



USER GUIDE FOR CONTINGENT LIABILITY FOR PPP PROJECTS



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Disclaimer

This User Guide has been prepared based on documents and practices of multilaterals, international agencies, other countries, and in-house experience of the IFS in appraising PPP projects. An attempt has also been made to provide Indian context to issues concerning PPP project appraisal.

The information provided in this User Guide do not in any way restrict or relieve the Project Sponsoring Agencies from any responsibility of reporting and setting aside fund for contingent liability. This User Guide only seeks to enhance the knowledge of the PPP Project Sponsoring Agencies about contingent liability. The IFS cannot be held responsible in any manner for any failure of a project or devolvement of contingent liability on the PSA or any other government instrumentality or any other materiality for any reason whatsoever.

While due care has been taken in preparation of this User Guide, however, any inadvertent error is regretted.

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Introduction

Infrastructure Development is a strong catalyst for sustainable economic growth. Government of India has a strong commitment towards development of infrastructure through policy and fiscal interventions, administered through a programmatic approach to infrastructure. For the first time in India, in 2019, a national level pipeline of greenfield infrastructure projects was created in the form of Rs. 10-lakh crore National Infrastructure Pipeline. In four years of the launch of the pipeline, more than 50% of projects are under implementation. In 2021, the National Monetization Pipeline was launched for ushering in private investment as well as bringing in private sector efficiencies in brownfield infrastructure projects. Further, the PM Gati Shakti Master Plan has been launched to provide a new direction to infrastructure planning, implementation, and monitoring – through coordinated implementation of infrastructure projects.

To accord greater thrust to the infrastructure development and investments, the “Infrastructure Finance Secretariat” (IFS) has been setup in the Department of Economic Affairs, to address various lacunae in the infrastructure policy value-chain through focused sectoral financing studies, identification of policy bottlenecks and engagement with myriad stakeholders in this space.

IFS has initiated various studies to cater to the high infrastructure investment requirements for sustaining fast paced infrastructure development which in turn necessitates inflow of private investments to supplement the public expenditure, thereby increasing the need for PPP projects. PPPs are being encouraged to bring private capital and efficiency in execution and operation of infrastructure projects. Besides, financial assistance schemes of the Government such as India Infrastructure Project Development Fund and Viability Gap Funding are encouraging use of PPPs through financial assistance for project development and uptake of commercially unviable projects having huge economic benefits.

With rapidly expanding PPP project portfolio, the government needs to improve management of contingent liabilities arising from these projects. Though PPPs present a number of recognized advantages for the public sector in the form of efficiency in service delivery, inflow of private investments and better risk sharing between the parties involved in the project, they are highly complex in nature due to their massive investment scale and involvement of multiple stakeholders.

Hence, the prudent management of contingent liabilities in PPPs is a necessary element of public policy. If these contingent liabilities are not properly identified, assessed and dealt with in a transparent way, the resultant financial obligation of the government will be difficult to be met in the future.

Table 1: Definition of Contingent Liability

Agency/Document	Definition
International Monetary Fund	Contingent liabilities are obligations that arise from a particular, discrete event(s) that may or may not occur.
Asian Development Bank	Contingent Liability is a possible obligation confirmed by occurrence or non-occurrence of uncertain future events. That liability for payment must arise and be quantified within the contract—for example a payment on termination or a penalty that results from the failure of an Implementing Agency to perform an obligation specified in the PPP contract
World Bank	Contingent liabilities are obligations whose timing and magnitude depend on the occurrence of some uncertain future event, usually outside the control of government
Management of Contingent Liabilities arising from PPP Projects, the Philippines	A contingent liability is a payment obligation whose occurrence, timing, and amount depend on some uncertain future event or circumstance.
Indian Accounting Standard, Ind AS 37, Provisions, Contingent Liabilities and Contingent Assets	A contingent liability is: <ul style="list-style-type: none"> (a) a possible obligation that arises from past events and whose existence will be confirmed only by the occurrence or non-occurrence of one or more uncertain future events not wholly within the control of the entity; or (b) a present obligation that arises from past events but is not recognised because: <ul style="list-style-type: none"> (i) it is not probable that an outflow of resources embodying economic benefits will be required to settle the obligation; or (ii) the amount of the obligation cannot be measured with sufficient reliability.

