between likelihood and fiscal impact on the overall risk rating.

Example of heat map based on risk rating

Risk Rating = Likelihood x Fiscal Impact

Fiscal Impact	High	Medium	High	Critical
	Medium	Low	Medium	High
	Low	Irrelevant	Low	Medium
		LOW	MEDIUM	HIGH
			Likelihood	

Source: PFRAM 2.0 User Manual

A risk is considered **critical** if it has both a high likelihood of occurring and a high fiscal impact. A high-risk rating can also be assigned if there is a high likelihood of occurrence with a medium fiscal impact or a medium likelihood of occurrence with a high fiscal impact.

e. Risk Mitigation Measures

Risk mitigation measures are strategies and actions implemented to reduce the potential impact of risks. Mitigation measures for the

40 sub-risks are presented in Appendix A(II). For risks, the severity of which are rated high or critical, mitigation measures should be considered, and associated costs assessed. The following are some suggested type of mitigation measures by Ekiti State Government:

i. Preventive Measures – to limit the possibility of an undesirable outcome. Some examples are – insurance products, risk guarantees (such as those provided by financial institutions to mitigate risk of the public entity failing to perform its financial obligations), financial instruments (to mitigate financial risks such as interest rate, exchange rate, commodity prices) and provisions in such instruments to cap the risks based on a pre-determined threshold on a project-to-project basis
ii. Corrective Measures – to correct undesirable outcomes. For instance, a contingency plan in case of natural disasters, or in case of contract termination.
iii. Detective Measures – to identify instances of undesirable outcomes. Here, we find all monitoring activities and reports. For example, if Ekiti State government provides a termination payment in case of default of the contracting MDA, it shall monitor financial performance and Contracting MDA compliance with its obligations.

f. Risk Prioritization

The table below is an illustration of the assessment of the priority of the require actions to be undertaken based on the risk rating and the mitigation measure.

Priority action = Risk rating x Mitigation measure

Prioritization of risk mitigation measures		Irrelevant	Low	Medium	High	Critical
Mitigation measure	NO	No action	Medium priority	High priority	High Priority	Critical
	YES	No action	Low priority	Medium priority	Medium priority	High priority
		Risk Rating				

Source: PFRAM 2.0 User Manual

The more severe risks (those with a high rating) – should be addressed first. Risk-rated critical, paired with no mitigation measures in place, would result in the need to implement a "critical" priority action; the priority would be considered a "high priority" if mitigation measures exist. Addressing the less important risks, even if they are an easy fix, does not improve the overall risk profile of the project and does not reduce the risk for the government.

For each project, the compilation of the qualitative assessment of the identified fiscal risks constitute the PFRM which will provide a heat map for the monitoring of fiscal risks during the project life cycle. See table below for illustration

Risk identification	Likelihood	Fiscal Impact	Risk Rating likelihood Impact	Mitigation strategy is it in place?	Priority actions	Suggested Mitigation Strategy
Governance Risks	Low	Medium	Low	No	Medium Priority	
Construction Risks	Medium	High	High	Yes	Medium Priority	
Demand Risks	Medium	Low	Low	No	Medium Priority	
Operational and Performance risks	Low	Low	Irrelevant	Yes	No action	
Financial risks	Medium	Medium	Medium	No	High Priority	
Force Majeure	Low	Low	Irrelevant	Yes	No action	
Material adverse government actions	Medium	Medium	Medium	No	High Priority	
Change in law	Medium	High	High	No	Critical	
Rebalancing of financial equilibrium	High	Medium	High	Yes	High Priority	
Renegotiation	High	Low	Medium	Yes	Medium Priority	
Contact termination	Medium	Medium	Medium	Yes	Medium Priority	

Source: PFRAM 2.0 User Manual

The PFRM should be reviewed annually and each time an event changes the project risk profile, and the PFRR be filled in accordingly for all medium, critical and high-priority risks.

FCCL Register and Affordability Analysis

FCCL Register – FCCL comprises direct and contingent financial liabilities. The direct liabilities include upfront payment, VGF, construction or operation subsidies, and availability payments.

The universe of contingent liabilities primarily include:

1) Any guarantee, insurance or financial support provided by the Contracting MDA or any other public entities to ensure either
   a. minimum level of revenues to the private partner: Revenue guarantee, or
   b. the interest, fees or repayment due by the private partner under the terms of the financing products (debt, bonds, guarantees) arranged for the project financing: Debt guarantee
2) Any payment due to the private partner by the Contracting MDA in case of termination of the PPP agreement before its terms: Termination payment. It shall be noted that Termination payment depends upon the cause of early termination, which comprises: private partner default, force majeure, contracting authority default, or termination for convenience.
3) Contingent liabilities arising from the occurrence of other fiscal risks as identified in the PFRR.

Based on the PFRR, the evaluator will quantify the contingent liabilities arising from the occurrence of a fiscal risk identified in the PFRM and analyse the PFRR. This quantitative assessment shall be done in accordance with the priority actions determined on the project heat map and address the risks which have been qualified as critical or requiring high-priority monitoring.

All direct and indirect liabilities shall be consolidated in the following FCCL Register (refer Table below).

Fiscal Commitment	Type of fiscal commitment/Definition	Adjustment factors/Trigger events	Location
Project X			
Payment 1	**Direct** Explain payment concept, periodicity, and form of calculation	Detail adjustment factors and trigger events if apply	Specific location where this information was taken (Feasibility Study, PPP Contract, Letter of Support, etc.) -
Payment 2	**Contingent** Explain payment concept, periodicity, and form of calculation		
Payment 3	-	-	-

Source: CPCS

The FCCL Register contains the type of liability, description of adjustment factors and trigger events, and the location (which will depend on the stage of the project). The Table below provide guidelines on what measures and methodologies to use for the assessment of typical FCCL.

Methodologies for assessment of FCCL

FCCL	Estimate	Function of available information
Direct Liabilities		
Upfront payment	- Annual cost over life of project - Present value of payment stream for the period of agreement	- Base Case
Availability payment		
Availability payment adjusted permanently by macroeconomic parameters		- Scenario analysis - Qualitative analysis of likelihood of reaching trigger values - Probability of occurrence
Availability payment adjusted by contingent events		
Contingent liabilities		
Revenue guarantee	- Estimated annual cost over life of project - Estimated present value of payment stream for the period of agreement	- Scenario analysis - Qualitative analysis of likelihood of reaching trigger values - Probability of occurrence
Debt guarantee		
Guarantee over annual payment by state-owned enterprise, local or subnational government		
Termination payment	- Maximum value	
Other fiscal risks		

FCCL Affordability Assessment - This analysis includes an evaluation of the affordability of the PPP project within the Ekiti State Government's budgetary provision. It considers the available fiscal resources, debt obligations, revenue projections, and the proposed project's impact on the overall financial position. After evaluation of the fiscal risks of the project, the next step is to check if the project is affordable. This should be part of the OBC preparation under Step 7 in the PPP Project Planning and Budgeting, Procurement and Approval Process cycle lifecycle as highlighted in the PPP Manual and Guideline.

