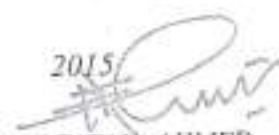


**KWARA STATE PUBLIC-PRIVATE PARTNERSHIP BUREAU  
LAW, 2015**

*I assent this 26<sup>th</sup> day of June, 2015*



ALHAJI ABDULFATAH AHMED  
Governor,  
Kwara State of Nigeria.



Kwara State of Nigeria  
Law No. 7 of 2015



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A LAW TO ESTABLISH THE KWARA STATE PUBLIC-PRIVATE PARTNERSHIP BUREAU TO ENHANCE INFRASTRUCTURE DEVELOPMENT AND SERVICE DELIVERY IN KWARA STATE, AND FOR CONNECTED PURPOSES.

( ) Date of Commencement

BE IT ENACTED by the House of Assembly of Kwara State of Nigeria and by the authority of same as follows –

PART I – ESTABLISHMENT AND FUNCTIONS OF THE BUREAU

1. (1) There is established a Bureau to be known as the Kwara State Public-Private Partnership Bureau (referred to in this Law as "the Bureau"). Establishment of the Bureau.
  
2. The Bureau shall – Incorporation of the Bureau.
  - (a) be a body corporate with perpetual succession and a common seal;
  - (b) have power to sue or be sued in its corporate name; and
  - (c) have power to acquire, hold and dispose of any movable or immovable property for the purposes of its functions under this Law.
  
3. (1) The objectives of the Bureau shall be to – Objectives of the Bureau.
  - (a) develop public infrastructure and public assets and provide social amenities and other facilities through public-private partnership in the State; and
  - (b) seek opportunities for and execute public-private partnership projects of a strictly commercial nature and impact for the purposes of diversifying the economic landscape and utilizing fallow assets for employment generation and increase in the internally generated revenue.
  
- (2) In seeking to achieve its objectives, the Bureau shall –
  - (a) initiate and develop public infrastructure and public assets development strategies for the State by means of public-private partnerships;

4. (1) The objectives of the Bureau shall be to –
- (a) initiate procurement of public-private partnerships for the development of public infrastructure and public assets by conducting pre-qualification processes from private investors willing to enter into public-private partnerships with any MDA of the State based on request for expression of interest or unsolicited proposals;
  - (b) evaluate expression of interest by private investors interested in public-private partnerships with any MDA of the State and issue a preferred mandate;
  - (c) act on behalf of the government or any of its agencies in public-private partnerships under this Law, and develop optimal means of financing the cost of public investments projects in order to achieve value for money;
  - (d) ensure on behalf of the government or any of its agencies that all aspects of financing, refinancing and insurance of public investment projects are duly undertaken by means of public-private partnerships within the public sector;
  - (e) prepare and develop on behalf of the State strategic master plans for public-private partnerships;
  - (f) provide policy recommendations on public-private partnership program for the delivery of public infrastructure and services;
  - (g) identify priority sectors for public-private partnership initiatives;
  - (h) initiate the development of public infrastructure or public assets and delivery of services through public-private partnerships;
  - (i) determine the framework of engagement of consultants specialists and advisers for public-private partnership in the State;



- (j) verify and monitor performance of the terms and conditions of concession agreements by concessionaires;
- (k) advise the government on matters relating to financing, construction and maintenance of public infrastructure or a board of public assets by means of public-private partnerships in the State; and, in particular, to identify and make recommendations to the government with respect to the acquisition of land required for such purposes;
- (l) undertake or conduct research, investigations or inquiries and collect information relating to public infrastructure and public assets;
- (m) liaise with bodies of professional persons and private agencies performing work with regard to public infrastructure and public assets; and
- (n) do such other things as may be relevant to its functions.

(2) The Bureau shall in relation to public-private partnerships initiated by it –

- (a) ensure the provision by the concessionaires of such facilities and amenities that are necessary for the users of public infrastructure or public assets;
- (b) oversee the development, operation and maintenance of public infrastructure and public asset provided by means of public-private partnerships, and such other facilities necessary or adjacent to such public infrastructure or public assets; and
- (c) satisfy, discharge and perform the obligations of the Bureau and the State, and uphold and observe the terms of any concession agreement, subject to the provisions of this Law.

