



KABALE UNIVERSITY

PUBLIC-PRIVATE PARTNERSHIP (PPP) POLICY,

2021

TABLE OF CONTENT

ABBREVIATIONS.....	iii
PREAMBLE.....	iv
1.0 INTRODUCTION	1
2.0 POLICY STATEMENT	1
3.0 CITATION.....	1
4.0 LEGAL AND POLICY FRAMEWORK.....	2
5.0 POLICY OBJECTIVES.....	3
6.0 STRATEGIES TO ACHIEVE THE OBJECTIVES.....	4
7.0 SCOPE AND APPLICATION.....	4
8.0 INTERPRETATION OF TERMS.....	5
8.1 Public-Private Partnership (PPP) generally;	5
8.2 Public-Private Partnership Models (PPP Models).....	5
9.0 ROLES AND RESPONSIBILITIES OF DIFFERENT ACTORS.....	6
9.1 Kabale University Council	6
9.2 University Management.....	7
9.3 Accounting Officer:.....	7
9.4 Private Party	7
9.5 Audits of Public Private Partnership Projects	7
10.0 RISK ASSESSMENT, ALLOCATION AND MITIGATION FRAMEWORK.....	8
11.0 PROJECT FINANCING STRUCTURE	8
11.1 PPP Project Structure	9
12.0 MONITORING AND EVALUATION	9
13.0 POLICY REVIEW.....	9
14.0 DATE OF APPROVAL	9
15.0 PRAYER.....	Error! Bookmark not defined.

ABBREVIATIONS

AU	African Union
BOLT	Build-Operate-Lease-Transfer
BOO	Build-Own-Operate
BOT	Build Operate and Transfer
BOOT	Build-Own-Operate-Transfer
COVID 19	Corona Virus
DBFO	Design, Build, Finance and Operate
DVC (AA)	Deputy Vice Chancellor (Academic Affairs)
DVC (FA)	Deputy Vice Chancellor (Finance and Administration)
EAC	East African Community
ICT	Information Communication Technology
KAB	Kabale University
LDO	Lease-Develop-Operate
MoU	Memorandum of Understanding
NDP	National Development Plan
PPDA	Public Procurement and Disposal Authority
PPP	Public-Private Partnership
ROT	Rehabilitate-Operate-Transfer
STEM/I	Science Technology Engineering Mathematics Innovation
UOTI	Universities and Other Tertiary Institutions Act
VC	Vice Chancellor

PREAMBLE

WHEREAS Kabale University is a Public University established under the Universities and Other Tertiary Institutions Act, 2001 (as amended) by Statutory Instrument No. 36 of July, 2015, with the main aim of becoming an efficient and effective University that excels in teaching, learning, research, innovation and community engagement and to become a sustainable vibrant University of academic excellence in the **Great Lakes Region and beyond;**

AND WHEREAS the Government of Uganda enacted the Public Private Partnership Act, 2015 which establishes Public-Private Partnership (PPP) as a model and a framework of providing efficient services and excellent quality public goods,

WHEREAS the Kabale University Council through this framework recognizes the increasing involvement and importance of private sector in provision of excellent quality public goods and services in a resource constrained environment as an alternative funding model for acquiring and administering infrastructural projects and other related services on behalf of the University in the medium to long-term;

AND WHEREAS, this policy targets to acquire and provide excellent quality public goods and services to the University at competitive costs and utilize private sector expertise and finance, and deliverables at reduced risks that are inherent in delivery of public infrastructures and services.

NOW WHEREFORE this Policy is hereby enacted and shall become effective on the date approved by the Kabale University Council.

1.0 INTRODUCTION

This policy document provides for a general outline within which the PPP will henceforth operate while the detailed guidance, process and procedures shall be separately developed in consultation with all relevant stakeholders for effective implementation.

With its strategic location in Kabale Municipality, Kabale University aims at being a hub for the East African Centre of Excellency for Science, Technology and Innovation, by appreciating the essential role ICT has turned out to play in changing education delivery approaches of teaching, learning and knowledge sharing after the event of Covid-19 pandemic. Therefore, KAB subscribes to the Higher Education harmonization of the 6th EAC Development Strategy, 2021/22 to 2024/25 by establishing infrastructures and structures that facilitate this process to match the AU Continental Education Strategy for Africa 2016-25.

The above aspiration stems from the University's vision to be *"a sustainable vibrant University of academic excellence in the Great Lakes Region and beyond"*. As such, the University has aligned its policies to the Government of Uganda's, strategic vision to match programme 12 of NDP III which aims at developing a highly productive human capital for increased competitiveness and better quality life for all. The focus therefore is to increase the STEM/I physical infrastructure and transformation of STEM/I research into commercialized products and services. This is richly elaborated in the approved University Strategic Plan 2020/22 to 2024/25.

