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**A LAW TO PROVIDE FOR PUBLIC PRIVATE  
PARTNERSHIP FOR PLATEAU STATE AND FOR  
CONNECTED PURPOSES**

ENACTED by the Plateau State House of Assembly as follows:

**PART I**

**PRELIMINARY**

**Citation and  
commencement**

1. This Law may be cited as the Plateau State Public Private Partnership Law, 2017 and shall come into operation on the 29<sup>th</sup> day of June 2018.

**Interpretation**

2. In this Law:  
“accountant-general” means the Accountant-General of the State;  
“agency” means the Plateau Infrastructure Promotion and Regulatory Agency established under Section 13 of this Law;  
“attorney-general” means the Attorney-General and Commissioner for Justice of the State;  
“auditor-general” means the Auditor-General of the State;  
“bid” means a tender, an offer, a proposal or price or quotation given in response to an invitation to participate in a Public Private Partnership Infrastructure or Project;  
“Bidder” means any person or group of persons that participates in a selection process relating to a Public Private Partnership Infrastructure or Project;

“bidding documents” means the tender solicitation documents or other documents for solicitation of bids for a Public Private Partnership Infrastructure or Project;

“chairman” means the Chairman of the Plateau State Council on Public Private Partnership appointed under Section 5 of this Law;

“commissioner” means the Chief Executive of any Government Ministry;

“construction” means any form of engineering works whether civil, structural, mechanical or electrical and includes rehabilitation, improvement, expansion, alteration and related works and activities, supply and installation of equipment or materials;

“council” means the Plateau State Council on Public Private Partnership established under Section 4 of this Law;

“court” means the Plateau State High Court of Justice and Courts of concurrent jurisdiction;

“government” or “state government” means the Government of Plateau State;

“governor” means the Executive Governor of Plateau State;

“house of assembly” means Plateau State House of Assembly;

“infrastructure” means a public infrastructure and includes projects or development projects which before the commencement of this

Law were financed, constructed, operated or maintained by the State Government and which after the commencement of this Law, may be wholly or partly implemented by the private sector under an agreement pursuant to the provisions of this Law including power plants, supply of electricity and energy, hydroelectric power projects, water supply and sanitation, provision of sewages, agricultural services, irrigation, telecommunications, interstate transport systems, roads and bridges, land reclamation projects, environmental remediation and clean-up projects, tourism development projects, recreational facilities, trade fair complexes, warehouses, solid wastes management, satellite and ground receiving stations, information technology networks and database infrastructure, education and health facilities, sewerage, drainage, mechanical systems and other infrastructure and development projects as may be approved from time to time by the State Executive Council;

“member” means a Member of the Council and includes the Chairman;  
“new investment and development project” includes any project involving any infrastructure not existing at the time the concession is being made, that will require the



injection of substantial funds or resources to design, construct, maintain or operate such infrastructure;

“private partner” or “concessionaire” means any person, project component, contractor or body corporate who or which has contractual responsibilities to the project and who or which has adequate financial base to implement the said project consisting of equity and firm commitments from reputable financial institutions to provide, upon award, sufficient credit lines to cover the total estimated cost of the project;

“project” includes the design, construction, development, or operation of a new infrastructure, asset or facility or the rehabilitation, modernization, expansion, operation or management of an existing infrastructure, asset or facility;

“public authority” includes the State Government or any of its Ministries, Departments and Agencies;

“public private partnership agreement or concession agreement” includes an Agreement between a Public Authority and a Private Partner for the provision, construction, maintenance or operation of Public Infrastructure or Project over an agreed period of

time including but not limited to the following:

- (a) Build, Own and Operate (BOO);
- (b) Build, Own, Operate and Transfer (BOOT);
- (c) Design, Build, Own and Operate (DBOO)
- (d) Design, Build, Operate and Transfer (DBOT)
- (e) Joint Development Agreement (JDA;)
- (f) Operation and Maintenance (OM);
- (g) Rehabilitate, Own and Operate (ROO);
- (h) Rehabilitate, Operate and Transfer (ROT):
- (i) Management Contracts (MC):
- (j) Technical Assistance (TA):
- (k) Consulting Services (CS):
- (l) Franchise; and
- (m) Bulk Supply of Services (BSS).

“public private partnership (PPP)” or “concession” means a collaboration between a Public Authority and a Private Sector Partner for the provision, construction, maintenance or operation of Public Infrastructure or Project;

“road” includes:

- (a) roads, the subject of a Public Private Partnership Agreement;

**Application of this  
Law and Public  
Procurement Law**

3

(1)

- (b) roadways, water tables, bridges and fording on the line of a road;
- (c) land on each side of a roadway and water table up to the boundary of a road;
- (d) traffic lines, acceleration lanes, shoulder, median strips, overpasses, interchanges, approaches, entrance and exit ramps, service areas;
- (e) areas on or adjacent to any public main road, waterway, railway or other routes used for public passenger transport; and
- (f) private road designated as a toll under this Law or otherwise developed or conceded under a Public Private Partnership Agreement.

“service charge, user fee or toll” means any Fee, Charge, Levy, Taxes, Rates, Royalties due or Compensation payable in relation to the use of a Public Infrastructure or Project; and

“state” means Plateau State of Nigeria

The provision of this Law shall apply to:

- (a) every contract for the financing, construction, upgrading, operation, equipping or maintenance of a project;

- (b) the provision of public services;
- (c) investment or development of any infrastructure or project;
- (d) management of either an existing or proposed infrastructure or projects; and
- (e) the control, supervision and regulation of infrastructure or projects undertaken as a Public Private Partnership.

(2) Where the provisions of this Law are in conflict with any provisions of the public Procurement Law, the provisions of this Law shall prevail.

(3) (a) The provision of this Law shall apply to any Public Private Partnership arrangement or agreement entered into before the commencement of this Law:

Provided that no term of such Arrangement or Agreement shall be invalidated on account of noncompliance with the provision of this Law.

(b) A Public Authority shall register with the Agency any infrastructure subject to Public Private Partnership Agreement, which was executed before the commencement of this Law.



**PART II**  
**ESTABLISHMENT, POWERS, FUNCTIONS, ETC OF THE**  
**PLATEAU STATE COUNCIL ON PUBLIC PRIVATE**  
**PARTNERSHIP**

**Establishment of the  
Plateau State Council  
on Public Private  
Partnership**

4. There is established a body to be known as" the Plateau State Council on Public Private Partnership"

**Composition of the  
Council**

5. (1) The Council shall comprise:

- (a) Commissioner, Ministry of Finance;
- (b) Commissioner, Ministry of Water Resources and Energy;
- (c) Commissioner, Ministry of Housing ;
- (d) Commissioner, Ministry of Works;
- (e) Commissioner Ministry for Transport;
- (f) Commissioner, Ministry of Commerce and Industries;
- (g) Commissioner, Ministry of Justice;
- (h) Commissioner, Ministry of Environment;
- (i) Commissioner Ministry for Mineral Development;
- (j) Commissioner, Ministry of Lands, Surveys and Town Planning;
- (k) Commissioner, Ministry of Agriculture and Rural Development;
- (l) Secretary to the

- (m) Government of the State;  
Chairman, Plateau State  
Planning Commission;
- (n) a representative from each  
of the following;

- (i) the Nigerian Society of  
Engineers, Plateau State  
Branch;
- (ii) Plateau Chamber of  
Commerce, Industries,  
Mines and Agriculture;  
and
- (o) the Director-General of the  
Agency as Secretary.

(2) The Member of the Council  
mentioned in sub-section (1) (o) of  
this Section shall be appointed by  
the Governor.

(3) Notwithstanding the provisions of  
sub-section (1) of this Section, the  
Council may co-opt the supervising  
Commissioner of an affected Public  
enterprise to attend relevant  
meetings of the Council.

**Allowances for  
Members of the  
Council**

6. (1) The members of the Council  
mentioned in sub-section (1) (l), of  
Section 5 of this Law shall be paid  
such remuneration, allowances and  
other benefits as the Governor may  
from time to time determine.

