



GOVERNMENT OF RIVERS STATE OF NIGERIA

**PUBLIC-PRIVATE PARTICIPATION
IN INFRASTRUCTURE
DEVELOPMENT LAW 2009**



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**NIGERIA GOVERNORS' FORUM
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Assented to this 20th day of October 2009

A handwritten signature in black ink, appearing to read 'Chibuike Rotimi Amaechi', written over a horizontal dashed line.

Rt. Hon. Chibuike Rotimi Amaechi
Executive Governor of Rivers State of Nigeria

A Law to promote, facilitate and regulate partnership between the Public and Private sectors in infrastructure Development in Rivers State and to establish the Rivers State Council on Public Private Partnership and the Rivers State Bureau of Public Private Partnership and other matters related thereto.

BE IT ENACTED by the House of Assembly of Rivers State of Nigeria as follows:

GOVERNMENT OF RIVERS STATE OF NIGERIA

PUBLIC-PRIVATE PARTICIPATION IN INFRASTRUCTURE DEVELOPMENT LAW 2009

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- Objectives of PPI
- Appraisal of PPI
- Registration and Execution of Proposal

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THE RIVERS STATE PUBLIC - PRIVATE PARTICIPATION IN INFRASTRUCTURE DEVELOPMENT LAW 2009

A Bill for a Law to promote, facilitate, and regulate Partnership between the Public and Private Sectors in Infrastructure Development in Rivers State, and to establish the Rivers State Council on Public - Private Partnerships and the Rivers State Bureau of Public - Private Partnerships; and other matters related thereto.

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PART 1

Preliminary

Establishment of the Public - Private Initiative (PPI).

There is hereby established a Partnership Initiative between the Public and Private Sectors for the financing, development, implementation and management of infrastructure and provision of services in Rivers State (hereafter in this law referred to as "PPI").

2. Objectives of PPI

The objectives of PPI are as follows -

- (a) strengthen institutional governance in the State by improving managerial skills and accountability with respect to the construction, rehabilitation and provision of infrastructure and essential services in the State;
- (b) attract private funds for investments in the State;
- (c) improve the management of State resources in order to provide efficient and cost effective service delivery in the State;
- (d) increase the employment generation potential of the State economy;
- (e) provide a clear, transparent, and well defined legal, regulatory, and institutional framework in order to enhance private investments in the State;
- (f) strengthen human capacity development within the State;

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- (d) increase the employment generation potential of the State economy;
- (e) provide a clear, transparent, and well defined legal, regulatory, and institutional framework in order to enhance private investments in the State;
- (f) strengthen human capacity development within the State;

- (g) provide quality, efficient and affordable services to residents of the State and expand services to a broader range of users in the Federation;
- (h) minimize financial, technical, and operational risk on the part of Government in the provision of infrastructure and essential services;
- (i) provide an enabling environment for private sector participation in infrastructure development in the State;
- (j) reduce the unit cost of infrastructural development, procurement, and investment in the state

3. Application of PPI

- (1) As from the commencement of this Law –
 - (a) the Policy Council established pursuant to Section 5 of this Law shall determine the minimum threshold that will apply for public private partnership projects for the provision of infrastructure and services to be executed under PPI in accordance with the provisions of this Law.
 - (b) The minimum threshold referred to in Section 1 (a) of this Law shall be approved by the State Executive Council which shall be published and communicated in an official publication to the general public.
- (2) Notwithstanding the provision of subsection (1) of this Section, the provisions of this Law shall not apply to the provision of infrastructure and services relating to –
 - (a) defence;
 - (b) security of the State; and
 - (c) urgent public need or emergency.
 - (d) close bid under Section 21 (4) of the Rivers State Public Procurement Law No. 4 of 2008.

Provided however that the State Executive Council shall have the power to determine the provisions relating to “ defence, security of the State, and urgent public needs or emergency”.

4. **Registration and Execution of Proposal**

- (1) The Approving Officer of the Contracting Authority or in the absence of the Approving Officer, any person acting in that capacity, shall register a Public-Private Partnership Proposal with the Rivers State Bureau of Public-Private Partnership established pursuant to Section 13 of this Law.
- (2) All Public-Private Partnership Agreements including Concession Agreements by the State Government under this Law shall be **executed** by the Governor or any person so designated by the Governor.

PART II

Establishment, Composition, Functions, etc of the Rivers State Council on Public-Private Partnerships

5. **Establishment of the Rivers State Council on Public Private-Partnerships**

There is hereby established a body to be known as the Rivers State **Council on Public Private Partnerships** (in this law referred to as "**the Policy Council**").

6. **Composition of the Policy Council**

- (1) The **Policy Council** shall consist of the following members -
 - (a) the Deputy Governor who shall be the Chairman;
 - (b) the Attorney-General and Commissioner for Justice of the State;
 - (c) the Secretary to the State Government
 - (d) the Surveyor-General of the State

- (e) Commissioner for Budget and Economic Planning;
 - (f) Commissioner for Finance;
 - (g) Commissioner for Works;
 - (h) Commissioner for Commerce and Industry
 - (i) Commissioner for Urban Planning and Development.
 - (j) In the absence of any Commissioner, the permanent secretaries of the designated ministries shall act;
 - (k) Representative of Port-Harcourt Chamber of Commerce, Industry, Mines and Agriculture.
 - (l) Three other members of the public who shall be professionals with not less than Ten (10) years experience in Economics, Finance, Business, Engineering, Accountancy, Law, Architecture, or other related field and one of whom shall be a woman; and
 - (m) one person from a non-profit non-governmental organization or the clergy;
 - (n) the Executive Director of the Rivers State Bureau of Public-Private Partnerships who shall act as Secretary to the Policy Council.
- (2) Members of the Policy Council appointed pursuant to subsection 1(L) and (m) of this Section shall be appointed by the Governor and shall be indigenes of the State.

