

Government of Grenada PPP Policy
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1 Introduction

The Government of Grenada (the Government) is committed to improving the quality, resilience, and sustainability of public assets and services and economic and social infrastructure across the country—and thereby laying a solid foundation for growth and job creation in Grenada’s New Economy. The Government also recognizes that meeting these infrastructure and public service needs while ensuring fiscal and debt sustainability, and in pursuit of greater efficiency in Government, will require both the public and private sectors to play a role.

To that end, the Government will engage in “Public-Private Partnerships”—long term contractual relationships with private sector entities, which will introduce resources and expertise into the delivery of public assets and services. PPPs will provide much-needed resources for investing in infrastructure and public assets. Crucially, PPPs will also improve the value achieved from Government resources committed to these sectors. The Government’s decision to implement a project as a PPP will be based on careful consideration of whether doing so will provide the best value for money.

This PPP Policy sets out the following:

- **PPP definition**, and the essential features of PPP contracts
- **Objectives and scope** of the PPP program, in the context of Grenada’s development objectives, and the specific objectives of this PPP Policy
- **Processes** by which PPP projects will be identified, developed, procured, and managed—including how the Government will treat unsolicited proposals
- **Institutional responsibilities** for the PPP program, and for developing, implementing, and approving PPP projects
- **Key commercial principles** by which PPP contracts will be structured
- Approach to managing the **fiscal implications** of PPP projects
- Mechanisms for ensuring **transparency and accountability** in the PPP program.

This PPP Policy provides a high level framework. The policy will be supported by detailed guidance material and tools intended to clarify and help Government officials meet the requirements set out in this policy.

2 PPP Definition

A **Public-Private Partnership (PPP)** is a long-term contract between a private party and a Government agency, for providing or managing a public asset and associated services, in which the private party bears significant risk and management responsibility. In this context:

- The **private party** to a PPP contract may be any majority privately-owned company or consortium
- The **government agency** may be a Ministry, a Government-owned Company, or any other public procuring entity. This agency retains overall responsibility for ensuring the service is provided to the quality required, by carefully managing the PPP contract
- The **public asset or service** may be a new investment, or may involve existing infrastructure or other public assets and services. PPP may be used in wide range of sectors, and for a wide range of assets and services—provided the public sector has an interest in having the asset managed and service provided

The nature of a PPP contract may vary; but generally involves the private sector bearing significant risk and management responsibility. Specifically, PPP contracts involve:

- **Transfer of management responsibility** for a public asset to the private party over the duration of a long-term contract. This may involve financing, designing, building or rehabilitating, maintaining, and operating the public asset and associated services; or some subset of these functions
- **Remuneration to the private party based on outputs delivered**, such as the availability of the asset or the provision of services to clearly-defined performance standards. Payments to the private party may be made by users, by Government, or by a combination of the two. Penalties may also be imposed for failure to meet contractually-specified standards, and bonuses may be paid for service above specified minimum standards
- **Allocation of risk** to the public and private parties clearly, comprehensively, and in a way that achieves value for money, by ensuring each party bears those risks they are best suited to manage.

PPPs can help achieve greater value in providing infrastructure and other services by tapping into the resources and expertise of the private sector, and creating incentives for good performance—as described further in Box 1 on “PPP value drivers”. However, PPP contracts are more complex to prepare, procure, and manage than traditional public procurement contracts—and hence present new challenges and risks. This PPP policy aims to provide a framework for managing PPPs in Grenada in a way that capitalizes on these value drivers and manages the associated risks.

Box 1: PPP Value Drivers

PPPs can help increase the availability, quality, and resilience of infrastructure and other public assets, and associated services, while reducing the fiscal commitment and risk involved in providing them. Well-structured and managed PPPs can do so in several ways.

First, PPPs can **mobilize additional funding and financing sources** for infrastructure and public services. Charging users or customers for products and services can also bring in more revenue to fund investment in public assets, and can typically be done more effectively or more easily with private operation under a PPP than by the public sector. Private operators may also find new ways to raise additional revenues from alternative uses for public assets, offsetting their cost to the Government or end users. Even where PPPs are ultimately paid for by public funds, the fiscal risk associated with financing and constructing new infrastructure is reduced by risk-sharing with the private party—although the Government typically also retains risks, creating contingent liabilities that should be identified and taken into account when assessing the fiscal costs of PPPs.