The principle features of this policy include clear statements of objectives and strategies, scope and application, identification of key projects under the specified PPP models and recognizing the critical roles by the key structures and partnerships. Also included are Risk management, monitoring and evaluation framework as well as audits of PPP projects.

2.0 POLICY STATEMENT

The Kabale University Public Private Partnership Policy shall be to engage both public and private sectors in financing and facilitating efficiency, flexibility and innovativeness in development and maintenance of University infrastructure. It shall also emphasis provision of services at an optimal cost with better value-for-money on a medium to long-term arrangements in order to improve the quality of teaching and learning, research and innovation, and community engagements. In so doing, Kabale University abide by the national laws and shall respect, protect and promote the rights and interests of private partners on mutual understanding.

3.0 CITATION

This policy shall be cited as **"Kabale University Public-Private Partnership Policy, 2021"**

4.0 LEGAL AND POLICY FRAMEWORK

- a.** Kabale University is an autonomous educational institution established by statutory instrument No.36 of July, 2015 and therefore has legal capacity to initiate, approve and implement PPP projects aimed at improving access to and quality of teaching and learning. Through this PPP policy, the University shall engage reputable and legal entities through a consistent and transparent procurement process to facilitate cost effective and timely delivery of PPP projects and services that support University objectives.
- b.** The University while implementing this PPP Policy, shall ensure legal consistency with;
 - i) The Constitution of the Republic of Uganda, 1995
 - ii) Uganda Vision, 2040
 - iii) The Universities and Other Tertiary Institutions Act, 2001 (as amended)
 - iv) The Public Private Partnership Act, 2015
 - v) The Public Private Partnership Regulations No 18. 2019
 - vi) The PPDA Act, 2003, (as amended) and Regulations
 - vii) The Investment Code Act, 1991
 - viii) The Industrial Property Act, 2014
 - ix) The Condominium Property Act, 2001
 - x) The Land Act, 1998, Cap 227
 - xi) The Income Tax Act, 1997, Cap 340
 - xii) The Physical Planning Act, 2010
 - xiii) The Uganda Human Rights Act, Cap.24
 - xiv) The Employment Act, 2006, Regulations and Guidelines
 - xv) The Consumer Protection ACT, 2006
 - xvi) The Sale of Goods and supply of Services Act, 2017
 - xvii) The Companies Act, 2012
 - xviii) The Contracts Act, 2010 (as amended)
 - xix) The Public Financial Management Act, 2015, and Regulations 2016
 - xx) The National Environment Act, 1995, Cap 153
- c.** This policy also seeks adherence to other legal frameworks specific to the nature of the projects and services not indicated above.
- d.** Additionally, this policy shall be applied in line with the
 - i) AU Continental Education Strategy for Africa 2016-25.
 - ii) EAC Vision 2050
 - iii) 6th EAC Development Strategy 2021-26
 - iv) National PPP Framework Policy, 2011 of Ministry of Finance, Planning and Economic Development,
 - v) National PPP guidelines,
 - vi) Higher Education policies, reforms and strategic plans,

- vii) National Intellectual Property Policy, 2019, of Ministry of Justice and Constitutional Affairs,
- viii) Business Registration Laws, Trademark Acts and regulations,
- ix) Domestic Tax Laws and fiscal policies.

e. Institutional frameworks include;

- i) Kabale University Resource Mobilization Policy, **2021**,
- ii) Financial Manual, **2019**,
- iii) Strategic Plan, 2020-21 to 2024/25 and
- iv) Any other related policies and procedures established by the University.

Where this policy contravenes or varies from the Public Private Partnership Act, 2015 and the Public Private Partnership Regulations No 18. 2019 the latter shall prevail.

5.0 POLICY OBJECTIVES

The policy provides a framework confirming Kabale University Council's commitment to apply PPP approach in the development of the University in line with her established objectives as outlined in the approved Kabale University Strategic Plans.

The Policy shall avail a structured approach by creating an enabling environment for PPP to stimulate investments in the University infrastructural development and other related services. The policy will facilitate identifications, assessments, provision and supervision of the implementation of potential projects within the University.

