Generic Preferred Risk Allocation Matrix (GPRAM)

Preface

Guided by the principle that risks should be borne by the party that is best able to manage it, the Generic Preferred Risk Allocation Matrix (GPRAM) is envisioned to serve as guide for government entities and the private sector in structuring public-private partnership (PPP) projects with regard to the risks to be borne by the government or the private sector, and the risks that may be shared between the government and the private sector. This risk allocation matrix lists the risk allocation preferences, including risk mitigation measures, for consideration by the proponent agencies in the development and implementation of their projects.

The formulation of the GPRAM was based on the results of one of the studies under the Philippines-Australia Partnership for Economic Governance Reforms (PEGR) Facility, specifically on *Reform Agenda 006-07: Institution Strengthening of the National Economic and Development Authority and other Oversight Agencies on Value Engineering, Contract Preparation and Performance Monitoring of Infrastructure Projects.*

The matrix was adopted by the Investment Coordination Committee (ICC) – Cabinet Committee (CC) on 7 December 2010[1] and considers comments received thereafter from the ICC members, Office of the President – Chief Presidential Legal Counsel (OP-CPLC), PPP Center of the Philippines and ICC Secretariat. The updated GPRAM was noted by the ICC-CC on 22 December 2014.

The GPRAM is intended to be recommendatory and envisioned to serve as reference of the ICC and the proponent agencies in the ICC review of new PPP projects prospectively. As such, the ICC may update the matrix from time to time, as necessary, in its prospective review and approval of PPP projects.

Investment Coordination Committee

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[1] On 7 December 2010, the ICC-CC agreed to adopt the GPRAM for PPPs with the understanding that the Secretariat will disseminate it to the ICC for further comments.

Type of Risk	Definition, Proposed Risk Allocation and Rationale	Possible Risk Mitigation Strategies / Suggested Contract Provision(s)
1. Site Risks		
1.1 Existing Structure (refurbishment/ extensions)	**Definition:** "Risk that existing structures are inadequate to support new improvements"[1] or structures/activities subject of or involved in PPP contract, resulting in additional construction, time and cost that may be necessary to replace, strengthen or improve the existing structures to enable it to successfully support the project. **Preferred Allocation:** Initially to the Government, then to Private; the time within which Government warrants the structural integrity of the system or old structure depends on the official assessment of the Government prior to competitive bidding **Rationale/Details:** Private sector can manage cost-effectively if proper due diligence of existing structure is conducted.	**Possible Risk Mitigation Strategies:** -Specify clearly in tender documents the responsibility/ies of the government and of private sector particularly stating therein that private sector will assume all attendant costs, required permits and clearances; -Give private firm enough time to do site studies; -"Private firm will pass to builder which relies on expert testing and due diligence"[2]; and -Provide the private sector all the necessary assistance in looking for alternative sites that will minimize its costs, and if possible, offer alternative structures that can support new improvements which the project requires. **Suggested Contract Provision(s):** - Contract clause requiring private partner to provide performance bond; and - Include as mitigating measure the following provisions in the construction portion of the contract – a) disclose conditions of existing structures; b) facilitate private contractor's access to plans/documents relative to said conditions; c) allow private sector to do actual testing and validate condition of existing structure.
1.2 Site Conditions	**Definition:** Risk that unanticipated adverse geological conditions (geotechnical risk) are discovered which cause construction costs to increase and/or cause construction delays.[3] **Preferred Allocation:** Private (construction contractor, as applicable) **Rationale/Details:** - Private sector validates or must validate the geotechnical study undertaken by the government. - Private sector can manage cost-effectively if site study effort is moderate and enough time is provided to bidders.	**Possible Risk Mitigation Strategies:** -Government to conduct thorough geotechnical investigation / studies based on international standards / practice during project preparation; -"Private firm will pass to builder, which relies on expert testing and due diligence"[4]; -Give private firm enough time to do site studies. Private firm shall make site inspection and due diligence in order to affirm or negate the geotechnical findings of the government. Once affirmed by the private firm, it shall be solely accountable to all the construction costs and to any damages caused by any adverse geological conditions. Otherwise, if the geotechnical study was negated by the private firm, the latter shall suggest the necessary measures to address their concerns. In case the Government did not agree with the suggestion of the private firm and subsequently, an adverse geological condition caused construction cost and damages, then the Government can be held liable. However, in all other cases, private firm will always be held liable to any construction costs and damages, which could have been discovered and remedied through its diligent effort prior to construction; and -Require the private sector to provide for contingency costs for such types of occurrence. **Suggested Contract Provision(s):** -Contract clause stipulating that where unanticipated adverse site/ground conditions are discovered at the site of the PPP project, the private sector partner shall bear any additional costs required for repairing or addressing such adverse site/ground conditions. The private sector partner shall also be liable for damages caused by these adverse geological conditions on the project site where such geological condition could have been ascertained and remedied by the private sector partner through diligent efforts prior to the construction period; and -Contract clause requiring private partner to provide performance bond.

[1] Risk Management Module of Public Private Partnerships Guidance Material Supporting Document. Queensland Government. 2008
[2] Ibid.
[3] Ibid.
[4] Ibid.

