

Annexure II

Concession Agreement

Between

POLLUTION CONTROL BOARD, ASSAM

And

.....

FOR

“Setting up and Operating Integrated Waste Management Facility comprising of Hazardous Waste Treatment Storage and Disposal Facility (HWTSDf) and Common Bio-medical Waste Treatment Facility (CBWTF) at Lekai, Dibrugarh, Assam

This Agreement, entered into on the _____ day of _____ 202 (“**Agreement Date**”) between Pollution Control Board of Assam a statutory body for governing and monitoring of Environment and Environmental Infrastructures in the state of Assam having its registered office at Bamunimaidam, Guwahati – 21 (herein after referred to as “**PCBA**” which expression shall, unless repugnant to the context, include its successors and permitted assigns) of the **FIRST PART**;

And

.....a company incorporated under the Companies Act, 2013, having its registered office at..... (herein after referred to as “.....” which expression shall, unless repugnant to the context, include its successors and permitted assigns), of the **SECOND PART**.

The expressions “**PCBA**” and “.....” shall wherever the context admits mean and include their respective successors-in-interest and permitted assigns and agencies and shall hereinafter collectively be called as: “**Parties**” and individually as “**Party**”

WHEREAS:

The Industries and Health Care establishments in the State of Assam, which are generating Hazardous Waste, Bio-Medical waste are supposed to send their waste for Treatment and Disposal as prescribed in Hazardous and other Wastes (Management and Trans-boundary Movement) Rules, 2016, Solid Waste Management Rules, 2016 as amended from time to time under Environment Protection Act 1986 and as per Bio Medical Waste Management Rules 2016. As of now there are no effective means available to them for disposal of such Hazardous Waste in the State. In view of the directions of Hon’ble National Green Tribunal in the cases related to polluting industries, the Pollution Control Board was directed to ensure proper disposal of Hazardous Waste generated by the industries, to achieve the aforesaid objective. Subsequently

The Government of Assam through letter no _____ has authorized PCBA that take up this task of selecting the Developer/Operator through bidding process, on priority basis

Accordingly, PCB vide Expression of interest no _____ dated _____ and thereafter through Request for Proposal no _____ dated _____ has invited proposals from prospective bidders.

After evaluation of the bids received in response to the RFP, Committee accepted the bid of _____ and issued the Letter to Acceptance No. _____ dated _____ to the Bidder ("Letter of Acceptance") requiring compliance with the requirements of the RFP, including the execution of the Contract Agreement.

As per the RFP requirement, PCBA and _____, have agreed for setting up and operating Integrated Waste Management Facility comprising of Hazardous Waste Treatment Storage and Disposal Facility (HWTSDf) and Common Bio-medical Waste Treatment Facility (CBWTF) at Lekai, Dibrugarh, Assam. The Pollution Control Board of Assam has provided 25 acres of land for establishment of the facility.

Now THEREFORE, in consideration of the promises and the mutual covenants herein contained the Parties hereto hereby agree as follows:

1. INTERPRETATION

A) In this Agreement, unless the context otherwise requires:

1.1 Words denoting the singular shall include the plural and vice-versa;

1.2 Words denoting a person shall include an individual, corporation, company partnership, trust or other entity;

1.3 Heading, sub-heading and bold type face are only for convenience and shall be ignored for the purpose of interpretation;

1.4 References to all agreements, documents or other instruments include (subject to all relevant approvals) a reference to that agreement, document or instrument as amended, supplemented, notated or assigned from time to time;

1.5 Reference to any legislation or law or to any provision thereof shall include references to such law as it may after the date of this Agreement from time to time, be amended, supplemented for re-enacted;

1.6 reference to the word “include” or including” shall be construed without limitation;

1.7 a reference to “party” is to a party to this Agreement and a reference to “parties” is unless otherwise stated to the contrary, a reference to the parties to this Agreement.

B) The following documents attached hereto shall be deemed to form an integral part of this Concession Agreement in the order of priority as listed below: -

- a) Letter from Government of Assam to Pollution Control Board, Assam as Annexure-1.
- b) Expression of Interest document attached as Annexure -2
- c) The Request for Proposal (RFP) document attached as Annexure-3.
- d) Letter of Acceptance issued to the Developer/Operator attached as Annexure-4
- e) All other Agreements/schedules and documents forming part hereof or referred to herein.

1- DEFINITION

The following expressions, wherever used in this Agreement, shall have the meanings ascribed thereto, as set out below:

“**Agreement**” means this agreement entered into between PCBA and the Developer/Operator including any amendments and modification thereof from time to time including the Concession Period and the Post Concession Monitoring Period, as elaborated later.

- i. “**Affected Party**” means the party claiming to be affected by a Force Majeure.
- ii. “**Applicable Law**” means all Laws in force and effect, including those detailed in Clause 3 of the Agreement herein, as of the date hereof and which may be promulgated or brought into force and effect hereinafter in India including judgements, decrees, injunctions, writs or orders of any court of record, as may be in force and effect during the subsistence of this Agreement and applicable to the Project/the Concessionaire.
- iii. “**Appointed Date**” means the date of this Agreement.
- iv. “**Arbitration Act**” means the Arbitration and Conciliation Act, 1996 and shall include any amendment to or any re-enactment thereof as in force from time to time. “**PCBA**” or “**Authority**” means the Pollution Control Board of Assam and shall include its authorized successors and assigns at all times.
- v. “**Authorization**” means permission for generation, handling, collection, reception, treatment, transport, storage, reuse, recycling, recovery, pre-processing, utilization

including co-processing and disposal of hazardous wastes granted under sub-rule (2) of rule 6 of Hazardous and Other Wastes (Management and Transboundary) Rules, 2016 along with Bio-medical waste management rules 2016.

