



Government of India
Ministry of Finance
Department of Economic Affairs



Scheme and Guidelines for Financial Support to

Public Private Partnerships in Infrastructure



INFRASTRUCTURE
Building for Growth





Government of India
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Department of Economic Affairs

Scheme and Guidelines for Financial Support to

Public Private Partnerships in Infrastructure

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Abbreviations

BOLT	Build Operate Lease Transfer
BOOT	Build Own Operate Transfer
BOT	Build Operate Transfer
DEA	Department of Economic Affairs, Ministry of Finance, Government of India
EC	Empowered Committee
EI	Empowered Institution
FI	Financial Institution
GoI	Government of India
LFI	Lead Financial Institution
NPV	Net Present Value
O&M	Operations and Maintenance
PPP	Public Private Partnership
PPPAC	Public Private Partnership Appraisal Committee
RFP	Request for Proposal
RFQ	Request for Qualification
VGF	Viability Gap Funding

Preface

Availability of quality infrastructure is a pre-requisite to achieve broad based and inclusive growth of the Indian economy on a sustained basis.

There has been an increasing realisation and consequent engagement of the private sector in provisioning of infrastructure. This involvement has been necessitated on account of the need to bring in the efficiencies of the private and commercial enterprise as well as supplement the limited public sector resources vis-à-vis the requirements of bridging the infrastructure deficit.

Investment decisions in the infrastructure sector through private sector engagement remains a challenge, especially where there is lack of excludability. Infrastructure projects, often have high social but an unacceptable commercial rate of return. These are generally characterised by substantial investments, long gestation periods, fixed returns, etc. that make it essential that Government supports infrastructure financing, through appropriate financial instruments and incentives. Capital grant as an instrument of government support to make socially viable projects commercially viable through an efficient and transparent allocation basis is an accepted economic proposition.

With a view to support the infrastructure projects, the Scheme for Support to PPPs in Infrastructure (Viability Gap Funding Scheme) was announced in 2004 and the modalities to operationalise it put in place by 2005. The Scheme aims to ensure wide spread access to infrastructure provided through the PPP framework by subsidising the capital cost of their access. Meeting the funding gap to make economically essential projects commercially viable would obviate the need for Government funding for such projects and allow private sector participation in the projects, thus facilitating private sector efficiencies in infrastructure development.

The Scheme provides financial support in the form of grants, one time or deferred, to infrastructure projects undertaken through public private partnerships with a view to make them commercially viable. The Scheme provides total Viability Gap Funding up to twenty percent of the total project cost. The Government or statutory entity that owns the project may, if it so decides, provide additional grants out of its budget up to further twenty

Meeting the funding gap to make economically essential projects commercially viable would obviate the need for Government funding for such projects and allow private sector participation in the projects, thus facilitating private sector efficiencies in infrastructure development

The Sponsoring Authority can seek preliminary 'eligibility for consideration' before posing the detailed project proposal for 'in principle' approval

percent of the total project cost. Viability Gap Funding under the Scheme is normally in the form of a capital grant at the stage of project construction.

The Guidelines for Financial Support to PPPs in Infrastructure were issued by Ministry of Finance in January 2006. The guidelines essentially flow from the provisions of the Scheme, approved by CCEA in 2005, and prescribe the procedure to be followed for posing proposals for seeking Viability Gap Funding for PPP projects.

Subsequently, recognising that the development of project documents is a detailed, complex and time consuming process, Ministry of Finance has issued guidelines to verify admissibility of the project under the Scheme. The Sponsoring Authority can seek preliminary 'eligibility for consideration' before posing the detailed project proposal for 'in principle' approval. Department of Economic Affairs would examine the 'eligibility for consideration' proforma and convey whether the proposal fulfils the requirements of the VGF Scheme and can be considered by the approval committee. This facility is optional and can be availed if necessary. Proposals can also be submitted directly for consideration by the approval committee for grant of Viability Grant Funding.

This compendium brings together the guidelines and notifications issued by Ministry of Finance to implement the Scheme. It is hoped that the compendium will be useful to the project authorities at the Central, State and Municipal level and will serve as a single point reference for the Scheme.

Checklist

I. Proposal for grant of 'in principle' approval

- a. EI memo with Annexures
- b. Feasibility Report/Detailed Project Report
- c. RFP Bidding Document
 - Vol. I Instruction of Bidders
 - Vol. II Draft Concession Agreement
 - Vol. III Schedules
- d. Statement on Deviation from MCA, if any
- e. Other project agreements as applicable

The above documents and soft copy thereof are to be provided in 6 sets for consideration by member of Empowered Institution

II. Proposal for grant of final approval

- a. EI memo for final approval
- b. Appraisal Report of the project by Lead Financial Institution
- c. Executed project agreement
- d. Certificate from the Sponsoring Authority that all conditions specified in the scheme have been complied with.

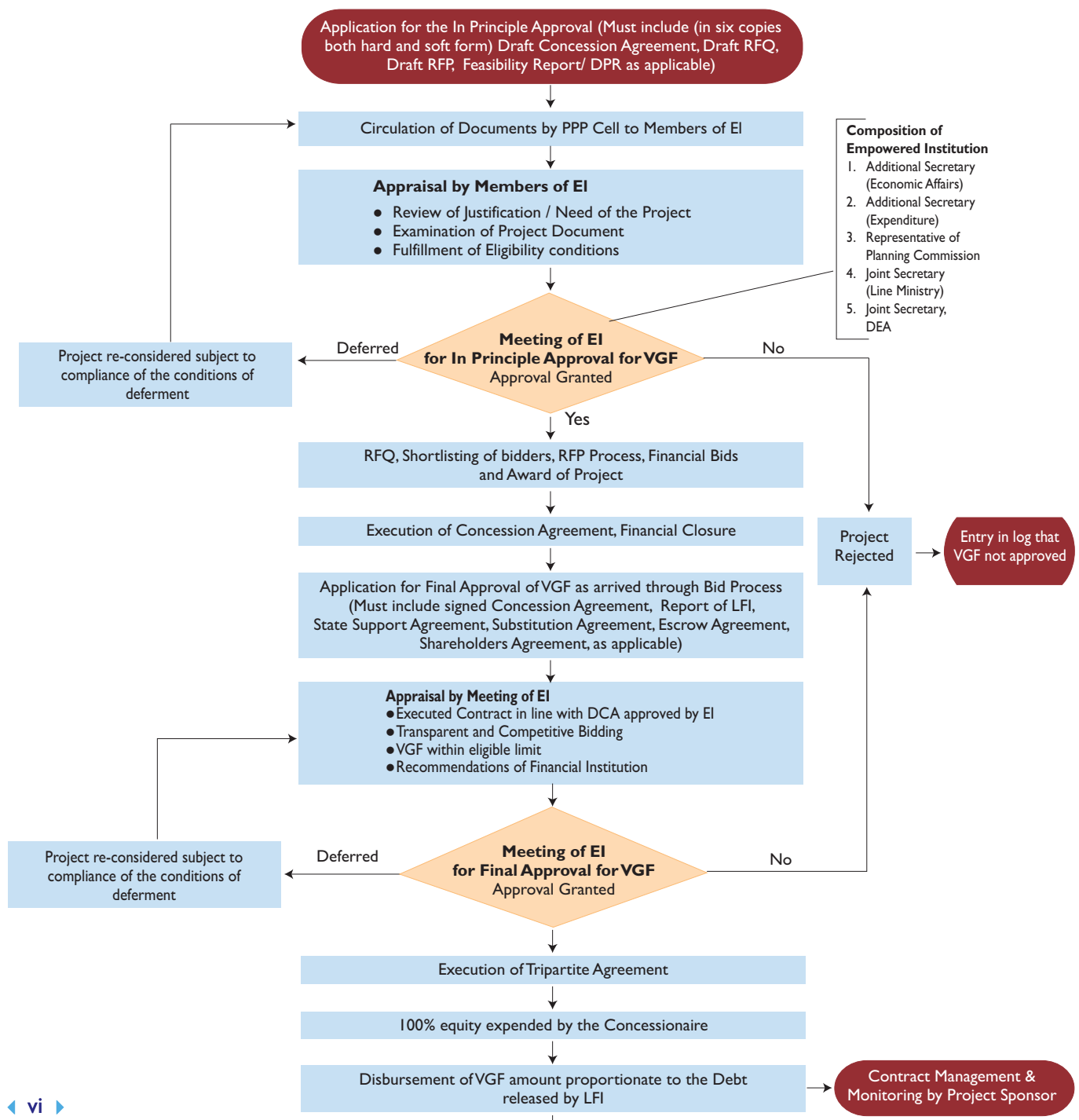
The above documents and soft copy thereof are to be provided in 6 sets for consideration by member of Empowered Institution