There are three common instruments that the contracting MDA can use to check affordability:

a. Comparing Annual Cost Estimate against the project Budget

   This instrument entails that the contracting MDA and Ekiti State Development and Investment Promotion Agency should verify whether the project is aligned with the budget constraints and priorities. The verification of the affordability of the fiscal commitments within the Ekiti State Budget is the primary step under the affordability analysis. This is achieved by assessing if the commitments allow the contracting MDA to achieve their fiscal targets of surplus i.e. does the contracting MDA annual budget allocation accommodate the cost of the fiscal commitment and contingent liability of the PPP project.

   It must be noted that this step needs to be done in line with the overall PPP framework, i.e. verification that the fiscal commitment estimations allow for positive social benefits (pass the cost-benefit

analysis). Also, the affordability analysis must be consistent to the overall liability and fiscal risk management of the P&BC.

b. Assessing the Impact on Debt Sustainability

Fiscal commitments from PPPs are considered debt-like obligations. Hence, the Ekiti State Debt Management Office may consider the consistency of treatment of such obligations within the overall government liabilities and fiscal management framework. PPP commitments could be included in debt measures to determine a project's impact on overall debt sustainability

c. Introducing Limits on PPP Commitments

Ekiti State government can adopt specific limits or thresholds on direct fiscal commitments of PPPs. The objective is to avoid tying up too much of the budget (within s specific sector or at aggregated level) in long-term payments. At this point. However, such limits are usually not needed in the early stages of PPP programs, such as the case of Ekiti State Government. This could be developed later as the magnitude and potential of the program becomes clear.

Affordability Indicators

The proposed affordability indicators in this FCCL Framework is presented below:

FC	Cost	**Indicator of fiscal affordability** (Including projections over PPP contract length-beyond medium-term horizon)
Direct liabilities	- Estimated Annual payments - NPV	- Cost as percentage of ministry or sector agency, and national annual revenue / deficit-surplus budget - Cost as percentage of sub-national public debt - Cost as percentage of GDP
Guarantees	- Estimated annual payment, or expected average payment - NPV (Base/Downside cases)	- Cost as percentage of ministry or sector agency, and national annual revenue / deficit-surplus budget - Cost as percentage of contingency line - Cost as percentage of public debt - Cost as percentage of GDP
Termination payment	- Estimated worst-case payment or expected average payment - NPV	- Cost as percentage of national budget - Cost as percentage of contingency line - Cost as percentage of GDP
Other fiscal risk	- Estimated worst-case payment or expected average payment - NPV (Base/Downside cases)	- Cost as percentage of ministry or sector agency, and national annual revenue / deficit-surplus budget - Cost as percentage of contingency line - Cost as percentage of GDP

10.0FCCL Management During Project Implementation Governance

Framework for the Management of PPP Liabilities including Monitoring, Reporting, Disclosure and Accounting of Government Liabilities.

Effective monitoring, reporting, and disclosure of fiscal commitments and risks will enable the Ekiti State Government to prevent undesirable events. Additionally, it will strengthen the State's ability to mitigate the impact of fiscal risks throughout the lifecycle of Public-Private Partnership (PPP) projects.

10.1 Monitoring of PPP Commitments

Ongoing Monitoring: The Ekiti State Ministry of Finance is committed to regularly and thoroughly monitoring the fiscal commitments associated with Public-Private Partnership (PPP) projects at every stage of their lifecycle. This includes evaluating financial obligations and performance metrics to ensure transparency, accountability, and effective resource management. By maintaining close oversight throughout the planning, implementation, and operational phases of these projects, the Ministry aims to safeguard public funds and enhance the overall impact of PPP initiatives on the state’s economy.

A sample of the monitoring template to be used by the contracting MDA to collect and register relevant information on the PPP project is presented below:

Sample Monitoring Template – Fiscal Commitments and Fiscal Risks

FC	Required information / Periodicity	Entity who must send information	Obligation to submit information set at: (PPP Agreement, Letter of Support, etc.)	Follow-up of mitigation activities of Risk Register
Project X				
Direct Liabilities				
Payment 1	-	-	-	-
Payment 2	-	-	-	-
Contingent Liabilities				
Payment 1	-	-	-	-
Payment 2	-	-	-	-
Other fiscal risks				
Risk A	-	-	-	-

Independent Oversight: External auditors will be engaged to conduct regular audits on the financial performance of PPP contracts to ensure fiscal commitments are within sustainable limits.

10.2 Reporting Obligations

Effective reporting of FCCL in PPP projects is important for public disclosure and transparency. Transparency in reporting and disclosing FCCLs ensures that the public and relevant stakeholders have access to comprehensive information regarding the potential fiscal risks associated with PPP projects. This transparency promotes accountability, enhances public trust, and allows for informed decision-making. Reporting FCCLs will fulfil a crucial governance requirement and will also help maintain credibility and confidence in the PPP framework, fostering a conducive environment for private sector participation. The Ministry of Finance-Ekiti State Debt Management Office in collaboration with EKDIPA will publish an annual report detailing all fiscal commitments and contingent liabilities arising from PPP agreements. This report will include:

- A list of ongoing PPP projects and their fiscal impacts.

- The potential exposure of the state to contingent liabilities.
- Risk mitigation strategies being employed.

The information on the legal framework for disclosure and implications for PPP disclosure in Ekiti State is stated in Appendix B while Appendix C provides a summary of the recommended disclosure for PPP projects in the State.

The Ministry of Finance – DMU will maintain a centralized register of all fiscal commitments related to Public

-Private Partnership (PPP) transactions in Ekiti State. To ensure both internal and external transparency regarding the financial impact of PPPs on the government's fiscal position, fiscal commitments (FCs) will be reported. Additionally, given that FCs may resemble debt obligations and can affect public finances similarly, it is recommended that they undergo the same scrutiny and limitations applied to regular debt obligations.

Contracting MDAs should report suggested information on direct and contingent liabilities for each PPP project using the sample in the table below:

PPP project	Direct liabilities	Annual payments value for 3-year budget			Present value of all payments
		2019	2020	2021	2022
Project 1	- Annuity payment. Indexed quarterly by inflation.				
Project 2	- Annuity payment. Indexed quarterly by inflation.				
PPP project	**Contingent liabilities**	**Estimated annual payments value for 3-year budget**			**Present Value of Maximum exposure**
		2019	2020	2021	2022
Project 1	- Revenue Guarantee				
	- Termination payment In case of default of contracting authority				
Project 2	- Termination payment In case of default of contracting authority				

10.3 Disclosures

All PPP contracts will be publicly disclosed, including any guarantees, subsidies, or contingent liabilities agreed upon. This transparency ensures that fiscal risks are well understood and managed. To ensure transparency and accountability, it is recommended that a comprehensive disclosure of financial information related to Public-Private Partnership (PPP) projects be implemented. Specifically, this should include a detailed breakdown of the stream of annual payments associated with these projects, along with the net present value of all direct liability payments. This information will provide stakeholders with a clearer understanding of the fiscal commitments involved.