As well as increasing resources available for infrastructure, PPPs can also **achieve better value for money** from those resources—whether by reducing costs or improving quality—through the following mechanisms:

- **Whole of life costing**—PPPs typically integrate up-front design and construction with ongoing operations and maintenance under the responsibility of one company. This creates an incentive to carry out each function in a way that minimizes total project cost over the long term
- **Adequate maintenance funding** is thereby ensured over the asset lifetime, enabling timely maintenance to avoid costly degradation of assets, and providing budget predictability
- **Innovation and efficiency**—specifying outputs in a contract, rather than prescribing inputs, provides opportunities for innovation in both asset design and process efficiency. Competitive procurement incentivizes bidders to develop innovative solutions for meeting these output specifications. Some process or design innovations may be applicable by the Government to a broader range of public services, increasing the impact of the PPP through technology transfer
- **Focus on service delivery**—under a PPP, the responsible agency enters into a long-term contract with a private party for services delivered. Management in the private PPP entity is therefore focused on service delivery, free from competing objectives or constraints typical in the public sector
- **Accountability**—Government payments, when necessary, are conditional on the private party providing specified outputs at the agreed quality, quantity, and timeframe. If performance requirements are not met, service payments to the private sector party may be abated and/or financial penalties applied.

3 Objectives and Scope

The Government of Grenada will use PPPs as an instrument to implement priority public investment projects that are aligned with the Government's development objectives, to manage public assets, and to deliver public services, where doing so is expected to provide the best value for scarce resources. This section briefly sets out the objectives of the PPP programme, in the context of Grenada's development objectives, and the specific objectives of this PPP Policy.

3.1 Objectives and Scope of Grenada's PPP Programme

The PPP Programme will be an important instrument in achieving the Government of Grenada's key economic policy objectives: boosting growth and job creation, while improving fiscal and debt sustainability including by achieving greater efficiency in the public sector.

PPPs may be used to implement priority public investment projects in a range of sectors—including provision of social and economic infrastructure to meet the basic needs of the people and enable growth, as well as managing Government-owned assets or lands with potential for development in key sectors such as agriculture and tourism. In this context, the overarching objective of the PPP programme is to make the best use of the financial and technical resources of the public and private sectors to provide high-quality, responsive, resilient, and sustainable public assets and services in a way that achieves value for money for the Government and service users.

The Government will consider PPP for proposed investment projects that have the following characteristics:

- **Assets with significant investment value.** Since the cost of preparing and managing a PPP contract is significant for both public and private parties, PPP will typically only be considered for projects with a minimum investment value of EC\$50m, although smaller projects may be considered on a case-by-case basis
- **Output requirements that can be clearly specified and monitored.** Specifying outputs rather than inputs and linking payment to delivery of those outputs are defining features of PPP contracts. PPPs will therefore be used only for delivering assets and services whose outputs can be clearly contractually specified, and monitored in practice
- **Outputs anticipate predictable needs over the contract lifetime.** The long-term nature of PPP contracts reduces the flexibility of the Government to adjust output specifications over time. PPPs will therefore be considered for assets and services for which needs are expected to be relatively predictable—while also building in mechanisms for dealing with change
- **Scope for innovation or improved infrastructure performance.** The use of PPPs will be focused on those sectors where Grenada could benefit most from introducing private sector and international experience and expertise—such as

sectors and services that are currently under-performing, or where there is a need for expansion, innovation, or adoption of new technology

- **Ability to generate revenues beyond Government payments.** To maximize benefits in alleviating fiscal constraints, the use of PPPs will be focused on projects that are expected to generate revenues, whether from charging service users or ancillary sources.

3.2 Objectives of Grenada’s National PPP Policy

This National PPP Policy (the Policy) sets out clearly how the Government of Grenada will identify, develop, implement and manage PPPs. It aims to ensure the potential benefits of using PPPs to deliver public assets and services are achieved in practice, such that PPPs are developed effectively and efficiently, and in a way that achieves value for money for the Government and service users. The Policy also aims to guide the private sector on what they can expect in their partnership with Government.

Specifically, the objective of this Policy is to ensure PPP projects are selected, developed, and implemented according to the following **guiding principles**:

