



# Enugu State of Nigeria Official Gazette

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The above laws are published as supplement to this gazette

#### ENUGU STATE NOTICE NO. 7

##### APPOINTMENT OF PERMANENT SECRETARY

It is notified that Ezugwu Bernadine Chinyere has been appointed to the post of Permanent Secretary  
Ezugwu Bernadine's appointment is with effect from 3rd March 2017

#### ENUGU STATE NOTICE NO. 8

##### APPOINTMENT OF PERMANENT SECRETARY

It is notified that Ugomsi Ella Noel O. has been appointed to the post of Permanent Secretary  
Ugomsi Ella Noel O's appointment is with effect from 3rd March 2017

#### ENUGU STATE NOTICE NO. 12

##### NEW APPOINTMENTS AND OTHER STAFF CHANGES

The Following are notified for general information:-

NEW APPOINTMENT			<i>Date of Promotion</i>
<i>Departments</i>	<i>Name</i>	<i>Appointment</i>	
Public Service	Agbawodike Chioma J	Clerical Officer	1-8-2001
Department, Office of the Head Service	Agbo Roseline N.	Clerical Officer (Revenue)	1-5-1988
	Aneke Mariet Wendy	Higher Exec. Officer (GD)	1-6-2011
	Ani Bethrand Onyibani	Asst. Exec. Officer	16-4-1986
	Ani Paschal C.	Executive Officer	1-6-2011
	Anike Emmanuella U.	Clerical Office (GD)	1-6-2011
	Anya Joy C.	Environ. Health Field Offr.	1-1-1994
	Chinwetalu Esther U.	Clerical Office (GD)	1-5-1988



ENUGU STATE OF NIGERIA  
2016, No. 5



*A law to Provide for Public Private Partnerships in Enugu State, Establish the Office of Public Private Partnerships, Enhance Infrastructure and Service Development and for Other Connected Purposes* Title.

BE IT ENACTED by the Enugu State House of Assembly as follows Enactment.

1 This law may be cited as the Enugu State Public Private Partnerships Law 2016, and shall come into effect on the **21<sup>st</sup> day of July, 2016.** Citation and date of commencement.

2. In this Law, unless the context otherwise requires- Interpretation.

'Approving Authority' means the Governor of Enugu State;

'Authorized Person' includes a police officer, public infrastructure inspector, designated official of the Office and such other person as the office may from time to time appoint;

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

'Concessionaire' means a person or organization with whom a concession agreement concerning a Public Private Partnership arrangement has been entered into pursuant to this Law;

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

Design, Build, Operate and Transfer (DBOT);  
Build, Own, Operate and Transfer (BOOT);  
Rehabilitate, Operate and Transfer (ROT);  
Joint Development Agreement (JDA); or  
Operation and Maintenance (OM)

'Commissioner' means the Commissioner for Finance, Enugu

State or any person charged with the responsibility to oversee the Ministry of Finance;

Governor' means the Governor of Enugu State of Nigeria;

'Government' means the Government of Enugu State;

'Person' means an individual and shall include a limited liability company, limited liability partnership or any organization duly registered under the Companies and Allied Matters Act, (CAMA) 2004;

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

'Project agreement' means an agreement between the Office and the private participant selected by the office and the state to carry out Public Private Partnership including, without limiting the generality of the foregoing, concession, leases, management contracts, other forms of agreements with private sector entities, technical assistance contracts, consulting services contracts, franchises and regulatory agreement;

'Public Asset' includes any property or economic opportunity of a public nature or arising from use of public property;

'Public Infrastructure' includes public facilities and amenities including roads, bridges, highways, rail lines, water transportation facility, public water works, housing, electric power stations, hospitals, recreational parks, motor parks, waste disposal facility, amusement centers and any other infrastructure or amenities for public use;

'Regulatory Agency' means a public authority that is entrusted with the power to issue and enforce rules and regulations governing the infrastructure facility or the provision of the relevant services;

