

TERM SHEET TEMPLATE – Mechanized Refuse Transfer Station

Project Need

It is generally noted that the disposal sites are being established further and further away from centres of large scale waste generation, which creates following issues:

- delays in completing collection routes thus prolonging the time that waste is exposed on the street;
- increased unproductive time that collection teams spend waiting for the return of the truck from unloading at the far away landfill; and
- increased transport costs

To solve these problems some municipalities are establishing the transfer stations, where in, waste is first stored in bulk in these transfer stations and is then transported to the sanitary landfill by a larger vehicle that involves lower transport cost per unit.

However, the mechanized refuse transfer station (MRTS) is generally preferred in larger cities; depending upon the quantity (more than critical mass of 280 TPD) and distance of the landfill site (20 km and above) in a particular city with an objective to increase the specific mass of waste with compaction to reduce the transport costs.

Need for PPP Intervention

The ULB needs a private operator to bring in

- i. capital investment required for setting up of a mechanized refuse transfer station; and
- ii. bring in newer and efficient technologies for waste compaction and transportation; and
- iii. bring in operational efficiencies in the overall management & provisioning of MSW services in line with the applicable environmental laws and MSW Rules.

PPP intervention, in addition to aiming at improving the service levels against achieved under public schemes, also illustrates variations in depth of change, in terms of ownership & control, risk sharing, and investment commitment, which affect the degree of success in achieving the objective.

PPP contract structure

The PPP structure intended for implementing Mechanized Refuse Transfer Station (MRTS) is generally a long-term concession agreement on build-operate-transfer (the “BOT”) format as it requires significant capital investment for setting up of the facility. The concession duration is generally in the range of 10-20 years for similar projects.

Financial Bid Parameter –

- i. Lowest Tipping Fee from the Authority per MT of MSW handled at the transfer station and transported to the designated site. /or
- ii. Lowest [Annual/Monthly] lump sum fee from the Authority for MSW handled at the transfer station and transported to the designated site.

Detailed Term Sheet

The section below outlines the detailed contractual arrangement for implementation of Mechanized Refuse Transfer Station on build-operate-transfer (the “BOT”) format:

Article	Key Items	Description
	SIGNING OF THE CONTRACT	<p>In the event of the Concessionaire promoting and incorporating a Special Purpose Vehicle under the Companies Act, 1956 within [6 (six)] months of the Effective Date (concession signing date), the Concessionaire shall request the Authority to accept the SPV as the entity which shall undertake and perform the obligations and exercise the rights of the Concessionaire under the Agreement. The Concessionaire shall hold at least 26% (twenty six percent) of the paid up capital of the SPV throughout the Concession Period. The Authority agrees that upon incorporation of the SPV, the SPV shall be treated as a permitted assign of the Concessionaire and shall, within 15 days, enter into a renovation agreement with the SPV. The SPV shall be bound to adhere to all the terms and conditions of this Agreement. For the purpose of this document following terms are defined as under:</p> <p>A. <i>Appointed Date</i>: The appointed date will be the date at which the contract is signed between the Authority and the private operator.</p> <p>B. <i>Effective Date</i>: The effective date will be the date at which the private operator fulfills/submits the Bank Guarantee or both the parties fulfills the condition precedent/condition subsequent [<i>as defined in point no. 3</i>] of the contract and notifies each other through “Notice To Proceed” (NTP).</p> <p>C. <i>Commercial Operation Date (COD)</i>: The date on which the commercial operation of the project starts.</p>