7. Tenure of Members

Any member of the Policy Council not being an ex-officio member shall hold office for five (5) years in the first instance and shall be eligible for re-appointment for a further term of three (3) years and no more.

8. Vacation of Office

(1) Any member of the Policy Council appointed pursuant to section 6(k) and (l) shall cease to hold office if he –

- (a) resigns his appointment by a notice under his hand addressed to the Governor;
- (b) becomes incapacitated by reason of infirmity of the mind or body;
- (c) becomes bankrupt or makes a compromise with creditors;
- (d) is convicted of a felony or any offence involving dishonesty or fraud;
- (e) is guilty of gross misconduct in relation to his duties;
- (f) is disqualified or suspended from practicing his profession in any part of Nigeria by the order of any competent authority made in respect of him personally;
- (g) dies in office; or
- (h) in the opinion of the Governor, it will be against public interest for him to continue in office.

9. **Functions of the Policy Council- General**

The Policy Council shall -

- (a) formulate policy directives clearly stating the rationale for using PPP's to deliver infrastructure in the State;
- (b) issue guidelines and instructions on PPP project preparation , procurement, and implementation in a coordinated and harmonized manner;
- (c) designate unsolicited project proposal as a PPP proposal for approval by the State Executive Council;
- (d) review and forward project proposals and Agreements from the Rivers State Bureau of Public - Private Partnerships to the State Executive Council.
- (f) carry out such other functions as the Policy Council may deem necessary in furtherance of the objectives of this Law.

10. Functions of the Policy Council - Formulation of a Master Plan for PPP Projects

- (1) The Policy Council shall formulate, develop or modify for the State a Master Plan setting out government objectives, sector priorities, and the level of investment required (in this Law referred to as the Master Plan);
- (2) The Master Plan shall focus on infrastructure needs within the State and shall allow contracting authorities to enter into an arrangement with the private sector to provide infrastructure under a long term contract (in this Law referred to as a public-private partnership);
- (3) The Projects identified in the Master Plan shall -
 - (a) encourage a balanced development of the State;
 - (b) take into consideration -
 - (i) the existing development plans of the State, investment priorities, short to long term goals for infrastructure project development in a coherent and sustainable manner.
 - (ii) the resources, project management capacity, and efficiencies of the private sector.

11. Remuneration of members of the Policy Council

- (1) Members of the Policy Council, other than ex-officio members, shall be paid such remuneration, traveling, and other allowances as the Governor may from time to time determine.
- (2) Ex-officio members shall be paid such allowances as the Governor may from time to time determine.

12. Proceedings of the Policy Council

- (1) Subject to the provisions of this Law, the Policy Council may make standing orders to regulate its proceedings at meetings.
- (2) The Policy Council shall meet at least once every quarter in each year and at such other times as may be necessary.
- (3) The quorum for the meeting shall be seven (7) members.
- (4) At every meeting of the Policy Council, the Chairman shall preside, but if he is absent, the members present at the meeting shall appoint one of the members present to preside.
- (5) The Policy Council may co-opt persons. Such persons may take part in the deliberations of the Policy Council but shall not be entitled to vote at the meeting of the Policy Council.
- (6) Any issue for determination before the Policy Council shall be by simple majority of members present and voting.

PART III

Establishment, Composition, Functions, etc of the Rivers State Bureau of Public – Private Partnerships

13. Establishment of the Rivers State Bureau of Public – Private Partnerships.

- (1) There is hereby established a body to be known as **the Rivers State Bureau of Public – Private Partnerships** (in this law referred to as “**the PPP Bureau**”).

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

14. The Executive Director of the PPP Bureau.

- (1) There shall be appointed by the Governor an Executive Director of the PPP Bureau who shall -
- (a) be the Chief Executive and Accounting Officer of the PPP Bureau;
 - (b) be a graduate from a recognized university;
 - (c) either be -
 - (i) a Legal Practitioner;
 - (ii) a graduate of economics with a Masters in Business Administration, Finance or any other related discipline;
 - (iii) an Accountant who shall be a member of the Institute of Chartered Accountants of Nigeria, or any other recognized accounting profession in Nigeria; or
 - (iv) an engineer who shall be a member of the Council of Registered Engineers of Nigeria (COREN)
 - (d) have held a senior management position in public administration or corporate management;
 - (e) have a minimum of fifteen (15) years cognate experience in his profession.
 - (f) be an indigene of Rivers State.
- (2) Subject to the provisions of section 13 of this Law, the Executive Director of the Bureau shall hold office for five (5) years in the first instance and may be re-appointed for another three (3) years term and no more and shall be paid such remuneration as shall be stated in his letter of appointment.

15. Removal of the Executive Director of the PPP Bureau

- (1) The Executive Director shall cease to hold office if he -
 - (a) resigns his appointment by a notice under his hand addressed to the Governor;
 - (b) becomes incapacitated by reason of infirmity of the mind or body;
 - (c) becomes bankrupt or makes a compromise with creditors;
 - (d) is convicted of a felony or any offence involving dishonesty or fraud;
 - (e) is guilty of gross misconduct in relation to his duties;
 - (f) is disqualified or suspended from practicing his profession in any part of Nigeria by the order of any competent authority made in respect of him personally;
 - (g) dies in office.

