ACT

THE PUBLIC-PRIVATE PARTNERSHIP ACT, 2010

ARRANGEMENT OF SECTIONS

Section

SIGNED this *day of , 2010*

DR. ERNEST BAI KOROMA,
President.

LS

No. **2010**

Sierra Leone

The Public-Private Partnership Act, 2010. Short title.

Being an Act to promote and facilitate the implementation of public-private partnership transactions for infrastructure projects and social sector service projects; to establish a Public-Private Partnership Council and a Public-Private Partnership Unit; and to provide for matters incidental thereto.

[ ] Date of commencement.

ENACTED by the President and Members of Parliament in this present Parliament assembled.

PART I–PRELIMINARY

Interpretation.

1. In this Act, unless the context otherwise requires–

"affordable" in relation to a PPP Project, means an arrangement where a contracting authority is able to meet any financial commitment likely to be incurred under the PPP Agreement from the contracting authority's existing or future budgetary funds;

"asset" includes an existing asset of a relevant contracting authority or a new asset to be acquired for the purposes of entering into a PPP Agreement;

"bid" means a tender, an offer, a proposal or price quotation, given in response to an invitation to participate in a PPP Project;

"bidder" means any person, including a group of persons, that participates in selection proceedings relating to a PPP Project;

"bidding documents" means the tender solicitation documents or other documents for solicitation of bids for a PPP Project, on the basis of which bidders are to prepare their bids;

"bidding consortium" means a group of persons making a proposal for a PPP Project, and "bidding consortia" shall be construed accordingly;

"commercial close" means the event that occurs when a contracting authority and a private partner have reached agreement on all terms of the PPP Agreement, subject only to the private partner obtaining financing for the proposed PPP transaction where such financing is required;

"contract finalisation phase" means that phase of a PPP transaction which takes place following the issuance by the Council, of the approval required by section 59(1), and prior to the commencement of the implementation phase, and shall include the achievement of both the commercial close and, where financing is required, the financial close of the PPP transaction;

"contracting authority" means a public authority ;

"Council" means the Public-Private Partnership Council established by section 25;

"Director" means the Director appointed under section 34;

"feasibility study" means a study commissioned or undertaken by a contracting authority for submission to the Council in accordance with section 42 (3);

"financial close" means the event that occurs, subsequent to commercial close, when a private partner has obtained the financing that may be required for a PPP transaction, and a final agreement, without conditionality as to financing, has been reached between the private partner and a contracting authority;

"implementation phase" means that phase of a PPP transaction which takes place following the achievement of the financial close of the PPP transaction;

"infrastructure project" means the design, construction, development and operation of any new infrastructure facility or the rehabilitation, modernisation, expansion or operation of any existing infrastructure facility, where

(a) in the case of a new facility, the facility would have been, prior to the start of the project, of a type that would be within the responsibility of a contracting authority; and

(b) in the case of an existing facility, the facility was, prior to the start of the project, within the responsibility of a contracting authority;

"local authority" has the meaning assigned to it under the Local Government Act, 2004;

"material default" means any failure of a private partner to perform any duty under a PPP Agreement which remains unsatisfied after the private partner has received written notice of the failure from the contracting authority;

"Minister" means the minister responsible for finance;

"parties" means the contracting authority and the private partner in a PPP Agreement ;

"PPP Project" means an infrastructure project or a social sector service project, as applicable, undertaken between a contracting authority and a private partner under this Act;

"pre-feasibility study" means a study commissioned or undertaken by a contracting authority for submission to the Unit in accordance with section 42;

"preferred bidder" means a bidder, including any bidding consortium, selected as a successful bidder during the procurement phase;

"private partner" means a person from the private sector who undertakes a PPP Project;

"procurement phase" means that phase of a PPP transaction which takes place following the issuance, by the Council, of the approval required by section 42;

"project identification phase" means the initial phase of a PPP transaction prior to the issuance, by the Council, of the approval required by section 42;

"public authority" means a Ministry, Government department, local authority or other statutory body;

"public function" means a function lying within the area of responsibility of a public authority;

"public-private partnership" or "PPP" means private sector participation in a project under this Act;

"regulatory agency" means a public authority that is entrusted with the power to issue and enforce the laws governing infrastructure developments or the provision of social sector services;

"Sierra Leone Investment and Export Promotion Agency" has the meaning assigned to it in the Sierra Leone Investment and Export Promotion Agency Act, 2007;

"social sector service project" means the design, development or operation of any systems, including utilities, that directly or indirectly provide social services to the general public over a period of at least five years, where such systems were within the responsibility of a contracting authority prior to the start of the project;

" Unit" means the Public-Private Partnership Unit established by section 32 ;

"unsolicited proposal" means any proposal relating to the implementation of a PPP project that is not submitted in response to a request or solicitation issued by a contracting authority under sections 45 to 59;

"user levy" means the right or authority granted to a private partner by a contracting authority to recover investment and a fair return on investment through collections from users of a PPP Project, and includes tolls, fees, tariffs, charges or any other benefit whatsoever called; and

"value for money" means the carrying out of the public function of a contracting authority or the use of public property by a private partner, under a PPP Agreement, which results in a net benefit to the contracting authority or consumer, defined in terms of cost, price, quality, quantity, risk transfer or a combination thereof.

Application.

2. (1) This Act applies to infrastructure projects and social sector service projects, undertaken between a public authority and a private partner, under a PPP Agreement.

(2) A PPP Agreement may be in the form of a concession transaction, a lease transaction, a management contract transaction or a long-term service contract transaction, as described in the Schedule, or may be in such other forms of public-private partnerships as may be prescribed by the Council.

(3) Where this Act conflicts with the procurement rules of a donor or funding agency, the application of which is mandatory under an obligation entered into by the Government, the requirements of those rules shall prevail; but in all other respects, this Act shall apply to all public-private partnership transactions, other than those transactions which have been expressly excluded from the provisions of this Act.

Exclusion of public procurements, privatizations, etc.

3. (1) This Act does not apply to the purchases of goods, services and works under the Public Procurement Act, 2004 nor to the privatization or divestiture of public infrastructure or publicly owned enterprises.

(2) This Act does not apply to the granting of any mineral rights under the Mines and Minerals Act, 2009.

PART II–PUBLIC–PRIVATE PARTNERSHIP AGREEMENTS

Nature of PPP Agreement.

4. (1) A Public-Private Agreement (PPP Agreement) is an agreement between a contracting authority and a private partner, made in accordance with this Act in which the private partner–

(a) agrees to perform or undertake any infrastructure project or social sector service project;

(b) assumes financial, technical or operational risks in connection with the performance of a public function or the use of public property; and

(c) receives consideration for performing a public function or utilising public property, by way of–

(i) a fee from any revenue fund or budgetary fund of the Government;

(ii) user levies collected by the private partner from end-users or customers for a service provided by the private partner; or

(iii) a combination of the consideration paid under subparagraphs (i) and (ii).