There are inherent uncertainties associated with contingent liabilities—the event that gives rise to the liability may not occur and even if it does the value of the liability at that time is not clear and is likely to be influenced by many circumstances. Thus, management and accounting of contingent liability for a PPP project is important.

The User Guide for Contingent Liability of PPP Projects has been designed to assist Project Sponsoring Agencies (PSAs), Transaction Advisers (TAs), Project Appraising Authority and Concessionaire in assessing the amount of financial liability arising from a PPP project. It is also expected to aid PSAs in making informed decisions regarding the financial payout to Concessionaire as a result of occurrence of unforeseen events.

This User Guide provides an introduction to Contingent Liabilities in PPP projects, Principles of Contingent Liability, Key Objectives, Applicability and Estimation Methodology. It also gives an overview of the contents in the Contingent Liability Toolkit, explains how to use the Toolkit and briefly introduces the tools of the Toolkit.

Key Objectives

The objective of the User Guide is to provide guidance to the PSAs, TAs, Concessionaire/Project Development and Implementing Agencies on the following:

- Understanding the concept of contingent liabilities that may arise from PPP projects;
- Measure and disclose the contingent liabilities arising from PPPs so that the project authorities and central/state government can better manage the fiscal costs arising from these long-term agreements and strengthen fiscal discipline to ensure macro sustainability;
- Ensure prudential limits on contingent liability;
- Understand potential financial risk arising from a PPP project & better manage contingent liabilities.

Applicability

This User Guide will be useful for PSAs, TAs, Concessionaire/Project Development, and Implementing Agencies for the following:

- To assess the contingent liability arising from a PPP project;
- Appropriate funds at the beginning itself to meet contingent liabilities;
- Allocation of risks arising from PPPs;
- Taking mitigation measures to minimize the impact of adverse events.

Contingent Liability Overview

A “Liability” is a present obligation of an entity that arises from past events, the settlement of which results in outflow of economic resources. Liabilities can create immediate payment obligations, known as direct liabilities or can create future payment obligations upon the occurrence of some future event/s requiring an entity to settle, known as contingent liabilities. PPPs impose financial commitments on project authorities and/or the central/state Government which can be (i) direct liabilities, where the timing and size of the liability are known upfront and (ii) contingent liabilities, where the commitment can be contingent upon a future event.

Table 2: Comparison between Direct Liability and Contingent Liability

Element of Liability	Direct Liability	Contingent Liability
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Obligation and Need for Payment	Present and certain obligation resulting from a past event; obligations and payment needs are known upfront.	Possible obligation from a past event; obligations may be confirmed by occurrence/nonoccurrence of uncertain future events.
Quantum of amount	Known upfront with certainty; reliable estimates of the amount of the obligation can be made for accounting and budgeting.	Uncertain amounts; estimates may also not be possible with reasonable accuracy and reliability.
Timing	Known with certainty	Uncertain/unknown
Outflow of resources	Known with certainty.	Uncertain and depend on the occurrence/nonoccurrence of an event in future;
Recognition	Recognized only in accrual basis of accounting and not in cash basis. In cash basis of accounting liabilities are recognized only when they are paid.	Not recognized; only disclosure is recommended.

Typically, PPPs can give rise to the following types of direct and contingent liabilities:

Table 3: Direct and Contingent Liabilities arising from PPP Projects

Direct Liabilities	Contingent Liabilities
<ol style="list-style-type: none"> 1. Viability gap payments 2. Annuity payments 3. Any project related specific subsidies 	<ol style="list-style-type: none"> 1. Costs on account of Force Majeure events. 2. Termination payments for Force Majeure events. 3. Payments for Concessionaire/Authority event of default events, if such defaults lead to termination of agreements.

Overarching Principles of Contingent Liability

The three overarching principles form the basis of the approach to contingent liability.

- (i) It should **quantify the contingent liabilities** incurred in a consistent way across projects:

The first and foremost principle is to quantify the contingent liabilities arising from PPP projects. Many governments/PSAs have entered into PPP projects without fully understanding their potential costs. This can create significant fiscal risk for governments/PSAs. To address this, governments/PSAs need to assess/quantify the fiscal affordability when they appraise a PPP project. Governments need to assess the likely costs of contingent payments arising from a PPP project. Assessing the cost of contingent liabilities is more difficult than for direct liabilities, since the need for, timing, and value of payments are uncertain. Thus, an estimation of probable contingent liability based on occurrence of different risk events will aid the governments/PSAs in assessing if a PPP project is affordable given the fiscal constraints.