## 5. The Bureau shall have power to—

Powers of  
the Bureau.

- (a) grant concession to private investors interested in public-private partnerships for design, construction, operation, management, control, maintenance, rehabilitation and financing of public infrastructure or public assets in accordance with this Law;
- (b) negotiate with prospective private partners;
- (c) obtain from any government agency or private institutions statistical or other information relevant to the functions of the Bureau;
- (d) monitor the concession agreements in order to ensure compliance with the terms and conditions;
- (e) designate a public infrastructure or public asset as a service charge, user fee or toll paying public infrastructure or public asset, and specify the condition for the use of such infrastructure or asset;
- (f) liaise and co-operate with all government agencies and parastatals with respect to private investors' participation in the provision and development of public infrastructure and public assets;
- (g) engage from time to time consultants and advisers on any public-private partnership or concession agreement;
- (h) perform any other functions as may be assigned to it by the Governor under this Law; and
- (i) partner with Ministries, Departments and Agencies.

## 6. (1) In project development and implementation the following provisions of this section shall apply.

Partnership with  
Ministries,  
Departments  
and Agencies.

(2) All solicited or unsolicited projects wherein the private sector is expected to perform a service, deliver an infrastructure asset, or supply materials to any Ministry, Department or Agency of the State for profit, must be reviewed and executed in partnership with the Bureau.

(3) When requested by a Ministry, Department or Agency, or instructed by the Governor, the Bureau shall –

- (a) support MDAs in the conceptualization and development of project ideas and business cases; and
- (b) assist in periodic review of infrastructure and service delivery efforts.

(4) Subject to the Governor's approval and negotiation with the Ministry, Department or Agency concerned, the Bureau shall earn fees (after financial close) for services provided for successfully completed public-private partnership projects.

PART II – ESTABLISHMENT, COMPOSITION AND FUNCTIONS OF THE BOARD

7. There is established the Public-Private Partnership Governing Board (in this Law referred to as "the Board") for the Bureau.

Establishment of the Board.

8. The Board shall consist of –
- (a) a chairman, who shall be a person knowledgeable in project financing, investment banking and engineering or other cognate experience of at least 15 years' work experience.
  - (b) Director General of the Bureau.
  - (c) Director of Strategy, Operations & Growth of the Bureau;
  - (d) Director of Administration of the Bureau;

Composition of the Board.

- (e) Director of Legal Affairs of the Bureau;
- (f) a representative from each of the following Ministries –
  - (i) finance,
  - (ii) planning and economic development,
  - (iii) Justice,
  - (iv) works and transport, and
  - (v) housing and urban development;
- (g) Secretary to the Board, who shall –
  - (i) arrange meetings of the Board and prepare the agenda and minutes of such meetings,
  - (ii) convey the decisions of the Board to its members,
  - (iii) conduct correspondence of the Board and the Bureau, and
  - (i) perform all other duties affecting the Board as may be assigned to him by the Chairman.

9. The Chairman and members of the Board, other than ex-officio members, shall be appointed by the Governor.

Appointment  
of Board  
members.

10. The Board shall –
- (a) give policy directions on the objectives, functions and powers of the Bureau pursuant to the provisions of this Law;
  - (b) be the policy making body on public-private partnerships for the State Government;
  - (c) take decisions on all issues pertaining to public-private partnerships in the State;
  - (d) identify priority sectors for public-private partnership initiatives;
  - (e) supervise the activities of the Bureau and liaise with the Governor on all issues pertaining to policy formulation, evaluation of operational guidelines and other required statutory provisions of the Bureau;

Functions  
of the  
Board.



- (f) determine the framework of engagement of consultants, specialists and advisers for public-private partnerships;
- (g) plan and recommend budgets for the Bureau;
- (h) identify and implement revenue sources regarding fees chargeable to internal (MDAs) and external clients;
- (i) create departments for the Bureau as it deems necessary; and
- (j) do other such things as may be relevant to its functions.

11. The Chairman and members of the Board shall hold office for a term of four years and may be re-appointed for a further term of four years only.