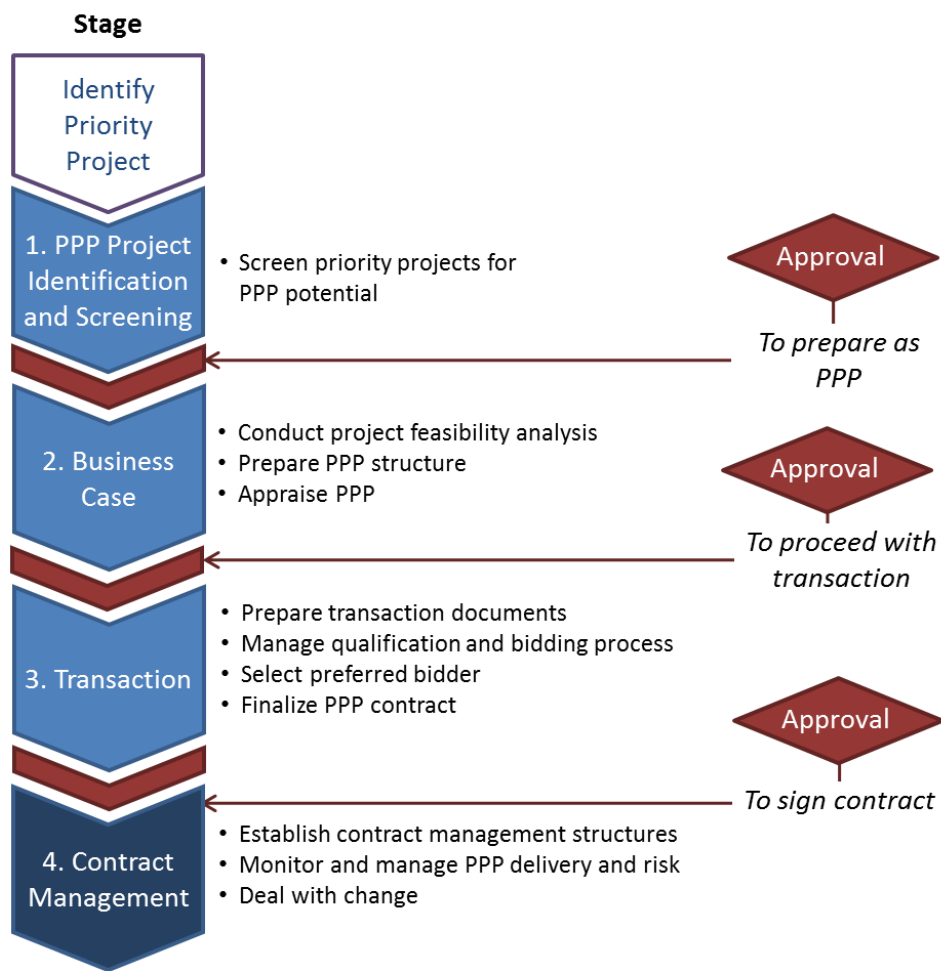
- **Value for money**—PPPs are selected and structured to achieve the optimal combination of benefits (that is, quality, responsive, resilient, and sustainable infrastructure and public services) and costs to Government and users, by capitalizing on the value drivers described above
- **Fiscal responsibility**—the fiscal impact of PPP projects is well-understood, expected costs are affordable, and the level of fiscal risk is acceptable
- **Transparency and probity** in how PPPs are identified, developed, procured, and managed
- **Environmental and social sustainability**—environmental and social impacts of PPP projects are carefully assessed, and are managed appropriately
- **Partnership and inclusiveness**—PPPs meet and balance the objectives of all interested parties—the Government agency and its private sector partner, as well as end users, employees, and other stakeholders—and are managed through a spirit of partnership and cooperation to achieve common goals of improved infrastructure services.

4 PPP Processes

To achieve the objectives stated above, all PPP projects in Grenada will be developed and implemented following a consistent, transparent process. The PPP process consists of four stages, as shown in Figure 1:

- (1) Identifying and screening potential PPP projects;
- (2) Developing a business case;
- (3) Preparing for and implementing a PPP transaction; and
- (4) Managing PPP contracts.

Figure 1: PPP Process



Box 2 below sets out the criteria against which a proposed PPP will be assessed at each key decision point. Under certain circumstances some of this work may be undertaken by a private company on the basis of an unsolicited proposal to the Government for a PPP project.

Box 2: PPP project appraisal criteria

To ensure that the objectives of the PPP program and the potential benefits of using PPPs are achieved in practice, the Government will ensure that all PPP projects meet the following five criteria:

- (1) **Alignment with government policy**—the project is aligned with policy priorities and sector and infrastructure plans over the short and long term
- (2) **Feasibility and economic viability of the project**—the underlying project makes sense, in that it is technically, legally, environmentally and socially feasible; economically cost-benefit justified and the least-cost solution to the identified service need
- (3) **Fiscal responsibility**—the project’s cost to Government is in line with fiscal priorities, and risks retained by Government would not be fiscally destabilizing
- (4) **Commercial viability**—there are qualified private parties available to do the project, and the project is expected to provide a commercial rate of return sufficient to attract such parties and create competitive tension for the opportunity
- (5) **Value for money**—the proposed PPP is expected to achieve value for money, compared to alternative implementation options; and compared to other PPP structures (that is, the PPP is structured well).

The following sections provide an overview of each stage of the PPP process. Detailed guidance and tools will be prepared and adopted to support responsible Government officials at each stage.