Type of Risk	Definition, Proposed Risk Allocation and Rationale	Possible Risk Mitigation Strategies / Suggested Contract Provision(s)
1.3 Permits and approvals / Site preparation	**Definition:** Risk that necessary approvals (except for environmental license, environmental management plan, or environment-related permits/approvals) "may not be obtained or may be obtained only subject to unanticipated conditions, which have adverse cost and time consequences"(e.g. prolonged delay).[5] **Preferred Allocation:** Private (operating company / project company, as applicable); In general, Government will provide assistance in obtaining approvals and permits. **Rationale/Details:** - Private is better informed about the rationale for its request; government may, however, assist to some extent. - Government (i.e. the implementing agencies) secures Environmental Compliance Certificate (ECC) since implementing agencies prepare the FS and design (in case of solicited). - Government is better informed and positioned to influence the speed of the approval process, particularly in situations that are complex or sensitive.	**Possible Risk Mitigation Strategies:** - Government to obtain in advance of the bidder proposal submission stage the requisite permits and approvals, which would allow the private firm to achieve a measure of pre-contractual certainty and an early start to the approval process; - Government to facilitate and secure assistance from relevant national and local agencies and make this a precondition for government to complete before going to bidding process; and - A time line must be provided in the contract in securing the necessary permits/approval. In case of prolonged delay without justifiable reasons, private firm shall bear the additional costs. **Suggested Contract Provision(s):** - Contract clause stipulating the schedule to obtain permits and approval and stipulating liquidated damages payable to private partner in case the delay is solely attributable to the government; and - Contract clause stipulating that the private partner shall bear the resulting additional costs or delay arising from failure to obtain or the delay in obtaining the necessary permits or approvals (except for environmental license, environmental management plan or other environment-related permits) for the PPP project even due to unanticipated conditions. Any promise of the procurement or project management team of the agency or local government unit (LGU) concerned to render assistance in obtaining the required permits or approval shall not transfer the risk to the government.
1.4 Environmental Liabilities Existing Prior to the Project	**Definition:** Risk that the project site is contaminated requiring significant remediation expenses.[6] **Preferred Allocation:** Government (pre-existing liability), if solicited; Private if unsolicited **Rationale/Details** - Private sector can manage cost-effectively if site study effort is moderately done for unsolicited projects. - Government is in better position to know any environmental issue/s especially for solicited projects.	**Possible Risk Mitigation Strategies:** - Government should disclose the extent of liabilities while minimizing enough to make project marketable; - "Private firm will pass to builder, which relies on expert testing and due diligence";[7] - Give private firm enough time to do site studies; and - Reimburse part of bidding cost to encourage bidders to prepare their own site studies. **Suggested Contract Provision(s):** - Contract clause requiring private partner to provide performance bond; - Contract clause stipulating the conditions and mechanism to compensate private sector for agreed-upon portion of remediation expenses; and - Contract clause stipulating that where the project site of solicited PPP project is subsequently discovered to be contaminated by pollution and its clean up entails considerable time and expense, the government shall be responsible for rehabilitating or cleaning up the site. For unsolicited projects, the private sector partner shall be responsible for undertaking any required rehabilitation or clean-up measures, and of generally managing the risks.
1.5 Environmental Liabilities Created During Operation	**Definition:** Risk that the use of the facility / project site over the contract term has resulted in significant environmental liabilities (clean up or rehabilitation required to make the site fit for future anticipated use).[8]	**Possible Risk Mitigation Strategies:** - During procurement, private partner must demonstrate financial capacity or support to deliver the site in the state required by government at the end of the contract; - Government to require sinking funds if it is to resume the site and its use is liable to result in significant clean up/rehabilitation cost; and

[5] Ibid.
[6] Ibid.
[7] Ibid.
[8] Ibid.

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	Preferred Allocation: Private **Rationale/Details:** - Private partner is able to manage the use of the asset and attend to its maintenance and refurbishment according to the environmental requirements known at the proposal stage. - Where the use of the facility or project site results in the pollution or contamination of the same over the contract period, the private sector shall be responsible for the clean-up and rehabilitation of the site to render the same fit for continued and future use since contamination results from use of site for the project. The same is true for pollution caused by the project outside of its site.	- Conduct of periodic environmental audit during the contract period (e.g., environmental audit every three or five years) by the project management team of the agency or LGU concerned. **Suggested Contract Provision(s):** - Contract clause defining what constitutes environmental liability and the mechanism to estimate the private partner's liability and pursue payment ; - Contract clause requiring the establishment of clean-up/ rehabilitation sinking fund; - Contract provision stipulating that periodic environmental audit by the project management team or by a 3rd party auditing firm during the contract period should be made; - If EMB suspends Project due to non-compliance by private partner with environmental laws, a provision for liquidated damages must be provided for the delay caused. However, said non-compliance will have to be established by EMB after the Private Partner has exhausted all means/options (and the allowed timeframes) to comply with them; and - Termination clause if environment liabilities are not sufficiently mitigated and addressed by the Private Partner.
1.6 Cultural heritage	**Definition:** Risk of costs and delays associated with the discovery of archaeological and cultural heritage[9] attributable directly to the government's mandated process of conserving, protecting, regulating and disposition of said discovery. **Preferred Allocation:** Government **Rationale/Details:** - Based on Sections 14, 15, 16 and 17 of Article XIV of the 1987 Constitution, and Republic Act (RA)No. 10066 otherwise known as the "National Cultural Heritage Act of 2009", the government shall conserve, protect, and regulate the disposition of historical and cultural heritage including archaeological sites. - Government generally has a better understanding of procedures, and is usually in best position to manage this risk.	**Possible Risk Mitigation Strategies:** - Research cadastral records and obtain expert advice; and - For the Government implementing agency to consult / coordinate with appropriate institutions / groups (both public and private) charged / concerned with archaeological and cultural heritage (e.g., the cultural agencies identified under Republic Act (RA) 10066 ('An Act Providing for the Protection and Conservation of the National Cultural Heritage, Strengthening the National Commission for Culture and the Arts (NCCA) and its Affiliated Cultural Agencies, and for Other Purposes') during the project development stage. **Suggested Contract Provision(s):** - Contract clause stipulating that private partner will abide with existing rules and regulations concerning handling and protection of archaeological and cultural heritage discoveries; and, liability for damages in case of breach; and - Contract clause defining risk and stipulating site availability schedule and liquidated damages payable in case of delays.
1.7 Availability of site	**Definition:** - Risk that tenure/access to a selected site which is not presently owned by government or private partner cannot be negotiated.[10] - Risk of costs and delays in negotiating land acquisition. **Preferred Allocation:** Government, if solicited; Private, if unsolicited Government, if government initiated the change in site or alignment **Rationale/Details:** - For solicited projects, it is assumed that site is preferred by the government and, thus, government to shoulder the risk up to the point it remains financially	**Possible Risk Mitigation Strategies:** - Research cadastral records and obtain expert advice; - For solicited projects, be able to (i) define Right-of-Way (ROW)requirements at an early stage and estimate this in the FS; (ii) demonstrate its firm commitment to acquire the site by allocating the necessary funds; and (iii) completely acquire the site prior to the bidding stage to the extent possible; and - The Implementing Agency should prepare a realistic timeline for the acquisition of ROW for the project.

[9] Ibid.
[10] Ibid.

