

NASARAWA STATE

INVESTMENT

AND

DEVELOPMENT AGENCY

LAW, 2020

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A LAW
TO
ESTABLISH THE NASARAWA STATE INVESTMENT AND
DEVELOPMENT AGENCY CHARGED WITH THE
RESPONSIBILITY AMONG OTHER THINGS TO PROMOTE,
FACILITATE AND COORDINATE INVESTMENTS IN THE
STATE AND OTHER RELATED MATTERS

S.1. This Law may be cited as the Nasarawa State Investment and Development Agency Law and shall come into operation on the day of 2020.

Citation and commencement.

S.2. In this law, unless the context otherwise requires:

“Achievable” in Part II Section 8(2) of First Schedule refers to the ability of a private party to provide the management skills and financial and technical resources required to implement its obligations under a PPP Agreement;

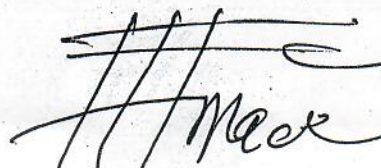
“Accounting Officer” means any person in-charge of a Contracting authority or so designated to perform such function;

“Affordable” or “Affordability” means that the financial commitments to be incurred by an institution in terms of the PPP Agreement can be met by public funds and/or charges imposed for the use of the output of the project;

“Agreement” or “PPP Agreement” means a Public-Private Partnership (PPP) agreement recording the terms of a PPP between a Contracting authority and a private party.

“Asset” includes an existing asset of a relevant Contracting authority or a new asset, the acquisition of which is the purpose of entering into a PPP agreement;

“Bureau of Public Procurement” means the agency of the government conferred with general responsibility for regulating and overseeing the procurement of goods, works and services for public purposes of the State;


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“CAMA” means the Companies and Allied Matters Act and includes such amendment or re-enactment thereof as may from time to time be made;

“CBN” means the Central Bank of Nigeria or its successor-in-title;

“Closed Bid” means a PPP procurement not complying with any or all the procurement procedures provided in this or any other applicable Law or in regulations made thereunder;

“Concession” means the right of economic exploitation of land, assets and rights granted pursuant to a concession agreement under this law.

“Concession Agreement” or a “PPP Agreement” means any agreement between a public entity and a private party for the construction, maintenance, operation or management of public infrastructure, assets and facilities over an agreed period of time including, but not be limited to public-Partnershipschemes such as;

(a) Design-Build-Finance-Operate (DBFO) and its variants, including Build-Own-Operate (BOO);

(b) Buy-Build-Operate (BBO), Lease-Develop-Operate (LDO);

(c) Build-Operate-Transfer (BOT), Build-Own-Operate-Transfer (BOOT), Build-Lease- Operate-Transfer, (BLOT), Build-Transfer-Operate (BTO)

(d) Rehabilitate, Operate and Transfer (ROT);

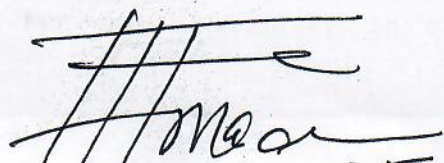
(e) Joint Development Agreement (JDA); or

(f) Operation and Maintenance (OM)

“Contingent liability” includes a government guarantee for a loan, a foreign currency transfer or step-in right in the event of a default by a party to a project or financing agreement;

“Contracting authority “ means a public entity that procures a private party with which it will execute a PPP agreement to carry out works or provide services;

“Contract Award Procedure” means the procedure defined for the procurement of a Private Party and for the consequent conclusion of a PPP agreement with that party, which procedure may be detailed by regulations made hereunder;

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“Desirable” in section 8 (2) of the First Schedule refers to the question whether there is an overriding requirement that the infrastructure or service should be provided directly by the public sector;

“Financing Agreement” means an agreement for financing the acquisition of the assets constituted into a project subject of a PPP agreement and includes any agreement pursuant thereto providing security for the loan, a term sheet, fee letter and any other document designated as between the loan agent (or the security agent or the arranger) or lender under such an agreement and the borrower.

“government” ordinarily means the government of Nasarawa State but where the context so admits, shall also mean the Federal government of Nigeria;

“Greenfield” shall mean any new investment or project which is not following an existing investment or project;

“Gross misconduct” shall mean such acts of indiscipline as are defined in the Public Service or amendment or re-enactment thereof in force in the State for the time being;

“Institution” means a ministry, department or agency, a constitutional body or other public entity of the State and includes a Contracting authority;

“Institutional function” means:

(a) A service, task, assignment or other function that a Contracting authority is entitled or obliged to perform;

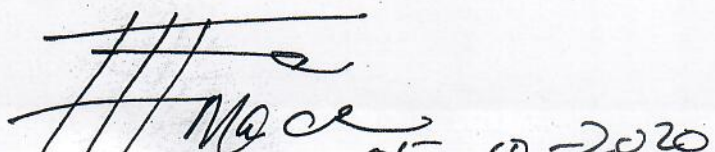
(i) in the public interest; or

(ii) on behalf of the public 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;

“ISA” means the investment and Securities Act and includes such amendment or re-enactment thereof as may be made from time to time;

“Preferred Bidder” means the bidder, including any bidding consortium, found after a competitive bid process to be in the lead position to be the private party to a PPP agreement;

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"Private Party" means a party to a PPP agreement, other than the Contracting authority or other public entity;

"Privatization" shall mean a transaction or series of transactions in which state-owned assets or shares in a company representing a controlling interest are to be transferred from the State government or a state government -controlled entity to the private sector.

"Project Officer" means a person identified by the accounting officer or accounting authority of a Contracting authority to manage a PPP to which that Contracting authority is a party from its inception to its expiration or termination;

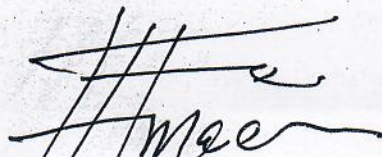
"Project" means an arrangement for the construction of works or the provision of goods and services, which can be, or is to be, implemented under a PPP agreement;

"Project Agreement" means any agreement, contract, arrangement and undertaking entered into by a private party in connection with the project, including an engineering, procurement and construction contract, a PPP agreement, a lease, an operations and maintenance agreement, a fuel or feed stock supply agreement and such other agreements as may from time to time be so designated under a PPP agreement;

"Public entity" means any government ministry or department or agency, statutory corporation or agency or any company in which the State has controlling shares or a controlling beneficial interest;

"Public-Private Partnership" or "PPP" means a commercial transaction between a public entity and a private party in terms of which the private party:

- (a) Undertakes a project or performs an institutional function on behalf of the government;
- (b) Acquires the use of a State asset or State property for that purpose;
- (c) Assumes substantial financial, technical, operational and management risk in connection there with; and
- (d) Receives a benefit therefore, by way of:
 - (i) Consideration to be paid by the government via an agreed payment mechanism; or

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(ii) Charges to be collected by the private party from users or customers of a service provided to them; or

(iii) A combination of paragraphs (i) and (ii) above.