(2) The members of the Council  
mentioned in sub-section 1 (a)-(m)  
and (o) of Section 5 of this Law  
shall be paid such allowances and

**Tenure of Office of  
Members of the  
Council** 7.

other benefits as the Governor may from time to time determine.

The member of the Council mentioned in sub-section (1) (o) of Section 5 of this Law shall hold Office for a period of Five years and no more.

**Vacation of Office by  
the Director-General** 8.

The member of the Council mentioned in sub-section (1) (o) of Section 5 of this Law shall vacate Office on the happening of any of the following, if:

- (a) he resigns his appointment by notice in writing to the Governor;
- (b) the period of the member's appointment has expired;
- (c) he has become incapable by reason of mental or physical infirmity of discharging his duties;
- (d) he has become unfit for membership of the Council by reason of the fact that he has an interest in a Contract entered into by Council and has not disclosed that fact;
- (e) he has been absent for three consecutive meetings of the Council without leave of the Council or good excuse;
- (f) he is convicted of an offence involving fraud or dishonesty; or
- (g) he is removed from office



by the Governor for any cause.

Proceedings of the Council 9.

The proceedings of the Council shall be governed by the rules contained in the Schedule to this Law.

Disclosure of interest 10. (1)

A member of the Council who directly or indirectly has an interest in any Infrastructure subject to Public Private Partnership, the affairs of which are being deliberated upon by the Council or is interested in any Contract made or proposed to be made by the Agency shall, as soon as possible after the relevant facts have come to his knowledge, disclose the nature of his interest at a meeting of the Council.

(2) A disclosure under sub-section (1) of this Section shall be recorded in the minutes of meeting of the Council and the member shall:

(a) not take part after such disclosure in any deliberation or decision of the Council with regards to the subject in respect of which his interest is thus disclosed; and

(b) be excluded for the purpose of constituting a quorum of any meeting of the Council for any such deliberation.



**Powers of the Council**

11. (1)

The Council shall have power to:

- (a) provide the Policy Guidelines in respect of the promotion, development and regulation of State Infrastructure through Public Private Partnership;
- (b) undertake supervisory role on the activities and functions of the Agency under this Law;
- (c) approve Standards and Guidelines for infrastructure development through Public Private Partnership;
- (d) provide the general Policy Guidelines relating to the functions of the Agency;
- (e) superintend over the policies implemented by the Agency;
- (f) subject to the provisions of this Law, make, alter and revoke Rules and Regulations for carrying out the functions of the Agency;
- (g) determine the Terms and Conditions of Service of the employees of the Agency;
- (h) fix the remuneration, Allowances and benefits of the Employees of the Agency in consultation with the Civil Service Commission;

- (i) liaise with relevant bodies or Institutions for the effective performance of its functions under this Law; and
- (j) do such other things which in its opinion are necessary or expedient to ensure the efficient performance of the functions of the Agency.

- (2) For avoidance of doubt, and notwithstanding the provisions of Sub-section (1) of this Section, the power to enter into any Public, Private Partnership Agreement and or, award of a Public Private Partnership Contract shall vest solely in the State Executive Council.

**Functions of the Council**

12.

The functions of the Council are to:

- (a) ensure that each Project Agreement is consistent with the provisions of this Law;
- (b) formulate Policy Guidelines on Public Private Partnerships;
- (c) ensure that all projects are consistent with the National priorities specified in the relevant Policy on Public Private Partnership;
- (d) approve project proposals submitted to it by a Contracting Authority;

- (e) approve project lists submitted to it;
- (f) authorize allocation from the Fund established under the relevant provision of this Law;
- (g) formulate or approve Standards, Guidelines and Procedures for awarding Contracts and Standardized Bid Documents;
- (h) examine and approve the feasibility study conducted by a Contracting Authority under this Law;
- (i) review the Legal, Institutional and Regulatory framework of Public Private Partnerships;
- (j) oversee the monitoring and evaluation by Contracting Authorities of a Public Private Partnership from the commencement to the post completion stage;
- (k) ensure approval of and fiscal accountability in the management of financial and any other form of support granted by the Government in the implementation of projects under this Law;
- (l) ensure the efficient implementation of any Project Agreement entered into by Contracting Authority;



- (m) determine whether the shares of a listed Public Enterprise should be by Public Issues or otherwise and advise the Government accordingly;
- (n) recommend to the Governor for approval the appointment of Advisers and Consultants on Public Private Partnership, including their Remuneration;
- (o) appoint as and when necessary, Committees comprising persons from Private and Public Sectors with requisite technical competence to advise on the development of infrastructure through Public Private Partnership;
- (p) approve Budget of the Agency established under this Law;
- (q) supervise the activities of the Agency and issue directions on the implementation of Public Private Partnership;
- (r) receive and consider the audited Accounts of the Agency;
- (s) submit to the Governor in each year a Report on the activities of the Agency;
- (t) receive regular and periodic Reports from the



Agency on programme implementation and give appropriate directions; and

- (u) perform any other function as may be conferred on it by this Law or any other written Law.

**PART III**  
**ESTABLISHMENT, POWERS AND FUNCTIONS OF THE**  
**PLATEAU STATE INFRASTRUCTURE PROMOTION AND**  
**REGULATORY AGENCY**

**Establishment of the Plateau State Infrastructure Promotion and Regulatory Agency**

13. (1) There is established a body to be known as the "Plateau State Infrastructure Promotion and Regulatory Agency" (hereinafter in this Law referred to as "the Agency").

(2) The Agency shall be a body corporate with perpetual succession and common seal and may sue or be sued in its corporate name.

(3) The Agency may acquire, hold or dispose of any property, moveable or immovable for the purpose of carrying out its functions under this Law.

**Functions relating to infrastructure development through Public Private Partnership**

14. The functions of the Agency with respect to Public Private Partnership shall be to:

- (a) promote and develop State infrastructure through Public Private Partnership;
- (b) set and maintain standards

regarding infrastructure and new development projects as permissible under this Law;

- (c) take custody of every Public Private Partnership Agreement made under this Law and monitor compliance with the terms and conditions of such Agreement;
- (d) ensure efficient execution of any Public Private Partnership Agreement or Contract entered into by Government, Ministries, Departments and Agencies;
- (e) ensure implementation and compliance with the provisions of this Law; and
- (f) perform such other functions as may be directed by the Council or the Governor from time to time and as are necessary and expedient to ensure the efficient performance of the functions of the Agency under this Law.

**Functions relating to regulation of infrastructure subject to Public Private Partnership** 15. (1)

The functions of the Agency with respect to the regulation of infrastructure subject to Public Private Partnership shall be to:

- (a) regulate the generation, transmission, distribution and marketing of energy

- in the State through Public Private Partnership;
- (b) ensure the promotion of infrastructure in other sectors of the economy under Public Private Partnership arrangements;
  - (c) ensure the reliability of services provided by Private Partners operating infrastructure under Public Private Partnership;
  - (d) monitor and investigate services provided under Public Private Partnership;
  - (e) formulate, regulate and review Infrastructure Tariffs, Fees, Levies, Tolls and Taxes in consultation with the relevant authorities responsible for revenue matters in the State;
  - (f) promote policies that are transparent, efficient and environmentally friendly;
  - (g) form and enforce standards in the execution of Public Private Partnership infrastructure and use of their services;
  - (h) protect the interests of consumers and users of services provided by Private Partners under Public Private Partnership Agreements; and
  - (i) impose mandatory reliable standards for services



provided by Private Partners and to impose penalties for contravention of any of the provisions of this Law or Public Private Partnership.

**Other functions**

The Agency shall:

- (a) be responsible to the Council;
- (b) provide secretarial support to the Council;
- (c) determine when an infrastructure may be subject to Public Private Partnership; and
- (d) carry out such other duties as may be assigned from time to time by the Council.

