



# DRAFT KEBBI STATE PPP MANUAL

KEBBI INVESTMENT PROMOTION AGENCY  
KEBBI STATE

DRAFT PPP MANUAL

2022

## SCHEDULES

### FIRST SCHEDULE

#### PUBLIC PRIVATE PARTNERSHIP SUPPLEMENTARY PROVISION RELATING TO THE AGENCY

##### PART 1

##### Preliminary

##### Public Private Partnerships and PPP Agreements

1. (1) The State remains open to partnership in iterative with private parties for the planning, design, financing, development, construction, provision, operation, maintenance and development to public infrastructure and the supply of goods, services and facilities in the State (hereafter in this Law referred to as "public private partnership or PPP").

(2) Where a public entity wishes to undertake a public private partnership, it shall be undertaken and implemented through a contract with a Private Party procured in accordance with the Kebbi State Price Intelligence and Public Procurement Law 2020.

(3) A public entity may enter in to a further contract (herein after called an "Ancillary Agreement") with a third party or with a Private Party in order to enable an agreement for that public private partnership to be undertaken and implemented; provided that such Ancillary Agreements are executed in accordance with this Law.

(4) Where a special purpose vehicle (herein after called "SPV") enters in to a PPP, only limited liability companies incorporated under the Companies and Allied Matters Act Cap C20 Laws of the Federal Republic of Nigeria (CAMA) shall hold equity there in and all third parties shall hold hare sin that SPV in accordance with CAMA, the documents incorporating the SPV and any relevant provisions of the PPP Agreement.

##### Objectives of Public Private Partnerships

2. The objectives of public private partnerships in the State are to:

(1) Facilitate private sector investment in the provision of new and rehabilitated infrastructure and other public assets;

(2) Release financial resources for investment in necessary social services;

(3) Develop more reliable public services by deploying private sector skills in project financing, risk management, project planning and the use of new technologies and thus ensure greater value for money in the provision of public infrastructure and services;

(4) Act as a catalyst for the implementation of socio-economic plans and or initiatives;

(5) Strengthen institutional governance in the State by improving public sector management skills and accountability in the construction, rehabilitation and provision of infrastructure and services in the State; and

(6) Provide a clear, transparent, and well-defined legal, regulatory and institutional framework for enhancing investment by, and transferring project risk in providing infrastructure and services in the State to, the private sector.

#### **Application of Public Private Partnership**

3. As from the commencement of this Law, any project for the provision of infrastructure and services using public assets owned or controlled by the State that meets the eligibility criteria established herein may be executed as Public Private Partnership under the provisions of this Law.

#### **Non-Application of Public Private Partnership**

4. Notwithstanding Section 3 of this Schedule, this Law shall not apply to the provision of infrastructure and services relating to urgent public need or a state of emergency as determined by a resolution of the House of Assembly passed upon presentation and debate of an address presented by the Governor.

## **PART II Institutional Framework**

#### **The State Executive Council**

5. The State Executive Council (also referred to as “Exco”) shall give final approvals for all PPP projects in the State.

#### **The Kebbi State Public Private Partnership Board**

6. The governing Board of the Kebbi State Investment Promotion Agency shall act as the Kebbi State Public Private Partnership Board (hereinafter referred to as the “Board”).

#### **General functions of the Board**

7. The Board shall:
  - (1) Recommend policy in respect to public private partnerships to the State Executive Council;
  - (2) Review and forward public private partnership project proposals to the State Executive Council in accordance with this Law;
  - (3) Designate unsolicited project proposals as public private partnership proposals to be undertaken in accordance with this Law;
  - (4) Facilitate the resolution of such disputes as may arise from time to time in the course of executing a public private partnership Agreement;
  - (5) Establish standards, procedures and regulations for the execution of public private partnership projects;
  - (6) Constitute as and when necessary committees comprising persons drawn from the State Executive Council, as well as the public and the private sectors with requisite technical experience to advise on specific public private partnership projects and act in the name of the Board in executing the function share by stated; and

(7) Carry out such other functions as the Governor may deem necessary for the due attainment of the objectives of this Law.