Tenure of Board members.

12. The Chairman and members who are not ex-officio members shall be paid such remuneration and allowances as may be approved by the Governor.

Remuneration of Board members.

13. The Chairman or any member of the Board shall cease to hold office if he –

Cessation of Board membership.

- (a) resigns the appointment as a member of the Board by giving one month's notice in writing to the Governor;
- (b) becomes bankrupt or makes a compromise with his creditors;
- (c) is convicted of an offence involving dishonesty;
- (d) becomes incapable of carrying out the functions of the Bureau either arising from an infirmity of the mind or body;
- (e) is found guilty by a competent court or tribunal for misconduct in relation to his duties;
- (f) allows his financial or fiduciary interests to come in conflict with the operations of the Board, the Bureau, or both;
- (g) in the case of a person with a professional qualification, he is disqualified or suspended other than at his own request from practicing his own profession by the order of a competent authority made in respect of that member; and

- (h) has been absent from three consecutive meetings of the Board without the permission of –
- (i) the Chairman, in the case of a member, and
  - (ii) the Governor, in the case of the Chairman.

14. The Chairman or any member of the Board may be removed from office by the Governor if he is satisfied that it is not in the interest of the Board or public interest that the Chairman or such member should continue in office.

Removal of  
Board  
member.

15. The supplementary provision set out in the schedule to this Law shall have effect with respect to the proceedings of the Board and the other matters mentioned therein.

Application  
of the  
Schedule.

### PART III – DIRECTOR GENERAL AND OTHER STAFF OF THE BUREAU

16. (1) The Governor shall appoint for the Bureau a Director General, who shall be a person with a minimum of 15 years' work experience in the financial sector and is a member of a relevant professional body.

Appointment  
of Director  
General.

- (2) The Director General shall –
- (a) be the Chief Executive and Accounting Officer of the Bureau;
  - (b) hold office upon such terms and conditions as may be contained in his letter of appointment; and
  - (c) hold office for a period of four years in the first instance, and may be re-appointed by the Governor for another term of four years only.

(3) The Director General may be removed from office by the Governor, if he is satisfied that it is not in the interest of the Bureau or public interest that he should continue in office.

17. The Director General shall be responsible –
- (a) for the day-to-day administration of the Bureau;
  - (b) to the Board for policy direction;
  - (c) for carrying out the policies and decisions of the Board in accordance with the provisions of this Law;

Duties of the  
Director  
General.

- (d) for the general direction and control of the employees of the Bureau; and
- (e) performing such other relevant duties as may be directed by the Board from time to time.

18. (1) The Board may employ, either directly from sources external to the Kwara State Government or on transfer or secondment from the Civil Service, such number of employees as may in the opinion of the Board be required to assist the Director General in the discharge of the Bureau's functions.

Other staff  
of the  
Bureau.

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

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

#### PART IV – EXECUTION OF PUBLIC-PRIVATE PARTNERSHIPS

19. (1) The Board may designate any public infrastructure or public asset, any road, bridge or highway within the State as public infrastructure or public assets with respect to which user fee or toll shall be payable for the purpose of this Law, subject to the approval of the Governor.

Designation  
of public  
infrastructure  
or public  
asset.

(2) Any project that is developed in whole by the Bureau shall be the responsibility of the Bureau.

(3) The Bureau shall have the power to include any Ministry, Department or Agency that it deems fit to join the project implementation team, under any terms of involvement that it sees fit.

20. (1) Without prejudice to the functions of the State under any other enactment the State either by itself or in conjunction with any other person (including another State) may –

Public-private  
partnership  
agreements.



- (a) enter into an agreement with a person (referred to in this Law as "a Partner") for the performance of functions of the State specified in the agreement;
- (b) enter, where appropriate, into direct agreement with persons who have arranged or provided funding for the partner for carrying out the public-private partnership in relation to –
  - (i) the design and construction of an asset together with operation of services relating to it and the provision of finance, if required for such design, construction and operation,
  - (ii) the construction of an asset, together with the operation of services relating to it and the provision of finance, if required, for such construction and operation,
  - (iii) the design and construction of an asset, together with the provision of finance for such design and construction,
  - (iv) the concession of unused State-owned assets, including land and buildings, for the purpose of raising revenue.