**PART IV  
STRUCTURE AND STAFF OF THE AGENCY**

**Structure of the Agency**

17. (1) There shall be established for the Agency the following Departments to be headed by Directors, namely;

- (a) Department of Public Private Partnership;
- (b) Department of Infrastructure;
- (c) Department of Administration; and
- (d) Department of Finance and Supplies.

(2) The Agency may establish the



following Units for the purpose of carrying out its functions under this Law:

- (a) Media and Public Relations Unit;
- (b) Audit Unit; and
- (c) Legal Unit.

- (3) Notwithstanding the provisions of sub-sections (1) and (2) of this Section, the Agency may subject to the approval of the Council establish additional Departments or Units whenever the need arises.

**Functions of  
Departments and  
Units**

18.

The respective functions of the Departments and Units shall be determined by the Agency subject to the approval of the Council.

**Director-General**

19. (1)

There shall be appointed by the Governor a Director-General for the Agency who shall not be below the rank of a Permanent Secretary in the Public Service or a person with cognate experience in Engineering, Law, Architecture or Business Sciences and who has been so qualified for a period of not less than 15 years.

(2)

The appointment of the Director-General shall be subject to the confirmation of the Plateau State House of Assembly.

(3)

The Director-General shall be:

- (a) the Chief Executive and

- (b) Accounting Officer; and responsible to the Council for the day- to-day execution of policies;
- (4) The Director-General shall hold Office in the first instance for a period of Five Years and no more.
- (5) Subject to the provision of this Section, the Director-General shall hold Office on such terms as to emoluments, allowances and benefits as may be specified in his Letter of Appointment.
- (6) Notwithstanding the provision of sub-section (4) of this Section, the Director-General may:
  - (a) resign his appointment by a notice in writing under his hand addressed to the Governor through the Council; or
  - (b) be removed by the Governor for inability to discharge the functions of his Office (whether arising from infirmity of the mind or body or any other cause) or for misconduct or corruption, subject to confirmation by the Plateau State House of Assembly.

**Staff of the Agency** 20.

The Agency may subject to the approval of the Council, appoint such staff as it may deem necessary

and expedient from time to time for the proper and efficient performance of its functions and on such terms and conditions as may be determined by the Council.

**Transfer and  
Secondment**

21. Notwithstanding the provisions of Section 20 of this Law, any other Officer or employee in the Public Service of the State may be seconded to the Agency, subject to the approval of the Agency.

**Promotion,  
Discipline, etc.**

22. Subject to the provision of Sections 20 and 21 of this Law, the Agency shall have power to promote and exercise disciplinary control over such Officers, Servants and Agents of the Agency as it may deem necessary following due process in accordance with the Public Service Rules pending when the Council approves the Terms and Conditions of Service for the employees of the Agency.

**Pension Rights**

23. (1) Service in the Agency shall be approved service for the purpose of the Pension Law and accordingly, Officers and other persons employed in the Agency shall be entitled to Pension, Gratuities and other benefits as are prescribed thereunder, so however that nothing in this Law shall prevent the appointment of a person in any Office on terms which preclude the grant of a Pension, Gratuity or other retirement benefits in respect of that



Office.

- (2) For the purpose of the application of the provision of the Pension Law, any power exercisable thereunder by an appropriate authority of the State Government, other than the power to make Regulations under the relevant provision of this Law, is vested in and shall be exercisable by the Agency and not by any other Person or Authority.

## PART V FINANCIAL PROVISIONS

### Funds of the Agency 24.

There is established and maintained for the Agency a Fund into which shall be paid and credited:

- (a) such Sums, Subventions, Budgetary Allocations and Grants as may be provided by the State;
- (b) any Loan granted to the Agency by the State Government or any Local Government in the State or any other person or institution, with the approval of the Governor;
- (c) such sums as may be paid to the Agency by way of Grants-in-aid or Donations from National, Bilateral and Multilateral Organizations, Agencies, National and International Development



- Partners, Communities and Individuals;
- (d) Subsidies, Donations, Gifts, Fees, Subscription, Rent, Interest and Royalties due to the Agency;
- (e) 2.5 per cent of all Utility Laws, Fees, Levies, Tolls, Taxes and Royalties collected from services provided by Infrastructure subject to Public Private Partnership; and
- (f) any other lawful source.

**Expenditure**

25.

The Agency may, from time to time, apply the proceeds of the Fund established under Section 24 of this Law for:

- (a) the payment of allowances and other benefits of the members of the Council;
- (b) reimbursing members of the Council or of any Committee set up by the Council or Agency for such expenses as may be expressly authorized by the Council;
- (c) the payment of Salaries, Fees or other Remuneration, Allowances and other benefits including Pensions and Gratuities payable to the staff and employees of the Agency;

- (d) cost of administration including Legal matters of the Agency;
- (e) Assets acquisition for the Agency; and
- (f) the maintenance of any property vested in or acquired by the Agency; and
- (g) any matter in connection with all or any functions of the Agency under this Law.

**Bank Accounts**

26. (1) The Agency shall operate such number of Bank Accounts as may be approved by the Accountant-General and all monies of the Agency shall be paid into any of such Accounts.

(2) No Cheque or other Instruments for withdrawal of money from any of such Accounts shall be made unless it is signed by the Director-General and Director of Finance and Supplies with the Director of Administration as an alternate signatory in the absence of the Director of Finance and Supplies.

**Annual Estimates,  
Accounts and Audit**

27. (1) The Agency shall submit to the Council not later than September of each year an estimate of its Expenditure and Income for the next succeeding year.

(2) The Agency shall keep proper accounts in respect of each year and

proper records in relation thereto and shall cause the Accounts to be audited by an Auditor appointed from the List and in accordance with the Guidelines supplied by the Auditor-General.

**Annual Report**

28.

The Agency shall prepare and submit to the Council, not later than March in each year a Report, in such form as it may direct, on the activities of the Agency during the immediate preceding year and shall include in such Report, a copy of the audited accounts of the Agency for that year and the Auditor-General's Report thereon.

**Power to accept Gift**

29. (1)

The Agency may accept any gift of Land, Money or other Property on such terms and conditions, if any, as may be specified by the person or organization making the gift.

(2)

The Agency shall not accept any gift if the condition attached by the person or organization making the gift is inconsistent with the functions of the Agency or is otherwise illegal.

**Power to Borrow**

30.

The Agency may with the approval of the Governor and subject to the resolution of the House of Assembly of the State, borrow by way of Loan or Draft from any source, monies required by the Agency for meeting its obligations



and discharging its function under this Law.

## PART VI

### PUBLIC PRIVATE PARTNERSHIP IN STATE INFRASTRUCTURE DEVELOPMENT

#### Public Partnership

#### Private

31. (1) A Public Private Partnership may include the following, the:
- (a) management of an Infrastructure or a Public Authority;
  - (b) performance of an Infrastructure of the Public Authority; and
  - (c) execution of an Infrastructure for a Public Authority.
- (2) The types of Contracts provided for in this Law, as well as the other types of contracts provided for in any Law in force, may be used separately, jointly or simultaneously in a single Public Private Partnership Infrastructure and may be submitted to one or more bidding processes.
- (3) In the event of carrying out a Public Work Project, upon completion of the Public Private Partnership, the Public Authority shall retain ownership of the Real Estate or other Asset(s), regardless of



Compensation, except otherwise stipulated in the Public Private Partnership Agreement.

**Specific Rules for  
Public Private  
Partnership  
Arrangement**

32.

A Public Private Partnership arrangement shall contain the following:

- (a) a period of validity compatible with the amortization of the investments made;
- (b) penalties to be applied to a Public Authority and also to the Private Sector Partner, in the event of failure to fulfil the contractual obligations;
- (c) possible circumstances for Contract termination prior to the end of the term of the Contract, as well as criteria for calculating the required Compensation payments; and
- (d) any conditions as the parties may consider necessary.

**Guarantee by Public  
Authority**

33. (1)

The Public Authority may provide guarantees for meeting obligations assured by a Private Partner, as a result of Public Private Partnership Agreements.

