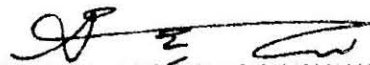


Assented to by me this 22<sup>nd</sup> day of July 2013



SENATOR ABIOLA AJIMOBİ  
HIS EXCELLENCY, THE EXECUTIVE GOVERNOR

Crest  
Oyo State of Nigeria

NO.61

A LAW TO PROVIDE FOR PUBLIC PRIVATE PARTNERSHIPS,  
ESTABLISH THE OFFICE OF PUBLIC PRIVATE PARTNERSHIPS  
AND ENHANCE INFRASTRUCTURAL DEVELOPMENT AND  
SERVICE DELIVERY IN OYO STATE AND OTHER MATTERS  
CONNECTED THEREWITH

Date of  
Commencement ( )

Enactment: ENACTED by the House of Assembly of Oyo  
State as follows:

Short Title: 1. This Law may be cited as the Oyo State Public  
Private Partnership Law, 2013.

Interpretation: 2. In this Law:

“Authorized person” includes a police officer,  
an Officer from relevant agencies designated  
officials of the Office and such person as  
the Office may from time to time appoint;

“Concession” means the right of economic use of land, assets and rights granted pursuant to a concession agreement under this Law;

“Concessionaire” means a Limited Liability Company, firm, Limited Liability partnership or any Organisation duly registered, under Companies and Allied Matters Act; to whom the government grants a concession based on a Public Private Partnership arrangement pursuant to this Law;

“Concession agreement” means any agreement between the government and a concessionaire 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 arrangement:

- (i) Design, Build, Operate and Transfer;
- (ii) Build, Own, Operate and Transfer;
- (iii) Rehabilitate, Operate and Transfer;
- (iv) Joint Development Agreement;
- (v) Operation and Maintenance;

“Governor” means the Governor of Oyo State of Nigeria;

“Government means the Government of Oyo State;

“House” means Oyo State House of Assembly;

"Person" or persons means a limited liability company, firm a limited liability partnership or any organization duly registered under the Companies and Allied Matters Act and to include concessionaire.

"Private Partners" shall include a Limited Liability Company, a Limited Liability Partnership or any organization duly registered under the Companies and Allied Matters Act and to include concessionaire; and

"Plan" means a technical working drawing, which shows the design of a project;

"Preferred mandate" is a document issued in favour of a successful pre-qualified bidder;

"Project agreement" means an agreement between the State and a Private Sector partner to carry out a Public Private Partnership, project including without limiting the generality of the foregoing, concessions, leases, management contracts, other forms of agreements technical assistance contracts franchises and regulatory agreement;

"Public asset" includes the right of uses of any property or economic opportunity of a public nature arising from use of public property;

"Public infrastructure" includes public facilities and amenities including but not limited to roads, bridges, highways, rail

lines water transportation facility, public water works, housing electric power stations, hospitals, public toilets, recreational parks, motor parks, waste disposal facility, agricultural facilities, amusement centres and any other infrastructure or amenities for public use;

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

“Road” includes:

- (i) Roads, the subject of project agreement;
- (ii) The roadways, water table, bridges and fording on the line of the road;
- (iii) The land on each side of the roadway and water table up to the boundary of the road;
- (iv) All traffic lanes, acceleration lanes, shoulder median strips, overpasses, underpasses, interchanges, approaches, entrance and exit ramps, service areas, maintenance;
- (v) 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
- (vi) Any private road designated as a toll road under this Law or otherwise developed or concessioned pursuant to a concession agreement.

“Service charge, User Fee or Toll’ means any fee, charge, levy, due or compensation payable by the Public in relation to the use of a public infrastructure or state assets;

“State Executive Council” means members of the Government Cabinet duly charged with the administration of the Government of Oyo State;

“The office” means the Office of Public Private Partnerships established in section 4 of this Law.