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	viable; - Government has a better understanding of procedures, has special powers of acquisition and use of land for infrastructure and is usually in best position to manage; - Government is in better position to negotiate where policy discourages use of compulsory acquisition power; - In case of unsolicited projects and in private partner preferred site, private partner is in control of site selection; government may assist in acquiring, if necessary, with no cost to government. However, the government may set a cap on the price of the land using applicable valuation methodologies in the course of the Swiss Challenge.	**Suggested Contract Provision(s):** - Contract clause stipulating site availability schedule and liquidated damages payable in case of delays; - Contract clause stipulating that availability of site is a precondition for contract to be effective; and - Contract clause stipulating any form of assistance that may be extended by the private sector to the government in acquiring the right-of-way for the project and resettlement of informal dwellers may also be added.
2. Design, Construction, and Commissioning Risk		
2.1 Design/Technical Risk	**Definition:** Risk that the design of the facility is substandard, unsafe, or incapable of delivering the services at anticipated cost and specified level of service (often resulting in long term increase in recurrent costs and long term inadequacy of service). **Preferred Allocation:** Private / Design Contractor, as applicable (contractor design fault); Government (if it is a government –initiated change in design or change in the agreed service standards leading to additional costs and/or delays in starting service delivery **Rationale/Details:** - Private partner has more experience, knowledge and control over the variables that determine the quality of the design (i.e., experience, competent staff, etc.). - Private prepares the detailed engineering and assumed to have conducted its due diligence.	**Possible Risk Mitigation Strategies:** - Ensure that the FS is available well in advance of the procurement process to adequately inform the design process; - Incorporate strict experience and competency requirements in the procurement process; - "Private partner may pass risk to builder / architects and other subcontractors while maintaining primary liability; government has the right to abate service charge payments where the risk eventuates and results in a lack of service – it may ultimately result in termination where the problem cannot be suitably remedied";[11] - Where the design of the project or facility turns out to be defective or incapable of delivering the intended services at anticipated cost and specified level of service, the private sector partner shall be responsible for any additional costs required to remedy the defective design and/or shall be liable for the resulting damages; and - Whenever applicable, appoint an Independent Consultant (IC) to provide independent advice to the Parties concerning design. **Suggested Contract Provision(s):** - Contract clause requiring performance bond; and - Contract clause stipulating liquidated damages
2.1.1 Interconnectivity Risk	**Definition:** Interconnectivity refers to the physical linkage of a project to another. This risk must have been duly considered during project development as this will affect the design and output specifications of the project. **Preferred Allocation:** Private	**Possible Risk Mitigation Strategies:** - Obtaining a "no objection" from the Proponent/s of the other project prior to bidding or as early as possible. **Suggested Contract Provision(s):** - Government has right or option to decide on projects which might have -interconnectivity and inter-operability aspects to proposed PPP projects. In proposed concession agreement, provisions must be formulated accordingly and must direct government and private sector partner to work positively /achieve mutually agreeable solutions or measures regarding such concerns; and - Also provide for stipulations wherein the specifics of how interconnectivity is achieved are laid out. A mere undertaking on the part of the Government is not sufficient as there is also a risk that the other proponent will not agree on the current framework. There should be timelines, mechanics and compensation mechanism provided as compulsion to Government and the third party to achieve interconnectivity with the new Proponent.

[11] Ibid.

Type of Risk	Definition, Proposed Risk Allocation and Rationale	Possible Risk Mitigation Strategies / Suggested Contract Provision(s)
2.1.2 Inter-Operabillity Risk	**Definition:** Interoperability risk refers to the risks associated with achieving clear and efficient operational arrangements with other facility operator/s. This will have to be considered in the project design and operation system requirements. **Preferred Allocation:** Shared Government, as a matter of public policy, shall pursue inter-operability of public service infrastructure Private will ensure operational aspect of inter-operability of the project	**Possible Risk Mitigation Strategies:** - The government to ensure that all affected facility operator are consulted as to their operational requirements as early as FS stage. **Suggested Contract Provision(s):** - Government has right or option to decide on projects which might have -interconnectivity and inter-operability aspects to proposed PPP projects. In proposed concession agreement, provisions must be formulated accordingly and must direct government and private sector partner to work positively /achieve mutually agreeable solutions or measures regarding such concerns; - Stipulations wherein the specifics of how interconnectivity is achieved is laid out. A mere undertaking on the part of the Government is not sufficient as there is also that risk that the other proponent will not agree on the current framework. There should be timelines, mechanics and compensation mechanism provided as compulsion to Government and the third party to achieve interconnectivity with the new Proponent; and - Contract clause stipulating a policy that requires PPP Proponents to cooperate with future projects. Similar to Consents and ROW, should the government fail to obtain "no objection" from Proponent/s, it may be treated as an excusable delay where the milestones may be extended accordingly.
2.2. Construction	**Definition:** "Risk that events occur during construction that prevent the facility from being delivered on time and on cost."[12] **Preferred Allocation:** Private (except for delay caused by the government, including government-initiated variations in the construction) **Rationale/Details:** Private partner has more experience, knowledge and control over the variables that influence construction cost and control over construction process (i.e., schedule, equipment, materials and technology, etc.) - this assumes that private partner has enough information to estimate costs and start operations on schedule and as planned.	**Possible Risk Mitigation Strategies:** - Incorporate strict experience and competency requirements in the procurement process; - Ensure that the FS is available well in advance of the procurement process; - To comply with its obligation under the contract, the private firm "generally will enter into a fixed term, fixed price building contract to pass the risk, to a builder with the experience and resources to construct";[13] - Whenever applicable, appoint an IC to provide independent advice to the parties concerning construction and certify completion of work, as applicable. The private partner cannot commence operation without the concurrence from the implementing agency on the recommendation of the IC (based on the inspections to be conducted by the IC) that the project is complete and in compliance to the standards prescribed in the Minimum Performance Standards and Specifications (MPSS).Cost associated to the hiring of an IC should be shared by Government and private sector; - Delays in the construction by the private firm is tantamount to failure to deliver the facility on time and on cost, hence private firm shall be accountable to any additional cost and damage caused on the agency, unless the delay is caused by force majeure; and - Aside from ensuring that the subcontractor has the technical competence to undertake the work, the credit standing of said subcontractor would have to be reviewed to ascertain if it could cause any risk to the project; **Suggested Contract Provision(s):** - Contract clause requiring performance bond ; - Contract clause stipulating liquidated damages contract clause; and - Contract clause providing partial cost overrun guarantee for complex structures.
2.3 Commissioning	**Definition:** "Risk that either the physical or the operational commissioning tests which are required to be completed for the provision of services to commence, cannot be successfully completed".[14]	**Possible Risk Mitigation Strategies:** - Incorporate strict experience and competency requirements on the procurement process.