(2)

The Public Private Partnership Agreement may stipulate that commitments related to counterpart instalmental payments owed by the

Public Authority may be paid off on behalf of the institution that financed the Partnership Project, as a guarantee for meeting, financing conditions.

(3) In order to meet the payment conditions stipulated in the Public Partnership Agreement, the earmarking of revenues or the creation or use of special funds shall be allowed, so long as these are provided in any Law.

(4) In order to grant additional guarantee for meeting the obligations assured by the Public Authority, the State Government shall make such payments as may be agreed by parties into a Trust Fund to encourage Public Private Partnership created by a Financial Institution.

**Private Sector participation in construction, maintenance, etc.** 34.

As from the commencement of this Law, any Public Authority involved in the financing, construction, operation or maintenance of an Infrastructure, by whatever name called, may in accordance with the Provision of this Law, enter into a Public Private Partnership arrangement to any duly pre-qualified Private Partner in the Private Sector for the financing, construction, operation or maintenance of such an Infrastructure that is financially

**Prioritization of  
Infrastructure  
Development**

35. (1) Every Public Authority shall prioritize its Infrastructures or Development Projects and such prioritized projects may be qualified for Concession under this Law.
- (2) The projects mentioned in sub-Section (1) of this Section shall be submitted to the Council by the Agency based on the recommendation of the relevant Public Authority prior to entering into any Public Private Partnership arrangement under the provisions of this Law.

**Financial Capacity  
for Infrastructure  
Development**

36. In entering into any Public Private Partnership arrangement under the provisions of this Law, a Public Authority shall ensure that the project proponent possesses the financial capacity, relevant expertise and experience in undertaking such Infrastructural Development or maintenance.

**Publication of the list  
of Infrastructures or  
Projects**

37. The Agency shall publish in the Official Gazette the List of Infrastructures eligible for Contract that are to be financed, constructed, operated or maintained under this Law or that may be subject to review or possible termination or cancellation.



**Designation of  
Infrastructure and  
collection of User Fee  
or Toll**

38. (1) Notwithstanding the provisions of this Law or any Law, the Agency may designate any Public Infrastructure or Road or Bridge or a State Highway as a Public Infrastructure or Project with respect to which a User Fee or Toll shall be payable subject to the approval of the Council.

(2) Pursuant to the provisions of sub-section (1) of this Section, the Council may in any Public Private Partnership Agreement make provisions for authorizing any person, in return for any undertaking under the Public Private Partnership Agreement as may be specified with respect to design, construction, maintenance, operation, improvement or financing of the Infrastructure or Project the right to levy, collect and retain Service Charges, User Fees or Tolls in respect of the use of the Public Infrastructure or Project.

(3) An Agreement made pursuant to the provisions of sub-section (2) of this Section may state the formula for sharing any collection made thereunder.

**Payment of Service  
Charge, User Fee or  
Toll**

39. (1) There shall be paid to the Private Partner Service Charge or User Fee or Toll by the user of the Public Infrastructure.



(2) The Service Charge or User Fee or Toll payable under the provisions of sub-section (1) of this Section may be adjusted in accordance with Regulations made by the Agency or in the absence of such Regulations as may be agreed with the Private Partner and incorporated into the Public Private Partnership Agreement.

**Rate for Service Charge, Fees or Toll**

40. (1) The Service Charge, User Fee or Toll, which may be levied and collected by the Private Partner pursuant to any Public Private Partnership 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 Public Private Partnership Agreement as agreed with the Agency where the Public Private Partnership is entered into prior to the Regulations made by the Agency.

(2) Every Public Private Partnership Agreement shall set out the procedures, circumstances and formula by which Service Charge, User Fee or Toll to be charged by the Private Partner shall be calculated, varied or adjusted and such provisions shall be observed and the Agreement fully implemented.

**Recovery of Investment**

41. (1) Any Private Partner who enters into any Public Private Partnership Agreement for financing, construction, operation or maintenance of any Infrastructure may, subject to the provisions of the Agreement, recover his investments.

(2) Notwithstanding sub-section (1) of this Section, the Private Partner shall:

- (a) undertake appropriate Insurance Policy on the Public Private Partnership arrangement with an Insurance Company approved by the National Insurance Commission; and
- (b) undertake the maintenance and repairs of the Infrastructure during the subsistence of the Public Private Partnership Agreement.

(3) Subject to sub-section (4) of this Section, the amount expended by any Private Partner who enters into any Public Private Partnership financing, construction, operation or maintenance under any Concession under this Law may be repaid by way of amortization payments through the Public Private Partnership Special Accounts.

- (4) Any Private Partner to whom any Public Private Partnership has been granted under the provisions of this Law shall make payment to the State Government, of such sum and at such intervals, from the proceeds realized from the implementation of the Public Private Partnership as may be provided in the Public Private Partnership Agreement.

**Authentication of the cost of an Infrastructure or Project** 42.

The cost of an Infrastructure or Development Project shall be duly authenticated by the relevant Public Authority or relevant qualified professional duly authorized by the Council to determine correctly the amount to be repaid by amortization.

**Special Purpose Vehicle** 43.

The Agency shall establish a Special Purpose Vehicle for the purpose of meeting specific objectives as shall be contained in the Public Private Partnership Agreement for the management of the Assets of the Equity Holders under the Agreement.

**Establishment of Special Public Private Partnership Accounts** 44. (1)

The Agency shall establish a Special Public Private Partnership Account into which shall be credited money accruing to the State Government and from which shall be defrayed monies to be paid in respect of the Public Private Partnership Agreement.



(2) The Special Public Private Partnership Account shall be operated by the Agency and the Private Partner.

**Power to Inspect**

45.

The Agency or a Public Authority shall have power at any reasonable hour during the day time to enter upon and inspect any Land or Assets comprised in any Public Private Partnership Concession granted or executed pursuant to the provisions of this Law for the construction or erection of any Infrastructure and it shall be the duty of the Private Partner or anyone acting in that behalf to permit and give free access to enter and inspect.

**Supervision of Infrastructure under Public Private Partnership**

46.

Subject to the provisions of this Law, the Agency shall, in collaboration with the relevant Public Authority, supervise the Infrastructure in respect of which a Public Private Partnership has been entered into.

**Right of Way**

47.

Every Private Partner to whom any Public Private Partnership Agreement has been granted under the provisions of this Law, shall have a Right of Way or Easement in respect of any Land or Property near to or bordering the Project Site or Infrastructure as may be reasonably necessary for the proper implementation of the



Infrastructure under this Law.

**Registration of  
Companies engaged  
in Public Private  
Partnership  
Arrangement**

48.

A Company engaged in any Public Private Partnership arrangement under the provisions of this Law, shall be registered with the Corporate Affairs Commission.

**PART VII**

**PUBLIC PRIVATE PARTNERSHIP PROCESSES AND AWARDS**

**Procurement  
Principles**

49. (1)

The procurement procedure relating to Public Private Partnership projects shall be as follows:

- (a) be fair, equitable, transparent, competitive and cost effective; and
- (b) notwithstanding any provisions in any other Law, the procurement procedure shall be in accordance with the provisions of this Law and any Regulations or Rules made thereunder.

**Competitive Bidding  
for Infrastructure  
Development**

50. (1)

Upon an approval for any arrangement, any Contract for financing, construction, operation or maintenance of any Infrastructure or Development Project under this Law, the Public Authority concerned shall, by publication in at least three National Newspapers having wide circulation in Nigeria and such other means of circulation, invite Open Competitive Public Bid for such Infrastructure approved under

the provisions this Law.

- (2) The Public Private Partnership Agreement shall be awarded to the Bidder who having satisfied the pre-qualification criteria, submits the most technical, economical and practical Bid.