- vi. **“Bid”** means the Response to Expression of Interest, Technical Proposal, Technical Presentation, submitted by.....in response to RFP Document issued by PCBA.
- vii. **“Bidder”** means with its registered address at
- viii. **“DFBOOT”** means Design Finance Build-Own-Operate and Transfer.
- ix. **“PCBA”** means Pollution Control Board of Assam.
- x. **“COD” means Commercial Operation Date i.e** the date on which the consent to operate (CTO) and authorizations as applicable are issued to the project by PCBA and the facility accepts the waste for treatment and disposal
- xi. **“Concession Period”** means the time period of 25 years or the life of the Project, whichever is later, commencing from the COD and the post monitoring period.
- xii. **“Damages”** shall mean the damages payable by either party to the other, as set forth in the Concession Agreement.
- xiii. **“Developer/ Operator”** means the party, responsible for designing, financing, establishing, operating (including collecting, receiving storing, treating and disposing the Hazardous Waste), maintaining and post Concession Period monitoring of the proposed IHWT SDF.
- xiv. **“Dispute Resolution Procedure”** means the procedure for resolution of Disputes set forth in Article 16.1
- xv. **“Effective Date”** means the date on which Consent to Establish is granted by the PCBA
- xvi. **“Encumbrances”** means, in relation to the Project, any encumbrances such as mortgage, charge, pledge, lien, hypothecation, security interest, assignment, privilege or priority of any kind having the effect of security or other such obligations, and shall include any designation of loss payees or beneficiaries or any similar arrangement under any insurance policy pertaining to the Project, where applicable herein but excluding utilities.
- xvii. **“Financial Year”** means the period commencing from April 1st of any given year to March 31st of the succeeding year.
- xviii. **“Force Majeure”** means an act, event, condition or occurrence as specified in clause 13 of this agreement.
- xix. **“Generator”** means the industry/entity/health care facility generating/producing Hazardous Wastes/Domestic Hazardous Waste in the State of Assam
- xx. **“Grants”** means any financial assistance under various schemes of respective State Governments and /or Government of India and includes the Central Sector Scheme of the Ministry of Environment, Forest & Climate Change, Government of India or any other scheme to be introduced by Central/State Government with regards to the waste management

24

- xxi. **"Gross Revenue"** means the gross receipt received from the Project.
- xxii. **"Government Agency"** means Government of India (GOI), Government of Assam (GoCG), commission, Board, Body, Bureau, Agency, Authority, Instrumentality, Court or other judicial or administrative body, central, state, or local, having jurisdiction over the Developer, the site/project facilities or any portion thereof, or the performance of all or any of the services or obligations of the Developer under or pursuant to this Agreement.
- xxiii. **"Hazardous Waste"** means Waste as defined under Hazardous Waste Management and Handling, Rules 1989, Hazardous and other Wastes (Management and Transboundary Movement) Rules, 2016 and as amended from time to time
- xxiv. **"Bio-medical Waste"** means Waste as defined under Bio-medical Waste Management rules 2016 and amended from time to time.
- xxv. **"Land"** means the land to be provided free of cost by Dibrugarh Municipal Board to the bidder.
- xxvi. **"Life of Project"** means the time period for which infrastructure is available, within the Project, to cater to the needs of the hazardous waste generators and health care facilities.
- xxvii. **"Letter of Acceptance"** or **"LOA"** means the letter issued by PCBA to the Successful Bidder to undertake and execute the project in conformity with the terms and conditions set forth in the RFP and any subsequent amendments thereof.
- xxviii. **"Material Adverse Effect"** means a material adverse effect of any act or event on the ability of either Party to perform any of its obligations under and in accordance with the provisions of this Agreement and which act or event causes a material financial burden or loss to either Party.
- xxix. **"Material Breach"** a breach by either Party of any of its obligations under this Agreement which has or is likely to have a Material Adverse Effect on the Project or which such Party shall have failed to cure.
- xxx. **"Membership"** means a membership Agreement to be jointly entered between the waste generators/industry and Occupier/Operator as per the provisions of Hazardous Waste Rules for availing the waste disposal and other services from IHWTSDf at Lekai, Dibrugarh, Assam.
- xxxi. **"Parties"** means the parties to the Concession Agreement collectively and "Party" shall mean any of the parties to the Concession Agreement individually.
- xxxii. **"Pre-processing"** means the treatment of hazardous waste before landfill or to make it suitable for co-processing or recycling or for any further processing.
- xxxiii. **"Post Concession Monitoring period"** means the period of 25 years commencing at the end of the Concession Period, during which period the Developer shall be responsible for monitoring and complying with all norms, guidelines prescribed by PCBA and other statutory authorities in relation to the Site, upon the terms and conditions herein contained.

- xxxiv. **"Project"** means Design and Construction of entire facility, operation, maintenance and post monitoring for an Integrated Hazardous Waste Treatment, Storage and Disposal Facility (IHWTSDF) & any other facilities as approved by MoEF & CC in the Environmental Clearance (EC), at Lekai, Dibrugarh, Assam. on DFBOOT basis.
- xxxv. **"Request for Proposal"** The Document, which is being issued to the prospective Bidders, asking for their Bids.
- xxxvi. **"Regulatory Authority/Body"** means a body consisting of Member Secretary and Chairman, PCBA.
- xxxvii. **"Recycling"** means reclamation and processing of hazardous and Other wastes as specified in the Hazardous and Other Wastes (Management and Transboundary) Rules 2016 and as amended from time to time in an environmentally sound manner for the originally intended purpose or for other purposes.
- xxxviii. **"Recovery"** means any operation or activity wherein specified materials are recovered.
- xxxix. **"Reuse"** means use of hazardous or other waste for the purpose of its original use or other use
- xl. **"Site"** means the Land and shall include the Integrated Hazardous Waste Treatment, Storage and Disposal Facility (IHWTSDF) located on such land.
- xli. **"Tax"** shall mean and includes any Indian taxes including but not limited to excise duties, customs duties, value added tax, GST, sales tax, local taxes, cess and any impost or surcharge of like nature (whether Central, State or local) on the goods, materials, equipment and services incorporated in and forming part of the Project charged, levied or imposed by any Government Agency, but excluding any interest, penalties and other sums in relation thereto imposed on any account whatsoever. For the avoidance of doubt. Taxes shall not include taxes on corporate income.
- xlii. **"Term of the Agreement"** means the term specified at Article 10 of this Agreement.
- xliii. **"Termination"** means early termination of this Agreement pursuant to Termination Notice or otherwise in accordance with the provisions of this Agreement but shall not, unless the context otherwise requires, include expiry of this Agreement due to efflux of time in the normal course.
- xliv. **"Termination Date"** shall mean the on which the concession period gets expired date specified in the Termination Notice as the date on which Termination occurs / comes into effect.
- xlv. **"Termination Notice"** shall mean the Notice of Termination by either Party to the other Party, in accordance with the applicable provisions of this Agreement.
- xlvi. **"Termination Payment"** shall mean the payments payable pursuant to Article 14.23 of this Agreement.

