



**GOVERNMENT OF KERALA**

**Abstract**

Local Self Government Department- Setting up of a Waste-to-Energy plant at Munnar on Build, Own, Operate and Maintain (BOOM) basis by M/s. A.G.Dauters Waste Processing Pvt. Ltd. in the land provided by M/s Kannan Devan Hills Plantations Company Pvt. Ltd., without adopting tender process - Sanction accorded- Orders issued.

**Local Self Government (DC) Department**

GO(Ms) No.13/2019/LSGD

Dated, Thiruvananthapuram 01.02.2019

- Read: 1.GO(Rt) No.3122/2017/LSGD dated 23.09.2017  
2.GO(Rt) No.499/2018/LSGD dated 21.02.2018  
3.Minutes of 12<sup>th</sup> meeting of the State Level Advisory Committee on Solid Waste Management held on 11.07.2018  
4.Council Decision No. 3(1) dated 11.09.2018 of Devikulam Grama Panchayat  
5.Letter No. A3-1655/18 dated 19.09.2018 of the Secretary, Devikulam Grama Panchayat  
6.Letter No. A1-365/2018 dated 18.09.2018 of the President, Munnar Grama Panchayat  
7. Minutes of 16<sup>th</sup> meeting of the State Level Advisory Committee on Solid Waste Management held on 28.09.2018  
8.Letter No. KSIDC/TVM/3606/2018/2115 dated 31.10.2018 of the Project Director, PMU- Waste to Energy Project, Kerala State Industrial Development Corporation.  
9. Minutes of the meeting held on 13.11.2018 by Honble Minister for LSGD  
10. Letter No. KSIDC/TVM/3606/2019/2742 dated 08.01.2019 of Managing Director, Kerala State Industrial Development Corporation.  
11. Letter No. KSIDC/TVM/3606/2019 dated 11.01.2019 of Managing Director, Kerala State Industrial Development Corporation.  
12.Letter No.KSIDC/TVM/3606/2019/2833 dated 21.01.2019 of Managing Director, Kerala State Industrial Development Corporation.

**ORDER**

As per the G.O read as 1<sup>st</sup> and 2<sup>nd</sup> paper above Government have constituted a State Level Advisory Committee (SLAC) chaired by Chief Secretary for taking decision on establishing centralized Waste-to-Energy plants in the State and also for co-ordinating further activities towards this end.

2) The Managing Director, M/s A.G. Dauters Waste Processing Pvt. Ltd. has submitted a proposal to Government for establishing a Waste-to-Energy Plant at Munnar. In the 12<sup>th</sup> meeting of the SLAC held on 11.07.2018, the Managing Director has made a presentation regarding the proposal submitted by them. The Presidents and Secretaries of both Munnar and Devikulam Grama Panchayats and Senior Vice President of M/s Kannan Devan Hills Plantations Company Pvt. Ltd were also presented as invitees for the meeting. The State Level Advisory Committee appraised the respective Presidents and Secretaries of Munnar and Devikulam Grama Panchayats, of the proposal submitted by M/s A.G.Dauters Waste Processing Pvt. Ltd. As per the minutes read as 3<sup>rd</sup> paper above State Level Advisory Committee has taken the following decisions.

- i. Munnar & Devikulam Grama Panchayats, M/s. Kannan Devan Hills Plantations Company Pvt. Ltd. and M/s. A.G.Dauters Waste Processing Pvt. Ltd. shall enter into a tripartite agreement for setting up the project at the land available with M/s. Kannan Devan Hills Plantations Company Pvt. Ltd.
- ii. Kerala State Industrial Development Corporation (KSIDC) shall prepare a draft tripartite agreement and submit the same to Government after getting the same vetted by the Legal Department of KSIDC
- iii. M/s A.G.Dauters Waste Processing Pvt. Ltd shall ensure operation of the plant within nine months from date of signing the agreement and detailed schedule of implementation of the project will be detailed in the agreement.

3) As per the Council Decision read as 4<sup>th</sup> paper above Devikulam Grama Panchayat has approved the proposal of M/s A.G.Dauters Waste Processing Pvt. Ltd to set up a Waste-to-Energy Plant at Munnar in the land provided by M/s Kannan Devan Hills Plantations Company Pvt. Ltd. based on a tripartite agreement to be executed between Munnar & Devikulam Grama Panchayats, M/s. Kannan Devan Hills Plantations Company Pvt Ltd and M/s. A.G.Dauters Waste Processing Pvt. Ltd. The Council has also decided to take up the matter with Government for Administrative Sanction for the project. As per the letter read as 5<sup>th</sup> paper above the Secretary, Devikulam Grama Panchayath has submitted the Council Decision to Government for further action. As per the letter read as 6<sup>th</sup> paper above the President, Munnar Grama Panchayat has also requested sanction for establishing the proposed Waste-to-Energy Plant at Munnar.

4) The 16<sup>th</sup> meeting of the SLAC on Solid Waste Management held on 28.09.2018 resolved to entrust Additional Chief Secretary, Local Self Government Department to issue necessary Government Orders sanctioning the project and also to entrust Additional Chief Secretary, Revenue to issue necessary Government Orders permitting the use of necessary land in possession with M/s Kannan Devan Hills Plantations Company Pvt. Ltd for setting up the Waste-to-Energy Plant at Munnar.

5) As per the letter read as 10<sup>th</sup> paper above, the Managing Director, KSIDC has reported that M/s A.G.Dauters Waste Processing Pvt Ltd has a Joint Venture Agreement with Langenburg Technologies USA in the ratio 80:20 and they are equity partners in the proposed project in the same ratio. M/s A.G.Dauters Waste Processing Pvt. Ltd. has submitted the Certificate of Incorporation under the Companies Act,2013 and the Corporate Identity Number of the Company is U74999DL2017PTC320806.

6) As per the letter read as 11<sup>th</sup> paper above, the Managing Director, KSIDC has submitted the draft Concession Agreement to be executed between Munnar and Devikulam Grama Panchayats, M/s A.G.Dauters Waste Processing Pvt. Ltd and M/s Kannan Devan Hills Plantations Company Pvt. Ltd. The Managing Director, KSIDC has also reported that, based on the decision taken in the minutes read as 9<sup>th</sup> paper above, they have engaged the services of a professional consultant to ascertain the existing and projected Solid Waste generation in Munnar, Devikulam and neighbouring Grama Panchayats by undertaking a detailed site assessment study. If it is found in the study that the generation of total solid waste in Munnar and Devikulam Grama Panchayats is less than the minimum assured quantity of 20 tones per day the neighbouring Grama Panchayats shall also be included in the cluster so as to ensure the minimum assured quantity. It is also reported that Clause No.13.1.2 of the Concession Agreement ensures insurance coverage to all the employees working in the project.