**General Bidding Requirement**

**Bidding**

51. (1)

The contracting of a Public Private Partnership Project by a Public Authority shall be preceded by a bidding process based on the following:

- (a) public notice of the request for Bid proposals shall expressly indicate that the Bid Process and Contract shall abide by the provisions of this Law;
- (b) the competition shall be carried out under a pre-qualification system;
- (c) the Notice requesting for Bid proposals shall:
  - (i) require guarantee for the Bid proposal and execution of the Contract greater than those established by Law;
  - (ii) require that the Bidder present a Financial Pledge made by Companies or Financial Institutions that meet the requirement of strength and safety as established

in the Notice;

(iii) require, as a condition for entering into the Public Private Partnership Arrangement, that the winning Bidder shall create a Special Purpose Vehicle of setting up and managing the partnership activities and also that it must adopt Standardized Accounting Practices and Financial Statement: Provide that the winning Bidder shall be in charge of preparing the Project Plan for achieving the purpose of the Partnership activity that was the subject of the Bidding Process, or allow an alternative Project Plan to be presented in the Bidding Process; and

(iv) provide for the resolution of any dispute by reference to Arbitration.

(2) After the pre-qualification stage, the Bidding Process shall comply with the following:

(a) the Public Authority entity shall receive Technical Bid proposals from the Bidders and may request



- that changes be made to serve public interest;
- (b) a reasonable and sufficient period of time shall be established for satisfying the requests made by the Public Sector Authority;
  - (c) once the stage for improving Technical Bid proposals is completed, the Public Authority shall receive the price proposals from the Bidders;
  - (d) the Bidders may present new and successive price proposals until one is declared to be the winner under the terms and conditions stipulated in the Public Notice;
  - (e) the Public Notice may limit the right to present new and successive price proposal to Bidders that are included in a specific range established in the Public Notice, relative to the proposal that initially places first; and
  - (f) if there are not at least three proposals included in the range established in the Public Notice, those who present the three best proposals may present new and successive price proposals.

(3) In order to judge the Bid proposals,



**Invitation to Bid,  
request for  
Expressions of  
Interest and Pre-  
Qualifications  
Bidding Documents**

the following criteria may be adopted the:

- (a) lowest Rate;
- (b) best Techniques; and
- (c) lowest counterpart instalment payments for Public Authority.

52. (1)

A Public Authority shall in consultation with the Agency prepare a request for submission of Expressions of Interest and the associated Pre-qualification Bidding Documents, after receiving approval from the Council on Public Private Partnership.

(2)

A Public Authority shall submit the request for submission of Expressions of Interest and the Pre-qualification Bidding Documents prepared by it to advertise, invite, solicit or call for Bids for the purposes of engaging in pre-qualification process.

(3)

The request for submission of Expressions of Interest shall be in accordance with the provisions of this Law and any relevant Regulations and Rules made thereunder.

(4)

The request for Expressions of Interest shall include the following:

- (a) a description of the proposed Public Private Partnership Infrastructure;

- (b) an indication of the essential elements of the Public Private Partnership Infrastructure; such as the:
  - (i) services to be delivered by the Private Partner; and
  - (ii) financial arrangements envisaged by the Public Authority;
- (c) a summary of the main terms of the Public Private Partnership Agreement to be entered into;
- (d) the manner and place for the submission of applications for pre-qualification and the deadline for the submission, expressed as a specific date and time, allowing sufficient time for Bidders to prepare and submit their Expressions of Interest; and
- (e) an appropriate statement to the effect that the Public Authority reserves the right to request proposals upon completion of the pre-qualification process only from a limited number of Bidders that best meet the pre-qualification criteria.

- (5) The Public Authority shall pursuant to the provision of this Section prepare and submit a report to the

Agency for its consideration.

**Submission of Bids**

53. (1)

A Bidder who intends to Bid for a project under this Law shall complete and submit a Technical and Financial Bid enclose each Bid in a separate sealed envelope as may be specified by the Public Authority.

(2)

A Public Authority shall open the Financial Bid submitted by a Bidder unless it has opened and approved the Technical offer submitted by that Bidder in accordance with the provisions of this Law.

(3)

The Council shall make rules for the submission and opening of tender documents.

**Competitive Dialogue**

54 (1)

A Public Authority may, in consultation with the approval of the Council, hold a competitive dialogue with each Bidder to define the Technical or Financial aspects of the projects in the manner prescribed under this Law.

(2)

A Public Authority may require a Bidder to submit to the Authority, a Technical and Financial non-bidding proposal for discussion with the Authority.

(3)

A Competitive Dialogue under subsection (1) shall be held with each Bidder on the basis of equality and



transparency.

- (4) The discussions held during a competitive dialogue shall be confidential and shall not be disclosed to any person by any party to the discussions.
- (5) After concluding the competitive dialogue stage, the Public Authority may alter project specifications risk matrix or structure and may re-open qualification for the project, while keeping the initial pre-qualified parties qualified.

**Building by Consortium**

55. (1) Where a Bidder is a Consortium constituted for the purpose of Bidding for a project under this Law, the Bidder shall submit the Bid in the name of the consortium'

(2) A Consortium under sub-section (1) shall submit, together with the Bid submission, proof that each member of that consortium has consented to join the consortium and participate in the Bidding process.

(3) A consortium shall appoint a person from among its members to represent the Consortium in any discussion held with the Public Authority and shall submit, together with the Bid Documents, a notice of the appointment of the representative.



- (4) A person who is a member of a Consortium shall not submit a Bid, whether directly or indirectly or through another Consortium or a Company which submits a Bid and in case of a Company, if that person owns a majority of the shares or has control over its management.
- (5) The Proposal Evaluation Team shall disqualify a Consortium which submits a Bid contrary to this Section.
- (6) A Public Authority may, where a member of a Consortium withdraws from the consortium, disqualify that Consortium from participating in the Bidding process or review the terms and conditions of a Project Agreement entered into with the Consortium.
- (7) The provision of sub-section (6) shall not apply where the Consortium replaces the member who withdraws with another party so as to ensure that it remains eligible throughout the tender and implementation process except for construction and design criteria at the later stage of the Project.
- (8) Each member of a Consortium which submits a bid under sub-section (1) shall be bound jointly and severally by the terms and conditions of the Project

**Evaluation of Bids  
Documents by the  
Agency**

56. (1)

Agreement and shall be jointly responsible for the performance of the obligations under the Agreement.

Any person who meets the criteria stated in the pre-qualification Bidding Documents shall qualify for the pre-qualification process, which criteria shall include the following:

- (a) professional and Technical qualifications, human and physical resources as may be necessary to carry out all aspects of the Public Private Partnership Infrastructure;
- (b) appropriate managerial and organizational capability, reliability and experience, including previous experience in operating similar Public Private Partnership infrastructures;
- (c) adequate Financial capacity to fund, or experience in arranging Financing, for the investment required for the Public Private Partnership Infrastructure, and
- (d) no involvement in litigation that could materially affect the ability to carry out the Public Private Partnership Infrastructure.

- (2) The criteria for evaluating Financial offers shall include:
- (a) the present value of proposed user levies, unit prices, and other charges over the full term of the Public Private Partnership Agreement;
  - (b) the present value of proposed direct payments by the Public Authority, if any;
  - (c) the present value of the costs for design and construction activities plus annual operation and maintenance costs;
  - (d) the extent of Financial support, if any, expected from a Public Authority;
  - (e) the soundness of the proposed financial arrangements;
  - (f) the social and economic development potential offered by the proposals; and
  - (g) any other prescribed criteria.

**Proposal Evaluation Team** 57.

- (1) A Public Authority shall constitute a Proposal Evaluation Team for the purpose of evaluating Bids submitted to it by Bidders under this Law.
- (2) A Proposal under sub-section (1) shall consist of:
- (a) the head of the Public Authority;
  - (b) a representative of the relevant department within



**Evaluation  
Technical Bids**

of 58.

