

TERM SHEET TEMPLATE – MSW Processing Facility

Project Need

The setting up of a waste processing facility requires substantial technology intervention in addition to financial investment and operational capacity to run the facility. In Indian context, it is observed that this is one the most neglected component in the entire value chain of MSWM system and the compliance with the MSW Rules are below acceptable levels. Further, the urban local bodies /or municipal authorities generally lack capacity and capability in terms of financial, technical and operational aspects for development of a waste processing facility, which can be addressed with private sector participation in implementing the project.

Need for PPP Intervention

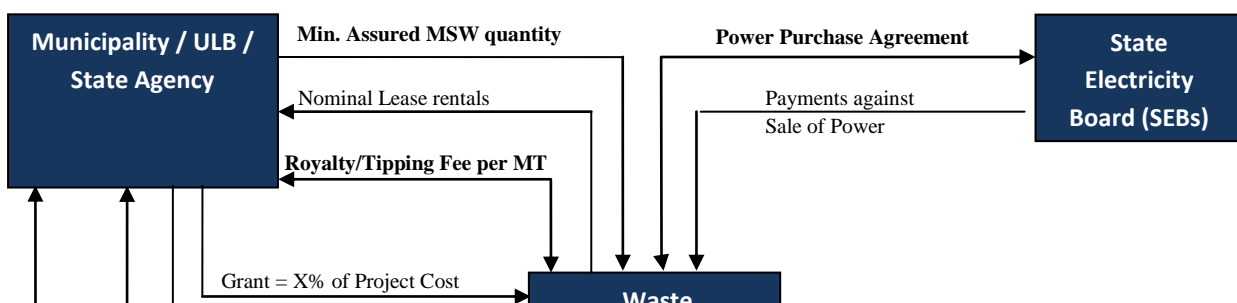
The ULB needs a private operator to bring in

- i. capital investment required for setting up of a waste processing facility.
- ii. bring in newer and efficient technologies for waste processing and recycling; 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 MSW processing facility 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 scope of work broadly includes development of waste processing and/or recovery facilities, transportation of final rejects to the landfill site. The concession duration is generally in the range of 10-25 years for similar projects. The figure below depicts the general PPP contract structure for a waste processing facility on BOT format:



Financial Bid Parameter – *The Bid Parameter for similar projects generally depends on aspects like; (i) scope of Project, (ii) duration of the concession period, (iii) proposed PPP contract & risk allocation structure, (iv) probable revenue streams & revenue risks associated with the Project, and (v) financial viability of the Project. Following are broadly accepted and/or followed Financial Bid Parameters on build-operate-transfer format for MSW processing facility:*

Case I – Project Financially Not-Viable

This scenario develops where the quantity and quality of MSW collected is not adequate to generate the by-products which can provide sufficient returns to cover the investment and operations cost of processing and scientific disposal of inert/rejects from MSW at the landfill site.

a. Lowest Tipping Fee per MT of MSW from Authority

- ✓ **Tipping Fee per MT** of MSW [*EITHER transported to the gate of processing & disposal facility OR final inert/rejects to be transported to the disposal facility with maximum cap to the inert/rejects amount as percentage of the input MSW*] with pre-determined [annual or bi-annual, as the case may be] increment rate¹ for the Tipping Fee; OR
- ✓ **Levelised Value² (LV)**: of the aggregate of the following, as applicable:
 - Tipping fee (Rs/MT) for MSW Processing [*this fee is on the total input waste*]; and
 - Tipping fee (Rs/MT) for Transportation of inert/rejects to the prescribed landfill site. [*this fee is on the inert/rejects quantity*]

This arrangement is useful when there is a likely chance of shifting of prescribed landfill site to a new location during the concession period, and then based on the provisions of the agreement the additional cost for transportation can be computed and incorporated in the payment schedule.

¹ *The increment rate is generally pegged to the inflation rate or the ULB can fix their own rate or can devise the formula based on the cost components to the MSWM system.*

² *This is Present Value of the quoted tariff discounted at the fixed discount rate.*

- b. Lowest Grant from Authority** – usually ULB provides one time grant as part of Capital Investment need for development of waste processing facility –
- ✓ One time Grant requirement (generally milestone based disbursement of grant) from the Authority to set up the Project Facility; in case partial cost recovery is foreseen depending upon the revenue model (probable revenue streams) and concession period which makes the project viable and where the ULB is not supposed to pay for the regular tipping fee for the allied activities related to the Project.

