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JIGAWA STATE
PUBLIC PRIVATE PARTNERSHIP
(PPP) POLICY

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FOREWORD

Without doubt, one of the most critical challenges confronting the economic growth of many states in Nigeria is a dearth of basic infrastructure. To close this gap therefore, massive investment must be made, which is often beyond the resources and capacity of government alone. Jigawa State Government therefore deems it necessary to consider leveraging on private sector investment and capacity to bridge its infrastructure gap through the effective use of Public Private Partnerships (PPP). It is in pursuance of this objective that the Jigawa State Investment Promotion Agency is saddled with the responsibility of developing a PPP policy, underpinned by the State's existing PPP framework, that would provide the requisite institutional and regulatory framework within which all Ministries, Departments and Agencies of the state can effectively enter into partnerships with the private sector in the financing, construction, operation and maintenance of public infrastructure and provision of social services.

This policy, developed by InvestJigawa and reviewed by a six-man committee that included His Excellency the Deputy Governor as Chairman, Honourable Commissioners for Education, Water Resources, Finance and Economic Planning, and Land, Housing, Urban Development and Regional Planning and the Director General InvestJigawa, provides clear and consistent processes and procedures to guide all aspects of PPP project development and implementation in Jigawa State.

It is clear that the test of a credible PPP policy is that it establishes a process whereby the PPP agreements that are the outcome of that process stand on a firm foundation that brings together both public and private sector interests for the duration of the agreement, in a way that is mutually beneficial. This is the ultimate goal of this PPP policy and I expect all state MDAs to buy in and commit to working assiduously to acquire the skills required to plan and implement viable PPP transactions in a timely and efficient manner.

I also call on the private sector to join forces with the State Government as we develop our State PPP Master Plan and implement the various projects that will see to the realisation of our great vision to "become a leading Nigerian State with prosperous, healthy and well-educated citizens, living in harmony with people and nature and pursuing legitimate interests in freedom moderated by good governance".

I am confident that adherence to the policy and related guidelines will ensure the emergence of a robust and competitive environment conducive to private sector investment, which will ultimately facilitate the rapid and qualitative expansion of infrastructure and services in Jigawa State.

Thank you and may Allah bless Jigawa State.

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***Muhammad Badaru Abubakar** MON, mni*

Governor of Jigawa State

ABBREVIATIONS

ExCo	Executive Council
ICRC	Infrastructure Concession Regulatory Commission
MDAs	Ministries, Departments and Agencies
MSMEs	Micro, Small and Medium Enterprises
PPP(s)	Public-Private Partnership(s)
PPP PMU	Public Private Partnership Projects Review Unit
PPP PRU	Public Private Partnership Project Review Unit
CDF II	Comprehensive Development Framework (second edition)
ExCo	Executive Council
SPV	Special Purpose Vehicle

EXECUTIVE SUMMARY

This Public-Private Partnership (PPP) policy sets out Jigawa State Government's objectives for PPPs, and the institutional framework it will create to deliver these objectives and ensure that any investment is carefully planned and prioritised to maximise value for money for government, end users and the public.

The objectives of the policy are to; facilitate and encourage private investment in the provision of new and refurbished public infrastructure, free up financial resources for investment in necessary public infrastructure and services, develop more reliable public services by deploying private sector skills and new technologies in project management, enhance the employment generation potential and diversity of the state economy, catalyse the implementation of the State Comprehensive Development Framework (second edition), improve the management of state resources in order to enable efficient and cost-effective delivery of infrastructure and social services, strengthen institutional governance, and provide a clear, transparent, and well-defined legal, regulatory and institutional framework for the identification, procurement, approval, and management of PPP projects.

The critical elements in the policy include; value for money, risk allocation, competition, transparency, capacity to deliver, output orientated and engaging with the market. It also provides for application of the policy to all projects for the provision of infrastructure and services by the state or local governments that are included in the State PPP master plan, which will be reviewed and updated from time to time by the Jigawa State Investment Promotion Agency (InvestJigawa) PPP Projects Monitoring Unit (PPP PMU) and approved by the State Executive Council. Unsolicited proposals by the private sector will also be considered.

InvestJigawa, through its PPP PMU, shall regulate the planning, design, construction, operation and maintenance of PPP projects in the state, with the final approval of the State Executive Council. The Agency will set out the eligibility criteria that all Ministries, Departments and Agencies (the contracting authorities) must meet to obtain the approval of the State Executive Council at key stages of the PPP procurement process, which are: Pre-feasibility and inclusion in the PPP Master Plan (First Stage), feasibility study (Second Stage), request for proposals (Third Stage) and bid evaluation and award of contract (Fourth Stage).

Key stakeholders in the PPP procurement process are the contracting authority, its accounting officer and staff, the project team/project team lead comprising various stakeholders, InvestJigawa PPP PMU, Ministry of Finance and Economic Planning, Due Process Bureau and Project Monitoring Bureau and the State Executive Council.

This PPP policy sets out to establish legal, regulatory and institutional frameworks that will ensure agreements which go through the PPP procurement process stand on a firm foundation that brings together both public and private sector interests in a way that is mutually beneficial.

This is the ultimate goal.

CHAPTER 1: INTRODUCTION

1.1 What is Public Private Partnership?

Public Private Partnership (PPP) is a form of contracting for public works or services whereby a private sector partner is responsible for providing a series of service outputs to a defined standard, rather than simply designing and constructing the asset in question. PPP covers a wide range of performance-based contracts with the following characteristics:

□ They are long-term contracts for the provision of a public service – often from 5 to 30 years and will usually involve the construction of new public infrastructure or other assets.

