



# <T1>PUBLIC PRIVATE PARTNERSHIP LAW

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# <T1>PUBLIC PRIVATE PARTNERSHIP LAW

## <T2>A LAW TO PROVIDE FOR PUBLIC PRIVATE PARTNERSHIPS, ESTABLISH THE OFFICE OF PUBLIC PRIVATE PARTNERSHIPS, ENHANCE INFRASTRUCTURE AND SERVICE DEVELOPMENT IN LAGOS STATE AND FOR CONNECTED PURPOSES

[Commencement]

<p>THE LAGOS STATE HOUSE OF ASSEMBLY enacts as follows—

### <h1>1. Establishment of the Office

<li1>(1) There is established an Office to be known as the Office of Public Private Partnerships (referred to in this Law as “the Office”).

<li1>(2) The Office shall be a body corporate with perpetual succession and a common seal.

<li1>(3) The Office may sue or be sued in its corporate name and may hold and dispose of any movable or immovable property.

### <h1>2. Establishment and composition of the Governing Board of the Office

<li1>(1) There is established the Public Private Partnership Governing Board (in this Law referred to as the “Board”) for the Office.

<li1>(2) The Board shall consist of—

(a) <li2>(a) a Chairman who shall be of impeccable character with a minimum of fifteen (15) years’ cognate experience in his field of specialisation and registered with the relevant professional recognised body(ies), and shall be appointed by the Governor;

(b) <li2>(b) four other members appointed by the Governor, with requisite knowledge in finance, banking, engineering or law with at least ten (10) years’ cognate experience and registered with relevant professional bodies; and

<li2>(c) the Director-General of the Office.

### <h1>3. Tenure of office of members of the Board

<p>The Chairman and members of the Board shall hold office for a term of four (4) years and may be re-appointed for a further term of four (4) years only.



#### **<h1>4. Cessation of office of members of the Board**

<p>The Chairman or any member of the Board shall cease to hold office if—

- <li1>(a) he resigns his appointment as a member of the Board;
- <li1>(b) he becomes bankrupt or makes a compromise with his creditors;
- <li1>(c) he is convicted of a felony or of any offence involving dishonesty or corruption or any other criminal offence;
- <li1>(d) he becomes incapable of carrying out the functions of his office either arising from an infirmity of the mind or body.

#### **<h1>5. Remuneration and allowances of members**

<p>The Chairman and members who are not ex officio members shall be paid such remuneration and allowances as are applicable to similar Boards.

#### **<h1>6. Functions of the Board**

<p>The Board shall give policy directions on the objectives, functions and powers of the Office pursuant to the provisions of this Law and shall—

- <li1>(a) be the policy making body on Public Private Partnership for the State Government;
- <li1>(b) take decisions on all issues pertaining to Public Private Partnership in the State;
- <li1>(c) identify priority sectors for Public Private Partnership initiatives;
- <li1>(d) supervise the activities of the Public Private Partnership Office and liaise with the Governor on all issues pertaining to policy formulation, evaluation of operational guidelines and other required statutory provisions of the Public Private Partnership Office;
- <li1>(e) determine the framework of engagement of consultants, specialists and/or advisers for the Public Private Partnership projects;
- <li1>(f) plan and recommend budgets for the Public Private Partnership Office; and
- <li1>(g) create departments for the Office as it deems necessary.





## **7. Proceedings of the Board**

The provisions contained in Schedule 1 to this Law shall have effect with respect to the proceedings of the Board and other matters Board mentioned in it.

## **8. Objectives of the Office**

(1) In performing its functions and exercising its powers, the primary objective of the Office shall be to develop public infrastructure or public assets and provide social amenities and other facilities through public Private Partnership in the State.

(2) In seeking to achieve its objectives, the Office shall—

(a) initiate and develop public infrastructure and public assets development strategies for the State by means of Public Private Partnerships;

(b) advise on policies that will promote and sustain Public Private Partnerships in the development of public infrastructure or public assets in the State;

(c) co-ordinate policies and programmes of the State with respect to 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 or public assets in the State are in accordance with prevailing Government Policy and public interest.