Furthermore, it is essential to publish the maximum exposure of contingent liabilities connected with PPP projects. By making this information available, stakeholders can assess the potential financial risks and obligations that may arise from these partnerships, thereby enhancing informed decision-making and public trust.

Specifically, the FRC shall publish information on all FCs and contingent liabilities as may be required under the FRL (and the MTEF).

For public disclosure purposes, it is recommended to disclose the stream of annual payments and net present value of all payments of direct liabilities per project. It is also recommended to publish maximum exposure for those contingent liabilities which probability or occurrence is considered low (such as for instance termination payments). For the case of guarantees, it is recommended either: (1) to disclose the stream

of annual payments and net present value of all payments per project if the information used for its estimation is reliable, or (2) maximum exposure of aggregated payments.

The table below shows a sample of reporting format to present direct and contingent liabilities by project.

Reporting Sample of FCs by project

PPP project	**Direct liabilities**	**Annual payments value for 3-year budget**			**Present value of all payments**
		2019	2020	2021	2022
Project 1	- Annuity payment. Indexed quarterly by inflation.				
Project 2	- Annuity payment. Indexed quarterly by inflation.				
PPP project	**Contingent liabilities**	**Estimated annual payments value for 3-year budget**			**Present Value of Maximum exposure**
		2019	2020	2021	2022
Project 1	- Revenue Guarantee				
	- Termination payment In case of default of contracting authority				
Project 2	- Termination payment In case of default of contracting authority				

It must be noted that estimations of liabilities (Table 3 11) and follow-up activities must be updated in an ongoing basis.

Estimates should be updated at least during the following project milestones:

- Approval of PPP project in the PPP project pipeline by the Executive Council (ExCo)

- Approval of OBC
- Approval of Full Business Case (FBC) by ExCo
- After the financial closure of PPP project
- During construction years (they are the riskiest years) on an annual basis
- During operation (checking on the financial performance of the firm) on an annual basis

10.4 Accounting

Fiscal responsibility is typically evaluated in relation to the government's liabilities and spending. It is important to recognize that proper accounting and reporting address the perception that public-private partnerships (PPPs) can attract immediate private financing without leading to increased government spending and debt. Determining how PPP commitments are to be recognized is important as it defines whether such liabilities count toward debt management limits. International public-sector accounting standards, such as International Public Sector Accounting Standards (IPSAS) 32, and international government financial reporting and statistics guidelines, such as IMF’s GFSM (2014), and IMF’s Guide on Public Sector Debt Statistics (2013) provide a framework for accounting and statistics of PPP transactions.

IPSAS 32 defines when PPP assets and liabilities should be recognized, assuming the government is following accrual accounting standards. Assets and liabilities appear in the government’s balance sheet, if:

ii. the government controls or regulates the services the operators must provide through a PPP agreement, and
iii. the government control any residual interest in the asset at the end of the contract.

Under this framework, the assets provided by the concessionaire are recognized, as well as its correspondent liabilities, either if the assets are funded by users-tariffs or by the government. Regarding contingent liabilities, IPSAS 19 states that the expected cost of a contingent obligation should be recognized only if: (1) it is more likely than not (50%) that the event will occur; and (2) the amount of the obligation can be measured with sufficient reliability.

Based on the understanding that KSMOF is already accustomed to IPSAS, it is recommended that this framework be used for accounting for FCCL.

10.5 External Audit and Legislative Oversight

In order to promote transparency and uphold accountability in financial practices, all fiscal commitments, along with any contingent liabilities, will undergo thorough evaluations through independent external audits. These audits will be conducted by qualified professionals, ensuring an unbiased assessment of the financial activities. Furthermore, the State House of Assembly will assume a pivotal role in overseeing and examining fiscal risk management initiatives. This will involve a comprehensive review of fiscal policies, assessment of risk exposure, and monitoring of financial decisions that could impact the state's economic stability. Through these measures, we aim to strengthen

financial governance and foster public trust in the management of public resources.

11.0 Approval Process and Governance

11.1 Project Approval and Evaluation

i. Pre-Approval Evaluation: Before the formal signing of any Public-Private Partnership (PPP) contract by the Contracting MDA/EKDIPA, the project must undergo a comprehensive evaluation process to ensure its viability and effectiveness. This process includes several key analyses:

   a. Cost-Benefit Analysis: This analysis is critical for determining the project's overall value for money. It involves a detailed comparison of the anticipated benefits of the project against the projected costs, including initial capital outlay, operational expenses, and maintenance costs. The analysis should also account for both quantitative factors, such as financial returns and economic impact, and qualitative factors, such as social and environmental benefits.

   b. Affordability Analysis: This assessment aims to evaluate the long-term fiscal implications of the project on the state's budget. It requires a thorough examination of the projected financial commitments associated with the PPP, including the costs that will be borne by the government over the contract term. Additionally, it assesses the project's alignment with the state's fiscal capacity and priorities, ensuring that it does not compromise financial stability or crowd out other essential public services.

c. Risk Analysis: A comprehensive risk assessment is essential to identify and evaluate all potential contingent liabilities that may arise from the project. This includes examining risks related to project delivery, operational performance, and external factors such as economic fluctuations or changes in regulatory frameworks. The analysis should also consider the allocation of these risks between public and private partners, ensuring that appropriate risk mitigation strategies are established.

This rigorous pre-approval evaluation process is crucial for ensuring that projects are not only financially sound but also aligned with the strategic objectives of the state.

ii. The initiation of the tender process for the Public-Private Partnership (PPP) is contingent upon obtaining the essential approval from the State Ministry of Finance, Ekiti State. The contracting MDA shall obtain the approval through EKDIPA. This authorization is a critical prerequisite, as it guarantees that the project aligns with all relevant financial regulations and guidelines established by the state. The ministry's endorsement serves as a safeguard, ensuring that fiscal responsibilities are thoroughly assessed and adhered to, thereby mitigating potential risks associated with financial mismanagement. Only after this approval is secured can the tendering activities proceed, paving the way for transparent and efficient collaboration between public and private sectors in delivering the proposed project.

Public Participation: In line with transparency principles, key stakeholders, including the public, will have access to non-confidential project information and will be able to participate in discussions on major PPP projects.

11.2 Governance Structure

a. Ekiti State PPP Unit: A specialized PPP Unit within the Ekiti State Development and Investment Promotion Agency (EKDIPA) will be responsible for the management and oversight of PPP projects, ensuring that contracts are in line with the state's fiscal sustainability objectives. This office will be responsible for post-contract monitoring, ensuring that projects deliver the expected public services and fiscal commitments are met.
b. State Executive Council: All major PPP projects and related fiscal commitments will require approval from the State Executive Council, based on recommendations from the State Ministry of Finance and the PPP Unit of EKDIPA.