xlvi. **“Treatment”** means a scientific method or process designed to change the physical, chemical or biological characteristics or composition of any Hazardous Waste so as to render such wastes harmless as prescribed in relevant laws.

xlvi. **“User charges/Tariffs”** means Tariffs to be agreed upon mutually between the Developer, the generator and charged by the Developer for services provided to Generators/Users such as transportation, Lab analysis, storage, waste container hire charges, preliminary & final treatment, disposal of wastes into Landfill Cell, Incinerator and the disposal of Incinerator residue at IHWTSDf and any other incidental services for managing the Generators Hazardous Wastes and Bio-medical Waste.

3. **APPLICABLE LAWS & REGULATIONS**

The Parties hereby recognize and confirm that the IHWTSDf shall comply with, inter alia, the following statutes and rules:

- 1) Environment (protection) Act, 1986
- 2) Hazardous Waste (Management and Handling) Rules, 1989 framed under the Environment protection Act, 1986 and as amended from time to time including HOWM Rules, 2016
- 3) Solid Waste Management Rules 2016
- 4) Bio-Medical Waste Management Rules, 2016
- 5) Water pollution Act of 1974
- 6) The Public Liability Insurance Act of 1991
- 7) Water (Prevention and control of pollution) Cess Act 1977
- 8) The Air (prevention and control of pollution) Act of 1981
- 9) Motor Vehicles Act, 1988
- 10) Labour and labour welfare laws
- 11) Any other relevant Acts, Notifications, Circulars, Statutes, Guidelines etc. and amendments issued thereon from time to time.

4. **STATUTORY REQUIREMENTS**

Project would be under a regulatory, control and monitoring mechanism to continue to serve the principal objectives of the project.

5. OBLIGATIONS OF PCBA

5.1 **Clearances:** the responsibility for obtaining all the clearances and approvals including Environmental Clearance ("EC"), Consent for Establishment ("CFE") and Consent to Operate ("CTO") shall lie with the Developer and the costs for the same would be borne by the Developer. PCBA shall assist the Developer in obtaining pre-construction and pre-operations clearances in an appropriate manner, at both the central and state Government levels including those mentioned in Annexure XX.

5.2 PCBA shall grant the Developer unencumbered leasehold rights for Concession Period and post Concession Monitoring Period over the 20 Acre land along with approach road to the site in, Vil. Lekai, Dibrugarh District of Assam for IHWT SDF. The expenses related to registration and stamp duty shall be borne by the Developer.

5.3 The Developer shall be solely responsible for convincing itself of the suitability of the location through technical and EIA studies prior to building any assets or developing land.

5.4 The Developer/Operator will submit a proposed Land Use Plan for the Land to PCBA, who have the right to modify and approve the proposed Land Use plan as per approved EC. The Developer shall be free to use the land in line with the approved plan.

5.5 The Developer undertakes not to use the land for any other purpose other than for development of the project for which the permissions are granted by EC as mentioned under this Agreement

5.6 The Developer shall not sublease the Site or any part thereof for any purpose whatsoever without prior written intimation to PCBA.

5.7 PCBA shall assist the Developer/Operator by providing the required documents for securing clearances for construction and operation of the IHWT SDF at Lekai, Dibrugarh, Assam

5.8 PCBA will grant the Developer/Operator freedom of operations within the Site subject to statutory provisions and PCBA guidelines.

5.9 PCBA will assist the Developer to sort out various issues related to operations and user charges between the Hazardous Waste generating industry and Health care facility and the Developer, and if necessary, approach the regulatory body to get such issues sorted out, during the Concession period.

5.10 PCBA will assist the Developer in holding joint membership drive and issue necessary directions to the industrial associations, industries in the State for

availing the waste disposal services from the IHWTSDF at Lekai, Dibrugarh, Assam.

5.11 PCBA will grant the Developer access to its industrial areas and allow plying of transport trucks for transporting the Hazardous Waste for the purpose of the project as per Applicable Laws. However, the Developer shall ensure that during the transportation of Hazardous Waste no spillage or littering is there.

5.12 PCBA shall arrange to provide the required Grants/ Financial Assistance through the State Government under the Central Sector Scheme of Ministry of Environment, Forest & Climate Change of Government of India and amendments, if any from time to time for sustenance of the IHWTSDF project.

5.13 Any kind of residential/commercial/industrial construction is not permitted within the buffer zone i.e. 500 meters from the HWTSDF as per the CPCB guidelines - Criteria for Hazardous Waste Landfill – Hazardous Waste Management Series – HAZWAMS/17/2000-01 dated February 2001 and other guidelines issued by CPCB from time to time.