### **Specific Function of the Board– Infrastructure Master Plan**

8. (1) The Board shall in consultation with the relevant public entities formulate for the State, and may from time to time modify, an infrastructure master plan or a PPP Priority List, setting out the PPP infrastructure priorities and objectives of the State.

(2) The Infrastructure Master Plan or the PPP Priority List shall identify specific projects that are desirable, achievable, and viable for execution as public private partnership projects.

(3) The Board shall ensure that PPP projects identified in the Infrastructure Master Plan or PPP Priority List:

(a) Are procured and contracted in accordance with this Law, any other applicable law of the State and any Regulations made there under;

(b) Accommodate the public need;

(c) Take account of such urban, regional or development plans as may have been approved by the State Government;

(d) Raise the competitiveness of the State economy;

(e) Encourage the physical development of the State;

(f) Take into consideration:

(i) The State's investment priorities and its short and long-term goals for the development of infrastructure facilities in a sustainable manner; and

(ii) The current resources, project management capacity and efficiency of the private sector.

### **The Kebbi State Public Private Partnership Secretariat**

9. A PPP Unit/Department within KIPA shall act as the PPP Secretariat to the Board

### **Functions of the PPP Secretariat**

10. The PPP Secretariat shall have the responsibility on behalf of the Board to:

(1) Appraise, review, monitor, evaluate and recommend to the Board on all PPP Projects in the State;

(2) Interface with and provide technical assistance to ministries, departments and agencies and specific Contracting Authorities throughout the life cycle of a PPP project;

(3) Build up and enhance the capacity of Government to design, implement, monitor and evaluate PPP projects;

- (4) Be a centre of expertise for the promotion, development, and implementation of PPPs and develop and serve as a primary and definitive source of all information on PPP legislation, regulations, Acts and standards applicable and in force in the State;
- (5) Facilitate and provide full support to the private sector and serve as liaison between the private sector and government agencies and relevant authorities in regard to PPPs in the State;
- (6) Undertake the formulation, development, period review and modification of the State Infrastructure Master Plan or PPP Priority List;
- (7) Facilitate the issuance or renewal of all public sector regulatory approvals for PPP Projects in the State;
- (8) Review, evaluate and recommend project proposals and feasibility studies and oversee the procurement process for PPP projects on behalf of the Public Sector;
- (9) Ensure that at the expiration of the term of a PPP Agreement, all parties there to fully enjoy their respective rights and discharge their respective obligations in accordance with the said PPP Agreement;
- (11) Issue quarterly progress reports on PPP Agreements in force to the Board and through the Board to the State Executive Council;
- (12) Advise the State Executive Council through the Board on resolving disputes arising from all PPP Agreements to which the State is a party; and
- (13) Carry out such functions in accordance with this Law as the Board may deem fit.

#### **Appointment of Consultants and Technical Advisers to the PPP Secretariat**

11. In carrying out its functions, the PPP Secretariat may engage the services of such consultants, transaction and technical advisers as the Board may approve.

### **PART III**

#### **Potential PPP Project and First Stage Approval**

##### **Registration of a Potential PPP Project**

12. (1) Where a relevant institution or prospective Contracting Authority intends to implement a Project as a public private partnership, the Accounting Officer of that Contracting Authority or in the absence of the Accounting Officer, any person acting in that capacity, shall apply to the Agency, and submit a Public Private Partnership Proposal as a Solicited Project Proposal (in this Law referred to as the "Proposal") with the PPP Secretariat.

(2) The PPP Secretariat shall register a Proposal if it:

(a) Is specified in the Infrastructure Master Plan or PPP Priority List;

(b) Revalidates the pre-feasibility study submitted by the Contracting Authority with its Application for Inclusion;

(c) Contains information on the expertise in the Contracting Authority to proceed with the project and a detailed profile of the members of its project team and the project management arrangements for undertaking the project;

(e) Gives the details for the appointment of a transaction adviser if the Contracting Authority deems this necessary; and

(f) Demonstrates payment of the applicable registration fee in accordance with relevant Regulations made under this Law.