- (ii) It should set **prudential limits on contingent liabilities** to ensure consistency with fiscal sustainability:

With the rapidly expanding PPP portfolio, it would be important for PSAs to limit the contingent liabilities they create.

- (iii) It should **monitor aggregate contingent liabilities arising from all PPP Projects**; and

It should **provide authorities with an oversight on the status of contingent liabilities**, gives the government more flexibility in committing support to PPP projects in the form of guarantees and/or contingent liabilities.

Estimation of Contingent Liability

The Concession Agreements for PPPs specify the types of risks/events that may trigger contingent liabilities. These agreements also list the force majeure conditions and concessionaire and authority event of defaults that may lead to termination of the Concession Agreements and consequential termination payments that may become due from the project authorities/government to the concessionaire.

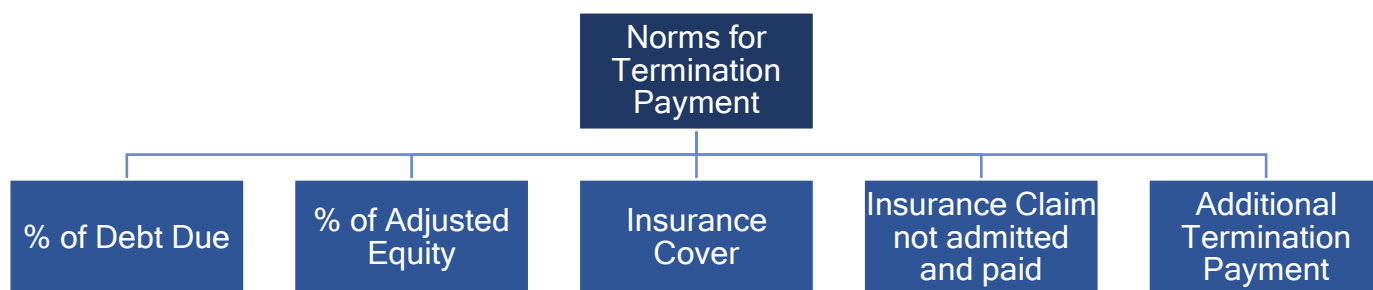
Important parameters in the estimation of contingent liability:

- **Selection of Sector, Covenant and PPP Mode:** User must make selections for the Sector, Covenants, and the Mode of PPP project.
- **Identification of risk event:** The risk event for which the contingent liability of the PSA must be estimated should be appropriately selected – Force majeure event, Concessionaire event of default and Authority event of default, etc.
- **Key Inputs:** User must provide key details of the project in the Dashboard Sheet – Important Dates (Appointed Date, Concession Period, Construction Period, Termination Date), Means of Finance – Equity, Debt, Grant)
- **Norms of Termination Payment** – Norms/Clauses for making the payment to the Concessionaire in case of occurrence of a risk event need to be updated in the workings sheet.

Figure 1: Check List for Contingent Liability Calculation

√ Total Project Cost	√ Det Due
√ Concession Period	√ Grant/VGF
√ Construction Period	√ Insurance Cover
√ Appointed Date	√ Insurance Claim (not admitted and paid)
√ Commercial Operation Date (COD)	
√ Termination Date	
√ Debt	
√ Equity	

Figure 2: Check List for Termination Payment Calculation



Contingent liability toolkit estimates the value/payment to be made by the Project Sponsoring Authority (PSA). The quantum of potential contingent liabilities is based on the clauses/basis of termination payments stated in the Concession Agreements. The clauses/basis of termination payments as per Model Concession Agreements/Signed Concession Agreements (in case of select sectors) have been listed in the table below:

Table 4: Clauses for Termination Payment as per Model Concession Agreements/Signed Concession Agreements

Sector	Concession Agreement	PPP Mode	Risk Event	Article No.	Reference Clauses
Roads	MCA-DBFOT	DBFOT	Termination Payment – Force Majeure Events	34	34.7; 34.8; 34.9
			Compensation for Competing Roads	35	35.4
			Concessionaire Default	37	37.3.1
			Authority Default	37	37.3.2
			Compensation for delay in Termination Payment	37	37.3.3
			Variation in Traffic Growth	29	29.1; 29.2
			Change in Law	41	41.1; 41.2
	MCA-HAM	HAM			
			Concessionaire Default	31	31.3.1; 31.3.2
			Authority Default	31	31.3.3
Ports	MCA- DBFOT	DBFOT	Termination Payment – Force Majeure Events	17	17.1 (a)
			Concessionaire Default	17	17.1 (b) (i);

