

## **TOOL # 5: OTHER KEY CLAUSES FOR A PSP CONTRACT**

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## Overview

- The objective of this tool is to provide suggested clauses for a performance based contract that are related to:
  1. **Obligations before signing of a contract**
  2. **Obligations after signing**, but before work begins
  3. **Terms of work** during contract, related to expected standard of service
  4. **Payment**: Details of responsible party, amount due and mechanism of payment to the private player for services provided
  5. **Penalties & Incentives**, for instances when service standards are not met by the private player, as well as incentives to reward strong performance (some of these have been highlighted in the previous sub section (Question 2))
  6. **Termination** of contract
  7. **Others**, related to miscellaneous events
- These 7 types of clauses have been provided for each of the key activities of the contract. As described on page XX of the toolkit, activities related to cleaning and refurbishment have been combined here, as in a typical IFSM contract.
- These are generic clauses that must be included in the contract. However some of these will need to be modified based on the ULB's specific requirements or contexts. Such clauses/details are marked with 'X' in RED font.

## Sample Key Clauses for a Term Sheet

### A. Cleaning and refurbishment of septic tank/ pits

#### 1. Obligations before signing of a contract

Cluses	Objectives
<b>By selected bidder</b>	<ul style="list-style-type: none"> <li>• Give a bank guarantee worth 50% of total cost of suction units to show capacity to purchase a suction units if the bidder does not have a suction units at the time of bidding</li> <li>• Give a performance guarantee (security deposit) worth 33% of value of annual contract in lieu of satisfactory performance, subject to monitoring</li> <li>• Map the households (HHs) in specified town limit and create a quarterly schedule of cleaning for a year</li> </ul>
<b>By ULB</b>	<ul style="list-style-type: none"> <li>• Specify the town limit which would be included by the private player in the cleaning schedule</li> <li>• Provide details and undertake filed visit with the private player to the site of septage disposal</li> <li>• Set up an escrow account with amount payable for 6 months to the private players, with a local bank</li> <li>• Undertake IEC activities in the town to ensure HH awareness about IFSM and responsibility of each stakeholder</li> </ul>

#### 2. Obligations after signing, but before work begins

Cluses	Objectives
<b>By selected bidder</b>	<ul style="list-style-type: none"> <li>• Purchase GPS mounted suction unit if the private player does not have it and the required cleaning materials</li> <li>• Take the required permissions - xxx , as per norms</li> <li>• Furnish insurance, driving license for drivers, business registration license, PAN card, affidavit of character and xx</li> <li>• Take and bear the cost of necessary utility connections as required such as telephone, electricity etc. for office space</li> <li>• Initiate operations within 30 days of signing the contract</li> </ul>

<b>By ULB</b>	<ul style="list-style-type: none"> <li>• Approve documents and grant work order to the selected bidder</li> <li>• Notify HHs within town limits about the mandated cleaning of septic tank/ pits</li> </ul>
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3. **Terms of work** during contract, related to expected standard of service

Key activities	Service standards
<b>Refurbishment of septic tank/ pits</b>	<ul style="list-style-type: none"> <li>• In case the HH septic tank/ pits are sealed, the private player must refurbish the septic tank/ pits with access manhole covers and collect a set amount, specified by the ULB from the HH</li> </ul>
<b>Cleaning of septic tank/ pits</b>	<p><b>Visit to HHs as per schedule</b></p> <ul style="list-style-type: none"> <li>• The private player must call each HH at least two days before the scheduled visit</li> <li>• The private player must visit each HH as per the defined and agreed quarterly based schedule</li> <li>• The private player must attempt to reach every HH at least twice before marking them as ‘unavailable’ or ‘unwilling’ to clean their septic tank/ pits</li> </ul> <p><b>Use of safety gear for cleaning septic tank/ pits</b></p> <ul style="list-style-type: none"> <li>• The cleaner and helper must wear protection gloves, boots and face masks at all times while dealing with fecal matter</li> <li>• No person should enter the septic tank/ pits at any given point, and cleaning should be done only through the GPS mounted suction unit</li> </ul> <p><b>No damage to tanks while cleaning</b></p> <ul style="list-style-type: none"> <li>• The private player must ensure that septic tank/ pits are not damaged in the process of cleaning</li> <li>• If structural damages are caused to the septic tank/ pits, they must be repaired free of cost within 48 hours</li> </ul> <p><b>Adequate cleaning septic tank/ pits</b></p> <ul style="list-style-type: none"> <li>• While cleaning septic tank/ pits, the private player must ensure that only 1-2 inches of fecal waste matter is left behind</li> </ul>