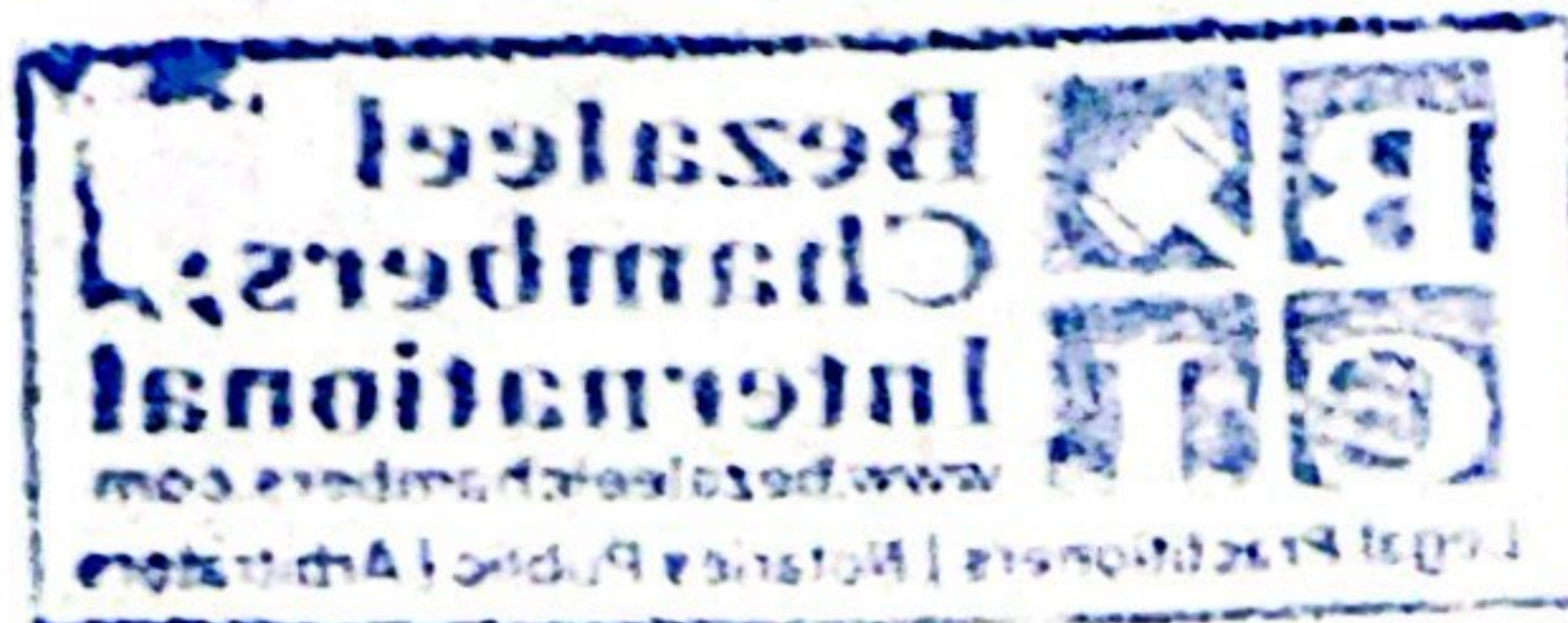
'Rehabilitation' means major repairs or maintenance requiring some change in design or a form of re-construction of infrastructure or asset, to add strength, thus renewing or extending the life span;

'Road' includes-

roads, the subject of a project agreement;

the roadways, drainage works, side walks, water table, bridges and fording on the line of the road;

the land on each (i.e. Right of Way Limit), side of the roadway. The minimum Right-of-Way Limits for rural roads is 30m for 2-



lane highway and 12m beyond the edge of pavement for multilane highways; and 20m for 2-lane urban roads and 6m beyond the edge of pavement for multilane urban roads;

all traffic lanes, acceleration lanes, shoulder, median strips, overpasses, underpasses, interchanges, approaches, entrance and exit ramps, service areas, maintenance;

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

any private road designated as a toll under this Law or otherwise developed or conceded pursuant to a concession agreement;

'Service Charge, User Fee or Toll' means any fee, charge, levy, due or compensation payable in relation to the use of a public infrastructure or asset by any person;

'State' means Enugu State of Nigeria;

'the Office' means the office of Public Private Partnerships established under this Law;

'Unsolicited' proposal' means any proposal relating to the implementation of an infrastructure project that is not submitted in response to a request or solicitation issued within the context of a selection procedure for a public private partnership project.



### **PART I – ESTABLISHMENT OF THE OFFICE OF PUBLIC PRIVATE PARTNERSHIPS**

3. (1) There is established an Office to be known as Office of Public Private Partnerships(referred to in this Law as “the Office”).
- (2) The Office shall be a body corporate with perpetual succession and a common seal.
- (3) The Office may sue and be sued in its corporate name and may hold and dispose of movable or immovable property.