### **Review of Proposal**

13. The PPP Secretariat shall within two weeks of registering a proposal assess and present it to the Agency with its recommendations there on as to whether or not to proceed with it as a PPP project.

### **First Stage Approval**

14. (1) The Agency shall consider the reviewed proposal along with the PPP Secretariat's recommendation thereon and issue a decision thereon within two weeks.

(2) If the Agency approves of the Proposal, it shall immediately issue an "in-principle" approval for the PPP project to proceed to the next stage.

(3) The giving of an "in-principle" approval, which shall be called a First Stage Approval, shall be communicated by the PPP Secretariat to the Contracting Authority.

(4) Thereafter, the Procuring Authority shall within six months undertake and complete a detailed feasibility study and submit it to the PPP Secretariat.

## **PART IV**

### **Feasibility Study and Second Stage Approval**

#### **Feasibility Study**

15. The feasibility study shall research in to and provide details of all project issues, including:

(1) The project's comparative advantage to the State in terms of value for money, affordability, transfer of risk to the private sector, social impact, employment generation and improvement in the living standards of citizens of the State;

(2) A consideration of the policy context in which the project is undertaken, a needs analysis and a full environmental impact assessment of the proposed project within its immediate locality in particular and the State in general, if necessary;

(3) The role of the Contracting Authority in the project and the specific functions to be considered in relation thereto;

(4) Expected input and deliverables by the private sector;

(5) The extent to which the functions to be undertaken by the project shall be efficiently performed by the private sector;

(6) A financial model that reasonably applies various assumptions and sensitivities to all anticipated project costs and revenues, the factors that may affect them and the expected rates of return there from;

(7) The most appropriate PPP option by which the Contracting Authority may implement the project; and

(8) The capacity of the Contracting Authority to effectively undertake whatever obligations are conferred on it and, where this is deficient, measures that may be taken to ameliorate such deficiency.

### **Second Stage Approval**

16. (1) The PPP Secretariat shall:

- (a) Undertake an assessment of the feasibility study submitted to it and within six weeks
- (b) consult the Ministry of Finance in order to identify and appropriately handle any risk and contingent liabilities issues that may arise from the project
- (c) present its recommendations to the Board, for review and decision;
- (d) Notify the Contracting Authority of the presentation of the feasibility study to the Board and the Board's decision thereon.

(2) The Board's approval of the feasibility study shall also authorise the prospective Contracting Authority to proceed to the next stage.

(3) This approval, which shall be called a Second Stage Approval, shall be communicated by the PPP Secretariat to the prospective Contracting Authority within one week of being given.

## **PART V**

### **PREPARATION TO BID AND THIRD STAGE APPROVAL**

#### **Contract Award**

17. (1) Upon receiving a Second Stage Approval, the Contracting Authority shall consult the PPP Secretariat to secure its concurrence with the proposed financial terms and risk allocation provisions of the draft PPP Agreement to be included in the Request for Proposals.

(2) The Contracting Authority shall, with the assistance of the PPP Secretariat:

- (a) Draw up a procurement plan setting out the actions to be taken, the persons or entities responsible there for and a time frame within which it expects to achieve the execution of a Public Private Partnership Agreement (herein after called "PPP Agreement");
- (b) Select and design an equitable, transparent, and cost-effective Procurement Procedure to be stated in the Request for Proposals, which procedure shall be stated in detail in the Request for Proposals; and
- (c) Draw up a draft PPP Agreement.

(3)The content of the various optional contract award procedures and the matters to be provided for in a Request for Proposals shall be stated by the PPP Secretariat and in subsequent regulations that may be issued by the Agency.

### **Third Stage Approval**

18. (1) After its review and recommendation, The PPP Secretariat shall present the following to Board for its approval;

- (a) Contract award plan;
- (b) the draft Request for Proposals; and
- (c) the draft PPP Agreement

(2)The Board shall after a review of the contract award plan, the draft Request for Proposals and the draft PPP Agreement, issue a Third Stage Approval for the Contracting Authority to proceed with the procurement process.