16. Appointment of Directors of the PPP Bureau

- (1) There shall be appointed by the Governor from within or outside the public service of the State, two officers, to be known as "Director Project Management" and "Director Administration and Finance"
- (2) The Directors shall report directly to the Executive Director and assist him in the day-to-day administration of the Bureau.
- (3) The Directors shall have at least ten years experience in either Law, Corporate Management, or Public Administration.
- (4) The Director of Administration shall also serve as secretary of the PPP Bureau

17. Project Advisers and Other Staff of the PPP Bureau.

- (1) There shall be transferred, seconded, or employed by the PPP Bureau such staff to be known as Project Advisers and shall include the following -
 - (a) Two Legal Practitioners to be seconded, or transferred from the Ministry of Justice of the State each with -
 - (i) a minimum of 5 years post-qualification experience; and
 - (ii) training or experience in Public-Private Partnerships;
 - (b) A Chartered Accountant with a minimum of ten (10) years working experience who shall be a member of the Institute of Chartered Accountants of Nigeria or any other recognized accounting profession in Nigeria from the Ministry of Finance;
 - (c) a graduate of economics with a minimum of ten (10) years working experience in budget and planning from the Ministry of Budget and Economic Planning;
 - (d) A Civil Engineer who shall be a member of the Council of Registered Engineers of Nigeria (COREN) with a minimum of ten (10) years working experience from the Ministry of Works;
 - (e) three other members of the public who shall be professionals with a minimum of ten years experience and shall be -
 - (i) an environmental engineer who shall be a member of Council of Registered Engineers of Nigeria (COREN);
 - (ii) a budget analyst who shall be a graduate of economics or accountancy; and
 - (iii) a public relations/mass communications officer who shall be a member of the National Union of Journalists or such other bodies recognized by statute.
 - (f) three technical experts to be appointed from the Private Sector by the Governor, upon the recommendation of the Executive Director, to the PPP Bureau as follows-

- (i) A Professional with a minimum of 10 years working experience in Project Finance, Purchasing and Supply, Banking, or Investment, and has held a senior management position in public administration or corporate management;
 - (ii) A Civil Engineer with a minimum of 10 years experience and member of COREN with cognate experience in international procurement
 - (iii) A Legal Practitioner with a minimum of 10 years cognate experience in Public-Private Partnership.
- (2) The technical experts appointed pursuant to subsection (17) (f) of this Section shall be indigenes of Rivers State
 - (3) The remuneration of the technical experts shall be as stated in their letters of appointment.
 - (4) Staff on secondment to the PPP Bureau pursuant to subsection (1) of this Section shall -
 - (a) be so seconded for 2 years and may be seconded for a further period of 2 years, and thereafter no more; and
 - (b) be paid such allowances as the Governor may, upon the recommendation of the Executive Director, determine.
 - (5) A person seconded to the PPP Bureau may elect that his services be transferred to the services of the PPP Bureau, and any previous service he may have rendered in the public service shall count as service to the PPP Bureau for the purpose of any pension subsequently payable by the PPP Bureau.
 - (6) Notwithstanding the provisions of this Section, the Executive Director of the PPP Bureau shall have the powers to employ such other staff as may be required for the discharge of the functions of the PPP Bureau under this Law.

Pensions Reform Act 2004

- (1) It is hereby declared that service in the PPP Bureau shall be approved service for the purpose of the Pensions Reform Act, 2004 and accordingly, employees of the Bureau shall be entitled to pension, gratuities, and other retirement benefits as prescribed under the Pensions Reform Act, 2004
- (2) Notwithstanding the provisions of Subsection (1) of this section, nothing in this Law shall prevent the appointment of a person to any office on terms which shall preclude the grant of a pension, gratuity, or other retirement benefits in respect of that office.
- (3) For the purposes of the application of the Pension Reform Act, 2004, any power exercisable by a Commissioner or other authority of the Government, other than the power to make regulations under section 97 of the Pensions Reform Act 2004 is hereby vested in and shall be exercisable by the PPP Bureau and not by any other person or authority.

17C - Removal of Officers and Staff from Office

All project advisers, staff, and members of the PPP Bureau, the Contract Management Unit "CMU" and the Infrastructure Development Finance Unit "IDFU" shall be removed from office if they are found guilty of:

- (a) gross misconduct
- (b) dishonesty or fraud
- (c) holds an interest in a contract agreement entered into by the government
- (d) becoming involved in an Act that can be considered inimical to the to the interest of the Rivers State Government

18. Terms and Conditions

The terms and conditions of service, including remuneration, allowances, gratuities, and medical benefits of the staff shall be competitive and commensurable to that which obtains in the private sector.

Confidentiality of Information

The Official Secrets Act, 2004 shall apply to all staff of the PPP Bureau who shall also sign a confidentiality agreement to observe strict secrecy with respect to all transactions of the Bureau.

20. Functions of the PPP Bureau

The PPP Bureau shall –

- (a) be a Centre of Expertise for the promotion, development, and implementation of Public - Private Partnership projects in the State;
- (b) assist the Policy Council in the formulation of PPP Policies and Guidelines in the State;
- (c) provide technical assistance and support on PPP implementation to all government agencies, contracting authorities, and the private sector in the State;
- (d) appraise, review, evaluate, and approve all PPP projects throughout the process of project selection, preparation and procurement in the State;
- (e) co-ordinate the activities of Contracting and other relevant government authorities, and the private sector with respect to PPP projects in the State.
- (f) facilitate the issuance or renewal of permits, licenses, and other regulatory approvals for PPP projects from all government agencies and authorities;

- (g) promote PPP awareness, disseminate information to investors about PPP opportunities in the State, and prepare standardized documentation on the processes, procedures and requirements of the PPP program;
- (t) carry out such other functions as the Governor may from time to time direct.

21. Appointment of Consultants and Technical Advisers to the PPP Bureau

The PPP Bureau shall, in carrying out its functions under this Law, engage the services of consultants, experts, and technical advisers.

22. Establishment of the Contract Management Unit

There is hereby established in the Chambers of the Attorney General, the Contract Management Unit (in this law referred to as "the CMU")

23. Composition of the CMU

- (1) The CMU shall consist of -
 - (a) the Attorney-General who shall be the Chairman;
 - (b) the Director, Department of Legal Drafting, Ministry of Justice who shall be the Secretary;
- © A Director from the Infrastructure Development Finance Unit, established pursuant to Section 27 of this Law
- (d) A Director from the Ministry of works
- (e) A Director from the Accountant-General's office
- (f) such other Law Officers and support staff as the Attorney-General and Commissioner for Justice may deem necessary.