(2) The agreements referred to in subsection 1(a) and (b) shall be under the purview of the Bureau.

(3) All public-private partnerships must include an operation and management component otherwise they will not be permissible as public-private partnerships for the State Government.

(4) A public-private partnership agreement must not contain provisions for any financial guarantee from the State or by any Ministry, Department or Agency for the public-private partnership but may include provisions for indemnity or undertaking that would be given in the ordinary course of business.



21. (1) For the purpose of procurement the Bureau shall be a procuring entity.

(2) The Bureau may undertake restricted or emergency procurements in accordance with this Law.

(3) The Standard Operating Procedures (SOPs) are a body of work that has been created to guide the decision-making and operations regarding the procurement of public-private partnerships and apply as if they are part of this law.

(4) All concessions, joint ventures or partnerships with the private sector must be procured through the Bureau. These include the delivery of public assets, service provision or procurement of supplies on behalf of the State Government for profitable gain.

(5) All MDAs that are seeking partnerships with the private sector, whether solicited or unsolicited, must submit all such partnership projects to the Bureau to be developed and executed in conjunction with the originating MDA.

(6) The Bureau may give letters of interest, procurement, comfort or undertakings in respect of any public-private partnership or concession agreement.

(7) The structure for payment and repayment shall be as follows –

(a) for all public-private partnership projects, regardless of model, where the State Government is to provide part or whole financing, the selected private partners will be required to commence the project with their own funds and see the project through to a significant level of completion based on the Standard Operating Procedures and the agreement, before the State Government's contribution;

(b) where a project has several phases paragraph (a) of this subsection still applies, and the State Government's financial obligations for any given

phase will be reconciled before 50% completion of the subsequent phase.

(8) This section applies to all financial instruments including, but not limited to, guarantees, performance bonds, advance installments, standing payment orders, and allocations.

22. Any company that the Bureau enters into a public-private partnership agreement with must be a company registered under the Companies and Allied Matters Act.

Partnership to be with registered companies.

23. The Bureau, with the approval of the Governor, may cause to be formed, limited liability partnerships or limited liability companies for the purpose of financing public-private partnership projects or facilitating such projects where, in the opinion of the Bureau, it is necessary or expedient to do so in order to discharge its functions under this Law.

Formation of limited liability partnerships and companies.

24. (1) Subject to the approval of the Governor and the confirmation of the Kwara State House of Assembly, the Bureau shall create and manage InfraFund Kwara (referred to as "IF-K"), which is a limited liability special purpose vehicle, and a combination of a funding entity and operational model, which leverages medium to long term equity and debt instruments, strictly to fund large scale PPP infrastructure projects for asset and service delivery.

The Infrafund Kwara.

(2) The IF-K shall be funded and managed as follows –

- (a) initial funds may come from a variety of credible local or international institutional investors and donors that have a medium or long term investment horizon; and may be any combination of commercial debt, capital market funding or grants (bilateral, foundations, multilateral, local, international, multinational, or corporate);

- (b) all funds that the Bureau secures through its own efforts shall come under the sole management of the Bureau for execution of the projects for which it is committed;
  - (c) all funds that are dedicated to any PPP project, even as a result of reallocation from any existing source, shall come under the sole management of the Bureau for the execution of project for which it is committed;
  - (d) a Fund Manager (which shall be a reputable financial institution in Nigeria) must be hired for the purpose of managing and advising on the IF-K;
  - (e) the IF-K, through the Fund Manager, will be able to issue notes to the public on an on-going basis for the purpose of fundraising for project execution, and the Governor must approve each round of note issuance;
  - (f) each round of debt raising by the IF-K must be in line with the existing laws relating to borrowing;
  - (g) the State Government will issue an Irrevocable Standing Payment Order (ISPO) to an appointed Trustee, who will create and manage the sinking fund from the ISPO payments, to be used for repayment of debt;
  - (h) the State Government shall pay a minimum of N100 million naira monthly into the sinking fund as its contribution to the IF-K
- (3) The funds in the sinking fund will be used for the following purposes –
- (a) contribution to the IF-K for the execution of approved projects as a source of the State Government's fulfillment of its obligations under contract terms, which may be, but not limited to, construction and equipment financing, user fee subsidies, operation and management fees;
  - (b) as return on investment to the large institutional investors;
  - (c) as repayment of note holders; and