The policy is intended to achieve;

- a) Cost effective and timely delivery.** The net present service costs and delivery period under this PPP arrangement shall be lower in comparison to the normal procurement, after attracting benefits of competition, design creativity, improved efficiency and transfer of risk.
- b) Excellent quality service/ product.** The quality of the public good and service delivered under this PPP shall be of the highest standards above those delivered under normal procurement process having attracted the benefits of innovation, competition, performance incentives and lifecycle maintenance.
- c) Strong customer focus.** The PPP agreements shall help the University to focus on innovative delivery of services /projects that the University clients find essential rather than management of existing services.
- d) Enhanced incentive and service diversity.** Risk allocations to the party that manages it best, linking service payments to performance hence, this PPP is to provide an incentive to deliver capital projects on time and to budget ensuring service / project standards are

met on a going concern basis. This will set a market benchmark and securing productivity improvements.

- e) **Better asset utilization.** Under this PPP arrangements, utilization of University assets shall be commercialized at competitive rates to maximize social and economic benefits derived from the third party.
- f) **More project delivery and wider economic benefits.** Due to constrained University budget on capital projects, this PPP will provide an open window for the private sector to finance a variety of identified University projects and accelerate their timely delivery. The implication therefore is that this PPP will stimulate other related economic benefits to the community.

6.0 STRATEGIES TO ACHIEVE THE OBJECTIVES

To achieve the objectives of this PPP policy, the University shall;

- a) Enter into contractual agreement with a reputable legal public or private entity for purposes of projects in given periods of time;
- b) Put in place management arrangements for realizing the objects of the policy;
- c) Create an enabling environment for PPP to stimulate investments in University infrastructural development and other related services.
- d) Shall adopt alternative dispute resolution mechanism for any disputes arising from the implementation of PPP projects
- e) Secure high level political support to PPP projects due to nature of the PPP projects.
- f) Ensure a consistent, transparent, efficient and accountable administrative mechanism that promotes synergistic partnerships, identifying the nature and magnitude of private partnership engagements that the University can actively undertake.
- g) Follow rules and methods of procurement consistent with the laws of Uganda by developing a strong, clear, fair, competitive and transparent procurement process consistent with PPDA laws and regulations.
- h) Secure surety for PPP projects with a higher value magnitude by entering into contractual obligation with the higher authority (Ministry of Education and Sports) that comes in, as a guarantor, and to do any other acts as may promote the relationship between itself and the private parties.

7.0 SCOPE AND APPLICATION

This policy shall apply to;

- a) Kabale University (KAB), and all other Government of Uganda Ministries, Departments, Agencies, Local Governments or private persons charged with the responsibility to deliver public goods and services to the University.

- b) Other entities/persons such as the University staff, any collaboration partners, alliance and private persons in all projects and services rendered to the University over medium to long-term period and nature.
- c) This Policy shall not exclude the applicability of the laws of Uganda including the National Private Partnership Framework.

8.0 INTERPRETATION OF TERMS

This Policy provides contextual definitions of Public-Private Partnership and related terms.

8.1 Public-Private Partnership (PPP) generally;

- a) Refers to contractual arrangements between the Kabale University and private sector or other public sector to finance, design, construct, manage, and/or maintain a University infrastructure or provide public service(s) on a medium to long-term engagements.
- b) Involves transfer or sharing of risks and rewards arising from development of University infrastructure or provide public service(s) on a medium to long-term appointments.
- c) Delivery of desired policy outcomes which are of public interests

8.2 Public-Private Partnership Models (PPP Models)

The University shall chose depending on circumstance from the models listed below which may be combined based on the analysis done. The various types of PPP contracts that may be favorable to the University depending on the project nature, level of risk transfer, investment levels and the desired outcomes to be used. The models include and are not limited to the following;

- i) **Build Operate and Transfer (BOT):** This is the simple and conventional PPP model where the private partner is responsible to design, build, operate (during the contracted period) and transfer back the facility to the public sector. Role of the private sector partner is to bring the finance for the project and take the responsibility to construct and maintain it. In return, the public sector will allow it to collect revenue from the users.
- ii) **Build-Own-Operate (BOO):** This is a variant of the BOT and the difference is that the ownership of the newly built facility will rest with the private party here. The public sector partner agrees to 'purchase' the goods and services produced by the project on mutually agreed terms and conditions.
- iii) **Build-Own-Operate-Transfer (BOOT):** This is also on the lines of BOT. After the negotiated period of time, the infrastructure asset is transferred to the Government Institution or to the private operator. This approach has been used for the development of highways and ports.
- iv) **Build-Operate-Lease-Transfer (BOLT):** In this approach, the government gives a concession to a private entity to build a facility (and possibly design it as well), own the facility, lease the facility to the public sector and then at the end of the lease period transfer the ownership of the facility to the government.