### **Collaboration with Related Agencies**

19. The Contracting Authority and the PPP Secretariat shall identify all public entities whose support or participation shall be necessary to execute the contract award plan and they shall ensure that such a public entity is aware in advance of the supportive role it will be required to play, the precise deliverables required of it and the time frame within which such deliverables must be available.

### **Approval of other documents**

20. (1)The Contracting Authority shall, for the purposes of Section 17 herein above, ensure all other draft contract award documents are prepared and submitted to the PPP Secretariat and the Procurement Body for their joint review and approval. These documents include;

- (a) pre-qualification notices;
- (b) statement of evaluation criteria; and
- (c) evaluation sheets

(2)The PPP Secretariat and the Procurement Body shall undertake the said joint review and send the results there of back to the Contracting Authority within four weeks of the submission.

(3)No Request for Proposals shall be issued to a candidate unless the PPP Secretariat and the Procurement Body have approved all other relevant and associated contract documents after a joint review.

## **PART VI**

### **BIDDING AND STATE EXECUTIVE COUNCIL APPROVAL**

#### **Contents of a Bid**

21. Every proposal submitted by a candidate in response to a Request for Proposals shall, in order to be valid, discuss without equivocation or evasion each of the matters required in RFP, and to be discussed to the detail required therein.

#### **Duties of the Contracting Authority**

22. The Contracting Authority shall be responsible for:



- (1) Conducting the bidding process with respect to any PPP project in accordance with the Kebbi State Price Intelligence and Public Procurement Law 2020;
- (2) Examining and evaluating the bids received;
- (3) Making recommendations to the PPP Secretariat for negotiating with the preferred bidder with the objective of completing a PPP transaction.

#### **State Executive Council Approval**

23. (1) The PPP Secretariat shall consult with the Procurement Body regarding the Procurement Report and they shall make and conclude a joint review of the said Report within three weeks of receiving it.
  - (2) Within a further one week of concluding the joint review, the PPP Secretariat shall forward the result and recommendations of the joint review to the Board.
  - (3) The Board shall consider the said result and recommendations and if it approves the PPP transaction to go forward, it shall forward its decision along with minutes of its relevant proceedings to the State Executive Council for ratification.
  - (4) Upon its decision to ratify the Board's approval, the State Executive Council shall thereby be deemed to have authorised the Board to issue a Notice of Award.
  - (5) This approval, which shall be called a State Executive Council (or "Exco") Approval, shall be communicated by the PPP Secretariat to the Contracting Authority.

#### **Notice of Award**

24. (1) The PPP Secretariat shall, immediately after State Executive Council Approval is granted, and after notifying the Contracting Authority under Section 24, publish in the name of the State Executive Council in at least one national newspaper, the State Tenders Journal, the State newspaper and the electronic media in the State, notice of the award of the PPP contract.
  - (2) The notice shall include the essential terms of the proposed PPP, particularly the names of the parties, the tenure of the PPP Agreement, a summary of the services to be provided, the cost of the project and the value for money benefits for the general public.

#### **Closed Bid**

25. (1) Notwithstanding anything to the contrary in this Law, the State Executive Council may approve a closed bid provided that each of the following conditions are met:
  - (a) There are peculiar intellectual property and trade secrets required to undertake the project; and there is only one source capable of providing the service due to peculiarities of such intellectual property and trade secrets, or other similar consideration;
  - (b) The project is incorporated into the Infrastructure Master Plan or the PPP Priority List;

(c)The State Executive Council establishes that regardless of not adopting the contract award procedures, value for money for the citizens of the State will be obtained.

(d)All documentation relevant to the closed bid, including minutes of meetings, correspondence, Request for Proposals or bid document howsoever called, proposals from one or more prospective candidates and a draft PPP Agreement are submitted by the PPP Secretariat to the State Executive Council for review and approval; and

(e) There is a compelling public interest to so approve.

(2)If the State Executive Council determines that the conditions in sub-section (1) has been met, it shall approve the PPP Agreement resulting from the closed bid in terms satisfying Section 23(2) herein, and issue a State Executive Council Approval to the Board.

(3)Upon grant of State Executive Council Approval under sub-section(2) above, the provisions of Section 24(4) and 25 shall apply.