7) As per the letter read as 12<sup>th</sup> paper above, the Managing Director, KSIDC has informed that Board of Tata Global Beverages Ltd. has approved the leasing of 2 acres of land to Munnar Grama Panchayat. Accordingly M/s Kannan Devan Hills Plantations Company Pvt. Ltd. has communicated the same to Munnar and Devikulam Grama Panchayat.

8) Government have examined the matter in detail and are pleased to accord sanction for the setting up of a Waste-to-Energy plant at Munnar on Build, Own, Operate and Maintain (BOOM) basis by M/s A.G.Dauters Waste Processing Pvt. Ltd. in the land provided by Kannan Devan Hills Plantations Company Pvt. Ltd., without adopting tender process. Sanction is also accorded to execute the tripartite concession agreement appended to this G.O, between Munnar & Devikulam Grama Panchayats, M/s A.G.Dauters Waste Processing Pvt. Ltd and Kannan Devan Hills Plantations Company Pvt. Ltd. for the purpose.

**(By Order of the Governor)**

**T.K Jose**

**Additional Chief Secretary to Government**

To

The President, Munnar/ Devikulam Grama Panchayat  
 The Managing Director, M/s A.G. Dauters Waste Processing Pvt. Ltd.  
 The Vice President/ Managing Director, M/s. Kannan Devan Hills Plantations Company Pvt. Ltd.  
 The Chairman & Managing Director, Kerala State Electricity Board Limited.  
 The Managing Director, KSIDC  
 The District Collector, Idukki  
 The Director of Panchayat  
 The Secretary Munnar/ Devikulam Grama Panchayat  
 The Principal Accountant General (Audit)/(A&E), Kerala.  
 The General Administration (SC) department  
 The Power Department.  
 The Revenue Department.  
 The Information Officer, I&PRD (Web & New Media)  
 The Executive Director, Information Kerala Mission.  
 Stock File / Office Copy.

Forwarded/By Order

*[Handwritten Signature]*  
 Section Officer

# **Concession Agreement**

**Between**

**Munnar Gram Panchayat and Devikulam Gram Panchayat**

**And**

**A.G. Dauters Waste Processing Private Limited**  
(In association with and on behalf of Langenburg Technologies LLC, USA)

**And**

**Kannan Devan Hills Plantations Company Limited**

**For**

**Waste to Energy Plant**

**Using Solid Waste as Input**

**For**

**Gram Panchayat, Munnar & Devikulam**

**At**

**Munnar • Kerala**

**On BOOM: Build, Own, Operate and Maintain Basis**

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## CONCESSION AGREEMENT

This CONCESSION AGREEMENT is entered into on this the \_\_\_\_\_ day of \_\_\_\_\_ 2018 at Munnar, District. Idukki, Kerala

between

Munnar Gram Panchayat, having its Office at Munnar, District Idukki, Kerala  
And Devikulam Gram Panchayat having its Office at Devikulam, District Idukki, Kerala (hereinafter referred to as the "Local Body" or "LB") which expression shall unless repugnant to the context or meaning thereof includes its successors, administrators and assigns) of the FIRST PART through their respective authorized representatives, and who are duly authorized/empowered to sign and execute this Concession Agreement;

and

A.G. Dauters Waste Processing Private Limited, a Company Incorporated under Companies Act, 2013 (Registration No. U74999DL2017PTC320806) and having its registered office at B-2, Dhawan Deep Building, 6, Jantar Mantar Road, New Delhi-11001, (Partners for India and SAARC for and on behalf of Langenburg Technologies LLC, USA, and Special Purpose Vehicle "SPV" to be formed specifically for the purpose, hereinafter referred to as "Concessionaire" or "Company") which expression shall unless repugnant to the context or meaning thereof includes its successors, administrators and assigns) of the SECOND PART through its duly Authorized Representative, Shri..... who is duly authorized and permitted to sign and execute this Concession Agreement.

and

M/s Kanan Devan Hills Plantation Company Private Limited, a Company incorporated under Companies Act, 1956 (Registration No. U01132KL2005PTC018014) and having its registered office at Door No. IX/2226, DHP House, NH 49, Munnar Post Devikulam Taluk, Distt. Idukki-685612, Kerala, (The company who shall be providing Land in Munnar to the Concessionaire for setting up the Waste to Energy Project for the Local Body, hereinafter referred to as "KDHPCL" or "Lessor") which expression shall unless repugnant to the context or meaning thereof includes its successors, administrators and assigns) of the THIRD PART through its duly Authorized Representative, Shri..... who is duly authorized and permitted to sign and execute the Land lease Agreement and this Concession Agreement as provider for the Project Land. Each party individually shall be termed as "Party" and in combination shall be termed as "Parties".



**WHEREAS:**

- A. Local Body is responsible for providing municipal and civic services, which includes the collection, transportation and disposal of Solid Waste (SW) generated in the town of Munnar and Devikulam, District. Idukki, Kerala. The Local body currently disposes the collected SW at designated dumping sites, which is, however, inadequate to handle the increasing quantity of Solid Waste generated within their respective jurisdiction.
- B. The Local body (LBs) desires to establish an initial 10 MW Solid Waste to Energy Processing Plant ("Plant") in the town of Munnar, to handle 20 MTPD Solid waste, on Build, Own, Operate and Maintain ("BOOM") basis, as a technology demonstration plant at Concessionaire's cost and expenses. This 20 MTPD solid waste will include solid waste generated in the town of Munnar and Devikulam within their jurisdiction of Gram Panchayats.
- C. The Local Body (i.e. Munnar Gram Panchayat and Devikulam Gram Panchayat), after evaluation of the offer dated ..... by the Concessionaire has entrusted him to establish a 10 MW Solid Waste to Energy Power Plant by processing 20 MTPD of Solid waste generated in Munnar Gram Panchayat and Devikulam Gram Panchayat at Treatment Plant on 2 (Two) Acres of land at \_\_\_\_\_ Munnar, (hereinafter referred to as "Project Site") provided by M/s Kanan Devan Hills Plantation Company Limited (KDHPCL) under Land Lease Agreement for the Solid waste to energy Project for 25 years to the Concessionaire, the details of which is mentioned in the schedule "A" to this Agreement. The Waste to Energy plant will be established at the cost and expense of M/S. A.G. Dauters Waste Processing Private Limited (Partners for India and SAARC for and on behalf of in association with Langenburg Technologies LLC, USA), the Concessionaire.
- D. At the end of concession period of 25 years from the Commencement Date, except in circumstances of non-renewal of this concession agreement, the Concessionaire shall remove and dismantle the plant and machinery at its own cost and will hand over the peaceful vacation of the Land to KDHPCL without any claim whatsoever, financial or otherwise to the parties to this Agreement.
- E. The Government have accorded sanction for entering into an agreement between the parties vide GO..... dt..... (Annexure 1)

The Parties hereto agree to enter into this Concession Agreement to record the terms, conditions and covenants of the Concession.