1	Definitions & Interpretation	The interpretation of contract document is fundamental to the process and Practice of Law. To set forth the clear interpretation of key terms in the contract, this Article focuses on the definition and interpretation of key terms in the contract which mitigates the risk of misinterpretation of the contract. For the purpose of this section “Authority” means sponsoring ULB/State Agency; “Concessioner” means the selected private operator;
2	The Concession	It is generally defined in terms of construction and O&M period and ranges between 10-20 years with Extension Clause depending on the financial evaluation and commercial consideration of the project. The commencement of the contract generally starts after fulfilling of Condition precedent/subsequent or the Commercial Operation Date (COD) as the case may be. In the event of Termination, the Concession Period shall mean and be limited to the period commencing from the date of Commercial Operations Date and ending with the Termination Date.
3	Condition Precedent/ Subsequent	It must be satisfied in the stipulated time [<i>generally six months from concession signing</i>] or such extended time as both parties may agree upon as per the contract provision; else concession agreement is liable for termination. i. <i>For Concessionaire</i> – it broadly includes payment of performance security & project development fees, achieving financial closure, getting applicable permits & clearances, project insurances, and submission of detailed Project Implementation & Operation Plan (PIOP). ii. <i>For Authority</i> – it broadly includes transfer of existing applicable permits, termination of all existing contracts in conflict with project operations, vest with the concessionaire the complete & lawful right, title and vacant procession of the project site in accordance with the provisions of land lease agreement.
4	Non Compliance with Condition Precedent ¹	In this event the compensation to be paid shall be as, i. in the event of the Authority’s default, then the Authority shall pay to the concessionaire, as a pre-agreed compensation, the development/ construction cost as per the Independent Project Monitoring Agency’s report, ii. in the event of the concessionaire default, the Authority shall enforce the performance bank guarantee /and also acquire the assets created under the project and/or recover any un-utilized amount that is released to the concessionaire as advance payment as per the Independent Project

¹ The contract document should clearly mention the financial obligations of the parties in case of default

		Monitoring Agency's report.
5	Project Site	<p>1. <i>Vesting of site with concessionaire</i> – the Authority shall license the land parcels for the development of MRTS to concessionaire at a nominal license fee of Rs [generally fixed at Rs 1 per sq meter] per annum for the contract period. The license fee shall remain fixed /or escalate annually at inflation or related parameter or defined percentage as per the contractual provisions.</p> <p>2. <i>Rights, Title and use of the Site</i> – the concessionaire shall have the right to use of the site in accordance with provisions of the contract but shall not without prior approval of the Authority, use the site for any purpose other than the activity directly related with project goal. However, the concessionaire shall allow access to and use of the site for laying utility services (like power line, pass through road, underground gas pipeline etc. through project facility.) as Authority may specify and the additional cost incurred by the concessionaire will be reimbursed by the Authority.</p> <p>3. <i>Peaceful Possession</i> – the Authority shall warrants that the site has been acquired through the due process of law and belongs to and is vested with Authority and has full powers to hold, and deal with the same consistent, inter alia, with the provisions of the contract, and that the concessionaire shall, in respect of the Site, have no liability regarding any compensation payment on amount of land acquisition or rehabilitation and/or resettlement of any Persons affected thereby.</p> <p>4. <i>Transitional Arrangements</i> – the Authority shall relocate or withdraw or adjust its existing permanent or contractual employees associated with MSWM services to other suitable works or locations within the transition period in line with COD of the Project as per the PIOP or as per the provision of the contract beforehand.</p>
6	Independent Project Monitoring Agency (IPMA)	<p>1. <i>Procedure for Appointment</i> – the Authority shall invite EOI from consulting firms or bodies corporate [who will be responsible for the compliance of the engineering, legal, social, commercial and environmental aspects of the project] & constitute a panel of three similar firms and select one from the panel in line with predetermined criteria & through open competitive bidding process. The initial term of the IPMA shall be for three (3) years, which term may be renewed by the Authority & Concessioner at their discretion or shall appoint another firm through competitive bidding and constitute a panel of new IPMAs for a term of 3 (three) years after the consultation with the concessionaire.</p> <p>2. <i>Payments to IPMA</i> – the Authority shall pay all fees, costs, charges and expenses to the IPMA in accordance with the terms of its appointment. However, the Authority and Concessionaire shall share this expense [equally] on [50:50] basis or on any other terms as agreed between both the</p>