Establishment  
of the Office

### **PART II – ESTABLISHMENT OF THE GOVERNING BOARD OF THE OFFICE**

4. (1) There is established a Governing Board for the Office (in this law referred to as the Board).
- (2) The board shall consist of -
  - (a) a Chairman, to be appointed by the Governor, who shall be a person of impeccable character with a minimum of fifteen

Establishment  
of Governing  
Body of the Office

- (15) years cognate experience in any field of specialization.
- (b) four (4) other members, to be appointed by the Governor, with requisite knowledge in Finance, Accounting, Banking, Engineering or law with at least ten (10) years cognate experience and registered with relevant professional body;
  - (c) the Executive Secretary of the Office, who shall also be the Secretary of the Board.

Tenure of Office of  
Members of the Board,  
Remuneration and  
Allowance

5. (1) The Chairman and members of the Board shall hold office for a term of four (4) years and maybe re-appointed for a further term of four (4) years and no more.
- (2) The Chairman and members of the Board shall be paid such remuneration and allowances as shall be approved by the Governor from time to time.

Cessation of Office  
of members of  
the Board

6. The Chairman or a member of the Board shall cease to hold office if-
- (a) he resigns his appointment as a member of the Board;
  - (b) he becomes bankrupt or makes a compromise with his creditors;
  - (c) he is convicted of a felony or other offence involving dishonesty or corruption or any other criminal offence other than traffic offence by a court of competent jurisdiction;
  - (d) he becomes incapable of carrying out the functions of his office by reason of an infirmity of the mind or body.

Functions of the  
Board

7. The Board shall give policy directions on the objectives, functions and powers of the Office pursuant to the provisions of this Law and shall-
- (a) be the policy-making body on Public Private partnerships for the state Government;
  - (b) take decisions on issues pertaining to Public Private Partnerships in the State subject to the approval of the Governor;
  - (c) identify priority sectors for Public private partnership initiatives;
  - (d) supervise the activities of the Office of Public Private Partnerships and liaise with the Governor on all issues pertaining to policy formulation, evaluation of operational guidelines and other required statutory provisions of the Public Private Partnerships Office;
  - (e) determine the framework of engagement of consultants, specialists and advisers for Public Private Partnership projects;
  - (f) plan and recommend budgets for the Public Private Partnerships Office;
  - (g) carry out such other functions as may be necessary or incidental to the performance of the above functions;

Proceedings of  
the Board

8. The provisions contained in Schedule 1 to this Law shall have effect with respect to the proceedings of the Board and other

matters mentioned therein.

### **Schedule 1**

Supplementary provisions relating to the board, etc.

1. The Board may make standing orders to regulate its proceedings at meetings.
2. Every meeting of the Board shall be presided over by the Chairman and in the absence of the Chairman, the members present shall nominate one of their members to preside at the meeting.
3. The Board shall meet at least once a month in each year. The Chairman may summon a meeting when he considers such meeting necessary for the discharge of the functions of the Board or upon receipt of a notice in writing by two members of the Board requesting for a meeting.
4. The quorum for the meeting of the Board shall be three (3) members.
5. The board may co-opt any person not being a member into any meeting of the board and such person(s) may take part in its deliberations but shall not be entitled to vote at the meeting.
6. All questions at a meeting of the Board shall be determined by a majority of votes of the members of the Board present, and if there is equality of votes, the Chairman shall have a casting vote.
7. The validity of any proceeding of the Board shall not be adversely affected by any vacancy in its membership or by any defect in the appointment of a member of the Board, or by reason that a person not entitled to do so took part in the proceedings of the Board.

## **PART III – FUNCTIONS AND POWERS OF THE OFFICE**

9. (1) In performing its functions and exercising its powers, the primary objective of the Office shall be to develop and maintain public infrastructure or public assets and provide social amenities and other facilities through Public Private Partnerships in the State.
- (2) In seeking to achieve its objectives, the office shall-
  - (a) initiate and execute strategies to develop public infrastructure and public assets for the State by means of Public Private Partnerships;
  - (b) advise on policies that will promote and sustain Public Private Partnerships in the development of public infrastructure and public assets in the State;
  - (d) co-ordinate policies and programmes of the state with respect to Public Private Partnerships for the provision and development of public infrastructure or public assets in the State; and
  - (e) ensure that Public Private Partnerships for the provision and development of public infrastructure or public assets in the State are in accordance with Government policy and the public interest.