					17 (b) (ii)
			Authority Default		17.1 (c)
			Additional Termination Payment	17	17.8
Airports	Signed Concession Agreement – OMDA*	OMDA	Termination Payment – Force Majeure events	32	32.9
			Concessionaire Default	35	35.3
			Authority Default	35	35.3
	Signed Concession Agreement – DBFOT [^]	DBFOT	Termination Payment – Force Majeure events	39	39.9
			Concessionaire Default	42	42.3.1
			Authority Default	42	42.3.2
			Under construction	42	42.3.5
SWM	Draft Model Concession Agreement	DBFOT	Termination Payment – Force Majeure events	28	28.9
			Concessionaire Default	31	31.4.2
			Authority Default	31	31.4.1
			Change in Law	35	35.1; 35.2
Sports	Draft Model Concession Agreement	DBFOT	Termination Payment – Force Majeure events	27	27.9
			Concessionaire Default	30	30.3.1
			Authority Default	30	30.3.2
			Under Construction	30	30.3.3
			Change in Law	34	34.1; 34.2

*Ahmedabad Airport signed concession agreement; [^]Jewar Airport signed concession agreement

Navigating through Contingent Liability Toolkit

The Toolkit is available on the <https://www.pppinindia.gov.in/> under the section Knowledge products with sub-category Online Toolkits as shown in the figure below:

Figure 3: Access Toolkit on the PPP India Portal

Snapshot to be added here

Once you access the Contingent Liability Toolkit, the user may register himself to the portal, this will help the user in saving their work for future use and also prevent repetition from redoing the work.

Figure 4: Register on the Contingent Liability Toolkit

Snapshot to be added here

While registering on the Contingent Liability Toolkit you will have to create a username and password for yourself.

The Password to be chosen should meet the following criteria.

- Should be minimum 8 letters
- One UPPERCASE letter
- One lower case letter
- One number
- One Special Character (@, #, \$, %, ^, &, *)

Table 5: Example of Username and Password

Username	Lotus123
Password	Life!is@awesome

Instructions to Operate the Model

On first use of the module please ensure the following:

- Ensure Analysis Toolpak is enabled (go to Tools, Addins and tick "Analysis Toolpak")
- Disable in cell editing (go to Tools, Options, Edit and untick "Edit directly in cell")
- To go to a sheet or row
- In order to navigate through the model, the following keystrokes will prove useful:
- To go to a sheet or row select a blue font cell and then either press.

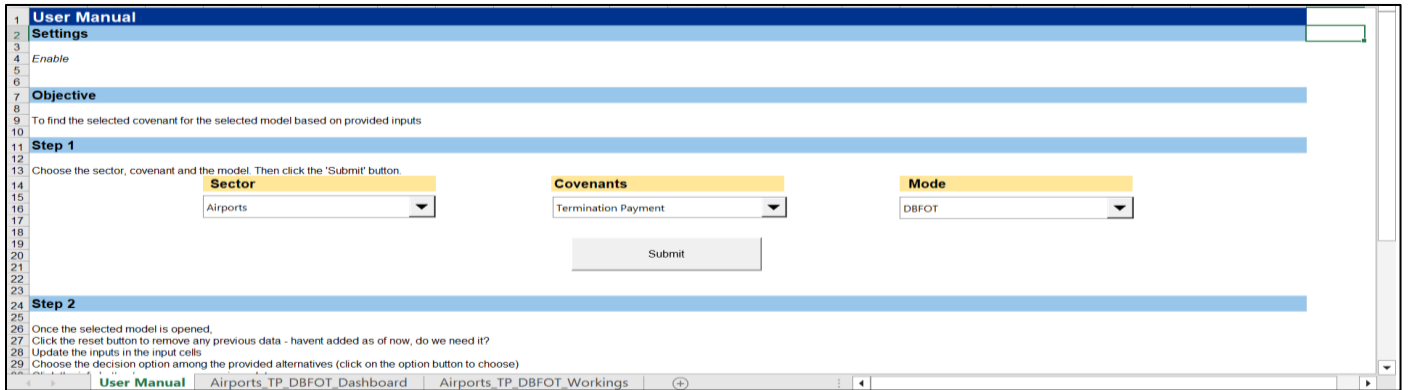
Ctrl + [OR Double Click

To return to last position - F5 + Enter

Once the user will login, they will see the “Disclaimer” section. The conditions of the model will have to be accepted to proceed further.