“Public Sector” means the class to which all public entities belong;

“Request for proposal” or “RFP” means a written request calling for technical and commercial proposals from interested parties to undertake the execution of a PPP project.

“Revertible Facility” means a facility developed under a PPP transaction designated there under to become the full and unencumbered property of the State at the termination of the PPP transaction;

“Special Purpose Vehicle” or “SPV “ means, for the purposes of this law, a limited liability company incorporated under the Companies and Allied Matters Act, whose purpose is solely for the acquisition, financing and use of certain defined assets and their associated permits, licenses or regulatory approvals and contract rights for a specific PPP project;

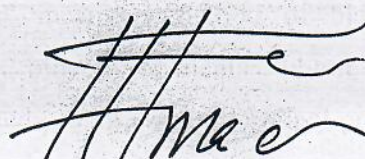
“State” means Nasarawa State of Nigeria;

“State Executive Council” or “EXCO” means the Governor of the State seating, deliberating and taking decisions of State formally with the Deputy Governor and the members of the Executive Board of Nasarawa State;

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

“Swiss Challenge” means a method of bidding in which the PPP Secretariat allows other proponents submit similar proposals to an approved unsolicited proposal by an original proponent for a PPP project. If any proposal is better than the proposal of the original proponent, the original proponent is asked to match with the other proposal . Where this fails, the award is given to the best bidder;

“transaction adviser” means a person or persons appointed in writing by an accounting officer or accounting authority of a public entity, who has or have appropriate skills and experience to assist and advise that public entity in connection with a PPP, including the design of contract award procedures and the preparation and conclusion of a PPP Agreement;


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“Value for money” means the consideration of a combination of the service outcome to be delivered by a private party with the value of risks transferred to it and the direct costs to the government and users, determined by the extent to which that combination results in a net benefit to the State through the project in terms of cost, price, quality, quantity, risk transfer or a combination thereof, all of which may be expressed as the net present value of project lifetime costs, including the cost of bearing risk; and

“Viable” in Sections 8 (2) and 32 (2) refers to the affordability and value for money for government and/or users as well as a reasonable return for private investors.

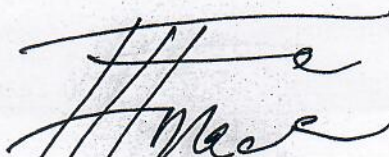
S.3(1) There is established for the State a body to be known as the Nasarawa State investment and Development Agency (in this law referred to as “the Agency”). *Establishment.*

(2) The Agency shall be a body corporate, with perpetual succession and a Common Seal and with power to sue and be sued in its corporate name and to acquire, hold and dispose of property whether movable or immovable for the purpose of its functions under this law.

S.4. The purpose of the Agency is to initiate, promote, facilitate and coordinate, investments in the State through Greenfield, Public Private Partnerships, Privatization, Concessions and commercialization of state owned assets and other related matters as the Board may determine from time to time. *Purpose of the agency.*

S.5(1) There is established for the Agency, a governing Board (in this law referred to as “the Board”) which shall consist of- *Composition of the Board.*

(a) The Chairman who shall represent the private sector with proven qualifications and possesses at least 10 years relevant investment promotion, economic planning, finance or cognate business experience at a senior management level to be appointed by the Governor of the State;


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(b) The Managing Director/Chief Executive Officer who shall be an individual with proven qualifications and possesses at least 7 years cognate experience in finance, law, economic planning, investment promotion, policy, or other related areas of expertise to be appointed by the Governor.

(c) The Commissioner for Justice/Attorney General of the State

(d) Commissioners of the following State Ministries or their representatives who shall not be below the rank of Director:

(i) Agriculture;

(ii) Trade, Industry & investment;

(iii) Finance;

(iv) Any other relevant MDAs as the Governor may determine from time to time;

* (e) The Director General of Nasarawa Geographic Information Service; *Delete*

(f) Four (4) reputable individuals representing the private sector with a university degree or its equivalent in investment, law, finance, economics or a related subject and possesses at least 5 years cognate experience in investment, law, finance, economics, or other related areas of expertise to be appointed by the Governor, two of whom shall be women; and

(g) Secretary to the Board who shall be a legal practitioner with at least 7 years post qualification experience or an individual who shall be a Fellow of the Institute of Chartered Secretaries and Administrators of Nigeria or with any similar qualifications and possesses at least 7 years of experience in secretarial functions to be appointed by the Governor on the recommendation of the Managing Director/ Chief Executive Officer.

- (2) A member of the Board shall not hold office or shall cease to hold office at the age of 70 years and above.
- (3) All members of the Governing Board of the Agency (with the exception of the Managing Director/ Chief Executive Officer and Secretary) shall serve on part-time basis.
- (4) Where any Commissioner is unable to attend, the Permanent Secretary in the Ministry may represent him.

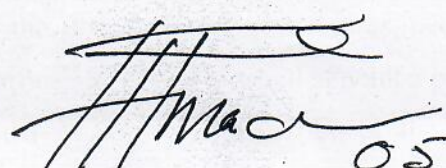
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- S.6(1) All appointed members of the Board shall hold office for a term of four years and may be reappointed for another term of four years and no more.
- (2) A member of the Board may resign from his office as such member by giving a notice of resignation in writing to the Governor.
- (3) A member of the Board shall be disqualified from office where such member;
- (a) Has been convicted of an offence involving fraud, dishonesty or gross misconduct;
 - (b) Has been adjudged bankrupt;
 - (c) Has become so incapacitated by unsoundness of mind and physical illness as to be incapable of carrying out the duties of his office;
 - (d) Has been absent from 3 consecutive meetings of the Board without the consent of the Chairman or any person generally or specifically authorised by the Board to act for that purpose, except he shows good reason for such absence; or
 - (e) Where the Governor in his discretion requires their removal from office in the public and other interest of the State.
- (4) The office of a member of the Board shall become vacant if a member:
- (a) dies;
 - (b) is removed from office in accordance with this law;
 - (c) resigns from office; or
 - (d) upon the expiration of the term of appointment.
- (5) If a member of the Board dies, resigns, retires, becomes disqualified or is removed from office, the Governor shall appoint a person to fill the vacancy for the remainder of the term of office of the member whose death, resignation, retirement, disqualification or removal occasioned the vacancy.

Tenure of office of Board members.

- S.7(1) Members of the Board shall be paid such remunerations, reasonable sitting allowances, individual travel expenses, and such other appropriate entitlements consistent with best practice as the Board may recommend, subject to the approval of the Governor, from time to time.