- (2) For the purpose of carrying out its functions, the Attorney-General shall have powers to co-opt into the CMU, -
 - (b) a representative from the project team of the Contracting Authority on an adhoc basis, to act as a contract manager, for the purpose of monitoring projects initiated by that Contracting Authority;
 - (b) an independent engineer or other specialists to report to the CMU on a regular schedule on progress, safety, and environmental issues.
 - (c) any relevant government ministry, department, or agency after consultation with the relevant head of the said government ministry, department, or agency as he may deem necessary.

24. Remuneration of members and staff of the CMU

The members and staff of the CMU shall be paid such allowances as the Attorney-General and Commissioner for Justice may determine from the budget of the Contract Management Unit.

25. Appointment of Consultants and Technical Advisers to the CMU

The PPP Bureau shall provide the CMU with technical assistance to enable it carry out its functions under this law.

26. Functions of the CMU

The CMU shall -

- (a) manage activities after PPP project commissioning in order to ensure that the parties adhere to the terms of the Contract Agreements;
- (b) liaise with the Contracting Authorities in the monitoring, and enforcement of PPP projects;

- (c) review any proposed changes to the Contract Agreements;
- (d) issue quarterly progress reports on PPP projects to the State Executive Council;
- (e) deliberate on refinance, expansion, or renewal of terms of existing contracts;
- (f) be a centre for the amicable resolution of disputes arising from the PPP Contract Agreements; and
- (g) carry out such other functions as the Attorney General and Commissioner for Justice may deem necessary in the regulation and monitoring of PPP projects

PART IV

27. Establishment of Infrastructure Development Finance Unit.

There is hereby established in the Ministry of Finance the Infrastructure Development Finance Unit (in this law referred to as "the IDFU").

28. Composition of the IDFU.

- (1) The IDFU shall comprise of-
 - (a) a head who shall be a-
 - (i) a civil servant and at least a substantive Director ; and
 - (ii) Member of the Institute of Chartered Accountants of Nigeria with cognate training and experience in project finance and management.
 - (b) Professionals and other staff as the Commissioner of Finance, may deem necessary.
- (2) Members of the IDFU shall possess core skills and competence required for the financing of public private partnership projects as that obtainable in the private sector.
- (3) The IDFU shall report to the Commissioner of Finance, who shall further report to the Policy Council

29. Remuneration of members of the IDFU

- (a) The members and staff of the IDFU shall be paid such allowances as the Commissioner for Finance may determine from the budget of the Infrastructure Development Finance Unit.

30. Functions of the IDFU

- (1) The Unit shall ensure value for money for the State by applying commercial standards in evaluating financial risk and cost and shall:

- (a) advise contracting authorities on all aspects of financing, refinancing, and insurance of public private partnership projects;
 - (b) advance monies on behalf of the state (including repayable loans and equity) and enter into other financial arrangements with respect to the financing of public-private partnership projects;
 - (c) form or cause to be formed special purpose companies for the purpose of financing public-private partnership projects;
 - (d) advise contracting authorities and the procurement body on the financial component of Invitations to Tender and Bids
- (2) subject to the approval of the State Executive Council, raise long term debt from the public, Foreign currency debt, including external commercial borrowings and other short term debt from either the local market through suitable instruments created for the purpose, and debt from bilateral or multilateral institutions in any currency for the purpose of financing a public-private partnership project.
- (3) In carrying out its functions, the IDFU shall comply with all guidelines and instructions that the Commissioner of Finance may from time to time issue to the Unit.
- (4) In providing advice to Contracting Authorities, the IDFU shall take policy guidance from the Attorney General and Commissioner for Justice that may be issued from time to time in relation to the process, procedures, and regulation generally of public- private partnership arrangements.

31. Collaboration between the IDFU and the PPP Bureau.

The IDFU shall in carrying out its functions collaborate with the PPP Bureau in such a way as shall give effect to the implementation of the provisions of this Law.

32. Appointment of Consultants and Technical Advisers to the IDFU.

The IDFU in carrying out its functions under this law may engage consultants and technical advisers to advice on the financing, refinancing, or insurance of public private partnership projects.

Establishment of Special Purpose Companies

(1) Subject to the approval of the Commissioner for Finance the IFDU shall form or cause to be formed special purpose companies for the purpose of raising long term debt and equity from the public as may be necessary for the financing of public-private partnership projects. Such debts shall have a maturity of not less than 5 years.

(2) The funding and management of special purpose companies shall be as prescribed by the State Executive Council upon the recommendation of the Commissioner of Finance.

(3) The practice and management of special purpose companies created under this Law with respect to dealings in the capital market shall be in accordance with the Investment and Securities Act, Laws of the Federation of Nigeria, 2004.

34. Borrowings and other financial arrangements

(1) Subject to the approval of the State Executive Council, the IDFU may from time to time borrow funds in any currency as may be necessary for the financing of public private partnership projects.

- (2) The IDFU may on behalf of the State open and maintain bank accounts, including accounts in currencies other than the naira.

35. Infrastructure Credit Guarantee

- (1) The State may upon the recommendation of the IDFU guarantee the credit of a party who intends to obtain a loan from a financial institution for the execution of a public private partnership project for the purpose of:
 - a. stimulating private sector participation;
 - b. encouraging the participation of companies and businesses indigenous to Rivers State
- (2) The State Executive Council shall upon the recommendation of the Commissioner for Finance give guidelines with regard to the method and types of guarantee, maximum amount of guarantee, and other matters concerning the conditions of the guarantee with respect to any particular PPP project.
- (3) Subject to the approval of the State Executive Council upon the recommendation on the Commissioner for Finance the IDFU shall set aside an amount to be used as guarantee.
- (4) The amount referred to in Subsection (3) of this section shall be from one of the following:
 - (a) budgetary allocation from the federal, state, or local governments
 - (b) investment from entities other than government
 - (c) revenue from guaranty fees
 - (d) loans from other financial institutions, grants, funds, or aids.