**NOW THEREFORE THIS AGREEMENT WITNESSES AND THE PARTIES AGREED AS FOLLOWS:**

**ARTICLE I DEFINITIONS AND INTERPRETATIONS**

"Additional Costs" shall mean the additional capital expenditure and/or the additional operating costs or both as the case may be, which the Concessionaire would be required to incur as a result of Change in Law.

"Affected Party" shall have the meaning ascribed to the said term in Article 10.1;

"Agreement" or "Concession Agreement" shall mean this Concession Agreement together with any Annexures, schedules or Addendum thereto;

"Applicable Laws" or "Law" shall mean all laws, acts, ordinance, rules, regulations, notification, guidelines or bye-laws in force and effect, including MSW Management and Handling Rules, as of the date hereof and which may be promulgated or brought into force and effect hereinafter in and/or India and as applicable including judgments, 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;

"Applicable Permits" shall mean all clearances, permits, authorizations, consents and approvals required to be obtained or maintained by the Concessionaire under Applicable Law;

"Appointed Date" shall mean the date of handing over of the Project Site and existing Assets to the Concessionaire;

"Assured Quantity" shall mean 20 (Twenty) MTPD of Solid Waste generated within the territorial jurisdiction of Munnar Gram Panchayat and Devikulam Gram Panchayat (LB).

"BOOM" shall have the meaning Build, Own, Operate and Maintain which shall further mean that the entire investment, operation and maintenance of the plant shall be done by the concessionaire and the ownership of the plant shall be with the concessionaire during the term of the Agreement and shall be non-transferable;

"Commencement Date" shall have the meaning ascribed to the said term in Article 7.1.1;

"Concession" shall have the meaning ascribed to the said term in Article 4.1;

"Concessionaire Event of Default" shall have the meaning ascribed to the said term in Article 11.1.1;

"Concessionaire Preliminary Notice" shall have the meaning ascribed to the said term in Article 11.2.2(b);

"Concessionaire's Proposal to Rectify" shall have the meaning ascribed to the said term in Article 11.2.1 (d);

"Concession Period" shall have the meaning ascribed to the said term in Article 4.2.1;

"Contractor" shall mean any Person with whom the Concessionaire has entered into/may enter into any material contract in relation with the Project;

"Construction Works" shall mean all works and things required to be constructed by the Concessionaire, pursuant for the purpose of commencement and operation of the Plant;

"Drawings" shall mean all of the drawings, designs, and documents pertaining to the Project in accordance with the Project requirements;

"Effective Date" shall mean the date of signing of this Agreement by all the Parties. It is agreed that this Agreement shall have no effect and implications against any Party unless this Agreement has been duly executed by all the Parties mentioned herein.

"Encumbrance" shall mean any encumbrance 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 without limitation any designation of loss payees or beneficiaries or any similar arrangement under any insurance policy pertaining to the Project, physical encumbrances, claims for any amounts due on account of taxes, electricity, water and other utility charges and encroachments on the Project Facilities;

"Expiry Date" shall mean the date 25 (twenty-five) years from the Commencement Date; unless otherwise terminated earlier as per the provisions of this Agreement.

"Final Termination Notice" shall mean the termination notice issued in accordance with Article 11.3;

"Financial Closure" means the fulfillment of all conditions precedent to the initial availability of funds. The Concessionaire shall use its own funds in

collaboration with its Technology Partner and shall not avail any financial facilities from any Banks or Financial Institutions in India.

"Force Majeure Event" shall mean an act, event, condition or occurrence as specified in Article 10.1;

"Force Majeure Period" shall mean period during which the Force Majeure Event continues;

"Good Industry Practice" shall mean the exercise of that degree of skill, diligence, prudence and foresight in compliance with the undertakings and obligations under this Agreement which would reasonably and ordinarily be expected of a skilled and an experienced person engaged in the implementation, operation and maintenance or supervision or monitoring thereof or any of them of a project similar to that of the Project.

"Government Agency" shall mean Government of India, Government of Kerala or any State Government or governmental department, commission, board, body, bureau, agency, authority, instrumentality, court or other judicial or administrative body, Central, State, or local, having jurisdiction over the Concessionaire, the Site/Project Facilities or any portion thereof, or the performance of all or any of the services or obligations of the Concessionaire under or pursuant to this Agreement;

"Material Adverse Effect" shall mean a material adverse effect on (a) the ability of the Concessionaire to exercise any of its rights to perform/discharge any of its duties/obligations under and in accordance with the provisions of this Agreement and/or (b) the legality, validity, binding nature or enforceability of this Agreement;

"Material Breach" shall mean 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 and which such Party shall have failed to cure;

"Minimum Assured Waste Quantity" shall have the meaning as ascribed in Article 3.3.7;

"MSW WASTE" means household solid waste generated within the town of Munnar and Devikulam and it doesn't include Construction & Demolition waste, and street sweeping waste.

"MSW Rules" means Municipal Solid Waste Rules, 2016 and specific solid waste management laws of India, State of Kerala & includes any statutory amendments/modifications thereto or re-enactments thereof, for the time being in force.

"Obligated Quantity" shall mean quantity of Solid Waste in excess of 20% of Assured quantity.

"Land Owner (and / or Lessor)" for this Concession Agreement, shall mean M/s **Kanan Devan Hills Plantation Company Private Limited (KDHPCL)** providing land for the project. The Land for the Solid Waste (waste to energy) project under this concession agreement is being provided by M/s Kanan Devan Hills Plantation Company Limited to the concessionaire for setting up the project for the Local Body (Munnar Gram Panchayat and Devikulam Gram Panchayat). The Land for the project shall be made available to the Concessionaire under **Land Lease Agreement** which shall be executed separately between the Land owner and the concessionaire as per the terms and conditions mutually agreed upon. It shall further mean that KDHPCL shall be responsible for providing required land for the project only and shall not have any other obligations or liabilities whatsoever arising out of this concession agreement.