		parties as per the contractual provisions. The Authority shall recover the pro-rated costs from amounts payable to the concessionaire, if any as per provisions of the contract.
7	Fee payable by Concessionaire	<p>1. <i>Performance Bank Guarantee (PBG)</i> – the Concessionaire shall, for due and punctual performance of its obligations provide to Authority, simultaneously with the execution of the Agreement, a PBG from a scheduled bank in the form (format to be provided) as set out in Appendix for a sum of Rs [generally around 10% of the total estimated project cost]. This PBG shall be kept valid for a period of entire concession term in a block of minimum of [180] days and when renewal is required to be done by the concessionaire it should happen at least 1 (one) month before the expiry of the existing PBG, failing which, the Authority would be entitled to revoke the PBG.</p> <p>2. <i>Project Development Fee</i> – the Concessionaire shall, simultaneous with the execution of this Agreement, pay to Authority a non-adjustable, non-refundable project development charge of Rs [generally around 1% of the estimated project cost] by way of demand draft.</p>
8	Financial Closure	<p>The Concessionaire shall at its own expense and risk make such financing arrangements as would, be necessary to implement the Project² and to meet all of its obligations under this Agreement in a timely manner. However, the existing fixed³ assets (new & existing) under the Project Facility may not be available as a lien/security for raising finances from external sources.</p> <p>In case the project is eligible for grants under the JNNURM scheme of GoI, the Concessionaire is entitled to receive the Grant under JNNURM scheme as may be approved for eligible components of waste processing facility. However, the Concessionaire has to make necessary arrangements for balance funds. <i>(Provided that the release of funds under JNNURM scheme is subject to Concessionaire adhering to the DPR prepared under JNNURM and in case there is a change initiated by the Concessionaire, for whatever reason, leading to a decrease in disbursement under JNNURM, the Concessionaire shall be responsible for making necessary funding arrangements to the extent of such shortfall).</i> The Concessionaire has to make best efforts, along with Authority, to obtain the grants under JNNURM. <i>Adequate contractual provisioning should be made in the contract for any delay in the disbursement of the JNNURM fund⁴.</i></p> <p>Regarding disbursement of Grants by the Authority, upon receipt of Grants</p>

² In case of JNNURM fund, the balance will be arranged by the concessionaire of if there is no grant from the Authority then the concessionaire will arrange of its own.

³ The Authority may consider the mortgaging the asset for the funding but the mechanism has to be spelt out in the contract document. The alternative way of doing this is creation of “**Default Escrow Agreement**” which will be signed at the time of execution of concession contract.

⁴ A suitable clause like extension of the Commercial Operations Date or cost escalation can be incorporated in the document.

		<p>from JNNURM, the Grants shall be disbursed to the Concessionaire on a mile-stone basis in relation to the milestone achieved by the Concessionaire till such time for development of Project Facility, and shall be duly certified by the IPMA. In the event of occurrence of a Concessionaire Event of Default, disbursement of Grant shall be suspended till such time it has been cured by the Concessionaire as per the provision of the contract⁵.</p> <p>The Concessionaire hereby agrees and undertakes that it shall achieve Financial Close within [180 (one hundred and eighty) days] from the date of receipt of Letter of award and in the event of delay, it shall be entitled to a further period subject to not extending the period of project completion. However, such period shall get extended, if such delay in Financial Close has occurred solely as a result of any default or delay by the Authority in procuring satisfaction of the Conditions Precedent or due to Force Majeure.</p>						
9	Obligation of the Concessionaire during the concession period	<p>1. <i>Obligations on Scope of Work during the Concession</i> – Shall design, construct and/or rehabilitate, operate & maintain: the Mechanized Refuse Transfer Station of capacity [] TPD for the MSW at the prescribed project site in line with project implementation and operations plan and capacities as per the scope of work provided in Volume II - PIM.</p> <p>2. <i>Use of Suitable Technology</i> – the Concessionaire shall have the right to develop the Project Facilities using such technology that it considers suitable & commercially viable for the purposes of implementing the Project, in accordance with terms of this Agreement and Applicable Law. The Concessionaire shall have the right to modify, adapt, upgrade or change the technology, from time to time, based on actual operations of the plant, and in line with meeting service level obligations and other provisions of this Agreement.</p> <p>3. <i>Project Implementation (Construction of Project Facilities)</i> – the Concessionaire shall adhere to the standards/ guidelines for construction as per BIS, MSW Rules 2000 and other applicable standards and/or guidelines. The Concessionaire shall undertake construction works by itself or through a contractor possessing requisite capability; but in either case, the concessionaire shall solely responsible to meet the Project Completion Schedule and achieve COD on or before the dates specified in this Agreement.</p> <table border="1" data-bbox="513 1633 1443 1818"> <thead> <tr> <th data-bbox="513 1633 699 1724"><i>Project Milestone</i></th> <th data-bbox="699 1633 1252 1724"><i>Description of Milestone</i></th> <th data-bbox="1252 1633 1443 1724"><i>Scheduled Project Completion Date</i></th> </tr> </thead> <tbody> <tr> <td data-bbox="513 1724 699 1818">1</td> <td data-bbox="699 1724 1252 1818">1. Obtained all Applicable Permits for the Project including licenses, consent, exemptions, permissions and approvals from the government agencies</td> <td data-bbox="1252 1724 1443 1818">[] days</td> </tr> </tbody> </table>	<i>Project Milestone</i>	<i>Description of Milestone</i>	<i>Scheduled Project Completion Date</i>	1	1. Obtained all Applicable Permits for the Project including licenses, consent, exemptions, permissions and approvals from the government agencies	[] days
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1	1. Obtained all Applicable Permits for the Project including licenses, consent, exemptions, permissions and approvals from the government agencies	[] days						