4.1 PPP Project Identification and Screening

PPPs are first and foremost public investment projects; albeit implemented by the private sector. Hence, as shown in Figure 1, the process of developing and implementing a PPP is preceded by identifying a priority public investment or service need. The aim of this stage is to select from among these priority projects those that are expected to provide better value for money if implemented as PPPs.

Identifying priority public investments and service needs in a given sector is primarily the responsibility of the Ministry, Department, or Agency (MDA) responsible for that sector. From among these priority projects, those with the characteristics listed in Section 3.2: Objectives of Grenada’s National PPP Policy may be considered for implementation as PPPs. In certain circumstances, potential PPP project ideas may also arise from unsolicited proposals from the private sector, as described in Section 4.5 below.

At this stage, identified potential PPP projects will be screened, by carrying out a quick and approximate check that a PPP for the project is likely to meet the criteria

described in Box 2 above—that is, whether the Project is likely to be viable, and commercially attractive, fiscally responsible and provide value for money as a PPP. Depending on the complexity of the project, this could require stakeholder consultations, and pre-feasibility analysis to identify technical solutions and major risks, and estimate project costs and revenues. This analysis will be presented by the relevant MDA in a Project Concept Note, along with an estimate of the work and resources required to develop a business case and prepare for a transaction.

This Project Concept Note will be submitted to the PPP Steering Committee for review and approval to proceed to the Business Case stage.

4.2 Business Case

Once a priority public investment project has been identified and initially approved for development as a PPP, the next step is to develop a Business Case for the project. A project Business Case sets out the scope and proposed structure of the project, and a detailed assessment of its viability and suitability for implementation as a PPP.

Developing a Business Case is an iterative process, through which the scope and structure of a proposed PPP is progressively developed and assessed against the criteria set out in Box 2 above. Depending on the nature of the project, it is likely to involve:

- Further stakeholder consultations on project needs and options
- Technical feasibility analysis, including identifying costs and significant risks
- Preparation of concept design drawings
- Social and environmental impact assessments and management plans
- Financial and economic analysis of the project and of proposed PPP structures, including estimating revenues
- Developing key commercial terms for the proposed PPP, including the contract type, allocation of key risks, and payment mechanisms (whether Government and/or end users will pay for services delivered), following the key commercial principles described in Section 6, and assessing its commercial attractiveness, including initial market soundings for potential investors in the project
- Value for money analysis: assessing and articulating the rationale for implementing the project as a PPP under the proposed structure in terms of value for money for Government and end users
- Fiscal analysis: identifying and assessing the level of fiscal support required for the project—both direct and contingent through the risks to be accepted by Government—and the affordability of this support given fiscal priorities and constraints (with reference to the treatment of PPP liabilities described in Section 7 below).

The work of preparing the Business Case may be done by the Government, or may be contracted out to appropriately qualified consultants. The Business Case will

present the resultant project scope and structure, and summarize the results of this analysis, demonstrating the compliance of the proposed project with the criteria described in Box 2 above. The Business Case will be carefully reviewed and scrutinized by relevant agencies before being submitted to Cabinet, as described further in Section 5.4 on PPP Approvals.

4.3 Transaction

Once Cabinet approval is given to proceed on the basis of the Business Case, the team will prepare and implement the PPP transaction. The objective at this stage is twofold: first, to select a competent firm or consortium as the private party to the PPP; and second, to identify the most effective and efficient solutions to the proposed project's objectives—from both technical and value for money perspectives. Achieving these objectives requires a well-prepared, transparent, competitive transaction process—as is the case for any form of public procurement.

While the specific transaction processes may vary depending on project needs, they will typically include the following steps¹:

- **Invite Expressions of Interest (EOIs) and pre-qualify bidders.** To ascertain the level of market interest and determine whether private parties have the financial and technical capability to implement the project, the Government may invite expressions of interest from private sector investors, and on the basis of responses received, select a shortlist of potential bidders. Requests for EOIs will be published in national, regional, and globally-followed platforms relevant to the sector, and will provide an overview of the project scope, as well as clear guidelines for the submission requirements and criteria for assessing bidder qualifications. This EOI process may be initiated in parallel with preparation of detailed transaction documents.
- **Prepare transaction documents.** To attract qualified investors and achieve competition in the bidding process the PPP transaction documents must be comprehensive and well-prepared. PPP transaction documents to be issued to qualified bidders will include, but not be limited to:
 - Full draft contract agreements, based on the key commercial terms defined in the Business Case, and following the commercial principles set out in Section 6
 - Request for Proposal (RFP) documents, which should include a detailed description of the transaction process, required proposal contents, and evaluation criteria
- **Issue Request for Proposals (RFP) and manage interactions with bidders.** The project team will ensure that all bidders benefit from open and equal access to project information, for example through a data room. Protocols for bidder