"Land Lease Agreement" shall mean the agreement executed between the Land Owner and the Concessionaire whereby the required Land is provided or made available at Munnar on lease or otherwise by the Land owner (M/s Kanan Devan Hills Plantation Company Private Limited) to the Concessionaire exclusively for the purpose of setting up solid waste to energy plant and for the purpose or matters incidental or relating thereto on such terms and conditions as mutually agreed upon under such agreement.

"Parties" shall mean the parties to this Agreement and "Party" shall mean either of them, as the context may admit or require;

"Power Purchasing Agreement" means the associated agreement stipulating the arrangements for the supply of electricity generated by the Project to the State Discom namely **Kerala State Electricity Board Limited (KSEBL)** and the purchase of that electricity by the KSEBL required for the effective performance of this Agreement.

"Power Plant" shall mean a power generation plant that will generate electricity by processing Solid Waste.

"Project Facilities" shall mean the "Plant" together with the Project Site and Existing Assets and all other related facilities located thereon, and any other offsite facilities created for the Project.

"Project Site" or "Plant Site" means the land where "Plant" is located and land for any other part of the Project Facilities to be provided by M/s Kanan Devan Hills Plantation Company Limited (KDHPCL) more fully described in Schedule 'A'

"Plant" the apparatus and machinery for carrying on the activities required for the Project, fixed or movable, but excluding consumables and premises.

"Local Body" (LB) shall collectively and separately mean Munnar Gram Panchayat and/or Devikulam Gram Panchayat, of District Idukki, Kerala.

"LB Event of Default" shall have the meaning ascribed to the said term in Article 11.1.2;

"LB Preliminary Notice" shall have the meaning ascribed to the said term in Article 11.2.1 (b);

"LB Proposal to Rectify" shall have the meaning ascribed to the said term in Article 11.2.2(b);

"Preliminary Notice" shall have the meaning ascribed to the said terms in Article 11.2.1 (b) & 11.2.2 (b);

"Project" shall mean design, financing, construction, operation and maintenance of the Plant in accordance with the provisions of this Agreement;

"Readiness Certificate" shall mean the certificate issued by the Concessionaire certifying, inter alia, that, the Concessionaire has constructed all the facilities within the Plant and obtained all the necessary approvals so as to enable receipt of MSW Waste for processing.

"Receipt Point" shall mean the place of delivery within the Plant Site, specified in writing by the Concessionaire and marked out on a lay out plan by the Concessionaire, at which place LB shall be required to deliver the Assured MSW Waste in accordance with the terms of this Agreement.

"Scope of Work" shall have the meaning ascribed to the said term in Article 2.2.2; and elsewhere as mentioned in the Concession Agreement

"Tax" shall mean and includes all taxes, fees, cess, levies that may be payable by the Concessionaire under Applicable Law;

"Technology Partner" shall mean Langenburg Technologies LLC, USA who has developed the advanced and proprietary technology of solid and sewage waste processing and has entered into arrangement with the Company or concessionaire for providing all technical and financial support to set up waste to energy power plant in India and SAARC countries.

"Termination Date" shall mean the date on which this Concession Agreement will be terminated in accordance with this Concession Agreement;

"Termination Notice" shall mean the notice of Termination by either Party to the other Party, in accordance with the applicable provisions of this Agreement.

"Termination Payment" shall mean the payment to be made by a Party to the other Party in case of termination of this Concession Agreement in terms hereof;

"Vacant Possession" means delivery of possession of the lands constituting the Site and access road to the site free from all Encumbrances and the grant of all rights of access and use and all other rights appurtenant thereto.

"Weighbridge" means the electronic weighbridge capable of performing the operations mentioned in Article 7.2.3(a);

"Working Day" shall mean any day (other than Sunday or government holidays or any other declared holiday for LB on which legal business of LB is conducted.

## **ARTICLE II: SCOPE OF THE PROJECT:**

The scope of the Project shall mean and include during the tenure of Concession Agreement, finance, design, build, operate and maintain on "BOOM" basis: build, own, operate and maintenance- of facilities and infrastructure for:

- a) Construction, operation and maintenance of Solid Waste to Energy Processing Facility of 10 MW for 20 MTPD of solid waste by Concessionaire through its own resources in association and collaboration with its Technology Partner during the tenure of concession agreement; however the Concessionaire may also have the provision for adding extra capacity to the Solid Waste to Energy Plant on its own cost and expenses to accommodate the growth in solid waste potential in future years subject to the mutual agreements of the Parties to this Concession Agreement.
- b) Performance and fulfilment of other obligations of the Concessionaire in accordance with the provisions of this Concession Agreement and Power Purchase Agreement with KSEBL (State Discom) and matters incidental thereto and / or necessary for the performance of any or all of the obligations of the Concessionaire under this Agreement and/or Power Purchase Agreement.
- c) Performance and fulfilment of obligations of the Local Body (LB), in accordance with the provisions of this Concession Agreement and of

KSEBL (State Discom) under Power Purchase Agreement and of KDHPCL (Land owner) under Project Land Lease Agreement and matters incidental thereto and / or necessary for the performance of any or all of the obligations of the LB under this Agreement and of KSEBL (State Discom) under Power Purchase Agreement and of KDHPCL (Land owner) under Project Land Lease Agreement.

### **ARTICLE III: OBLIGATIONS OF THE CONCESSIONAIRE**

The Munnar Grama Panchayat and Devikulam Gram Panchayat (LB) has agreed to award the work of establishing an initial 10 MW Waste to Energy power plant by processing 20 MTPD of Solid Waste of Munnar Gram Panchayat and Devikulam Gram Panchayat (Local body) at treatment plant to the Concessionaire. The Concessionaire shall carry out the required Scope of Work in addition to and not in derogation of any of his other obligations under this agreement, the Concessionaire shall have the following obligations: -

#### **3.1 Approvals**

3.1.1 The Concessionaire shall be responsible to design, construct, develop, establish, finance, operate and maintain the Project as per the Local, Regional and National Laws of the Country.

3.1.2 The Concessionaire shall obtain necessary authorizations, and consents/approvals from various departments as may be required for the Project. The Local Body (LB) shall issue necessary recommendation letters and assist as and when required without any financial burden to the Local Body (LB).