Where this asset has no alternative use or/and economic life longer than the PPP contract, it will be transferred back to the contracting authority (CA) at the end of the contract;

- Payment is linked to the performance of the private sector partner against an output specification and may be reduced if the specification is not met at any time during the contract period;
- The private sector partner will be responsible for managing more of the project risks than will be the case in separate design, construction and maintenance contracts. PPP contracts will typically transfer the majority of design and construction risks, maintenance and operational risks, and in some cases demand or usage risks. To maximise value for money, the general rule is that project risks should be allocated between the public and private sectors, each risk to the party that is best able to manage them.

Interest in PPP is growing world-wide including in Africa, essentially in response to shrinking government budgets to address current and future infrastructure investments and services. PPPs can and have enabled governments to address their responsibilities in delivering required socio-economic goods and services by ensuring efficiency, effectiveness, accountability, quality and outreach of services.

1.2 Overview

The Government of Jigawa State ("the Government") needs to invest in the physical and social infrastructure of the state in order to promote the socio-economic wellbeing of its citizens, and to support a diversified and sustainable economy. At both the federal and state levels, the poor quality and unreliable nature of public services such as transportation and power impose higher costs on businesses and households, making the business environment less competitive. It has been estimated that this reduces the potential for economic growth by about 2% per annum.

Often, state governments are unable to bridge the public sector funding gap from their own sources, and therefore work in partnership with the private sector to implement projects for he construction of new infrastructure and to rehabilitate existing assets for the provision of essential public services.

This policy sets out ng with state governments through their investment promotion agencies. ICRC being the federal agency vested with regulatory and supervisory powers over PPPs at the nationthe Government's objectives for PPPs in Jigawa State and the institutional framework it will create to deliver these objectives and ensure that any investment is carefully planned and prioritised to maximise value for money for government and the public. The Government will also bear in mind that the costs of providing public services do not place an unsustainable burden on users of the services or on public expenditure.

Some basic public services such as electricity, railway, major ports and airports, and inter-state roads are the responsibility of the federal government, and the State Government will continue to work with the relevant federal Ministries, Departments, and Agencies (MDAs) to ensure that investment is directed to developing and improving those federal infrastructure assets located within the state. In undertaking its own PPP transactions, the Government will ensure that there is a consistency of approach between federal and state PPP policies as they evolve. The Government will also invest directly alongside other private investors, where appropriate, in support of projects to improve for example the availability of electricity, or the quality of the road network when this is in the long-term interest of the state.

1.3 Background

Governments the world over have come to recognise the role of the private sector in bringing about socio-economic development and growth in their economies, through investments and technical expertise. PPP policies and frameworks therefore provide important instruments for attracting investments from the private sector. Indeed, PPPs have been identified as potent tools
in effectively addressing financing related constraints, management expertise and maintenance of public infrastructure and services. However, despite the innumerable benefits associated with the PPP concept, there still remains a number of challenges for governments considering its use, including: Non-existence of adequate legal, policy and institutional frameworks that will provide
guidelines and procedures for development, implementation, evaluation and monitoring; Lack of well-prepared investment grade projects; Inadequate enabling environment which includes lack of strong institutions to lead transactions, inadequate long-term financing instruments and appropriate risk sharing mechanisms; and Severe shortage of skilled manpower to undertake key responsibilities associated with PPP implementation.

Consequently, the federal government through the Infrastructure Concession Regulatory Commission (ICRC), has been workial Level, provides guidance and

technical support to states wishing to pursue the PPP model in provision of public infrastructure. To this end, ICRC established the Nigeria PPP Network (NPPPN), with all states as members. InvestJigawa represents Jigawa State on the NPPPN.
From 2021, InvestJigawa has been working with the ICRC to strengthen the state's capacity to effectively implement PPPs, and this includes staff training and the development of this policy.
Prior to the ICRC's support however, in 2017, and with the help of development partners, Jigawa State Government developed a PPP framework. The framework has been subsumed into this policy.
Apart from the above, and the state's Comprehensive Development Framework (second edition) (CDF II) that recognises PPP, the need for the development of a PPP policy for Jigawa State is also underscored by the Presidential Enabling Business Environment Council (PEBEC)'s State Action on Business Environment Reforms (SABER) programme. One of the indicators for measuring performance under the programme is the existence of a PPP policy in the state being assessed.

1.4 Objectives of the PPP Policy in Jigawa State
The Jigawa State Government in developing a PPP policy, seeks to achieve the following

Objectives:
1. Facilitate and encourage private investment in the provision of new and refurbished public infrastructure: The urgent need to fill the infrastructure gap cannot be over emphasised.
However only governments that are ready to create a level playing field in which every private sector player has an equal opportunity to succeed, and in which no artificial barrier exists, can attract the support of the private sector in infrastructure development and public services delivery. The private sector should be seen and treated as a key partner, and supported to do what it knows how to do best – which is creating wealth.

2. Free up financial resources for investment in necessary public infrastructure and services: In a PPP structure, the responsibility of financing the project assets often rests with the private sector partner, depending on the service delivery model adopted. The private sector partner raises project finance through equity and/or debt finance. The project is usually owned (or leased) by one or more equity investors during the project term. Some of these shareholders may also be contractors to the project, who carry out construction, design or management of the assets. Others may be pure financial investors. Debt finance in the form of bank loans or bonds, also can be raised to at least partially finance the construction

and operation of the project. This allows government to utilise its limited resources on the provision of other essential infrastructure.

3. Develop more reliable public services by deploying private sector skills in project financing, risk management, project planning and the use of new technologies, thus ensuring greater value for money in the provision of public infrastructure: The Government will test value for money by comparing the costs at net present value of PPP proposals against a value for money benchmark wherever possible. The benchmark will usually be an estimate of the cost of providing an equivalent service through public finance. Bids will only be invited when it is clear that there is scope for a private proponent to deliver value for money, and the cost of the service is affordable to both government and service users.

4. Enhance the employment generation potential and diversity of the state economy: Utilising PPPs as a way of developing local private sector capabilities through joint ventures with large national and international firms, as well as sub-contracting opportunities for local firms in areas such as civil works, electrical works, facilities management, security services, cleaning services and maintenance services.