6. RIGHTS OF PCBA

6.1 The Developer/Operator will ensure free access to the designated representatives of PCBA /Regulatory body for the purpose of ensuring that the IHWTSDF is functioning without violation of the statutory obligations. However, the exercise of such rights will not interfere with the commercial operations of the IHWTSDF.

6.2 PCBA has the right to request any operational information from the Developer. It is the responsibility of the Developer to provide all such information as and when required by PCBA or its representatives.

6.3 PCBA shall be entitled to receive from the Developer the share in the Dividend declared in accordance with the provisions of Companies Act, 2013 for the relevant financial year.

7. OTHER COVENANTS

7.1 If a violation of a statutory requirement continues at the Site, then on the basis of such declaration by PCBA, PCBA may declare an extraordinary event and initiate termination action in line with the provisions of this Agreement.

7.2 That, anything done by PCBA and Developer with respect to the project under this Agreement including execution of Agreement or MOU or any act, deed, and/or correspondence etc, shall be binding upon all the parties concerned.

7.3 PCBA will ensure the compliance by the Generators (polluters) and Health Care Facilities to get their waste treated within the State of Assam, unless

Treatment capacity is unavailable/ dysfunctional. Criteria for declaring the Treatment capacity as unavailable/dysfunctional are:

- i. The Developer/s and Operators are not in a position to run the facility/ies properly. However, sufficient opportunity will be given to the Developer to present his case on operation of facility by him.
- ii. If facility/ies have attained full capacity and are not in a position to accept further quantities of treatable waste.

7.5 PCBA including its regional offices will extend required help (including issue of letters for authorizations for collecting information) in getting data's and information's from various government agencies for carrying out EIA and other studies, CPCB shall make available the records of and data used for any of the studies to the Company if requested at any stage of the process.

8. OBLIGATIONS OF THE DEVELOPER

The Developer undertakes, inter alia the following key obligations:

8.1 To Design, Build, Finance, Operate, Maintain and undertake the during Concession period including post concession monitoring of the Integrated HWTSDf & CBWTF, Lekai, Dibrugarh, Assam on DFBOOT Basis

8.2 Design and build the facility of capacity so as to sufficiently cater to the requirements of Hazardous Waste Generators and Health Care Facilities in the state. This also includes reasonable effort on part of the Developer to enhance the capacity as and when required during the concession period so as to sufficiently cater to the requirements of Hazardous Waste Generators in the state of Assam.

8.3 To comply with the existing Laws, Rules, Guidelines of MOEF, CPCB, PCBA and all other statutory laws governing the reception, transport, treatment, Storage and disposal of Hazardous Waste and to such similar facilities.

8.4 To comply with any changes in the statutory framework governing the reception, transport, treatment, storage and disposal of Hazardous Waste.

8.5 Ensure commissioning of HWTSDf within a period of 15 months from the date of agreement or within such other extended period as may be allowed by PCBA.

8.7 To carry out Environmental Impact Assessment (EIA) as per statutory requirements.

8.8 Hand back the physical possession of the Site to PCBA upon expiry or earlier termination of this Agreement, as the case may be, free from all and any encumbrances whatsoever on an basis – where is basis.

8.9 To ensure proper functioning of IHWTSDf with all safety and precautions and ensure no material adverse effect on the habitat and environment of any kind whatsoever may be as per Applicable Laws. In case any damage of loss, the Developer shall be solely responsible for the same.

8.10 To ensure proper, timely and effective disaster management.

8.11 The Developer/Operator will provide all Hazardous Waste management related and environment management services in the HWTSDf as required by statutes and as committed during the selection process

8.12 The Developer is also responsible for ensuring the safety of goods and people within and in proximity to the Site who could be affected by operations of the HWTSDf.

8.13 The Developer would have to seek the permission of PCBA / Regulatory body/ as required statutorily for handling wastes other than Hazardous Wastes as specified under the Hazardous and other Wastes (Management and Transboundary Movement) Rules, 2016 and Bio-medical waste management rules 2016 and amended from time to time during the tenure of this Agreement.

8.14 The Developer will abide by the following principles in the operation of HWTSDf

- A) Efficient management of facilities
- B) Regular maintenance of contracted facilities and monitoring of the Site environment.
- C) Provision of the necessary resources including financing and manpower.

8.15 The Developer/Operator is responsible for regular reporting to the Statutory Authorities including PCBA on the following matters:

(i) As prescribed under Hazardous and other Wastes (Management and Transboundary Movement) Rules, 2016 and under any other applicable law.

(ii) The Developer/Operator shall share the copy of the Annual report submitted to the State Pollution Board.

(iii) The audit annual report including financial statements within 6 (six) months of financial year.

8.16 In the event that on-line waste management /tracking systems are installed at the facility, the PCBA or any other statutory authority may require that such systems be linked to the central and/or regional monitoring systems installed by PCBA or any other statutory authority and with the Generators.

8.17 Subject to the rights and obligations under this Agreement and unless directed by PCBA /statutory authorities to the contrary, the Developer shall provide non-discriminatory service to all the Generators.

8.18 The Developer/Operator is responsible for allocating appropriate space, on temporary basis, for statutory duties of the Government/Government bodies.

8.19 The Developer/Operator shall collect and deposit 5 % of the annual turnover of the land fillable waste in an Escrow Account to be jointly operated by..... Pollution Control Board Assam and the concerned Bank. This amount is to be levied by the generator to the Developer over and above the disposal charges levied by the Developer/Operator. In compliance with the Office Memorandum of Ministry of Environment & Forests letter no: 23-1/2008-HSMD dated 16th April 2009. This deposited fund would be used by the Developer for post-closure monitoring of the landfill and as prescribed by the CPCB/MoEF&CC from time to time.

8.20 The Developer/Operator shall collect user charges from Generators/Operators on its own effort, based on rates to be mutually agreed upon between the Developer/Operator and waste Generator

8.21 The obligations of the Developer include the Project Scope in totality as detailed out in Chapter-2 i.e. "Scope of Work" of the RFP document.