- (d) the State Government's sole execution of projects when necessary.
- (4) The deduction of funds for any purpose including debt repayment, reimbursement and project execution shall be subject to all of the following approval steps, with proof of each submitted to the Trustee before the deduction –
  - (a) written indication, signed by both the Director General and the Independent Assessor, that such funds should be deducted from the account;
  - (b) Governor's approval of deduction as advised by the Director General with proof of completion of paragraph(a) of this subsection;
  - (c) Fund Manager instructs the Trustee to withdraw the appointed amount and pay it to the respective party as indicated in the Governor's approval, accompanied by proof of completion of paragraphs (a) and (b) of this subsection;
  - (d) Trustee makes the payment to the respective party as instructed.
- (5) All funds that are withdrawn from the IF-K will be periodically verified by the Fund Manager at its discretion.
- (6) The IF-K shall be operated as follows –
  - (a) only PPP projects approved by the Governor and the Executive Council under advisement of the Bureau, may be considered for funding through IF-K;
  - (b) the minimum project value threshold for eligibility of funding and operation through the IF-K shall be as determined by the Executive Council;
  - (c) the Fund Manager and Independent Assessor will conduct ongoing monitoring on the operations of the IF-K along with the Bureau.



(7) External Independent Assessors will be appointed to work with the Bureau at project development stages and for ongoing contract monitoring and program evaluation.

25. As from the commencement of this Law any Concession Agreement to be entered into by the Bureau must be presented before the Governor for ratification before implementation.

Ratification of  
Concession  
Agreement.

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

Authorization  
to collect user  
fees or tolls for  
PPP projects.

27. (1) The Bureau, based on the advice of the Kwara State Internal Revenue Service, may specify the –

User fee or toll  
regulation for  
PPP projects.

- (a) service charge, user fees or tolls payable in respect of designated public infrastructure or public assets; and
- (b) conditions under which a member of the public will access the use of public infrastructure or public assets.

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

(3) The Bureau may provide for service charge, user fees or tolls to be charged for a period, specified in, or determined in accordance with, the regulations, which may provide that payment of service charge user fee or tolls shall end –

- (a) on a date, or at the end of a period, specified in the regulations; or
- (b) on a date determined by reference to –
  - (i) the achievement of a specified financial objective, or
  - (ii) such other factors or combination of factors as may be specified in the regulations.

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

28. (1) The service charge, user fees or tolls –
- (a) shall be paid to the concessionaire and adjusted in accordance with regulations made by the Bureau or in the absence of such regulations as may be agreed with the concessionaire and incorporated into the relevant concession agreement;
  - (b) levied in respect of public infrastructure or public assets is valid only if it is charged by the concessionaire in accordance with the provisions of this Law.

Payment of service charge, user fee or toll for PPP projects.

29. (1) The setting of application and compliance on service charges, user fees and tolls shall be in accordance with the provisions of this section.

Setting of and compliance for service charge, user fee or toll.

(2) The service charge, user fee or toll which may be levied and collected by the concessionaire pursuant to any concession agreement shall in every case be the service

charge, user fee or toll specified or calculated in accordance with any index or formula or other provision stated in the concession agreement with the Bureau, where the concession agreement is entered into prior to the regulations made by the Bureau.

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

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

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

(6) It shall be an offence for any person to fail or refuse to pay service charge, user fee or toll in accordance with this Law, any regulations made under this Law or within the terms of Concession Agreement, and the offender shall be liable on conviction to fine of not more than N20,000 or a maximum of six months' imprisonment, or both.

(7) If it appears to a person employed to collect



service charge, user fee or toll that a person has refused or failed to pay, the person so employed may –

- (a) refuse to permit the defaulter to use, or prevent him from using the public infrastructure or public asset with respect to which service charge, user fee or toll are payable; and
- (b) require him to vacate the public infrastructure or public asset, or call, where necessary, the assistance of law enforcement agents.