5. Act as a catalyst for the implementation of the CDFII, and any subsequent action plans, taking into account the state's urban, regional, or development plans: Boosting private businesses and industries which are associated with infrastructure development, such as construction and equipment supply. This will create a paradigm shift in the economy by making the state more competitive through the strengthening of its infrastructure base.

6. Improve the management of state resources in order to enable efficient and cost- effective delivery of infrastructure and social services in the state: Imposing budgetary certainty by setting present and the future costs of infrastructure projects over time.

7. Strengthen institutional governance in the state by improving managerial skills and accountability in the planning, construction, rehabilitation and provision of infrastructure and social services: Using PPPs as a way of gradually exposing state-owned enterprises and government officials to global best practice, and structuring PPPs in such a way as to ensure transfer of skills.

8. Provide a clear, transparent, and well-defined legal, regulatory and institutional framework for the identification, procurement, approval, and management of PPP projects: This will send a clear message on government's commitment to PPP,

highlighting its commitment to honour PPP payment obligations and give potential private partners comfort when they are bidding
for PPP contracts. It will also provide a reliable framework arrangement for speedy settlement of PPP-related disputes that may arise from time to time.

1.5 Justification for Development of the Policy

The Government of Jigawa State is ambitious, bold and focused. It wants to do well for all its people, establishing the necessary infrastructure that would support provision of public services.

The state has vast untapped resources, but lacks the capital to optimally exploit these resources to achieve its goals. Therefore, the State's economy remains small and largely informal. It is for this reason that the Government has taken steps to invite the private sector – both domestic and international, to partner with it in addressing the prevailing resource constraints.

However, government is also not oblivious of the challenges of attracting investment, especially given the stiff competition that exists among states and national governments in their quest to attract the limited foreign and local investments that trickle into Africa. For Jigawa State, the CDF II places a high premium on collaborating with the private sector, and this includes the pursuit of appropriate public-private partnerships and very importantly, provision of robust physical infrastructure.

Supported by the CDFII, in 2017 Jigawa State Government developed a PPP framework within which PPPs would operate, and is desirous of adopting a PPP policy that would guide management, coordination and implementation of PPPs. Importantly, where a PPP policy exists, it gives comfort to private sector investors, that their partnership with government has legal backing and some form of security. Jigawa State is not treading on uncharted waters, as the PPP
model is already in place in Anambra, Cross River, Edo, Kaduna, Kogi, Kwara, Lagos, Niger and Rivers states.

1.6 Critical Elements of the Policy

In deciding whether PPP is an appropriate procurement model for public infrastructure projects and services delivery, the Government of Jigawa State will consider the following key principles in its decision-making process.

a. Value for Money (VfM) Achieving value for money should be a key consideration at all stages of a project's development and procurement. The project appraisal will take account not only of cost but also risks and service quality. The government will test value for money by comparing the costs at net present value of PPP proposals against a value for money benchmark wherever possible.

b. Public Interest

Consideration of public interest requires that: InvestJigawa shall ensure adequate consultation with end-users and other stakeholders

when preparing the State's PPP pipeline; and Private sector partners in the provision of vital services to communities need to be mindful of the consequences of their actions/inaction for those communities, and work together with contracting authorities to avoid or mitigate socially unacceptable outcomes.

c. Risk Allocation

The principle that the government will follow in allocating risks will be to optimise, rather than maximise the transfer of project risks to the PPP contractor. This means that in practice, risks will be allocated to the party best able to manage the risks. The allocation of risk will therefore determine the chosen method of private sector involvement and allocation of responsibilities, which will in turn be based on an assessment of the public interest.

d. Output Orientated

The formal agreement between the contracting authority and the private sector partner will be specified in terms of verifiable, agreed upon, key performance indicators (KPIs) to be provided on the basis of output or performance-based specifications. It will contain provisions regarding responsibilities and allocation of risks in case of unforeseen events.

e. Transparency

Transparency and openness are key requirements of all government procurement, including PPP projects. Hence:

Fiscal discipline and transparency must be safeguarded and the potential public finance implications of sharing responsibilities for infrastructure with the private sector, fully understood; Sound enabling environment for infrastructure investment, which implies high standards of public and corporate governance, transparency and the rule of law, including protection of property and contractual rights, will be put in place to encourage the participation of the private sector; Contracting authorities will take effective measures to ensure public and private sector integrity and accountability, and establish appropriate procedures to deter, detect, and

penalise corruption; Awarding of PPP contracts or concessions will be designed to guarantee procedural fairness, non-discrimination, and transparency; Private sector participants, their sub-contractors and representatives will not resort to bribery and other irregular practices to gain unfair advantage, or attempt to win

favours.
Nor should they be party to these practices in the course of their infrastructure operations.
They will observe commonly agreed principles and standards of responsible business conduct. They will participate in infrastructure projects in good faith, and fulfil their contracted commitments to both the contracting authority and project, barring which agreed upon sanctions will apply.

f. Competition

The benefits of private sector participation in public services delivery and infrastructure development are increased by effective competition, by ensuring that business activities are subject to appropriate commercial pressures, dismantling unnecessary barriers to entry, and implementing and enforcing adequate competition laws.

g. Capacity to Deliver

In view of the complicated nature of PPP transactions and MDAs' lack of capacity to manage the commercial processes involved, the development and coordination of PPP projects will be done in InvestJigawa. All projects shall include trainings to those involved the project, to transfer relevant skills and understanding.

h. Engaging with the Market

Projects to be procured within a PPP policy framework must have the formal approval of the State Executive Council (ExCo), before involving the private sector. MDAs will clearly communicate the objectives of infrastructure policies and will put in place mechanisms for consultation between public and private partners regarding these objectives. As part of the procurement process, they will disclose all project-related information (full disclosure), including the condition of existing infrastructure, and the standards of performance they require, together with proposed penalties for non-compliance.