Objectives of  
the Office

Functions of  
Office

10. The functions of the Office shall be to-

- (1) initiate procurement of Public Private Partnerships for the development of public infrastructure and public assets by conducting pre-qualification process for private investors willing to enter into Public Private Partnerships with the state based on a request for expression of interest;
- (2) evaluate expressions of interest by prospective investors interested in Public Private Partnerships in accordance with the provisions of the Enugu State Public Procurement Law;
- (3) act on behalf of the Government or any of its agencies in Public Private Partnerships under this law and develop optimal means of financing the cost of public investment projects in order to achieve value for money;
- (4) ensure on behalf of the Government or any of its agencies that all aspects of financing, refinancing and insurance of public investment projects are duly undertaken by means of Public Private Partnerships within public sector;
- (5) prepare and develop on behalf of the state, strategic master plans for Public Private Partnerships;
- (6) identify priority sectors for Public Private Partnerships initiative;
- (7) initiate the development of public infrastructure or public asset through Public Private Partnerships in the state;
- (8) determine the framework of engagement of consultants, specialist and advisers for Public Private Partnerships in the state;
- (9) verify and monitor performance of the terms and conditions of concession agreements by concessionaires;
- (10) advise the Government on matters relating to financing, construction and maintenance of public infrastructure or public assets by means of Public Private Partnerships in the state; and in particular, to identify and make recommendations to the Government with respect to the acquisition of land required for such purposes;
- (11) undertake or conduct any research, investigation or inquiry and collect information relating to public infrastructure or public assets in general;
- (12) liaise with bodies of professional persons and private agencies performing work with regard to public infrastructure or public assets;
- (13) liaise with relevant Government Ministries, Departments, Agencies or other public authorities responsible for issuing any approval, license, permit or other authorization required for the implementation of any concession or Public Private Partnership project.
- (14) receive, evaluate and make recommendations to the Governor on any unsolicited proposal for Public Private Partnerships either directly from any individual, including a limited liability company or other corporate entity, or through any Government Ministry, agency or department; and

- (15) In relation to Public Private Partnerships initiated by the Office, it shall -
- (i) ensure the provision by the concessionaire of such facilities and amenities that are necessary for the users of public infrastructure or public assets;
  - (ii) oversee the development, operation and maintenance of public infrastructure or public assets provided by means of Public Private Partnerships and such other facilities necessary or adjacent to such public infrastructure or public assets; and
  - (iii) satisfy, discharge and perform the obligation of the Office and the State, to uphold and observe the terms of any concession agreement subject to the provisions of this Law.
11. The Office shall have the power to -
- (1) advise the bureau of Public procurement on the award of concessions to private investors interested in Public Private Partnerships for the design, construction, operation, management, control, maintenance, rehabilitation and financing of public infrastructure or public assets in accordance with the Enugu state Public procurement law;
  - (2) negotiate with prospective private partners;
  - (3) obtain from any Government agency or private institutions, statistical or other information relevant to the function of the Office;
  - (4) inspect and monitor concessionaires to ensure compliance with the terms of any concession agreement;
  - (5) designate a public infrastructure or public asset as a service charge, user fee or toll paying public infrastructure or public asset and specify the condition for use of such infrastructure or asset in liaison and co-operation with the relevant Government Ministries, Departments, Agencies or other public authorities, if any responsible for such public infrastructure or asset;
  - (6) liaise and co-operate with all Government agencies and parastatals with respect to private investors' participation in the provision and development of public infrastructure or public assets;
  - (7) pursuant to and in accordance with the provisions of this Law, and subject to the approval of the Governor, approve the amount of money that may be charged by any private or public operator with respect to any public infrastructure, public assets or amenities as toll or user fees;
  - (8) establish and operate an information management system concerning public infrastructure or public asset and projects;
  - (9) perform any other functions as may be assigned to it by the Governor under this Law, or any other enactment;
  - (10) do all things that are necessary or expedient for the performance of its functions, including the engagement



providers.