## **PART VII**

### **Execution of the Public-Private Partnership Agreement**

#### **The Public Private Partnership Agreement**

26. (1)Upon receiving State Executive Council Approval, the Contracting Authority shall, with the support of the Office of the Attorney-General and the PPP Secretariat, conclude the PPP Agreement between the Private Party and the Contracting Authority.

(2)The PPP Agreement shall include a management plan that establishes the capacity of the Contracting Authority and the private party to effectively implement, operate and continuously monitor and evaluate the project.

(3)Within two weeks of concluding the PPP Agreement, the Contracting Authority shall send an electronic copy thereof without commentary or mark-up, and complete with all relevant schedules, ancillary agreements, and with any relevant duly executed supporting financing agreements, project agreements, consents and licences, to the PPP Secretariat; which documents shall collectively be called “the PPP Documents”.

#### **Completion, Execution, Registration of the Public Private Partnership Agreement**

27. (1) Upon receiving the PPP Documents, the PPP Secretariat shall prepare the requisite number of clean copies thereof and ensure that each page is initialled by a representative each of the Contracting Authority and the Private Party, which stage shall be known as “completion”, to signify that both parties confirm the correctness of the initialled copies.

(2)The completed PPP Agreement with all relevant PPP Documents shall be formally presented by the Board and executed for the State only by the Governor, or by a person acting in such capacity, with his signature witnessed by the political or the administrative head of the Contracting Authority; and for the Private Party by its

Chairman or person acting in that capacity with his signature witnessed by its chief executive officer or person acting in that capacity.

(3) Upon the execution of a PPP Agreement, the PPP Secretariat shall immediately register it, retain a counterpart with copies of all other PPP Documents and transmit to the counterparts each to:

- (i) The Governor;
- (ii) The Deputy Governor;
- (iii) The Contracting Authority;
- (iv) The Private Party;
- (v) The Office of the Attorney General;
- (vi) The Ministry of Finance;
- (vii) The Ministry of Budget, and Economic Planning;
- (ix) The Ministry of Commerce, Industry and Tourism
- (x) The Office of the Accountant-General of the State;
- (xi) The Procurement Body; and
- (xii) The Government body responsible for monitoring and/or evaluating Government-wide project performance.

(4) The Board shall be the sole authority empowered to issue certified true copies of a PPP Agreement and any accompanying PPP Documents.

(5) No PPP Agreement shall commence prior to the issuance of a State Executive Council Approval.

## **PART VIII**

### **Guarantees, Indemnities, Incentives, Financing and Risk Mitigation**

#### **Power to issue Guarantees**

28. The Government, on the recommendation of the Ministry of Finance, may provide guarantees in favour of a private party in support of the financial or contractual obligations of a Contracting Authority in form, substance and terms agreed with a financial services provider entering in to a project finance arrangement for a PPP Project.

#### **Power to issue Indemnity**

29. The Government can issue an indemnity to a multilateral entity providing partial or other risk insurance to a PPP Project or to a Private Party in a PPP Agreement.

#### **Guarantee or Indemnity to be approved by State Executive Council**

30. A guarantee or an indemnity shall be approved by the State Executive Council only upon consideration of a proposal from the Board setting out a detailed justification for it.

#### **Proposal for approval of Guarantee or Indemnity**

31. In considering a proposal to grant a guarantee or an indemnity, the State Executive Council shall give due consideration to the following:

- (1) The objectives of this Law and the general policy of the State with regard to investment promotion and public-private partnerships;

(2)The type of project finance arrangement, its seniority, interest rates, applicable moratorium, maximum amount of funding, and other relevant financial and legal terms and conditions contained in a term sheet or other binding document setting out such essential terms;

(3)The total amount of project financing to be guaranteed by the Government for all PPP Projects at any given time;

(4)The extent of compliance with any Federal or other State Law in force for the time being; and

(5)The extent of compliance with such Acts or regulations as may be issued by the Board relating to such guarantees or indemnities.