[12] Ibid.
[13] Ibid.

Type of Risk	Definition, Proposed Risk Allocation and Rationale	Possible Risk Mitigation Strategies / Suggested Contract Provision(s)
	Preferred Allocation: Private **Rationale/Details:** - Private partner is in control of the design and construction process and its inputs, and therefore better positioned to manage this risk. - The private sector partner shall be responsible for liquidated damages if the physical or operational commissioning tests which are required for the provision of services to commence cannot be successfully completed, except when the delay is due to the failure of the government to facilitate the prompt public sector attendance to the commissioning tests.	**Suggested Contract Provision(s):** - Contract clause requiring a performance bond ; - Contract clause stipulating liquidated damages (until all physical and operational commissioning tests passed); and - Contract provision providing clear, specific and time-bound conditions for commissioning.
3. Sponsor and Financial Risk		
3.1 Interest Rates Pre-Completion	**Definition:** Risk that prior to completion local currency interest rates may move adversely.[15] **Preferred Allocation:** Private **Rationale/Details:** - Private partner should have considered and priced into the project as part of the capitalization. - Risks, particularly increased project cost, resulting from the increase in interest rates of the local currency prior to the completion of the project shall be assumed by the private sector.	**Suggested Contract Provision(s):** - Contract clause to explicitly stipulate conditions/provisions related to unforeseen and/or extraordinary cases; and - Contract clause holding government unharmed.
3.2 Interest rates post-completion	**Definition:** Risk that after completion interest rates may move adversely. **Preferred Allocation:** Private **Rationale/Details:** - Private partner in control of selecting and arranging long-term financing. - Where interest rates after the completion of the project move adversely, the government shall not be liable for additional payment or costs resulting from such adverse movements in interest rates. The private sector partner is expected to be competent in arranging long-term financing for the project, and hence should manage the risk.	**Suggested Contract Provision(s):** - Contract clause holding government unharmed.

[14] Ibid.
[15] Ibid.

Type of Risk	Definition, Proposed Risk Allocation and Rationale	Possible Risk Mitigation Strategies / Suggested Contract Provision(s)
3.3 Exchange rate	**Definition:** Risk that during operation, exchange rates may move adversely, affecting the private partner's ability to service foreign denominated debt and obtain its expected profit. **Preferred Allocation:** Private **Rationale/Details:** - Private partner is in control of selecting and arranging local and foreign currency mix for long-term financing, and since this is part of parametric formula. - Where exchange rates move adversely, affecting the private sector partner's ability to service foreign denominated debt and obtain its expected profit, the government shall incur no further liability to the private sector partner other than the payment due the latter under the contract.	**Suggested Contract Provision(s):** - Contract clause requiring establishment of a Foreign Exchange Liquidity Facility; - Contract clause indicating tariff or payment adjustment; and - Contract clause explicitly stipulating conditions/provisions related to unforeseen and/or extraordinary cases.
3.4 Inflation	**Definition:** "Risk that value of payments received during the term is eroded by inflation". [16] **Preferred Allocation:** Private **Rationale/Details:** - Private partner should have priced it in the tariff system and such risk should be part of the parametric formula. - The government shall not be liable for additional payments to the private sector partner in case the value of payments received by the latter during the term of the project is eroded by inflation. The private sector partner is expected to have considered inflation when it invested in the project, and hence should manage this risk.	
3.5 Financing unavailable	**Definition:** "Risk that when debt and/or equity is required by the private firm for the project, it is not available then and in the amounts and on the conditions anticipated". [17] **Preferred Allocation:** Private **Rationale/Details:** - Private partner is responsible for arranging finance. - The private sector partner shall be responsible for the non-availability of the required financing for the project. If the private sector partner fails to secure such required financing and the same results in delays and/or non-completion of	**Suggested Contract Provision(s):** -Contract clause requiring this as an event of default as Government or the Project cannot be held hostage in the event that the proponent cannot secure the required financing within x period of time.

[16] Ibid.
[17] Ibid.

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	the project, it shall be liable for damages in accordance with the terms of contract. The government may also be entitled to collect the sum due to it under the private sector partner's performance bond. To ensure a successful and viable project management team, the agency or LGU concerned shall ensure that the potential private sector partner meets the financial capability requirement under Section 5.4 (c) of the Implementing Rules and Regulations (IRR) of RA 6957[18], as amended.	
3.6 Sponsor Risk	**Definition:** - Risk that the private partner "is unable to provide the required services or becomes insolvent"[19] - Risk that the private partner "is later found to be an improper person for involvement in the provision of these services".[20] - Risk that financial demands on the private partner exceed its financial capacity causing corporate failure.[21] **Preferred Allocation:** Private **Rationale/Details:** - Private partner provides performance bond and/or letters of credit; - If this risk (insolvency) materializes, it is assumed that the project is not profitable and there is no private partner to transfer the risk to. - If the private sector partner is unable to provide the required services or becomes insolvent, or is later found to be an improper person for involvement in providing these services, or financial demands on the private sector partner exceed its financial capacity causing corporate failure, the government shall be entitled to immediately collect the sum due to it from the performance bond provided by the private sector.	**Possible Risk Mitigation Strategies:** - Conduct of proper assessment / eligibility of private partner by government (specifically the Bids and Awards Committee) **Suggested Contract Provision(s):** - Contract clause requiring a performance security
3.7 Change in ownership	**Definition:** "Risk that a change in ownership or control of the private firm results in a weakening in its financial standing or support or other detriment to the project".[22] **Preferred Allocation:** Private **Rationale/Details:** - Where there is a change in ownership or control of the private sector partner resulting in a weakening in its financial standing or support or other detriment	**Possible Risk Mitigation Strategies:** -Government consent must be secured if there is change in the responsibilities of the contracting parties due to a change in ownership. **Suggested Contract Provision(s):** - Contract clause requiring government consent prior to any change in control, and providing ability to influence or prevent change only in specific circumstances.

[18] Referring to the Implementing Rules and Regulations effective on 13 April 2006 of the Republic Act (R.A). No 6957 as amended by R.A. 7718 or Build-Operate-Transfer (BOT) Law
[19] Risk Management Module of Public Private Partnerships Guidance Material Supporting Document. Queensland Government. 2008
[20] Ibid.
[21] Ibid.
[22] Ibid.