Remuneration of Board member.


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- (2) Members of the Board referred to in section 5 (1) (c) (d) and (e) of this law are however not entitled to be paid remuneration for the performance of their duties on the Board.

S.8 The functions of the Board shall be to:

Functions of the Board.

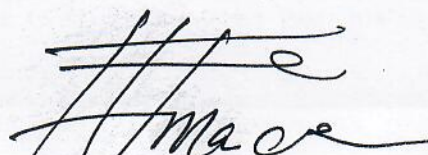
- (a) Set out the broad strategy, vision, mission and values of the Agency
- (b) Approve the internal rules and regulations of the Agency;
- (c) Carry out activities that may promote the purpose of the Agency;
- (d) Approve the annual budget proposal for the Agency before it is transmitted to relevant authorities;
- (e) Evaluate the performance of the Agency in accordance with the plan of action and the budget;
- (f) Monitor and evaluate the implementation of regulations , strategies and plans;
- (g) Monitor the performance of the management and staff of the Agency;
- (h) Submit activity report to the Governor on a quarterly basis;
- (i) Approve remuneration and welfare package for staffs of the Agency except that of the Managing Director/Chief Executive Officer;
- (j) Approve the appointment and dismissal of the staff of the Agency other than members of the Board except that of the Managing Director/Chief Executive Officer;
- (k) Perform such other functions conferred upon it by any provision of this law

S.9(1) Subject to this law, the Board may make internal rules regulating its proceedings.

Meeting of the Board.

- (2) The meetings of the Board shall be held once every quarter and at any time it is deemed necessary upon invitation of the Chairperson, in case of absence of its Chairperson at their own initiative, or upon proposal in writing by a third (1/3) of its members.

- (3) The invitation shall be delivered in writing to the members of the Board at least five (5) days before the meeting is held. For an extraordinary meeting, the invitation shall be convened in writing at least three (3) days before the meeting is held.
- (4) Every quarter, the Board shall:
 - (a) Review the progress of the various programmes and projects on the roadmap and to consider any special issues as may be directed by the Governor.
 - (b) Examine the financial and activities reports of the previous quarter which shall be transmitted to the Governor
- (5) Where the chairperson is unable to attend any Board Meeting, the members present shall select a chairperson for the meeting from the members present.
- (6) At every Board Meeting, a quorum shall be formed when a simple majority of the members are in attendance.
- (7) In the event of a stalemate on any vote relating to any matter, the chairperson of the meeting shall have a casting vote.
- (8) The Board may invite in its meeting any person from whom it may seek advice on a certain issue on the agenda. The invited person shall not be entitled to vote at any meeting of the Board, follow the debates of other items on the agenda and shall not count towards a quorum.
- (9) The Board may hold or continue a meeting by use of any means of communication by which all participants can hear and be heard at the same time and a member of the Board who participates in a teleconference meeting shall be taken for all purposes to have been present at the meeting and the Board may establish procedures for teleconference meeting (including recording the minutes of such meetings).
- (10) The Board may pass a resolution without a meeting being held if all members entitled to vote on the resolution sign and date on one or more copies of a document stating that they consent to the resolution and any such resolution shall be deemed passed on the date of the last signature to be applied.

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S.10(1) The Board may appoint one or more committees to carry out, on behalf of the Board, some of its functions as the Board may determine. *Committee of Board.*

(2) A committee appointed under this section shall consist of such number of persons, not necessarily 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.

S.11 Where any Board member has any direct or indirect personal interest in the issues under consideration or to be considered soon, the member shall be required, as soon as they are informed of the agenda, to immediately inform the Board of the basis of their interests. *Notification th a member of t Board has personal inter in issues unde consideration*

(2) Any member who notifies about their interest on the issue under consideration shall not vote during decision making or participate in discussions on such an issue.

(3) Where the majority or all of the Board members have direct or indirect interests, in matters being discussed, to the extent that a decision cannot be taken, the issues shall be forwarded to the Governor

S.12. The Agency shall:

(1) Advise and assist the government to create an enabling environment for business and investment to foster social and economic growth and development in the State; *Functions of Agency.*

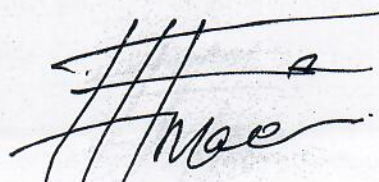
(2) Serve as a one-stop shop for all investment related activities in the State;

(3) Lead on all Public Private Partnerships, Concession, Commercialization, and Privatization transactions even where they are identified and/or project managed by other Ministries, Departments and Agencies.

(4) Establish standards, procedures and regulations for the execution of Public Private Partnerships, Concession, Commercialization, and Privatization transactions in the State.

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- (5) Aid the government to secure development finance from multilateral and bilateral development partners as well as private investors- both domestic and foreign – through diverse financing options;
- (6) Act as lead negotiator in deals with private investors - both domestic and foreign – with the consideration of needs of the State and those of its citizens.
- (7) Aid in the establishment of a framework for monitoring and evaluating the progress of the State's strategic investment programmes and projects for effective implementation;
- (8) Assist the State in building capacity for investment project identification, evaluation, planning, execution and management;
- (9) Develop and maintain a comprehensive and reliable database on investment opportunities for effective planning especially in areas where the State has demonstrable comparative and competitive advantages;
- (10) Establish a framework for identifying, engaging and coordinating all government agencies responsible for the entire investor experience in the State;
- (11) Maintain liaison between investors and Federal government and its agencies concerned with investments of the State;
- (12) Periodically conduct research, publish and revise data and information on the investment status of the State in order to assist prospective investors to evaluate the State's potential as an investment destination;
- (13) Provide and disseminate up-to-date information on incentives available to investors;
- (14) Identify, engage and create a database of reputable prospective and potential investors, both domestic and foreign, on available investment opportunities in the State.
- (15) Organise and monitor all investment promotion activities of the State;
- (16) Conduct trainings and workshops aimed at building the institutional capacities of State government Ministries, Departments and Agencies and other relevant stakeholders in investment promotion;



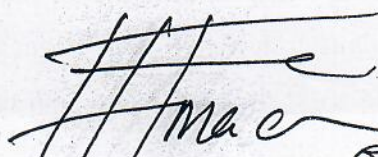
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- (17) Work with the State agency responsible for land allocation to identify and document available land for agricultural, housing, mining, industrial and other uses to hasten land allocation, ensure optimal land use for economic development, and protect the rights of all stakeholders (land owners, occupiers, communities);
- (18) Perform such other functions as may be deemed supplementary or incidental to the achievement of its primary purpose under this law

S.13. The Agency shall have powers to:

Power of the Agency.