Case II – Project Financially Viable

This scenario is observed at the places where the generation of MSW is substantial and the revenue from waste processing there on is sufficient to sustain the operation of waste processing and transportation of inert/rejects to the prescribed landfill site.

- a. **Highest Royalty per MT of MSW**, payable to Authority
- ✓ Royalty per MT of MSW transported [by the Authority] to the gate of processing facility with pre-determined [annual or bi-annual] increment rate; OR
 - ✓ **Levelised Value (LV)** of the Royalty³ per MT of MSW transported [by the Authority] to the gate of processing facility at the pre-determined discounted rate specified to all Bidders **for the Concession Term**; OR
- b. **Highest Authorization Premium per Annum** to Authority
- ✓ Lump sum authorization Premium per annum to the Authority for utilization of the MSW for processing and/or recycling activities as the case may be, with pre-determined [annual or bi-annual, as the case may be] increment rate for the premium;

Detailed Term Sheet

The section below outlines the detailed contractual arrangement for implementation of MSW Processing facility on build-operate-transfer (the “BOT”) format:

Article	Key Items	Description
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³ The private player has to give the hard number of the royalty payable to the Authority for the entire contract period. This helps in better financial planning at the Authority’ end as they are aware of likely cash outflows for the Project through-out concession.

	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	<p>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;</p>
2	The Concession	<p>It is generally defined in terms of construction and O&M period and ranges between 15-30 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.</p>
3	Condition Precedent/ Subsequent	<p>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.</p> <p>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</p>

		<p>detailed Project Implementation & Operation Plan (PIOP).</p> <p>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 possession of the project site in accordance with the provisions of land lease agreement.</p>
4	Non Compliance with Condition Precedent ⁴	<p>In this event the compensation to be paid shall be as,</p> <p>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,</p> <p>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 Monitoring Agency’s report.</p>
5	Project Site	<p>1. <i>Vesting of site with concessionaire</i> – the Authority shall license the land parcels for the development of processing facility 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 (<i>like power line, pass through road, underground gas pipeline etc. through processing facility.</i>) 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>

⁴ The contract document should clearly mention the financial obligations of the parties in case of default

		<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 [<i>who will be responsible for the compliance of the engineering, legal, social, commercial and environmental aspects of the project</i>] & 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 [<i>equally</i>] on [<i>50:50</i>] basis or on any other terms as agreed between both the 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.</p>
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 [<i>generally around 10% of the total estimated project cost</i>]. 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 [<i>generally around 1% of the estimated project cost</i>] 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 Project⁵ and to meet</p>

⁵ 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.

		<p>all of its obligations under this Agreement in a timely manner. However, the existing fixed⁶ 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 fund⁷.</i></p> <p>Regarding disbursement of Grants by the Authority, upon receipt of Grants 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 Facilities, 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 contract⁸.</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 Waste Processing Facility of capacity [] TPD for the organic waste 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>Sale & marketing of by-products from processing MSW</i> – the</p>

⁶ 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.

⁷ A suitable clause like extension of the Commercial Operations Date or cost escalation can be incorporated in the document.

⁸ A suitable clause relating to the default and suspension in the payment of penalty has to be incorporated

Concessionaire shall be free to sell or otherwise dispose of any components of MSW and products derived or produced from the Plant as a consequence of undertaking the processing of the MSW including compost /or electricity /or RDF /or fluff /or gas /or sludge /or residual treated water /or any other products /or by-products, other material recovered /or produced from MSW, without any interference or requirement of any additional reporting, clearance or approval in this regard from the Authority.

4. *Project Implementation (Construction of Project Facilities)* – 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.

<i>Project Milestone</i>	<i>Description of Milestone</i>	<i>Scheduled Project Completion Date</i>
<i>I</i>	1. Obtained all Applicable Permits for the Project including licenses, consent, exemptions, permissions and approvals from the government agencies concerned.	[] days
<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 processing 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 waste processing facility.	[] days

5. *Project Implementation (Operations & Maintenance)* – the Concessionaire shall operate and maintain the Project Facilities in accordance with the approved project implementation and operations plan and applicable laws.

6. *Insurance* – 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 Facilities in accordance with the Good Industry Practices.