¹ A PPP transaction is a form of public procurement. As such, the PPP transaction process set out in this Policy is designed to be consistent with the principles and requirements of the Public Procurement and Disposal of Public Property Act [add date].

interactions during bid preparation will be established in the RFP documentation—these will include a structured, transparent, and fair process for bidder feedback and adjustment of the draft PPP agreements in light of bidder concerns

- **Evaluate bids and select preferred bidder.** Bidders will submit information detailing their qualifications, as well as detailed technical and financial proposals as required by the RFP, which will be evaluated according to the process and criteria set out in the transaction documents. Although the details of individual transactions will vary, the general principle is that bidders will submit two separate bid packages: technical and financial. The technical proposals will be evaluated first; bidders that do not meet the minimum required standards will be rejected, and the other bidders will move onto the opening of financial envelopes. The highest-scoring bidder will be identified as the ‘preferred bidder’. The basis for selection of the preferred bidder will be clear, objective and quantifiable. Bidders will be required to include sworn statements they will abide by the terms of the RFP, and if selected as the preferred bidder will execute the transaction documents substantially in the form of the draft contracts issued to all pre-qualified bidders. This may include including signed copies of the transaction contracts in the bid package
- **Finalize contract.** Once the preferred bidder has been selected, the Government will finalize the PPP contractual agreements with that bidder. Some further negotiation with the preferred bidder may be required to clarify elements of the proposal or contract, but the Government will not incorporate substantive changes to the draft PPP contracts at this stage (that is, changes that could have resulted in a different result from the bidding process)
- **Final approval.** The final contract must be re-submitted to Cabinet for approval before signing. This submission must present any changes to the expected cost and project structure as approved at Business Case stage, and provide a clear rationale for how those changes remain consistent with the PPP criteria set out in Box 2 above
- **Contract execution and financial close.** Once the contract is signed by all parties, several more steps, or ‘conditions precedent’ may be needed to achieve contract effectiveness and financial close. The project team will remain responsible for timely and comprehensive completion of these actions. At the completion of each PPP transaction, a summary of the transaction process will be prepared by the project team and submitted to the responsible MDA, to provide lessons for future transactions.

Detailed guidance on the transaction process may be prepared and adopted by Government to help implementing agencies follow the above policies, including model transaction documents.

4.4 Contract Management

The PPP contract will be monitored and managed throughout its lifetime to ensure that all parties meet their contractual obligations, and that PPP project services are delivered according to the contractually-specified standards. The responsible Government Agency, in consultation with the PPP Core Team, will designate a Contract Manager (which may be supported by a contract management team, as needed), and will develop the processes and tools for managing the contract. The Contract Manager will, inter alia:

- **Monitor PPP delivery and risk**—ensuring that services are delivered continuously and to a high standard, in accordance with minimum standards contained in the PPP contract(s); that risk allocations are maintained in practice and risks are properly mitigated; and that payments or penalties are made according to contractual specifications. This may include establishing and managing contract monitoring arrangements such as periodic reviews of PPP performance by independent consultants, or mechanisms for measuring consumer satisfaction
- **Manage change**—ensuring that external risks and opportunities are spotted and changing circumstances are acted on effectively in a way that achieves value for money over the project lifetime; and putting into practice contractually-defined mechanisms to deal with contract adjustments, dispute resolution, and contract termination
- **Manage contract expiry and asset handover**—managing the transition of assets and operations at the end of the contract term, including ensuring that conditions upon handover meet contractually-required quality and operational standards.

The Contract Manager will maintain up to date project performance information and financial indicators, and make that information available for inclusion in budget documents and other Government internal and public reporting as required.

4.5 Unsolicited Proposals

An unsolicited proposal is a proposal initiated by a private party to undertake a PPP project that was not specifically requested by Government. Unsolicited proposals may allow the Government to benefit from private sector innovation in putting forward novel ideas for meeting infrastructure and public service needs or managing public assets. However, they also bring challenges. The Government will consider unsolicited proposals that are demonstrated to be of public interest, but only under a framework that preserves competitive pressure, transparency, and fiscal discipline.

The Government will accept unsolicited proposals only if they fall into one of the following two categories:

- A solution to a publically-identified need that is unique to the private entity proposing it. For example, the proponent may own assets, land, or technology that make it uniquely able to provide a particular public service

- An innovative solution to a priority infrastructure, public asset management, or public service challenge—that is, a solution that was not already under consideration or development by the Government.

Unsolicited proposals will be subject to the same review and approval requirements as described above for Government-initiated PPP projects. However, the project proponent will be responsible for project preparation and analysis, working with a designated Government project execution team.