- (1) Conclude arrangements with any person for the effective implementation of any programme or project and to enter into such other contracts as it may deem necessary to facilitate its functions under this law;
- (2) Procure, within its budgetary limit, any property or service it may require for the effective discharge of its functions under this law and to dispose of any such property or terminate any such service;
- (3) Request the Head of any Ministry, Department or Agency of the government to furnish it with any document, explanation or other information it may require for the due execution of its functions under this law;
- (4) Regulate its own proceedings;
- (5) Insure its property against all forms of risk;
- (6) Enter into association with such other body, agency or organisation within or outside Nigeria as it may consider desirable or appropriate and in furtherance of the primary purpose of this law;
- (7) Receive any gifts, grants, donations or endowments or any other monies that are not inconsistent with the purpose of this law;
- (8) Borrow and invest its funds as the Board may determine from time to time;
- (9) Open a banking account or banking accounts as the Board may from time to time determine for the purposes of its funds;
- (10) Engage on a competitive basis, in line with procurement policies that may be prescribed by the Board from time to time, such consultants and advisers and other service providers as are necessary or expedient for the performance of its functions;


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(11) Do such other things as are necessary or expedient for the performance of its functions under this law.

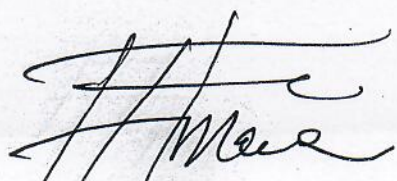
- S.14 (1) The Managing Director/Chief Executive Officer shall be appointed and may be removed by the Governor.
- (2) The Managing Director/ Chief Executive Officer may be appointed from the public or private sector.
- (3) If appointed from the public sector, the individual shall be of a rank not below a Special Adviser in the State service.
- (4) The Chief Executive Officer shall hold office for a term of four (4) years and may be re-appointed for one further term of four (4) years.
- (5) The Chief Executive Officer shall be paid such remuneration and allowances as may be determined from time to time by the Governor.

Appointment of the Managing Director/Chief Executive Officer.

S.15. The Chief Executive Officer shall:

- (a) Be responsible for the daily administration of the Agency and implementation of the decision (s) of the Board;
- (b) Prepare a 12-month action plan and budget, yearly, based on the functions of the Agency for review and approval of the Board;
- (c) Prepare strategic policy documents on key investment issues at their own initiative or as may be directed by the Board;
- (d) Liaise with relevant State government Ministries, Departments and Agencies to conduct periodic review of broad sector policies to ensure alignment with investment promotion initiatives of the State;
- (e) Provide technical assistance to the Board for the purpose of defining appropriate policy directions and high-level reform priorities;
- (f) Coordinate the implementation of the various recommendations of the State Executive Council on investment issues;
- (g) Provide support in the development of feasibility studies on investment projects in small and medium enterprise supported sectors;
- (h) Ensure the execution of the action plan and annual budget of the Agency and maintenance of accurate accounting records;

Functions of the Managing Director/Chief Executive Officer

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- (i) Arrange for the payment of allowances of the Board members and other related matters;
- (j) Undertake any other tasks relating to the functions of the Agency as directed by the Board or the Governor.

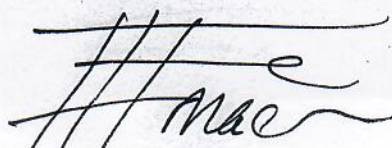
S.16. The Agency shall have power to appoint staff through direct recruitment, transfer or secondment from any public service in the State, such number of employees as it may, in the opinion of the Board deem necessary for the efficient discharge of the functions of the Agency under this law and shall have the power to pay remuneration (including allowances) to such persons as the Board may determine. *Staff of the Agency.*

S.17(1) The Agency shall have power to determine, with the approval of the Board, the terms and conditions of service (including terms and conditions of service as to remuneration, allowance, pensions, gratuities and other benefits) of the persons employed by the Agency and until such regulations are made, the terms and conditions of service applicable to employees in the State Public Service shall apply subject to such modifications as the Board may, in its discretion, make. *Staff Regula*

(2) The Agency may, subject to the provisions of this law, make staff regulations relating generally to the conditions of service of the employees of the Agency and without prejudice to the generality of the foregoing, such regulations may provide for:

- (a) The appointment, promotion and disciplinary control (including dismissal) of the employees of the Agency; and
- (b) Appeals by such employees against dismissal or other disciplinary measures.

S.18(1) It is hereby declared that the Agency's terms and conditions of service of employees shall be as approved by the Board. *Conditions of Service.*

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- (2) Notwithstanding the provisions of sub-section (1) of this Section, nothing in this law shall prevent the Board from appointing a person to any office on terms which preclude the Agency's terms and condition of service of employees.

S.19(1) The Agency shall establish and maintain a fund that shall be applied towards the discharge of its functions under this law. *Funds of the Agency.*

- (2) There shall be paid and credited into the fund established pursuant to sub-section (1) of this Section:

(a) The State budget allocations;

(b) Gifts, loans, endowments, grants or aid from any agency, institution, bilateral and multilateral organisations or any government and entitlements from privatization proceeds;

(c) Income from rendered services;

(d) Any returns on any fund of the Agency invested pursuant to Section 20 (3) of this law; and

(e) All other sums raised in any other manner as permitted under this law.

- (3) The Agency may accept gifts of land, money or other property, unless the terms and conditions, if any, as may be specified by the person (s) or organization making the gift are inconsistent with the functions of the Agency.

S.20(1) The Agency may, with the consent of or in accordance with any specific authority given by the Governor, borrow by way of a bridge finance or overdraft from a solvent and profit-making Nigerian commercial bank approved by the Governor such specified amount of money as may be required by the Agency for meeting its obligations and discharging its functions under this law. *Borrowing a investing powers, etc.*

- (2) The Agency may, subject to the provisions of this law and the conditions of any trust created in respect of any property, invest all or any of its funds with the consent of the Governor

- (3) The Agency may invest any surplus funds in quoted securities as may be approved by the Governor from time to time.

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- (4) Subject to the provisions of the Land Use Act, and any special or general direction which the Governor may give in that regard, the Agency may acquire or lease any land required for its purpose under this law.

S.21. The funds of the Agency shall be utilised for the following purposes:

Application of funds.

- (1) Allowances, salaries and other emoluments of members and staff of the Agency;
- (2) The cost of administration of the Agency;
- (3) All other expenses incurred by the Agency in the discharge of its functions under this law or any other enactment;
- (4) Such other purposes as may be deemed supplementary or incidental to the provisions of this law or as may be approved by the Governor.

S.22(1) The Agency shall keep proper accounts and records of its income and expenditure for each financial year and shall cause the accounts to be properly audited annually.

Annual estimates, accounts and audit of the Agency.