<b>Transport of fecal sludge</b>	<p><b>No spillage during transportation</b></p> <ul style="list-style-type: none"> <li>• The private player must ensure that no fecal matter is spilled during transportation</li> <li>• In case there is any spillage, the fecal matter must be cleaned as soon as it is brought to the notice of the private player</li> </ul> <p><b>Dumping of fecal sludge at correct treatment site</b></p> <ul style="list-style-type: none"> <li>• The fecal sludge and only the fecal sludge must be dumped off at the allocated treatment site</li> </ul>
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4. **Payment:** Details of responsible party, amount due and mechanism of payment to the private player for services provided

	Details
<b>Mechanisms</b>	<p>The private player will be paid <b>INR XX lacs per quarter</b> by the ULB based on signatures from HHs with cleaned septic tank/ pits and signatures from the Treatment Plant operator. The payment will be subject to the following clauses:</p> <ul style="list-style-type: none"> <li>• Full payment will be made when all the HH's septic tank/ pits are cleaned as per schedule</li> <li>• If HH septic tank/ pits are not cleaned as per schedule by the end of the quarter, payment will be deducted based on penalties specified in monitoring and evaluation framework section</li> <li>• Penalties will be deducted from the quarterly payment based on service standards not being met which are detailed in the monitoring and evaluation framework section</li> </ul> <p>Payment for refurbishment will be made by the HHs themselves and ULB will not bear responsibility for ensuring payment of the same</p>

5. **Penalties & Incentives**, for instances when service standards are not met by the private player, as well as incentives to reward strong performance (some of these have been highlighted in the previous sub section (Question 2)

	Details
<b>Mechanism</b>	<p>Penalties will be imposed on the private player if the specified service standards are not met. Penalties will be deducted from the payment due to the private sector every quarter after necessary inspections and verifications are completed by the ULB</p> <p>In case of 95% of scheduled households are cleaned for 2 continuous quarters, a 5% bonus for that quarter would be paid to the private player</p> <p>The metrics of performance, means of inspections and resultant penalties in cases of non-compliance are highlighted in the monitoring and evaluation framework section</p>

## 6. Termination of contract

	Details
<b>Payments made on termination at cause and at will</b>	<p>In case of termination due to cause and will, the outcomes for the ULB and the private player are detailed below:</p> <p><b><u>At Cause</u></b></p> <p><u>ULB does not fulfill contract conditions</u></p> <p>Selected bidder would be compensated for investments and the cost of winding down</p> <p><u>Private player is unable to meet service standards</u></p> <p>ULB will seize the performance bank guarantee given by the private player</p> <p><b><u>At Will</u></b></p> <p><u>ULB decides discontinue the contract for reasons unrelated to player performance</u></p> <p>3 month notice period required to be given by the ULB. Private player compensated for investments and the cost of winding down and the performance bank guarantee returned to the private player</p> <p><u>Private player wants to terminate the contract due to reasons unrelated to ULB compliance with contract terms</u></p> <p>3 month notice period required to be given by the private player and performance bank guarantee is forfeited</p>

<b>Force Majeure</b>	<b>XXX</b>
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7. **Others**, related to miscellaneous events

	<b>Details</b>
<b>Payment delays</b>	ULB to pay interest for the payment, delayed by 3 months or more, at a rate of interest of 5% p.a. calculated from the due date of payment
<b>Cost escalation</b>	The selected bidder would have the opportunity to renegotiate the cost with the ULB annually. However, within the negotiated period, the escalated costs would be to be borne by the private player  In case, of discontinuation of contract, it would be treated as a at will discontinuation by the selected bidder

**B. Construction of Treatment Plant**

1. **Obligations before signing of a contract**

<b>Clauses</b>	<b>Objectives</b>
<b>By selected bidder</b>	<ul style="list-style-type: none"> <li>Give a performance guarantee worth 33% of value of the construction contract in lieu of satisfactory performance subject to monitoring</li> </ul>
<b>By ULB</b>	<ul style="list-style-type: none"> <li>Provide specifications of the site for construction</li> </ul>