3.1.3 The Concessionaire shall build, own, operate and maintain the Project at Site situated at Munnar Grama Panchayath in Survey No 66/3 at Nullathanni Estate, Munnar P O, where 02 Acres of land is provided to Concessionaire by M/s Kanan Devan Hills Plantation Company Limited [KDHPCL] for the Tenure of the Concession Agreement for setting up Solid Waste to Energy Processing Plant to treat and handle 20 MTPD of Solid Waste of Local Body.

3.1.4 The Concessionaire shall be responsible to construct Power evacuation lines from its sub-station to the nearest sub-station 66/220/440 Grid of KSEBL up to maximum distance of 5 kms. Construction of any power lines beyond 5 kms shall be the responsibility of KSEBL (State Discom). The permission for overhead electrical lines and towers shall be the responsibility of the Local Body (LB) / KSEBL (State Discom).

3.1.5 Environmental Clearance: The Concessionaire shall ensure that from the Commencement Date till the Concession Period or the Terminate Date,



whichever is earlier, the processes employed in the construction, operation and maintenance of the Plant including post closure maintenance thereof shall conform to the applicable laws pertaining to environment, health and safety aspects, policies and guidelines related thereto. The Concessionaire shall obtain and maintain from time to time all necessary clearances or any other requirements from similarly empowered Government agency and for this purpose concessionaire shall carry out and fulfil the necessary requirements as stipulated and applicable and implement appropriate environment management plans in respect of the Plant. The Local Body (LB) shall issue recommendation letters as and when required without any financial burden to the Local Body (LB).

If this project is governed under Environmental Impact Assessment notification 2006 and its latest amendments; the Concessionaire shall with the necessary assistance from LB, obtain necessary Environmental Clearances from State Environmental Impact Assessment Authority (SEIAA) if required.

### **3.2 General Obligations:**

3.2.1 The Concessionaire shall observe and comply with all its obligations set forth in this Concession Agreement and all the terms mentioned in the Proposal letter dated..... given by the Concessionaire.

3.2.2 The scope of work ("**Scope of Work**") to be performed by the Concessionaire is as follows: -

- (i) The Concessionaire shall be responsible for financing, designing, drawing, fabrication, supplying, providing, erecting, constructing, testing & commissioning of the Waste to Energy Power Plant at the Project Site on "Build, Own, Operate and Maintain" (BOOM) basis.
- (ii) The Concessionaire shall own, operate and maintain the Plant for a period of 25 (twenty-five) years (being the "Concession Period") from the Commencement Date.
- (iii) The Concessionaire shall weigh the MSW Waste received at the Project site and shall maintain daily records of the same.
- (iv) The Concessionaire shall be responsible for setting up of Solid Waste to Energy Processing Plant as required to operate this facility as per its own design and 100% investments shall be made by the Concessionaire in association with its Technology Partner and the Government/ Local Body (LB) shall not be obligated to provide any financial or other such support.
- (v) Prior to establishment of the Plant, the Concessionaire shall carry out a detailed study and analysis on the MSW Waste

generated/created within the municipal limits of Local Body (LB) and all other participating LBs (if any) and shall ensure that the Plant will be operated as per the features and characteristics of the MSW Waste so generated/created within the Local Body (LB) and all other participating LBs territorial limits.

(vi) The Concessionaire shall allow designated officers of the Local Body(LB) to visit the facility in line with the operating conditions to the Plant. The Concessionaire will advise and update the (LB) regarding the operation of the Plant and the Project on periodical basis.

(vii) The Concessionaire shall form a Special Purpose Vehicle (hereinafter referred to as "SPV") in the name of "Langenburg Technologies Munnar Private Limited" or in such other suitable Name, for the specific purpose of design, development, erection, installation, operation and maintenance of Solid Waste to Energy Processing Plant / Facility.

(viii) The newly formed SPV shall enter into Power Purchase Agreement with KSEBL (State Discom) wherein KSEBL (State Discom) shall purchase the electricity generated by the Concessionaire's SPV on such terms and conditions as set out in the Power Purchase Agreement.

3.2.3 Subjected to Applicable Law Local Body (LB) shall waive all and any of applicable developmental charges towards the development of the Project, etc.

3.2.4 The Concessionaire shall bear all the expenses, charges and deposits charges for the Electricity and Water Supply utilized during the operation of the Plant. Local Body (LB) shall ensure the necessary supply as required during construction period electricity is provided to the concessionaire. The Concessionaire shall have option to make its own arrangements for the water as required by it during the construction period.

3.2.5 The Concessionaire shall, at its own expenses, carry out all the necessary statutory and regulatory tests and submit the required reports to the relevant government bodies.

3.2.6 The Concessionaire shall ensure that the plant should run at a yearly average of not less than 90% of total plant capacity.

2.2.7 The (LB) or its agents, shall remain responsible for the collection of waste and delivery of that waste to the Concessionaire's facility. The waste-to-energy facility will process Solid Waste (SW), which shall exclude Construction & Demolition (C&D) waste.

3.2.8 The stamp duty, registration charges and other costs pertaining to this Concession Agreement and all connected documents shall be borne by the Concessionaire.

3.2.9 The Concessionaire shall complete the erection, testing and commissioning of the Plant within 9-12 months from the date of execution of Power Purchase Agreement. The Power Purchase Agreement shall be executed with facilitation and help of Local Body (LB) within 2-3 (Two to Three) months from the date of execution of this Concession Agreement

3.2.10 The whole work shall be carried out in strict conformity with the provisions of Good Industry Practices and National Standards. The Concessionaire shall ensure that the work is executed in the most proper and best workmanship during the Concession period.

3.2.11 The Concessionaire shall, at its own cost and expense, hold and keep current insurance required for the normal course of business. For clarity, insurance is only for the space occupied by the Concessionaire, covering its equipment and activities within the designated space of the Site.

3.2.12 The Concessionaire shall endeavour in so far as may be, to employ local candidates in its operations who meet the employment requirements under its category of Support staff.

3.2.13 The Concessionaire shall be responsible for the strict compliance of and shall ensure strict compliance by his sub-contractor, employees and agents, all labours and other, of rules or regulations having the force of law affecting the relationship of employer and employee between the Concessionaire/sub-contractor and their respective employees.

3.2.14 The Concessionaire shall comply with all the rules and regulation of the local authorities for protection of health and sanitary arrangements of all those directly or indirectly employed on the work of this Agreement. The Concessionaire shall adhere to safe working practices and guard against hazardous and unsafe working conditions and shall comply with standard safety rules.