III. Disbursement of VGF

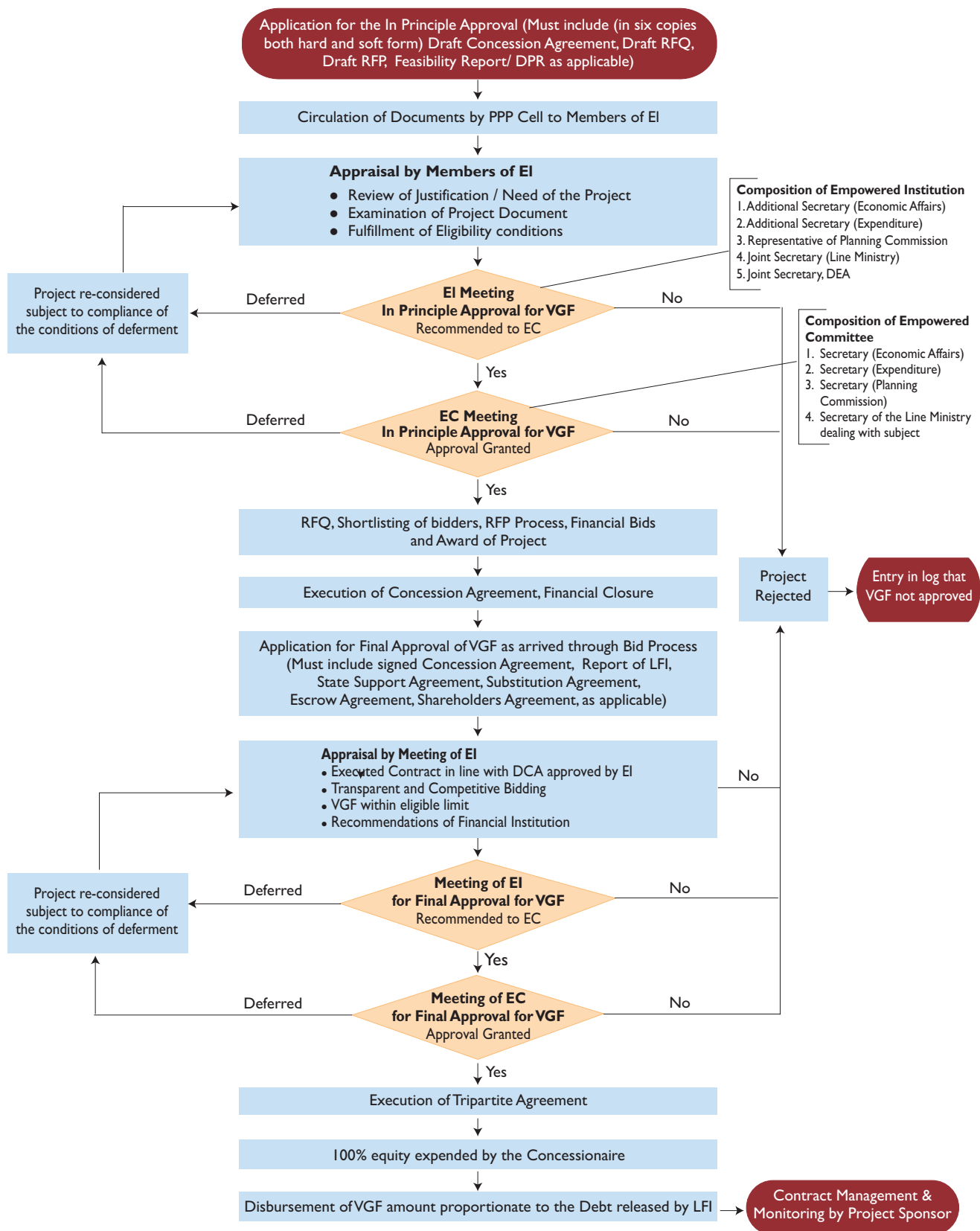
- a. 4 copies of Tripartite Agreement

VGF Process Flow

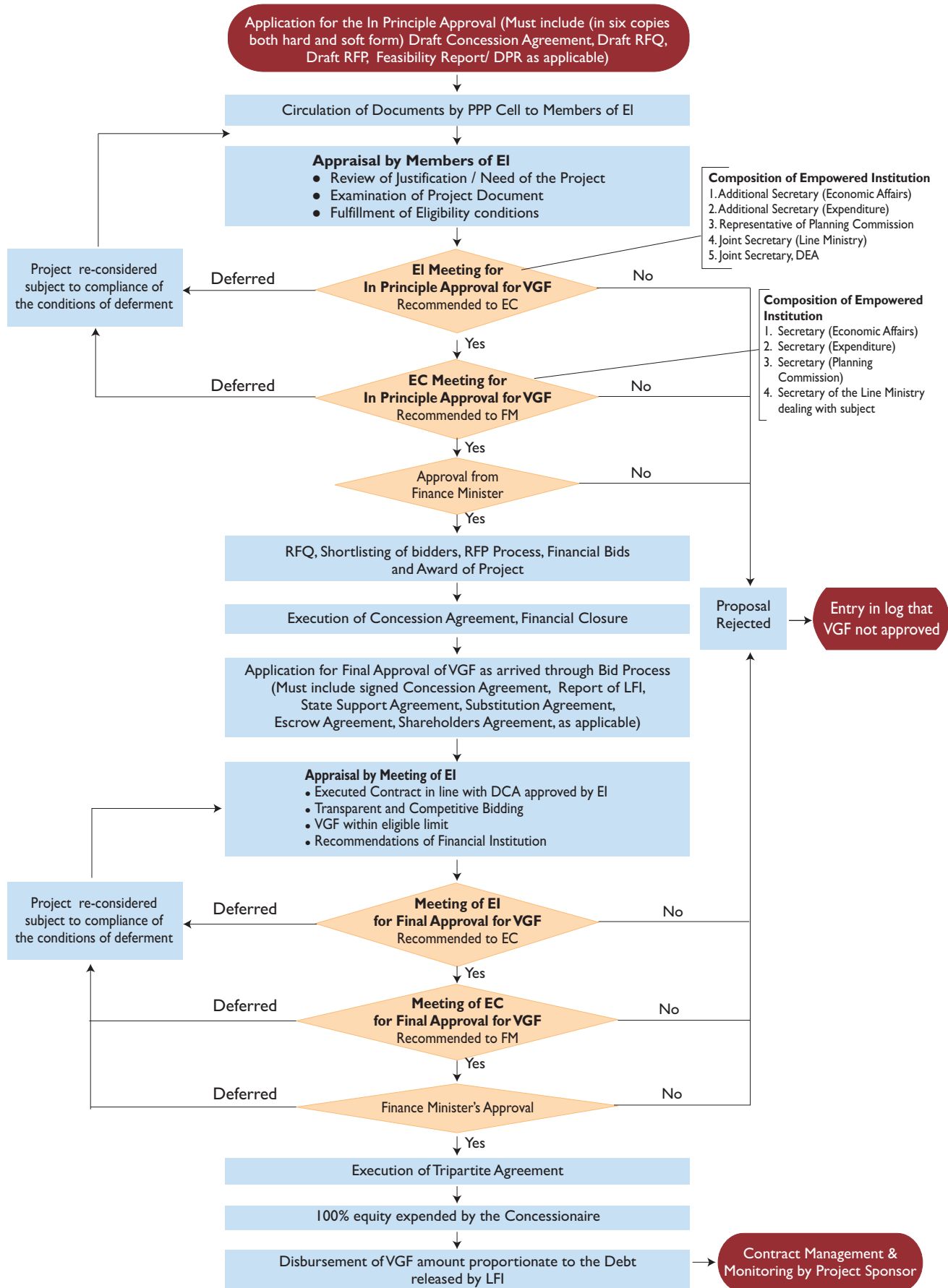
VGF Process where VGF sought is up to Rs 100 crore



VGF Process where VGF sought is more than Rs 100 crore and up to Rs 200 crore



VGF Process where VGF sought is more than Rs 200 crore



Guidelines for Financial Support to Public Private Partnerships in Infrastructure

Viability Gap Funding Scheme

1. Introduction

1.1 The Central Government has notified a Scheme for financial support to infrastructure projects that are to be undertaken through Public Private Partnerships (PPPs). A copy of the Scheme is at Annex-I.

1.2 The procedure to be followed for submission, appraisal and approval of financial support under this Scheme is specified below.

2. Institutional Structure

2.1 The institutional structure for appraisal and approval of financial support to PPPs is specified at Annex-II.

3. Applicability

3.1 These guidelines will apply to PPP projects posed by the Central Ministries, State Governments and Statutory Authorities, as the case may be, which own the underlying assets (see Rule 5.1).

3.2 Proposals to be made under this Scheme shall be considered for providing Viability Gap Funding (VGF), one time or deferred, with the objective of making a PPP project commercially viable (see definition).

3.3 The proposal shall relate to a Public Private Partnership project which is based on a contract or concession agreement between a Government or statutory entity on the one side and a private sector company on the other side, for delivering an infrastructure service on payment of user charges (see definition).

Proposals under this Scheme shall be considered for providing Viability Gap Funding with the objective of making a PPP project commercially viable

Note: The Guidelines for Financial Support to PPPs in Infrastructure were notified by Ministry of Finance, Department of Economic Affairs vide OM No. 1/4/2005-PPP dated January 23, 2006.

3.4 This Scheme will apply only if the contract/concession is awarded in favour of a private sector company in which 51 percent or more of the subscribed and paid up equity is owned and controlled by a private entity (see definition).

3.5 A private sector company shall be eligible for VGF only if it is selected on the basis of open competitive bidding and is responsible for financing, construction, maintenance and operation of the project during the concession period (see Rule 3.1).

3.6 The project should provide a service against payment of a pre-determined tariff or user charge (see Rule 3.1).

4. Appraisal and 'In Principle' Approval by Empowered Institution

4.1 The proposal for seeking clearance of the Empowered Institution shall be sent (in six copies, both in hard and soft form) to the PPP Cell of the Department of Economic Affairs in the format specified at Annex-III. The proposal should include copies of all project agreements (such as concession agreement, state support agreement, substitution agreement, escrow agreement, O&M agreement and shareholders' agreement, as applicable) and the project report (see Rules 3.1 and 5.1).

4.2 The proposal will be circulated by the PPP Cell to all members of the Empowered Institution for their comments. All comments received within four weeks shall be forwarded by the PPP Cell to the concerned Administrative Ministry, State Government or statutory authority, as the case may be, for submitting a written response to each of the comments. In case the project is based on a model concession agreement, the comments will be furnished within two weeks (see Rules 5.2 and 5.4).

4.3 The proposal, along with the project report, concession agreement and supporting agreements/documents, together with the comments of the respective Ministries and the response thereto, will be submitted by the PPP Cell to the Empowered Institution for consideration and 'in principle' approval.

4.4 While submitting the proposal to the Empowered Institution, the PPP Cell will indicate whether the proposal conforms to the mandatory requirements of the Scheme. Deficiencies, if any, will be indicated in the note of PPP Cell. In particular, the Department of Economic Affairs and the Department of Expenditure will examine the proposals with a view to ensuring that they conform to the conditions specified in the Scheme. Planning Commission will examine the project report and the concession agreement with a view to ensuring that the proposal is broadly in order.