2. **Obligations after signing**, but before work begins

<b>Clauses</b>	<b>Objectives</b>
<b>By selected bidder</b>	<ul style="list-style-type: none"> <li>Arrange for construction and supporting materials listed in the DETAILED PROJECT REPORT</li> <li>Take the required permissions - xx , as per norms</li> <li>Furnish insurance, business registration license, PAN card, affidavit of character and xx</li> <li>Take and bear the cost of necessary utility connections as required such as telephone, electricity etc. for office space</li> </ul>



	<ul style="list-style-type: none"> <li>Initiate operations within 30 days of signing the contract</li> </ul>
<b>By ULB</b>	<ul style="list-style-type: none"> <li>Ensure that permissions for construction on the selected site are granted and work order is issued to the selected bidder</li> </ul>

3. **Terms of work** during contract, related to expected standard of service

Key activities	Service standards
<b>Construction of Treatment Plants</b>	<ul style="list-style-type: none"> <li>The private player must construct unplanted Treatment Plants in the manner specified in the detailed project report and drawings provided to the player</li> </ul>

4. **Payment:** Details of responsible party, amount due and mechanism of payment to the private player for services provided

Key activities	Details
<b>Construction</b>	<p>The private player will be paid according to cost of construction ascertained by unit rates in schedule of quantities and percentage progress as ascertained by the DETAILED PROJECT REPORT</p> <p>Payment for construction will be released in 3 tranches based on the 3 milestones subject to ULB certification of satisfactory construction or correction in case of non-satisfactory construction:</p> <p>The private player will be paid <b>INR XX lacs</b> in total for construction divided in 3 phases:</p> <ul style="list-style-type: none"> <li><b>Xx %</b> advance immediately after signing the agreement and issue of work order</li> <li><b>Xx</b> payment for completion of 50% of work which involves construction of superstructure</li> <li><b>Xx %</b> of the payment after 3 months of satisfactory operations of Treatment Plants</li> </ul>

5. **Penalties & Incentives,** for instances when service standards are not met by the private player, as well as incentives to reward strong performance (some of these have been highlighted in the previous sub section (Question 2))

Details

<b>Mechanism</b>	<p>Penalties will be imposed on the private player if the specified service standards are not met. Penalties will be deducted from the payment due to the private sector after necessary inspections and verifications are completed by the ULB</p> <p>The metrics of performance, means of inspections and resultant penalties in cases of non-compliance are highlighted in the monitoring and evaluation framework section</p>
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## 6. Termination of contract

<b>xx</b>	<b>Details</b>
<b>Payments made on termination at cause and at will</b>	<p>In case of termination due to cause and will, the outcomes for the ULB and the private player are detailed below:</p> <p><b>At Cause</b></p> <p><u>ULB does not fulfill contract conditions</u></p> <p>Selected bidder would be compensated for investments and the cost of winding down</p> <p><u>Private player is unable to meet service standards</u></p> <p>ULB will seize the performance bank guarantee</p> <p><b>At Will</b></p> <p><u>ULB decides discontinue the contract for reasons unrelated to player performance</u></p> <p>3 month notice period required to be given to the private player. Private player compensated for investments and the cost of winding down and the performance bank guarantee returned to the private player</p> <p><u>Private player wants to terminate the contract due to reasons unrelated to ULB compliance with contract terms</u></p> <p>3 month notice period required to be given by the private player and performance bank guarantee is forfeited</p>
<b>Force Majeure</b>	<b>xxx</b>

## 7. Others, related to miscellaneous events

	Details
<b>Payment delays</b>	ULB to pay interest for the payment, delayed by 3 months or more, at a rate of interest of 5% p.a. calculated from the due date of payment
<b>Cost escalation</b>	Since the contract duration is 6 months, there is no provision for cost escalation. The private player will have to construct the Treatment Plant at the finalized cost as the time of bidding. In case of suspension of work due to cost escalation, the ULB can terminate the contract at cause due to private player being unable to meet service standards

## C. O&M of Treatment Plants

### 1. Obligations before signing of a contract

Clauses	Objectives
<b>By selected bidder</b>	<ul style="list-style-type: none"> <li>Give a performance guarantee worth 33% of value of the annual contract in lieu of satisfactory performance subject to monitoring</li> </ul>
<b>By ULB</b>	<ul style="list-style-type: none"> <li>Provide specifications of the Treatment Plant and location</li> </ul>