3.2.15 It shall be the Concessionaire's responsibility to protect its employees and workers against accidents on work. The Concessionaire shall there by indemnify the Local Body(LB) against any claim for damage to persons or property resulting from and in course of work undertaken by the Concessionaire, or its agents, associated with the performance of this Agreement.

3.2.16 The Concessionaire shall be solely responsible for the security of the Plant during the construction, Operation & Maintenance and the entire Concession period.

3.2.17 The Concessionaire shall be responsible to obtain auxiliary fuel and other supplementary goods for running the Plant at its own cost.

3.2.18 The Concessionaire shall, in terms of provisions of this Agreement and Land Lease Agreement, handover the peaceful possession of the entire land and adjoining sites, if any of the Project Site to KDHPCL upon expiry of the Concession Period of 25 (twenty-five) years or on termination whichever is earlier, unless otherwise renewed as mutually agreed by the parties.

3.2.19 The Concessionaire shall make provisions to accommodate any increase in agreed quantity of MSW Waste in future and shall deal with additional waste quantity accordingly.

3.2.20 The Concessionaire shall bear all the present Taxes, levies and duties arising out of this Concession Agreement.

### **3.3 Repair and Maintenance Work of the plant**

The Concessionaire shall design and plan and schedule the repair and maintenance works in a manner such as to ensure receipt of Solid Waste at the Plant at all times during the entire Concession Period. Concessionaire shall provide Local Body (LB) advance notice of any planned repair or maintenance work of any of the Project Facilities provided however, no such notice would be required in the event of any unplanned repair or maintenance caused by an emergency or accident or any such unforeseeable event. Similarly, Local Body (LB) will advise the Concessionaire of any events or issues of which they are aware, that might impact on the operations and/or repair and maintenance of the Plant. The concessionaire shall endeavour to maintain the average annual MSW Waste processing capacity to generate electricity i.e. 90% (ninety percent) yearly average of agreed plant capacity.

3.3.1 The Parties hereby agree that, except for shutdown due to Force Majeure, the maximum number of days that the Plant will be permitted to be shut down for repair and maintenance work in a calendar year, without attracting default provisions shall be limited to an aggregate of fifty-five (55) calendar days and not more than 7 (Seven) days at a stretch.

### **3.4 Environmental monitoring**

The Concessionaire shall submit an Environment Monitoring Plan and shall submit regular reports to the Local Body (LB) and other relevant government bodies in line with Environmental Impact Assessment directions if so required.

### **3.5 Website**

The Concessionaire shall maintain a website that provides the relevant details and emission parameters of the plant and the process that it operates in such reasonable detail, under the Commercial-In-Confidence conditions etc., as would enable awareness about the Plant operations to any person accessing the web-site.

### **3.6 No Breach of Obligations**

Notwithstanding anything contained herein, the Concessionaire shall not be considered to be in breach of its obligations under this Concession Agreement nor shall it incur or suffer any liability if and to the extent performance of any of its obligations under this Concession Agreement is affected by or on account of any of the following:

- i) Force Majeure Event,
- ii) (LB) Event of Default;
- iii) Compliance with the instructions of the Local Body(LB) or the directions of any Government Agency other than instructions issued as a consequence of a breach by the Concessionaire of any of its obligations hereunder;
- iv) Closure of the Plant or part thereof with the approval of the Local Body (LB)/State government.

## **ARTICLE IV: OBLIGATIONS OF LOCAL BODY (LB)**

### **4.1 Obligations of Local Body (LB)**

The obligations of the Concessionaire to establish the Project and commence operation of the Power Plant are subject to Local Body(LB) fulfilling its obligations under this Concession Agreement as listed below under this Concession Agreement-

#### **4.1.1 Land Allotment**

KDHPCL has agreed to make available two (02) Acres of land, more particularly described in the schedule hereunder written on lease or otherwise as may be mutually agreed, to the concessionaire for a period of 25 years for setting up the Project, in line with their proposal letter submitted but the title to the land is not in any way transferred to the Concessionaire nor it provides collateral for the Project. Such land so provided by KDHPCL shall not be Permanent Grant in favour of Concessionaire. The details of Plant Site are mentioned in the Schedule "A" to this Agreement. Upon the Site(s) being made available, the Concessionaire shall, subject to the provisions of the Concession Agreement and the land lease agreement /the document to be executed by KDHPCL have the right to enter upon, occupy and use the same and to make at Concessionaire's costs, charges and expenses such investigation, development and improvements in the

Site as may be necessary or appropriate to implement the Project and provide the Project Facilities in accordance with the provisions of this Agreement.

4.1.2 The Concessionaire shall have the right to the use of the Site in accordance with the provisions of this Agreement and Land Lease Agreement and for this purpose, it may subject to what is hereinafter mentioned regulate the entry into and use of the same by any third parties.

4.1.3 The Local Body (LB) or its agents agree to comply with the access arrangements and operating conditions put in place by the Concessionaire for the safe and efficient operation of the Plant under the terms and conditions of the Agreement.

4.1.4 The land may not be included as capital contribution from any party associated with the Project.

4.1.5 The Local Body (LB)/KDHPCL shall continue to ensure access to the site for the entire Concession Period, including rejection of zoning applications or development approvals that may hinder access.

4.1.6 The Local Body (LB) will be responsible for maintaining access roads and infrastructure up to the Gate of the Plant so as to deliver required quantity of MSW at the Power Plant Site. Any road works or other activities that restrict access or impact on the delivery of waste will be compensated to the Concessionaire by the Local Body for the entire period of disruption; maintenance to existing haul route roads that lead to or will be used to access the facility; construction and or maintenance for all required access routes to the site and facility and intersections with local roads designed to ensure that there are no interruptions or disruptions to the delivery of waste as per the requirements of the Agreements. Such access roads and infrastructure up to the main gate aforesaid shall be made with the prior approval in writing of KDHPCL.

4.1.7 The facility will have access to the required allotment of land at the agreed site.

4.1.8 The Plant Site will have access to basic utilities with connection to the National or Local Grid.

## **4.2 Peaceful Possession**

4.2.1 The Land Owner or Lessor hereby represents that the land provided by M/s Kanan Devan Hills Plantation Company Limited (KDHPCL) for setting up Solid waste to energy plant for Local Body has been leased to KDHPCL and that with the permission and authorization of Tata Global Beverages Limited (TGBL), has the power to lease or otherwise make

available the same to the Concessionaire and that the Concessionaire shall in the premises, have no liability whatsoever regarding any compensation payment on account of land acquisition or rehabilitation/resettlement of any Persons affected directly and/or indirectly thereby.