Establishment of Public Private Partnership System	3. There is established the Public Private Partnership System in the state for the purpose of enhancing infrastructural development and service deliver.
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Establishment of the Public Private Partnership office	4. (1) There is established the Office Public Private Partnership (hereinafter called “the office”) to coordinate the process and ensure that the objectives of this Law are realized.
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(2) The Office shall be a body corporate with perpetual succession and a common seal, capable of suing and being sued in its Corporate name and shall have the power to do the following:

- (a) The Office shall have the power to enter into contracts and incur obligations;
- (b) The Office shall acquire, hold, mortgage, purchase and deal howsoever with property whether movable or immovable , real or personal; and

(c) do all such things as are necessary or incidental to the carrying out of its functions and duties under this Law.

Objective of the Office

5. (1) The Primary objective of the Office shall be to ensure the development and enhancement of public infrastructure, public assets and other facilities in the State through Public Private Partnership.

(2) In furtherance of its primary objective the Office shall:

- (a) initiate, propose and develop policies and strategies for the development of public infrastructure and public assets and development strategies for the provision of social amenities and public services in the State by means of the Public Private Partnerships;
- (b) advise the government on policies that will promote and sustain Public Private Partnerships in the development of public infrastructure or public assets in the State;
- (c) coordinate policies and programmes of the State with respect to the adoption of Public Private Partnerships for the provision and development of public infrastructure or public assets in the State; and
- (d) ensure that the adoption of Public Private Partnerships for the provision and development of public infrastructure or public assets in the State is in accordance with prevailing Government policy and public interest.

The Functions 6.  
of the Office

The functions of the Office shall be to:

- (a) co-ordinate the policy making on Public Private Partnerships for the State Government;
- (b) be part of the government's decision-making process on all issues pertaining to Public Private Partnerships in the State;
- (c) identify priority sectors for Public Private Partnership initiatives;
- (d) initiate and facilitate procurement of Public Private Partnerships for the development of public infrastructure and public assets including conducting the pre-qualification process for private investors willing to enter into Public Private Partnerships with the State;
- (e) evaluate expression of interest by private investors interested in Public Private Partnerships with the State and issue preferred mandates to pre-qualified bidders in accordance with the provisions of the Public Procurement Law of Oyo State;
- (f) act on behalf of the Government or any of its agencies in Public Private Partnership undertakings with private sector entities;
- (g) ensure that all aspects of financing, refinancing, and insurance of public investment projects are undertaken by means of Public Private Partnerships within the public sector;
- (h) prepare and develop on behalf of the State, a strategic master plan for Public Private Partnerships;
- (i) determine the framework for the engagement of consultants, specialists and advisers for Public Private Partnerships in the State;
- (j) verify and monitor performance of the terms and conditions of concession agreements by concessionaries;

- (k) satisfy, discharge and perform the obligations of the State Government under the terms of any concession agreement subject to the provision of this Law;
- (l) monitor and oversee the development operation and maintenance of public infrastructure or public assets provided by means of Public Private Partnership and such other facilities necessary or adjacent to such public infrastructure or public assets or social amenities;
- (m) advise the Government on matters relating to financing, construction and maintenance of public infrastructure or public assets by means of Public Private Partnership in the State, and on all issues pertaining to policy formulation evaluation of operational guidelines and other required statutory provisions of the Public Private Partnership Office;
- (n) undertake or conduct research, investigations or inquiries and collect information relating to public infrastructure or public assets in general; and establish, operate an information and management system concerning public infrastructure or public assets projects;
- (o) do such other things as would enable the office to achieve the objectives of the office under this Law.

Power of 7. The Office shall have power to:  
the office.

- (a) negotiate with and enter into project agreement with private partners; and for the design, construction, operation, management, control, maintenance, rehabilitation and financing of public infrastructure or public



assets in accordance with the guideline of the office.

- (b) take custody of every concession agreement made under this Law and monitor compliance with the terms and conditions of such agreement;
- (c) obtain from any government ministry, department or agency or private institution statistical or other information relevant to the functions of the office;
- (e) inspect and monitor concessionaires to ensure compliance with the terms of any concession agreement;
- (f) designate a public infrastructure or public asset as a service charge, user fee or toll-paying infrastructure or public asset and specify the condition for the use of such infrastructure or assets;
- (g) pursuant to and in accordance with the provisions of this Law approve the amount of money that may be charged by any private or public operator with respect to any public infrastructure or public asset as toll or use fees.
- (h) Perform any other functions as may be assigned to it under this law by the Governor; and
- (i) Do all other things that are necessary or expedient for the performance of its functions including the engagement from time to time of consultants and advisers and other service providers.