4.5 The Empowered Institution will either approve the proposal in principle (with or without modifications) or advise the concerned Ministry, State Government or statutory authority, as the case may be, to provide

Private sector company shall be eligible for VGF only if it is selected on the basis of open competitive bidding and is responsible for financing, construction, maintenance and operation of the project during the concession period

additional clarifications/information or to make necessary changes for further consideration of the Empowered Institution (see Rule 5.3).

4.6 Approval under this Scheme will be for the purposes of this Scheme only. All other statutory, financial or administrative approvals shall be obtained as applicable (see Rule 5.6). For projects owned by the Central Government or its statutory entities, approval of PPPAC shall also be obtained in accordance with the guidelines issued by the Ministry of Finance. However, these approvals may be obtained simultaneously in order to save on time.

4.7 In cases where financial support is available from any other Ministry of the Central Government under an on-going Scheme for assistance to PPPs, the proposal would be sent to such Ministry for consideration. In case the Ministry recommends that the proposal be considered for additional assistance under this Scheme, the same shall be submitted to the Empowered Committee for consideration (see Rule 5.7).

4.8 Once cleared by the Empowered Institution, the project would be eligible for financial support under this Scheme.

The quantum of financial support (VGF) to be provided shall be equivalent to the lowest bid for capital subsidy, but subject to a maximum of 20 percent of the total project cost

5. Viability Gap Funding

5.1 The quantum of financial support (VGF) to be provided under this Scheme shall be in the form of a capital grant at the stage of project construction. The amount of VGF shall be equivalent to the lowest bid for capital subsidy, but subject to a maximum of 20 percent of the total project cost. In case the sponsoring Ministry/State Government/statutory entity proposes to provide any assistance over and above the said VGF, it shall be restricted to a further 20 percent of the total project cost (see Rule 4.1 and 4.2).

6. Invitation to Bid

6.1 Financial bids shall be invited by the concerned Ministry, State Government or statutory entity, as the case may be, for award of the project within four months of the approval of the Empowered Institution. This period may be extended by the Department of Economic Affairs, as necessary (see Rule 7.1).

6.2 The private sector company shall be selected through a transparent and open competitive bidding process. The criterion for bidding shall be the amount of VGF required by a private sector company where all other parameters are comparable (see Rule 6.1).

7. Final Approval by Empowered Institution

7.1 Within three months from the date of award, or such extended period as may be permitted, the Lead Financial Institution shall present its appraisal of the project (in six copies, both in hard and soft form) for consideration and approval of the Empowered Institution. The appraisal shall be accompanied by an updated application in the format specified at Annex-III along with the

The Lead Financial Institution is responsible for regular monitoring and periodic evaluation of project compliance with agreed milestones

project report and project agreements. The Lead Financial Institution shall verify the contents of the application and convey its recommendation to the Empowered Institution (see Rule 7.2).

7.2 Prior to final approval by the Empowered Institution, the Ministry, State Government or statutory authority, as the case may be, proposing the project, shall certify that the bidding process conforms to the provisions of this Scheme and that all the conditions specified in the Scheme have been complied with (see Rule 6.2).

7.3 The procedure specified in para 4 above shall be followed *mutatis mutandis* for examination and approval of the appraisal report of the Lead Financial Institution.

8. Disbursement of VGF

8.1 Prior to disbursement, the Empowered Institution, the Lead Financial Institution and the private sector company shall enter into a Tripartite Agreement in such format as may be prescribed by the Empowered Committee from time to time (see Rule 8.3).

8.2 For the purposes of this Scheme, a Lead Financial Institution shall be the Financial Institution (FI) that is funding the project, and in case of a consortium of FIs, the FI designated as such by the consortium shall be the Lead Financial Institution (see definition).

8.3 VGF shall be disbursed only after the private sector company has subscribed and expended the equity contribution required for the project and will be released in proportion to debt disbursements remaining to be disbursed thereafter (see Rule 8.1).

8.4 VGF shall be released to the Lead Financial Institution as and when due (see Rule 8.2).

9. Monitoring

9.1 The Lead Financial Institution shall be responsible for regular monitoring and periodic evaluation of project compliance with agreed milestones and performance levels, particularly for the purposes of disbursing the VGF. It shall also send a quarterly progress report to the Empowered Institution (see Rule 7.3).

Annex-I

Scheme for Support to Public Private Partnerships in Infrastructure

- A. Whereas the Government of India recognises that there is significant deficit in the availability of physical infrastructure across different sectors and that this is hindering economic development;
- B. Whereas the development of infrastructure requires large investments that cannot be undertaken out of public financing alone, and that in order to attract private capital as well as the techno-managerial efficiencies associated with it, the Government is committed to promoting Public Private Partnerships (PPPs) in infrastructure development; and
- C. Whereas the Government of India recognises that infrastructure projects may not always be financially viable because of long gestation periods and limited financial returns, and that financial viability of such projects can be improved through Government support;
- D. Now, therefore, the Government of India has decided to put into effect the following Scheme for providing financial support to bridge the viability gap of infrastructure projects undertaken through Public Private Partnerships.

1. Short Title and Extent

1. This Scheme will be called the Scheme for Financial Support to Public Private Partnerships (PPPs) in Infrastructure. It will be a Plan Scheme to be administered by the Ministry of Finance. Suitable budgetary provisions will be made in the Annual Plans on a year to year basis.
2. The Scheme shall come into force with immediate effect.

2. Definitions

In this Scheme, unless the context otherwise requires:

Empowered Committee means a Committee under the Chairmanship of Secretary (Economic Affairs) and including Secretary (Planning Commission),

Government of India has decided to put into effect Scheme for providing Financial Support to bridge the viability gap of infrastructure projects undertaken through Public Private Partnerships

Secretary (Expenditure) and the Secretary of the line ministry dealing with the subject.

Empowered Institution means an institution, company or inter-ministerial group designated by the Government for the purposes of this Scheme.

Lead Financial Institution means the financial institution (FI) that is funding the PPP project, and in case there is a consortium of FIs, the FI designated as such by the consortium.

Private Sector Company means a company in which 51 percent or more of the subscribed and paid up equity is owned and controlled by a private entity.

Project Term means the duration of the contract or concession agreement for the PPP project.

Public Private Partnership (PPP) Project means a project based on a contract or concession agreement, between a Government or statutory entity on the one side and a private sector company on the other side, for delivering an infrastructure service on payment of user charges.

Total Project Cost means the lower of the total capital cost of the PPP Project: (a) as estimated by the government/statutory entity that owns the project; (b) as sanctioned by the Lead Financial Institution; and (c) as actually expended; but does not in any case include the cost of land incurred by the government/statutory entity.

Viability Gap Funding or **Grant** means a grant one-time or deferred, provided under this Scheme with the objective of making a project commercially viable.

Public Private Partnership Project is a project based on a contract or concession agreement, between a Government or statutory entity on the one side and a private sector company on the other side, for delivering an infrastructure service on payment of user charges

3. Eligibility

In order to be eligible for funding under this Scheme, a PPP project shall meet the following criteria:

- i. The project shall be implemented i.e. developed, financed, constructed, maintained and operated for the Project Term by a Private Sector Company to be selected by the Government or a statutory entity through a process of open competitive bidding; provided that in case of railway projects that are not amenable to operation by a Private Sector Company, the Empowered Committee may relax this eligibility criterion.
- ii. The PPP Project should be from one of the following sectors:
 - a. Roads and bridges, railways, seaports, airports, inland waterways;
 - b. Power;
 - c. Urban transport, water supply, sewerage, solid waste management and other physical infrastructure in urban areas;
 - d. Infrastructure projects in Special Economic Zones and internal infrastructure in National Investment and Manufacturing Zones;¹
 - e. International convention centres and other tourism infrastructure projects;

¹ Sector added by Department of Economic Affairs vide Notification No. 3C/1/2012-PPP, dated February 02, 2012.

- f. Capital investment in the creation of modern storage capacity including cold chains and post-harvest storage;²
- g. Education, health and skill development, without annuity provision;³
- h. Oil/Gas/Liquefied Natural Gas (LNG) storage facility (includes city gas distribution network);
- i. Oil and Gas pipelines (includes city gas distribution network);
- j. Irrigation (dams, channels, embankments, etc);
- k. Telecommunication (Fixed Network) (includes optic fibre/wire/ cable networks which provide broadband/internet);
- l. Telecommunication towers;
- m. Terminal markets;
- n. Common infrastructure in agriculture markets; and
- o. Soil testing laboratories.⁴

Provided that the Empowered Committee may, with approval of the Finance Minister, add or delete sectors/sub-sectors from the aforesaid list.

- iii. The project should provide a service against payment of a pre-determined tariff or user charge.
- iv. The concerned Government/statutory entity should certify, with reasons:
 - a. That the tariff/user charge cannot be increased to eliminate or reduce the viability gap of the PPP;
 - b. That the project term cannot be increased for reducing the viability gap; and
 - c. That the capital costs are reasonable and based on the standards and specifications normally applicable to such projects and that the capital costs cannot be further restricted for reducing the viability gap.

4. Government Support

- 1. The total Viability Gap Funding under this Scheme shall not exceed twenty percent of the Total Project Cost; provided that the Government or statutory entity that owns the project may, if it so decides, provide additional grants out of its budget, but not exceeding a further twenty percent of the Total Project Cost.
- 2. Viability Gap Funding under this Scheme will normally be in the form of a capital grant at the stage of project construction. Proposals for any other form of assistance may be considered by the Empowered Committee and sanctioned with the approval of the Finance Minister on a case-by-case basis.
- 3. Viability Gap Funding up to Rs. 100 crore (Rupees one hundred crore) for each project may be sanctioned by the Empowered Institution, subject to the budgetary ceilings indicated by the Finance Ministry. Proposals up to Rs. 200 crore (Rupees two hundred crore) may be sanctioned by

The total Viability Gap Funding under this Scheme shall not exceed twenty percent of the Total Project Cost; provided that the Government or statutory entity that owns the project may, if it so decides, provide additional grants out of its budget, but not exceeding a further twenty percent of the Total Project Cost

² Sector added by Department of Economic Affairs vide Notification No. 3C/1/2011-PPP dated March 17, 2011.