⁵ A suitable clause relating to the default and suspension in the payment of penalty has to be incorporated

		concerned.		
	<i>II</i>	1. Completed provision of all the utilities such as water, power, internal roads, boundary wall, lighting facility, storm water drain and rain water harvesting at prescribed site[s] for waste processing facility.	[] days	
	<i>III</i>	1. Completion of construction works including civil works for MRTS facility, administrative office, common areas, leachate treatment system etc. 2. Installed the plant and machinery including installation of electrical, mechanical and instrumentation facilities / utilities for the MRTS facility.	[] days	
	<p>4. <i>Project Implementation (Operations & Maintenance)</i> – the Concessionaire shall operate and maintain the Project Facility in accordance with the approved project implementation and operations plan and applicable laws.</p> <p>5. <i>Insurance</i> – the Concessionaire shall at its cost/expense, purchase/ maintain by due reinstatement or otherwise, during the Concession Period all insurances in respect of the Project Facility in accordance with the Good Industry Practices.</p> <p>6. <i>Measurement of MSW</i> – a weighbridge will be constructed, operated and maintained at the entrance of the MRTS facility by concessionaire and shall have an electronic display unit and suitable technology, duly calibrated to carry out the operations.</p> <p>7. <i>Manpower</i> – the concessionaire shall ensure that all the employees provided for smooth operation of the Project shall be covered under all relevant labor laws, especially The Minimum Wages Act, The Contract Labor Regulation and Abolition Act, The Child Labor Act, The workmen’s compensation act or any other act and judgments having oversight over this Project & provision of this contract. The Concessionaire shall pay its workers, supervisor, laborers, drivers etc as per the Minimum Wages Act, 1948 in force and amended from time to time. The Concessionaire shall indemnify the Authority against all claims, damages or compensation under the provisions of all Applicable laws.</p> <p>8. <i>Disinfectant and Odor Control</i> – the Concessionaire shall provide system for odor control to neutralize foul, nauseating smell in the Project facility. The Concessionaire shall spray eco-friendly disinfectants on all vehicles, leaving the processing facility and ensure that all the vehicles carrying solid waste to landfill site shall be covered during transportation.</p>			