9. RIGHTS OF THE DEVELOPER

9.1 The Developer shall have the right to create a charge on the project assets in favor of the Lenders to the project.

9.4 Position of lessors in respect of charge on assets/assign/ability rights shall be at par with lenders.

9.5 The lenders and the Developer have the right to transfer/assign the rights and powers arising out of the Agreement to another party for the purpose of financing or for any other purpose, subject to prior written approval from PCBA. Assignability and transfer of ownership rights during termination will be governed by terms of Transfer & Termination.

9.7 Developer has the right to enter into individual contracts/membership agreements defining initial User Charges & terms/conditions of service with various Generators, specific to the location of their facilities and Waste characterization.

10. TERM OF THE AGREEMENT

Unless otherwise provided for and subject to earlier termination, the Term of the Agreement shall commence on the Agreement Date and shall, continue during the concession period and Post concession Monitoring Period. The term of the Agreement can be extended with the mutual consent of PCBA and the, Developer/Operator.

11. NORMAL TRANSFER

11.1 The PCBA shall issue a Transfer Information Notice at least 6 months before the expiry of the Term of the Agreement.

11.2 On receipt of the Transfer Information Notice, the PCBA and Developer/Operator by mutual consent shall cause a condition survey of the entire Site to be conducted by a third party independent professional body of experts to ascertain whether the Project has complied with the provisions of this Agreement.

11.3 The PCBA and Developer/Operator shall by mutual consent agree to appoint an Independent Appraising Team at least 6 months prior to the Scheduled Date of Normal Transfer. The composition of the Appraising Team shall be decided by Regulatory Body.

11.4 Until the completion of Term of the Agreement, the Site shall remain at the sole risk of the Developer/Operator, and the Developer/Operator shall be solely responsible for any loss of or damage caused to or suffered by third parties or the Developer/Operator for any reasons whatsoever to whole or any part of the Site, unless such loss or damage caused to or suffered by the Developer/Operator is due to any act of default or omission or negligence on the part of PCBA or due to Force Majeure.

12. CHANGE IN LAW

12.1 "Change in law" means the occurrence or coming into force or any of the following after the proposal Due date:

- a) The enactment of any new Indian Law;

- b) The repeal, Modification or re-enactment of any existing Indian law;
- c) A change in the interpretation or application of any Indian law by a court of record;
- d) Direct or notification by any governmental agency which has a force of law and statutory effect.
- e) The developer shall observe and comply with all the laws applicable or to be made applicable from time to time.

12.2 Relief from Change in law.

If, after the date of this Agreement, there is a change in law which substantially and adversely affects the rights of Developer/operator under this Agreement, The Developer may, by written notice, request amendments to the terms of this Agreement. The Developer/Operator shall be entitled for compensation whatsoever by **“Generators or Health Care Facilities”** as may be applicable as a result of Change in law.

12.3 Changes in Tax Law and Regulations

The Developer/Operator is entitled for compensation or excluded for any increase in indirect and/or Direct tax, which the Developer/Operator is liable to pay in respect of the project.

13. FORCE MAJEURE

13.1 Definition

13.1.1 **“Force Majeure”** (“FM”) shall mean any event or circumstance or combination of events or circumstances (and their consequences) occurring on or after the Effective Date that materially adversely affect(S) the performance of PCBA and/or the Developer’s (Affected Party (ies)) rights or obligations under this Agreement provided that such events and/or circumstances

- a) are beyond the reasonable control, directly or indirectly, of the Affected Party (it being understood that if a causing event is within reasonable control of an Affected Party, the direct consequences shall also be deemed to be within such Party’s reasonable control), including but not limited to any act of God, any act or omission of any government authority, explosions, fire, riot, war, situations arising from pandemic and epidemic; or

b) could not have been avoided, overcome or remedied if the Affected Party had taken reasonable care or had acted in accordance with Good Industry Practice (each a "Force Majeure Event")

13.1.2 "Reasonable care" includes any acts or activities that protect the Integrated HWTSDf & CBWTF from a casualty event which are reasonable in the light of the likelihood of such event, the probable effect of such event should it occur, and the likely efficacy of the protection measures.

13.1.3 Any event or circumstance meeting the definition of Force Majeure and which adversely affects the performance of the Developer's turnkey or any such contractors constructing significant assets for the IHWTSDf shall constitute a Force Majeure Event for the Developer/Operator.

13.1.4 The following conditions shall not, however, constitute a Force Majeure Event unless they are caused due to a Force Majeure Event affecting the Developer's turnkey contractors or any such contractors constructing significant assets for the Project:

- a) Late delivery of plant, machinery, equipment, materials, spare parts, fuel, water or consumables for the Project; or
- b) A delay in the performance of any of the Developer's turnkey contractors or any such contractors constructing significant assets.

13.1.5 Notwithstanding anything contained in this Section, insufficiency of funds shall not constitute a Force Majeure Event.

13.2 Notice and particulars thereof

13.2.1 The Affected Party shall give notice to the other Party of the Force Majeure Event as soon as is reasonably practicable, but not later than fifteen (15) Days after the date on which the affected Party knew or should reasonably have known of the commencement of the Force Majeure Event. Notwithstanding the above, if the Force Majeure Event results in a breakdown of communications rendering it not reasonably practicable to give notice within the applicable time limit specified herein, the Affected Party shall give such notice as soon as is reasonably practicable after the reinstatement of communications, but not later than five (5) days after such reinstatement,

13.3 Notice shall, inter-alia, specify the:

- 1) The nature of such Force Majeure Event;
- 2) The date and time when the Affected Party was materially and adversely affected by the Force Majeure Event;
- 3) The material adverse effect of such Force Majeure Event on the Affected Party;
- 4) The measures which the Affected Party has taken, or proposes to take, to alleviate the impact of those Force Majeure Events and/or mitigate the damage;
- 5) An estimate of the period of time that the Affected Party shall be unable to perform its obligations and/or continue to be materially adversely affected by the Force Majeure Event; and
- 6) Any other relevant information as may be necessary.