- v) **Lease-Develop-Operate (LDO):** Here, the government or the public sector entity retains ownership of the newly created infrastructure facility and receives payments in terms of a lease agreement with the private promoter. This approach is mostly followed in the development of airport facilities.
- vi) **Rehabilitate-Operate-Transfer (ROT):** Under this approach, the governments/local bodies allow private promoters to rehabilitate and operate a facility during a concession period. After the concession period, the project is transferred back to governments/local bodies.
- vii) **Design, Build, Finance and Operate (DBFO):** In this model, the private party assumes the entire responsibility for the design, construction, finance, and operate the project for the period of concession.
- viii) **Management contract:** Here, the private promoter has the responsibility for a full range of investment, operation and maintenance functions. He has the authority to make daily management decisions under a profit-sharing or fixed-fee arrangement.
- ix) **Public-Private Partnership (PPP)** is a contractual agreement involving the private sector in the delivery of public services.
- x) **Service contract:** This approach is less focused than the management contract. In this approach, the private promoter performs a particular operational or maintenance function for a fee over a specified period of time.

9.0 ROLES AND RESPONSIBILITIES OF DIFFERENT ACTORS

This PPP policy sets out clear allocation of responsibilities to implement the policy and timelines. This shall be broadly categorized within the governance structures and the detailed guidelines and procedures will identify specific roles and processes.

9.1 Kabale University Council

In line with UOTI Act, 2001, Secs 40 & 41 (as amended), the University Council shall be responsible for the overall administration and objects of the University, therefore;

- a) The University Council shall be the Contracting Authority as in the PPP Act, 2015, Sec 12. The Council shall identify, appraise, develop, procure, and monitor the PPP projects in accordance with the Act while ensuring quality control, and suitability to Kabale University Vision, Mission and Master Plan.
- b) The Contracting Authority shall appoint Transaction Advisor and Project Officer for each PPP project whose roles are provided under Sec 18 of the PPP Act, 2015.
- c) Shall monitor a project to determine whether or not;
 - i) Project complies with conditions of the agreement
 - ii) Remedial measures taken to correct any defaults
 - iii) Penalties imposed are imposed, where there are defaults
 - iv) Tariffs and levies if any are charged as prescribed
 - v) The private party complies with the instructions of the Contracting Authority

- d) Cause the private party to prepare the financial statements and annual report within two months after the end of the financial year.

9.2 University Management

- a) The University Management shall initiate and facilitate PPP documents by offering technical support, provide standardized procedures and documentations to reduce transaction costs.
- b) Promotion by the University Management shall support development of well-prepared PPP projects for marketing to investors, identify PPP solutions by raising awareness, building internal capacity and managing public perception.
- c) The University Management shall supervise the implementation and report to the University Council on the progress of all PPP projects
- d) Advice private party on the prescribed accounting and financial reporting rules to be adopted for PPP projects.

9.3 Accounting Officer:

The University Secretary shall perform the functions of Accounting Officer as detailed in the PPP Act, 2015 sec 13 in the implementation of the PPP Projects to include;

- a) Solicit for the private party for a project
- b) Appoint Project Team, Project Auditor and Evaluation Committee for each PPP project. Detailed functions are provided in the PPP Act, 2015.
- c) Protect against forfeiture, theft, loss, wastage or misuse of any property
- d) Sign an agreement on behalf of the Contracting Authority, with the private party, in accordance with the PPP Act, 2015.
- e) Take custody of a project agreement made under the PPP Act, 2015, and monitor compliance with the terms and conditions of the agreement.

9.4 Private Party

- a) Private Party in PPP shall be a special purpose company incorporated under the laws of Uganda to implement a specific PPP project.
- b) Shall keep proper books of accounts and records in relation to the PPP Project and open for scrutiny by the Contracting Authority.
- c) Submit annual report and audited financial statements to the Minister within six months after end of the financial year.

9.5 Audits of Public Private Partnership Projects

9.5.1 Process Auditor

In compliance to the PPP Act, 2015, each project will have a Process Auditor to ensure compliance to the requirements in implementing PPP as in the Act. The full functions of the Project Auditor are as enshrined in Section 17 of the PPP Act, 2015.

9.5.2 Auditor General

- a) The Auditor General or an auditor appointed by Auditor General shall in each financial year, while carrying out a comprehensive audit in accordance to the National Audit Act, audit each PPP entered into by a Contracting Authority from inception to conclusion of the project.
- b) The Auditor General shall within nine months of the end of the Audit, report to Parliament.