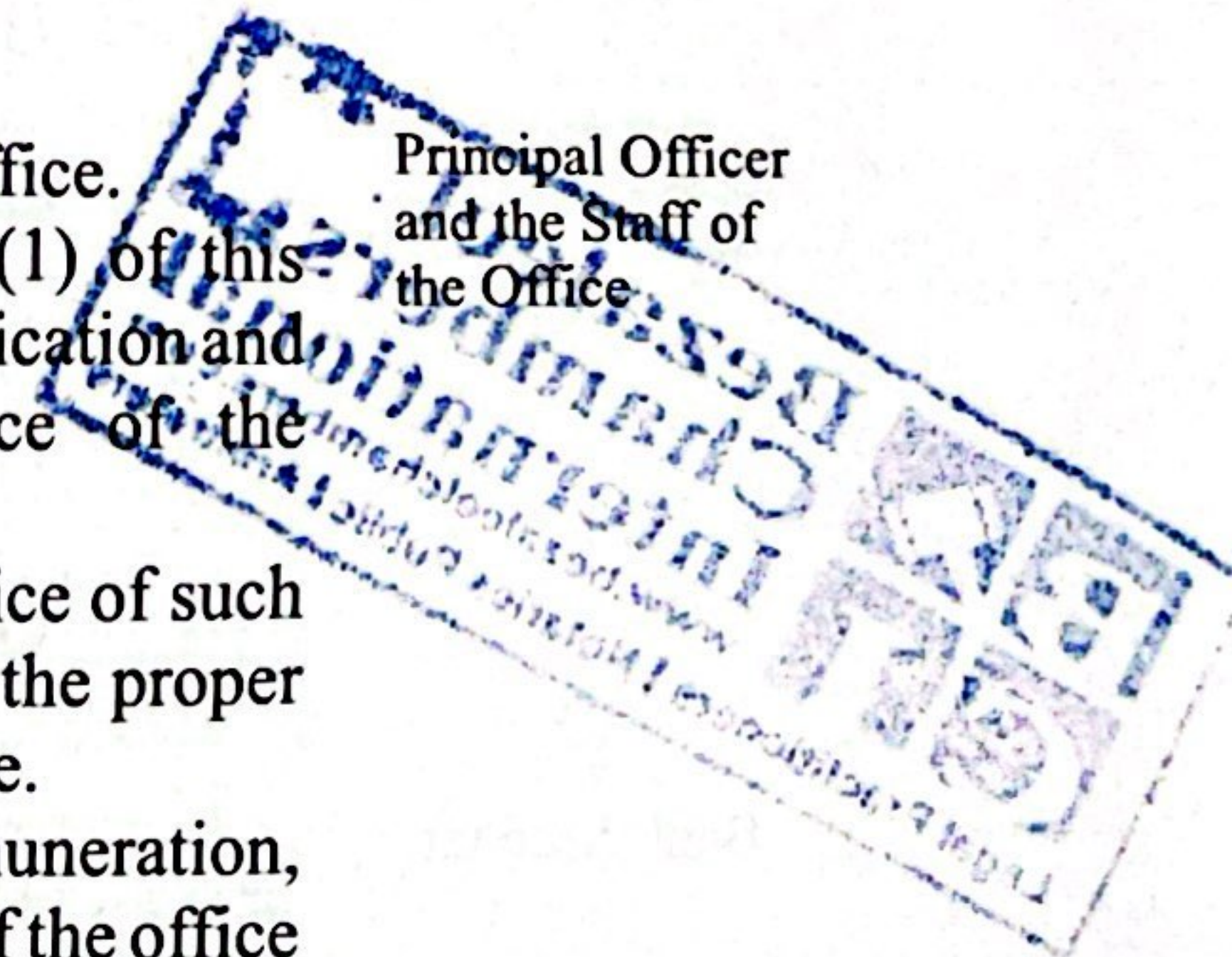
- Approving Authority 12. Any award of a concession by the Bureau of Public Procurement on the recommendation of the Office of Public Private Partnerships under this Law shall be subject to ratification and approval of the Governor as the approving authority.
- Procurement of Public Private Partnerships 13. (1) The Office may give letters of Procurement, contract or undertakings in respect of any Public Private Partnerships or concession agreement.  
(2) The Office shall be a procuring entity for purposes of the Enugu state Public procurement law and shall comply with the intendment of that Law.  
(3) The Office may undertake restricted or emergency procurements in accordance with the provisions of the Enugu state Public procurement Law.  
(4) The Office shall not be bound to award any concession designed upon an unsolicited proposal to the person who made such proposal but may invite such person to participate in the pre-qualification exercise for the procurement of a Public Private Partnerships designed out of such proposal.
- No State Ministry Department or Agency's Guarantee. 14. No Public Private Partnership agreement shall contain provisions for any financial guarantee from the State, any Ministry, Department or Agency in respect of any concession but such agreement may provide for indemnity or course of business.
- Appeal from Decisions of the Office. 15. Without prejudice to any dispute resolution clause contained in a concession agreement and to any other right of recourse available at law, where any concessionaire is dissatisfied with any act, omission, decision or exercise of power by the Office under this Law, the concessionaire may appeal against such decision or exercise of power to the Enugu State Public Procurement Bureau.