If the unsolicited proposal is approved, procurement will generally be through an open, competitive tender process. Tender documents will be prepared in collaboration with the proponent based on the unsolicited proposal. If the original proponent is not selected as the winning bidder, the winning bidder may be required to compensate the proponent for costs incurred in developing the project, to an amount agreed in advance by the Government with the proponent.

A project may be considered for sole-source procurement only where there is a clear reason that the original proposer is the only one capable of implementing it. In such cases, the Government will make every effort to ensure the proposal provides value for money.

Detailed guidance and tools will be prepared and adopted to clarify requirements and processes for dealing with unsolicited PPP project proposals.

5 Institutional Responsibilities for PPPs

Developing and implementing PPP projects will require close coordination between several Government entities.

The PPP programme will be overseen by a PPP Steering Committee. The Ministry of Finance will designate a 'PPP Core Team', to act as secretariat to the Steering Committee, and as a focal point for day-to-day management of the PPP programme. Each PPP initiative will be the responsibility of the relevant Ministry or Government agency, and will be implemented by a multi-agency project team. Proposed PPPs will be reviewed and approved by Cabinet at key stages in the development process.

The roles of the PPP Steering Committee, PPP Core Team, PPP Project Teams, and responsibilities for review and approval of PPP projects are described in turn below.

5.1 PPP Steering Committee

A PPP Steering Committee will be established to provide direction to the PPP programme, and oversee the development and implementation of PPP projects. The responsibilities of the PPP Steering Committee are as follows:

- Guide the development of PPP policy, including adopting as appropriate more detailed guidelines and regulations or standard forms of key documents for mandatory use by all Ministries, Departments and Agencies that are implementing PPPs
- Select projects to be developed as a PPP, based on an initial screening by the PPP Unit
- Hold PPP execution teams accountable for developing and implementing PPP projects, following an agreed project timeline
- Approve key decisions at various stages of PPP implementation processes, which decisions will also be subject to Cabinet approval at key project stages, as described in Section 5.4 below
- Guide Contract Managers as needed to manage change during the lifetime of the PPP contract.

The PPP Steering Committee consists of the Permanent Secretaries of the Ministry of Finance and the Ministry of Communication, Works and ICT; the Attorney General; and the Chief Executive Officer of the Grenada Industrial Development Corporation (GIDC). Other Permanent Secretaries may join the Committee when projects under their Ministries' portfolios are being considered or implemented as PPPs. At a minimum, the attendance of the Permanent Secretaries of the Ministry of Finance and of the responsible line Ministry and the Attorney General will be required for committee decisions pertaining to a particular PPP project.

5.2 PPP Core Team

The Ministry of Finance will designate a PPP Core Team to act as Secretariat to the PPP Steering Committee in managing the PPP Program. The members of this PPP Team may be drawn from across departments within the Ministry; one member and department will be designated as the main PPP focal point. The responsibilities of the PPP Core Team are as follows:

- **Develop and disseminate PPP policy**—advise on development of PPP policy and regulation; develop guidance material and templates for issuance by the PPP Steering Committee, and build understanding in public and private sectors of the Government’s PPP programme
- **Regulate the PPP programme**—ensure that all PPP projects are developed in accordance with PPP policy, principles, and processes. This includes ensuring that projects are properly reviewed against required criteria at each stage; that review processes are completed; that Cabinet submissions include all the information required for a well-informed decision; and that PPP projects are properly managed
- **Contribute to the development of PPP projects** by forming part of the PPP Execution Team responsible for developing the business case for each PPP project and implementing the subsequent PPP transactions
- **Be a repository of skills and knowledge**—continually build knowledge about managing PPPs, drawing from domestic and international experience. This includes compiling information on PPP projects in Grenada, and periodically reviewing and systematically analyzing the success of those projects—what has worked and what has not—to inform the development of the PPP programme.

5.3 PPP Project Teams

A **PPP Execution Team** will be established for each project selected for development as a PPP, reporting to the PPP Steering Committee. The PPP Execution Team will be responsible for developing a Business Case for the project, and for implementing the PPP transaction, with the support of experienced advisors. Each PPP Execution Team will be led by a representative of the responsible Ministry or Government agency, and will include representatives of the Ministry of Finance PPP Core Team, GIDC, and other relevant Government entities.

When the PPP transaction reaches financial close, a **Contract Manager** or management team will be appointed by the responsible Ministry or Government agency, to manage the PPP contract for its duration. The Contract Manager may refer to the PPP Steering Committee to provide guidance as needed to manage change over the contract lifetime.

5.4 PPP Reviews and Approvals

All PPP projects will require review and approval at key stages in the PPP development process. The objectives of these reviews and approvals are to ensure that PPP projects are aligned with Government priorities, and are developed according to this Policy and its guiding principles.

