KWARA STATE PUBLIC PRIVATE PARTNERSHIPS LAW, 2023

I assent this 27th day of November 2023

ABDULRAHMAN ABDULRAZAQ
Governor,
Kwara State of Nigeria.

Kwara State of Nigeria
Law No. 12 of 2023

ARRANGEMENT OF SECTIONS

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A LAW TO PROVIDE PUBLIC PRIVATE PARTNERSHIPS, ESTABLISH THE OFFICE OF PUBLIC PRIVATE PARTNERSHIPS, AND FOR OTHER CONNECTED PURPOSES

( ) Date of Commencement

The Kwara State House of Assembly Enacts:

1

(i) There is established an office to be known as the Office of Public Private Partnership (referred to in this law as "the Office") Establishment of The Office

(ii) The office shall be a body corporate with perpetual succession and a common seal.

(iii) The office may sue or be sued in its corporate name and may hold and dispose of any movable or immovable property.

2

(i) An advisory board (referred to as the "Board") for the office has been established (in this law). Establishment of advisory board of the office

(ii) The Advisory Board shall consist of:

(a) The Chairman

(b) Four other members were appointed by the governor.

(c) The tenure, allowances, and other conditions of the members of the Advisory Board shall be as determined by the Governor.

3. The Board shall render advice on the objectives, functions, and power of the office under the provisions of this Law. Function of Advisory Board

4. The provision contained in the first Schedule to this Law shall have effect concerning the proceedings of the board and other matters mentioned in it. Proceedings of The Advisory Board

5. 1 (i)In performing its functions and exercising its powers, the primary objective of the Office shall be to develop and maintain public infrastructure of public assets and provide social amenities and other facilities through Public Private Partnerships in the State. Objectives of The Office

(ii) To provide appropriate regulatory framework for the evolvement Public Private Partnership in the management of public infrastructure or public assets in the state.

(iii) Initiate the process and process and suggest appropriate public infrastructures and public assets for Public Private Partnership.

2. (i) In seeking to achieve its objectives, the Office shall;

(a) Initiate and develop public infrastructure and public assets development strategies for the state using Public Private Partnerships.

(b) Advise on policies that will promote and sustain Public Private Partnerships for the provision and development of public infrastructure or public assets in the State.

(c) Coordinate policies and programmes of the State concerning Public Private Partnerships for the provision and development of public infrastructure or public assets in the state; and

(d) Ensure that public private partnerships for the provision and development of public infrastructure of public assets in the state are governed by prevailing government policy and public interest.

6. The functions of the Office shall be to:

Functions of the Office

(i) Collaborate with appropriate government institution organs or bodies to conduct a pre-qualification process for private investors willing to enter a public-private partnership in expression of interest in management or public infrastructure and public assets.

(ii) Initiate procurement of Public-Private Partnerships to develop public infrastructure and public assets by conducting a pre-qualification process for private investors willing to enter Public-Private Partnerships with the state based on a request for expression of interest.

(iii) Evaluate expressions of interest by private investors interested in Public-Private Partnerships with the state and issue a preferred mandate to the Kwara State Public Procurement Board for award.

(iv) Act on behalf of the Government or any of its agencies in Public Private Partnerships under this Law and develop optimal means of financing the cost of public investment projects on order to achieve value for money.

(v) Ensure on behalf of the government or any of its agencies that all aspects of financing, refinancing, and insurance of public private partnerships within the public sector are met.

(vi) Prepare and develop, on behalf of the State, strategic master plans for Public-Private Partnerships.

(vii) Initiate the development of public assets through Public Private Partnerships in the State.

(viii) Form, or cause to be formed, Limited Liability Companies or Limited Liability Partnerships, subject to the provisions of the Law to secure finance for public investment projects or to facilitate Public Private Partnerships.

(ix) Verify and monitor the performance of the terms and conditions of concession agreements by concessionaries.

(x) Advise the Government on matters relating to financing, construction, and maintenance of public infrastructure or public assets through Public Private Partnerships in the State; and identify and make recommendations to the Government for the acquisition of land required for such purposes.

(xi) Undertake or conduct any research investigations or inquiries and collect general information relating to public infrastructure or public assets.

(xii) Liaise with bodies of professional persons and private agencies performing work regarding public infrastructure of public assets in general and

(xiii) About Public Private Partnerships initiated by the Office, it shall:

(a) ensure the provision by the concessionaire of such facilities and amenities that are necessary for the users of public infrastructure of public assets.

(b) oversee the development, operation and maintenance of public infrastructure or public assets provided by means of Public Private Partnerships and such other facilities necessary or adjacent to such public infrastructure or public assets; and

(c) satisfy, discharge and perform the obligation of the Office and the State, to uphold and observe the terms of any concession agreement subject to the provision of this Law.