The user will be landed on the “Sector” section. In this section, the user will be able to see choose from five sectors – Roads, Ports, SWM, Airports and Sports. Once the sector is selected, the user will select the appropriate covenant – Change in Law, Termination Payment, and Variation in Traffic. Lastly, in this section, appropriate PPP Mode will have to be selected. The user can select Sector, Covenant and Mode as shown in the figure below.

Figure 5: Overview of the “Sector” Section



Once the user will make the selections for **Sector**, **Convenant**, and **PPP Mode**, they will see the “Dashboard” section. In this section, the user will be required to make selections for risk events for calculation of Contingent Liability. The user can add project particulars including means of finance, concession period, construction period, appointed date, termination date, insurance claims, etc.

Figure 6: Overview of the “Dashboard – Key Inputs” Section

Dashboard - Inputs to be updated by end-user

Key Inputs

Risk events for calculation of Contingent Liability

Non-political FM Event
 Authority Default
 AD Pending
 Termination

Indirect Political FM Event
 Concessionaire Default
 Under Construction
 Customised CA

Political FM Event
 Termination on expiry of concession

Your Selection Authority Default: TRUE TRUE

Project Particulars

Construction Period (months)	30
Concession Period Considered (yrs)	30
Last Capex Payment Month	30
Appointed Date	1-Apr-15
Termination Date	20-Feb-20
Total Project Cost	300.00

[Click here to update WPI figures if project timeline is not between 2011-2021](#)