4.2.2 The Concessionaire shall, subject to complying with the terms and conditions of this Concession Agreement, remain in peaceful possession and enjoyment of the MSW Processing Site (Plant Site) during the Concession Period. In the event the Concessionaire is obstructed by any Person claiming any right, title or interest in or over the MSW Processing Site or any part thereof or in the event of any enforcement action including any attachment, distraint, appointment of receiver or liquidator being initiated by any Person claiming to have any interest in/charge on the MSW Processing Site or any part thereof, the Local Body or KDHPCL shall, if called upon by the Concessionaire, defend such claims and proceedings provided however if the Government or any authority raises any objection to the use of the land for the energy plant or otherwise, it shall be the responsibility of the Concessionaire and Local Body to remove such objection without in any way making KDHPCL for the same. It is hereby further clarified that the other parties hereto have satisfied themselves with the right, title and interest of KDHPCL over the schedule land and its right to lease the same in favour of the Concessionaire and no such matter shall be the subject matter of any claim by the Concessionaire or the Local Body against KDHPCL, including claim for any compensation.

### **4.3 Ensure Availability of MSW Waste**

4.3.1 The Local Body (LB) shall deliver to the Project Site, an initial total of 20 tones per day of un-segregated MSW excluding construction & demolition building debris, street sweepings, ("Assured Waste Quantity") to the Concessionaire at its cost and expense.

4.3.2 In case the Concessionaire certifies that Solid Waste is not fit for acceptance by the Concessionaire under any of the terms of this Agreement, the Local Body shall remove the same within 48 hours from the time of issue of such certificate, at the Local Body (LB's) cost and risk.

4.3.3 Local Body shall be obliged to deliver a minimum 80% (eighty percent) of the Assured Waste Quantity as "Minimum Assured Waste Quantity", of the total 20 tones/day of waste to the Concessionaire. This shall be calculated on a monthly average basis, taking into consideration maintenance downtime for Concessionaire equipment.

4.3.4 In the event that the Local Body is unable to deliver the "Minimum Assured Waste quantity", the Concessionaire shall have right for compensation for the loss of power units not being produced due to non-supply of minimum assured quantity of MSW to the Plant site, thereby resulting in reduction in running capacity of plant by 10% or more of the

agreed plant capacity (90%) and the Local Body (LB) shall be obliged to make good to such loss to the Concessionaire.

#### **4.4 General Obligations of Local Body (LB)**

4.4.1 Local Body shall observe and comply with all its obligations set forth in this Concession Agreement and all participation required for the effective implementation of the Project.

4.4.2 Local Body shall remain responsible for all waste collection and delivery of the agreed quantity of waste to the Concessionaire at the Plant Site.

4.4.3 Local Body shall extend all reasonable and timely support to the Concessionaire for obtaining required licenses, permits, NOCs etc. for the Project.

4.4.4 Local Body shall, as soon as possible and in an expeditious manner, sanction and approve all the plans and drawings submitted by the Concessionaire, including but not limited to building plan, specifications of civil work and electrical work etc.

4.4.5 Local Body shall including but not limited to certificates, confirmations as may be required by the Concessionaire for the purpose of claiming any exemptions or incentives from any Government authority, without any financial implications to the Urban Local Body, shall provide all necessary assistance to the Concessionaire.

4.4.6 Local Body shall endeavour to provide Grid Connectivity and associated Evacuation facilities in accordance with applicable Regulations in force and as amended from time to time.

4.4.7 Local Body shall endeavour to promptly facilitate execution of a Power Purchasing Agreement between Kerala State Electricity Board Limited (KSEBL) (State Discom) and the Concessionaire's SPV which is a pre-requisite and a requirement for the full and complete performance of the Concession Agreement. The Government / Local Body (LB) agrees that the absence of an agreed Power Purchasing Agreement between the Concessionaire's SPV and KSEBL (State Discom) is considered as a Material Adverse Effect under the provisions of this Agreement.

4.4.8 Local Body agrees that this Concession Agreement and Power Purchase Agreement (to be executed between the SPV and KSEBL) shall not be terminated or cancelled due to any event of political changes in the state or otherwise, except as otherwise specified in the relevant clauses of this Concession Agreement.



#### **4.5. Power Purchasing Agreement**

4.5.1 Local Body (LB) recognizes that this Concession Agreement requires a complimentary Power Purchasing Agreement and the Power Purchase Agreement is essential for the Project.

4.5.2 A Power Purchase Agreement between the Concessionaire's "SPV" and the KSEBL (State Discom) is required for the execution of this Agreement and the effective performance of the Project, as it specifies and regulates the supply and disbursement of the electricity generated by the Project, and that the purchase of the electricity generated by the Project by the KSEBL (State Discom) at the agreed rate for the life of the Concession, is critical to the financial viability of the Project and thereby the achievement of the objectives set out in the Concession Agreement and Site lease Agreements.

4.5.3 A Power Purchase Agreement shall be executed between the Concessionaire's newly formed SPV (Special Purpose Vehicle) and KSEBL (State Discom) for a period of 25 Years (being the "Concession period") on such terms and conditions as shall be mutually agreed upon and subject to the Electricity Act, 2003 as amended and regulations made there under.

4.5.4 The details of the supply of the electricity to KSEBL (State Discom) and purchase of the electricity by the KSEBL (State Discom) will be set out in the Power Purchasing Agreement.

#### **ARTICLE V CONCESSION**

##### **5.1 Grant of Concession**

Subject to and in accordance with the terms and conditions set forth in this Concession Agreement, Local Body(LB) hereby grants and authorizes the Concessionaire following rights, in addition to the right to finance, design, drawing, fabrication, supply, provide, erect, construct, test, commission, operate and maintain the Solid Waste to Energy Power Project and to exercise and/or enjoy the rights, powers, benefits, privileges, authorizations and entitlements as set forth in this Agreement: -

- (a) To receive at the Project Site, during each day of the Concession Period, Assured Waste Quantity from Local Body(LB) (which shall be delivered by Local Body(LB) at its own cost and expense) for the Project, to be transported and supplied by Local Body(LB) as set forth in the agreement.
- (b) To receive all fiscal incentives and benefits accruing in respect of or on account of the Project.

- (c) To facilitate the movement of material; including building construction materials, plant and machinery, spares and consumables from the supply locations to the Project Site.
- (d) To process the Solid waste at the Project site and sell the Electricity Power generated out of such process to KSEBL (State Discom) in terms of Power Purchase Agreement and other by products produced in such manner as Concessionaire deems fit.