10	Authority' Obligation	<p>1. Authority shall at its own risk and expense provide a minimum assured waste quantity [] TPD at the specified location in the processing facility. IF the arrangement (as per scope of work) is to increase the waste quantity every year, then the Authority shall by end of 11th month of every year (November 20XX) during the term, indicate the minimum assured waste quantity during the next year.</p> <p>2. The Authority shall pay Tipping Fee to Concessionaire for handling of MSW at MRTS and transportation of the waste at the designated site(s). The Tipping Fee shall be paid on a monthly basis equivalent to the amount calculated as per provisions of the agreement and subject to necessary approval by the IPMA.</p> <p>3. If Applicable, water, power and approach road to the Project Facility at [Site location] shall be provided by the Authority in accordance with Applicable Laws.</p> <p>4. The Authority shall handover existing infrastructure, if any on 'as is where is' basis, to the Concessionaire within the time frames as set out in the handover plan finalized based on mutual consent [if applicable].</p> <p>5. The Authority shall grant in a timely manner all such approvals, permissions and authorizations which Concessionaire may require or is obliged to seek from the Authority under this Agreement, in connection with implementation of the Project and the performance of its obligations. Provided where authorization for availing permits for utilities such as power, water, sewerage, telecommunications or any other incidental services/utilities is required, the same shall be provided by the Authority not later than 120 (One Hundred and Twenty) days from receipt of request from Concessionaire to make available such authorization, subject to the conditions of the applications / details submitted being complete and correct.</p> <p>6. <i>Covenants of Non-Interference by Authority</i> – the Authority shall have no right, title or interest to the technology that would be used by Concessionaire in the development, O&M of the Project Facility. Any technology that may be employed by Concessionaire in the development, O&M of the Project Facility would be proprietary technology obtained under specific license and the Authority hereby undertakes that it shall not violate or cause a breach of the license arrangements of Concessionaire for such technology.</p>
11	Payment by the Authority	<p>1. <i>Tipping Fee</i> – the Authority agrees & undertakes to pay the Concessionaire, the Tipping Fee and/or lump sum amount at regular intervals (monthly, quarterly or bi-annually) as per the provisions of the concession agreement.</p>

		<p>2. <i>Tipping Fee escalation</i> – the Authority may choose one of the following criteria to increase the Tipping Fee [applicable when the project is not financially viable] –</p> <ul style="list-style-type: none"> i. Increase in the base Tipping Fee, with OR without compounding, by 5% annually thereof; OR ii. In addition to annual revision or without considering annual revision as in case 2 (i) above, the applicable base Tipping Fee shall be adjusted and revised annually on 1st April of each year to reflect variation in the Wholesale price Index (WPI) occurring between the 1st week ending January and the week ending on immediately after 1st January of the year in which such revision is undertaken. The revision shall be undertaken such that 1st April every year (the date of revision), the Tipping Fee applicable shall be adjusted and revised to reflect suitable percentage rate (y%) of inflation occurring during the aforesaid period. The formulae is as follows – Tipping Fee = $x + [x(WPI_b/WPI_a) - x]y$; where x is the base tipping fee and WPI_b is the WPI of the week ending on or subsequent to Jan 1 of the year of revision and WPI_a is the WPI of the week ending 1st week of Jan for the remaining year. iii. In the event of allocation of new disposal site[s] by the Authority for there would be no escalation in Tipping Fee to be paid by the Authority if the site[s] are located within a radius of equidistant from the existing transfer station site. In case, the site[s] are located at distance > the radius of existing distance, the transportation of waste from project facility to designated site shall be increased in line with the increase in transportation distance. [<i>the basis of transportation cost per distance unit (km) taken from the state transportation association</i>]. <p>3. <i>Calculation of Monthly Payments</i> – the concessionaire shall raise the monthly payment after calculating the amount payable as follows:</p> <p>$A = [R_T * (\text{Higher of } W_{AVG} \text{ or } W_{MIN})] - P$, where R_T is the prevailing Tipping Fee per MT, W_{AVG} is the monthly average MSW received at the gate of MRTS facility, W_{MIN} is the minimum assured waste by the authority per day multiplied by number of days in a particular month and P is the penalties to the Concessionaire for non-compliance as per provisions of concession agreement.</p> <p>[In this case, the penalty to the Authority may also be included, to be paid separately to concessionaire, for providing waste below the minimum assured quantity as it will affect the operations of the processing facility. For instance</p> <p>$\text{Penalty to Authority} = (W_{MIN} - W_{ACT}) * [X] \% \text{ of } R_T$, where X generally varies between 50-80%, W_{ACT} is the actual monthly average of waste</p>
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		<p><i>provided by the Authority].</i></p> <p>4. <i>Mechanism of Payment</i> – the Authority shall pay tipping fee to Concessionaire within period of [30] days from the date of submission of Monthly Statement by Concessionaire, duly certified by the IPMA. If there is a delay in the payment beyond 60 days, the Authority shall pay an interest of [] % above the corresponding State Bank of India (Medium Term) Lending Rate.</p> <p>5. From each payment made to the Concessionaire, [1%] will be retained by the Authority. After completion of [one] year or after Audit Clearance (receipt of audit report) whichever is later, the total amount will be repaid to the concessionaire after adjustments for any additional payments done or for any other dues on part of concessionaire to the concession authority.</p> <p>6. The payment made to concessionaire shall include all custom duties, import duties, excises duties, business taxes, income, service, VAT and other taxes & duties that may be levied in accordance to the laws and regulations in force on the contractor’s equipment, materials and supplies (permanent, temporary and consumables) to be used on or furnished under the contract and on the services to be performed under the contract. Nothing in the contract shall relieve the contractor from his responsibility to pay any taxes & duties that may be levied in India or the country of origin.</p> <p>7. The concessionaire shall pay Income Tax on all payments made to him under the contract. Under the provisions of relevant Indian Income Tax Act, the corporation is required to deduct tax at source and will be deduct from the gross amount of each bill submitted.</p>
12	Force Majeure	<p>1. <i>Non-Political Event</i> – includes act of God, extremely adverse weather conditions, lightning, earthquake, cyclone, flood, volcanic eruption, draught or fire (to the extent originating from a source external to the Project Site or beyond design specifications for the Construction Works) or landslide, radioactive contamination or ionizing radiation; strikes or boycotts or popular movement (other than those involving the Concessionaire, or their respective employees/representatives or attributable to any act or omission of any of them) interrupting supplies and services to the Project Site for a period exceeding 7 (seven) or 30 (thirty) consecutive days (at the discretion of the Authority), discovery of geological conditions, or archaeological remains on the Site <i>or</i> any event or circumstances of nature analogous to any of the foregoing.</p> <p>2. <i>Indirect Political Event</i> – includes an act of war, invasion, armed conflict or act of foreign enemy, blockade, embargo, riot, insurrection, terrorist or military action, civil commotion or politically motivated sabotage; industry wide or state wide strikes or industrial action not arising on account of the</p>