Power of Procurement 8. (1) The Office may give letters of Procurement, comfort or undertakings in respect of any project agreement.

Appointment of the Director-General of the Office 9. (1) The Governor shall appoint for the Office a Director-General who shall be a person of impeccable character with a minimum of ten years cognate experience in any of the following fields; Commerce, Accounting, Finance, Banking, Engineering or Law and registered with the appropriate professional body.

(2) The Director-General shall:

- (a) be the Chief Executive Officer and Chief Accounting Officer of the Office;
- (b) be responsible for the execution of the policy and the day to day administration of the Office;
- (c) be answerable to and responsible to the Governor in the discharge of his functions;
- (d) upon invitation, attend meetings of the State Executive Council at which Public Private Partnership or activities of the Office are to be discussed;
- (e) hold office for a period of four years in the first instance and may be re-appointed for another term of four years only; and
- (f) hold office upon such terms and conditions as may be contained in his letter of appointment.

Tenure 10. The Director-General shall cease to hold office of office of if:  
Director-General

- (a) he resigns his appointment as Director-General by notice under his hand address to the Governor;
- (b) he is removed by the Governor for inability to discharge the functions of his office as a result of an infirmity of either mind or body or for misconduct or corruption in relation to his duties or otherwise howsoever;
- (c) he becomes bankrupt or makes a compromise with his creditors; or
- (d) he is convicted of a felony or any offence involving dishonesty or corruption or any other criminal offence whatsoever.

The Secretary 11. (1) The Governor shall appoint for the of the Office. Office a Secretary who shall be Civil Servant of not less than the Level of a Director;

- (2) The Secretary shall:
  - (a) arrange meetings of the Office and prepare the agenda and minutes of such meetings;
  - (b) Convey decision of the Office regarding Public Private Partnerships to the Ministries, Department and Agencies of the State; and
  - (c) perform all other duties affecting the Office as may be assigned to him by the Director-General.

Appointment  
of other staff  
of the office.

12. (1) The Governor shall approve the appointment for the Office such other staff as maybe expedient for the proper and efficient performance of the functions of the Office.
- (2) For the purpose of this section, appointment shall include secondments, deployment, transfer and contract appointments.
- (3) The terms and conditions of service (including remuneration, allowances, benefits and pensions) of the staff of the office shall be in accordance with the salary structure of the Civil Service.
- (4) Notwithstanding the provisions of subsection (3) of this Section, the Governor may approve such remuneration, allowances and benefits for the Director-General or any other staff of the Office as he deems fit.

Funds of the  
Office.

13. The funds of the Office shall consist of:
  - (a) all subventions, grants and budgetary allocations from the State Government;
  - (b) gifts, loans, grants or aid from any agency, institution, bilateral and multinational organization or any government;
  - (c) a percentage of service charges or user fees as may be prescribed in the regulation of the Office or agreed in the relevant concession agreement in the absence of such regulation; and
  - (d) other monies that may become payable to or vested in the Office in respect of any matter incidental to its functions.

Bank Account. 14. The Office shall keep and operate bank accounts for its funds with a reputable bank as may be authorized by or allowed under the extant financial laws and regulations of the State.

Utilization of Funds. 15. The funds of the Office shall be utilized for the following purposes:

- (a) payment of salaries, remuneration, fees and allowances of staff, agents or consultants to the Office;
- (b) development and maintenance of any property vested in or owned by the Office;
- (c) Human capital Development; and
- (d) defraying of other expenses incurred by the Office in carrying out its functions under this Law.

Annual Budget. 16. (1) The Office shall prepare and submit to the Ministry of Economic Planning and Budget an estimate of its income and expenditure in accordance with the call circular of the Ministry.