7. The Office shall have the power to:

Power of the Office

(i) advise the Kwara State Public Procurement Board for the award or concession to private investors interested in Public Private Partnerships of design, construction, operation, management, control, maintenance, rehabilitation, and financing of public infrastructure or public assets.

(ii) negotiate with prospective private partners.

(iii) obtain from the government agency or private institutions, statistical or other information relevant to the functions of the Office.

(iv) inspect and monitor concessionaries to ensure compliance with the terms of any concession agreement.

(v) designate a public infrastructure or public assets as a service charge, user fee or toll paying public infrastructure or public asset and specify the condition for the use of such infrastructure or public asset and specify the condition for the use of infrastructure or assets.

(vi) specify the classes of vehicles that may use a tool road under Public Private Partnership made under this law.

(vii) liaise and cooperate with all government agencies and parastatals with respect to private investor's participation in the

provision and development of public infrastructure or public assets.

(vii) pursuant to and per the provision of this Law, approve the amount of money that may be charged by private operators with respect to any public infrastructure, public assets or amenities as toll or user fees.

(viii) establish and operate an information management system concerning public infrastructure or public assets and projects.

(ix) perform any other function as may be assigned to it by the Governor under this Law or any other enactment; and

(x) do all necessary or expedient things to perform its functions, including the engagement from time to time of consultants, advisers, and other service providers.

8. The Kwara State Public Procurement Board's award of a concession is subject to the governor's approval as the approving authority. Approving Authority

9. (i) The Office may give guarantees, letters of comfort, or undertakings with respect to any Public Private Partnerships or concession agreement with the approval of the approving authority. Procurement of Public Private Partnerships

(ii) The Office shall be a producing entity for the purpose of the Kwara State Public Procurement Law and shall comply with the intendment of that Law.

(iii) The Office may undertake restricted or emergency procurements by the provision of the Kwara State Public Procurement Law.

10.

i. The Governor shall appoint a Director-General for the Office, the Chief Executive Officer. Appointment of Director General

ii. The Director-General shall be a qualified and registered professional who must not be below GL 16 and have

cognate/related experience in Business Administration and Management.

iii. The Director-General shall:

1. be responsible to the Board for policy direction and the day-to-day administration of the Office.
2. hold Office upon such terms and conditions as may be contained in his letter of appointment and
3. hold Office for a period of four (4) years in the first instance and may be reappointed by the Governor for another term of 4 years.

Removal of Director General

11. The Governor shall remove the Director-General if he is satisfied that it is not in the interest of the Board that such Director-General should continue in the office, provided that the Governor shall also have power to suspend the Director-General if deemed appropriate.

Other Staff of the Office

12. (1) The Office may occasionally engage such other employees as necessary for the proper and efficient conduct of the Office's business.

(2) The terms and conditions of service (including remuneration, allowances, benefits, and pensions) of the employees of the Office shall be as determined by the Board after consultation with any committee, agency, or other body responsible for determining salaries in the State.

(3) Notwithstanding the provisions of subsection (2) of this section, the Governor may, upon the recommendation of the Board, approve such remuneration allowances and benefits for the Director-General or any other employee of the Office.

Establishment of Special Purpose Companies or Limited Liability Partnerships

13. The Office with the approval of the Governor may cause to be formed, Limited Liability Partnerships Limited Liability Companies for the purpose of financing Public Private Partnership projects or facilitating such projects where, in the opinion of the Office, it is necessary or expedient to do so to discharge its functions under this Law.

14. (i) There shall be an inspectorate Department of the Office staffed with persons with requisite training and experience designated as public infrastructure inspectors who shall report to the Director-General. Inspectorate Department

(ii) Public infrastructure inspectors shall undertake inspection of public infrastructure projects or public assets from time to time and shall monitor the application of appropriate service charges, user fees, or tolls by concessionaries in accordance with the terms

of the relevant concession agreement without any regulation to that effect.

15. Without prejudice to any terms as to dispute resolution as agreed in any relevant concession agreement and to any other rights of recourse available at law, where any concessionaire is dissatisfied with any omission or decision, or exercise of power by the Office, may appeal to the Governor through the Kwara State Public Procurement Board. Appeal From Decisions of the Office

16. 1 (i) The Office shall prepare and submit to the Governor an annual estimate of its income and expenditure not later than 30th June of each year for approval by the Governor. Financial Provisions

(ii) The Office shall keep the proper account for each year from 1 January to 31 December according to the state's prevailing audit policy.

2. Other sources of funds of the office shall consist of:

(i) Gifts, loans, grants, or aid from any agency, institution, bilateral and multinational organizations, or any Government.