		<p>acts or omissions of the concessionaire, for a continuous period of exceeding 7 (seven) / or 30 (thirty) consecutive days (at the discretion of the Authority).</p> <p>3. Political Event – includes change in Law, expropriation or compulsory acquisition by any Government Agency of any Project Assets or rights of the Concessionaire; or any unlawful or unauthorized or without jurisdiction revocation of, or refusal to renew or grant without valid cause any consent or approval required by the Concessionaire to perform their respective obligations under the Project Agreements (other than a consent the obtaining of which is condition precedent) provided that such delay, modification, denial, refusal or revocation did not result from the Concessionaire’s failure to comply with any condition relating to grant, maintenance or renewal of such consents or permits.</p> <p>4. Duty to report Force Majeure Event – the Affected Party shall by notice report such occurrence to the other Party and shall not be entitled to any relief for or in respect of that event unless it shall be notified not later than 7 (seven) or 14 (fourteen), at the discretion of the Authority.</p> <p>5. Effect of Force Majeure Event – upon the occurrence of such Event prior to the Appointed Date, the period set forth for achieving Financial Close shall be extended by a period equal in length to the duration of such Event. At any time after the Appointed Date, if any Event occurs before COD, the Term and dates set forth in the Project Completion Schedule shall be extended by a period equal in length to the duration for which such Event subsists.</p> <p>6. Allocation of costs – if <u>Non-political event</u>, the Parties shall bear their respective costs & neither Party shall be required to pay to the other Party any costs arising out of any such Event; if <u>Indirect Political event</u>, all costs attributable to such Event, and not exceeding the insurance cover for such Event, shall be borne by the concessionaire, and to the extent costs exceed such insurance cover, one half of such excess amount shall be reimbursed by the Authority; if <u>Direct Political Event</u>, all costs attributable to such event shall be reimbursed by the Authority to concessionaire.</p> <p><i>Further, Force Majeure costs may include interest payments on debt, O&M expenses, any increase in the cost of the Works and all other costs directly attributable to the Force Majeure Event, but shall not include loss of revenues or debt repayment obligations.</i></p> <p>7. Termination Notice– If a Force Majeure Event subsists for a period-of-180 days or more within a continuous period of 365 days, either Party may in its discretion terminate this Agreement by issuing a Termination Notice to the</p>
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		<p>other Party without being liable in any manner whatsoever.</p> <p>8. Termination Payment – in case of <u>Non-Political event</u>, the Authority shall make a payment equal to 90% of the Debt due less Insurance Cover for assets under Concessionaire ownership; in case of <u>Indirect Political event</u>, the Authority shall make a payment equal to Debt due less Insurance Cover for assets under concessionaire ownership (provided that if any Insurance claims forming part of the Insurance cover are not admitted & paid, then 80% of such unpaid claims shall be included in the computation of Debt due) and 110% of the Adjusted Equity; if case of <u>Direct Political event</u>, the Authority shall pay amount equal to Debt due plus 150% of Adjusted value of the Equity.</p> <p><i>In all these events, the concessionaire shall be entitled to withdraw the performance bank guarantee, if subsisting.</i></p>
13	Event of Default and Termination	<p>1. Concessionaire Event of Default – this includes; breach of any of its contractual obligations leading to material adverse effect under the contract and if the same has not been remedied for more than 60 days from the notice date; voluntary winding up resolution by concessionaire’ shareholders; the equity holding is not in line with the provisions of this Agreement, failed to achieve any of the Project Milestones beyond 180 days of the respective Scheduled Project Milestone Date as per this Agreement, failed to make payment to Authority beyond maximum allowed as per this Agreement.</p> <p>2. Authority Event of Default – this includes; material breach of any of its obligations under this Agreement and has failed to cure such breach within 60 days of receipt of notice issued by the concessionaire; the Authority has unlawfully repudiated this Agreement or otherwise expressed its intention not to be bound by this Agreement; failed to make any payments due to the Concessionaire and more than 180 days have elapsed since receipt of payment invoice.</p> <p>3. Termination Payment – in case of <u>Authority’ event of default</u> and if termination occurs prior to the COD, the authority shall pay to concessionaire equal to Debt due plus 120% of equity contribution by concessionaire till termination date and if termination occurs after COD, amount shall be equal to Debt due plus 150% of adjusted value of equity on termination date; in case of <u>Concessionaire’ event of default after COD</u>, the Authority shall pay to concessionaire only the Debt due as on termination date and in case the termination <u>before COD</u> then the bank guarantee will be en-cashed by the Authority and there will not be any other liability on the Authority.</p>