(2) The Office shall keep proper accounts in respect of each year from 1<sup>st</sup> January to 31<sup>st</sup> December in accordance with the prevailing audit policy of the State and shall forward its statement of account of the preceding year to the Auditor-General of the State for audit purposes.

Accounts and Audit 17. (1) The Office shall keep proper accounts of all its transaction in respect of each year from 1<sup>st</sup> January to 31<sup>st</sup> December in accordance with the prevailing audit policy of the State in such form as shall conform to standard commercial practice and as prescribed by extant financial

laws and regulations of the State, and shall forward its statement of Account for the preceding year to the Auditor-General of the State for audit purposes.

(2) The form of accounts shall be such as to secure the provision of separate information in respect of each of the main activities and divisions of the Office.

(3) The accounts shall be audited annually by external auditors appointed by the Office from a list of approved auditors by the Auditor-General of the State.

Annual Report.	18. The Office shall prepare and submit an annual report in accordance with the prevailing audit policy of the State not later than the 30 <sup>th</sup> day of June each year being a report on the activities of the Office during the immediate preceding year and shall include with the report a copy of the audited accounts of the Office and the Auditor's report.
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Public Private Partnership Agreement	19. Without prejudice to the functions of the State under any other enactment, the State either by itself or in conjunction with any other Private Partner or another State may:
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(a) enter into an agreement with Private Partners (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 construction and operation;

(iii) the design, construction or operation of an asset, together with the provision of finance and operation.

Establishment Of Special Purpose Companies or Limited Liability	20.	The Office with the approval of the Governor may cause to be formed, Limited Liability Partnerships or Liability Companies for the purpose of financing Public Private Partnership projects or facilitating such projects where in the opinion of the Office it is necessary or expedient to do so in order to discharge its functions under this Law.
Registration Under Companies And Allied Matters Act.	21.	The Office shall enter into a Public Private Partnership agreement only with a company registered under the Companies and Allied Matters Act.
State Ministry, Department or Agency Guarantee.	22.	A Public Private Partnership agreement may contain provisions that a financial guarantee or indemnity or undertaking or letter of comfort would be given by the State or any Ministry, Department or Agency of the government provided that no such financial guarantee, indemnity, undertaking or letter of comfort in respect of any concession agreement made pursuant to this Law shall be given



except with the approval of the State Executive Council.

Designation Of Public Infrastructure Or Public Assets 23. (1) Notwithstanding the provisions of any Law, the Office in consultation with the Ministry, Agency or Department of the government that has control over the particular asset may designate any public infrastructure or public asset 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.

(2) In the exercise of its power under this section, the office shall have regard to the rights and interest of the community where the public infrastructure or assets is situated with a view to giving them opportunity to participate, sense of belonging and due consideration in determining the service charges, user fees or tolls.

User Fees and Tolls 24.(1) The Office may by Regulation stipulate:

- (a) the Service charges, user fees or tolls payable in respect of designated public infrastructure or public assets; and
- (b) conditions under which members of the public may access the use of public infrastructure or public assets.

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



- (3) The Office may provide for service charge, user fees or tolls to be charged for a period specified or determined in accordance with the Regulation, where the Regulations provide for a period when payment of service charge, user fees 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, provided that such terms of the agreement are not in conflict with the provisions of the regulations.
- (5) The service charge, user fee or toll which may be levied and collected by the Concessionaire pursuant to any concession agreement shall in every case be the service charge, user fee or toll specified or calculated in accordance with any index or formula or other provision stated in the concession agreement as agreed with the office where the concession agreement is entered into prior to the regulations made by the Office.
- (6) Each concession agreement shall set out the procedure, circumstances and formulae by which the service charge, user fee or toll to be charged shall be calculated, varied or adjusted.