- (c) a representative from the regulatory body;
  - (d) a representative of the Agency; and
  - (e) a representative of the Attorney-General.
- (3) The Proposal Evaluation Team may constitute committees for the purpose of receiving Bids and carrying out a Technical and Financial evaluation of the Bids.
- (4) The Proposal Evaluation Team shall evaluate Bids in accordance with regulations made by the Council
- (5) The Council shall not take part in the process of evaluating Bids submitted to the Public Authority.
- (1) The Proposal Evaluation Team shall open and evaluate the Technical Bids submitted to the Public Authority under the provisions of this Law within the time and in accordance with the procedure specified in the tender Documents and rules made under the relevant provisions of this Law.
- (2) The Technical Evaluation of the Bid Documents shall include the following;
- (a) technical soundness;
  - (b) compliance with environmental standards under any Law;
  - (c) operational feasibility;

- (d) quality of service and measure to ensure their continuity;
- (e) timetable and work plan for the delivery of the Public Private Partnership Infrastructure or Project; and
- (f) any other prescribed criteria.

**Evaluation  
Financial Bids**

of 59. (1)

The Proposal Evaluation Team shall invite the Bidders who have been pre-qualified on the basis of their Technical Bid under the relevant provisions of this Law to attend a meeting for the Financial offer.

(2) The Proposal Evaluation Team shall evaluate the tenders on the Financial Bid and determine the Bid that meets the requirements specified in the tender Documents.

(3) In evaluating a Bid under sub-Section (1), the Proposal Evaluation Team shall take into account the economic advantage that would accrue to the Public Authority if the Bid is accepted and the comparative balance for the Financial and Technical elements of the Bid set out in the tender Documents. The Proposal Evaluation Team shall also take into consideration the following criteria;

- (a) the present value of the proposal user levies, unit prices, and other charges over the full term of the Public

**Approval of Pre-  
Qualification Report  
by the Council**

60. (1)

- Private Partnership Agree-  
ment;
- (b) the present value of proposed  
direct payments by the  
Public Authority if any;
- (c) the present value of the cost  
for design and  
construction activities plus  
annual operation and  
maintenance cost;
- (d) the extent of Financial support,  
if any, expected from a  
Public Authority
- (e) the soundness of the proposed  
Financial Arrangements;
- (f) the social and economic  
development proposals;  
and
- (g) any other prescribed criteria.

Pursuant to the relevant provisions  
of this Law, the Agency shall  
prepare a pre-qualification report  
for approval by the Council.

(2)

The pre-qualification report to be  
submitted by the Agency to the  
Council shall contain the following  
statements;

- (a) that the Bids explain the  
capacity of the Private Partner  
to effectively implement,  
manage, enforce, monitor, and  
report on the proposed Public  
Private Partnership Infra-  
structure; and

- (b) that a satisfactory due diligence



analysis has been completed by the Public Authority, in relation to the capacity and qualification of the selected Private Partner to complete the Propose Public Private Partnership Infrastructure or Project.

**Bidder's Security**

61.

A Bidder shall not forfeit any Bid security that it may have been required to provide, other than in cases of:

- (a) withdrawal or modification of a proposal after a specified deadline;
- (b) failure to sign the Public Private Partnership Agreement, if required by the Public Authority to do so, after the proposal has been accepted; or
- (c) failure to provide the required security for the fulfillment of the Public Private Partnership Agreement after the proposal has been accepted or to comply with any other condition prior to signing the Public Private Partnership Agreement as specified in the request for proposals.

**Circumstances where  
Competitive  
Contracts not be  
necessary**

62.

Notwithstanding Section 50 (1) of this Law and if after advertisement;

- (a) only one Private Partner applies or submits a Bid or proposal; or
- (b) only one Private Partner meets

the pre-qualification requirements;  
the Public Authority may undertake direct negotiation without competitive Bidding for any Public Private Partnership to be entered into pursuant to the provisions of this Law.

**Confidentiality** 63. (1)

A Public Authority and the Agency shall treat proposals in such a manner as to avoid the disclosure of their content to competing Bidders, and any discussion, communication or negotiation between the contracting Authority and a Bidder shall be confidential, save for communications concerning the clarification of a request for submission of expressions of interest, a pre-qualification Bidding Document or a request for proposals.

- (2) Unless required by Law or by a Court Order or permitted by the request for proposals, a party to a negotiation shall not disclose, to any other person, any Technical or Financial matter or any other information in relation to any discussion, communication or negotiation submitted, received or done, as the case may be, under this Law, without the consent of the other Party.

**PART VIII**

## PUBLIC PRIVATE PARTNERSHIP AGREEMENTS

### Nature of Public Private Partnership Agreements

64. (1) A Public Private Partnership Agreement shall be an agreement between a Public Authority and a Private Partner made in accordance with the provisions of this Law in which the Private Partner:

- (a) agrees to perform or undertake any infrastructure or social sector service;
- (b) assumes financial, technical or operational risks in connection with the performance of a Public function or the use of Public Property; and
- (c) receives consideration for the provision of a public property, by way of:
  - (i) a fee from any revenue fund or budgetary fund of the Government; or
  - (ii) levies collected by the Private Partner from end-user or customers for a service provided by the Private Partner.

(2) A Public Private Partnership Agreement shall provide for such matters as the parties consider appropriate, but shall include:

- (a) the nature and scope of works to be performed and services to be provided by the Private



- Partner;
- (b) the conditions for provision of services and extent of exclusiveness, if any, of the Private Partner's rights under the Public Private Partnership Agreement;
  - (c) the assistance that a Public Authority may provide to the Private Partner in obtaining licences and permits to the extent necessary for the implementation of the Public Private Partnership Agreement;
  - (d) the return of assets, if any, to a Public Authority, at the termination or expiration of the Public Private Partnership Agreement, in such manner as may be provided for in the Public Private Partnership Agreement;
  - (e) in the case of a Public Private Partnership Infrastructure, procedures for the review and approval of engineering designs, construction plans and specifications by the Public Authority and the procedures for testing and final inspection, approval and acceptance for the Public Private Partnership Infrastructure or Project;
  - (f) the rights of the Public Authority, or of a regulatory agency, to monitor

the works to be performed and services to be provided by the Private Partner, and the conditions and extent to which the Public Authority or the Regulatory Agency may order variations in respect of the works and conditions of service or take such other reasonable actions as they may find appropriate to ensure that the Public Private Partnership Infrastructure or Project is properly operated and the services are provided in accordance with the applicable legal and contractual requirements;

- (g) the extent of the Private Partner's obligations to provide the Public Authority or regulatory Agency, as appropriate, with reports and other information on its operations;
- (h) mechanisms to deal with additional costs and other consequences that might result from any order issued by the Public Authority, or another Public Authority, including any compensation to which the Private Partner might be entitled;
- (i) any rights of the Public Authority to review and approve major contracts to be entered into by the Private

Partner, in particular with the Private Partner's own shareholders or other affiliated persons;

(j) guarantees of performance to be provided and insurance policies to be maintained by the Private Partner in connection with the implementation of the Public Private Partnership Infrastructure or Project;

(k) the extent to which either Party may be exempt from liability for failure or delay to comply with any obligation under the agreement owing to circumstances beyond its reasonable control;

(l) the duration of the Public Private Partnership Agreement and the rights and obligations of the Parties upon its expiry or termination;

(m) the sharing of risks between the Public Authority and the Private Partner;

(n) assistance to the Private Partner to enjoy the right to enter upon, transit through or do work or fix installations upon property of the Public Private Partnership Infrastructure; and

(o) such other information as may be prescribed by the parties.

Operation of Public 65. (1) A Public Private Partnership



**Private Partnership  
Infrastructure or  
Project**

Agreement shall set out the extent of a Private Partner's obligations to ensure:

- (a) the modification of the Public Private Partnership Infrastructure so as to meet the public demand for the Public Private Partnership Infrastructure;
- (b) the continuity of the Public Private Partnership Infrastructure.

- (2) A Private Partner shall have the right to issue and enforce rules governing the use of the Public Private Partnership Infrastructure, subject to the approval of the Public Authority and the Agency.