14	Handover of Project Facilities	<p>1. Ownership during the Concession Term – all immovable assets including site and civil structures created for processing facility shall be transferred to the Authority, and all movable assets including equipments & machinery and vehicles shall be transferred to the Concessionaire [may be in accordance with the Financing Documents & first prior charge to Senior Lenders privileges].</p> <p>2. At the End of Concession Term – the concessionaire shall on the date of expiry of the Term, hand back on as-is where-is basis, peaceful possession of the <u>Project facilities</u> [processing site and other supporting facilities created on the land of the Authority] to the Authority free of cost and free from all encumbrances and in good operable condition having sufficient residual economic life.</p>
15	Dispute Resolution	<p>Any dispute arising after the CoD then the difference or controversy of whatever nature (<i>including the change of scope</i>) between the parties, howsoever arising under, out of or in relation to this Agreement, including those arising with regard to acts, decision or opinion of the IPMA (the “Dispute”) shall in the first instance be attempted to be resolved amicably with the procedures set forth in this Agreement. If the dispute is not amicably settled within fifteen (15) days of such meeting between the two, either party may refer the dispute to arbitration in accordance with the provisions of this Agreement.</p>
16	Change of scope	<p>The change in scope may arise due to any one of the following: (i) increase/decrease in the service area; or (ii) change in waste composition; or (iii) capacity constraints due to increase in the intake waste; due to any of the above reasons then and the responsibility of the change in scope lies either with the Authority or the Concessioner then the Article 15 will be applicable. It is further clarified that both the parties will follow the process of dispute resolution as per the provisions of the Agreement.</p>
17	Representation and Warranties	<p>1. Concessionaire’ Representatives & Warranties – it is duly organized, validity existing and in good standing under the laws of India; it has the financial standing and capacity to undertake the project in accordance with the terms of this Agreement; there are no actions, suits, proceedings or investigations pending or, to the Concessionaire’s knowledge, threatened against it at law or in equity before any court or before any other judicial, quasi judicial or other authority, the outcome of which may result in the breach of this Agreement; no representation or warranty by the Concessionaire contained herein or in any other document furnished by it to the Authority or to any government agency in relation to Applicable Permits contains or shall contain any untrue or misleading statement of material fact or omits or shall omit to state material fact necessary to make such representation or warranty not misleading.</p> <p>2. Authority’ Representatives & Warranties – it has full power & authority to execute, deliver and perform its obligations under this Agreement; it has financial standing & capacity to perform its obligations under the Agreement; it has complied with Applicable Laws in all material respects;</p>