The table below sets out PPP review and approval requirements. At each stage, approvals will be based on the relevant submission demonstrating that the PPP is (or is expected to be) compliant with the PPP Criteria set out in Box 2 above. The PPP Core Team representative on the Project Execution Team will be responsible for coordinating this review and approval process.

Table 1: PPP Reviews and Approvals

Stage	Review Required	Approving Authority	What is approved
Project Identification and Screening: upon submission of Concept Note	Ministry of Finance	PPP Steering Committee	Form Project Execution Team and proceed to develop Business Case
Business Case: upon submission of Business Case	Ministry of Finance; Attorney General	Cabinet	Proceed to prepare and implement transaction
Transaction: upon submission of final contract prior to signing	Ministry of Finance; Attorney General	Cabinet	Sign PPP Contract
Contract Management: on-going throughout contract lifetime, in case of renegotiation, upon submission of revised contract prior to signing	Ministry of Finance; Attorney General	Cabinet	Sign revised PPP Contract

6 PPP Commercial Principles

PPP contracts will be designed to achieve the best value for money for the Government and service users. To that end, this section outlines commercial principles that will guide the preparation of PPP contracts in Grenada. The Government may develop and adopt detailed guidance material and standard PPP contract clauses that encapsulate these principles.

6.1 Risk Allocation and Management

Appropriate allocation of risk between the Government and private parties is critical to successful PPP projects. Project risks will be allocated following the principle that each party bears the risk they are best-placed to manage. This means risks will be allocated to the party best able to:

- Influence the risk, where possible
- Anticipate or respond to the risk factor, if it cannot be influenced directly; or
- Absorb the risk, where it cannot be influenced and its impact cannot be controlled.

Following this principle, the party to which a risk is allocated will also have control over decisions related to the risk factor. Examples of risks to be considered include land acquisition risks, design and construction risks, demand risk, macroeconomic risks such as inflation and foreign exchange rates, regulatory risks, and force majeure risks.

Risk allocation will be achieved primarily through the PPP contractual agreements. Allocation mechanisms may include the performance-based payment and penalty mechanisms described in Section 6.2, and where appropriate, provision of Government guarantees or indemnities as a mechanism for accepting or sharing certain project risks. The Government will thereby accept or share only those risks it believes it is best positioned to manage, and will not offer general guarantees on overall project returns or loan repayments.

To ensure the intended risk transfer to the private party is achieved in practice, a minimum level of equity finance of the PPP project may be required. Performance bonds may also be required at certain project stages.

The Government may adopt detailed guidance and tools for risk allocation and management, including defining preferred risk allocations.

6.2 Payment Mechanisms and Performance Specifications

The PPP contract will clearly set out the performance standards required through the life of the PPP, and the mechanisms by which the private party will be paid. A key feature of PPP contracts is that these aspects are linked, such that remuneration depends on achieving contractually-defined performance standards.

Performance standards will be output-based—that is, they will define the standards of the asset or service required, rather than specifying how those

standards should be achieved. They will also be SMART: Specific, Measurable, Achievable, Realistic, and Time-bound.

Payment mechanisms by which the private party will be remunerated may include user charges, Government payments or a combination of the two, as follows:

- For PPPs that involve charging users for services, the PPP contract will establish the right of the private party to collect these charges, and include as appropriate mechanisms and responsibilities for setting and/or adjusting the level of charges over time
- Government payments to the private party under PPP projects will generally be made only upon delivery of the asset or service according to the contractually-specified standards over time. Payments may be linked to availability of the asset, or delivery of specific outputs. Government payments may in some cases include capital contributions during construction where this is considered to result in the best value for money—any such payments will be linked with achievement of contractually-defined construction milestones. The contract will define the timing and mechanism by which Government payments will be made.

In either case, the PPP contract may also define **bonuses or penalties** for achieving or failing to achieve clearly-defined performance targets, which may include the use of performance bonds.

Given the long-term nature of PPP projects, unpredictable changes over the lifetime of the contract are inevitable. PPP contracts will therefore include appropriate **adjustment mechanisms** by which services or payments may be adjusted in response to changing circumstances. Such adjustment mechanisms will aim to create a clear process and boundaries for change.

6.3 Investment Incentives

PPP projects may qualify for investment incentives under Grenadian law, which may include, inter alia, tax holidays, import duty exemptions, and withholding tax exemptions. The eligibility of proposed PPP projects for these incentives will be assessed according to the criteria set out in the relevant legislation—project-specific incentives will not be considered.

6.4 Refinancing

Over the lifetime of a PPP contract, changes to the project risk profile or in capital markets may mean the private party can replace or renegotiate its original debt on more favourable terms than obtained at the outset of the project. Each PPP contract will set out how the gains from refinancing will be determined and treated, following the principle that such gains will be shared equitably between the public and private parties to the contract, and service users where applicable.