**Revision of Public  
Private Partnership  
Agreement**

66.

A Public Private Partnership Agreement shall set out the extent to which a Private Partner is entitled to a revision of the Public Private Partnership Agreement with a view to providing compensation in the event that the cost of the Private Partner's performance of the agreement has substantially increased or that the value the Private Partner receives for such performance has substantially diminished as compared with the costs and the value of performance as a result of:

- (a) changes in the economy;
- (b) changes in legislations or regulations in situations

where:

- (i) they occur after the conclusion of the Public Private Partnership Agreement;
- (ii) it is beyond the control of the Private Partner; and
- (iii) they are of such nature that the Private Partner could not reasonably be expected to have taken them into account at the time the Public Private Partnership Agreement was negotiated.

**Acquisition of rights related to Infrastructure or Project Site** 67.

A Public Authority, under the terms of any Law and Private Partnership Agreement, shall make available to the Private Partner such rights related to the Public Private Partnership Infrastructure Site, including title thereto, as may be necessary for the implementation of the Public Private Partnership Infrastructure.

**Security to be provided by Private Partner** 68.

Subject to any restriction that may be contained in a Public Private Partnership Agreement, a Private Partner shall have the right to create security over any of its assets, rights or interests, including those related to a Public Private Partnership Project, as shall be

required to secure any finances needed for the Public Private Partnership Infrastructure, security over movable or immovable property owned by the Private Partner or its interest in Public Private Partnership assets.

**Assignment of a  
Public Private  
Partnership  
Agreement**

69. (1) The rights and obligations of the Private Partner under a Public Private Partnership Agreement may not be assigned to a third Party without the prior written consent of the Public Authority.

(2) A Public Private Partnership Agreement shall set out the conditions under which a Public Authority shall give its consent to an assignment of the rights and obligations of the Private Partner under the Public Private Partnership Agreement, including the acceptance by the new Private Partner of all obligations thereunder and evidence of the New Private Partner's Technical and Financial capability as shall be necessary for undertaking the Public Private Partnership Infrastructure.

**Arbitrary Variation  
Agreements**

70. No Agreement reached pursuant to the provisions of this Law shall be arbitrarily varied, modified, suspended, cancelled or changed except in accordance with the provisions of this Law.



**PART IX  
DISPUTES RESOLUTION**

**Dispute involving  
Public Authority,  
Private Partner and  
Users**

71. (1) Any dispute between a Public Authority and the Private Partner shall be settled by reference to Arbitration in Accordance with Nigerian Law or such other dispute settlement mechanism as may be specified in the Public Private Partnership Agreement.
- (2) A Public Authority may require the Private Partner to establish efficient mechanisms for handling claims submitted by its customers or users of the Public Private Partnership Infrastructure where the Private Partner provides services to the public or operates a Public Private Partnership Infrastructure which is accessible to the public.

**PART X  
OFFENCES AND PENALTIES**

**Contributing to  
Economic Adversity  
of an Infrastructure  
subject to Public  
Private Partnership**

72. (1) A person who has contributed to the economic adversity or failure of an Infrastructure subject to Public Private Partnership in any material particular is guilty of an offence and shall be liable on conviction to imprisonment for a term not exceeding Two years.
- (2) A person convicted under this Section shall be liable to refund to

the Agency the amount determined by the Court as the equivalent in monetary terms of loss suffered by the public enterprise as a result of the offence or of such other terms as the Court may deem fair and just in the public interest.

**Failure to execute  
Contract, etc**

73.

A person who, having entered into a Contract to execute any public work, including buildings, roads, or to supply goods, materials or services in respect of an infrastructure subject to Public Private Partnership, without just cause:

- (a) fails to execute the public work or to supply the goods, materials or services; or
- (b) otherwise abandons or fails to complete the performance of the Contract, is guilty of an offence and liable on conviction to a Fine of N500,000 or to Imprisonment for a term of Three Years or to both such fine and Imprisonment.

**Failure to Pay  
Service Charge, User  
Fee or Toll**

74. (1)

Any person who fails or refuses to pay Service Charge, User Fee or Toll in accordance with this Law or Regulations made thereunder commits an offence and shall be liable on conviction to a Fine of N10,000.00 or Imprisonment for a term not exceeding Six months or to both such Fine and



Imprisonment.

- (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:
  - (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) Any person who refuses to comply with any instruction pursuant to sub-Section (2) of this Section commits an offence and shall be liable on conviction to a Fine of N20,000.00 or Imprisonment for a term not exceeding Six (6) Months or both such Fine and Imprisonment.

**Contravention of  
provision relating to  
Confidentiality**

75.

Any person who contravenes the provisions of Section 63 of this Law commits an offence and shall be liable on conviction to a fine of



- N50,000.00.
- Obstruction of Official** 76. Any person who obstructs or assaults any Officer or employee of the Agency or an Agent of the Agency authorized in that behalf in the cause or carrying into effect any provision of this Law, commits an offence and shall be liable on conviction to a Fine of N50,000.00 or Imprisonment for Six Months or to both such Fine and Imprisonment.
- Contravention of the provisions relating to Secrecy** 77. Any person who contravenes the provisions of Section 91 of this Law, commits an offence and shall be liable on conviction to a Fine of not less than N50,000.00 or Imprisonment for a term of Six Months or to both such Fine and Imprisonment.
- Attempt to commit offence, etc** 78. A person who attempts to commit any of the Offences specified in this Law is guilty of an offence and shall be liable on conviction to the same punishment as is prescribed for the full offence.
- Conspiracy, Procurement, Instigation, Aiding, Abetment, etc** 79. Any person who conspires, procures, instigates, aids, abets or facilitates another person to do anything prohibited under the provisions of this Law, commits an offence and shall be liable under the relevant provisions of this Law relating to such offence and shall be

punished as if he committed the offence himself.

**Provisions where  
penalty is not  
specifically provided** 80.

A person who contravenes or fails to comply with any of the provisions of this Law and Regulations made thereunder for which no penalty is specifically provided, shall be guilty of an offence and liable on conviction to a Fine of N50,000.00 or to Imprisonment for a term not exceeding Six Months or to both such Fine and Imprisonment.

**Offences by Bodies  
Corporate** 81

Where an offence under this Law or the Regulations made thereunder is committed by a Body Corporate, Firm or Association;

- (a) any Director, Manager, Secretary or other Officer of the Body corporate;
- (b) any Partner or Firm;
- (c) any Person concerned in the management of the Association;

shall be liable to be prosecuted and punished for the offence as provided under this Law and the Regulations made thereunder, unless the act or omission constituting the offence took place without his knowledge, consent or connivance.

**PART XI**  
**LEGAL PROCEEDINGS**

- Limitation of Actions** 82 (1) Subject to the provision of this Law, the provisions of the Public Officers Protection Law shall apply in relation to any action instituted against the Public Authority Council, Agency or any Member, Officer or Employee of the Public Authority, Council or Agency as the case may be.
- (2) No action against the Public Authority, Council, Agency or any Member, Officer or Employee of the Agency as the case may be for any act done in pursuance or execution of the provisions of this Law or any other Law or of any Public duties or authority or in respect of any alleged act done in the execution of this Law or any other Law or public duties by a Public Authority, shall lie or be instituted in any Court unless it is commenced:
- (a) within Three Months after the act, neglect or default complained of; or
  - (b) in the case of a continuation or damage or injury, within Six Months after the ceasing thereof.
- (3) No Action shall be commenced against a Public Authority, Council, Agency or any Member, Officer or



Employee of the Public Authority, Council or Agency as the case may be, before the expiration of a period of One Month after written notice of the intention to commence the action by the intending Plaintiff or his Agent.

- (4) The notice referred to in sub-Section (3) of this Section shall clearly and explicitly state the:
- (a) cause of action;
  - (b) particulars of claim;
  - (c) name and place of abode of the intending Plaintiff; and
  - (d) relief which he claims.