		it has good & valid right to the Project Site, and has power & authority to grant a license in respect thereto to the Concessionaire in accordance with the terms and conditions set out in this Agreement; and upon the Concessionaire performing the covenants herein, it shall not at any time during the term hereof, interfere with peaceful exercise of the rights and discharge of the obligations by the Concessionaire, in accordance with this Agreement.
18	Waiver and Severability	No failure or delay by the operator in exercising any right, power or remedy under this Agreement shall operate as a waiver thereof, nor shall any single or partial exercise of the same preclude any further exercise thereof or the exercise of any other right, power or remedy. If at any time, any provision of this Agreement is or becomes illegal, invalid or unenforceable in any respect under the law of any jurisdiction, the legality, validity and enforceability of such provision under the law of any other jurisdiction, and of the remaining provisions of this Agreement, shall not be affected or impaired thereby. Provided however, if the said provision is fundamental provision of this Agreement or forms part of the consideration or object of this Agreement, the provision of this Article shall not apply.
19	Miscellaneous	<p>1. Assignments & Charges – the Concessionaire shall not assign in favor of any person this Agreement or the rights, benefits and obligations hereunder save and except with prior consent of both the Authority & Senior Lenders. Concessionaire shall not create nor permit to subsist any Encumbrance over the Project Facilities except with prior consent in writing of Authority and Senior Lenders. However, above restraints shall not apply to Liens/ encumbrances arising by operation of law, and Pledges/hypothecation of goods/ stocks/ movable assets, revenues & receivables as security for indebtedness, in favor of the Senior Lenders and working capital providers for the Project, and assignment of Concessionaire’s rights and benefits under this Agreement to or in favor of the Senior Lenders as security for financial assistance provided by them.</p> <p>2. Liability and Indemnity – the Concessionaire shall indemnify, defend and hold Authority harmless against any & all proceedings, actions and, third party claims arising out of a breach by Concessionaire of any of its obligations under this Agreement except to the extent that any such claim has arisen due to Authority Event of Default during the Term; whole concession period; and Authority shall, indemnify, defend and hold harmless the Concessionaire against any and all proceedings, actions, third party claims for loss, damage and expense of whatever kind and nature arising out of defect in title and/or the rights of Authority and/or arising of a breach by Authority, its officers, servants and agents of any obligations of Authority under this Agreement except to the extent that any such claim has arisen due to Concessionaire Event of Default during the Term.</p> <p>3. Governing Law & Jurisdiction – this Agreement shall be governed by the laws of India. The Courts at [Project City] shall have jurisdiction over all matter arising out of or relating to this Agreement.</p> <p>4. Amendments – This Agreement and the schedules together constitute a</p>

		<p>complete and exclusive understanding of the terms of the Agreement between the parties on the subject hereof and no amendment or modification hereto will be valid and effective unless agreed to by all the parties hereto and evidenced in writing.</p> <p>5. Notices – Unless otherwise stated, notices to be given under this Agreement including but not limited to a notice of waiver of any term, breach of any term of this Agreement and termination of this Agreement, shall be in writing and shall be given by hand delivery, recognized international courier, mail, telex or facsimile transmission and delivered or transmitted to the parties at their respective addresses provided in the Agreement.</p>
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