³ Sector added by Department of Economic Affairs vide Notification No. 3C/1/2011-PPP dated May 04, 2011.

⁴ Sectors listed at (h) to (o) added by Department of Economic Affairs vide Notification No 3C/1/2012-PPP dated May 24, 2011.

The Private Sector Company shall be selected through a transparent and open competitive bidding process

the Empowered Committee, and amounts exceeding Rs. 200 crore may be sanctioned by the Empowered Committee with the approval of the Finance Minister.

4. Unless otherwise directed by the Ministry of Finance, the Empowered Institutions may approve project proposals with a cumulative capital outlay equivalent to ten times the budget provisions in the respective Annual Plan.
5. In the first two years of operation of the Scheme, projects meeting the eligibility criteria will be funded on a first come, first served basis. In later years, if need arises, funding may be provided based on an appropriate formula, to be determined by the Empowered Committee, that balances needs across sectors in a manner that would make broad base the sectoral coverage and avoid pre-empting of funds by a few large projects.

5. Approval of Project Proposals

1. Project proposals may be posed by a Government or statutory entity which owns the underlying assets. The proposals shall include the requisite information necessary for satisfying the eligibility criteria specified in paragraph 3 above.
2. Projects based on standardised/model documents duly approved by the respective Government would be preferred. Standalone documents may be subjected to detailed scrutiny by the Empowered Institution.
3. The Empowered Institution will consider the project proposals for Viability Gap Funding and may seek the required details for satisfying the eligibility criteria.
4. Within 30 days of receipt of a project proposal, duly completed as aforesaid, the Empowered Institution shall inform the sponsoring Government/statutory entity whether the project is eligible for financial assistance under this Scheme. In case the project is based on standalone documents (not being duly approved model/standard documents), the approval process may require an additional 60 (sixty) days.
5. In the event that the Empowered Institution needs any clarifications or instructions relating to the eligibility of a project, it may refer the case to the Empowered Committee for appropriate directions.
6. Notwithstanding the approvals granted under this Scheme, projects promoted by the Central Government or its statutory entities shall be approved and implemented in accordance with the procedures specified from time to time.
7. In cases where Viability Gap Funding is budgeted under any on-going Plan Scheme of the Central Government, the inter-se allocation between such on-going Scheme and this Scheme shall be determined by the Empowered Committee.

6. Procurement Process for PPP Projects

1. The Private Sector Company shall be selected through a transparent and open competitive bidding process. The criterion for bidding shall be the amount of Viability Gap Funding required by a Private Sector Company for implementing the project where all other parameters are comparable.
2. The Government or statutory entity proposing the project shall certify that the bidding process conforms to the provisions of this Scheme and

convey the same to the Empowered Institution prior to disbursement of the Grant.

7. Appraisal and Monitoring by Lead Financial Institution

1. Within four months from the date on which eligibility of the project is conveyed by the Empowered Institution to the concerned Government/statutory entity, the PPP project shall be awarded in accordance with paragraph 6 above; provided that upon application made to it by the concerned Government/statutory entity, the Empowered Institution may extend this period by not more than two months at a time.
2. The Lead Financial Institution shall, within three months from the date of bid award, present its appraisal of the project for the consideration and approval of the Empowered Institution; provided that upon application made to it by the concerned Government/statutory entity, the Empowered Institution may extend this period by not more than one month at a time.
3. The Lead Financial Institution shall be responsible for regular monitoring and periodic evaluation of project compliance with agreed milestones and performance levels, particularly for the purpose of disbursement of Viability Gap Funding. It shall send quarterly progress reports to the Empowered Institution which will make a consolidated progress report once every quarter for review by the Empowered Committee.

A Grant under this Scheme shall be disbursed only after the Private Sector Company has subscribed and expended the equity contribution required for the project and will be released in proportion to debt disbursements remaining to be disbursed thereafter

8. Disbursement of Grant

1. A Grant under this Scheme shall be disbursed only after the Private Sector Company has subscribed and expended the equity contribution required for the project and will be released in proportion to debt disbursements remaining to be disbursed thereafter.
2. The Empowered Institution will release the Grant to the Lead Financial Institution as and when due, and obtain reimbursement thereof from the Finance Ministry.
3. The Empowered Institution, the Lead Financial Institution and the Private Sector Company shall enter into a Tripartite Agreement for the purposes of this Scheme. The format of such Tripartite Agreement shall be prescribed by the Empowered Committee from time to time.

9. Revolving Fund

A revolving fund of Rs. 200 crore (Rupees two hundred crore) shall be provided by the Finance Ministry to the Empowered Institution. The Empowered Institution shall disburse funds to the respective lead financial Institutions and claim reimbursement thereof from the Ministry of Finance.

10. Guidelines

The Guidelines issued vide Ministry of Finance Press Release as well as OM of F.No. 2/10/04-INF dated August 19, 2004 stand withdrawn with immediate effect.

Annex-II

Setting up an Empowered Committee and Empowered Institution

Cabinet Committee on Economic Affairs in its meeting of July 25, 2005 approved the Scheme for Support to Public Private Partnerships in Infrastructure. In pursuance of the decision of the Cabinet, it has been decided to constitute an Empowered Committee and Empowered Institution for approving financial assistance to such projects which satisfies all the eligibility criteria indicated in the Scheme.

2. The composition of Empowered Committee will be as follows:
 - (a) Secretary (Economic Affairs)
 - (b) Secretary (Planning Commission)
 - (c) Secretary (Expenditure)
 - (d) Secretary of the line Ministry dealing with the subject
3. The Empowered Committee will:
 - i. Sanction Viability Gap Funding up to Rs. 200 crore (Rupees two hundred crore) for each project subject to the budgetary ceilings indicated by the Finance Ministry. Amounts exceeding Rs. 200 crore may be sanctioned by the Empowered Committee with the approval of Finance Minister;
 - ii. Determine the appropriate formula that balances needs across sectors in a manner that broad bases the sectoral coverage and avoids pre-empting of funds by a few large projects;
 - iii. Determine the inter-se allocation between any on-going Plan Scheme providing Viability Gap Funding and this Scheme; and
 - iv. Provide clarifications or instructions relating to eligibility of a project for such support as and when requested by Empowered Institution.
4. The composition of the Empowered Institution is as follows:
 - (a) Additional Secretary (Economic Affairs)
 - (b) Additional Secretary (Expenditure)

In pursuance of the decision of the Cabinet, it has been decided to constitute an Empowered Committee and Empowered Institution for approving financial assistance to such projects which satisfies all the eligibility criteria indicated in the Scheme

Note: Setting up an Empowered Committee and Empowered Institution was notified by the Ministry of Finance, Department of Economic Affairs vide OM No. F.No. 2/10/2004-INF dated August 18, 2005

- (c) Representative of Planning Commission not below the rank of Joint Secretary
 - (d) Joint Secretary in the line Ministry dealing with the subject
 - (e) Joint Secretary, DEA - Member Secretary
5. The Empowered Institution will sanction projects for Viability Gap Funding upto Rs. 100 crore (Rupees one hundred crore) for each eligible project subject to the budgetary ceiling indicated by the Finance Ministry. Empowered Institution will also consider other proposals and place them before the Empowered Committee.
6. **Eligible Sector:** The sectors eligible for Viability Gap Funding under this Scheme are:
- i. Roads and bridges, railways, seaports, airports, inland waterways;
 - ii. Power;
 - iii. Urban transport, water supply, sewerage, solid waste management and other physical infrastructure in urban areas;
 - iv. Infrastructure projects in Special Economic Zones; and
 - v. International convention centres and other tourism infrastructure projects.

Provided that the Empowered Committee may, with approval of the Finance Minister, add or delete sectors/sub-sectors from the aforesaid list.

Pradip K. Deb
Joint Secretary to Government of India

*Empowered
Committee may, with
approval of the Finance
Minister, add or delete
sectors/sub-sectors
from the list*

Annex-III

Memorandum for Empowered Institution

Scheme for Financial Support to PPPs in Infrastructure

S. No.	Item	Response
1	General	
1.1	Name of the Project	
1.2	Type of PPP (BOT, BOOT, BOLT, OMT etc.)	
1.3	Location (State/District/Town)	
1.4	Central Ministry/State Government/Statutory Authority posing the project as owner of the underlying assets (see Rule 5.1)	
1.5	Name of the Government/statutory entity which will sign the concession agreement (see definition)	
1.6	Whether the contract/concession is to be awarded to a private sector company (see definition)	
1.7	Will the private sector company be responsible for financing, construction, maintenance and operation of the project (see Rule 3.1)	
2	Project Description	
2.1	Brief description of the project	
2.2	Justification for the project	
2.3	Possible alternatives, if any	
2.4	Estimated total project cost with break-up under major heads of expenditure. Also indicate the basis of cost estimation. (see definition)	
2.5	Phasing of investment	
2.6	Project Implementation Schedule (PIS)	

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S. No.	Item	Response
3	Financing Arrangements	
3.1	Sources of financing (equity, debt, mezzanine capital etc.)	
3.2	Indicate the revenue streams of the Project (annual flows over project life). Also indicate the underlying assumptions.	
3.3	Indicate the NPV of revenue streams with 12 percent discounting	
3.4	Who will fix the tariff/user charges? Please specify the process in detail.	
3.5	Will the project have pre-determined user charges/tariffs (see Rule 3.1)	
3.6	Can the user charges/tariffs be increased for reducing the viability gap? If no, please furnish the certificate as per Appendix-A. (see Rule 3.1)	
3.7	Can the concession period be increased for reducing the viability gap? If no, please furnish the certificate as per Appendix-B. (see Rule 3.1)	
3.8	Can the total project costs be restricted or phased out for reducing the viability gap? If no, please furnish the certificate as per Appendix-C. (see Rule 3.1)	
3.9	Have any FIs been approached for funding the project? If yes, there response may be indicated.	
4	IRR	
4.1	Economic IRR (if computed)	
4.2	Financial IRR, indicating various assumptions (attach separate sheet if necessary)	
5	Clearances	
5.1	In case the project is owned by the Central Government or its statutory entities, the status of PPPAC approval may be indicated	
5.2	Status of environmental clearances	
5.3	Clearance required from the State Government and other local bodies	
5.4	Other support required from the State Government	
6	GoI Support	
6.1	Likely amount of VGF required for the project (also indicate as percent of item 2.4)	