12.0 Institutional Responsibilities and Roles for the Management of the FCCLs of PPPs throughout the Project Lifecycle.

i. Ekiti State Development and Investment Promotion Agency (EKDIPA): The agency was established by EKDIPA Law 08 of 2019. According to the law, the functions of EKDIPA shall be to:

   a. Manage all enterprise development and job creation initiatives that may be undertaken by the Government.
   b. Advise and assist the government in creating an attractive and competitive climate for business that will lead to robust economic activities in the State;
   c. Monitor the implementation, execution and delivery of projects as contained in agreements between the Government and respective investors;
   d. Enter into and participate as an agent of the Government in any such business, project, transaction negotiations or financial arrangement which the Government desires to enter into or participate in its direct capacity as a State and not through any other statutory corporation;
   e. Act as trustee, hold and dispose of any such property in trust for and on behalf of the Government; however subject to the provisions of the Land Use Act in relation to Land Matters;
   f. Advise and conduct risk or benefit assessment that will assist the Government in decision making and the implementation of all projects and programmes pursuant to the State Investment Promotion Strategy;
   g. EKDIPA may grant a margin of preference in the evaluation of Expression of Interest when comparing from domestic bidders with those from foreign bidders or when comparing

Expression of Interest from domestic suppliers offering services locally with those from foreign suppliers;

h. Assist the State in building capacity for investment project identification, evaluation, planning, execution and management;

i. Source on behalf of the Government, finance for investment from multilateral and bilateral development partners as well as private investors, both domestic and foreign through Public Private Partnerships and other financial arrangements, and where appropriate, act as lead negotiator in transactions with private investors that ensure the needs of the State and those of its citizens are well represented;

j. Advise and assist in the establishment of a framework for monitoring and evaluating the progress of the State's strategic economic investment programmes and projects for effective implementation;

k. Foster sustainable economic growth and create job opportunity for the residents of the State.

l. Establish a framework for identifying and proactively engaging the Federal Government and its Agencies in the investment promotion drive of the State;

m. Publish and periodically revise data and information on the investment status of the State in order to assist prospective investors to evaluate the State's potential as a lucrative investment destination;

n. Convey, assign, surrender and yield up, accept the surrender of, charge, mortgage, demise, reassign, transfer or

otherwise dispose of, or deal with any movable or immovable property vested in EKDIPA;

o. Articulate, clear growth and development strategies for providing needed support and appropriate incentives to grow the local private sector and enlarge the economic base of the State in line with the priorities of the State;

p. Based on the State's resources focused on the approved EKDIPA strategy, identify and document available land for agricultural, housing, commercial, industrial and other uses so that it can be speedily made available to qualified investors in a manner that protects the rights of all stakeholders (land owners, occupiers, communities) and provides opportunities for optimal land use for investment and job creation;

q. Advise and assist the government in developing and maintaining a comprehensive and reliable database on investment opportunities for effective planning especially in areas where the State has demonstrable comparative and competitive advantages;

r. Develop a database of reputable prospective and potential investors both in Nigeria and abroad with a view to reaching out to them when opportunities arise;

s. Plan well-researched investment promotion activities including tours and road shows aimed at promoting specific investment projects in areas where the State has demonstrable comparative and competitive advantages;

t. Act as the State's lead negotiator for all Public Private Partnership models including Build Operate-Transfer, Concession, Privatization Transactions etc. even when they are identified and/or project managed by other Ministries, Departments and Agencies;
u. Act as a one-stop resource and coordination centre for all investment-related activities;
v. Take over existing State projects, structures and outfits which fall within mandate; and even where they are identified and/or project managed by other Ministries, Departments and Agencies;
w. The Agency shall be in charge of all Ease of Doing Business Initiative in the State;
x. Perform such other functions as the Governor may from time to time direct or as may be deemed necessary to achieve its primary purpose under this Law.

ii. Ministry of Finance: In line with the provisions of section 2 of Ekiti State Debt Management Office Law no 14 of 2020, The Debt Management Unit under the State Ministry of Finance shall perform the following related responsibilities for project FCCLs:
a. Maintain a reliable database of all debt securities, loans taken or guaranteed by the Government or any of its agencies and all contingent liabilities related to it;
b. Prepare and implement a plan for the efficient management of the State's debt obligations, sustainable levels compatible with desired economic activities for growth and

development; and participate in negotiation aimed at realizing those objectives;

c. Verify and service debt guaranteed or taken directly by the Government;
d. Prepare a schedule of any other Government obligation such as trade debt and other contingent liabilities and provide advice on policies and procedures for their management;
e. Ensure that charge of grant, guaranteed debt and contingent liabilities are registered and updated regularly.

Consequently, the Ministry of Finance shall be responsible for overall coordination of the framework, managing the risk register, and reporting to the government and the public. The Debt Management Unit in the State Ministry of Finance shall

iii. The Contracting MDAs: This is the implementing ministry, department or agency. The roles and responsibilities of the contracting MDA on the FCCLs of the PPPs are:

a. To identify, conceptualize, develop and procure PPP transactions;
b. Undertake feasibility study for the PPP project
c. Continuous monitoring and implementation of the PPP project.

iv. Ekiti State Internal Revenue Service (EKIRS): To support revenue mobilization efforts that enhance the state's capacity to meet its fiscal commitments.

13.0 Conclusion

The Fiscal Commitment and Contingent Liability Framework for Ekiti State is an essential tool for ensuring the long-term financial sustainability of the state. By identifying and managing risks proactively, Ekiti State can secure its fiscal health, maintain service delivery, and ensure that public resources are used efficiently and effectively. The state government is committed to implementing this framework as part of its broader strategy for good governance, transparency, and fiscal responsibility.

The Fiscal Commitment and Contingent Liability Framework for PPPs in Ekiti State ensures that the government can pursue infrastructure development and public service delivery through PPPs without exposing the state to unsustainable fiscal risks. By proactively managing both explicit and implicit liabilities, Ekiti State will continue to benefit from private sector participation while maintaining fiscal prudence, transparency, and long-term sustainability.

APPENDIX A

I. Risk Categories

S/N	MAIN RISK CATEGORY	NUMBER OF RISKS SUBCATEGORIES
1	Governance Risks	3 detailed risks
2	Construction Risks	11 detailed risks
3	Demand Risks	7 detailed risks
4	Operational & Performance Risks	6 detailed risks
5	Financial Risks	4 detailed risks
6	Force Majeure Risks	No Subcategories
7	Material Adverse Government Actions	No subcategories
8	Change in Law	No subcategories
9	Rebalancing of Financial Equilibrium	3 detailed risks
10	Renegotiation Risks	No subcategories
11	Contract Termination Risks	2 detailed risks

II. PFRAM Risks and Mitigation Measures

PFRAM 2.0 User Manual proposes the following list of risks and associated potential mitigation measures to be considered when establishing the Project Risk Matrix:

i. Governance Risks

Risk 1. If the Public Investment Management (PIM) framework is not strong enough to guarantee that only priority projects are selected, a non-priority project might be implemented and absorb public resources, crowding out priority projects and leading to efficiency losses. To mitigate this risk, the public investment management framework should to be reinforced.