1.7 Main Characteristics of PPP Projects

a. Medium to Long-term in Nature Most PPP projects are generally large projects, and require long-term investment ranging from to 30 years or more. The tenure of the contract/agreement is such that it typically covers the entire economic life of the asset to ensure that the private sector partner takes a whole life-cycle view for the development of the asset and/or delivery of the public infrastructure or service. The asset is then designed, constructed, operated, and maintained in such a way that the whole lifecycle cost of the project is minimised and the private sector partner ensures that the asset is well maintained throughout its entire economic life.

b. Driven by Independent PPP Company

In light of the capital requirement of most PPP infrastructure projects and the risks associated with them, private sponsors of such projects often form a separate PPP company, often under a Special Purpose Vehicle (SPV) structure. The rationale for SPVs is that the risks associated with a project are unique to that project and therefore should be limited to that project. In addition, when a government tender goes to market, interested private sector parties often will pool skills and finances in a consortium that will form the basis of the SPV. So, the implementing partners are also often unique to that project. The SPV also allows the private sector consortium to raise funding restricted to the SPV, thus protecting the parent companies from the risks of project failure.

c. Allocation of Risks

One key factor to achieving successful implementation of a PPP project is the optimal sharing of risks and responsibilities between the public and private sector. The guiding principle adopted in identifying and allocating responsibilities is that the party best able to manage a particular activity should be responsible for the risks associated with that activity and receive the associated rewards or losses. For example, PPP risks typically assigned to the private sector include the proper designing and construction of the assets and that financial returns are adequate to repay loans. The public sector, on the other hand, often assumes risks related to macro-economic stability (for example, inflation) and land acquisition from public and private land owners.

d. Encourage Innovative Approaches

Output specifications form a vital part in encouraging innovation in PPP projects. Producing effective output specifications involves defining the expected end result without being too prescriptive about the means for meeting these outputs. The CA concerned clearly states the public service requirements for the facilities and services, while leaving room for the private sector to produce innovative, cost-effective solutions. The output specification shall clearly state what needs to be achieved and not how it is to be achieved. In these types of PPP contractual arrangements, the CA makes payments to the private sector based on whether the outcome or output specifications have been met.

e. Performance-based Payment Mechanisms

A PPP can be structured in such a manner that the agreement includes a performance-based payment mechanism, whereby the contracting authority only pays when services are delivered by the private sector. Moreover, the recurrent payment may depend on whether the services provided meet the specified performance standards as well. For example, it is not just expected that a new water distribution PPP project will provide customers with adequate quantity of water, but also that the potable water meets specified quality standards.

f. Private Financing
In a PPP structure, the responsibility of financing the project assets often rests with the private sector partner, depending on the PPP model adopted. In the models which involve funding the project assets by the private sector, the private sector partner raises project finance through equity and/or debt finance. The project is usually owned (or leased) by one or more equity investors during the project term. Some of these shareholders may also be contractors to the project, who carry out construction, design or management of the assets. Others may be pure financial investors.

g. User Fees Imposition
Public infrastructure projects funded through PPP often recover some of their costs through payment of user fees. In these instances, the private sector partner takes steps to recover their investment from the project revenues through the imposition of user fees rather than from government directly. For example, many publicly funded highways do not charge toll fees to vehicles using the facility, whereas most PPP road projects are structured as toll roads which collect revenue directly from vehicles.

h. Service Performance Standards
To ensure that the private sector party involved in the PPP fully understands the minimum service levels that the public sector requires for the PPP project in question, it is necessary for the PPP bidding documents, contract agreement and the monitoring plan to describe in detail, a set of minimum performance standards for the requested services, comprising the required minimum service levels. Detailed service performance standards are then negotiated with the selected preferred bidder as part of the PPP contract negotiations.

1.8 Application of the Policy
This policy will apply to all projects for the provision of infrastructure and services by the state or local governments that are included in the State PPP Master Plan. The master plan will be prepared following consultation with state MDAs and will comprise those projects that are deemed suitable for PPP within each MDA's medium- and long-term action plans for infrastructure development. The master plan will be reviewed and updated annually by the PPP PMU (as described in Chapter 2 below) in accordance with the PPP master plan regulations, and approved by the State ExCo.

1.9 Unsolicited Proposals
Unsolicited proposals by the private sector will be subject to the same project review process described in the regulations, and will be procured in accordance with this policy once they are incorporated into the master plan. Two or more MDAs or local government councils, or a combination of state MDAs and local government councils may jointly propose a project for inclusion in the PPP master plan.

2.0 PPP with Micro, Small and Medium Enterprises (MSMEs)
Due to the need to encourage MSMEs to thrive, provision has been made for them to participate in a more streamlined procurement process. In proposing PPP projects for inclusion into the PPP master plan, MDAs and local governments will be encouraged to consider infrastructure and services such as markets and public toilets, which can effectively be provided and managed by MSMEs. There will be a threshold in the guidelines that will determine what qualifies an investor as an MSME. Unsolicited proposals from MSMEs will also be considered by MDAs or local governments, subject to the same project review process described in the regulations and also be procured in accordance with this policy, once they are incorporated into the PPP master plan.

CHAPTER 2: THE INSTITUTIONAL FRAMEWORK

2.1 InvestJigawa and the PPP PMU: Functions

InvestJigawa (the Agency) shall facilitate and regulate the planning, design, construction, operation and maintenance of PPP projects in Jigawa State. The Agency shall among other things:

- Formulate policies and programmes on PPP in the state in collaboration with relevant MDAs;
- Review and forward PPP project proposals to the State ExCo;
- Take custody of all PPP agreements and monitor, in collaboration with the Due Process and Project Monitoring Bureau, compliance by the parties involved;
- Establish standards, procedures, guidelines, and regulations for the execution of PPP projects by the state and local government councils; and
- Develop, in collaboration with relevant MDAs, a PPP master plan setting out the priorities and objectives of the state concerning PPPs and which takes into consideration: (a) The state's investment priorities and its short- to long-term goals for the development of infrastructure in a sustainable manner, and (b) the current resources, project management capacity and efficiency of the private sector.