#### **PART IV – APPOINTMENT OF THE EXECUTIVE SECRETARY AND STAFF OF THE OFFICE**

- Appointment of The Executive Secretary of the Office 16.(1) There shall be appointed the Executive Secretary for the office by the Governor.  
(2) A person to be appointed the Executive Secretary of the Office shall be of proven integrity with a minimum of ten (10) years cognate experience in a relevant field of specialization and registered with the appropriate professional body, and shall, in the case of a civil servant, be a person not below the rank of a director.  
(3) The Executive Secretary shall -  
(a) be the Chief Executive and Accounting Officer of the Office;  
(b) be responsible for policy direction and the day to day administration of the Office;  
(c) hold office, on such terms and conditions as may be specified in his letter of appointment, for a term of four (4)

years and may be re-appointed for a further term of four (4) years only.

- (4) Without prejudice to the provision of Section 16 sub-section (3)(c) of this Law, the Executive Secretary may be suspended or removed from office by the Governor on grounds of gross misconduct, financial impropriety, fraud or manifest incompetence.
- 17.(1) The Board shall appoint the principal officers of the Office.  
(2) The principal officers appointed under subsection (1) of this section shall be required to possess the requisite qualification and experience required for the effective performance of the functions.  
(3) The Board shall approve the appointment for the Office of such other number of employees as may be expedient for the proper and effective performance of the functions of the Office.  
(4) The terms and conditions of service (including remuneration, allowances, benefits and pensions) of the employees of the office shall be in accordance with the salary structure in the State civil Service.  
(5) Without prejudice to the generality of the foregoing, the Office shall have the power to appoint either on transfer or on secondment from any public service in the state, such number of employees as may be required to assist the Office in the discharge of any of its functions under this Law, and persons so employed shall be remunerated (including allowances) as the Board may consider appropriate.



#### **PART V- REGISTRATION AND ESTABLISHMENT OF COMPANIES**

18. Any company with which the Office enters into a Public Private Partnerships or concession agreement must be a company registered under the Companies and Allied Matters Act, 2004 or any other law in force. Registration under the Companies and Allied Matters Act
19. The Office may, with the approval of the Governor, cause to be formed, limited liability partnerships or limited liability companies for the purpose of financing Public Private Partnership projects or facilitating such projects where in the opinion of the Office it is necessary or expedient to do so in order to discharge its functions under this Law. Establishment of Special Purpose Companies or Limited Liability Partnerships

#### **PART VI- FINANCIAL PROVISIONS**

20. The Funds of the office shall consist of- Funds of the Office
- (1) all subventions and budgetary allocations from the State Government;
- (2) gifts, loans, grants or aids from any agency, institution, bilateral or multilateral organization or any Government;
- (3) a percentage of service charge or user fees as may be prescribed in the office's regulations or as provided in the relevant concession agreement in the absence of such

regulation; and

- (4) all other sums which may become payable to or vested in the office in respect of any matter incidental to its functions.

Application of  
the Funds

21. The funds of the Office shall be applied for the following purposes -

- (1) salaries, remuneration, fees, allowances of its staff, agents or consultants;
- (2) for the development and maintenance of any property vested in or owned by the Office;
- (3) for maintaining general financial reserves subject to general or special directives that may be given in that behalf by the Governor in accordance with the provisions of this law;
- (4) to defray other expenses authorized by the Office in carrying out its functions under this Law.

Bank Account

22. The Office shall open and operate bank accounts for its business activities with a reputable bank(s) as may be duly authorized by existing finance laws and regulations in the State.

Borrowing  
Powers

23. The Office shall have power to borrow money for the purpose of discharging its functions under this Law subject to the approval of the Governor on the recommendations of the Board.

Financial Year  
Budgeting Audit  
and Annual Report

24.(1) The financial year of the office shall be the same as that of the Government.

(2) Not later than six (6) months before the end of financial year, the office shall submit to the Board an estimate of its expenditure and projected income for the succeeding year.