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- (7) Where the concession agreement does not set out the provisions for calculation, adjustment or variation of the service charge, user fee or toll or such provisions are declared invalid, void or unenforceable by any competent Court or Authority, the concessionaire shall apply to the Office for a calculation of or an adjustment or variation to the service charge, user fee or toll and the Office shall provide the necessary guidelines for the assessment of the applicable service charge, user fee or toll, taking into account all relevant circumstances.
  - (8) The Office shall have power to vary or adjust, or to require the adjustment of any service charge, user fee or toll charged by 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.
  - (9) The Office shall ensure that concessionaires or private sector partners for Public Private Partnership projects shall be selected through a vigorously transparent, efficient and competitive procedure, adapted to the peculiarities of the different projects selected for the Public Private Partnership arrangement.
  - (10) The Office shall consult and collaborate with the Ministry, Agency or Department of the Government that has control over the particular infrastructure or asset to determine a risk allocation structure that is best suited to the project and best serves the interest of the public, the private sector partner and the project.
25. (1) The appropriate share of the Service charge, user fees or tolls shall be paid to the concessionaire and adjusted in accordance with regulations made by the

Office or in the absence of such regulations as may be agreed with the concessionaire and incorporated into the relevant concession agreement.

(2) A service charge, user fee or toll levied in respect of public infrastructure of public assets is valid only if it is levied in accordance with the provisions of this Law.

<p>Authorization to collect user fees or Tolls</p>	<p>26. Notwithstanding the provisions of any Law, the Office may in the relevant concession or project agreement authorize any person in return for undertaking such obligation 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.</p>
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<p>Offences And Penalties</p>	<p>27. (1) It shall be an offence for any person to fail or to refuse to pay a service charge, user fee or toll in accordance with this law or any regulations made under this Law within the terms of the Concession Project Agreement and the offender shall be liable on conviction to a fine of not less than Fifty Thousand or six months imprisonment or any non-custodial sentence provided by law.</p>
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(2) If it appears to an authorized person employed to collect service charge, user fee or toll that an individual has refused or failed to pay, the person so employed may:

- (a) refuse to permit the defaulter to use, or prevent him from using or continuing to use the public infrastructure or public asset with respect to which the service charge, user fee or toll are payable; and
- (b) require him to vacate the public infrastructure or public asset or where necessary call for the assistance of other authorized persons.
- (c) Where an individual refuses to pay a service charge, user fee or toll with respect to the use of any public infrastructure or public asset, the person may be arrested by an Authorised person or Designated Officer and charged before a competent court as soon as reasonably possible without prejudice to the right of the person to be admitted to bail. Where the infrastructure is a road or 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, of the fine prescribed by subsection (1) of this Section and the demurrage shall be paid to the appropriate authority designated by the office or shall remain so impounded pending the trial of the offence committed under the said subsection.

Power to  
make  
Regulations.

28. The Office may subject to this law and subject further to the approval of the Governor make and publish such regulations as in its opinion are necessary or expedient for giving full effect to the provisions of this law and for

the due administration of its provisions especially for the purpose of:

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

Pre-Existing  
Concessions

29. The provision of this Law shall apply to Concessions Public Private Partnership Project Agreement or Concessions entered into before the commencement of this Law and shall preserve and protect all rights, properties, interests and obligations existing under that contract and any Law applicable when the Public Private Partnership Project Agreement was entered into or the concession awarded.

Appeal from  
decision of  
the office

30. 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 Private is dissatisfied with any decision or omission or exercise of power by the Office under this law, the concessionaire may appeal against the decision or exercise of power to the State Executive Council through the Secretary to the State Government. Response must be given within twenty-one days from date of receipt of complaint by the Secretary to the State Government.

Governor  
to give  
General  
Directives

31. The Governor may give to the Office such directives of a general nature or relating generally to matters of policy with regard to the exercise of its functions under this law as he may consider necessary and it shall be the duty of the Office to comply with the directives or cause them to be complied with.

Jurisdiction

32. This Bill shall have exclusive jurisdiction over issues relating to or connected with Public Private Partnerships in Oyo State.

The printed impression has been carefully compared with the Bill which was passed by the Oyo State House of Assembly and it is hereby certified to be a true and correct printed copy of the Bill.

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Rt. Hon. (Hadjia) M. J. Sunmonu  
Speaker, House of Assembly

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Barrister Paul Ishola Bankole  
Permanent Secretary/Clerk