Risk 2. If the Ministry of Finance (MOF) is not able to effectively manage fiscal risks arising from this project, the risks might be amplified, and the probability and impact of other fiscal risks may be higher than they would be with adequate experience and capacity. To mitigate this risk, capacity in the fiscal risk management team in the MOF/Budgetary authority should be strengthened.

Risk 3. If project and contract information is not disclosed adequately, public concerns regarding the governance of the project/contract may arise, preventing users from acting as independent auditors of the project and/or exerting pressure to change the project. To mitigate this risk, the government should put in place a strong communication strategy engaging stakeholders and creating ownership of the project, together with clear and standardized disclosure procedures for project information and, ultimately, contract disclosure.

ii. Construction Risks

Risk 4. Risks related to land availability

- If the land is not already available, the government might face additional fiscal costs arising from possible compensation for construction delays. To mitigate this risk,
  - a complete assessment of land needs should be undertaken prior to contract closure;
  - the land acquisition process should be prepared; and
  - buffers and flexibility clauses should be included in the contract.
- If the project might be cancelled due to lack of land, the government might face costs due to compensation to the private partner and the project redesign. To mitigate this risk, the government should ensure land availability at an early stage of the project cycle.
- If the private partner has to pay for the land acquisition, the private partner might not be able to cope with the cost; the government would be confronted with the cost of project cancellation and retender, or renegotiation at higher fiscal cost. To mitigate this risk, the government should ensure land availability at an early stage of the project cycle or provide sufficient information regarding the need and value of the land to ensure that the private partner is able to cope with the cost.
- If the government has to pay for land acquisition, it may face additional fiscal costs arising from the acquisition and possible delays due to unavailability of land, which might lead to compensation payments for possible delays. To mitigate this risk, the government should
  - complete the assessment of land availability and cost prior to contract closure; and
  - build in buffers and flexibility clauses in procurement and contracts.

Risk 5. Risks related to relocation of people and activities

- If people and/or activities are subject to relocation due to project implementation:
- If the government is paying for the relocation of people and/or activities and possible project delays, it will face the cost of relocation and compensation. To mitigate this risk, the government should undertake a timely assessment of relocation needs and engage in effective stakeholder management.
- If the private partner is paying for the relocation of people and/or activities and is unable to cope with cost, the government will be faced with the cost of project cancellation and retender, or renegotiation at higher fiscal cost. To mitigate this risk, the government should ensure timely assessment of

relocation needs and provide sufficient information on relocation needs and costs.

Risk 6. Risks related to land decontamination

- If the government has to pay for land decontamination and the need for decontamination arises, this will result in fiscal costs. To mitigate this risk, the government should undertake a timely assessment of the need and cost of decontamination.
- If the private partner has to pay for land decontamination and is not able to cope with the cost, the government may face the cost of project cancellation and retender, or renegotiation at higher fiscal cost. To mitigate this risk, the government should
  - ensure a timely assessment of decontamination needs; and
  - should provide sufficient information on land condition.

Risk 7. Risks related to environmental and archaeological issues

- If there is a possibility of facing environmental/archaeological issues and the government has to pay for them, the government may face costs
  - for environmental and archaeological issues; and
  - for compensation payments it might have to make to the private partner due to project delays. To mitigate this risk, the government should (1) specify environmental constraints prior to tender (including permits and licenses); and (2) develop a plan to deal with archaeological findings.
- If there is a possibility of environmental/archaeological issues and the private partner has to pay for them, the private partner might not be able to cope with the associated costs; the government may be faced with the cost of project cancellation and retender, or renegotiation at higher fiscal cost. To mitigate this risk, the government should
  - specify environmental constraints prior to tender (including permits and licenses); and
  - develop a plan to deal with archaeological findings.

Risk 8. Risks related to geological issues

- If there is a possibility of geological issues and the government has to pay for them, it may face compensation payments. To mitigate this risk, the government should;
  - ensure a timely assessment of the geological conditions and their implications for the project; and
  - develop a plan to deal with these issues.

- If there is a possibility of geological issues and the private partner must pay for them, the private partner might not be able to cope with the costs related to these issues; the government may be faced with the cost of project cancellation and retender, or renegotiation at higher fiscal cost. To mitigate this risk, the government should:
  - ensure a timely assessment of the geological conditions and their implications for the project; and
  - provide sufficient information regarding geological conditions.

Risk 9. Risks related to licensing

- If the project is subject to licensing and the government pays compensation for project delays due to delayed licensing, the government may face the costs of compensation for project delays. To mitigate this risk, the government should ensure that subnational governments are fully supportive of the project and that project deadlines are consistent with subnational regulations.

Risk 10. Risks related to failures/errors/omissions in project design

- If the government can be held responsible for design failures, errors, or omissions, it may have to pay compensation for failures in designs presented to the private partner if the cost of design risks is not fully transferred to the private partner. To mitigate this risk, the tender process and the contract should ensure that the private partner takes full responsibility for the design.

Risk 11. Risks related to inherent defects in assets transferred to the private partner

- If the government can be held responsible for any inherent defect in assets transferred to the private partner, it may have to pay compensation to the private partner for inherent defects and the costs of defect remediation. To mitigate this risk, the government should ensure a prior assessment of the quality of the assets to be transferred to the private partner, allowing for full pricing of identifiable defects.

Risk 12. Risks related to changes in project design and scope required by procuring agencies

- If the government is responsible for compensation due to changes in design and scope required by procuring agencies, it may have to compensate the private partner for net costs due to changes in the design and/or scope. To mitigate this risk, the contract should include provisions allowing for changes in the design/scope of the project, up to a predetermined limit. In addition,

the accountability framework to monitor project cost overruns should be reviewed and improved, as necessary.

Risk 13. Risks related to changes in input prices

- If the government is responsible for compensation in the event of excess volatility in input prices, it may have to pay compensation for significant changes in input prices. To mitigate this risk, the volume and prices of the relevant inputs should be monitored, and sufficient funds should be allocated for expected compensation payments.
- If the private partner faces any excess volatility of input prices, the private partner may not be able to cope with significant changes; the government may be faced with the cost of project cancellation and retender, or renegotiation at higher fiscal cost. This risk can be mitigated by renegotiating the contract to re-establish financial equilibrium.

Risk 14. Risks related to changes in nominal exchange rate

- If the government is responsible for compensation in the event of excess volatility in nominal exchange rate, it may have to pay compensation for significant increases. To mitigate this risk, the volume of foreign currency required and the exchange rate should be monitored, and sufficient funds should be allocated for expected compensation payments.
- If the private partner faces any excess volatility in the nominal exchange rate, the private partner may not be able to cope with significant changes; the government may be faced with the cost of project cancellation and retender, or renegotiation at higher fiscal cost. This risk can be mitigated by renegotiating the contract to re-establish financial equilibrium.

iii. <u>Demand Risks</u>

If the PPP is fully funded by the government, and the payments are linked to the volume of service being provided:

Risk 15. If a cap is in place, the project may be confronted with much higher demand than included in the contract, which might require a costly renegotiation of the cap or require the government to purchase services from other providers. This risk can be mitigated by managing demand and possibly diverting demand to less costly alternative services.