(3) The Office shall keep proper accounts and records of its business activities, (receipts, payments, assets, liabilities etc), and shall in respect of each financial year prepare its annual financial statements in accordance with the prevailing accounting policy, for audits.

(4) The Office shall within six (6) months after the end of the financial year to which the accounts relate, cause the accounts to be audited by the External Audit firm(s) to be recommended by the Auditor-General from the list of registered audit firms and thereafter submitted to Auditor-General for vetting and certification.

(5) The Office shall, at the end of each financial year, prepare and submit to the Board a report in such form as shall accurately capture all the activities of the office during the immediate proceeding year and shall include in such report a copy of the audited accounts of the office and the Auditor's Report.

## PART VII- LEGAL PROCEEDINGS

Legal  
Proceedings.

25.(1) Subject to the provisions of this law, no suit shall be commenced against the Office before the expiration of thirty (30) days after written notice of an intention to commence the suit shall have been served.

- and the notice shall clearly and explicitly state-
- (a) the cause of action;
  - (b) the particulars of the claim;
  - (c) the name and address of the intending plaintiff or his legal practitioner, and
  - (d) the relief being sought.
- (2) The Executive Secretary, an officer, employee or agent of the office shall not personally be subject to any action, claim or demand by, or liable to any person in respect of anything done or omitted to be done in the exercise of any functions or power conferred by this law upon the Office, its Executive Secretary, officers, employees or agents.
- (3) A member of the Board or the Executive Secretary or any officer or employee of the Office shall be indemnified out of the assets of the Office against any liability incurred by him in defending any proceeding, whether civil or criminal, if the proceeding is brought against him in his capacity as a member, Executive Secretary, officer or employee of the Office.
- (4) A notice, summons or other document required or authorized to be served upon the office under the provisions of this Law or any other law or enactment may be served by delivering it to the Executive Secretary or by sending it by registered post and addressed to the Executive Secretary at the principal Office of the Office.

#### **PART VIII- PUBLIC PRIVATE PARTNERSHIPS AGREEMENT, USER FEES, ETC.**

26. Without prejudice to the functions of the State under any other enactment, the State either by itself or in conjunction with any other person (including another State) may -
- (a) enter into an agreement with a person (referred to in this law as a 'partner') for the performance of the functions of the State specified in the agreement in relation to any of the following -
    - i. the design and construction of an asset together with operation of services relating to it and the provision of finance, where required, for such design, construction and operation;
    - ii. the construction of an asset together with operation of services relating to it and the provision of finance, where required, for such construction and operation;
    - iii. the design and construction of an asset together with the provision of finance for such design and construction.
  - (b) enter, where appropriate into direct agreement with persons who have arranged or provided funding for the partner for carrying out a Public Partnership project.
27. As from the commencement of this Law, any Public Private Partnership arrangement or concession agreement to be entered into by the Office must be presented for ratification by the Governor before execution and implementation.

Public Private  
Partnerships  
Agreement.

Ratification of  
Public Private  
Partnership or  
Concession  
Agreement

- Designation of Public Infrastructure or Public Asset
28. Notwithstanding the provisions of any law, the Board may designate any public infrastructure, asset, road, bridge or highway within the State, subject to the constitutional authority of the Government, as public Infrastructure or public asset with respect to which user fees or toll shall be payable for purposes of this Law subject to the approval of the Governor.
- Authorization to collect user free or toll.
29. Notwithstanding the provisions of any Law, the Board may in the relevant concession or other agreement authorize any person, in return for undertaking such obligations as may be specified in a concession or project agreement with respect to the design, construction, maintenance, operation, improvement or financing of public infrastructure or public assets, to enjoy specific rights as may be stated in the concession or project agreement including the right to levy, collect and retain service charges, user fees or tolls in respect of the use of the public infrastructure or public assets.
- User free or Toll Regulation
30. (1) The Office may by Regulation specify-
- (a) the service charge, user fee or toll payable in respect of designated public infrastructure or public assets, and
  - (b) the conditions under which a member of the public may access the use of the public infrastructure or public assets.
- (2) A concessionaire shall prepare for the approval of the Office, service charge, user fee or toll 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, after consultation with the concessionaire, specify.
- (3) The Office may provide for service charge, user fee or toll to be charged for a period specified or determined in accordance with the regulations which may provide that payment of service charge, user fee or toll (to the concessionaire) 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 toll regulations for the purpose of this Section.
- Payment of Service Charge User Free or Toll.
31. (1) Service charge, user fee or toll shall be paid to the concessionaire and adjusted in accordance with regulations made by the Officer 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 a public infrastructure or public asset is valid only if it is charged by the concessionaire in accordance with the provisions of this Law.(1)