36. Viability Gap Funding

- (1) The State shall finance only commercially viable projects. Viable projects may also include those projects that will become viable after receiving viability gap funding upon approval of the State Executive Council subject to the recommendation of the IDFU

Use of the Infrastructure Credit Guarantee

- (1) Any Guarantee referred to in Section 36 (1) shall be used to:
 - i. fulfill the obligations with respect to loans guaranteed by the Government;
 - ii. repay the principal and interest with respect to loans under sub-section 30(2) of this Law;
 - iii. pay for the cost, operation, promotion, and management of the Infrastructure Credit Guarantee
- (2) The IDFU shall open a bank account to be known as the "PPP Credit Guarantee Account" with a bank to be nominated by the Commissioner of Finance and approved by the State Executive Council.

(3) The "PPP Credit Guarantee Account" shall be managed and operated by a financial institution established pursuant to the Banks and other Financial Institutions Act Cap B3, Volume 2 Laws of the Federation of Nigeria, 2004 (in this law referred to as the Management Institution) and accordance with the provisions of this Law.

38. Minimum Revenue Guarantee

- (1) The Government may subject to the approval of the State Executive Council, upon the recommendation of the Commissioner for Finance, issue minimum

revenue guarantee to the private party with respect to a PPP project.

39. Operation of the Credit Guarantee Facilities.

- (1) The IDFU shall no later than the first quarter of the expiration of each financial year, set before the Commissioner for Finance a statement setting out the details of each guarantee given during the year or given at any time before, and in force at the commencement of the year.
- (2) The Commissioner of Finance shall report same to the Policy Council for onward submission to the State Executive Council.
- (3) Except upon the approval of the State Executive Council, the combined net aggregate of the principal of all moneys guaranteed by the government and outstanding (including the equivalent of moneys raised in a currency other than the Naira) shall not exceed 50 Billion Naira.

40. Other Government Support and Incentives for PPP Projects

- (1) The Government shall provide appropriate financial incentives and support as may be necessary in the interest of the public, in order to attract private investment in infrastructure and essential services in the State which may include -
 - (a) Equity participation as considered appropriate by the Government for investment in a public private partnership project upon the recommendation of the Commissioner for Finance;
 - (b) reduction or exemption of taxes and levies;
 - (c) subsidies with respect to any particular project;
 - (d) the grant of a loan by the Government.

- (2) The IFDU shall issue specific guidelines with respect to the -
 - (a) criteria for qualification by the private party for the incentives and;
 - (b) sector application;
 - (c) method of application;
 - (d) appraisal and approval process

4. **Obligation of Contracting Authorities.**

- (1) Contracting Authorities shall seek the advice of the
IDFU
on the best financing approach before undertaking a public- private partnership project.
- (2) This shall apply to all public-private partnership projects regardless of whether it is an open or closed bid.

42. **Risk Allocation.**

- (1) The PPP Bureau shall provide technical assistance and support to Contracting Authorities with regards to the mechanism for risk identification, allocation, and mitigation as shall be determined on a project by project basis.
- (2) The Attorney-General and Commissioner for Justice shall periodically issue guidelines in order to provide the public and private sector with other specific measures that the government may use to mitigate or manage project risk.

PART V

Registration of a Potential PPP Project and PPP BUREAU APPROVAL NO.1

43. Registration of a Potential PPP Project

- (1) Where a Contracting Authority intends to implement a Project under this Law, it shall register the project as a **Submitted Project Proposal** (in this law referred to as **the Proposal**) with the Bureau.
The PPP Bureau shall register a Proposal if –
 - (a) the Proposal –
 - (i) contains a submission on the availability of the necessary expertise in the Contracting Authority to proceed with the project and a detailed profile of the members of its team;
 - (ii) give the details of the appointment of a **Project Officer** from within or outside the Contracting Authority or a transaction advisor if so deemed necessary by the contracting authority;
 - (iii) contains a pre-feasibility study.
 - (b) if the applicable registration fee in accordance with the guidelines to this Law has been paid; and
 - (c) the Proposal has complied with all requirements of this Law.

44. Designation of Proposal

Upon registration of the Proposal, the PPP Bureau shall make an assessment of the Proposal submitted to it, make its recommendation where necessary, and shall;

- (1) forward the Proposal to the Policy Council for its review and onward presentation to the State Executive Council;
- (2) the State Executive Council shall notify the Policy Council of its decision to proceed or not to proceed with the Proposal as a PPP project, and shall issue an "in principle" approval.

45. **PPP BUREAU APPROVAL NO.1**

- (1) Upon the decision to proceed with the Proposal by the State Executive Council the Bureau shall issue **BUREAU APPROVAL NO.1 to the Contracting Authority.**
- (2) The Contracting Authority shall proceed with a detailed Feasibility Study with respect to the Proposal and submit same to the PPP Bureau in accordance with guidelines as shall be issued by the Attorney General and Commissioner of Justice.

PART VI

Feasibility Study and PPP BUREAU APPROVAL NO.2

46.

Feasibility Study

- (1) Every Contracting Authority shall undertake a feasibility study when it considers that a proposal shall be implemented as a PPP Project.
- (2) The feasibility study shall particularly give details as regards the following-
 - (a) the comparative advantage in terms of the strategic and operational benefits of the proposed project if implemented as a PPP project;
 - (b) it shall describe in specific terms the:
 - (i) social and environmental impact of the proposed PPP project;
 - (ii) expected outputs and deliverables by the private sector, and;
 - (iii) the extent to which these functions shall be efficiently performed by the private sector in terms of the Agreement;

- (iv) most appropriate option by which the contracting authority may implement the project as a PPP project;
- (c) the capacity of the contracting authority to effectively enforce the agreement including the capacity to monitor project execution, and supervise performance of the private sector under the terms of the agreement;
- (d) demonstrate that the proposed PPP Project shall provide -
 - (i) value for money for the State;
 - (ii) affordability;
 - (ii) transfer appropriate financial, operational and technical risk to the private sector and
 - (iv) generate substantial employment opportunities and improve the living standards of the people of the State.