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S. No.	Item	Response
6.2	Will the VGF be used as a capital grant at the stage of project construction? If no, please furnish details of the alternative proposal. (see Rule 4.2)	
6.3	Will the sponsoring Ministry/State Government/statutory entity provide any assistance in addition to the VGF under this Scheme? If yes, please furnish details. (see Rule 4.1)	
6.4	Is there any other Scheme of the Central Government under which this project is eligible for financial assistance? If yes, indicate the details thereof. (see Rule 5.7)	
7	Concession Agreement	
7.1	Is the Concession Agreement based on a duly approved model concession agreement? If yes, indicate the details thereof (in a note to be attached) along with a copy of the MCA. (see Rules 5.2 and 5.4)	
7.2	Have any variations in the MCA been proposed? If yes, please provide a detailed note. (to be attached)	
7.3	Details of the Concession Agreement (attached at Appendix-D)	
8	Criteria for short-listing	
8.1	Is short-listing to be in one stage or two stages?	
8.2	Indicate the criteria for short-listing (attach separate sheet if necessary)	
9	Criteria for Bidding	
9.1	Will the bidding parameter be the minimum VGF required? If no, please indicate the bidding parameter(s). (see Rules 3.1 and 6.1)	
9.2	Have all other conditions, specifications and project agreements been frozen prior to inviting financial bids? If no, please furnish the details with justification thereof. (see Rule 6.1)	
10	Others	
10.1	Remarks, if any	

The (name of project) has been submitted by the undersigned as the duly authorised officer of (name of Ministry, State Government or Statutory Authority, as the case may be) for seeking Viability Gap Funding under the Scheme for Financial Support to PPPs in Infrastructure.

It is certified that the proposal complies with the provisions and eligibility criteria specified in the aforesaid Scheme.

The above statements as also the information contained in the enclosures are true to the best of my knowledge and belief.

Dated:

*(Name and designation of
Officer alongwith official stamp)*

Appendix-A

Certificate Relating to User Charge/Tariff

(To be furnished as required under Rule 3 of the Scheme for Financial Support to PPPs in Infrastructure)

It is certified that:

- a. The (name of project) has been submitted by the undersigned as the duly authorised officer of (name of Ministry, State Government or statutory authority, as the case may be) for seeking Viability Gap Funding under the Scheme for Financial Support to PPPs in Infrastructure.
- b. The undersigned hereby certifies that the proposal complies with the provisions and eligibility criteria specified in the aforesaid Scheme.
- c. The user charge/tariff for the project has been fixed under and in accordance with (state law and rule along with relevant sections). A copy of the relevant Act and Rules is attached.
- d. The user charge/tariff as fixed for this project is indicated below (attach separate sheet if necessary).
- e. The aforesaid user charge/tariff cannot be fixed at a higher level for the reasons stated below.
- f. That the above statements are true to the best of my knowledge and belief.

Dated:

*(Name and designation of
Officer along with official stamp)*

Appendix-B

Certificate relating to Concession Period for the Project

(To be furnished as required under Rule 3 of the Scheme for Financial Support to PPPs in Infrastructure)

It is certified that:

- a. The (name of project) has been submitted by the undersigned as the duly authorised officer of (name of Ministry, State Government or statutory authority, as the case may be) for seeking Viability Gap Funding under the Scheme for Financial Support to PPPs in Infrastructure.
- b. The concession period for the project has been fixed keeping in view the considerations noted below.
- c. The aforesaid concession period cannot be increased for the reasons stated below.
- d. That the above statements are true to the best of my knowledge and belief.

Dated:

*(Name and designation of
Officer along with official stamp)*

Appendix-C

Certificate relating to Total Project Cost

(To be furnished as required under Rule 3 of the Scheme for Financial Support to PPPs in Infrastructure)

It is certified that:

- a. The (name of project) has been submitted by the undersigned as the duly authorised officer of (name of Ministry, State Government or statutory authority, as the case may be) for seeking Viability Gap Funding under the Scheme for Financial Support to PPPs in Infrastructure.
- b. The total project cost for the project is reasonable and has been fixed in accordance with the standards and specifications normally followed for similar projects (attach separate sheet if any details are to be furnished).
- c. That the aforesaid total project costs cannot be reduced for reasons indicated below (attach separate sheet if necessary).
- d. That the above statements are true to the best of my knowledge and belief.

Dated:

(Name and designation of Officer
along with official stamp)

Appendix-D

Brief particulars of the Concession Agreement

A. Sponsoring Ministry:

C. Legal Consultant:

B. Name and location of the Project:

D. Financial Consultant:

S. No.	Item	Clause No.	Description
1	General		
1.1	Scope of the Project (Please state in about 200 words)		
1.2	Nature of Concession to be granted		
1.3	Period of Concession and justification for fixing the period		
1.4	Estimated capital cost		
1.5	Likely construction period		
1.6	Conditions precedent, if any, for the concession to be effective		
1.7	Status of land acquisition		
2	Construction and O&M		
2.1	Monitoring of construction; whether an independent agency/engineer is stipulated		
2.2	Minimum standards of Operation and Maintenance/Performance standards		
2.3	Penalties for violation of prescribed O&M standards/Performance standards		
2.4	Safety provisions relating to structures, users and construction works		
2.5	Penalties for violation of safety related provisions		
2.6	Environment related provisions		
3	Financial		
3.1	Maximum period for achieving financial close		
3.2	Nature and extent of capital grant/ subsidy stipulated		
3.3	Bidding parameter (capital subsidy or other parameter)		
3.4	Provisions for change of scope and the financial burden thereof		

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S. No.	Item	Clause No.	Description
3.5	Concession fee, if any, payable by the Concessionaire		
3.6	User charges/fee to be collected by the Concessionaire		
3.7	Indicate how the user fee has been determined; the legal provisions in support of user fee (attach the relevant rules/notification); and the extent and nature of indexation for inflation		
3.8	Provisions, if any, for mitigating the risk of lower revenue collection		
3.9	Provisions relating to escrow account, if any		
3.10	Provisions relating to insurance		
3.11	Provisions relating to audit and certification of claims		
3.12	Provisions relating to assignment/ substitution rights relating to lenders		
3.13	Provisions relating to change in law		
3.14	Provisions, if any for compulsory buy-back of assets upon termination/ expiry		
3.15	Contingent liabilities of the government		
	a. Maximum Termination Payment for Government/Authority Default		
	b. Maximum Termination Payment for Concessionaire Default		
	c. Specify any other penalty, compensation or payment contemplated under the agreement		
4	Others		
4.1	Provisions relating to competing facilities, if any		
4.2	Specify the Dispute Resolution Mechanism		
4.3	Specify the governing law and jurisdiction		
4.4	Other remarks, if any		

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Tripartite Agreement

This Tripartite Agreement is made at New Delhi on this [... ..] day of [... ..], [200 ...]

BETWEEN

1. [... ..] acting through [Shri Department of Ministry of] Government of India, New Delhi (hereinafter referred to as “Empowered Institution”),
2. [... ..], acting for itself and for the Lenders listed in Schedule as Lender, (hereinafter referred to as the “Lead Institution”) and having its registered office at [... ..] and its principal administrative offices at [... ..]

AND

3. [... .. LIMITED], a company incorporated and existing under the Companies Act, 1956 and having its registered office at [... ..], acting through its Director [Shri] duly authorised by the resolution passed at the meeting of its Board of Directors held on [... ..] (hereinafter referred to as the “Concessionaire”).

(The expressions “Empowered Institution”, the “Lead Institution” and the Concessionaire shall include their respective successors, and are hereinafter collectively referred to as the “Parties” and individually as “Party”)

AND WITH

[... .. a statutory body constituted under the provisions of the Act, /... .. a government company within the meaning of the Companies Act, 1956/the State of through its]* (the “Owner”) as confirming Party.

* Delete whichever is inapplicable

Note: Tripartite Agreement for the purposes of the Scheme for Financial Support to PPPs in Infrastructure was notified by Ministry of Finance, Department of Economic Affairs, vide OM No. 3A/1/2008-PPP dated May 23, 2008.

WHEREAS

- A. The Owner had pursuant to the Notice Inviting Prospectus No.
... Dated ... (the "Tender Notice") laid down and prescribed the technical and commercial terms and conditions and invited bids for construction, operation and maintenance of ... [Name of the Project] (the "Project") on BOT basis.
- B. After evaluation of the bids so received the Owner had accepted the bid of the Consortium comprising of [...], [...] and [...] and has consequent thereto entered into the Concession Agreement (as defined hereinafter), a true copy of which is annexed hereto and marked as Annexure 'A'; with the Concessionaire which has been promoted by the Consortium to undertake the Project.
- C. The Central Government has notified a Scheme called the "Scheme for Support to Public Private Partnerships in Infrastructure" (the "Scheme") for financial support to infrastructure projects that are to be undertaken through Public Private Partnerships.
- D. On an Application made by the Owner ("the Proposal") for the Project to be considered for viability gap funding ("VGF") under the Scheme, the Empowered Institution has agreed to provide to the Concessionaire VGF by way of grant under and in accordance with the Scheme to the extent and in the manner setforth hereinafter.
- E. The Scheme requires certain representations by the Owner and entering into of the tripartite agreement setting forth, inter alia, the terms and conditions of VGF grant.

Now therefore the parties hereto hereby agree and this agreement witnesseth as follows:

I. Definitions and Interpretations

- I.1 For the purposes of this Agreement, the following terms shall have the meaning hereinafter respectively assigned to them:
 - I.1.1 "**Agreement**" means this Tripartite Agreement, and amendments if any thereto made in accordance with the provisions contained herein in this behalf.
 - I.1.2 "**Balance Debt**" shall mean the balance principal amount of the debt agreed to be provided by the Lenders to the Concessionaire under the Financing Agreements for financing the Project Cost and which remains to be disbursed by the Lenders to the Concessionaire after the Concessionaire has subscribed and expended the equity contribution required for the Project.
 - I.1.3 "**Concession Agreement**" means the Concession Agreement dated [...] entered into between the Owner and the Concessionaire, and shall include all Annexures and appendices thereto and any amendments thereto made in accordance with the provisions contained in this behalf therein provided any amendments thereto made hereafter which materially alter

any of the terms and conditions thereof shall not be binding on the Empowered Institution and the Central Government unless previously approved by the Empowered Institution.