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	to the project, the private sector partner shall be liable for damages on account thereof. As a condition for pre-qualification, the law requires that a project proponent must have the ability to sustain the financing requirements of a development or project (RA 7718, sec. 2(k); and IRR of RA 6957, sec. 5.4)[23]. This essential requirement should therefore be a continuing one regardless of any subsequent change in the corporate or ownership structure of the project proponent, and the private sector partner should thus be given the task of managing this risk. - If change occurs, the ability of private partner to manage risk is diminished. - Private partner would have to accept requirement to sign agreement, hence if condition is not acceptable, it could walk away from project.	
3.8 Tax changes	**Definition:** "Risk that before or after completion, the tax impost on the private firm, its assets or on the project, will change".[24] **Preferred Allocation:** Private, or if tax increases or new taxes arise from discriminatory changes in tax law, the Government **Rationale/Details:** - General changes in tax law affect all businesses in the country; - The government is in better position to influence specific discriminatory tax law changes affecting the project (note: discriminatory if only a specific company/sector/field is affected). - Where before or after the completion of the project, taxes imposed on the private sector partner, its assets or on the project are amended, the government shall incur no liability to the private sector partner, unless such change in taxes affecting the latter or the project is declared as discriminatory by a court of law. In such a case, the private sector partner shall be entitled to compensation. The terms of said compensation shall be provided in the contract.	**Possible Risk Mitigation Strategies:** - Private partner to incorporate in project due diligence - "Financial returns of the private partner should be sufficient to withstand general tax law changes".[25] **Suggested Contract Provision(s):** - Contract clause providing compensation terms for discriminatory changes in tax law; and - Contract clause providing a buy-out (put) option or termination with compensation for private partner when no other compensation mechanism is available.
4. Operating Risk		
4.1 Inputs / Operating Cost Overrun	**Definition:** "Risk that required inputs cost more than anticipated, are of inadequate quality or are unavailable in required quantities".[26] **Preferred Allocation:** Private	**Possible Risk Mitigation Strategies:** - "Private partner may manage through long term supply contracts where quality / quantity can be assured; and - Private partner can address to some extent in its facility design".[27] **Suggested Contract Provision(s):** - Contract clause imposing penalties for breach of specific and well defined performance and quality specifications;

[23] Referring to the Implementing Rules and Regulations effective on 13 April 2006 of the Republic Act (R.A). No. 6957 as amended by R.A. 7718 or Build-Operate-Transfer (BOT) Law
[24] Risk Management Module of Public Private Partnerships Guidance Material Supporting Document. Queensland Government. 2008
[25] Ibid.
[26] Ibid.
[27] Ibid.

Type of Risk	Definition, Proposed Risk Allocation and Rationale	Possible Risk Mitigation Strategies / Suggested Contract Provision(s)
	Rationale/Details: - Private partner is in control of the selection of inputs. - Where the required inputs or supplies cost more than the anticipated amount are of inadequate quality or are unavailable in the required quantities, the private sector partner shall be liable for additional costs needed to procure these inputs or supplies. If the private sector partner fails to obtain the required inputs or supplies to ensure the successful completion of the project, it shall be liable for damages for breach of specific performance and quality specifications as defined in the contract.	and - Contract clause on compensation to private partner for issues attributable to government-supplied inputs.
4.2 Maintenance and Refurbishment	**Definition:** "Risk that design and/or construction quality is inadequate resulting in higher than anticipated maintenance and refurbishment costs".[28] **Preferred Allocation:** Private **Rationale/Details:** - Private partner is in control of design and construction processes. - If the design and/or construction quality is inadequate resulting in higher than anticipated maintenance and refurbishment costs, the private sector partner shall be liable for such additional costs and for damages for not meeting specific performance, level of service, and quality specifications as stipulated in the contract. The government shall be entitled to collect the sum due to it under the private sector partner's performance bond.	**Possible Risk Mitigation Strategies:** - Private firm to "manage through long term subcontracts with suitably qualified and resourced sub-contractors";[29] and - Government to ensure detailed and clear output specifications and conduct rigorous auditing of maintenance work. **Suggested Contract Provision(s):** - Contract clause imposing penalties (and possible termination) for not meeting specific and well defined performance, level of service, and quality specifications; and - Contract clause requiring performance bond from private.
4.3 Changes in output specification outside agreed specification range	**Definition:** - "Risk that government's output requirements are changed after contract signing whether pre or post commissioning".[30] - Change prior to commissioning may require a design change with capital cost consequences depending on the significance of the change and its proximity to completion. - Change after completion may have a capital cost consequence or a change in recurrent cost only (for example, where an increase in output requirements can be accommodated within existing facility capacity). **Preferred Allocation:** Private, if it initiated the change; Government, if the government decides on the change in output specification	**Possible Risk Mitigation Strategies:** -Government to minimize the chance of its specifications changing and, to the extent they must change, it will ensure the design is likely to accommodate it at least expense; this will involve considerable time and effort in specifying the outputs up front and planning likely output requirements over the term;[32] - Government to require the approval of the Approving Body for contract variations that will have impacts on government undertakings/ exposure, performance standards and service charges; and Parties must strictly comply with the provisions on contract variation under the BOT Law and its implementing rules; and - Government to ensure that change/s (whether or not cumulative amount of change/s exceeds 10% of the original contract) should not have negative implication to financial, cost recovery, tariff, revenue, etc. exceeding the allowed range based on sensitivity analysis; otherwise, approval by approving body (i.e., Investment Coordination Committee (ICC)) should be secured. **Suggested Contract Provision(s):** - Contract clause reflecting best endeavors obligation by private to fund with option on government to compensate

[28] Ibid.
[29] Ibid.
[30] Ibid.
[31] Risk Management Module of Public Private Partnerships Guidance Material Supporting Document. Queensland Government. 2008