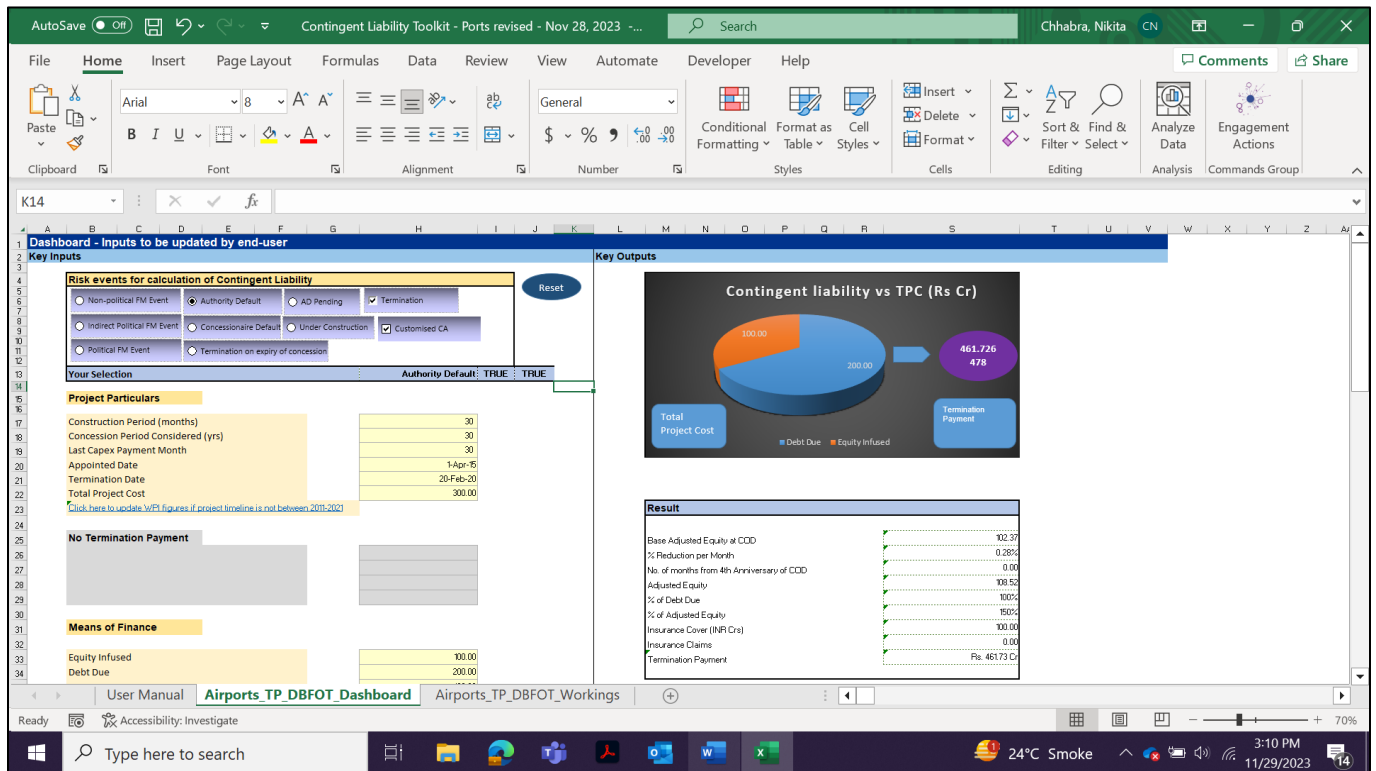
How to Update and Manage the Inputs

- **Select your sector:** Use the 'Sector Selector' menu to choose your sector.
- **Select the Covenants:** Use the 'Covenant' menu to choose the event.
- **Select the type of PPP Mode:** Use the 'Mode' menu to choose the PPP mode.
- **Select the Risk Event** from the options available.
- **Select Termination/Non-termination:** If risk event has resulted in termination, select termination
- **Select Customized CA, if not based on Model Concession Agreement**
- **Provide Project Details/Particulars - Key Dates, Concession Period, Construction Period, Means of Finance, etc.**
- Enter the **financial information** in the 'Key Inputs' in the Dashboard Sheet
- The tool has **default values** already entered for the parameters mentioned.
- These **values could be updated manually** for each project.
- Once the values are updated, the **Dashboard will give the outputs and contingent liability based- on the specific Covenant.**

1. **WPI figures**
2. **Norms/Articles/Clauses for Termination Payment**
3. **Other Key Inputs, if any**

Based on the inputs provided by the user and the risk event selected, the results for termination payment to be made will be derived. Values derived for Adjusted Equity, Debt Due, Insurance Claims and Termination Payment will be provided in the Key Outputs sheet based on the calculations made in the “Workings” sheet.

Figure 7: Overview of the “Dashboard – Key Outputs” Section



The “Workings” Sheet will comprise manual inputs and hardcoded values. All the manual inputs shall be provided/filled in by the user based on the specifications of the project. The users can create dummy/real projects in the Toolkit to understand the project they are aiming to design and develop with their transaction advisors.

In case of Concession Agreement being based on the **Model Concession Agreement, Norms** will be auto filled in based on the clauses provided in the MCA. In case of Customized CA, the User will need to termination payment clauses/norms for risk events to be updated.

Figure 7: Inputs based on Model Concession Agreement

Risk event	% of Debt Due as per MCA	% of Adjusted Equity as per MCA	Insurance Cover switch	Insurance Claim switch
Non-political FM Event	90%	-	1	1
Indirect Political FM Event	100%	110%	1	1
Political FM Event	100%	150%	1	1
Authority Default	100%	150%	1	1
Concessionaire Default	90%	-	1	1
AD Pending	-	-	-	-
Underconstruction	-	-	-	-