- (2) The Agency shall appoint reputable External Auditors from a list approved Auditors provided by the Auditor-General of the State who shall audit the accounts of the Agency at the end of each financial year.
- (3) The Agency shall forward a report of the external audit to the office of the Auditor-General of the State not later than two weeks after the submission of report by the External Auditor.

S.22. Within three (3) months after the end of each year, the Board shall submit through the Governor to the State Executive Council the annual report on the activities of the Agency and its administration during the immediate preceding year and shall include in the report the audited accounts of the Agency and the auditors' comments thereon.

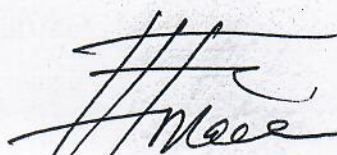
Annual report.

S.23. The Governor may give to the Agency directives of a general nature as are necessary or expedient to give effect to the provisions of this law.

Governor's general directives and guidelines.

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- S.24(1) The Agency shall, as soon as possible after its establishment, provide itself with a Common Seal. *Common seal/ authentication documents.*
- (2) The fixing of the Common Seal of the Agency shall be authenticated by the signature of the Chief Executive Officer or any other person specifically authorised to act for that purpose.
- (3) Any contract or instrument which, if made or executed by a person not being a body corporate, would not be required to be under seal and may be made or executed on behalf of the Agency by the Chief Executive Office or any person specifically authorized to act for that purpose.
- (4) Any document purporting to be a document duly executed under the seal of the Agency shall be received in evidence and shall, unless and until contrary is proved, be deemed to be properly executed.
- S.24. The supplementary provisions set out in the schedule to this law shall have effect with respect to the functions of the Board and the other matters mentioned therein. *Schedule.*
- S.25(1) Subject to the provisions of this law, no suit shall be commenced against the Agency before the expiration of thirty (30) days after written notice of intention to commence such suit has been served upon the Agency by the intending claimant or his agent, and the notice shall clearly state: *Legal proceedings.*
- (a) The cause of action;
- (b) The particulars of claim; and
- (c) The relief sought.
- (2) No member or staff of the Agency shall be sued in his personal capacity for any act done or omitted to be done in the lawful performance of his duties under this law.
- S.26. Any law or regulations in force immediately before the commencement of this law and applicable to Public Private Partnerships, Privatization, Concessions and commercialization of state owned assets shall, at the commencement of this law, be deemed to be repealed. *Repeal.*

 05-10-2020

EXPLANATORY MEMORANDUM

(This note does not form part of this law and has no legal effect)

This law seeks to establish the Nasarawa State investment and Development Agency

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SCHEDULES

FIRST SCHEDULE

**PUBLIC PRIVATE PARTNERSHIPS SUPPLEMENTARY PROVISION RELATING
TO THE AGENCY**

PART I

Preliminary

Public Private Partnerships and PPP agreements

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

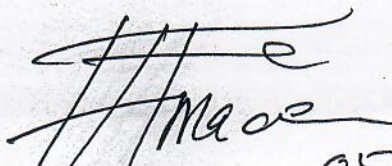
(2) Where a public entity wishes to undertake a public private Partnership, it shall be undertaken and implemented through a contract with a Private Party procured in accordance with this law.

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

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

Objectives of Public private Partnership

2. The Objectives of public private Partnerships in the State are to:


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- (1) Facilitate private sector investment in the provision of new and rehabilitated infrastructure and other public assets;
- (2) Release financial resources for investment in necessary social services;
- (3) Develop more reliable public services by deploying private sector skills in project financing, risk management, project planning and the use of new technologies and thus ensure greater value for money in the provision of public infrastructure and services;
- (4) Act as a catalyst for the implementation of socio-economic plans and or initiatives;
- (5) Strengthen institutional governance in the State by improving public sector management skills and accountability in the construction, rehabilitation and provision of infrastructure and services in the State; and
- (6) Provide a clear, transparent, and well-defined legal, regulatory and institutional framework for enhancing investment by, and transferring project risk in providing infrastructure and services in the State to, the private sector.

Application of Public private Partnership

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

Non-Application of Public Private Partnership

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

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PART II
Institutional Framework

The State Executive Council

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

The Nasarawa State Public Private Partnership Board

6. The Governing Board of the Nasarawa State investment and Development Agency shall act as the Nasarawa State Public Private Partnership Board (hereinafter referred to as the "Board").

General functions of the Board

7. The Board shall:
- (1) Recommend policy in respect of public private Partnerships to the State Executive Council;
 - (2) Review and forward public private Partnership project proposals to the State Executive Council in accordance with this law;
 - (3) Designate unsolicited project proposals as public private Partnership proposals to be undertaken in accordance with this law;
 - (4) Take custody of all public private Partnership agreements entered into by Contracting Authorities and monitor compliance by the parties thereto;
 - (5) Facilitate the resolution of such disputes as may arise from time to time in the course of executing a public private Partnership Agreement;
 - (6) Establish standards, procedures and regulations for the execution of public private Partnership projects;

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(7) Constitute, as and when necessary, committees comprising of persons drawn from the State Executive Council, as well as the public and the private sectors with requisite technical experience to advise on specific public private Partnership projects and act in the name of the Board in executing the functions hereby stated; and

(8) Carry out such other functions, as the Governor may deem necessary for the due attainment of the Objectives of this law.

Specific Function of the Board– infrastructure Master Plan

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

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

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

(a) Are procured and contracted in accordance with this law, any other applicable law of the State and any regulations made thereunder;

(b) Accommodate the public need;

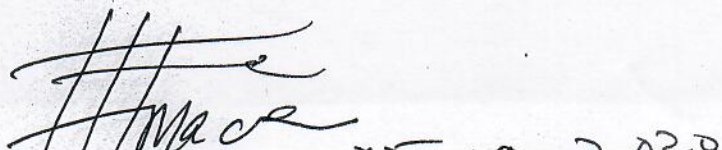
(c) Take account of such urban, regional or development plans as may have been approved by the State government;

(d) Raise the competitiveness of the State Economy;

(e) Encourage the physical development of the State;

(f) Take into consideration:

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

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

The Nasarawa State Public Private Partnership Secretariat

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

Functions of the PPP Secretariat

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

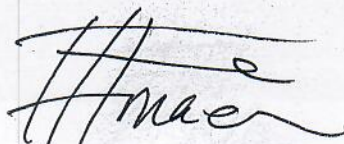
- (1) Appraise, review, monitor, evaluate and recommend action to the Board on all PPP Projects in the State;
- (2) Interface with and provide technical assistance to Ministries, Department and Agencies and specific Contracting Authorities throughout the life cycle of a PPP project;
- (3) Build up and enhance the capacity of government to design, implement, monitor and evaluate PPP projects;
- (4) Be a centre of expertise for the promotion, development, and implementation of PPPs and develop and serve as a primary and definitive source of all information on PPP legislation, regulations, Acts and standards applicable and in force in the State;
- (5) Facilitate and provide full support to the private sector and serve as liaison between the private sector and government Agencies and relevant authorities in regard to PPPs in the State;
- (6) Undertake the formulation, development, periodic review and modification of the State infrastructure Master Plan or PPP Priority List;
- (7) Facilitate the issuance or renewal of all public sector regulatory approvals for PPP Projects in the State;