### 2. Obligations after signing, but before work begins

Clauses	Objectives
<b>By selected bidder</b>	<ul style="list-style-type: none"> <li>Arrange for cleaning materials as listed in the DETAILED PROJECT REPORT</li> <li>Take the required permissions - xxx , as per norms</li> <li>Furnish insurance, business registration license, PAN card, affidavit of character, employee details and xx</li> <li>Take and bear the cost of necessary utility connections as required such as telephone, electricity etc. for office</li> </ul>
<b>By ULB</b>	<ul style="list-style-type: none"> <li>Ensure that work order is issued to the selected bidder</li> </ul>

3. **Terms of work** during contract, related to expected standard of service

Key activities	Service standards
<p><b>O&amp;M of Treatment Plants</b></p>	<p>Collect sludge for dumping into the Treatment Plants</p> <ul style="list-style-type: none"> <li>The private player must depute an operator at the Treatment Plant who operates it from 10 am to 5 pm daily</li> <li>The operator needs to ensure that only septage is collected from the suction units and dumped in the Treatment Plant and prevent any contaminated dumping</li> </ul> <p>Adequate drying of septage</p> <ul style="list-style-type: none"> <li>The operator needs to ensure that collected septage is dried adequately by letting it rest for a duration of 15 days</li> </ul> <p>Cleaning of septage</p> <ul style="list-style-type: none"> <li>The operator needs to clean the dried septage from Treatment Plants after 15 days and dump it at a designated site or sell it as compost if so desired</li> <li>The operator needs to take a sample of dried septage after 15 days and effluents within the first week, once every quarter, in designated instruments and hand over the same to the ULB inspectors for inspection</li> </ul> <p>Maintenance of Treatment Plants</p> <ul style="list-style-type: none"> <li>The operator needs to replace top layer of sand when it gets thin (less than 250 mm)</li> <li>The operator needs to ensure that the discharge area is clean and the effluent drains are regularly flushed</li> <li>The private player needs to ensure that Treatment Plants are in working conditions and undertake repairs if they turn out to be faulty or break down</li> </ul>

4. **Payment:** Details of responsible party, amount due and mechanism of payment to the private player for services provided

Key activities	Details
<p><b>O&amp;M of Treatment Plants</b></p>	<p><b>INR xx lacs</b> would be paid annually, divided as quarterly payments based ULB monitoring and evaluation</p> <ul style="list-style-type: none"> <li>Penalties will be deducted from the quarterly payments based on service standards not being met which are detailed in the monitoring and evaluation framework section</li> </ul>

5. **Penalties & Incentives**, for instances when service standards are not met by the private player, as well as incentives to reward strong performance (some of these have been highlighted in the previous sub section (Question 2))

	Details
<b>Mechanism</b>	<p>Penalties will be imposed on the private player if the specified service standards are not met. Penalties will be deducted from the payment due to the private sector every quarter after necessary inspections and verifications are completed by the ULB</p> <p>The metrics of performance, means of inspections and resultant penalties in cases of non-compliance are highlighted in the monitoring and evaluation framework section</p>

6. **Termination of contract**

	Details
<b>Payments made on termination at cause and at will</b>	<p>In case of termination due to cause and will, the outcomes for the ULB and the private player are detailed below:</p> <p><b>At Cause</b></p> <p><u>ULB does not fulfill contract conditions</u></p> <p>Selected bidder would be compensated for investments and the cost of winding down</p> <p><u>Private player is unable to meet service standards</u></p> <p>ULB will seize the performance bank guarantee</p> <p><b>At Will</b></p> <p><u>ULB decides discontinue the contract for reasons unrelated to player performance</u></p> <p>3 month notice period required to be given by the ULB. Private player compensated for investments and the cost of winding down and the performance bank guarantee returned to the private player</p> <p><u>Private player wants to terminate the contract due to reasons unrelated to ULB compliance with contract terms</u></p> <p>3 month notice period required to be given by the private player and performance bank guarantee is forfeited</p>

<b>Force Majeure</b>	XXX
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7. **Others**, related to miscellaneous events

	<b>Details</b>
<b>Payment delays</b>	ULB to pay interest for the payment, delayed by 3 months or more, at a rate of interest of 5% p.a. calculated from the due date of payment
<b>Cost escalation</b>	<p>The select bidder would have the opportunity to renegotiate the cost with the ULB annually. However, within the negotiated period, the escalated costs would d be to be borne by the private player</p> <p>In case, of discontinuation of contract, it would be treated as a at will discontinuation by the selected bidder</p>