(8) Where a person refuses to pay a service charge, user fee or toll with respect to the use of any public infrastructure or public asset, the person may be prosecuted. Where the infrastructure is a road or a bridge, the vehicle driven by the person shall be impounded by an authorized person and removed to a vehicle park provided for that purpose, and such vehicle shall remain so impounded until the payment to the concessionaire of the unpaid toll and the demurrage to the appropriate authority designated by the Bureau, or shall remain so impounded pending the trial of the offence committed.

30. (1) The Bureau shall be responsible for making recommendations to the Executive Council, as it deems necessary, regarding the following –

- (a) designating a public infrastructure or public asset as a service charge, user fee or toll paying infrastructure or asset;
- (b) establishing fair and general conditions designating who, when and how the public infrastructure or public asset may be used and from whom service charge, user fee or toll may be collected; and
- (c) giving effect to any provision and purpose of this Law.

Power to  
make  
regulations



31. The provisions of this Law shall apply to public-private partnerships or Concessions entered into before the commencement of this Law and shall preserve and protect all rights, properties, interests and obligations existing under them and any law applicable when the public-private partnership was entered into or the Concession was awarded.

Existing  
Concessions.

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

Appeal  
from  
decisions  
of the  
Bureau.

#### PART V – FINANCIAL PROVISIONS

33. The Funding of the Bureau shall come from –

- (a) all subventions and budgetary allowances from the State;
- (b) gifts, loans, grants or aid from any agency, institution, bilateral and multinational organization or any government;
- (c) all other sums which may be payable to, or vested in, the Bureau in respect of any matter incidental to its functions.

Funds of  
the Bureau.

34. The funds of the Bureau shall be utilized for the following purposes –

- (a) to pay salaries, remuneration, fees and allowances of staff, agents or consultants to the Bureau;
- (b) for the development and maintenance of any property vested in or owned by the Bureau; and
- (c) to defray other expenses authorized by the Bureau in carrying out its functions under this Law.

Application  
of the  
Funds.

35. The Bureau shall prepare and submit to the Ministry of Planning and Economic Development annual estimate of its income and expenditure in accordance with the call circular of the Ministry.

Annual estimates

36. The Bureau shall keep and operate bank accounts for its funds with a reputable bank as may be duly authorized by the existing financial laws and regulations in the State.

Bank account

37. The Bureau shall –

Account and audit

- (a) keep proper accounts of all its transactions in such form as the Board may direct, being a form that shall conform to standard commercial practice;
- (b) ensure that the form of accounts shall be such as to secure the provision of separate information in respect of each of the main activities and divisions of the Bureau;
- (c) ensure that its accounts are audited annually by external auditors appointed by the Board from a list of approved auditors provided by the Auditor-General of the State.

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

Annual report

#### PART VI – MISCELLANEOUS

39. In this Law, unless it is otherwise expressly provided for or the context otherwise requires –

Interpretation

"authorized person" includes a police officer, public infrastructure Inspectors, designated officials of the Bureau and such other person as the Bureau may from time to time appoint;

"Bureau" means the Kwara State Public-Private

Partnership Bureau;

"concessionaire" means the person or organization with whom a concession agreement concerning a public-private partnership has been entered into pursuant to this Law;

"concession agreement" means any agreement between the government and any person, firm, company or limited liability partnership for the construction, maintenance, operation or management of public infrastructure, assets and facilities over an agreed period of time including, but not limited to, the following types of agreements –

- (a) Design, Build, Operate and Transfer (DBOT);
- (b) Build, Own, Operate and Transfer (BOOT);
- (c) Rehabilitate, Operate and Transfer (ROT);
- (d) Joint Development Agreement (JDA);
- (e) Operation and Maintenance (OM);
- (f) Owner lease back;

"Commissioner" means the Commissioner for Finance of Kwara State or any person charged with the responsibility to oversee the Ministry of Finance;

"Executive Council" means the Executive Council of Kwara State;

"governor" means the Governor of Kwara State of Nigeria;

"Government" means the Government of Kwara State;