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- (8) Review, evaluate and recommend project proposals and feasibility studies and oversee the procurement process for PPP projects on behalf of the Public Sector;
- (9) Recommend to the Board, the extension, termination or renegotiation of PPP agreements in force;
- (10) Ensure that at the expiration of the term of a PPP Agreement, all parties thereto fully enjoy the irrevocable rights and discharge the irrevocable obligations in accordance with the said PPP Agreement;
- (11) Issue quarterly progress reports on PPP agreements in force to the Board and through the Board to the State Executive Council;
- (12) Advise the State Executive Council through the Board on resolving disputes arising from all PPP agreements to which the State is a party; and
- (13) Carry out such functions in accordance with this law as the Board may deem fit.

Appointment of Consultants and Technical Advisers to the PPP Secretariat

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

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PART III

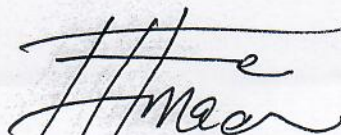
Potential PPP Project and First Stage Approval

Registration of a Potential PPP Project

12. (1) Where a relevant institution or prospective Contracting authority intends to implement a Project as a public private Partnership, the Accounting Officer of that Contracting authority or in the absence of the Accounting Officer, any person acting in that capacity, shall apply to the Board, and submit a Public private Partnership proposal as a Solicited Project proposal (in this law referred to as the "proposal") with the PPP Secretariat.
- (2) The PPP Secretariat shall register a proposal if it:
- (a) Is specified in the infrastructure Master Plan or PPP Priority List;
 - (b) Revalidates the pre-feasibility study submitted by the Contracting authority with its Application for Inclusion;
 - (c) Contains information on the expertise in the Contracting authority to proceed with the project and a detailed profile of the members of its project team and the project management arrangements for undertaking the project;
 - (e) Gives the details for the appointment of a transaction adviser if the Contracting authority deems this necessary; and
 - (f) Demonstrates payment of the applicable registration fee in accordance with relevant regulations made under this law.

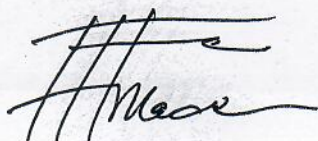
Review of proposal

13. The PPP Secretariat shall within two weeks of registering a proposal assess and present it to The Board with its recommendations thereon as to whether or not to proceed with it as a PPP Project.



First Stage Approval

14. (1) The Board shall consider their viewed proposal along with The PPP Secretariat's recommendation there on and issue a decision thereon within the shortest possible time.
- (2) If the Board approves of the proposal, it shall immediately issue an "in-principle" approval for the PPP Project to proceed to the next stage.
- (3) The giving of an "in-principle" approval, which shall be called a First Stage Approval, shall be communicated by the PPP Secretariat to the Contracting authority .
- (4) Thereafter, the Contracting authority shall within four months undertake and complete a detailed feasibility study and submit it to the PPP Secretariat.

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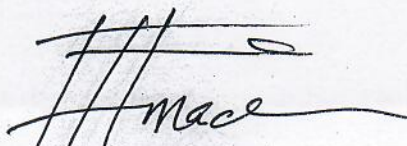
PART IV

Feasibility study and Second Stage Approval

Feasibility Study

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

- (1) The project's comparative advantage to the State in terms of value for money, affordability, transfer of risk to the private sector, social impact, employment generation and improvement in the living standards of citizens of the State;
- (2) A consideration of the policy context in which the project is undertaken, a needs analysis and a full environmental impact assessment of the proposed project with in its immediate locality in particular and the State in general, if necessary;
- (3) The role of the Contracting authority in the project and the specific functions to be considered in relation thereto;
- (4) Expected input and deliverables by the private sector;
- (5) The extent to which the functions to be undertaken by the project shall be efficiently performed by the private sector;
- (6) A financial model that reasonably applies various assumptions and sensitivities to all anticipated project costs and revenues, the factors that may affect them and the expected rates of return therefrom;
- (7) The most appropriate PPP option by which the Contracting authority may implement the project; and
- (8) The capacity of the Contracting authority to effectively undertake whatever obligations are conferred on it and, where this is deficient, measures that may be taken to ameliorate such deficiency.

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Second Stage Approval

16. (1) The PPP Secretariat shall:

- (a) Undertake an assessment of the feasibility study submitted to it and within four weeks and present it to the Board with its recommendations, for review and decision;
 - (b) Notify the Contracting authority of the presentation of the feasibility study to the Board and the Board's decision thereon.
- (2) The Board's approval of the feasibility study shall also authorize the prospective Contracting authority to proceed to the next stage.
- (3) This approval, which shall be called a Second Stage Approval, shall be communicated by The PPP Secretariat to the prospective Contracting authority within one week of being given.

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PART V

PREPARATION TO BID AND THIRD STAGE APPROVAL

Contract Award

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

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

(a) Draw up a contract award plan setting out the actions to be taken, the persons or entities responsible thereof and a timeframe within which it expects to achieve the execution of a Public private Partnership Agreement (hereinafter called "PPP Agreement");

(b) Select and design an equitable, transparent, and cost effective Contract Award Procedure to be stated in the Request for proposals, which procedure shall be stated in detail in the Request for proposals in accordance with the provisions of the Public Procurement Law and any other relevant extant laws; and

(c) Draw up a draft PPP Agreement

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

Third Stage Approval

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

(a) Contract award plan;

(b) The draft Request for proposals; and

(c) The draft PPP Agreement

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(2) The Board shall after a review of the Contract award plan, the draft Request for proposals and the draft PPP Agreement, issue a third Stage Approval for the Contracting authority to proceed with the procurement process.

Collaboration with Related Agencies

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

Approval of other documents

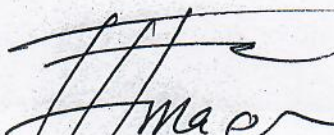
20. (1) The Contracting authority shall, for the purposes of Section 17 herein above, ensure all other draft contract award documents are prepared and submitted to the PPP Secretariat and the Bureau of Public Procurement for their joint review and approval.