Risk 16. If no cap is in place, the government may face higher than expected demand, leading to higher than expected costs. This risk can be mitigated by managing demand and possibly diverting demand to less costly alternative services.

R17. If the project is suffering from insufficient demand, this may lead to project failure; the government may face costs for early termination or renegotiation. This risk can be mitigated by managing the demand or by renegotiating the contract to re-establish financial equilibrium.

If the PPP is fully funded by the government, and the payments are not linked to the volume of service being provided:

Risk 18. If demand is much higher than expected, the project may collapse, and the government may face the cost of early termination or contract collapse. This risk can be mitigated by managing or diverting demand, which could have a fiscal cost.

Risk 19. If demand is much lower than expected, the project might be challenged; the government would not face additional fiscal costs, but it would pay for a service that is not/not fully being taken up by the user. This risk can be mitigated by managing demand by increasing demand or diverting it from other projects.

If the project is either totally user-funded or funded by a combination of government payments and user fees:

Risk 20. If users consider user fees—regulated or not—excessive relative to services received, this might have a bearing on the reputation of the government. This risk can be mitigated by effective communication.

Risk 21. If the project is suffering from insufficient demand, this might lead to project failure, presenting the government with additional fiscal costs for early termination or renegotiation. This risk can be mitigated by managing the demand or by renegotiating the contract to re-establish financial equilibrium.

iv. Operation & Performance Risks

Risk 22. If the PPP agreement does not ensure that the government has full access to information on project performance, the government may be unable to effectively manage the contract. To mitigate this risk, the information-sharing requirements should be included in the contract and addressed in the legal framework.

Risk 23. If the contract does not clearly specify performance indicators, reference levels, and penalties or deductions, the government may face significant risks for not being able to address poor performance by the private partner. Failure to monitor project performance can lead to poor contract enforcement, which has administrative, efficiency, and political costs. It may also cause difficulties in applying project cancellation clauses and possibly in using step-in rights by

financiers. To mitigate this risk, (1) key performance indicators should be included in the PPP agreement, with reference levels, linked to penalty mechanism (preferably automatic deductions form periodic payments); and (2) the core contract management team should be involved in contract negotiation to guarantee that performance indicators/levels are fair, measurable, and contractible, that is, able to be presented as evidence in court.

Risk 24. If the government does not have the capacity and procedures in place to monitor performance, it faces significant risks for not monitoring performance, which has administrative, efficiency, and political costs. To mitigate this risk, contract monitoring procedures should be in place when contracts are signed; a core contract management team should be assigned before contract closure and should be involved in contract negotiation to guarantee that contract management procedures are feasible and efficient.

Risk 25. Depending on whether and how the contract addresses the introduction of new technologies, technical innovation may create explicit and implicit fiscal risks for the government. To mitigate this risk, the duration of PPP agreements should not exceed the expected life cycle of the technology used in the sectors, enabling the government to respond to technological innovation within a reasonable timeframe. For PPP agreements for projects including high and low innovation components, it can be appropriate to separate the two components—for example, a hospital building from the medical equipment—into separate contracts that might be of different duration or nature; the high-tech component might not be under a PPP agreement but might be undertaken as traditional public procurement.

Risk 26. If there is a scarcity of specialized human resources, this could lead to performance issues. To mitigate this risk, the government should reallocate human resources from other activities or plan capacity-building activities in advance.

Risk 27. If there is a risk of significant increases in labour costs, this may lead to project failure. To mitigate this risk, the government should plan capacity-building activities ahead of time.

v. Financial Risks

Risk 28. If the private partner is unable to obtain finance for project implementation, the government may face project failure before implementation starts, being forced to take over the project, re-tender, or redesign and re-tender the project. To mitigate this risk, the government should (1) undertake a proper due diligence on private bidders' financial conditions and their ability

(technical and managerial) to conduct the project; (2) establish adequate qualification requirements; (3) consider bid bonds and performance bonds to discourage not suitable candidates from bidding for PPPs; and (4) require some degree of commitment by financing parties during tender for very sensitive projects in less developed financial markets.

Risk 29. If the private partner is unable to refinance short-term financing instruments, the government may face project failure after implementation starts. In such cases, the government could (1) be required to pay compensation for capital investment, (2) take over the project, or (3) renegotiate an interim financial solution and then re-tender the project (possibly under worse cost conditions for the government). To mitigate this risk, in addition to undertaking the measures listed under Risk 28, the government may require bidders to obtain long-term financing for very sensitive projects.

Risk 30. If the private partner is unable to cope with excess volatility in interest rates, the government may face project failure after implementation starts. The government could (1) be required to pay compensation for capital investment, (2) assume the project, or (3) renegotiate an interim financial solution and then re-tender the project (possibly under worst cost conditions for the government). To mitigate this risk, the government should undertake the measures listed under Risk 28.

Risk 31. If the government contractually accepted some exchange rate risk, fiscal support may be needed in the form of compensation; it may have to pay compensation for excessive volatility of the exchange rate. Also, if the private partner is unable to cope with excess volatility in the nominal exchange rate, the government may have to (1) renegotiate under stress or face project collapse and pay compensation for capital investment; or (2) assume the project and then re-tender under a different risk allocation scheme. To mitigate these risks, the government should ensure proper consideration of exchange rate risk, which may lead to better risk sharing and proper use of hedging mechanisms.

vi. Force Majeure Risks

Risk 32. If there is no exact list of events to be considered force majeure tailored for the project, the government might have to pay compensation, adjust, or even terminate the contract due to force majeure events. Full or partial compensation by the government may even force the government to buy the assets or assume debt. To mitigate this risk, the scope of the force majeure events should be clearly stated in the contract, considering the legal requirements and specific project conditions. The contract should create

incentives for the private partner to get insurance against some risks when insurance is available at a reasonable cost and to effectively manage risks by designing assets and managing services in ways that minimize the probability of occurrence and size of impact.

vii. Material Adverse Government Actions (MAGA)

Risk 33. If no clear definition of events to be considered MAGA are included in the contract, the government might have to pay compensation, adjust, or even terminate the contract due to acts and omissions by public entities, potentially forcing the government to buy the assets or assume debt. To mitigate this risk, contract managers should monitor the channels through which government's actions and omissions can affect the project during the life of the contract. Executive government actions and policy changes should be carefully evaluated by the contract manager and the fiscal management team to assess any impact on the PPP agreement.

viii. Change in Law

Risk 34. If the PPP agreement does not identify changes in law that do and do not require compensation by the government, the government might have to pay unforeseen compensation when adjusting or even terminating the contract due to changes in law. Changes in law might also benefit the private partner and, if not considered in the contract, increase the private partner’s profit margin without benefitting the government. The cost of changes in law might include compensation payments, need to buy the asset or to assume debt, or loss of potential compensation paid by the private partner to the government. To mitigate this risk, the PPP agreement should clearly identify changes in law that trigger a compensation or the right to terminate and should define the consequences. In addition, legislation and public policies should be in place to efficiently deal with this risk.

ix. Rebalancing of Financial Equilibrium

Risk 35. The legal framework may prescribe that the government is paying compensation and/or terminating the contract due to requirement to reinstate financial equilibrium. The government may have to pay compensation or cancel the project. To mitigate the risk from this, the PPP agreement should restrict its application to the cases of force majeure, MAGA, avoiding its application to a wider range of situations.