Type of Risk	Definition, Proposed Risk Allocation and Rationale	Possible Risk Mitigation Strategies / Suggested Contract Provision(s)
	Rationale/Details: - Government is in better position to manage and mitigate the occurrence of the risk. - Private has more expertise, experience and knowledge. - The project proponent who initiates any change in output specifications range resulting in damages to the government or the public shall be liable for liquidated damages as stipulated in the PPP contract. On the other hand, where such change in output specification is required by the government, the government shall compensate the private sector partner for the cost of implementation of such changes. Where there is a necessity for the changes in output specifications in projects carried out over long periods, the government and the private sector partner may agree on allocating the risk and resulting costs between the two of them. Moreover, any change in output specification should satisfy the conditions enumerated in Section 12.11 of the IRR of RA 6957[31] since any such change necessarily requires a change in the terms of the contract.	via fee increase or capital contribution; - Contract clause providing a buy-out (put) option or termination with compensation for private, should finance not be obtained and change makes project unviable; - Contract clause stipulating that any change initiated by private that have negative implication to cost recovery, tariff, etc. which exceeds the allowed amount as computed in sensitivity analysis should secure approval from approving body; and - Contract clause stipulating the scope, requirements, and procedures for contract variation in accordance with the provisions of BOT Law and its IRR.
4.4 Operator failure / short fall in service quality	**Definition:** "Risk that a subcontract operator may fail financially or may fail to provide contracted services to specification"[33](failure may lead to service unavailability and a need to make alternate delivery arrangements with corresponding cost consequences). **Preferred Allocation:** Private **Rationale/Details:** - Private partner is fully and primarily liable for all obligations to government irrespective of whether it has passed the risk to a subcontractor. - If the private sector partner fails to meet specific performance, level of service and quality specifications, it shall be liable for liquidated damages in accordance with the provisions of the PPP contract. The private sector shall also be held liable on its performance bond.	**Possible Risk Mitigation Strategies:** -"Government to carry out due diligence on principal subcontractors for probity and financial capacity and commission a legal review of the major subcontracts including the guarantees or other assurances taken by the private partner; if failure does occur the private partner may replace the operator or government may require operator replacement";[34] - Government to develop detailed and clear output specifications; - Government to conduct performance monitoring and to ensure adequate Operations and Maintenance (O&M) contract; and - Include categorical provision on the contract stating therein that in case of failure / short fall in service quality of the subcontractor / operator, the private firm can be held liable and pay damages. **Suggested Contract Provision(s):** - Contract clause imposing penalties (and possible termination) for not meeting specific and well defined performance, level of service, and quality specifications; and -Contract clause requiring performance bond from private.
4.5 Technical obsolescence or innovation (Asset Risk)	**Definition:** -"Risk of the contracted service and its method of delivery not keeping pace, from a technological perspective, with competition and/or public requirements".[35] - Private partner's revenue may fall below projections either via loss of demand (user pays model) payment abatement (availability model and/or operating costs	**Possible Risk Mitigation Strategies:** - Government to develop detailed, well-researched output specifications;[36] - Private partner to develop detailed, well-researched design solution; - Private partner may have recourse to designer, builder or their insurers; - Private partner "to arrange contingency/reserve fund to meet upgrade costs subject to government agreement

[31] Referring to the Implementing Rules and Regulations (IRR) effective on 13 April 2006 of the Republic Act R.A. No. 6957 as amended by R.A. 7718 or Build-Operate-Transfer (BOT) Law
[33] Risk Management Module of Public Private Partnerships Guidance Material Supporting Document. Queensland Government. 2008
[34] Ibid.
[35] Ibid.
[36] Ibid.

Type of Risk	Definition, Proposed Risk Allocation and Rationale	Possible Risk Mitigation Strategies / Suggested Contract Provision(s)
	increasing. - Government may not receive contracted service at appropriate quantity/quality. **Preferred Allocation:** Private **Rationale/Details:** - Private partner is able to use its expertise and know-how to minimize this risk. - Where technical obsolescence or innovation affects, among others, the contracted service and the method of delivery thereof such that the required service or output falls below well-defined standards, the private sector shall assume the cost of upgrading the service or output to the required standard. In case of failure to do so, the private sector partner shall be liable for liquidated damages consistent with the terms of the PPP contract. The government shall also be entitled to collect the sum due to it under the private sector partner's performance bond.	as to funding the reserve and control of reserve funds upon default";[37] - For PPP projects requiring an asset transfer at the end of contract period, the government should ensure to include in the provision of the contract, the conduct of necessary upgrade to the facilities to ensure its service level efficiency and to ensure that the operation is at par and current with prevailing industry standards; and - Both partners to monitor obligations in the contract.[38] **Suggested Contract Provision(s):** - Contract clause imposing penalties (and possible termination) for not meeting specific and well defined performance, level of service, and quality specifications; - Contract clause defining the condition required of the facility at the end of the term; - Contract clause requiring performance bond from private ; and - Contract clause specifying mechanism to establish a reserve fund (private, public-private, public).
5. Demand Risk		
5.1 Demand Risk	**Definition:** Risk that operating revenues falls below forecast as a result of decrease service volume (i.e., traffic volume, water or power consumption) attributable to an economic downturn, competition in the relevant market tariff increases or change in consumer habits. **Preferred Allocation:** Private **Rationale/Details:** - Private partner has the expertise and experience in validating forecasted demand or rate of return (ROR). - When demand can be estimated with relative certainty, the private partner is in a better position to mitigate risk through commercial management practices. - When a minimum, guaranteed demand which both parties agreed upon is attained, government has no liability in terms of decrease in revenue regardless a competing facility is put up by government. - Where operating revenues fall below forecasted levels as a result of decrease in volume attributable to an economic downturn, or change in consumer habits, the government shall not be liable for additional payment to cover losses incurred by the private sector partner in view of such decrease in revenues. The private sector partner shall be deemed to have assumed such risk. As a project proponent, the private sector partner is expected to have conducted its own market demand analysis for the PPP project and devised means of mitigating the risk that the demand or revenue could fall below projected levels.	**Possible Mitigating Strategies:** -Government and private to perform independent market demand analyses commensurate with project scale and characteristics; and -Where users pay private partner will ensure robust financial structure and financier support; o Adequate debt coverage; o Adequate reserves; o Credit enhancement, insurance; **Suggested Contract Provision(s):** - Contract clause stipulating the availability payment or mechanism to establish minimum revenue payments; and - Contract clause stipulating specific period or expiration and coverage for take-or-pay condition (e.g., limiting to the term of senior debt); with Department of Finance (DOF) charging guarantee fee;

[37] Ibid.
[38] Ibid.