13.4 Failure by the Affected Party to give notice to the other Party within the time period specified above shall not prevent the Affected Party from giving such notice at a later time, provided however that in such case the Affected Party shall not be eligible for the remedies for any failure or delay in complying with its obligations under or pursuant to this Agreement until notice has been given in accordance with this Section.

13.5 Reporting requirements

13.5.1 For so long as the Affected Party continues to claim to be affected by the Force Majeure Event, it shall provide the other Party with regular (and not less than monthly) written reports containing:

- 1) The information called for by section hereinabove; and
- 2) Such other information as the other Party may reasonably request.

13.5.2 The Affected Party shall also provide to the other Party reasonable facilities including Site inspection for obtaining further information about the Force Majeure Event or circumstance alleged to constitute a Force Majeure Event.

13.6 Force Majeure period

13.6.1 In this Section, reference to Force Majeure period shall mean the period from the date and time specified in the notice given by the Affected Party in respect of a Force Majeure Event, until such time as the impact of the Force

Majeure on the Affected Party is no longer, or would no longer have been materially adverse, if the affected Party had complied with its obligations under this Section, materially adverse.

13.6.2 On expiry of the Force Majeure period, the Affected Party shall forthwith give notice to that effect to the other Party.

13.6.3 In the event that such notice is not tendered by the Affected Party to the other Party within a week from the expiry of the Force Majeure period, the other Party may serve such notice to the Affected Party.

13.7 Obligation to Perform

From the date of expiry of the Force Majeure period, the obligations of the Affected Party under this Agreement shall no longer be suspended.

13.8 Performance Excused

The affected Party to the extent rendered unable to perform its obligations or part thereof under this Agreement as a consequence of the Force Majeure Event, shall be excused from performance of such of its obligations to the extent it is unable to perform on account of such Force Majeure Event as specified in Clause 13.1.

14. DEFAULT & TERMINATION

14.1 Developer Event of Default-Right of PCBA to terminate

The following (unless arising as a result of a Force Majeure Event or Change in Law) shall constitute Developer Events of Default.

- 1) A material breach of a material provision of this Agreement or non-performance of any key obligations by the Developer/Operator.
- 2) Refusal, withdrawal, suspension or non-renewal of any statutory authorization required for the operation of the Integrated HWTSDf & CBWTF solely attributable to the Developer/Operator by the Central Pollution Control Board or the Pollution Control Board of Assam.
- 3) Appointment of a provisional liquidator in a providing for winding up of the Developer, after notice to the License and due hearing, unless such appointment has been set-aside/challenged within 45 days.
- 4) The Developer is ordered to be wound up by a court or files a petition for voluntary winding up except for the purpose of amalgamation or reconstruction provided that the property, assets and undertaking of the Developer/Operator are

transferred to its successor; and provide that such amalgamation or reconstruction does not adversely affect the ability of the amalgamated or reconstructed entity to perform its obligations under this Agreement, the successor has assumed in writing unconditional responsibility for the performance of the Developer's obligations and the technical, financial and operating capability of the successor should be satisfactory to PCBA and is not prejudicial to national interest as determined by PCBA.

5) Persistent failure on the part of the Developer/Operator to operate and promote activities at the IHWTSDf and provide the Generators with services in accordance with the principles of Good Industry Practice and in accordance with the provisions of this Agreement.

14.2 PCBA events of Default-Right of Developer/Operate to terminate

The following (unless arising as a result of a Force Majeure Event, or Developer/Operator Default) would constitute PCBA events of Default:

- 1) A material breach of a material provision of this Agreement or non-fulfillment of any key obligations by PCBA.
- 2) Repudiation of the Lease Agreement by PCBA.
- 3) Lack of timely facilitation/recommendation of Grants.
- 4) Dissolution of PCBA or occurrence of any structural changes within the present constitution of PCBA which have a material adverse effect on the rights and obligations of the Developer/Operator under this Agreement, unless such dissolution or structural change or transfer is in connection with restructuring of all or any substantial part of PCBA, and PCBA's successor is able to perform PCBA's obligations under this Agreement, provided that:
 - a) The powers of PCBA are transferred to PCBA's successor and such entity has the powers to continue as PCBA; and
 - b) PCBA's successor has assumed in writing the responsibility for performance of PCBA's obligations here under,

14.3 Consequences of Default

In the event of Default of Developer/Operator ("Event of Default") the termination procedure as set out in this Section shall apply.

14.4 Notice of Intent to Terminate

14.4.1 On the happening of any Event of Default as set out above, the non-defaulting Party may initiate termination of this Agreement by delivering a

notice to the defaulting Party of intention to terminate this Agreement (Notice of Intent to Terminate). The non-defaulting Party shall also send copy of the Notice of Intent to Terminate to the Lenders, if any.

14.4.2 The Notice of Intent to Terminate shall specify with reasonable detail the defaults committed by the defaulting Party.

14.5 Remedy Period

14.5.1 Following the service of the Notice of Intent to Terminate, the defaulting Party shall have a period of 90 days ("Remedy Period") to cure the Event of Default pursuant to which the Notice of Intent to Terminate was issued.

14.5.2 During the Remedy Period, the defaulting Party may continue to undertake efforts to cure the default, and the non-defaulting Party shall not, by any act or omission, impede or otherwise interfere with the defaulting Party's endeavors to remedy the Event of Default.

14.5.3 During the Remedy period, both the Parties shall, save as otherwise provided herein; continue to perform their respective obligations under this Agreement.