Risk 36. The government might have to pay compensation and/or terminate the contract due to contract guaranteeing a rate of return for the private partner.

To mitigate this risk, clauses and expectations on a guaranteed level of project rate of return or the shareholder's rate of return should be avoided.

Risk 37. The government might have to pay compensation and/or terminate the contract due to excessive protection against some hardships. To mitigate this risk, hardship clauses, if needed, should be precise and strict. Alternative methods to reduce excessive private sector risks should be considered, including insurance, future markets, and other hedging mechanisms.

x. Renegotiation Risks

Risk 38. If the government opens an uncontrolled renegotiation process, under information asymmetry and no competitive pressure, it might jeopardize economic efficiency by allowing the private partner to transfer to the government costs and risk that had originally been accepted by the private partner, with the fiscal impact depending on the government's ability to manage the renegotiation process. To mitigate this risk, the government should have a strategic view of PPP agreement management and create the capacity to renegotiate.

xi. Contract Termination Risks

Risk 39. If the government enters into an early termination process without clear knowledge of the consequences and procedures, the lack of clarity regarding consequences on early termination increases the private partner's bargaining power, leading to increases in the cost of termination; possibly preventing the government from cancelling non-performing contracts, or generating incentives for governments to nationalize a project or assets without proper assessment of the cost of that decision. To mitigate this risk, contracts should include a clear definition of the reasons for early termination (for example, underperformance of the private partner, public interest, or force majeure) and should present its consequences in terms of transfer of assets and responsibilities, namely, financial compensation for capital investment. Compensation should vary according to the party responsible for the early termination.

Risk 40. If the government terminates the contract without a clear understanding of transfer processes, including financial consequences, then (1) it may need to pay for stock of inputs or outputs; (2) human resources issues may imply financial compensation or increased current expenditures; and (3) licenses needed to continued operation may create fiscal surprises. To mitigate this risk, contracts should include a clear definition of the termination process; all financial consequences and identified gaps in the contract should be resolved by having both parties sign transfer protocols detailing the rules.

Appendix B

Legal Framework for Disclosure and Implications for PPP Disclosure

In Ekiti State, several laws and regulations govern Public-Private Partnership (PPP) disclosures to ensure transparency, accountability, and fair competition. These legal frameworks set the standards for how PPP projects should be structured, managed, and disclosed to the public. The relevant laws and regulations directing PPP disclosures in Ekiti State include the following:

i. **Ekiti State Public-Private Partnership Law** - Ekiti State Public-Private Partnership Law provides the legal foundation for all PPP activities within the state. It establishes the regulatory framework for how the government can partner with private entities for the delivery of public infrastructure and services. This law mandates the creation of a PPP Unit or Agency responsible for overseeing and managing PPP projects. This agency is tasked with ensuring transparency, monitoring projects, and managing disclosures. The law requires that all PPP projects follow transparent procurement processes.

ii. **Ekiti State Fiscal Responsibility Law** – The Law emphasizes the need for prudent management of public finances. Under this law, public disclosures related to PPP projects must include financial obligations, projected revenues, and potential liabilities to the state.

iii. Ekiti State Public Procurement Law - This law governs the procurement processes for public projects, including those under PPP arrangements. It ensures that all procurement procedures for PPPs are transparent, competitive, and fair. The law requires that all stages of the procurement process, including the call for bids, the selection of preferred bidders, and the final contract awards, be disclosed to the public. The public procurement process must be transparent, with the results of the bidding process and the names of the winning bidders published in accessible formats.

iv. Ekiti State Freedom of Information Law (FOI Law) 2011 - The Ekiti State FOI Law provides the public with the right to access government-held information, including information related to PPP projects. Section 2 (1) of the Law requested that "subject to the provision of this Law but notwithstanding anything contained in any other Law or Regulation, every citizen of Ekiti State of Nigeria, has a legally enforceable right to, and shall, application be given access to any record under the control of a government or public institution."

v. Nigerian Infrastructure Concession Regulatory Commission (ICRC) Act - While this is a federal law, it provides guidance to Ekiti State in structuring its PPP arrangements. The ICRC Act establishes best practices for PPPs at the national and sub-national levels. It mandates that PPP projects be carried out transparently, with adequate disclosure of project information to the public. The ICRC Act requires detailed disclosures at various stages of a PPP project's lifecycle—planning, procurement, contract signing, and implementation. These guidelines are adopted by states like Ekiti to ensure alignment with national transparency standards.

vi. Ekiti State Audit Law - The Audit Law ensures that all financial transactions, including those related to PPP projects, are subject to independent audits. These audits must be published to provide transparency on how public and private funds are being utilized in PPP agreements. This law helps ensure that any discrepancies or inefficiencies in PPP management are detected and addressed transparently.

vii. Ekiti State Public Finance Management Law 2020- section 85 of the Law stated that "*The Commissioner for Finance may make regulations concerning any matter for the purpose of giving effect to the provision of this Law".* This law provides for the control and management of public finances, including those involved in PPP projects. It requires comprehensive disclosure of all financial aspects of PPP agreements, ensuring that public resources are used responsibly

viii. PPP Disclosure Framework 2024 - The Ekiti State Public-Private Partnership (PPP) Disclosure Framework outlines a comprehensive set of guidelines

that detail the responsibilities for disclosure at various stages of the PPP cycle. It specifies the timelines for when information should be disclosed, the appropriate channels for communication, and the methods to be used for ensuring transparency and accountability throughout the partnership process. This framework is designed to foster trust between public and private entities, ensuring that all stakeholders are kept informed of developments and decisions related to the PPP projects.

Appendix C

SUMMARY OF SPECIFIC DISCLOSURES

S/N	DOCUMENT	CONTENT	CREATOR	APPROVER	TIME
Disclosure of information at project development					
i.	PPP Projects Pipeline	List of projects approved for development including brief project description, contracting authority, sector, and estimated project cost	Ekiti State Development and Investment Promotion Agency	Ekiti State Development and Investment Promotion Agency	Within 30 days of approval for inclusion in the PPP project pipelines
ii.	Basic Project Information	Project name, Location, Sector, Contracting MDA, Project value Project rationale, Description of asset, Services to be provided, Estimated demand to be served annually, Rationale for selecting the PPP mode, Indicative investment size, Pre-feasibility study, report	Contracting MDA	Ekiti State Development and Investment Promotion Agency	Within 30 days following the approval of the OBC for the project
iii.	Project progress tracking	A web-based platform section that shows actual achievement dates for tracking.	Ekiti State Development and Investment Promotion Agency	Ekiti State Development and Investment Promotion Agency/ Contracting MDA	Immediately after the information becomes available
Disclosure of information during project preparation					
iv.	Project preparation documents	Strategic needs assessment, technical analysis, risk matrix, financial model, economic analysis, management arrangement, and OBC	Contracting MDA	Ekiti State Development and Investment Promotion Agency	Within 30 days of approval