1.1.4 “**Total Project Cost**” means the lower of the following total capital cost of the Project:

- a. [Rs. (Rupees ...)] as estimated by the Owner;
- b. [Rs. (Rupees ...)] as contained in the Financial Package approved, inter alia, by the Lead Institution; and
- c. the amount as actually expended on the Project as certified by the statutory auditors,

but shall not include the cost of the land comprised in the Project.

1.1.5 “**VGF Grant**” means the grant payable by the Central Government under and in accordance with the Scheme as set forth in the Guidelines for Financial Support to Public Private Partnerships in Infrastructure notified by the Finance Ministry on 12.1.2006 vide OM No. 1/5/2005-PPP and as referred to in clause 2.1 of this Agreement.

1.2 The words and expressions beginning with or in capital letters used in this Agreement and not defined herein but defined in the Concession Agreement shall have, unless repugnant to the context, the meaning respectively assigned to them in the Concession Agreement.

1.3 In this Agreement unless the context otherwise requires:

- a. Any reference to a statutory provision shall include such provision as is from time to time modified or re-enacted or consolidated so far as such modification or re-enactment or consolidation applies or is capable of applying to any transactions entered into hereunder;
- b. The words importing singular shall include plural and vice versa, and words denoting natural persons shall include all genders, partnerships, firms, companies, corporations, joint ventures, trusts, associations, organisations or other entities (whether or not having a separate legal entity);
- c. The headings are for convenience of reference only and shall not be used in and shall not affect the construction or interpretation of this Agreement;
- d. Terms beginning with capital letters and defined in this Agreement shall have the meaning ascribed thereto herein;
- e. The words “include” and “including” are to be construed without limitation;
- f. Any reference to a “day” shall mean reference to a calendar day;
- g. Any reference to “month” shall mean reference to a calendar month;
- h. Any reference to any agreement, deed, instrument, licence or document of any description shall be construed as reference to that agreement, deed, instrument, license or other document as

amended, varied, supplemented, modified or suspended at the time of such reference provided that this clause shall not operate so as to increase liabilities or obligations of the Empowered Institution hereunder or pursuant hereto in any manner whatsoever;

- i. References to Recitals, clauses, sub-clauses, paragraphs, Annexures or appendices in this Agreement shall, except where the context otherwise requires, be deemed to be references to Recitals, Articles, clauses, sub-clauses, paragraphs, Annexures and appendices of this Agreement;
- j. Any agreement, consent, approval, authorisation, proposal, notice, communication, information or report required under or pursuant to this Agreement from or by any Party shall be valid and effectual only if it is in writing under the hands of duly authorised representative of such Party, in this behalf and not otherwise; and
- k. Any reference to any period commencing “from” a specified day or date and “till” or “until” a specified day or date shall include both such days or dates.

1.4 Priority of Agreements:

In the event of any conflict between this Agreement and

- i. the Concession Agreement; or
 - ii. any of the Project Agreements,
- the provisions of this Agreement shall prevail.

2. Grant

- 2.1 Relying on the representations made by the Concessionaire and the Owner as set forth hereinafter and believing them to be true, the Empowered Institution hereby grants to the Concessionaire and the Concessionaire hereby accepts from the Empowered Institution the VGF grant in a sum of [Rupees (Rs. crore)] (the “VGF Grant”) for the Project under the Scheme subject to and on the terms and conditions set forth in this Agreement and the Scheme. The VGF Grant shall be disbursed to the Concessionaire by Lead Institution for and on behalf of the Empowered Institution in the manner as set out in Clause 2.2.
- 2.2 The Lead Institution shall disburse the VGF Grant in the manner set forth herein to the Concessionaire for and on behalf of the Empowered Institution in proportion to the disbursements of the Balance Debt, and shall after each such disbursement of VGF Grant to the Concessionaire, notify the Empowered Institution of the same.
- 2.3 The Lead Institution shall along with the disbursement of the Balance Debt disburse in proportion thereto the VGF Grant to the Concessionaire in the same manner as such Balance Debt and, upon such disbursement, shall be deemed to have been received by the Concessionaire.
- 2.4 Notwithstanding anything to the contrary contained in this Agreement in the event of

- i. Any suspension of the Concessionaire's rights under the Concession Agreement or termination of the Concession Agreement, or;
- ii. Any suspension of the rights of the Concessionaire under this Agreement or termination of this Agreement; or
- iii. Occurrence of any VGF Default,

The disbursement of the balance of the undisbursed amount of VGF Grant shall be suspended or terminated, as the case may be, in the sole discretion of the Empowered Institution without the Empowered Institution or the Lead Institution being liable to the Concessionaire or the Owner in any manner whatsoever for the same. Such suspension or termination as the case may be, of the undisbursed portion of the VGF Grant shall be deemed to be with mutual agreement of the Parties.

- 2.5 The Concessionaire and the Lead Institution agree and acknowledge that the VGF is for and shall solely be used to fund such part of the Total Project Cost as is on account of viability gap which necessitated the VGF Grant and for no other purpose whatsoever.
- 2.6 The Concessionaire and the Lead Institution acknowledge and the Owner confirms that VGF Grant under this Scheme shall be disbursed only after the Concessionaire subscribes to and has expended the equity contribution required for the Project from the Concessionaire under the Financial Package.

3. Representations and Warranties

- 3.1 The Confirming Party represents, warrants and confirms to the Empowered Institution and the Lead Institution respectively the following:
 - a. The Total Project Cost does not include the cost of the land comprised in the Project incurred by the Owner;
 - b. The Concessionaire has been selected through a transparent and open competitive bidding process conforming to the provisions of the Scheme;
 - c. The Project shall provide service against payment of predetermined tariff/user charge as set forth in the Concession Agreement;
 - d. The pre-determined tariff/user charges payable pursuant to the Concession Agreement to the Concessionaire for provision of services pursuant thereto, cannot be increased to eliminate or reduce the viability gap, which necessitated the application for the VGF Grant for the Project under the Scheme by the Owner;
 - e. The Concession Period under the Concession Agreement cannot be increased for reducing the viability gap, which necessitated the application for the VGF Grant under the Scheme;
 - f. The Total Project Cost is reasonable and based on the standards and specifications normally applicable to such projects as the Project and the same cannot be restricted for reducing the viability gap, which necessitated application by the Owner for VGF Grant under the Scheme; and

- g. The grants made or which may hereafter be made by the Owner to the Concessionaire for meeting the Total Project Cost or any part thereof shall not exceed in aggregate, a further 20 percent of the Total Project Cost.
- 3.2 The Concessionaire represents and warrants to the Empowered Institution and the Lead Institution that:
- a. It is duly organised and validly existing under the laws in India and has full power and authority to execute and perform its obligations under this Agreement and to carry out the transaction hereby contemplated;
 - b. It has taken all necessary corporate and other actions under applicable laws to authorise the execution and delivery of this Agreement and to perform its obligations under this Agreement;
 - c. This Agreement constitutes its legal, valid and binding obligation, enforceable against it in accordance with the terms hereof, and its obligations under this Agreement will be legally valid, binding and obligations enforceable against it in accordance with its terms;
 - d. The execution, delivery and performance of this Agreement will not conflict with or result in a breach or constitute default under or accelerate performance required by any of the terms of Memorandum and Articles of Association of the Concessionaire or any applicable law or any covenant, contract, arrangement or understanding, or any decree or order of any court to which it is a party or by which it or any of its properties or assets is bound or affected;
 - e. All information furnished to the Empowered Institution, the Lead Institution and the Owner and as updated on or before the date of this Agreement is true and accurate in all material respect;
 - f. There are no actions, suits, proceedings or investigations pending or to its knowledge threatened against it at law or in equity before any court or any other judicial, quasi judicial or other authority or body, the outcome of which may result in the breach of this Agreement;
 - g. It has complied with all Applicable Laws and Applicable Permits in all material respects;
 - h. It is not in breach of the Concession Agreement or of any Project Agreements or Financing Agreements; and
 - i. No representation or warranty contained herein or in the Concession Agreement or any other document furnished by it to the Empowered Institution or the Owner or the Lead Financial Institution contains or will contain any untrue or misleading statement of material facts or omits or will omit to state a material fact necessary to make such representation or warranty not misleading.
- 3.3 In the event of any occurrence or circumstance coming to the knowledge of the Party making any representation hereunder which renders any of its aforesaid representations or warranties untrue or incorrect at any time

during the subsistence of this Agreement, such party shall immediately notify the other parties hereto about the same. Such notification shall not have the effect of remedying any such representation or warranty that has been found to be incorrect or untrue.

4. Project Monitoring

- 4.1 Lead Institution agrees and undertakes that subject to the provisions of this Agreement, the Lead Institution shall undertake regular monitoring and periodic evaluation of Project compliance with the agreed milestones and performance levels as set forth in the Concession Agreement and it shall, through periodic reports, advise and keep informed the Empowered Institution about the slippages or otherwise in Project compliances with the agreed milestones and performance levels as set forth in the Concession Agreement together with brief description of the causes of slippages or non-compliances, if any, therein. Without prejudice to the generality of the foregoing, the Lead Institution shall as part of its monitoring obligation hereunder undertake the following:
- 4.1.1 From the date of this Agreement, the Lead Institution shall through its representative, inspect the Project Site on a monthly basis and shall keep a regular inspection log recording progress of the Project; and
- 4.1.2 The Lead Institution shall send on a quarterly basis progress reports of the Project to the Empowered Institution together with brief description of the causes of slippages or non-compliances, if any, therein.