There shall be a PPP PMU situated in the Agency to become a center of expertise for the promotion, development, and implementation of PPPs. The unit will serve as the primary and definitive source of all information on PPP legislation, regulations, guidelines and standards applicable and in force in the state. In this role, it will facilitate and provide support to the project teams within contracting authorities and where necessary, act as the primary point of contact for the private sector on PPP matters generally. It will also act as the first level facilitator for dispute resolution between a contracting authority and a private sector partner. Here, a "contracting authority" refers to any MDA, statutory corporation of the State Government, or any Local Government Council. It also includes any company in which the State Government has controlling shares or a controlling beneficial interest, which intends to enter a PPP agreement to carry out works or to provide services.

In addition, the unit will liaise with similar units in other states and particularly with the ICRC to ensure consistency of policy, coordination of PPP programmes across the federation and the dissemination of PPP know-how and capacity building.

The other functions of the unit will be to:

- Appraise, review, monitor, evaluate and make recommendations to the Agency for further action on all PPP projects in the state;
- Draft standards, procedures, guidelines and regulations on behalf of the Agency regarding the planning, approval, procurement and contract award of PPP projects;
- Build up and enhance the capacity of the Government to design, implement,

monitor, and evaluate PPP projects and provide technical assistance to contracting authorities throughout the project life cycle;

- Through the Agency, make recommendations to the State ExCo on the development, periodic review and modification of the State PPP Master Plan;
- Facilitate the issuance or renewal of any regulatory approvals, permits or licenses for PPP projects;
- Review and make recommendations to the Agency regarding pre-existing PPP contracts;
- Issue quarterly progress reports to the Agency for onward transmission to the State ExCo.

2.2 Identification, Procurement, and Approval of PPP projects

The Agency will set out in the regulation, the eligibility criteria that all contracting authorities must meet to obtain the approval of the State ExCo at key stages during the planning, preparation, and procurement process of a PPP project. This will ensure that only projects that are demonstrably viable, achievable, and in line with the PPP master plan and are affordable to the end user, are taken to market. The PPP PMU will support this process and act as the interface between a contracting authority and the Agency. There will be four key stages. In order to reduce bureaucratic delay and the time elapsed to completion of a PPP transaction, the first three stages will require only the approval of the Agency, whilst the fourth must receive the approval of the State ExCo.

PPP models that may be the subject of procurement will include: Design-Build-Finance-Operate (DBFO), Build-Own-Operate (BOO); Buy-Build-Operate (BBO), Lease-Develop-Operate (LDO); Build-Operate-Transfer (BOT), Build-Own-Operate-Transfer (BOOT), Build-Lease-Operate Transfer, (BLOT) and Build-Transfer-Operate (BTO). However, these models are not exhaustive and none will be specifically mandated for a given project. The determination of the preferred PPP model to be adopted will be left to each MDA, but prospective private parties will retain the choice to propose a PPP model different from that selected by an MDA.

The four stages of the PPP procurement process are:

a. Pre-feasibility and Inclusion in the PPP Master Plan (First Stage Approval)

The contracting authority will need to submit a pre-feasibility study and demonstrate to the Agency that it has appointed a project team with the necessary skills to complete the project, set up appropriate project management arrangements, and appoint external specialist advisers. This is required to obtain "in principle" approval to move to the next stage in the procurement process.

This stage is where the contracting authority must look inwards and advise itself as to the capacity of its project team to deploy the procurement, project planning and management skills that will be relevant through each stage. Thereafter, the contracting authority shall procure a relevant external adviser (transaction adviser/consultant) with specialist financial and technical skills to complement in-house capacities. Procurement of the transaction adviser/consultant must meet Due Process and Project Monitoring Bureau's guidelines as they relate to the procurement of consultants.

b. Feasibility Study (Second Stage Approval)

The feasibility study will set out the project scope and risks, and will demonstrate that the project will meet its economic and social objectives, provide value for money, that it is affordable for the state budget or for end users, and that it will contribute to the Government's economic and social objectives. It will therefore contain:

- A needs analysis, an environmental impact assessment (where necessary), and a description of the project's policy context;
- A description of the role of the contracting authority and that of any other state MDAs or local government councils that may be required to grant approvals, oversee, or regulate the implementation of the project;
- The expected input and deliverables from the private sector party and evidence that theyprivate sector party has the capacity and skills to deliver them;
- A financial model that sets out the anticipated project costs and revenues, together with the key assumptions and sensitivity testing of the expected rates of return against these assumptions;
- An analysis of any long-term guarantees or other forms of financial support that may be required in order to achieve cost-effective financing of the project;
- An options appraisal of the most appropriate procurement method and identification of the preferred PPP option to be contracted; and
- Evidence that the contracting authority has the skills and resources to deliver the project and any subsequent contractual obligations placed upon it.

c. Request for Proposals (Third Stage Approval)

On receipt of the Agency's approval of the feasibility study, the contracting authority will prepare a draft Request for Proposal (RfP) and supporting documents that will include inter alia:

1. A description of the preferred PPP option and the proposed procurement methodology as described in regulations or as amended from time to time by the

Agency together with the criteria against which bids will be evaluated and a PPP contract awarded;

2. A project plan up to contract award, which sets out all of the actions to be taken and those persons or entities that will be responsible for taking them, including those MDAs whose support and participation will be required to complete the project together with a realistic timetable for their support or agreement;

3. A draft PPP agreement that contains statements on certain items that must be mandatorily provided for under the law.

The contracting authority will be required to obtain the joint approval of the Agency and the Due Process and Project Monitoring Bureau of the draft RfP before it can be issued to bidders in the bidding process. It will then be required to conduct the subsequent bidding process in an equitable, transparent, cost effective, and competitive manner.

d. Bid Evaluation and Award of Contract (Fourth Stage Approval)

The contracting authority will complete the evaluation of bids received, in accordance with the stated criteria, and prepare a procurement report on the procurement and bid evaluation process. The Agency (through the PPP PMU) and the Due Process and Project Monitoring Bureau will jointly review this report. Thereafter, the PPP PMU will present the results of the joint review and make recommendations to the Agency on the contract award decision, which will then be submitted for ratification by the State ExCo.