## **9. The functions of the Office**

The functions of the Office shall be to—

(1) initiate procurement of Public Private Partnerships for the development of public infrastructure and public assets by conducting pre-qualification process for private investors willing to enter into Public Private Partnerships with the State based on request for expression of interest;

(2) evaluate expression of interest by private investors interested in Public Private Partnerships with the State and issue a preferred mandate in accordance with the provisions of the Lagos State Public Procurement Law;

(3) 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 in order to achieve value for money;

(4) ensure on behalf of the Government or any of its agencies that all aspects of financing, refinancing and insurance of public investment projects are duly undertaken by



means of Public Private Partnerships within the public sector;

<li1>(5) prepare and develop on behalf of the State, strategic master plans for Public Private Partnerships;

<li1>(6) identify priority sectors for Public Private Partnership initiative;

<li1>(7) initiate the development of public infrastructure or public asset through Public Private Partnerships in the State;

<li1>(8) determine the framework of engagement of consultants specialists and advisers for Public Private Partnership in the State;

<li1>(9) verify and monitor performance of the terms and conditions of concession agreements by concessionaries;

<li1>(10) advise the Government on matters relating to financing, construction and maintenance of public infrastructure or a Board of public assets by means of Public Private Partnerships in the State, and in particular, to identify and make recommendations to the Government with respect to the acquisition of land required for such purposes;

<li1>(11) undertake or conduct any research investigations or inquiries and collect information relating to public infrastructure or public assets in general;

<li1>(12) liaise with bodies of professional persons, and private agencies performing work with regard to public infrastructure or public assets; and

<li1>(13) in relation to Public Private Partnerships initiated by the Office, it shall—

<li2>(i) ensure the provision by the concessionaire of such facilities and amenities that are necessary for the users of public infrastructure or public assets,

<li2>(ii) 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

<li2>(iii) 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 provisions of this Law.

## <h1>10. Powers of the Office

<p>The Office shall have power to—

<li1>(1) concession to private investors interested in Public Private Partnerships for design, construction, operation, management, control, maintenance, rehabilitation



and financing of public infrastructure or public assets in accordance with the Lagos State Public Procurement Law;

<li1>(2) negotiate with prospective private partners;

<li1>(3) obtain from any government agency or private institutions, statistical or other information relevant to the functions of the Office;

<li1>(4) inspect and monitor concessionaires to ensure compliance with the terms of any concession agreement;

<li1>(5) designate a public infrastructure or public asset 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 assets;

<li1>(6) liaise and co-operate with all government agencies and parastatals with respect to private investors' participation in the provision and development of public infrastructure or public assets;

<li1>(7) pursuant to and in accordance with the provisions of this Law, and the approval of the House approve the amount of money that may be charged by any private or public operator with respect to any public infrastructure, public assets or amenities as toll or user fees subject to the approval of the House;

<li1>(8) establish and operate an information and management system concerning public infrastructure or public assets and projects;

<li1>(9) perform any other functions as may be assigned to it by the Governor under this Law; and

<li1>(10) do all things that are necessary or expedient for the performance of its functions, including the engagement from time to time of consultants and advisers and other service providers.

## **<h1>11. Procurement of Public Private Partnership**

<li1>(1) The Office may give letters of procurement, comfort or undertakings in respect of any Private Partnership or concession agreement.

<li1>(2) The Office shall be a procuring entity for the purpose of the Lagos State Public Procurement Law and shall comply with the intendment of that Law.

<li1>(3) The Office may undertake restricted or emergency procurements in accordance with the provisions of the Lagos State Public Procurement Law.

## **<h1>12. Appointment of the Director-General of the Office**

<li1>(1) The Governor shall appoint for the Office a Director-General who shall be of



impeccable character with a minimum of ten (10) years' cognate experience in the relevant field of specialisation and registered with the appropriate professional body(ies).

<li1>(2) The Director-General who shall—

<li2>(a) be the Chief Executive Officer of the Office;

<li2>(b) be responsible to the Board for policy direction and the day to day administration of the Office;

<li2>(c) hold office upon such terms and conditions as may be contained in his letter of appointment; and

<li2>(d) hold office for a period of four (4) years in the first instance, and may be re-appointed by the Governor for another term of four (4) years only.

### <h1>13. Secretary to the Board

<li1>(1) There shall be a Secretary to the Office who shall be a Civil Servant of not less than Grade Level 15.

<li1>(2) The Secretary shall—

<li2>(a) arrange meetings of the Board, prepare the agenda and minutes of such meetings;

<li2>(b) convey decisions of the Board to its members; and

<li2>(c) perform all other duties affecting the Board as may be assigned to him by the Chairman.