7. *Measurement of MSW* – a weighbridge will be constructed, operated and

		<p>maintained at the entrance of the processing facility by concessionaire and shall have an electronic display unit and suitable technology, duly calibrated to carry out the operations.</p> <p>8. <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>9. <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> <p>10. <i>General Obligation</i> – the Concessionaire shall at its own cost & expense endeavor to obtain carbon credits for the project. The fiscal incentives and benefits accruing in respect of or on account Carbon Credits should be received fully by the Concessionaire or to be shared in the ratio of [X:Y] between the Authority and Concessionaire as per the provisions of this Agreement. However, the concessionaire shall bear all the development and validation cost for obtaining the CDM benefits for the project. Further, the concessionaire shall pay for all utility charges (water, power etc.) relating to the Project Facilities.</p>
10	Authority’ Obligation	<p>1. <i>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.</i></p> <p>2. <i>In case, the segregation of input MSW to processing is obligation of Authority, the agreement shall clearly delineate the service levels in terms of performing segregation activity, for instance shown below:</i></p> <ul style="list-style-type: none"> - <i>Within one year of COD – [50%] or more</i> - <i>Within two years of COD – [70%] or more</i> - <i>Within three years of COD – [80%] or more</i> - <i>Within four years of COD – [90%] or more</i>

		<p>3.If Applicable, the Authority shall pay Tipping Fee to Concessionaire for processing of MSW and disposal of Residual Inert Matter to Landfill. 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>4.If Applicable, water, power and approach road to the Project Facility at [<i>Site location</i>] shall be provided by the Authority in accordance with Applicable Laws.</p> <p>5.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>6.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>7.<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 Jan1 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 processing facility to landfill shall be increased in line with the increase in transportation distance. [*the basis of transportation cost per distance unit (km) taken from the state transportation association*].

3. Calculation of Monthly Payments – two cases arises:

- i. ***Tipping fee (Rs/MT) is linked with input waste to processing facility***
- the total gross monthly payment would be a product of number of tons of MSW received in a particular month at the gate of the processing facility multiplied by the prevailing Tipping Fee per MT of MSW. The gross monthly payment would also deduct all the applicable penalties as per the provision of this contract. The general formula for calculation of monthly payments (A) is as follows:

$A = [R_T * (\text{Higher of } W_{AVG} \text{ or } W_{MIN})] - P$, where R_T is the prevailing Tipping Fee per MT, W_{AVG} is the monthly average MSW received at the gate of processing 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.

[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

*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*

		<p><i>of waste provided by the Authority].</i></p> <p>ii. When Tipping fee (Rs/MT) is linked with output waste from processing facility i.e. inert/rejects to landfill site – the total gross monthly payment would be a product of number of tons of inert/reject transported to landfill site multiplied by prevailing Tipping Fee per MT of waste. The general formula for calculation of monthly payments (A) is as follows:</p> <p><i>$A = [R_T * (\text{Lower of } W_{AVG} \text{ or } W_{MAX})] - P$, where R_T is the prevailing Tipping Fee per MT, W_{AVG} is the monthly average inert/rejects transported from processing to the landfill site, W_{MAX} is the maximum permissible inert/rejects to the landfill site from processing facility multiplied by number of days in a particular month and P is the penalties to Concessionaire for non-compliance as per provisions.</i></p> <p>4. Mechanism of Payment – the Authority shall pay tipping fee to Concessionaire within a period of 30 or 60 days (as the case may be) 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>
12	Force Majeure	<p>1. Non-Political Event – 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. Indirect Political Event – 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 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</p>

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.

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.

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.

6. *Allocation of costs* – if *Non-political event*, 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 *Indirect Political event*, 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 *Direct Political Event*, all costs attributable to such event shall be reimbursed by the Authority to concessionaire.

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.

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 other Party without being liable in any manner whatsoever.

8. *Termination Payment* – in case of *Non-Political event*, the Authority shall make a payment equal to 90% of the Debt due less Insurance Cover for assets under Concessionaire ownership; in case of *Indirect Political event*, the Authority shall make a payment equal to Debt due less Insurance Cover for assets under concessionaire ownership (provided that if any Insurance

		<p>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 <i>Direct Political event</i>, 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 <i>Authority’ event of default</i> 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 <i>Concessionaire’ event of default after COD</i>, the Authority shall pay to concessionaire only the Debt due as on termination date and in case the termination <i>before COD</i> 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</p>

		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.
15	Dispute Resolution	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.
16	Change of scope	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.
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; 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.</p>

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 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</p>

		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.
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