5. Role of Lead Institution

- 5.1 The Concessionaire and the Lead Institution acknowledge that the Lead Institution is only acting as trustee for the Empowered Institution in respect of the VGF Grant and has no rights to the VGF Grant in any manner whatsoever.
- 5.2 The Empowered Institution hereby authorises the Lead Institution to exercise such rights, powers, authorities and discretion as are conferred by this Agreement on the Lead Institution together with all such rights, powers, authorities and discretion as are reasonably incidental hereto.
- 5.3 In performing its functions and duties under this Agreement, the Lead Institution shall act in trust for the benefit of, and as agent for the Empowered Institution or its nominees, successors or assigns, in accordance with the provisions of this Agreement.
- 5.4 The Lead Institution shall maintain accurate account of all VGF Grant disbursements made by it pursuant to this Agreement and shall by the 15th day of every month furnish a copy thereof as at the close of the immediately preceding month, duly certified under the hands of an officer of the Lead Institution duly authorised in this behalf, to the Empowered Institution together with statement showing the tentative

disbursement schedule of the balance of the VGF Grant remaining to be disbursed.

- 5.5 In discharge of its duties and obligations hereunder, the Lead Institution:
- a. May, in the absence of bad faith or gross negligence on its part, rely as to any matters of fact which might reasonably be expected to be within the knowledge of the Concessionaire upon a certificate signed by and on behalf of the Concessionaire by an officer of the Concessionaire duly authorised in this behalf by the Board of Directors of the Concessionaire;
 - b. May, in the absence of bad faith or gross negligence on its part, rely upon the authenticity of any communication or document believed by it to be authentic;
 - c. Shall, within 5 (five) business days of its receipt, deliver to the Empowered Institution a copy of any notice or document received by the Lead Institution in its capacity as the trustee for the Empowered Institution from the Concessionaire or any other person hereunder or in connection herewith; and
 - d. Shall, within 5 (five) business days of its receipt, deliver to the Concessionaire a copy of any notice or document received by the Lead Institution from the Empowered Institution in connection herewith.
- 5.6 The Lead Institution agrees not to claim or exercise any right of set off, banker's lien or other right or remedy with respect to any amount of the VGF Grant pending disbursement to the Concessionaire. For the avoidance of doubt, it is hereby acknowledged and agreed by the Lead Institution that the monies, if any, received from the Empowered Institution and held by the Lead Institution on account of the VGF Grant and awaiting disbursement to the Concessionaire shall not be considered as part of the assets of the Concessionaire and being trust property held in trust for the Empowered Institution, and shall, in the case of bankruptcy or liquidation of the Lead Institution, be wholly excluded from the assets of the Lead Institution in such bankruptcy or liquidation and shall be made over to the Empowered Institution or its nominee.

6. VGF Default

- 6.1 Following events shall constitute an event of default by the Concessionaire ("VGF Default") under this Agreement unless such event of default has occurred as a result of Force Majeure or any act or omission of the Empowered Institution:
- a. The Concessionaire causes the Lead Institution to transfer the VGF Grant to any account of the Concessionaire in breach of the terms of this Agreement and fails to cure such breach by depositing the relevant funds into the designated Account or any Sub-Account in which such transfer should have been made, within a Cure Period of 5 (five) business days; or

- b. The Concessionaire commits or causes any other breach of the provisions of this Agreement; or
 - c. Any of the representation and warranties of the Concessionaire are found at any time to be false or incorrect and fails to cure the same, within a Cure Period of 5 (five) business days; or
 - d. Any of the representation and warranties of the Owner are found at any time to be false or incorrect and the Owner fails to cure the same, within a Cure Period of 5 (five) business days; or
 - e. The Concessionaire commits Concessionaire Default under the Concession Agreement unless such default has occurred solely as a result of any breach of the Concession Agreement by the Owner or due to Force Majeure; or
 - f. The Concessionaire is adjudged bankrupt or insolvent or is ordered to be wound up or passes an effective resolution for its winding up or a receiver is appointed for the Concessionaire or for the whole or a material part of its assets.
- 6.2 Upon occurrence of a VGF Default, the consequences thereof shall be deemed to be a material breach of the Concession Agreement by the Concessionaire and treated as a Concessionaire Default under the Concession Agreement, and shall be accordingly dealt with under and in accordance with the provisions of the Concession Agreement for such breach under the Concession Agreement.

7. Term of the Agreement

- 7.1 This Agreement shall come into force and effect upon the execution hereof and shall remain in full force and effect so long as any of the Lead Institution or the Concessionaire obligations to the Empowered Institution remain to be discharged, or a period of seven years from the date hereof, whichever is later.

8. Indemnity

- 8.1 The Concessionaire will indemnify, defend and hold harmless the Empowered Institution and Lead Institution against any and all proceedings, actions and third party claims for any loss, damage, cost and expense arising out of any breach by the Concessionaire of this Agreement, or the Concession Agreement of any of Project Agreement or the Financing Agreements, or on account of failure of the Concessionaire to comply with Applicable Laws or Applicable Permits, or on account of disbursement or failure to disburse the VGF Grant or any part thereof.
- 8.2 The Lead Institution will indemnify, defend and hold the Empowered Institution harmless at all times against any and all proceedings, actions and third party claims for any loss, damage, cost and expense arising out of failure of the Lead Institution to fulfil its obligations under this

Agreement other than any loss, damage, cost and expense, arising out of acts done in discharge of their lawful functions by the Lead Institution, its officers, servants and agents.

- 8.3 The Empowered Institution will indemnify, defend and hold harmless the Lead Institution at all times against any and all proceedings, action and third party claims for any loss, damage, cost and expense arising on account of disbursement of the VGF Grant pursuant hereto for and on behalf of the Empowered Institution or on account of failure of the Empowered Institution to fulfill its obligations under this Agreement or the Lead Institution complying with any direction of the Empowered Institution given pursuant to this Agreement other than any loss, damage, cost and expense arising out of acts done in discharge of their lawful function by the Empowered Institution, its officers, servants and agents.
- 8.4 In the event that any Party hereto receives a claim from a third party in respect of which it is entitled to the benefit of an indemnity hereunder or in respect of which it is entitled to reimbursement (the “Indemnified Party”), it shall notify the other Party responsible for indemnifying such claim hereunder (the “Indemnifying Party”) within 15 (fifteen) days of receipt of the claim and shall not settle or pay the claim without the prior approval of the Indemnifying Party, which approval shall not be unreasonably withheld or delayed. In the event that the Indemnifying Party wishes to contest or dispute the claim, it may conduct the proceedings in the name of the Indemnified Party and shall bear all costs involved in contesting the same. The Indemnified Party shall provide all cooperation and assistance in contesting any claim and shall sign all such writings and documents as the Indemnifying Party may reasonably require.

9. Dispute Resolution

- 9.1 Any dispute, difference or claim arising out of or in connection with this Agreement which is not resolved amicably within [... ..] days of communication thereof shall be decided finally by reference to arbitration to a Board of three Arbitrators comprising of one nominee of the Party which is the Claimant in such dispute, one nominee of the Empowered Institution and the third to be appointed in accordance with the Rules of Arbitration of the International Centre for Alternative Dispute Resolution, New Delhi (the “Rules”). Such arbitration shall be held in accordance with the said Rules and shall be subject to the provisions of the Arbitration and Conciliation Act, 1996.
- 9.2 The Arbitrators shall issue a reasoned award and such award shall be final and binding on the Parties. The venue of arbitration shall be Delhi and the language of arbitration shall be English.

10. Miscellaneous Provisions

10.1 Governing Law and Jurisdiction

This Agreement shall be construed and interpreted in accordance with and governed by the laws of India, and the Courts at Delhi shall have jurisdiction over all matters arising out of or relating to this Agreement.

10.2 Waiver of Sovereign Immunity

The Empowered Institution unconditionally and irrevocably:

- a. Agrees that the execution, delivery and performance by it of this Agreement constitute commercial acts done and performed for commercial purpose;
- b. Agrees that, should any proceedings be brought against it or its assets, property or revenues in any jurisdiction in relation to this Agreement or any transaction contemplated by this Agreement, no immunity (whether by reason of sovereignty or otherwise) from such proceedings shall be claimed by or on behalf of the Empowered Institution with respect to its assets;
- c. Waives any right of immunity which it or its assets, property or revenues now has, may acquire in the future or which may be attributed to it in any jurisdiction; and
- d. Consents generally in respect of the enforcement of any judgement or award against it in any such proceedings to the giving of any relief or the issue of any process in any jurisdiction in connection with such proceedings (including the making, enforcement or execution against it or in respect of any assets, property or revenues whatsoever irrespective of their use or intended use of any order or judgement that may be made or given in connection therewith).

10.3 Rights of the Concessionaire

The rights and remedies of the Concessionaire in the VGF Grant, including in any balance thereof awaiting disbursement to the Concessionaire, are set forth in their entirety in this Agreement and the Lead Institution and the Concessionaire shall have no other rights or remedy against or to such VGF Grant including in any balance thereof awaiting disbursement to the Concessionaire.

10.4 Amendments

All additions, amendments, modifications and variations to this Agreement shall be valid, effectual and binding on the Parties and the Owner only if in writing and signed by their respective duly authorised representatives.

10.5 Waiver

10.5.1 Waiver by any Party of a default by another Party in the observance and performance of any provision of or obligations under this Agreement:

- a. Shall not operate or be construed as a waiver of any other or subsequent default hereof or of other provisions of or obligations under this Agreement;
- b. Shall not be effective unless it is in writing and executed by a duly authorised representative of the Party; and
- c. Shall not affect the validity or enforceability of this Agreement in any manner.

10.5.2 Neither the failure by any Party to insist on any occasion upon the performance of the terms, conditions and provisions of this Agreement or any obligation thereunder nor time or other indulgence granted by any Party to another Party shall be treated or deemed as waiver of such breach or acceptance of any variation or the relinquishment of any such right hereunder.

10.6 No Third Party Beneficiaries

This Agreement is solely for the benefit of the Parties and no other person or entity shall have any rights hereunder.