### <h1>14. Registration under Companies and Allied Matters Act

<p>Any company that the Office enters into a Private Public Partnership agreement with must be a company registered under the Companies and Allied Matters Act.

### <h1>15. Appointment of other staff of the Office

<li1>(1) The Governing Board shall approve the appointment for the Office other number of employees as may be expedient for the proper and efficient performance of the functions of the Office.

<li1>(2) The terms and conditions of service (including remuneration, allowances, benefits and pensions) of the employees of the Office shall be in accordance with the salary structure in the State Civil Service.





(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.

## **16. Establishment of special purpose companies or limited liability partnerships**

The Office with the approval of the Governor may cause to be formed, Limited Liability Partnerships or 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 in order to discharge its functions under this Law.

## **17. No State or Ministries, Departments or Agency's Guarantee**

A Public Private Partnership Agreement must not contain provisions for any financial guarantee from the State, any Ministry, Department or Agency for the Public Private Partnership but may include provisions for indemnity or undertaking that would be given in the ordinary course of business.

## **18. Appeal from decisions of the Office**

Without prejudice to any terms as to dispute resolution as agreed in any relevant concession agreement and to any other right of recourse available at law, where any concessionaire is dissatisfied with any omission or decision of or exercise of power by the Office under this Law, the concessionaire may appeal against the decision or exercise of power to the Lagos State Public Procurement Agency.

## **19. Funds of the Office**

The funds of the Office shall consist of—

(1) all subventions and budgetary allocations from the State Government;

(2) gifts, loans, grants or aid from any agency, institution, bilateral and multinational organisations or any government;

(3) 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; and

(4) all other sums which may become payable to or vested in the Office in respect of any matter incidental to its functions.

## **20. Bank account**

The Office shall keep and operate bank accounts for its funds with a reputable bank(s) as may be duly authorised by the existing financial laws and regulations in the State.



## **<h1>21. Application of the funds**

<p>The funds of the Office shall be utilised for the following purposes—

- <li1>(1) salaries, remuneration, fees, allowances of staff, agent or consultants to the Office;
- <li1>(2) for the development and maintenance of any property vested in or owned by the Office;
- <li1>(3) to defray other expenses authorised by the Office in carrying out its functions under this Law.

## **<h1>22. Financial provisions**

- <li1>(1) The Office shall prepare and submit to the Ministry of Economic Planning and Budget an estimate of its income and expenditure in accordance with the call circular of the Ministry of Economic Planning and Budget.
- <li1>(2) The Office shall keep proper accounts in respect of each year from 1st January to 31st December in accordance with the prevailing audit policy of the State and shall forward its statement of Account of the preceding year to the Auditor-General for Audit purposes.

## **<h1>23. Accounts and audit**

- <li1>(1) The Office shall keep a proper account of all its transactions in such form as the Board may direct, being a form that shall conform with standard commercial practice.
- <li1>(2) The form of accounts shall be such as to secure the provision of separate information in respect of each of the main activities and divisions of the Office.
- <li1>(3) The accounts shall be audited annually by external auditors appointed by the Board from a list of approved auditors provided by the Auditor-General of the State.

## **<h1>24. Annual Report**

<p>The Office shall prepare and submit an annual report in accordance with the prevailing audit policy of the State not later than the 30th day of June each year, a report on the activities of the Office during the immediate preceding year and shall include in such report a copy of the audited accounts of the Office and the Auditor’s Report.

## **<h1>25. Public Private Partnership Agreement**

<p>Without prejudice to the functions of the State under any other enactment, the State either itself or in conjunction with any other person (including another State) may—

- <li1>(a) enter into an agreement with a person (referred to in this Law as a “Partner”) for the performance of functions of the State specified in the agreement in relation to—



<li2>(i) the design and construction of an asset together with operation of services relating to it and the provision of finance, if required, for such design, construction and operation;

<li2>(ii) the construction of an asset, together with the operation of services relating to it and the provision of finance, if required for such construction and operation;

<li2>(iii) the design and construction of an asset, together with the provision of finance for such design and construction.

<li1>(b) enter, where appropriate into direct agreement with persons who have arranged or provided funding for the partner for carrying out the Public Private Partnership.

## <h1>26. Ratification of Concession Agreement

<p>As from the commencement of this Law any Concession Agreement to be entered into by the Office must be presented before the House of Assembly for ratification before implementation.