Type of Risk	Definition, Proposed Risk Allocation and Rationale	Possible Risk Mitigation Strategies / Suggested Contract Provision(s)
6. Network and Interface Risk		
6.1 Changes in competitive network	**Definition:** "Risk that an existing network is extended / changed / re-priced so as to increase competition for the facility".[39] **Preferred Allocation** Private **Rationale/Details:** - Private partner has the expertise and experience in validating forecasted demand or ROR. - Government manages network allowing it to influence the materialization of network risk and its consequences. - The risk that changes in the competitive network or industry of the project/facility could result in increased competition or lower revenues for the private sector partner shall be allocated to the private sector partner. The government shall incur no additional liability to the private sector partner on account thereof. The possibility of this risk occurring during the contract period and its impact on the project should have been studied and considered by the project proponent before entering into the contract.	**Possible Risk Mitigation Strategies:** - Government to set minimum service / performance parameters; - Government to conduct thorough network planning when developing project concept; and - Private firm to review likely competition for service and barriers to entry prior to enter agreement. **Suggested Contract Provision(s):** - Contract clause to provide private partner with non-compete protections and compensation mechanisms ; and - Contract clause stipulating specific period or expiration and coverage for take-or-pay condition (e.g., limiting to the term of senior debt); with DOF charging guarantee fee.
7. Industrial Relations Risk		
7.1 Industrial Relations	**Definition:** Risk of strikes or industrial action causing delay and cost to the project.[40] **Preferred Allocation:** Private **Rationale/Details:** - Private partner has better information about and control over the causes of industrial action. - The private sector partner shall shoulder the additional cost and effects of protracted delay caused to the project by industrial or labor-related actions.	**Possible Risk Mitigation Strategies:** - Private partner (or its sub-contractors) manage project delivery and operations;[41] and -Government to have the private sector liable for any delay in the delivery of the project and any additional cost caused by the improper management of its own staff and/or its subcontractors. **Suggested Contract Provision(s):** - Contract clause requiring payment of liquidated damages to government; and - Contract clause stipulating the obligation of the private sector to pay damages for the delay in the delivery of the project and additional cost.
8. Legislative and Government Policy Risk		
8.1 Approvals	**Definition:** Risk that additional approvals required during the course of the project cannot be obtained.[42]	**Possible Risk Mitigation Strategies:** - Government to provide assistance; and - Government to monitor and limit (where possible) changes which may have these effects or consequence on the project.

[39] Ibid.
[40] Ibid.
[41] Ibid.
[42] Ibid.

Type of Risk	Definition, Proposed Risk Allocation and Rationale	Possible Risk Mitigation Strategies / Suggested Contract Provision(s)
	Preferred Allocation: Private (operating company / project company, as applicable); In general, Government will provide assistance in obtaining approvals and permits. **Rationale/Details** - Private partner has better understanding of rationale requiring such approvals unless new government approvals are required during implementation which are not specified in tender documents. - The private sector partner shall likewise be liable for failure to secure additional approvals required during the course of the project when such failure to obtain additional approvals are attributable to it and where the same results in lengthy delays in the completion of the project. In the case of regulatory approvals or issues, the government shall assist the private sector partner in obtaining regulatory approvals or in complying with regulatory requirements but shall not be liable for the non-issuance thereof by the concerned agencies. The PPP contract could clearly state the obligations of the agency or LGU concerned and the private sector partner with respect to the approvals and permits required for the project.	**Suggested Contract Provision(s):** - Contract clause to specify private partner compensation mechanism ; and - Contract clause to stipulate obligations of both parties.
8.2 Changes in law/policy	**Definition:** "Risk of a change in law/policy of government only, which could not be anticipated at contract signing and which has adverse capital expenditure or operating cost consequences for the private firm".[43] **Preferred Allocation:** Private, for general changes in law and/or policy; Government, if change is discriminatory against the project **Rationale/Details:** - Private to cover the risk during construction period and when changes are due to general law and during operation period with government compensation as may be provided and approved in the contract. - General changes in law affect all businesses in the country. - Government is in better position to influence specific discriminatory tax law changes affecting the project. - Government to facilitate, if new government policy or law becomes effective during implementation. - The government shall incur no liability for changes in any applicable law or policy that could not have been anticipated when the contract was executed and has adverse capital or operating cost consequences for the private sector partner. The private sector partner should have considered potential changes in applicable laws or policies when it entered into the contract, and its financial returns should be sufficient to withstand such change.	**Possible Risk Mitigation Strategies:** - Government to define jurisdictions of LGU and national government (NG) to a project (such as national project within one or several LGUs); - Private partner to incorporate in project due diligence - financial returns of the private partner should be sufficient to withstand general law / policy changes; - Government to monitor and limit (where possible) changes which may have these effects or consequence on the project; - Government to require the private firm to effect the change in a way that the financial effect on government is minimized (for example, pay on a progressive scale); and - Government to pass through to end users. **Suggested Contract Provision(s):** - Contract clause allowing compensation to private in a pre-specified "significant amount";[44] - Contract clause to allow pass through to end users; and - Contract clause incorporating provision for contract re-opener for Government and private sector to agree on contract revisions to address such concerns.

[43] Ibid.
[44] Ibid.

Type of Risk	Definition, Proposed Risk Allocation and Rationale	Possible Risk Mitigation Strategies / Suggested Contract Provision(s)
8.3 Regulation	**Definition:** Risk that "where there is a statutory regulator involved there are pricing or other changes imposed on the private firm which do not reflect its investment expectations".[45] **Preferred Allocation:** Government **Rationale/Details:** - Government to absorb regulatory risks. - Negotiation or regulatory setting is normally conducted between parties. - The government and the private sector partner shall enter into negotiations to address any relevant pricing or regulatory changes that bear on the PPP contract concerned and affect the private sector partner's investment expectations. As an additional guarantee or incentive to the private sector, the government, on a case-to-case basis, will protect investors from particular regulatory risks such as court orders or decisions by regulatory agencies that prevent investors from adjusting tariffs to contractually agreed levels. The details of such additional protection or incentive for private sector partners shall be included in the PPP contract.	**Possible Risk Mitigation Strategies:** - "Private firm to assess regulatory system and may make appropriate representations";[46] - The government to ensure that the following will be part of the contract terms of PPP contract: (1) specifics of the type of protection to be offered by the government, and (2) mechanisms through which such protection will be offered; and - The government and private sector must negotiate fairly with regard to the regulatory power of the government to PPP contracts and private sector must likewise be given incentives. **Suggested Contract Provision(s):** - Contract clause to specify whether payment will be subject to regulator or not, and if not, specify mechanism to set and adjust tariffs; and -Contract clause stipulating the mechanism for tariff adjustments.
9. Force Majeure Risk		
9.1 Force Majeure Risk	**Definition:** "Risk that inability to meet contracted service delivery (pre or post completion) is caused by reason of force majeure events".[47] **Preferred Allocation:** Private and Government **Rationale/Details:** - Since none of the Parties is at fault here, it should be shared. -Private partner can buy insurance from the marketplace. - Government is better positioned to manage uninsurable risks.	**Possible Risk Mitigation Strategies:** -Private sector to purchase insurance for insurable risks;[48] and - The government and private party may seek to negotiate on the appropriate contract adjustments, however, failure to meet a mutual agreement may be considered as grounds for dispute resolution or contract termination. **Suggested Contract Provision(s):** - Contract clause to expressly define events that will constitute acts of God and political force majeure events; - Contract clause to relieve private from consequences of service discontinuity if force majeure event is uninsurable; - Contract clause to require that "if insurable, private must ensure availability of insurance proceeds towards asset repair and service resumption and government is to be given the benefit of insurance for service disruption costs";[49] - Contract clause to provide responsibilities of both parties; - Contract clause to include terms and conditions for payment for work performed up to the date of construction or development of the project ceased on account of force majeure events; and - Contract clause stating that the private sector shall establish a reserve fund, sourced from the revenues it generates from the operation of the facility/utility, to mitigate/soften the financial impact of shouldering the repair/reconstruction works, without necessarily resorting to tariff increases or extending the concession period to recover the costs incurred.