Upon grant of approval by the State ExCo, the PPP PMU will accordingly be authorised to issue a Notice of Award of the PPP contract. Thereafter, the contracting authority and the private sector party execute the PPP Agreement.

2.3 Key Players in the PPP Transaction Process

In the stages summarised in 2.2 above, there are a number of key participants whose roles are complementary but clearly identifiable. They are:

a. Contracting Authorities

Respective MDAs are the engine room of each PPP transaction. They each have the key responsibility to first identify projects that meet the eligibility criteria for listing in the State PPP Master Plan and which are consistent with their sector investment priorities. Thereafter, they shall procure the services of transaction advisers/consultants, who have acquired high level of recognition and competence as advisers in preparing, implementing and managing PPP projects, to develop a work plan that will start with the preparation of a comprehensive project feasibility study and an accompanying financial model, through to undertaking the various studies that collectively demonstrate project viability.

Following the State ExCo's approval, the contracting authority will then be responsible for managing a procurement process to award a PPP contract to a private sector party with the capacity to deliver the project and meet the Government's objectives and the wider public interest.

b. Ministry of Finance and Economic Planning The Ministry of Finance and Economic Planning is responsible for the management of state government debt and contingent liabilities. It also manages the financial risk inherent in transactions to which the State Government is a party. It is therefore the MoF's responsibility to review the financial models built for specific projects, test the assumptions in those models and design strategies/instruments to hedge against contingent liabilities becoming crystallised. At the point of considering whether or not to grant a second stage approval, the MoF will be critical as the financial risk adviser to the Agency.

c. Due Process and Project Monitoring Bureau

The state procurement legislation requires that the procurement of all goods, works and services by or for the state shall be done in accordance with the principles enshrined therein. PPP regulations must therefore conform to the letter and spirit of the procurement legislation whilst making provision for contract award documents and the result of the private party procurement process shall be reviewed and approved by the Due Process and Project Monitoring Bureau.

d. Jigawa State Investment promotion Agency (InvestJigawa)

InvestJigawa serves as the state's PPP policy coordination and contract monitoring body. It will be responsible for the preparation and periodic updating of a PPP master plan, and oversight of the preparation and procurement of PPPs by relevant MDAs based on stated principles that ensure competitiveness and value for money. The Agency is also responsible for facilitating the resolution of any disputes that may arise during the tenor of the PPP agreement. The Agency must always be careful not to take on the roles of project planning, preparation, development and procurement and day-to-day contract management that are the peculiar province of the relevant contracting authority.

e. The State Executive Council (ExCo)

The State ExCo is the ultimate body to which the Agency is accountable for ensuring that any PPP project presented to it for final approval has gone through each procurement stage and has complied with statutorily established eligibility criteria. The ExCo will scrutinise the entire PPP award process to ensure that each PPP project meets the fundamental requirements of value for money and affordability for the state and public.

f. Private Sector Parties

The private sector will be given greater responsibility for the delivery of public infrastructure and services under this policy, although each contracting authority will remain ultimately accountable for its delivery. Each PPP agreement will set out the service standards that the private sector party will be required to meet, and the arrangements to ensure that the interests of service users and the wider public are protected.

g. Transaction Advisers/Consultants

The complex nature of PPP projects requires, in addition to an in-depth "theoretical" knowledge, practical deal-making experience in areas such as project management or contract negotiation. It spreads over various fields such as technical, finance, legal, market/demand, tax, accounting and insurance. This is where transaction advisers/consultants are needed. These are private sector companies that have acquired a high level of recognition and competence as advisers in preparing, implementing and managing PPP projects. Most of them advise both public and private sector clients. All contracting authorities shall be required to engage relevant technical advisers/consultants for a variety of needs in engineering, architecture, economics and finance, management of projects and procurement, or a combination thereof.

2.4 Roles and Responsibilities of Key Stakeholders

STAKEHOLDER	RESPONSIBILITY
Accounting Officer of the MDA (the contracting authority)	* Oversight of PPP procurement within the MDA. * Appoints the PPP project monitoring team and team lead, and delegates responsibility to the team for (a) developing and contracting a PPP project supported by InvestJigawa's PPP Performance Review Unit, and (b) hiring transaction advisers/consultants. * For unsolicited proposals, decides whether to proceed with developing bid documents for a detailed proposal
	based on the recommendation of the project monitoring team. * Submits PPP projects to the State ExCo for approval, through the PPP PMU of InvestJigawa. * Ensures the final structure and cost of the PPP is within the range approved by the ExCo and signs the PPP contract.
MDAs (contracting Authorities)/Staff	* Identify potential PPPs among sector and MDA priorities. * Procure transaction advisers/consultants to develop initial business case, supported by the PPP PMU and other relevant MDAs such as the MoF. * Assess preliminary proposals submitted by a private sector proponent for consistency with sector priorities. * Develop business case together with transaction advisers/consultants. * Manage the ongoing relationship with private sector partner; monitor and report on private sector partner performance.