These documents include;

- (a) Pre- qualification notices;
- (b) Statement of evaluation criteria; and
- (c) Evaluation sheets

(2) The PPP Secretariat and the Bureau of Public Procurement shall undertake the said joint review and send the results thereof back to the Contracting authority within two weeks of the submission.

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


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PART VI

BIDDING AND STATE EXECUTIVE COUNCIL APPROVAL

Contents of a Bid

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

Duties of the Contracting authority

22. The Contracting authority shall be responsible for:


- (1) Conducting the bidding process with respect to any PPP project in an equitable, transparent, cost effective and competitive manner in accordance with the State's Public Procurement Rules;
- (2) Examining and evaluating the bids received;
- (3) Making recommendations to the Board through the PPP Secretariat for negotiating with the preferred bidder with the objective of completing a PPP transaction.

Bid Evaluation criteria

23. (1) In evaluating bids, the Contracting authority shall determine their individual compliance with minimum scores previously established for various criteria including those listed in subsection (2) here in below.

(2) These criteria shall include but not be limited to:

- (a) Affordability of the service to be provided;
- (b) Value for money;
- (c) Comprehensive commercial and technical plans that demonstrate project viability, expected return on investment , the nature of service to be delivered to the public; and


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(d) The extent to which the bidders propose to take on various risk elements.

(3) For each project, the Contracting authority shall identify a preferred and a reserve bidder and upon doing so, the Contracting authority shall submit a report to the Bureau of Public Procurement and the PPP Secretariat on the entire contract award process (in this law referred to as the "Procurement Report").

(4) The Procurement Report shall enclose all contract award documents issued or utilized by the Contracting authority or submitted up to the point of selection of the preferred and the reserve bidders, minutes of evaluation meetings and copies of all the proposals and accompanying documents submitted by each Candidate.

State Executive Council Approval

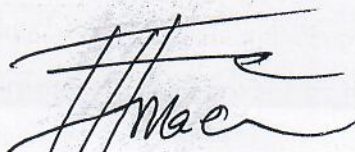
24. (1) The PPP Secretariat shall consult with the Bureau of Public Procurement regarding the Procurement Report and they shall make and conclude a joint review of the said Report within two weeks of receiving it.

(2) Within a further one week of concluding the joint review, the BPP shall issue a Certificate of No Objection to the Contracting authority, and thereafter, the PPP Secretariat shall forward the result and recommendations of the joint review to the Board.

(3) The Board shall consider the said result and recommendations and if it approves The PPP transaction to go forward, it shall forward its decision along with minutes of its relevant proceedings to the State Executive Council for ratification.

(4) Upon its decision to ratify the Board's approval, the State Executive Council shall thereby be deemed to have authorized the Board to issue a Notice of Award.

(5) This approval, which shall be called a State Executive Council (or "EXCO") Approval, shall be communicated by the PPP Secretariat to the Contracting authority.

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Notice of Award

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

Closed Bid

26. (1) Notwithstanding anything to the contrary in this law, the State Executive Council may approve a closed bid provided that each of the following conditions are met:
- (a) There are peculiar intellectual property and trade secrets required to undertake the project; and there is only one source capable of providing the service due to peculiarities of such intellectual property and trade secrets, or other similar consideration;
 - (b) The project is incorporated into the infrastructure Master Plan or the PPP Priority List;
 - (c) The State Executive Council establishes that regardless of not adopting the Contract award procedures, value for money for the citizens of the State will be obtained.
 - (d) All documentation relevant to the closed bid, including minutes of meetings, correspondence, Request for proposals or bid document howsoever called, proposals from one or more prospective candidates and a draft PPP Agreement are submitted by the PPP Secretariat to the State Executive Council for review and approval; and
 - (e) There is a compelling public interest to so approve.

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

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

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PART VII

Execution of the Public-Private Partnership Agreement

The Public Private Partnership Agreement

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

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


(3) Every PPP Agreement shall state provisions that meet the requirements of affordability, value for money and transfer of substantial risk to the Private Party and other provisions as required in any applicable regulations made pursuant to this law.

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

Completion, Execution, Registration of the Public private Partnership Agreement

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

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

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administrative head of the Contracting authority; and for the Private Party by its Chairman or person acting in that capacity with his signature witnessed by its chief executive officer or person acting in that capacity.

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

- (i) The Governor;
- (ii) The Deputy Governor;
- (iii) The Contracting authority;
- (iv) The Private Party;
- (v) The Office of the Attorney-General;
- (vi) The Ministry of Finance, Budget, and Planning;
- (ix) The Ministry of Trade, Industry and investment;
- (x) The Office of the Accountant-General of the State;
- (xi) The Bureau of Public Procurement; and
- (xii) The government body responsible for monitoring and/or evaluating government-wide project performance.

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

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

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PART VIII

Guarantees, Indemnities, incentives, Financing and Risk Mitigation

Power to issue Guarantees

29. The government may provide guarantees in favour of a private party in support of the financial or contractual obligations of a Contracting authority inform, substance and terms agreed with a financial services provider entering into a project finance arrangement for a PPP Project.

Power to issue Indemnity

30. The government may issue an indemnity to a multilateral entity providing partial or other risk insurance to a PPP Project or to a Private Party in a PPP Agreement.

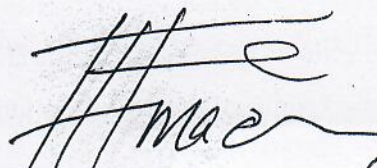
Guarantee or Indemnity to be approved by State Executive Council

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

proposal for approval of Guarantee or indemnity

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

- (1) The objectives of this law and the general policy of the State with regard to investment promotion and public-private Partnerships;
- (2) The type of project finance arrangement, its tenor, interest rates, applicable moratorium, maximum amount of funding, and other relevant financial and legal terms and conditions contained in a term sheet or other binding document setting out such essential terms;
- (3) The total amount of project financing to be guaranteed by the government for all PPP projects at any given time;


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

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

Application of a Guarantee

33. A government guarantee or indemnity shall be applied solely to:

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

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

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

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

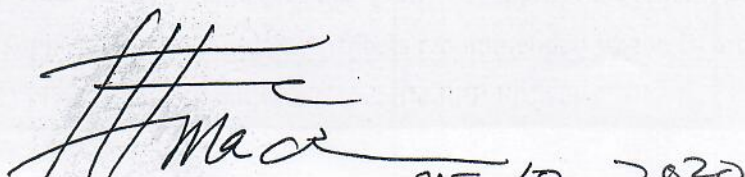
Government incentives for Public private Partnership Projects

34. (1) The State Executive Council may approve the grant of appropriate financial incentives and investment support to approved PPP Projects recommended by the Board as being necessary to attract private investment into a specific PPP Project.

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

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

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



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

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

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

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

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

(ii) The method of calculating and applying subsidies to a specific project.