Disclosure of information during procurement					
v.	EOI		Contracting MDA	Ekiti State Development and Investment Promotion Agency	Following approval
vi.	List of shortlisted bidders		Contracting MDA	Ekiti State Development and Investment Promotion Agency	As soon as the shortlisting is completed and shortlisted bidders are notified
vii.	RFB		Contracting MDA	Ekiti State Development and Investment Promotion Agency	Immediately after the commercial close
viii.	Bid Award		Contracting MDA	Ekiti State Development and Investment Promotion Agency	After the approval required
Disclosure of information following execution of project agreement (commercial close)					
ix.	Project summary	project scope, Parties to the PPP agreement, Project risk analysis, Government support, Project value, tariffs, and pricing, Termination clauses, Handback provisions, Key performance indicators with agreed target levels.	Contracting MDA	Ekiti State Development and Investment Promotion Agency	Within 30 days of the project's commercial close
x.	The financial structure of the PPP project	The project's equity-debt ratio, debt and equity providers, share capital	Contracting MDA	Ekiti State Development and Investment Promotion Agency	Within 30 days of financial close.
xi.	Project Documents	This will include all redacted information in the PPP agreement	Contracting MDA	Ekiti State Development and Investment Promotion	Not later than 30 days after commercial close

				Agency	
xii.	Renegotiations and renegotiated agreements and associated documents	Summary of all redacted information on each renegotiation in the PPP agreement	Contracting MDA	Ekiti State Development and Investment Promotion Agency	Not later than 30 days after the parties have signed the renegotiated clause
Performance Disclosure throughout the contract period					
xiii.	Performance Information	Performance of the private party on key performance indicators against agreed targets, Audit reports, audited financial statements, reports from the private party, and Reports from independent experts.	Contracting MDA	Ekiti State Development and Investment Promotion Agency	Not later than one year after the financial close (updated annually)

Appendix D- Case Example: Application of FCCL Management

In a toll-road PPP project, the government:

- Identifies risks like traffic shortfalls, currency depreciation, and maintenance cost overruns.
- Quantifies potential liabilities using financial models based on various traffic and economic scenarios.
- Allocates traffic risk to the private partner but retains the risk of land acquisition delays.
- Mitigates risks by capping termination payments, requiring the private partner to hedge foreign currency debt, and establishing a contingency fund.
- Regularly monitors traffic volumes, private partner performance, and financial exposure, adjusting the risk management approach as needed.

Appendix E

EKITI STATE PUBLIC-PRIVATE PARTNERSHIP PIPELINE PROJECTS

S/N	NAME OF THE PROJECT	SECTOR	ESTIMATEED COST (NAIRA)	IMPLEMENTING MINISTRY, DEPARTMENT, OR AGENCY (MDA)	PROJECT STAGE
1	**CONSTRUCTION OF 20,000 BED SPACE HOSTEL**	EDUCATION	4,630,000,000.00 (Naira))	EKITI STATE UNIVERSITY, ADO-EKITI	DEVELOPMENT STAGE
2	**COMPLETION OF COMPREHENSIVE HEALTH CENTRE**	SOCIAL & HEALTH	50MILLION NAIRA	EKITI STATE COLLEGE OF HEALTH SCIENCE AND TECHNOLOGY IJERO EKITI	IMPLEMENTATION STAGE
3	**COMPLETION OF MODERN LIBRARY, IJERO-EKITI**	EDUCATION/HEALTH	100MILLION NAIRA	EKITI STATE COLLEGE OF HEALTH SCIENCE AND TECHNOLOGY IJERO EKITI	DEVELOPMENT STAGE
4	**OPERATION AND MANAGEMENT OF FOUNTAIN HOTEL, ADO-EKITI**	HOSPITALITY	151,650,000 million (naira)	FOUNTAIN HOLDINGS LIMITED-MINISTRY OF INVESTMENT, TRADE AND INDUSTRY	IMPLEMENTATION STAGE
5	**OPERATION AND MANAGEMENT OF IKOGOSI WARM SPRINGS, IKOGOSI-EKITI, EKITI STATE**	HOSPITALITY	503,200,000 million (naira)	FOUNTAIN HOLDINGS LIMITED-MINISTRY OF INVESTMENT, TRADE AND INDUSTRY	IMPLEMENTATION STAGE
6	**CONSTRUCTION OF FOUNTAIN COURT, LAGOS STATE**	REAL ESTATE	2,621,000,000 Billio naira	FOUNTAIN HOLDINGS LIMITED-MINISTRY OF INVESTMENT, TRADE AND INDUSTRY	IMPLEMENTATION STAGE
7	**CONSTRUCTION OF OBA ADEJUGBE BUILDERS MART,ADO-EKITI**	REAL ESTATE	188,000,000 million (naira)	FOUNTAIN HOLDINGS LIMITED-MINISTRY OF INVESTMENT, TRADE AND INDUSTRY	IMPLEMENTATION STAGE
8	**CONSTRUCTION OF ADO-EKITI CITY CENTRE BUS TERMINAL**	TRANSPORT	#2,329,440,507.94	MINISTRY OF PHYSICAL PLANNING &URBAN DEVELOPMENT	IMPLEMENTATION STAGE
9	**SPECIAL AGRICULTURE PROCESSING ZONE**	AGRICULTURE/PROCESSING	80 MILLION DOLLARS	Ministry Agriculture and Food Security/ Ekiti State Developemnt and Investment Promotion Agency	IMPLEMENTATION STAGE
	OPERATION AND MANAGEMENT OF IKUN DAIRY FARM	AGRICULTURE	988,244,342.00	FOUNTAIN HOLDINGS LIMITED-MINISTRY OF INVESTMENT, TRADE AND INDUSTRY, MINISTRY OF AGRICULTURE AND FOOD SECURITY	COMPLETED
10	**CONSTRUCTION RING ROAD PROJECT**	INFRASTRUCTURE	20 BILLION (NAIRA)	MINISTRY OF INFRASTRUCTURE AND PUBLIC UTILITIES, MINISTRY OF WORKS	IMPLEMENTATION STAGE
11	**construction of Eyiyato Housing Estate**	Housing	123,662,860 million (NAIRA)	Foutain Holding Limited	Ongoing
12	**OPERATION AND MANAGEMENT OF IRE BURNT BRICK**	CONSTRUCTION	186,900,000 million (NAIRA)	FOUNTAIN HOLDINGS LIMITED	COMPLETED
13	**EKITI STATE KNOWLEDGE ZONE PROJECT**	KNOWLEDGE ECONOMY, TECHNOLOGY & COMMUNICATION	80 MILLION DOLLARS	EKITI STATE DEVELOPMENT AND INVESTMENT PROMOTION AGENCY	IMPLEMENTATION STAGE