## <h1>27. Designation of public infrastructure or public assets

<p>Notwithstanding the provisions of any law, the Board may designate any public infrastructure or public asset, any road, bridge or highway within the State as public infrastructure or public assets with respect to which user fee or toll shall be payable for the purpose of this Law subject to the approval of the House of Assembly.

## <h1>28. Authorisation to collect user fees or tolls

<p>Notwithstanding the provisions of any law, the Board may in the relevant concession or other agreement, authorise any person, in return for undertaking such obligations as may be specified in a concession or project agreement with respect to the design, construction, maintenance, operation, improvement or financing of public infrastructure or public assets, to enjoy specific rights as may be stated in the concession or project agreement including the right to levy, collect and retain service charges, user fees or tolls in respect of the use of the public infrastructure or public assets.

## <h1>29. User fee or toll regulations

<li1>(1) The Office may by regulation specify the—

<li2>(a) service charge, user fees or tolls payable in respect of designated public infrastructure or public assets; and



<li2>(b) conditions under which a member of the public will access the use of public infrastructure or public assets.

<li1>(2) A concessionaire shall propose for the approval of the Office service charge, user fees or tolls or any review of same in relation to the use of public infrastructure or public assets by reference to such circumstances or combination of circumstances or classification as the Office may, after consultation with the concessionaire specify.

<li1>(3) The Office may provide for service charge, user fees or tolls to be charged for a period specified in or determined in accordance with the Regulations, which may provide for a period when payment of service charge, user fees or tolls shall end—

<li2>(a) on a date, or at the end of a period specified in the Regulations; or

<li2>(b) on a date determined by reference to—

<li3>(i) the achievement of a specified financial objective, or

<li3>(ii) such other factors or combination of factors as may be specified in the Regulations.

<li1>(4) Where a concession agreement has been executed in accordance with this Law, the terms of the concession agreement shall be deemed to constitute a valid service charge, user fee or tolls regulations for the purposes of this section.

### <h1>30. Payment of service charge, user fees or tolls

<li1>(1) Service charge, user fees or tolls shall be paid to the concessionaire and adjusted in accordance with the regulations made by the Office or in the absence of such regulations as may be agreed with the concessionaire and incorporated into the relevant concession agreement.

<li1>(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 in accordance with the provisions of this Law.

### <h1>31. Offences and penalties

<li1>(1) It shall be an offence for any person to fail or refuse to pay service charge, user fee or toll in accordance with this Law, any regulations made under this Law or within the terms of Concession Agreement, and the offender shall be liable on conviction to a fine of One Hundred Thousand Naira (₦100,000.00) or six months' imprisonment or any non-custodial sentence provided by Law.

<li1>(2) If it appears to a person employed to collect service charge, user fee or toll that a person has refused or failed to pay, the person so employed may—

<li2>(i) refuse to permit the defaulter to use, or prevent him from using the



public infrastructure or public asset with respect to which service charge, user fee or toll 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 fee or toll with respect to the use of any public infrastructure or public asset, the person may be arrested. Where the infrastructure is a road or bridge, the vehicle driven by the person shall be impounded by an authorised person and removed to a vehicle park provided for that purpose, and such vehicle shall remain so impounded until the payment to the concessionaire of the unpaid toll, of the fine prescribed by subsection (1) of this section and the demurrage to the appropriate authority designated by the Office or shall remain so impounded pending the trial of the offence committed under the said subsection.

### **32. Regulations of service charge, user fees or tolls**

(1) The service charge, user fee or toll, which may be levied and collected by the concessionaire pursuant to 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 as agreed with the Office where the concession agreement is entered into prior to the regulations made by the Office.

(2) Each concession agreement shall set out the procedures, circumstances and formulae by which service charge, user fee or toll 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 fee or toll or such provisions are declared invalid, void, unenforceable or of no effect, by any competent Court or Authority, the concessionaire shall have the right to make an application to the Office from time to time for an adjustment or variation to the service charge, user fee or toll and the Office shall promptly approve or reject any such application having taken into account all relevant circumstances.

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

### **33. Power to make regulations**

The Office shall have power to make regulations subject to the Regulations Approval Law to—

(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 charge, user fee or toll may be collected; and

(c) give effect to any provision and purposes of this Law.

### 34. Pre-existing Concessions

(1) The provisions of this Law shall apply to Public Private Partnerships or Concessions entered into before the commencement of this Law and shall preserve and protect all rights, properties, interests and obligations existing under that contract and any Law applicable when the Public Private Partnerships was entered into or the Concession was awarded.