STAKEHOLDER	RESPONSIBILITY
Transaction Advisers/Consultants	* Provide transaction advisory services to contracting authorities, including training and institution building. * Act as multidisciplinary advisers and experts on PPP project management. * In collaboration with the contracting authority, conduct pre-investment, pre-feasibility and detailed feasibility studies. * Design PPP project structure and risk allocation in collaboration with the contracting authority. * Define the scope and design of a PPP project, such as the preparation of drawings, specifications, detailed cost estimates and complete tender documents. * Undertake the overall advisory responsibility for planning, design, procurement, construction and commissioning of a PPP project.
Project Team: Appointed by the contracting authority's Accounting Officer, and comprising representatives of the contracting authority, InvestJigawa PPP Unit, other sector bodies where appropriate, and external advisers.	* Undertake a detailed feasibility study. * Design project structure and risk allocation. * In the case of unsolicited proposals, review and assess the detailed proposal from the private sector proponent and if approved, negotiate and finalise the project structure. * Create a full set of draft contracts, including any proposed government guarantees and tender documents, following the guidelines and contract templates prepared by the InvestJigawa PPP PMU in collaboration with the Due Process and Project Monitoring Bureau.
	* Conduct the bidding process according to the process defined by the InvestJigawa PPP PMU. * Evaluate bids and decide on a preferred bidder. The project team may appoint an evaluation committee including additional specialists. * Negotiate with the preferred bidder to reach final contract close.
The Project Team Lead: Appointed by the contracting authority's Accounting Officer. May be a full-time position for large PPP projects, or selected from project team personnel.	* Manages all activities of the project team. * Acts as the main point of contact throughout the procurement and negotiation processes.

STAKEHOLDER	RESPONSIBILITY
InvestJigawa PPP PMU	Oversight and approval: * Assess the initial business case according to the same criteria as other government projects—value for money and consistency with budget and policy priorities. * Support the MDAs in identifying potential PPP projects among sector priorities, and in contracting transaction advisers/consultants for the initial development of the business case. * Review and certify that the business case, or preliminary proposal in the case of unsolicited proposals, is in line with PPP principles laid out in the PPP policy and InvestJigawa law. * Membership of contracting authority project team. * Receive and review project reports from contracting authority. * Develop, publish, and periodically update guidelines and requirements for each stage of project development, standard documentation, procurement, and dispute resolution procedures.
Ministry of Finance and Economic Planning	Oversight and approval: * Sign any government guarantees. * Record and report on contingent liability portfolio, including liabilities arising from guarantees to PPP projects.
Due Process and Project Monitoring Bureau	Oversight and approval: * Ensure consistency of existing procurement processes by law, except for exceptions (in compliance with PPP policy and legislation). * Draw from their knowledge and experience in case of dispute, as with any government procurement activity.
State Executive Council (ExCo)	Oversight and approval: Assess the project proposal for consistency with budget and policy priorities and approve the PPP for procurement if it meets all relevant criteria.

2.5 Financial Management of PPP Commitments

The State Government recognises that the long-term financial commitments incurred by contracting authorities under PPP agreements will in almost all cases fall outside state revenue inflow expectations, and would, if left to budgetary allocations, be completely unaffordable.

Through the MoF, it will provide oversight of the long-term financial commitments that will arise under PPP contracts by way of direct investment, guarantees, indemnities or subsidies. Even where the services are commercial in character, or where it is intended to recover costs through user charges, there are likely to be some long-term risks retained by the State Government or a need for non-cash long-term support that enables Jigawa State Government free up financial resources for other important social objectives.

The Government will use the arrangements described in 2.2 above to ensure long-term liabilities are acceptable. Thus, while risk and contingent liability management are the responsibility of the MoF, it must be clearly noted that contracting authorities will remain accountable for the quality and cost of services delivered through PPP agreements, and for negotiating any spending commitments that are incurred. Also, where there is a need for government funding to supplement revenues from user charges, this will be justified against quantified economic and social benefits that derive from the project, and these payments will be provided in annual budgets through a specific fund established for such purposes, or via similar arrangements.

2.6 Legal Framework

The Government will put in place a legal framework for the implementation of this policy and of PPP contracts that is effective enough to maintain both the public interest and that of private investors, in projects. It will also ensure that there are no distortions created by existing banking, tax, or other laws that would bias the investment decisions of contracting authorities for or against PPP as a procurement option, or would distort the commercial decisions of PPP investors, contractors, or operators. It will require that all PPP contracts contain a clear and detailed description of the rights and obligations of both the contracting authority and the private party, and include appropriate procedures for dispute resolution. In addition, apart from the incentives described below, the state will promote, with its private sector partners, the establishment of an Infrastructure Facility Fund that will aggregate capital for investment in eligible state PPP projects.

The legal framework will take full account of the constitutional separation between federal and state powers and responsibilities and respects the personal and property rights of all citizens. It will protect the investments or security interests of

individuals or companies and will not discriminate between domestic or foreign persons and investors. It will encourage corporate
social responsibility and harmonious relationship between investors and host communities by reserving certain level of skilled and unskilled jobs for the host communities This framework will enable incentives to be developed to ensure attention to environmental and conservation concerns, while also respecting commercial confidentiality within the requirements for transparency and openness in public procurement and public service delivery. The state will
ensure that all public authorities responsible for granting permits or licenses or the conveyance and registration of property, comply with good practice and the timely implementation of their statutory responsibilities.

CHAPTER 3: GUIDELINES FOR MONITORING AND EVALUATION OF PPP PROJECTS

These guidelines shall be followed for monitoring all PPP projects which are based on agreement between Jigawa State Government or MDAs on the one side and a private sector company on the other, for delivering an infrastructure service or payment of user charges, tariffs or annuity from the government. These guidelines may also be adopted for PPP projects in social sectors where similar monitoring and enforcement is considered necessary.