14.6 Withdrawal of Notice of Intent to Terminate

14.6.1 If, during the Remedy period, the defaulting Party rectifies or remedies the default to the satisfaction of the non-defaulting Party or the non-defaulting Party is satisfied with steps taken or proposed to be taken by the defaulting Party or the Event of Default giving rise to the Notice of Intent to Terminate has ceased to exist, the non-defaulting Party shall withdraw the Notice of Intent to Terminate in writing with a copy to the Lenders. However, the defaulting Party shall compensate the other Party for any loss due to such a default, as per assessment of appraising team, within one month.

14.7 Termination Notice

14.7.1 Upon the expiry of the Remedy Period, unless the Parties have otherwise agreed to, or the Event of Default giving rise to the Notice of Intent to Terminate has ceased to exist or the default has been rectified or remedied by the defaulting Party or a lender, the non-defaulting Party may terminate this Agreement by giving a 90 days written notice ("Termination Notice") to the defaulting Party, with a copy to the Lenders.

14.7.2 Upon the expiry of such notice period unless the Lenders have successfully exercised the right of substitution in accordance with the provisions of this Agreement, this Agreement, shall stand terminated.

14.8 Transfer Information Notice

14.8.1 Upon service of the Termination Notice in according with the provisions of this Section on the defaulting Party, PCBA shall be entitled to serve upon the Developer/Operator transfer information notice calling upon the Developer/Operator to provide the following:

- 1) All or any data or records regarding the operation or maintenance of the Integrated HWTSDf & CBWTF and project;
- 2) Any other information or records regarding the Developer/Operator, its business, assets and liabilities, and

14.8.2 On receipt of the Transfer Information Notice, the Developer/Operator may remove all movable assets from the facility at its own cost.

14.9 Lender's Rights of Substitution

14.9.1 If the Termination Notice is issued by PCBA to Developer/Operator in the event of default:

Within 30 day from the date of service of the termination notice, the lenders or such lender's agents may approach PCBA with a request to replace the Developer/Operator by another Developer/operator (replacement notice) for operating the Integrated HWTSDf & CBWTF under this Agreement. The replacement notice shall indicate the name(s) of the Nominated Developer(S) (ND) proposed to substitute the Developer/Operator for the purpose of this Agreement. The PCBA and lenders will then consult for a period of 30 days as to the suitability of the ND. If the ND does not meet the qualifying criteria (the original bid selection criteria that were employed), then such ND shall be deemed not to be technically, financially or managerial competent to operate the Integrated HWTSDf & CBWTF and PCBA shall be entitled to reject such ND. PCBA would have the powers to reject such ND.

14.9.2 If within 90 days from the date of termination notice, the ND acceptable to PCBA does not execute a renewal of this Agreement, PCBA may terminate this Agreement on the expiry of the 90-day termination notice period as if no replacement notice had been served.

14.9.3 The above rights of the lenders are subject to the statutory approvals as may be required under the Applicable Laws.

14.20 Procedure for appointing an Appraising Team

14.20.1 within 7 days after the issue of Termination Notice, the Party issuing such notice shall provide the other Party with a list of acceptable members (individuals or firms or consortia of individuals or of firms or of a combination thereof) to constitute the Appraising Team to carry out a determination of the residual statutory liabilities of the Developer/Operator. The Appraising Team shall include.

- 1) Environment expert experienced in the engineering and operational aspects of Integrated HWTsdf & CBWTF.
- 2) Financial expert.

14.20.2 In the event the Party receiving the list of members does not agree to the appointment of an appraising team selected from the list within 7 days after it receives such list, either Party may ask PCBA to nominate an independent Indian firm of chartered accountants and that person shall be designated as the financial expert in the team undertaking the Appraisal. This financial expert shall then form an appraising team selecting such experts from those in 1) and 2) above or from other qualified and experienced experts in the field, as he deems appropriate for the task.

14.20.3 From the date of such appointment, the procedure set out for Normal Transfer and Termination would apply mutatis mutandis.

14.20.4 However, until such time, maximum time period of 6 months, as the Integrated HWTsdf & CBWTF and the Site or any parts thereof, are handed over by the Developer to PCBA respectively (equivalent to the date of actual transfer in the course of normal transfer) both the Parties shall use all reasonable efforts to operate and maintain the Integrated HWTsdf & CBWTF as per the provisions of the Agreement.

14.20.5 If this Agreement has been terminated in accordance with the provisions hereof, the Developer shall, until Actual Date of Transfer, be entitled to the revenues, if any during the appraisal process referred to in this Section.

14.21 Transfer Fees and Charges

Transfer fees and charges and other incidental expenses incurred at the time of Termination or Normal Transfer shall be borne by PCBA and Developer/Operator in the following proportion:

Head of charge	Onus
1. Fees to third party experts for any required inspections or certifications	Party in default or on expiry of this Agreement, the Developer/ PCBA whoever is the possessor of the project
2. Fees to appraising team	Party in the default or on expiry of this Agreement, the Developer/PCBA whoever is the possessor of the project.
3. Internal costs and expenses of each Party (management time, cost of survey, inventories, inspections etc)	to be borne by each Party respectively

14.22 PCBA's Liability

In the event of Normal Transfer or Termination of this Agreement for reasons not attributable to PCBA, PCBA shall not be liable for any liability and/or damages to the Development or to any other third party.

14.23 Termination Payments

Upon Termination of this Agreement due to default of PCBA, the Developer/Operator shall have the following rights:

- a. The Developer/Operator shall be entitled to withdraw the Performance Security

Upon Termination of this Agreement due to default of the Developer/Operator, the Developer/Operator shall pay to the PCBA, by way of Termination Payment, an amount equal:

- b. The Developer/Operator will continue to operate the project until the new agency assumes the charge on the same rates which have been approved by PCBA for transportation and disposal of waste.
- c. PCBA will forfeit the performance security in the Developer's/Operator's event of default.
- d. The developer shall return the land and immovable assets

15. INSURANCE

The Developer shall on and from commencement of construction, maintain or cause to be maintained at its own expense, insurance policies to cover all risk related to assets and liabilities.