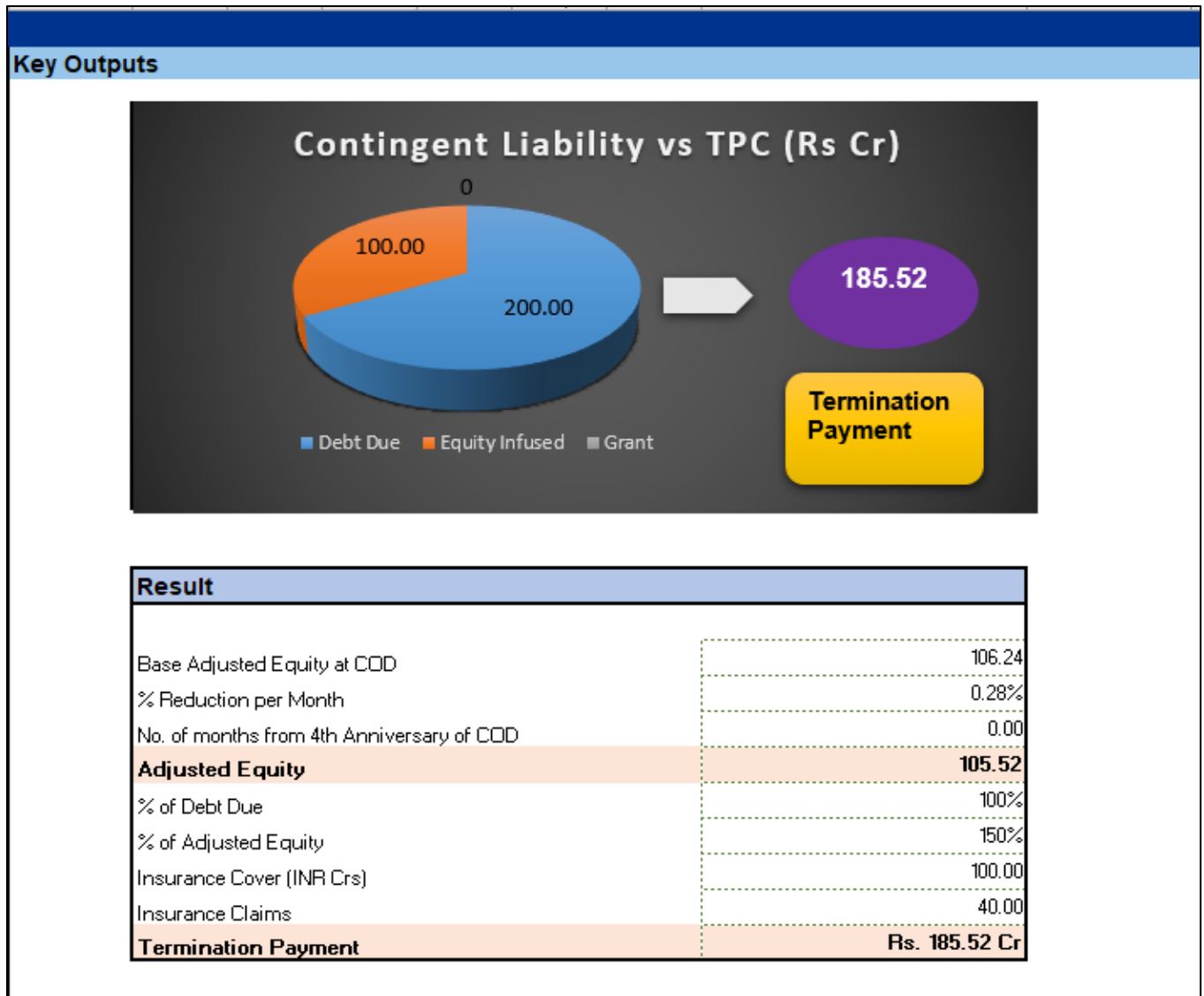
*Please provide details of the additional Clause, if any

Figure 8: Inputs based on Customized Concession Agreement

Risk event	Debt due as per Customized CA	Adjusted Equity as per Customized CA	Insurance cover	Insurance claim	Any other Clause (please provide the value)	Clauses as per the DCA/Signed CA
Non-political FM Event	100.00%	0.00%				
Indirect Political FM Event	80.00%	150.00%				
Political FM Event	90.00%	100.00%				
Authority Default	90.00%	100.00%				
Concessionaire Default	90.00%	100.00%			100	
AD Pending	90.00%	100.00%				
Underconstruction	90.00%	100.00%				

*Please provide details of the additional Clause, if any

Figure 9: Overview of the “Workings” Section



The Toolkit is being built keeping in mind the increasing number of professionals entering the PPP arena in the Project Sponsoring Authorities. The Toolkit could be used by a PSA for the calculation of contingent liability for a dummy/real project for different risk/default events. This will help ensure that all important risk/default events and the cost associated with them are known to the PSA beforehand, which in turn will help PSA to avoid problems later on in the operational life of the project.

The Toolkit provides several advantages to its users. Some of the key advantages are:

- Help PSAs in managing contingent liabilities or financial commitments arising from PPP projects and accordingly make budget provisions;
- Ensure proper management of project risks;
- Fiscal transparency and economic credibility is enhanced through the disclosure of fiscal risks/ contingent liabilities;

- This would help PSAs in taking measures such as introduction of suitable clauses in bid documents to minimize the impact of adverse events and wisely allocate risks;
- Easy to understand analytical tool;
- Time-saving and cost-effective process.

The user can reach out the IFS connect in case they face any difficulty while working with the toolkit. The contact details are provided for the in the [Contact Us](#).

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