**Service of Notice** 83.

A Notice, Summons or other document required or authorized to be served on the Public Authority, Council or Agency under the provisions of this Law or any other Law may be served by delivering it to any Principal Officer of the Public Authority, Council or Agency or by sending it by registered post addressed to the Chief Executive at the head office of the Public Authority, Council or Agency.

**Legal Representation** 84.

In an action by or against the Public Authority Council or Agency, the body may be represented in Court at any stage of the proceedings by a Law Officer from the Ministry of Justice or by a Private Legal Practitioner with the written

authorization of the Attorney-General.

**Restriction of execution against Property**

85. (1) Subject to the provisions of the Sherriff and Civil Process Act, 2004 in any action against the Public Authority, Council or Agency, no execution or attachment processes in the nature thereof shall be issued against such body unless not less than Three Months' Notice of the intention to execute or attach has been given to such body.

(2) Any sum of money which by the judgment of any Court has been awarded against the Public Authority, Council or Agency shall, subject to any direction given by the Court, where no Notice of Appeal against the Judgment has been given, be paid from Fund of the Public Authority, Council or Agency.

**Indemnity of Officers 86.**

Any Officer, Member or Employee of the Public Authority, Council or Agency shall be indemnified out of the assets of such body against any liability incurred by him in defending any proceeding, whether Civil or Criminal, if the proceeding is brought against him in his capacity as an Officer, Member or employee of the body.

**PART XII  
MISCELLANEOUS**

- Standing and Ad-hoc Committees** 87. (1) The Council or Agency may appoint Standing or Ad-hoc Committees to perform such functions as the Council or Agency may consider necessary.
- (2) A Committee appointed under the provisions of this Section, shall consist of such number of members as may be determined by the Council or Agency.
- (3) Any decision of such Committees shall have no effect until same is confirmed or approved by the Council or Agency.

- Execution of Contractual Documents** 88. (1) Any Contract or document entered into or executed by a person not being a body corporate, which is not required to be under seal may be entered into or executed on behalf of the Agency by the Director General or by any person generally or specifically Authorized by the Council for that purpose.

- (2) Any document purporting to be a document duly executed or issued under the seal of the Agency shall unless the contrary is proved, be deemed to be so executed or issued, as the case may be.

**Validation of certain Acts**

No act done or proceeding taken under the provisions of this Law



shall be questioned on the ground of:

- (a) the existence of any vacancy in or any defect in the constitution of the Council or any omission; and
- (b) defect or irregularity not affecting the merits of the case.

**Immunity**

90.

No Officer, Member or Employee of the Public Authority, Council or Agency may be personally liable for any act of omission or commission done in good faith in the discharge of his duties under the provisions of this Law.

**Secrecy**

91.

The Chief Executive, Member, Officer or Employee of the Public Authority Council or Agency shall:

- (a) not for his personal gain, make use of any information which has come to his knowledge in the exercise of his powers or is obtained by him in the ordinary course of his duty;
- (b) treat as confidential any information, which has come to his knowledge in the exercise of his powers or is obtained by him in the performance of his duties under the provisions of this Law;
- (c) not disclose any information referred to under paragraph

(b) of this sub-section, except as required by Law.

**Directives by the Governor**

92.

The Governor may give to the Agency such directives of a general or specific character with respect to the performance of its function and its procedure as the Governor may consider necessary, and it shall be the duty of the Agency to comply with such directives.

**Power to make Regulations**

93. (1)

The Agency may subject to the approval of the Governor make Regulations for carrying into effect the provision of this Law and for the due administration of its provisions and may in particular, make Regulations:

- (a) setting standards to be complied with under the provisions this Law;
- (b) providing methods of ensuring compliance with set standards;
- (c) providing appropriate sanctions for noncompliance with set standards;
- (d) prescribing the forms for returns and other information required under the provisions of this Law or any other Law; and
- (e) prescribing the procedure for obtaining any information required under this Law or any other Law.

(2) The Agency may as it relates to

Public Private Partnership  
arrangements make Regulation  
specifying:

- (a) approved Service Charges, User Fees or Tolls payable in respect of designated Public Infrastructure or Project as shall be recommended by the Private Partner;
- (b) the period within which Service Charge, User Fees or Tolls shall be paid; and
- (c) conditions under which a member of the public may access the use of Public Infrastructure or Project.



**SCHEDULE**

**SECTION 9**

**PROCEEDINGS OF THE COUNCIL**

- Standing Orders.** 1. The Council may make Standing Orders regulating its proceedings or the proceedings of any of its Committees.
- Meetings of the Council** 2. (a) The Council shall hold a minimum of Four general meetings and such emergency meetings in any given Year for the transaction of business and such meetings shall be held at such places as the Council may consider necessary.  
(b) The Council shall keep the minutes of its meetings.
- Quorum.** 3. The Quorum for the meetings of the Council shall be Seven members including the Chairman or the presiding member.
- Presiding over meetings** 4. At any meeting of the Council, the Chairman shall preside and in his absence, the members present shall appoint any of their members to preside at such meeting.
- Voting during meetings** 5. Any decision requiring a vote at a meeting shall be determined by a majority of the votes of the

members present and in case of an equality of votes, the Chairman of the meeting shall have a second or casting vote.

**Vacancy in the Council**

6.

The Council may act, notwithstanding any vacancies in its membership.

**Co-option of a member**

7.

Where the Council desires to obtain advice from any person on a particular matter, it may co-opt him as a member for such periods as it considers necessary and the person so co-opted shall have rights and privileges of a member save that he is not entitled to vote upon any question.

**Common Seal**

8.

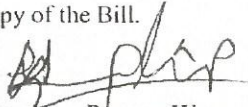
- (a) The Common Seal of the Council shall not be affixed to any document except in pursuance to a resolution duly passed at a meeting of the Council and is recorded in its minutes of meeting.
- (b) The use or fixing of the Common Seal of the Council shall be authenticated by the signature of the Chairman or any other Member or Officer authorized by the Council generally or specifically to act in that behalf by the Council and

the Secretary to the Council.

- (c) The Secretary to the Council shall have custody of the Common Seal of the Council and be responsible for affixing the Common Seal on any document as stipulated under the provisions of this Law or as authorized by the Council.



This printed impression has been carefully compared by me with the Bill which has been passed by the Plateau State House of Assembly and found by me to be true and correctly printed copy of the Bill.

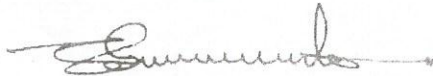


**Longbap, Ponven Wuyep**

Ag. Clerk,

Plateau State House of Assembly.

I assent this 28<sup>th</sup> day of JUNE 2018



**Rt. Hon. Simon Bako Lalong**

Governor,

Plateau State of Nigeria.

Repassed by two-thirds majority

This \_\_\_\_\_ day of \_\_\_\_\_ 2018

**Rt. Hon. Peter Ajang Azi**

Speaker,

Plateau State House of Assembly

Governor of  
Plateau State,  
Government Office,  
Rayfield , Jos.

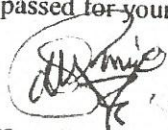
**FORWARDING OF PUBLIC PRIVATE PARTNERSHIP BILL  
2017 FOR ASSENT**

Following the presentation by you of the Public Private Partnership Bill 2017 in January, 2017, the House, after a careful consideration of same passed the Bill as follows:

**SCHEDULE TO THE BILL**

<b>SHORT TITLE OF THE BILL</b>	<b>LONG TITLE OF THE BILL</b>	<b>SUMMARY OF THE CONTENTS OF THE BILL</b>	<b>DATE PASSED</b>
Public Private Partnership Bill 2017	A Bill For A Law to Provide for the Public Private Partnership for Plateau State and for Connected Purposes.	The Bill seeks to establish Public Private Partnership Bill for Plateau State	8/2/18

2. In accordance with Section 100 (3) of the 1999 Constitution (As Amended), I forward to you the Bill as passed for your Assent.

  
**Rt. Hon. Peter Ajang Azi**  
Speaker