16. DISPUTE RESOLUTION

16.1 Commercial disputes between the users/Generators/Health Care Facilities and the Developer/Operator.

A) PCBA would resolve commercial disputes, including tariff disputes, arising between the Developer and the User/s/User Association/Generators.

B) For the purpose of regulating the project, a regulatory body has been set up. The composition of the regulatory body would be as below:

i. Chairman of PCBA.

ii. Member Secretary of PCBA.

C) The regulatory body would set up a redressal procedure under which whether the users or the Developer/Operator could address and present their grievances. The regulatory body would primarily take up issues related to service provided by the Developer.

D) If and as required, PCBA the Developer/Operator and the concerned users, user associations and Health Care Facilities will enter into Triparty agreements confirming their acceptance of the redressal procedure to be set up as above.

16.2 Dispute Resolution between PCBA and the Developer/Operator

16.2.1 Save as expressly stated to the contrary in this Agreement any dispute or difference of whatsoever nature howsoever arising under, out of, or in connection with this Agreement between the Parties shall be referred to the dispute resolution procedures as set out hereafter.

16.2.2 Each Party shall select and appoint one senior representative within a period of 7 days from the day on which the notice of dispute has been sent by one Party to the other. The representatives shall meet in Guwahati as and when necessary from time to time and attempt in good faith and use their best endeavors at all times to resolve the dispute and produce written terms of settlement.

16.2.3 If the dispute has not been resolved as evidenced by the signing of the written terms of settlement within 30 business days after the receipt of the notice the parties shall go for resolution by arbitration as provided in section 16.2.4.

16.2.4 In the event that the dispute has not been resolved in accordance with the provisions above, the dispute shall be referred to a bench of three (3) Arbitrators, where each Party will nominate one Arbitrator and the third Arbitrator shall be nominated by such appointed Arbitrators and the Arbitrations proceedings shall be governed by the provisions of Arbitration and Conciliation Act, 1996 or any statutory modification or reenactment thereof.

16.2.5 The venue of arbitration shall be Guwahati and the language of arbitration shall be English.

17. INDEMNITIES

17.1 The Developer/Operator shall comply with all applicable Laws prevalent and as amended from time to time. The Developer/Operator shall be liable for and shall defend, hold harmless and indemnify PCBA against all losses, claims and costs arising out of the Developer's/Operator's performance under the Agreement, breach of the Agreement, claims of personnel, and claims of third parties in the nature of sub concessionaires, lessees, construction contractors, subcontractors for services and such parties (unless otherwise provided for in this Agreement).

17.2 The Developer will keep PCBA indemnified against any claims from the PCBA, other statutory authorities and third parties for damage to the environment or any such operator defaults during the Concession Period and the post concession monitoring period arising out of Developer's/Operator's breach or negligence of the terms of the Agreement herein.

17.3 The Developer/Operator shall indemnify PCBA against liability and costs that may arise as a result of accidents at work, occupational diseases and any contingency that may arise from the employment of such personnel other than where such liabilities or costs arise due to PCBA's gross negligence or willful default.

18. MISCELLANEOUS PROVISIONS

18.1 Amendments etc.

No amendment or waiver of any provision of this Agreement, nor consent to any departure by any of the Parties there from, shall in any event be effective unless the same shall be in writing and signed by the Parties hereto and then such waiver or consent shall be effective only in the specific instance and for the specified purpose for which given.

18.2 Agreement to override other agreements; conflicts

This Agreement supersedes all previous agreements or arrangement between Parties, including any memoranda of understanding entered into in respect of the contents hereof and represents the entire understanding between the parties in relation thereto.

18.3 No Waiver; Remedies

No failure on the part of any Party to exercise, and no delay in exercising any right, power or privilege hereunder shall operate as a waiver, thereof or a consent thereto; nor shall any single or partial exercise of any such right, power or privilege preclude any other or further exercise thereof or the exercise of any other right, power or privilege. The remedies herein provided are the cumulative and not exclusive of any remedies provided by Applicable Law.

18.4 Severance of terms

If any provisions of this Agreement are declared to invalid, unenforceable or illegal by any competent arbitral tribunal or court, such invalidity, unenforceability or illegality shall not prejudice or affect the remaining provisions of this Agreement which shall continue in full force and effect.

18.5 Language

All notices, certificates, correspondence or other communications under or in connection with this Agreement, and project contracts, if any, or the project shall be in English.

18.6 Notice

Any notice to be given hereunder shall be in writing and shall either be delivered personally or sent by registered post, telex, facsimile transmission, electronic mail

or other means of telecommunication in permanent written form. The addresses and numbers for service of notice shall be given to the Parties at their respective addresses set forth below:

i. Developer's/Operator's address:.....

PCBA Address: Pollution Control Board of Assam, Bamunimaidam, Guwahati
– 21.

or such other address, telex number or facsimile number as may be notified by that Party to the other Party from time to time, and shall be deemed to have been made or delivered (i) in the case of any communication made by letter, when delivered by hand, or by mail (registered, return receipt requested) at that address and (ii) in the case of any communication made by telex or facsimile when transmitted properly addressed to such telex number or facsimile number. In case any Party changes its address, communication numbers, or directed attention as set forth above, it shall notify the other parties in writing to the adoption thereof.

18.8 Original Document

This Agreement is made in two original copies, each having the same contents and the Parties have read and thoroughly understood the contents hereof and have hereby affixed their respective signatures and seals before witnesses.

In witness whereof, this Agreement has been executed by the duly authorized representatives of the Parties hereto on the day and year first above written.

for and on behalf of

Pollution Control Board of Assam

Member Secretary

WITNESS:

1.-----

2.-----

for and on behalf of

WITNESS:

1.-----

2.-----