47. PPP BUREAU APPROVAL NO.2

The PPP Bureau shall review the feasibility study and if satisfied issue **BUREAU APPROVAL NO. 2**

PART VII

Procurement, BUREAU APPROVAL NO 3A and BUREAU APPROVAL NO.3B (PROCUREMENT)

48. Procurement,

- (1) After the issuance of **BUREAU APPROVAL NO.2** the Contracting Authority shall seek and obtain approval from the IDFU with respect to the financial terms of the model PPP Agreement.

- (2) The Contracting Authority shall design a fair, equitable transparent, and cost effective procurement process. The procurement process may include the following:
- (a) The project launch formally releasing details of the project in an official publication
 - (b) A request for pre-qualification in order to determine the technical and financial capacity of interested private sector participants;
 - (c) request for proposal from qualified private sector partners
- (3) The Request for Proposal shall include the following:
- (a) the estimated investment amount of the project, and matters concerning construction, such as the cost, duration, location and scale where applicable;
 - (b) the proceeds to be paid to the private party such as user Fees, or by the government or a combination of both and Supplementary Projects where applicable;
 - (c) the method involved in the PPP Project including the designation or non-designation of the facility as a Revertible Facility;
 - (d) any State or Local Government subsidies that may apply and the amount and method of the financial support;
 - (e) the management and operation of the proposed PPP Project;
 - (f) the eligibility criteria for the private sector partner; and
 - (g) other matters which the Contracting Authority considers necessary.
- (4) The Contracting Authority shall give consideration to Local Content in formulating the Request for Proposal.

49. PPP BUREAU APPROVAL NO.3A

- (1) The PPP Bureau shall, after a review of the Procurement plan and model PPP Agreement, issue PPP BUREAU APPROVAL No.3A to enable the Contracting Authority to proceed with the procurement process.
- (2) The PPP Bureau shall notify the Procurement Body of its PPP BUREAU APPROVAL No.3A issued to the Contracting Authority in order to enable it advertise, invite, solicit or call for bids.

50. Pre-Selection of Bidder

The Contracting Authority shall work with the Procurement Body in carrying out the pre-selection exercise and may request for professional or technical assistance from the PPP Bureau.

51. Invitation to Bid

- (1) The Contracting Authority shall prepare and submit a Request for proposal to the Procurement Body for written approval.
- (2) No document pertaining to a Request for proposal shall be issued to pre-selected bidder or bidders unless approved by the Procurement Body.

52. Contents of a Bid

Every bid with respect to a PPP Project shall include -

- (a) a plan that enhances the employment generation

- (b) potential of the State economy;
a skill transfer plan that allows professional and competent Rivers State indigenes to be included at all phases of the PPP Project; and
- (c) sub-contracting and local-social economic impact.

53. Duties of the Procurement Body

The Procurement Body shall be responsible for -

- (a) conducting the bidding process with respect to any PPP project in an equitable, transparent, cost effective and competitive manner;
- (b) examining and evaluating the bids received;
- (c) making recommendations to the PPP Bureau for entering into negotiation with the preferred bidder.

54. Procurement Report

- (1) After the evaluation of the bid but before appointing the preferred bidder, the Procurement Body shall submit a report as regards the evaluation of the bid (in this law referred to as "Procurement Report") for approval by the PPP Bureau.
- (2) The Procurement Report shall contain -
 - (a) the bid criteria for affordability;
 - (b) the method used in the Value for Money Analysis;
 - (c) substantial financial, technical, and operational risk transfer to the preferred bidder;
 - (d) reasons for the choice of the preferred bid;
 - (e) any other information as may be required by the Bureau.

55. BUREAU APPROVAL NO. 3B

49. PPP BUREAU APPROVAL NO.3A

- (1) The PPP Bureau shall after a review of the Procurement plan and model PPP Agreement, issue **PPP BUREAU APPROVAL 3A** to enable the Contracting Authority proceed with the procurement process.
- (2) The PPP Bureau shall notify the Procurement Body of its **PPP BUREAU APPROVAL No.3A** issued to the Contracting Authority to enable it advertise, invite, solicit or call for bids.

50. Pre-Selection of Bidder

The Contracting Authority shall work with the Procurement Body in carrying out the pre-selection exercise and may request for professional or technical assistance from the PPP Bureau.

51. Invitation to Bid

- (1) The Contracting Authority shall prepare and submit a Request for proposal to the Procurement Body for written approval.
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- (1) After the evaluation of the bid but before appointing the preferred bidder, the Procurement Body shall submit a report as regards the evaluation of the bid (in this law referred to as "Procurement Report") for approval by the PPP Bureau.
- (2) The Procurement Report shall contain -
 - (a) the bid criteria for affordability;
 - (b) the method used in the Value for Money Analysis;
 - (c) substantial financial, technical, and operational risk transfer to the preferred bidder;
 - (d) reasons for the choice of the preferred bid;
 - (e) any other information as may be required by the Bureau.

55. BUREAU APPROVAL NO. 3B

The PPP Bureau shall, upon satisfactory examination of the Procurement Report issue **BUREAU APPROVAL NO. 3B**

56. Closed Bid

Notwithstanding anything to the contrary in this Law, the State Executive Council may authorize the negotiation of any PPP project without complying with the procurement procedure above-

- (a) where there is one source capable of providing the services such as intellectual property and trade secrets;
- (b) if such project falls within the exemption under sub-section (4) of section 21 of the Rivers State Public Procurement Law No. 4 of 2008 ;
- (c) in any other case as may be determined by the State Executive Council for compelling public interest.