10.0 RISK ASSESSMENT, ALLOCATION AND MITIGATION FRAMEWORK

To ensure the success of PPP infrastructure projects, it is important for all partners to manage the risks from a project life cycle perspective, in which risks are identified and assessed in the earliest possible project stage and are allocated to the parties who are in the best position to control them. The following shall be taken into consideration;

- a) Prior to PPP contract establishment, the University shall conduct a comprehensive risk assessment for individual projects /services to identify, measure, allocate and design appropriate mitigation measures ensuring that risk management serves the objectives of all project stakeholders.
- b) The identified key risks shall be categorized appropriately and measured hence, establishing the magnitude, likelihood and ranked before a significant transfer as a form of risk allocation is made to appropriate party.
- c) The University shall adopt suitable risk mitigation strategies once risk allocation is determined.

11.0 PROJECT FINANCING STRUCTURE

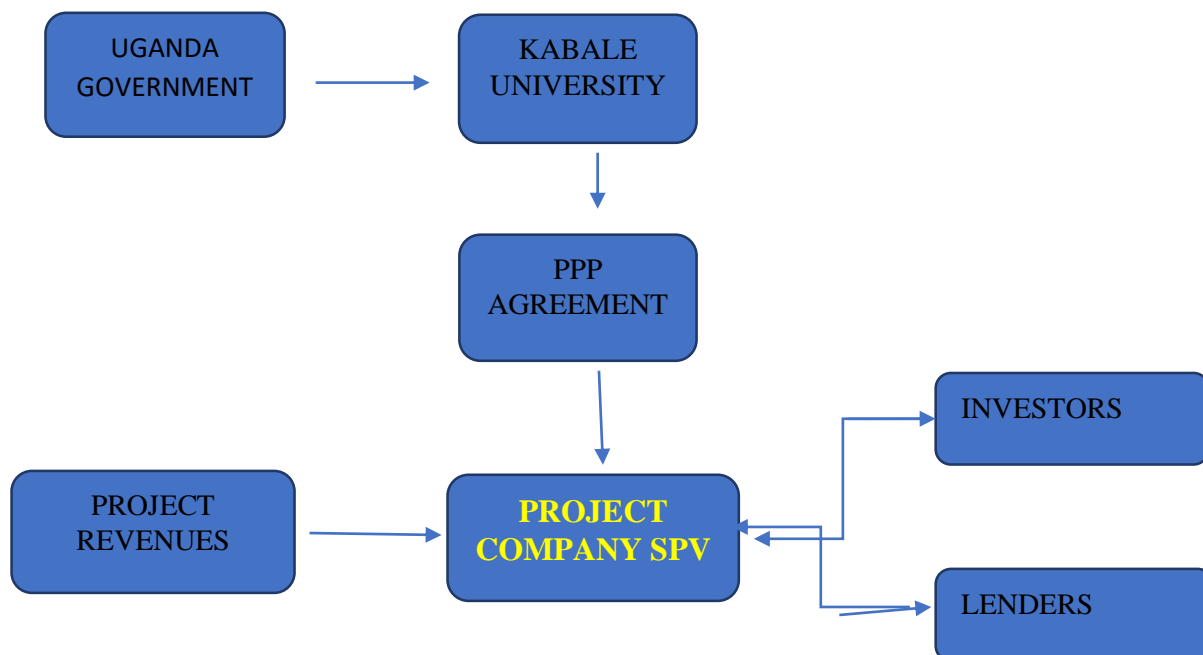
Kabale University will establish a financial support mechanism for all PPP projects by creating project development facilities that will utilize external expertise as transaction advisors on legal, technical and financial projects and services.

The evaluated successful bidder shall fully finance the PPP project over an established time period and the University shall ensure a packaged balance of price and service that is acceptable to customers and sustainable for the provider.

It is envisaged that the project's capital costs will be financed by the Project Company through a mix of shareholder equity and long-term debt financing. The primary revenue source for the project will be revenues generated from the facilities, as well as any ancillary facilities.

The PPP project shall have revolving mechanism and be financially attractive to private partners by ensuring economic viability to avoid future liability to the University.

11.1 PPP Project Structure



12.0 MONITORING AND EVALUATION

Monitoring and Evaluation of the PPP projects will be the on-going responsibility of Kabale University Council. At the project level, the contracting authority have the responsibility for monitoring and evaluation of their projects and to provide such data as will be needed for the overall project monitoring.

In this respect, it will be especially important and necessary for Kabale University Council to plan for changes in project management personnel over the project life. This will help to ensure that successors receive the necessary training to continue effective monitoring of the contract to secure value for money and to meet accountability and legal obligations.

13.0 POLICY REVIEW

The policy may be reviewed within three years to accommodate any changes.

14.0 DATE OF APPROVAL

The Kabale University Policy on Public-Private Partnership, 2021, shall be effective from the 27th September, 2021 the date of approval by the Kabale University Council.