(ii) A percentage of service charge or user fees as may be prescribed in the Office's regulation or agreed in the relevant concession agreement in the absence of such regulation, subject to the approval of the Governor; and

(iii) All other sums which may become payable to or vested in the Office regarding any matter incidental to its functions.

17. The Office shall have the power to borrow money to discharge its function under this Law, subject to the approval of the Board.

Power to Borrow

18. The Office shall keep and operate bank accounts for its fund with a reputable bank or banks as may be duly authorized by the Governor in that behalf.

Bank Account

19. The funds of the Office shall be utilized for the following purposes:

Application of the Funds

(i) Salaries, remuneration, fees allowances of staff agents or consultants to the Office.

(ii) For the development and maintenance of any property vested in or owned by the Office.

(iii) For maintaining general financial reserves subject to general or special directives that may be given on that behalf by the Governor following the provisions of this Law; and

(iv) To defray other expenses authorized by the Office in carrying out its functions under this Law.

20. The Office shall prepare and submit an annual report under the prevailing audit policy of the State no later than the 30th day of June each year, a report on the Office's activities during the immediately preceding year. Such report shall include a copy of the Office's audited accounts and the Auditor's report.

Annual Report

21. Notwithstanding the provision of any Law, the office may designate any public infrastructure asset, any road, bridge or highway within the state and subject to the constitutional authority of the Government a public infrastructure or public assets concerning which user fees or toll shall be payable for the purpose of this Law.

Designation of Public Infrastructure Assets

22. Notwithstanding the provision of any Law, the Office may, in the relevant concession or other agreement, authorize any person, in return for undertaking such obligations as may be specified in a concession or project agreement concerning the design, construction, maintenance, operation, improvement of financing of public infrastructure or public assets, to enjoy specific rights as may be stated in the concession or project agreement including the rights to levy, collect and retain service

Authorization to Collect User Fees of Tolls

charges, user fees or tolls in respect of the use of the public infrastructure or public assets.

23.

(1) The Office may, by regulation, specify the:

User Fees Toll Regulation

(a) Service charge, user fees or tolls payable in respect of designate public infrastructure or public infrastructure or public assets; and

(b) Conditions under which a member of the public will access the use of public infrastructure or public assets.

(2) A concessionaire shall propose for the approval of the Office service charge and user fees or may review them in relation to the use of the public infrastructure or public assets by reference to such circumstances or combination of circumstances or classification as the office may, after consultation.

(3) The Office may provide for service charges, user fees, or tolls to be charged for a period specified in or determined by the regulations, which may provide for a period when payment of service charges, user fees, or toll shall end:

(a) On the date or at the end of the period specified in the regulations; or

(b) On a date determined by reference to:

(i) The achievement of a specified financial objective; or

(ii) Such other factors or combinations of factors as may be specified in the regulations.

(4) Where a concession agreement has been executed by this Law, the terms of the concession agreement shall be deemed to constitute a valid service charge, user fee, or toll regulations for the purpose of this section.

24.

(1) Service charges, user fees, or tolls shall be paid to the concessionaire and adjusted in accordance with a regulation made by the office or in the

Payment of Service Charge, User Fees or Tolls

absence of such regulations as may be agreed with the concessionaire and incorporated into the relevant concession agreement.

(2) A service charge, user fee, or toll levied in respect of public infrastructure or public assets is valid only if it is charged by the concessionaire following the provision of this Law.

Offences And Penalties

25. (1) It shall be an offence for any person to fail or refuse to pay service charges, user fees, or tolls following this law, or any regulations made under this law or within the terms of the concession agreement, and the offender shall be liable, on conviction to a fine of Ten thousand Naira (₦100, 000.00) or one-month imprisonment or any non-custodial sentence provided by the Law.

(2) If it appears to a person employed to collect service charges, user fees, or tolls that a person has refused or failed to pay, the person so employed may:

(i) Refuse to permit the defaulter to use or prevent him from using the public infrastructure or public assets to which service charges, user fees, or tolls are payable; and

(ii) Require him to vacate the public infrastructure or public asset or call, where necessary, the assistance of law enforcement agents.

(3) where a person refuses to pay a service charge, user fees or tolls concerning the use of any public infrastructure that is a road or bridge, the vehicle driven by a person shall be impounded by the authority person and removed to a vehicle part provided for that purpose and such vehicle shall remain so impounded until the payments to the concessionaire of the unpaid toll and the payment of the fine prescribed by subsection (1) of this section to the appropriate authority designated by the office or shall remain so impounded pending the trial of the offence committed under the said subsection.

26.

(1) The service charge, user fee or toll, that may be levied and collected by the concessionaire under any concession agreement shall in every case, be the service charge, user fee, or toll specified or calculated in accordance with any index or formula or other provision stated in the concession agreement is entered into prior to the regulations made by the office.