57. Notice of Contract Award

- (1) Except for the close bid, the Contracting Authority shall issue a notice of the contract award to be published pursuant to the provisions of the Rivers State Procurement Law.
- (2) The notice shall identify the successful bidder and include the essential terms of the proposed Agreement.

PART VIII

The Public Private Partnership Agreement

58. The Public Private Partnership Agreement

- (1) Upon the issuance of **BUREAU APPROVAL NO.3B,**

the Attorney General and Commissioner for Justice shall negotiate the final terms of the PPP and/or Concession Agreement between the Private Party and the Contracting Authority and forward same to the Governor for execution.

- (2) The Attorney General and Commissioner for Justice shall complete a due diligence on all the parties concerned to establish their competence and capacity to enter the Agreement.

The Agreement shall include a contract management plan that includes the capacity of the Contracting Authority to effectively monitor the long contract term, the Private Party's capacity to execute the project, and a budget for the contract management team.

- (3) Every Agreement shall meet the requirements of affordability, value for money, and transfer of substantial, financial, technical and operational risk to the Private Party and shall particularly;

- (a) specify relevant financial terms;
- (b) identity the responsibilities of contracting parties;
- (c) provide for the return of asset if any, to the Contracting Authority in such a manner as provided in the Agreement;
- (d) provide for payment to the private party by way of compensation from either the government budget or user fees collected from the private sector or a combination of both;
- (e) provide for the contract duration and termination procedures;
- (f) provide for a Preference Hiring Plan;
- (g) provide that a satisfactory legal due diligence has been completed in respect of the project;
- (h) provide that the Government and the private investors in relation to this project have the respective capacity and competence to enter into this project;
- (i) provide that all labour and stake holder's related matters have been settled;

- (4) Upon the approval of an "unsolicited Project Proposal" by the State Executive Council, it shall be deemed to be a Solicited Project Proposal and shall comply with the provisions of this Law.

62. Duration of the PPP Projects

Except the contrary is expressed in any particular contract, no PPP Project Agreement shall exceed a 20 year term.

63. Extension of the PPP Agreement

- (1) The State Executive Council may on the advice of the CMU extend the duration of the project term as provided in the PPP Agreement under the following circumstances-
 - (a) an initial delay in completion of the project construction or interruption of the project due to circumstances beyond the control of the parties;
 - (b) suspension of the project as a result of the action of Contracting Authority or other Public Authority; or
 - © the unforeseeable increase in cost or circumstances that were not contemplated by the parties as at the date of the Agreement.
- (2) The State Executive Council shall take into account the public interest of the State in granting extension to any existing project and such extension shall be as prescribed in the Guidelines

64. Termination by the Contracting Authority

The Contracting Authority may recommend to the State Executive Council the termination of any PPP Agreement in the event that the Private Party can no longer perform its obligations owing to fundamental breach or insolvency of the private party.

65. Step-In-Right

- (1) The Contracting Authority may during the term of the project step-in or intervene in the interest of the public and terminate the Agreement.
- (2) Provided however, that to ensure fairness to the private operator especially in the case of termination for reasons of public interest, the private operator shall be compensated in accordance with the provisions of the Contract Agreement.

66. Termination of the Public-Private Partnership Agreement by the Private Investor

The private party may terminate the Contract Agreement in any of the following circumstances-

- (a) in the event of a fundamental breach; or
- (b) if the parties fail to agree on a revision of certain conditions in the PPP Agreement where the PPP Agreement stipulates that at the end of the concession or project term there shall be the revision of such conditions.

Provided that the Private party shall be compensated through mechanisms agreed to by the both parties in the Agreement.

PART X

Financial Provisions

67. Funds of the PPP Bureau.

- (1) The PPP Bureau shall maintain a separate account which shall consist of and to which shall be credited-
 - (a) such administrative fees to be paid by the

private sector and Government agencies as the Bureau, subject to the approval of the Policy Council, may from time to time prescribe for the purpose of carrying out its functions.

- (b) all sums of money accruing to the PPP Bureau by way of grants-in-aid and gifts, testamentary dispositions, endowments and contributions from any source; and
- © such monies as may from time to time be granted to the Bureau by the Federal, State or Local Governments or other donor agencies provided such grants are not intended for purposes contrary to the objects and functions of the Bureau.
- (2) The Executive Director and the Director, Administration and Finance of the PPP Bureau shall be signatories to the account. The funds in the account shall be used for the recurrent and capital expenditure of the Bureau as the Policy Council may approve.

68. Estimates.

- (1) The PPP Bureau, the CMU and the IFDU shall cause to be prepared not later than the 30th of September each year, an estimate of its expenditure for the succeeding year for the purpose of approval through the Policy Council to the Rivers State House of Assembly.
- (2) Subject to subsection (1) of this Section, *the* Attorney General and Commissioner for Justice shall have powers to approve all expenditure of the CMU, as he may deem necessary.

69. Accounts and Audit.

The PPP Bureau, CMU and the IDFU shall cause to be kept such proper accounts and records, which shall be audited by auditors appointed by the Auditor General for the State.

70. Annual Report

The PPP Bureau shall prepare and submit to the State Executive Council through the Policy Council not later than the 30th day of June each year, a report on the activities of the PPP Bureau during the immediate preceding year and shall include in such report a copy of the audited accounts of the PPP Bureau and of the Auditors' Report.

71. Funds of the CMU.

- (1) The CMU shall maintain a separate account which shall consist of and to which shall be credited-
 - (a) such administrative fees to be paid by the private sector and Government agencies as the Attorney General and Commissioner for Justice may from time to time prescribe for the purpose of carrying out its functions;
 - (b) all sums of money accruing to the CMU by way of grants-in-aid and gifts, testamentary dispositions, endowments and contributions from any source; and
 - (c) such monies as may from time to time be granted to the CMU by the federal, state or local Governments or other donor agencies provided such grants are not intended for purposes contrary to the objects and functions of the CMU.
- (2) The Accountant General, Solicitor- General and Permanent Secretary of the State shall be signatories to the account.
- (3) The funds in the account shall be used for the recurrent expenditure of the CMU as the Rivers State House of Assembly may approve.