#### **Application of a Guarantee**

32. A Government guarantee or indemnity shall be applied solely to:

(1)Fulfilment by the Contracting Authority of its financial and contractual obligations under the PPP Agreement or any ancillary agreement or any financing agreement;

(2) Payment of any termination payments specified in the PPP Agreement;

(3)Payment by the Government of a minimum revenue charge covering the cost of operating and maintaining the facility built under the finance arrangement; and

(4)Such other purposes as the Board may recommend to the State Executive Council as necessary to enhance the viability of a relevant project finance or PPP Agreement.

#### **Government Incentives for Public Private Partnership Projects**

33. (1)The State Executive Council on the recommendation of the Ministry of Finance may approve the grant of appropriate financial incentives and investment support to approved PPP projects recommended by the Board as being necessary to attract private investment in to a specific PPP project.

(2) Such financial incentives and investment support may include:

(a)Equity participation in cash or in kind not exceeding 49.9% of the total equity investment in the relevant project;

(b) Justifiable direct subsidies with respect to any particular project;

(c) Reduction of or exemption from fiscal impositions applicable in the State; and

(d)Approaching the Federal Government with the Private Party to grant reduction or exemption from fiscal impositions by the Federal Government;

(e) The grant of a loan by the Government to a specific project on terms.

(3) The Board may issue regulations with respect to:

(i)The criteria for qualification by the private sector for the grant of incentives and/or investment support; and

(ii) The method of calculating and applying subsidies to a specific project in consultation with the Ministry of Finance.

### **State Government may promote an Infrastructure Fund**

34. (1) The State Government may, upon the approval of a proposal to that effect, collaborate with one or more well-established banks or financial services providers or a suitably-qualified private company, to promote the establishment, funding and operation of an Infrastructure Fund (“a Fund” or “the Fund”).

(2) The Fund shall be incorporated under CAMA and regulated under the Investment and Securities Act (“ISA”).

(3) The Fund shall be established for the sole purpose of investing its assets in PPP projects and reinvesting the profits there from in the Fund or distributing such profits to its shareholders.

(4) The money in the Fund may be contributed by the Government and other investors from the general public and shall be applied to:

(a) Acquire bonds, equity and other securities issued by private parties for implementing PPP projects in the State; and

(b) Guaranteeing loans from financial services providers, corporations and individuals for the sole purpose of implementing PPP infrastructure projects.

(5) The Fund shall not be used for any business except those prescribed under this Section and in its incorporating documents approved under the ISA.

### **The Funds and Accounts Monitoring Committee**

35. (1) When a Fund is established and registered under CAMA and the ISA, there shall also be established a Public Private Partnership Investment Fund Accounts and Monitoring Committee (herein after referred to in this Law as the “Monitoring Committee”), which shall be a standing committee of the Board.

(2) The function of the Monitoring Committee shall be to:

(a) Keep watch on behalf of the Government on any and all PPP investment funds established under this Law or which, though not established under this Law, have funds invested in a PPP in the State;

(b) Obtain, review and report to the Board on periodic financial and operating reports in respect of such funds from the persons or bodies charged with their management.

(3) The members of the Monitoring Committee shall be:

(a) The member of the State Executive responsible for Finance, who shall be Chairman;

(b) The Attorney General and Commissioner for Justice;

(c) The member of the State Executive Council with primary responsibility for providing economic advice to the Governor;

(d) Three persons from the private sector nominated by the Governor who have such experience as he deems relevant to its work; and

(e) The head of the PPP Secretariat, shall also be the Secretary of the Committee.

### **Risk Allocation**

36. (1) The PPP Secretariat shall provide technical assistance to Contracting Authorities on risk allocation mechanisms on a project-by-project basis.

(2) The Board shall issue regulations on risk allocation and specific measures by the Contracting Authorities and/or State Government to mitigate or eliminate project risk.

## **PART IX Financial Provisions**

### **Funds of the PPP Secretariat**

37. (1) The PPP Secretariat shall maintain such bank accounts as the Board may approve, from which all expenses of the PPP Secretariat shall be met, and to which shall be credited:

(a) Such administrative fees as a repaid on PPP transactions, as the PPP Secretariat may from time to time prescribe with the approval of the Board;

(b) All monies accruing to the PPP Secretariat by way of grants-in-aid, bequests, endowments and contributions from any source; and

(c) Such monies as may from time to time be appropriated to the PPP Secretariat from the annual budget of the State or other Government.