"internally generated revenue" means the aspects of Kwara State's revenue that are from sources and activities within the State;

"MDA" means Ministries, Departments and Agencies of the Kwara State Government;

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

"Project Agreement" means an agreement between the Bureau and private participant selected by the Bureau to carry out public-private partnership, including, without limiting the generality of the foregoing, concessions, leases, management contracts, other forms of agreements with private sector entities, technical



assistance contracts, consulting services contracts, franchises and regulatory agreement;

"public infrastructure" includes public facilities and amenities including roads, bridges, highways, rail lines, water transportation facility, public water works, housing, electric power stations, hospitals, recreational parks, motor parks, waste disposal facility, amusements centres, and other infrastructure or amenities for public use.

"PPP" means public-private partnerships;

"rehabilitation" means major repairs or maintenance requiring some changes in design or a form of reconstruction of infrastructure or asset to add strength, thus renewing or extending the life span;

"road" includes –

- (a) roads, the subject of project agreement;
- (b) the roadways, water table, bridges and fording on the line of the road;
- (c) the land on each side of the roadway and water table up to the boundary of the road;
- (d) all traffic lanes, acceleration lanes, shoulder, median strips, overpasses, underpasses, interchanges, approaches, entrance and exit ramps, service areas, maintenance;
- (e) any other areas on or adjacent to any public main road or parochial road, waterway, railway or other routes used for public passenger transport; and
- (f) any private road designated as a toll under this Law or otherwise developed or conceded pursuant to a concession agreement;

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

"State" means Kwara State.

40. This Law may be cited as the Kwara State Public-Private Partnership Bureau Law, 2015. Citation.



## SCHEDULE (Section 15)

## SUPPLEMENTARY PROVISIONS RELATING TO THE BOARD

1. Subject to this Law, the Board may regulate its proceedings and make standing orders with respect to the holding of its meetings and those of its committees, the custody and production for inspection of such minutes and such other matters as the Board may from time to time determine.

2. (1) The Board shall meet whenever it is convened by the Chairman, and if the Chairman is requested to do so by notice given to him by not less than three other members, he shall convene a meeting of the Board to be held within 14 days from the date on which the notice was given.

(2) Every meeting of the Board shall be presided over by the Chairman, but if the Chairman is unable to attend a particular meeting, the members present at the meeting shall elect one of them to preside at the meeting.

(3) The quorum of any meeting of the Board shall consist of the Chairman (or the person presiding at the meeting pursuant to subparagraph (2) ) and three other members.

(4) The Board shall meet for the conduct of its business at the principal office of the Bureau on such days as the Chairman may appoint.

3. (1) A question put before the Board at a meeting shall be decided by consensus or, where this is not possible, by a majority of the votes of the members present and voting.

(2) The Chairman shall, in the case of an equality of votes, have a casting vote in addition to his deliberative vote.

4. Where the Board seeks the advice of any person on a particular matter, the Board may invite that person to attend for such period as it deems fit, but a person who is invited by virtue of this paragraph shall not be entitled to vote at any meeting of the Board and shall not count towards the quorum.

5. No member of the Board or a committee shall be personally liable for any act of the Board done or omitted to be done in good faith on the course of the operations of the Board.

6. The validity of any proceeding of the Board or its committees shall not be affected by –

- (a) any vacancy in the membership of the Board or its committees;
- (b) reason that a person not entitled to do so took part in the proceedings; or
- (c) any defect in the appointment of a member.

7. (1) The Board may appoint one or more committees to carry out on behalf of the Board such of its functions as the Board may determine and report on any matter with which the Board is concerned.

(2) A committee appointed under subparagraph (1) shall be presided over by a member of the Board and shall consist of such number of persons (not necessarily all members of the Board) as may be determined by the Board, and a person other than a member of the Board shall hold office on the committee in accordance with the terms of his appointment.

(3) A decision of a committee of the Board shall be of no effect until it is confirmed by the Board at a properly convened meeting.

8. The fixing of the seal of the Bureau shall be authorized by the signature of the Chairman and the Secretary to the Board or the Chairman and such other person authorized by the Board to act for that purpose.

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



*Clerk to the House*