3.1 Institutional Framework

As the PPP programme develops across sectors in the state, a mechanism to monitor and enforce implementation of the agreed terms and delivery of services will need to be institutionalised. The mechanism should be capable of ensuring that the contracting authority and the private sector partner carry out their respective obligations in accordance with the PPP agreement with a view to safeguarding end-user interests and that of the general public. It should also be ensured that the medium and long-term objectives are clearly identified and pursued.

A two-tier mechanism for monitoring the performance of PPP projects shall be adopted as follows:

1. PPP Projects Monitoring Unit (PPP PMU) at the MDA level; and
2. PPP Performance Review Unit (PPP PRU) at InvestJigawa level.

The PPP PMU and PPP PRU should be involved in all PPP projects as early as possible, preferably at the award stage itself. The above structure is in addition to the independent engineer who is expected to function independently and provide inspection reports for further action by the contracting authority and the private sector partner.

3.2 The PPP Project Monitoring Unit (PPP PMU)

A PPP PMU shall be created at the MDA (contracting authority) level for monitoring each PPP project. The PPP PMU shall have sufficient capacity, resources and skills to oversee and monitor implementation of the PPP contract assigned to it. It may hire consultants to provide the requisite assistance as necessary. Where a number of projects are being executed at the same time, the contracting authority may choose to club two to three projects under a single PPP PMU.

Monitoring by the PPP PMU should, inter alia, cover the following aspects to be summarised in a monthly "PPP Project Monitoring Report" which should be submitted to the PPP PRU within a specified number of days of the close of the relevant month:

a. Compliance with the conditions precedent and achievement of financial closure within the period specified in the PPP agreement;

b. Adherence to the timelines and other obligations specified in the concession agreement;

c. Streamlining of, and adherence to the reporting procedures between the PPP private sector partner and the contracting authority;

d. Assessment of performance against laid down standards;

e. Remedial measures and action plan for curing default, especially when performance standards are not fulfilled;

f. Imposition of penalties in the event of default;

g. Levy and collection of user charges based on approved principles;

h. Progress of on-going disputes and arbitration proceedings, if any; and

i. Compliance with the instructions of the contracting authority or independent engineer, as the case may be.

At the beginning of each financial year, the PPP PMU, with the approval of PPP PRU, shall finalise a format in which it shall submit its monthly report for each project. The format shall be carefully prepared to include all the obligations of the PPP private sector partner and the contracting authority, as specified in the PPP agreement. It shall serve as a checklist for ensuring that the provisions of the agreement are being complied with, in letter and spirit.

The monthly report shall clearly bring out the compliance of the PPP private sector partner and the contracting authority with respect to each and every item included in the aforesaid format and the PPP agreement. The monthly report shall also contain a summary, which should highlight the items where a default has occurred or is likely to occur. The proposed action for rectifying the default shall also be included in the summary. The intention is to ensure that both the parties, public and private, perform their respective obligations in accordance with the agreement.

The PPP PMU shall be manned by at least three officers, of which at least one should be from the finance discipline. The head of the PPP PMU shall be an officer of at least, the rank of a Director/Deputy Director/Superintendent Engineer. The other two personnel can either be officers or consultants. It shall be ensured that the personnel of PPP PMU spend at a minimum of two days at the project site during every two months and must interact with user representatives during such visits.

As an indicative norm, each PPP PMU may oversee two or three PPP projects, depending on the overall value of each project. In case of a large project, the PPP PMU shall only look after a single project. The respective contracting authorities may establish their own norms keeping in view the size and complexity of their projects.

3.3 PPP Performance Review Unit

A PPP Performance Review Unit (PPP PRU), headed by an officer not below the rank of Deputy Director shall be set up at the level of the PPP PMU at InvestJigawa, for reviewing the monitoring of all PPP projects. In case the PPP PRU is to review a number of PPP projects, it should preferably have a dedicated team with no other functions. The PPP PRU may also hire consultants as necessary. The unit shall review the PPP Projects Monitoring Report submitted by the different PPP PMUs and oversee or initiate action for rectifying any default or lapses.

The PPP PRU shall also prepare quarterly reports on the status of the PPPs. These reports should have particular focus on any non-compliance relating to the provisions of the relevant agreement, especially in terms of the standards of performance or loss to public funds and the end users. It should clearly indicate the steps taken or required to be taken by the contracting authority in accordance with the provisions of the relevant agreement.

The PPP PRU shall submit a quarterly report to the ExCo, and such quarterly report shall include:

a. A compliance report regarding implementation of the various PPP projects as per the provisions of the respective agreements;

b. An 'Exception Report' highlighting issues where remedial action is to be taken for enforcing the provisions of the respective agreements;

c. A review of the grievances of users and the manner and extent of remedial action taken; and

d. Matters affecting the interests of the public funds utilised, in relation to the expenditure and revenue arising from the PPP project.

The PPP PRU shall cause to be conducted an evaluation of the project's performance, including a social audit wherever applicable, once every two years.

The respective contracting authority shall follow the aforesaid guidelines and send a quarterly compliance report to the Budget and Economic Planning Directorate with a copy to the Ministry of Finance and Economic Planning. The Budget and Economic Planning Directorate, in consultation with the Ministry of Finance and Economic Planning, shall prepare a summary of these reports along with the recommendations relating to further action/ improvements which shall be placed before the State ExCo once every quarter for the subsequent years. Thereafter, the experience gained over two years shall be evaluated to enable such modifications in the guidelines as may be necessary.

CHAPTER 4: CONCLUSION

It is clear that the test of a credible PPP policy is that it establishes a process whereby the PPP agreements that are the outcome of that process stand on a firm foundation that brings together both public and private sector interests for the duration of the agreement, in a way that is mutually beneficial. This is the ultimate goal of this PPP policy, which sets out legal, regulatory and institutional frameworks that will guide implementation of PPP projects across Jigawa State, and collaboration with both federal and state MDAs, which is expected to ensure a conducive PPP ecosystem.