32. (1) The service charge, user fee or toll which may be levied and collected by the concessionaire pursuant to any concession agreement shall in every case be the service charge, user fee or toll specified or calculated in accordance with any index or formula or other provision stated in the concession agreement with the Office where the concession agreement is entered into in the absence of or prior to regulations made by the Office.
- (2) Each concession agreement shall set out the procedures, circumstances and formulae by which the service charge, user fee or toll to be charged by the concessionaire shall be calculated, varied or adjusted and such provisions in the agreement shall be observed and fully implemented.
- (3) Where the concession agreement does not set out the provisions for calculation and adjustment or variation of service charge, user fee or toll or any such provisions are declared invalid, void, unenforceable or of no effect by any competent Court or Authority, the Concessionaire shall have the right to apply to the Office from time to time for an adjustment or variation of the service charge, user fee or toll, and the Office shall promptly approve or reject any such application taking into account all relevant circumstances.
- (4) The Office shall have the power to vary or adjust or to require the adjustment of any service charge, user fee or toll charged by a Concessionaire in respect of a public infrastructure or public asset only in accordance with the provisions of this Law or as may be agreed and incorporated into any relevant concession agreement.

Determination of  
Service Charge, User  
fee or Toll Payable

#### PART IX - OFFENCES

- 33 (1) It shall be an offence for any person to fail or refuse to pay service charge, user fee or toll in accordance with this Law, any regulations made under this law or within the terms of a concession agreement, and the offender shall be liable on conviction to a fine of One Hundred Thousand Naira (N100,000.00) or six months' imprisonment.
- (2) If it appears to person employed to collect or charged with the responsibility of collecting any service charge, user fee or toll that a person has refused to pay, the person so employed may-
- (i) refuse to permit such defaulter the use of or prevent him from using the public infrastructure or public asset with respect to which the service charge, user fee or toll is payable and
- (ii) require the defaulter to vacate the public infrastructure or public asset, or call, where necessary, the assistance of a law enforcement agent.
- (3) Where a person refuses to pay a service charge, user fee or toll with respect to the use of any public infrastructure or public asset, the person may be arrested. Where the infrastructure is a road or bridge, the defaulter's vehicle shall be impounded by an authorized person and removed to a vehicle park provided for that

Offences and  
Penalties

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 to the appropriate authority designated by the office or shall remain so impounded pending the trial of the offence committed under the said subsection.

### PART X – MISCELLANEOUS

Power to make  
Regulations.

34. The Office shall have power to make regulations to -
- (i) designate a public infrastructure or public asset a service charge, user fee or toll paying infrastructure or asset;
  - (ii) establish fair and general conditions designating who, when and how a public infrastructure or public asset may be used and from whom service charge, user fee or toll may be collected; and
  - (iii) give effect to any provision and purposes of this Law.

Pre-existing  
Concessions.

- 35.(1) The provisions of this Law shall apply to Public Private Partnerships or concessions entered into before the commencement of this Law, and shall preserve and protect all rights, properties, interests and obligations existing under such agreement and any Law applicable when the Public Private partnerships was entered into or the concession awarded.
- (2) The Office shall keep all records of Public Private Partnerships or concessions referred to in subsection (1) of this section and all Public Private Partnerships or concessions executed pursuant to this Law.

Execution of  
Documents.

- 36.(1) The fixing of the seal of the Office shall be authenticated by the signature of the Chairman of the Board or the Executive Secretary or of any person authorized generally or specially for that purpose by the Board.
- (2) 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 may be made or executed on behalf of the Office by the Executive Secretary or any person generally or specially authorized for that purpose by the Board.
- (3) Any document purporting to be a document duly executed under the seal of the Office shall be received in evidence and shall, unless and until the contrary is proved, be presumed to be so executed.

Relevant Laws.

37. The provisions of other relevant State laws and regulations shall apply to this law including the Public procurement law and financial instructions.

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

UBOSI EDWARD UCHENNA  
Speaker of the house of Assembly

BARR. DR. EMMANUEL OKEY UDAYA  
Clerk of the House /Perm. Sec.

ASSENTED to this 25th day of November, 2016.



RT. HON. IFEANYI UGWUANYI  
Governor of Enugu State