[45] Ibid.
[46] Ibid.
[47] Ibid.
[48] Ibid.
[49] Ibid.

Type of Risk	Definition, Proposed Risk Allocation and Rationale	Possible Risk Mitigation Strategies / Suggested Contract Provision(s)
10. Asset Ownership Risk		
10.1 Default and termination	**Definition:** "Risk of 'loss' of the facility or other assets upon the premature termination of lease or other project contracts upon breach by the private firm and without adequate payment".[50] **Preferred Allocation:** Private **Rationale/Details:** - Private firm has more knowledge of the underlying causes of default and can identify risk earlier than government. - Prior to early termination of contract, arbitration is conducted. - If the contract is terminated upon breach committed by the private sector partner and such termination occurs prior to the completion of the agreement, the private sector partner may be entitled to payment for work performed up to the date of termination of the agreement. If the termination occurs after the completion of the project, the private sector partner may receive the fair market value of the assets less all amounts due to the government.	**Possible Risk Mitigation Strategies:** - Define and/or identify the possible serious breaches by the private firm which will lead to termination; - Private partner to be given time and opportunity to remedy defaults by the private partner which may lead to termination;[51] - If termination occurs pre-completion, government may (but need not to) make payment for value in the project on a cost to complete basis; - If termination occurs post completion the private partner "may receive fair market value less all amounts due to government";[52] - Government to require step in rights to ensure access and service continuity until ownership / control issues are resolved; - Government must have a ready plan of action or alternative plan before the termination of the contract with the private firm; and - For PPPs that have an asset transfer, the government will have to ensure that the following will be part of the contract terms of PPP contract: (1) standard required of the assets on the handover date, (2) process for monitoring the asset standards over a period leading up to the contract end date, (3) financial penalties for failure to meet the required standards. **Suggested Contract Provision(s):** -Contract clause clearly establishing specific contract breaches leading to termination; -Contract clause to define options for remediation of default; -If and when necessary, contract clause to define method to establish compensation to private in case of termination (pre and post-completion); -The terms and conditions pre- and post-completion termination payment shall be provided in the contract. The agency or LGU concerned shall ensure that the PPP contract contains adequate provisions on alternative courses of action that the government may take to guarantee access to and continuous provision of services from the PPP facility or infrastructure until ownership or control issues are resolved; and -Contract clause stipulating the obligation of the private partner to be liable for any defects and deficiencies the assets on the handover date. The private partner should also be required to repair or rectify any defects and deficiencies such that the asset conforms with the MPSS.
10.2 Residual value on transfer to government	**Definition:** "Risk that on expiry or earlier termination of the services contract the asset does not have the value originally estimated by government at which the private partner agreed to transfer it to government".[53] **Preferred Allocation:** Private	**Possible Risk Mitigation Strategies:** - Government to impose on the private firm maintenance and refurbishment obligations;[54] - Government to "ensure an acceptable maintenance contractor is responsible for the work, commission regular surveys and inspections";[55] - Government may require private to establish a dedicated "sinking fund to accumulate funds sufficient to bring the asset to agreed condition and/or (if required) obtain performance bonds to ensure the liability is satisfied".[56] May be addressed during the formulation of the Concession Agreement and - Apart from taking over the asset/facility at final maturity of the PPP contract, the government may have

[50] Ibid.
[51] Ibid.
[52] Ibid.
[53] Ibid.
[54] Ibid.
[55] Ibid.
[56] Ibid.

Type of Risk	Definition, Proposed Risk Allocation and Rationale	Possible Risk Mitigation Strategies / Suggested Contract Provision(s)
	Rationale/Details: - Private partner can incorporate lifecycle maintenance, refurbishment, and performance requirements into the design facility, and can manage these processes during the term of the contract. - The private sector shall properly manage and/or operate the project so that the assets are maintained or brought up to the agreed condition by the end of the contract, except when the project or facility is transferred immediately to the government upon completion of the construction or development of such project or facility.	the following options subject to the provisions of the contract and/or existing laws, rules and regulations: • an option to renew the PPP Contract instead of taking over the asset/facility (on a pricing basis which reflects the fact that its capital cost has been paid off)—this encourages the private partner to keep the asset/facility in good condition in case the renewal option is exercised; • an option to put a new PPP Contract out for a competitive bid (in which the existing private partner may participate); the winner of the bid will take over the asset/facility from the private partner at no cost. If the asset/facility is to be transferred to the government at the end of the PPP Contract, there is a tendency for the private partner to neglect maintenance during the final years of operation[57]. **Suggested Contract Provision(s):** - Contract should have provisions that third party shall conduct evaluation of facility on its residual value; - Contract to stipulate that capital gains to be shouldered by private partner prior to transfer to government; -Contract clause specifying the conditions in which assets are to be transferred to the government at the end of the term; -Contract clauses stipulating the performance indicators and frequency of monitoring of these indicators; - Contract clause requiring transfer of building plans, operating information, manuals, etc.; and - Contract clause requiring the creation of a sinking fund to cover the cost of bringing the facility up to the desired standard.

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