Nasarawa State infrastructure Fund

35. (1) There shall be an infrastructure Fund to be known as the Nasarawa State infrastructure Fund.

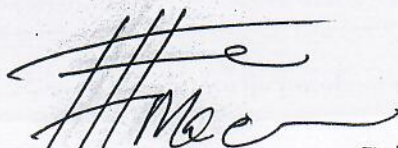
(2) There shall be paid and credited to the fund established pursuant to Section (35) subsection (1) of this section:

(a) Five Per Cent (5%) of the Nasarawa State Internally Generated Revenue;

(b) Such monies as may, from time to time be provided to the fund by the government of the Federation, the State government or a Local government, Corporate Organisations, Development Partners or any other party as approved by the Board;

(c) All interests and profits that may, from time to time, accrue to the fund;

(d) All other monies as may be approved by the Board.


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(3) The State government may, Upon the approval of a proposal to that effect, collaborate with one or more well-established banks or financial services providers or fund manager or a suitably-qualified private company, to promote the funding and operation of the infrastructure Fund ("a Fund" or "the Fund").

(4) The Fund shall be incorporated and regulated under the investment and Securities Act ("ISA").

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

(6) The monies in the Fund may be contributed by the government and other investors from the general public and shall be applied to:

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

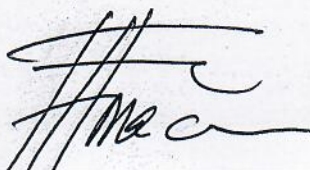
(b) Obtain loans from financial services providers, corporations and individuals for the sole purpose of implementing PPP infrastructure projects.

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

The Funds and Account monitoring Committee

36. (1) When a Fund is established and registered under the ISA, there shall also be established a Public private Partnership investment Fund Account and monitoring Committee (hereinafter referred to in this law as the "monitoring Committee"), which shall be a standing committee of the Board.

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


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

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

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

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

(b) The Attorney-General and Commissioner for Justice;

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

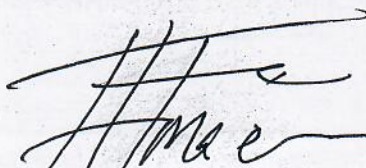
(d) Three persons from the Private sector nominated by the Governor who have such experience as he deems relevant to its work; and

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

Risk Allocation

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

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


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PART IX
FINANCIAL PROVISIONS

Funds of the PPP Secretariat

38. (1) The PPP Secretariat shall utilize the Agency's account from which all expenses of the PPP Secretariat shall be met, and to which shall be credited:

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

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

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

(2) The Chief Executive Officer of Agency shall be the approving authority to all financial transactions of the PPP Secretariat.

Annual Estimates

39. The PPP Secretariat shall cause to be prepared and submitted to the Board annually estimates of the recurrent and capital expenditure for the succeeding year of the Secretariat and the Board.

Accounts and Audit

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

Annual Report

41. The Board shall prepare and submit to the Governor a report on its activities during the immediately preceding year, including in such report the Auditors' Report for the previous financial year.

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PART X

Miscellaneous Provisions

Unsolicited Project proposals and their Qualifying criteria

42. (1) Any proposal to the State government for a PPP Project that is not contained in the infrastructure Master Plan or PPP priority list of the State government shall be referred to as an 'Unsolicited Project proposal'.
- (2) A prospective Contracting authority that receives an Unsolicited Project proposal shall forward it to the PPP Secretariat with its comments and recommendations.
- (3) The PPP Secretariat shall undertake a comprehensive review of the submissions under subsection (2) hereof and forward them to the Board for onward presentation to the State Executive Council for approval.
- (4) Only those proposals that fulfill the criteria set out in Sections 8 (2) and (3) and 23 (2) of this law shall be approved.
- (5) Upon the approval of an Unsolicited Project proposal by the State Executive Council, it shall be deemed to have been included in the infrastructure Master Plan or Project Priority List to which then the provisions of this law shall apply and shall be subject to a Swiss Challenge at the procurement stage.

Duration of a Public private Partnership Project

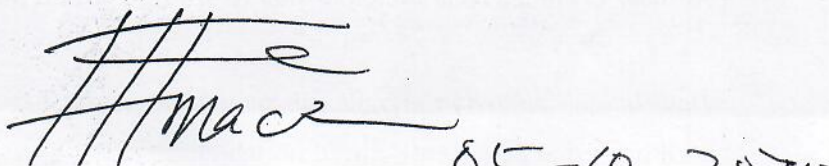
43. (1) Except the State Executive Council approves, upon the recommendation of the Board, no PPP Agreement shall exceed a term of twenty-five years from the date of the PPP Agreement.
- (2) The term of a PPP Agreement shall include a construction period not exceeding two years in any event, during which no revenue or royalty payments however so called shall be due from the Private Party to the State.

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Prohibited transactions

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

- a. Any transfer of shares in a project SPV or any other transaction involving the transfer of voting rights in such SPV;
 - b. Any increase in share capital, or any amendment of the incorporation documents of the SPV, apart from those that are mandatory under The PPP Agreement or the Act;
 - c. Any issue of bonds or other security to be undertaken by the SPV;
 - d. Any merger, takeover or other change in corporate status of the SPV;
 - e. Any assignment in part or full by the SPV of its existing or future claims under a PPP Agreement to a domestic or foreign financial institution involved in financing of the PPP, or contracts with such other financial institutions to secure their claims arising from such financing; and
 - f. Any assignment under paragraph (e) immediately preceding to a domestic or foreign financial institution for the purpose of conversion of such claims to securities.
- (2) The listing of the shares of a project SPV in the Nigeria nor other capital market shall be permitted only following are commendation by the Board and approved by the State Executive Council.



PART XII
CONCLUDING PROVISIONS

Power to make regulations

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

Failure to Comply with Parts III-VII

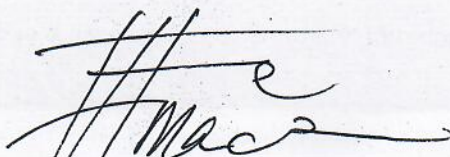
46. In the event that a public entity fails to comply with the provisions of Parts III-VII of the First Schedule of this law, the Board may revoke the relevant Inclusion Decision or issue such other directive to the Contracting authority, as it deems appropriate to ensure compliance with the said Parts.

Transitional Provisions

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

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

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



This printed impression (Nasarawa State Investment and Development Agency Law 2020) has been carefully compared by me with the Bill, which has been passed by the Nasarawa State House of Assembly and is found by me to be a true and correct copy of the Bill.



.....
EGO MAIKEFFI ABASHE
Clerk to the House
Nasarawa State House of Assembly

I assented thisday of2020

.....
ENGR. ABDULLAHI A. SULE
Governor
Nasarawa State of Nigeria