6.5 Dispute Resolution Mechanisms

Due to the long term and complex nature of PPP contracts, differences in interpretation can arise, leading to disputes between the contracting parties. Each

PPP contract will establish a resolution process to ensure disputes are resolved quickly and efficiently, without interruption of service. The guiding principle is that disputes should be handled first and foremost through structured discussion between the parties concerned; secondly by arbitration; and only in the final instance by resort to legal mechanisms.

6.6 Termination Provisions

Upon termination of the PPP contract, the project assets will revert to the Government. A termination date will be clearly set in the PPP contract, along with arrangements for contract close and handover of assets. The PPP contract will also set out circumstances that would allow for early termination, and any financial consequences arising therefrom. While the latter may vary by project, the Government will generally not make termination payments that include compensation to equity holders in case of termination due to private party default.

6.7 Renegotiation

PPP contracts will be carefully designed to minimize the need for renegotiation during the contractual term, by comprehensively allocating risks and incorporating appropriate mechanisms for dealing with changes in project parameters. Renegotiations will be approached with caution, given the absence of competitive pressure for the private party. The Government will accept an offer for renegotiation only if it believes that renegotiation is likely to improve value for money for the Government and/or end users, and if the same ends cannot be achieved within the contract.

Any proposed renegotiation of the PPP contract will be approached following the same principles, criteria, and analysis as a new PPP contract. Cabinet approval will be required for the revised contract. Where renegotiation requires adjustment to contractual payments (to the Government, and/or the private party), benchmarking or market testing will be employed where possible in lieu of a competitive process to help ensure value for money.

7 Fiscal Management and Accounting for PPPs

Under PPP projects the private party is typically responsible for raising the financing needed for construction and commissioning. Nonetheless, PPPs typically create fiscal obligations for the Government, which can in some cases be similar to those arising from traditionally-procured projects financed by Government debt. PPP fiscal obligations may be direct—that is, where anticipated payments are known—or contingent—where the occurrence, timing, and magnitude of a payment depends on some uncertain future event.

The Government of Grenada is committed to responsible management of its fiscal commitments arising from PPP projects. This includes identifying and appraising the fiscal implications of all proposed PPPs and ensuring these are in line with fiscal priorities, as described in Section 4: PPP Processes. It also includes recognizing and reporting fiscal commitments to PPPs in public financial plans, reports, and accounts.

Following international practice², the Government will determine as follows when and how PPP projects and their associated liabilities should be recognized as contributing to public debt:

- For ‘Government-pays’ PPPs—that is, PPPs where the revenue stream to the private party comprises payments from the responsible Government entity—the Government will recognize and include in statements of public debt a liability equal to the total value of the PPP asset
- ‘User-pays’ PPPs will not generally be considered as creating liabilities that should be recognized and factored into public debt measures. Nonetheless, where these projects involve fiscal risk through the provision of Government guarantees or other risk-sharing mechanisms, the associated contingent liabilities will be disclosed in notes to public financial statements, and included in budget documents and reports on public finances alongside information on public debt. These contingent liabilities will be recognized as public liabilities—that is, equivalent to public debt—only if payment by Government is considered probable.

For PPP projects involving a combination of Government and user payments, the treatment in accounts and public financial reporting will be split accordingly.

² This approach is based on the principles set out in the International Public Sector Accounting Standard (IPSAS) 32, which defines how governments should account for PPP liabilities, and IPSAS 19, which defines the treatment of contingent liabilities.

8 Transparency and Accountability

The Government of Grenada is committed to a fully transparent process that ensures that information about PPP projects and the performance of the PPP programme is publically available. This will enable independent auditing entities and the general public to hold the Government accountable for its management of the PPP programme. *[Note for consideration: is there any broader transparency or freedom of information policy that would apply to PPP information?]*

To that end, the Government will disclose PPP project and programme information as follows:

- Information on each potential PPP project and invitation for Expressions of Interest will be published as part of the tender process
- PPP contracts will be published as soon they become effective, along with a summary of the key project features and commercial terms. Certain contractual details may be excluded to protect commercially sensitive information
- Performance data of each active PPP will be publically available
- Information on the fiscal implications of PPP projects will be provided in Annexes to budget documents.

PPP projects and the PPP programme as a whole may be periodically audited to assess whether the provisions of this policy have been followed, and whether the resultant projects are achieving the stated aims of the policy. External advisors may be contracted to provide appropriate expertise in assessing PPP project quality.

[Note for consideration: is there a Contractor General who does this kind of review (as is the case in Jamaica, for example?) Or, are value for money or process audits part of the remit of the Auditor General?]