(2) The provisions of subsection (1) of this section shall only apply to Public Private Partnerships or Concessions listed in the Second Schedule to this Law.

### 35. Interpretation

In this Law unless it is otherwise expressly provided for or the context otherwise require—

“**Authorised 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 right of economic exploitation of land, assets and rights granted pursuant to a concession agreement under this Law;

“**Concessionaire**” means the person or organisation with whom a concession agreement concerning a Public Private Partnership arrangement has been entered into pursuant to this Law;

“**Concession Agreement**” means any agreement between the Government and any person, firm, company or limited liability partnership for the construction, maintenance, operation or management of public infrastructure, assets and facilities over an agreed period of time including, but not limited to, the following types of agreements—

- (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), or
- (v) Operation and Maintenance (OM);

“**Commissioner**” means the Commissioner for Finance, Lagos State or any person charged with the responsibility to oversee the Ministry of Finance;



<li1>“**Governor**” means the Governor of Lagos State of Nigeria;

<li1> “**Government**” means the Government of Lagos State;

<li1>“**House**” means Lagos State House of Assembly;

<li1>“**person**” means an individual and shall include a limited liability company, a limited liability partnership or any organisation duly registered under the Companies and Allied Matters Act 1990;

<li1>“**plan**” means a technical working drawing, which shows the design of a project;

<li1>“**Preferred Mandate**” is a document issued in favour of a successful pre-qualified bidder;

<li1>“**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, concessions, leases, management contracts, other forms of agreements with private sector entities, technical assistance contracts, consulting services contracts, franchises and regulatory agreement;

<li1>“**public asset**” includes the right of use of any property or economic opportunity of a public nature or arising from use of public property;

<li1>“**public infrastructure**” includes public facilities and amenities including roads, bridges, highways, rail lines, water transportation facility, public water works, housing, electric power stations, hospitals, recreational parks, motor parks, waste disposal facility, amusements centres, and any other infrastructure or amenities for public use;

<li1>“**rehabilitation**” means major repairs or maintenance requiring some changes in design or a form of re-construction of infrastructure or asset to add strength, thus renewing or extending the life span;

<li1>“**road**” includes—

<li2>(1) roads, the subject of project agreement,

<li2>(2) the roadways, water table, bridges and fording on the line of the road,

<li2>(3) the land on each side of the roadway and water table up to the boundary of the road,

<li2>(4) all traffic lanes, acceleration lanes, shoulder, median strips, overpasses, underpasses, interchanges, approaches, entrance and exit ramps, service areas, maintenance,

<li2>(5) any other areas on or adjacent to any public main road or parochial road, waterway, railway or other routes used for public passenger transport, and



(6) any private road designated as a toll under this Law or otherwise developed or conceded pursuant to a concession agreement;

“**service charge, user fee or toll**” means any fee, charge, levy, due or compensation payable in relation to the use of a public infrastructure or asset by any person;

“**State**” means Lagos State.

“**the Office**” means the Office of Public Private Partnerships.

### **36. Repeal**

The Lagos State Roads (Private Sector Participation) Authority Law No.7 of 2007 is repealed.

### **37. Citation and commencement**

This Law may be cited as the Lagos State Public Private Partnership Law and shall come into effect on 34<sup>th</sup> day of June 2011.

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## **<T1>SCHEDULE 1**

### **<T2>Proceedings of the Board**

<li1>1. The Board may make standing orders to regulate its proceedings at meetings.

<li1>2. The Board shall meet at least once a month in each year. The Chairman may summon a meeting when he considers that a meeting is necessary for the discharge of the function of the Board or upon receipt of a notice in writing by two members of the Board requesting for a meeting.

1. <li1>3. The quorum for the meeting shall be three (3) members.

<li1>4. The Board may co-opt persons who are not members to any meeting of the Board and such persons may take part in its deliberations but shall not be entitled to vote at the meeting.

<li1>5. All questions at a meeting of the Board shall be determined by a majority of votes of the members of the Board present and if there is equality of votes, the Chairman shall have a casting vote.

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**<T1>SCHEDULE 2**

1. <li1>1. The Concession Agreement between the Government of Lagos State and the State Roads, Bridges, and Highway Infrastructure (PSP) Development Board and Lekki Concession Company Limited dated 24th April 2006 and any Supplemental Agreement made pursuant the Concession Agreement.