Regulation of Service Charge, User Fees or Tolls

(2) Each concession agreement shall set out the procedure, circumstances and formulae by which service charge, user fee or tolls to be charged by the concessionaire shall be calculated, varied or adjusted and such provisions shall be observed, and agreement fully implemented.

(3) Where the concession agreement does not set out the provisions for calculation and adjustment or variation of service charge, user fees or tolls or such provisions are declared invalid, void, unenforceable or of no effect, by any competent court who is authority, the concessionaire shall have the right to make an application to the Office from time to time for calculation and adjustment or variation of service charge, user fees or tolls and the Office shall promptly approve or reject any such application having taken into account all relevant circumstances.

(4) The Office shall have the power to vary or adjust or to require the adjustment of any service charge, user fees, or tolls charged by a concessionaire in respect of a public infrastructure or asset only in accordance with the provisions of this or as may have been agreed and incorporated into any relevant concession agreement.

27. (1) The Office shall have the power to make regulations to.

Power To Make Regulation

(a) designate a public infrastructure or public asset as a service charge, user fee or toll-paying infrastructure or asset; and

(b) establish fair and general conditions designating who, when, and how the public infrastructure or public asset may be used and from whom service charges, user fees, or tolls may be collected.

(2) Regulations made under this section shall provide that breach of such regulation shall constitute an offence punishable by fine or by imprisonment as provided in the relevant regulation.

(3) The Office may make such regulations necessary for giving effect to any provision and purposes of this law.

28. (i) The provisions of this law shall apply to Public Private Partnerships or concessions entered before the commencement of this law. They shall preserve and protect all rights, properties, interests, and obligations existing under that contract and any law applicable when the Public Partnerships were entered into or the concession was awarded. Pre-Existing Concessions

2) The provision of subsection (1) of this section shall only apply to Public Private Partnerships or concession listed in the second schedule to this law.

29. **"Approving Authority" means** the Governor of Kwara State. Interpretation

"Authority Person" includes a Police Officer, Public Infrastructure Inspectors, designated officials of the Office, and such other person as the Office may from time to time appoint.

"Concession" means the person or organization with whom a concession agreement concerning a Public Private Partnership arrangement has been entered pursuant to this law.

"Concession Agreement" means any agreement between the Office and any person, firm, or limited liability company for the construction, maintenance, operation, or management of public infrastructure, assets

and facilities over an agreed period including, but not limited to the following:

Types of Agreement:-

(i) Design, Build, Operate and Transfer (DBOT);

(ii) Build, Own, Operate and Transfer (BOOT);

(iii) Rehabilitate, Operate and Transfer (ROT);

(iv) Joint Development Agreement (JDA);

(v) Operation and Maintenance (OM)

"Commissioner" means the Commissioner for Finance Kwara State or any person charged with overseeing the Ministry of Finance.

"Governor" means the Governor of Kwara State of Nigeria.

"Government" means the Government of Kwara State.

"Person" means an individual and shall include a limited liability company, a limited liability partnership, or any organization duly registered under the Companies and Allied Matters Act 1990.

"Plan" means a technical working drawing which shows the design of a project.

"Preferred Mandate" is a document issued in favour of a successful pre-qualified bidder.

"Project Agreement" means an agreement between the office and Private Participant selected by the office (and the State) to carry out Public Private Partnership, including without limiting the generality of the foregoing, concession, leases, management contracts, other forms of agreements with private sector entities, technical assistance contracts, consulting services contracts, franchises and regulatory agreement;

"Public Asset" includes the rights of use of any property or economic opportunity of a public nature or rising from use of public property.

"Public Infrastructure" means major repairs or maintenance requiring some changes in design or a form of re-construction of infrastructure of asset to add strength, thus renewing or extending the life span.

"Roads" includes:

(1) Roads, the subject of the project agreement;

(2) The roadways, water table, bridges and fording on the line of the roads;

(3) The land on each side of the roadway and water table up to the boundary of the road;

(4) All traffic lanes, acceleration lanes, shoulder, median strips, overpasses, underpasses, interchanges, approaches, entrance and exit ramps, service areas, maintenance;

(5) Any other areas on or adjacent to any public main road or parochial road waterway, railway or other routes used for the public passengers transport; and

(6) Any private road designated as a toll under this law or otherwise be developed or conceded under a concession agreement.

"Service Charge, User fee or Toll" means any fee, charge, levy, due or compensation payable about the use of a public infrastructure or asset by any person;

"State" means Kwara State

"The Office" means the Office of Public Private Partnerships.

I have carefully compared this printed impression with the Bill that has been passed by the Kwara State House of Assembly and found it to be a true copy of the said Bill.

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Clerk to the House