10.7 Survival

10.7.1 Termination of this Agreement:

- a. Shall not relieve the Parties of any obligations hereunder which expressly or by implication survive termination hereof; and
- b. Except as otherwise provided in any provision of this Agreement expressly limiting the liability of either Party, shall not relieve either Party of any obligations or liabilities for loss or damage to the other Party arising out of, or caused by, acts or omissions of such Party prior to the effectiveness of such termination or arising out of such termination.

10.7.2 All obligations surviving the cancellation, expiration or termination of this Agreement shall only survive for a period of 3 (three) years following the date of such termination or expiry of this Agreement.

10.8 Severability

If for any reason whatever, any provision of this Agreement is or becomes invalid, illegal or unenforceable or is declared by any court of competent jurisdiction or any other instrumentality to be invalid, illegal or unenforceable, the validity, legality or enforceability of the remaining provisions shall not be affected in any manner, and the Parties will negotiate in good faith with a view to agreeing to one or more provisions which may be substituted for such invalid, unenforceable or illegal provisions, as nearly as is practicable to such invalid, illegal or unenforceable provision. Failure to agree upon any such

provisions shall not be subject to dispute resolution under Clause 10.1 of this Agreement or otherwise.

10.9 Successors and Assigns

This Agreement shall be binding on and shall inure to the benefit of the Parties and their respective successors and permitted assigns.

10.10 Notices

All notices or other communications to be given or made under this Agreement shall be in writing, shall either be delivered personally or sent by courier or registered post with an additional copy to be sent by facsimile. The address for service of each Party and its facsimile number are set out under its name on the signing pages hereto. A notice shall be effective upon actual receipt thereof save that where it is received after 5.30 (five thirty) p.m. on a business day or on a day that is not a business day, the notice shall be deemed to be received on the first business day following the date of actual receipt. Without prejudice to the foregoing, a Party giving or making a notice or communication by facsimile shall promptly deliver a copy thereof personally, or send it by courier or registered post to the addressee of such notice or communication. It is hereby agreed and acknowledged that any Party may by notice change the address to which such notices and communications to it are to be delivered or mailed. Such change shall be effective when all the Parties have notice of it.

10.11 Language

All notices, certificates, correspondence and proceedings under or in connection with this Agreement shall be in English.

10.12 Authorised Representatives

Each of the Parties shall by notice in writing designate their respective authorised representatives through whom only all communications shall be made. A Party hereto shall be entitled to remove and/or substitute or make fresh appointment of such authorised representative by similar notice.

10.13 Original Document

This Agreement may be executed in four counterparts, each of which when executed and delivered shall constitute an original of this Agreement.

10.14 Confirming Party

The Owner has signed this Agreement as confirming party in token confirmation of the representations and warranties of the Owner set forth herein and in ratification of the terms hereof.

In witness whereof the parties hereto have executed these presents on the day, month and year first above written.

For and on behalf of the Lead Institution

By:

Name:

Designation:

For and on behalf of the Concessionaire

By:

Name:

Designation:

For and on behalf of the Empowered Institution

By:

Name:

Designation:

In the presence of:

1. _____
2. _____

In token confirmation and ratification of the Owner's representations and warranties and of the terms hereof

For and on behalf of the Owner

By:

Name:

Designation:

In the presence of:

1. _____
2. _____

Guidelines for forwarding proposals to DEA to ascertain their eligibility under the Scheme

In continuation of the Notification of even number dated January 23, 2006, it may be noted that prior to making a formal request to the Empowered Institution under the Viability Gap Funding (VGF) Scheme of GoI, the Sponsoring Authority of a Public Private Partnership (PPP) project may if it so desires submit the project concept to the Department of Economic Affairs to ascertain the admissibility of a project under the VGF Scheme based on the mandatory conditions of the Scheme. The proposal in this regard may be submitted to the Department of Economic Affairs in the attached proforma. Within 7 (seven) working days of receipt of the duly filled proforma the Department of Economic Affairs would indicate to the Project Authority whether the project proposal could be posed for the consideration of the Empowered Institution. Such a proposal could be made in case a doubt exists regarding the admissibility of the project under the VGF Scheme. Upon receipt of the response from the Department of Economic Affairs, the Project Authority could then prepare the detailed project proposal and submit the proposal as per the prescribed proforma contained in Notification of even number dated January 23, 2006 along with the supporting documents for the consideration of the Empowered Institution.

Arvind Mayaram
Joint Secretary to Govt. of India

Note: The Guidelines for forwarding proposals to DEA to assess the eligibility of the proposal under the Scheme were notified by the Ministry of Finance, Department of Economic Affairs vide OM No. 1/4/2005-PPP dated September 4, 2006.

Viability Gap Funding Scheme

Memorandum to the Department of Economic Affairs

Name of the Project:

State/Central Sector Project	
Name of the Applicant	
Administrative Ministry/Department	
Sponsoring Authority	
Implementing Agency	
Location	
Sector	
Activities proposed	
Type of PPP	
Type of VGF sought	

A. Conditions of the VGF Scheme

S. No.	Condition	Comment
1.	Whether the project proposal has been posed by a Government or statutory entity which owns the underlying assets	
2.	Whether the project is to be implemented i.e. developed, financed, constructed, maintained and operated for the Project Term by a Private Sector Company	
3.	Is the project from the sectors identified in the guidelines	
4.	Whether the Private Sector Company will be selected by the Government or a statutory entity that owns the project through a transparent and open competitive bidding process	
5.	Whether the Project provides a service against payment of a pre-determined tariff or user charge	
6.	Whether user charges/tariff has been fixed by Government or a statutory authority	
7.	Whether the Government/statutory entity making the proposal has certified/will be able to certified with reasons; <ol style="list-style-type: none"> i. That the tariff/user charge cannot be increased to eliminate or reduce the viability gap of the PPP; ii. That the Project Term cannot be increased for reducing the viability gap; 	

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S. No.	Condition	Comment
	iii. That the capital costs are reasonable and based on the standards and specifications normally applicable to such projects and that the capital costs cannot be further restricted for reducing the viability gap.	
8.	Is the total VGF within the gap stipulated in the guidelines	
9.	Whether the proposed project is (or will be) based on standardised/model documents duly approved by the respective Government	

B. Other project related information (if available)

S. No.	Item	Comment
1.	Total Project Cost (in Rupees Cr.)	
2.	VGF sought from Gol (in Rupees Cr.)	
3.	VGF as a percent of Total project cost	
4.	Additional grant from the Sponsoring Authority	
5.	Construction period (from Financial closure)	
6.	Likely year in which VGF sought	
7.	Is the project viable without VGF	
8.	If not, is it viable with VGF	
9.	Status of the concession agreement <ul style="list-style-type: none"> - has it been finalised - if not, is it proposed to be based on a model document 	

Sectors Eligible for Viability Gap Funding

Notification dated February 2, 2012

No. 3C/1/2012-PPP
Government of India
Ministry of Finance
Department of Economic Affairs
PPP Cell

North Block, New Delhi.
February 2, 2012

NOTIFICATION

**Subject: Scheme for Support to Public Private Partnerships (PPPs)
in Infrastructure – eligible sectors.**

In exercise of the powers conferred under the proviso to Rule 3 (ii) of the Scheme for Support to Public Private Partnerships (PPPs) in Infrastructure, it has been decided to replace the existing entry at serial (d) of Rule 3(ii) by the following.

“(d) Infrastructure projects in Special Economic Zones and internal infrastructure in National Investment and Manufacturing Zones”

This issues with the approval of the Finance Minister.

Rajesh Khullar
Joint Secretary to the Government of India

Sectors Eligible for Viability Gap Funding

Notification dated March 17, 2011

No. 3C/1/11-PPP
Government of India
Ministry of Finance
Department of Economic Affairs
PPP Cell

New Delhi, the March 17, 2011

NOTIFICATION

**Subject: Scheme for Support to Public Private Partnerships (PPPs)
in Infrastructure – eligible sectors.**

In exercise of the powers conferred under the proviso to Rule 3 (ii) of the Scheme for Support to Public Private Partnerships (PPPs) in Infrastructure, it has been decided to add the following sectors in the list of sectors in Rule 3(ii):

“(f) Capital investment in the creation of modern storage capacity including cold chains and post-harvest storage.”

This issues with the approval of the Finance Minister.

Rajesh Khullar
Joint Secretary to the Government of India

Sectors Eligible for Viability Gap Funding

Notification dated May 4, 2011

No. 3C/1/11-PPP
Government of India
Ministry of Finance
Department of Economic Affairs
PPP Cell

New Delhi, the May 4, 2011

NOTIFICATION

**Subject: Scheme for Support to Public Private Partnerships in
Infrastructure – eligible sectors.**

In exercise of the powers conferred under the proviso to Rule 3 (ii) of the Scheme for Support to Public Private Partnerships (PPPs) in Infrastructure, it has been decided to add the following sectors in the list of sectors in Rule 3(ii):

“(g) Education health and skill development, without annuity provision.”

This issues with the approval of the Finance Minister.

Rajesh Khullar
Joint Secretary to the Government of India

Sectors Eligible for Viability Gap Funding

Notification dated May 24, 2012

No. 3C/1/2012-PPP
Government of India
Ministry of Finance
Department of Economic Affairs
PPP Cell

North Block, New Delhi.
May 24, 2012

NOTIFICATION

**Subject: Scheme for Support to Public Private Partnerships (PPPs)
in Infrastructure – eligible sectors.**

In exercise of the powers conferred under the proviso to Rule 3 (ii) of the Scheme for Support to Public Private Partnerships (PPPs) in Infrastructure, it has been decided to add the following sectors in the list of sectors in Rule 3(ii):

- “(h) Oil/Gas/Liquefied Natural Gas (LNG) storage facility (includes city gas distribution network);
- (i) Oil and gas pipelines (includes city gas distribution network);
- (j) Irrigation (dams, channels, embankments, etc);
- (k) Telecommunication (Fixed Network) (includes optic fibre/wire/ cable networks which provide broadband /internet);
- (l) Telecommunication towers;
- (m) Terminal markets;
- (n) Common infrastructure in agriculture markets; and
- (o) Soil testing laboratories.”

This issues with the approval of the Finance Minister.

Rajesh Khullar
Joint Secretary to the Government of India

Notes



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