(2) The Chief Executive Officer of KIPA shall be the approving authority and the Head of Finance, and the PPP Departmental/Unit Head shall be joint signatories to all banking transactions of the PPP Secretariat.

### **Annual Estimates**

38. The PPP Secretariat shall cause to be prepared and submitted to the Board, not later than 15<sup>th</sup> September each year, estimates of the recurrent and capital expenditure for the succeeding year of the Secretariat and the Board.

### **Accounts and Audit**

39. The PPP Secretariat shall cause to be kept such proper accounts and financial records, which shall be audited by auditors recommended by the Auditor-General for the State.

### **Annual Report**

40. The Board shall prepare and submit to the Governor not later than the 30th day of April each year, a report on its activities during the immediately preceding year, including in such report the Auditors' Report for the previous financial year.

## **PART X Miscellaneous Provisions**

### **Unsolicited Project Proposals and their Qualifying Criteria**

41. (1) Any proposal to the State Government for a PPP project that is not contained in the Infrastructure Master Plan or PPP priority list of the State Government, shall be referred to as an unsolicited Project Proposal.

(2) A prospective Contracting Authority that receives an Unsolicited Project Proposal shall forward it to the PPP Secretariat with its comments and recommendations for registration.

(3) The PPP Secretariat shall undertake a review of the submission under sub-section (2) hereof.

(4) Only those proposals that fulfil the criteria set out in Sections 8(2) and (3) and 12(2)(c), (e) and (f) of this Law shall be registered.

(5) Upon the registration of an Unsolicited Project Proposal by the PPP Secretariat, it shall be deemed to have been included in the Infrastructure Master Plan or Project Priority List and shall then comply with the provisions of this Law.

### **Prohibited Transactions**

42. (1) The following shall not be valid without the written consent of the Board:

- a. Any transfer of shares in a project SPV or any other transaction resulting in a change of control in such SPV;
- b. Any issue of bonds or other security to be undertaken by the SPV;
- c. Any merger, takeover or other change in corporate status of the SPV;
- d. Any assignment in part or full by the SPV of its existing or future claims under a PPP Agreement to a domestic or foreign financial institution involved in financing of the PPP, or contracts with such other financial institutions to secure their claims arising from such financing; and
- e. Any assignment under paragraph(e) immediately preceding to a domestic or foreign financial institution for the purpose of conversion of such claims to securities.

(2) The listing of the shares of a project SPV in the Nigerian or other capital market as otherwise permitted by the PPP Agreement.

## **PART XII Concluding Provisions**

### **Power to make Regulations**

43. The Board may, on the advice of the PPP Secretariat, issue, amend, modify or alter Regulations as may be necessary to give full effect to the provisions of the First Schedule of this Law and for their due implementation and administration.

### **Failure to Comply with Parts III-VII**

44. In the event that a public entity fails to comply with the provisions of Parts III–VII of the First Schedule of this Law, the Board may revoke the relevant Inclusion Decision or issue

such other directive to the Contracting Authority, as it deems appropriate to ensure compliance with the said Parts.

#### **Transitional Provisions**

45. (1) Notwithstanding anything to the contrary in this Law or any other enactment, at the commencement of this Law, all on-going or completed projects involving a PPP for the provision of infrastructure, goods or services shall be registered with the PPP Secretariat and shall be known as Deemed Approved Projects.

(2) Upon registration under sub-section (1) here of, the Board shall review all agreements or contracts relevant to such Deemed Approved Projects and, after discussions with the parties thereto, may issue such directives to them as may be necessary to bring the said agreements or contracts in to conformity with this Law.

(3) The State Executive Council, upon exceptional circumstances being shown by the Board, may, in the public interest, exclude any Agreement executed prior to the commencement of this Law from complying therewith.

---

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

.....  
**(SULEIMAN SHAMAKI),**  
Clerk to the House.