PART XI

Miscellaneous Provisions

72. Directive by the Governor.

The Governor may give to the Policy Council, the PPP Bureau, the IDFU or the CMU such directives of a general or specific nature or relating generally to matters of policy with regards to the exercise of their functions, as he may consider necessary.

73. Power to make regulations.

The Attorney General shall issue guidelines, rules and regulations to all government agencies and the private sector

- (a) prescribing the detailed procedure as regards PPP projects with respect to the inception, approval, implementation, execution, management and termination phases; and
- (b) as, in his opinion may be necessary or expedient for giving full effect to the provisions of this Law and for the due administration of its provisions.

74. Immunity

The Executive Director of the Bureau, the Chairman of the CMU, the Commissioner of Finance and their staff shall not be personally liable for any action lawfully done by them in the course of carrying out their functions under this Law.

75. Savings and transitional provisions.

- (1) Notwithstanding anything to the contrary in this Law or any other Law or Enactment, at the commencement of this Law, all ongoing or completed projects involving partnerships between the public

and private sectors for the provision of infrastructure shall be registered with the Bureau.

- (2) The provisions of this Law shall apply to the projects referred to in this section subject to any agreement between the public and private sectors with respect to the projects.
- (3) The Attorney General may in the interest of the public, exclude any Agreement or projects executed prior to the commencement of this law from complying with the provisions of the Law.

76. Consequential Amendment.

The provisions of the Rivers State Public Procurement Law No. 4 of 2008 relating to Public Private Partnerships shall apply subject to the provisions of this Law.

77. Definitions.

In this Law, unless the context otherwise requires -

“affordability” means that the financial commitments to be incurred by an institution in terms of the PPP agreement can be met by funds –

- (a) designated within the Contracting Authority's existing budget for the function to which the agreement relates; and/or
- (b) designated for the contracting authority in a future budget and/or
- (c) by users of the PPP project.

“Agreement” means a public- private partnership agreement recording the terms concluded between a contracting authority and a private party.

“Asset” includes an existing asset of a relevant Contracting Authority or a new asset to be required for the purposes of entering into an agreement;

“Approving Officer” means any person in charge of a Contracting Authority or so designated to perform such function;

“Concession Agreement” shall include but not limited to public-partnership schemes such as:

- (a) Design-Build-Operate and Transfer (DBOT) in its variants;
- (b) Build-Own-Operate (BOO) or Build, Own, Operate, and Transfer (BOOT),
- (c) Joint Development Agreement (JDA),
- (d) Build-Operate-Transfer (BOT), Build-Transfer, or Operation and Maintenance (OM)

“Contingent liability” includes government guarantee for loan and foreign currency transfer and step-in function in the event of the default by the relevant contracting authority;

“Contracting Authority” means any ministry or government department, Local Government Council, statutory corporation or Agency;

“Gap Funding” means funds invested into a public-private partnership project by the Government of Rivers State for the purpose of making the project commercially viable.

“Institution” means a department, a constitutional institution or a public entity.

“Institutional function” means

- (a) a service, task, assignment or other function that a contracting authority is entitled or obliged to perform-

- (i) in the public interest; or
 - (ii) on behalf of the public service generally; or
- (b) Any part or component of or any service, task, assignment, or other function performed or to be performed in support of such a service, task, assignment or other function;

“private party” means a party to a PPP agreement, other than the Public Sector;

“project officer” means a person identified by the accounting officer or accounting authority of an Contracting Authority, who is capable and appropriately qualified to manage a PPP to which that Public Sector is party from its inception to its expiration or termination;

“project” means a project to be implemented under an agreement;

“Public Sector” means any ministry or government department, local government council, statutory corporation or agency or any company in which the State has controlling shares.

“public-private partnership” or **“PPP”** means a commercial transaction between the public sector and a private party in terms of which the private party -

- (a) performs an institutional function on behalf of the government;
- (b) acquires the use of state property for its own commercial purposes;
- © assumes substantial financial, technical and operational risks in connection with the performance of the functions of the government and / or use of state property; and

- (d) receives a benefit for performing the institutional function or from utilizing the state property, either by way of:
- (i) consideration to be paid by the institution which derives from a revenue fund or, government business enterprise, from the revenues of such institution; or
 - (ii) charges or fees to be collected by the private party from users or customers of a service provided to them;
 - (iii) a combination of such consideration and such charges or fees;

“preferred bidder” means the bidder, including any bidding consortium, to be appointed as preferred bidder;

“State” means Rivers State of Nigeria;

“State Executive Council” means the Executive Council of Rivers State

“State property” includes all movable and immovable property belonging to the state as well as intellectual property rights vested in the state;

“transaction adviser” means a person or persons appointed in writing by an accounting officer or accounting authority of an institution, who has or have appropriate skills and experience to assist and advice the institution in connection with a PPP, including the preparation and conclusion of a PPP agreement;

“value for money” means that the extent to which the provision of the institutional function or the use of state property by a private party in terms of the PPP agreement results in a net benefit to the institution defined in terms of cost, price, quality, quantity, risk transfer or a combination thereof;

“Request for Proposal ” means to request for proposals from interested investors or parties to undertake the execution of a PPP project.

77. Citation.

This Law may be cited as the Public Private Participation in Infrastructure Development Law 2009.

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



A handwritten signature in black ink, appearing to read 'Tonye Ezekiel Harry', is written over a horizontal dashed line.

RT. HON. TONYE EZEKIEL HARRY
SPEAKER
RIVERS STATE HOUSE OF ASSEMBLY