## **5.2. Concession Period**

5.2.1 The Concession hereby granted is for the period of **25 (Twenty-five) years** commencing from the Commencement Date and ending on the Expiry Date (the "Concession Period") during which the Concessionaire is authorized to design, finance, construct, operate and maintain the Waste to Energy Project in accordance with the provisions hereof. Provided that in the event of termination of this Concession Agreement, the Concession Period shall mean and be limited to the period commencing from the Commencement Date and ending with the Termination Date.

5.2.2 The Local Body (LB) may increase the Assured Waste Quantity with mutual acceptance from the Concessionaire. The Concessionaire shall then accept the additional MSW for Processing as per the terms and conditions of this Agreement.

5.2.3 In the event, such increase in Assured Waste Quantity necessitates an increase in the capacity in the Waste Processing Facilities for power generation the Concessionaire shall, at its own cost and expense, design, finance, procure, construct, operate, maintain and add such Waste to Energy facilities of suitable capacities at the Project Site or such suitable sites provided by the land owner to the Concessionaire at its own cost and expenses.

5.2.4 Such additional site, if any for the Waste to Energy facility shall and continue to remain the properties of the Land Owner.

5.2.5 Local Body and the Concessionaire shall after every 5 years during the concession period, review in detail, the operation and functioning of the Solid waste Processing Facility in terms of input waste quantity received and processed in the Plant; down time period, maintenance of the facility, adherence to environment compliances, safety standards, amenities to employees and their safety at work place and such other matters as they deem fit concerning running and operation of the Plant. The Review shall also include any increase in Solid waste Input of Local Body and approach to handle and accommodate such additional input to the processing facility, generation of additional power and other products.

### **5.3 Rights Associated with Grant of Concession**

Without prejudice to the generality of the foregoing, the Concession hereby granted to the Concessionaire shall include without being limited to, and shall entitle the Concessionaire, without requiring any further authority or authorization from Local Body(LB), to enjoy following rights, privileges and benefits in accordance with the provisions of this Concession Agreement and Applicable Laws:

- (a) to design, engineer, finance, procure, install, commission, operate and maintain the Plant either itself or through such Person as may be selected by it; overall responsibility for the entire Project during the entire Concession Period is the responsibility of the Concessionaire.
- (b) Upon commissioning of the Plant, to manage, operate and maintain the same either itself or through such Person as may be selected by it; overall O&M responsibility for the entire Project during the entire Concession Period is the responsibility of the Concessionaire.
- (c) to use, appropriate, process MSW delivered by the Local Body(LB) to the Concessionaire;
- (d) to store, use, appropriate, market, sell or dispose all the products obtained after processing and treatment of the MSW Waste and to further retain and appropriate any revenues generated from the sale of such products
- (e) To obtain the utilities required for enabling the construction of the Plant, at its own costs.
- (f) Exclusively hold, possess, and control the Project Site (as mentioned in Schedule A), in accordance with the terms and conditions of the land lease agreement executed between the Concessionaire and Land Owner (KDHPCL), for the purpose of the due implementation of this Project, in accordance with the terms of this Concession Agreement. Such Land shall not be Permanent Grant in favour of Concessionaire.
- (g) The Concession and this Concession Agreement will be aligned with the Land lease Agreement with KDHPCL and Power Purchasing Agreement with KSEBL (State Discom) required for the effective performance and execution of this Agreement.

### **5.4 Use of Suitable Technology**

Without prejudice to the generality of the foregoing, the Concessionaire shall have the right to develop the Plant using Langenburg's Proprietary Technology including its upgrades that it considers suitable and commercially viable for the purpose of implementing the Project, in

accordance with the terms of this Concession Agreement. It is acknowledged that it is the intention of the Concessionaire to use the Langenburg's Proprietary Technology associated with the concept of a Waste to Energy Processing Plant and that the Concessionaire shall have the right to modify, adopt, upgrade or change the technology, from time to time, based on actual operations of the Plant and the requirements of the Project.

### **5.5 Acceptance of Concession**

In consideration of the rights, privileges and benefits conferred upon the Concessionaire, and other good and valuable consideration expressed herein, the Concessionaire hereby accepts the Concession and agrees and undertakes to perform/discharge all of its obligations in accordance with the provisions hereof.

### **5.6 Concessionaire's Right to execute Project through SPV:**

The Concessionaire shall have the right to execute, construct, implement, erect, operate, own and maintain the Project through a Special Purpose Vehicle ["SPV"] to be formed by the Concessionaire after the execution of this Concession Agreement.

### **5.7 Clean Development Mechanism (Carbon Credits)**

This shall be in consonance with Paris Agreement on climate change wherein Govt. of India, being an active party to the Paris Agreement on climate change ratifies the treaty and is committed to curb carbon dioxide (CO<sub>2</sub>) emissions to keep global average temperatures from rising above 1.5°C as compared to the pre-industrial years.

As part of the initial commitments to the Paris Agreement, Govt. of India also plans to reduce its carbon emission intensity - emission per unit of GDP - by 33-35% from 2005 levels over 15 years. It aims at producing 40% of its installed electricity capacity by 2030 from non-fossil fuels.

This has resulted in an urgency for India to shift significantly from coal-based power generation to renewable energy sources and to facilitate low carbon economy under the rules of The Paris Agreement.

In the light of above, the Concessionaire with support of LB shall use its best endeavours to register the Plant for carbon credits under the rules and guidelines laid down by Govt. of India in this behalf. The Concessionaire shall have to share 50% of carbon credit income from the CDM with the Local Body (LB); the Concessionaire in association with LB to apply for this project to seek carbon credit, with all the expenses associated with this process shall be borne by the Concessionaire.

## **5.8 Financing Arrangements**

The Concessionaire shall make the entire investment for the project on its own with its own resources of funds in association & collaboration with its Technology Partner for the purpose of the Project and accordingly the Concessionaire shall not create any sort of Encumbrance on the Project Land in favour of the Lenders for availing the financing facility for the Project.

For avoidance of doubt it is reiterated that the Concessionaire shall not create any lien on the site provided for setting up Project Facilities.

## **ARTICLE VI: PROJECT LAND**

### **6.1 Lease and Handover of the Project Land**

5.1.1 M/s Kanan Devan Hills Plantation Company Private Limited (KDHPCL), shall lease the required area of Land to the Concessionaire for the entire tenure of the concession period of ..... years for setting up of the Solid Waste to Energy Plant. The Concessionaire shall enter into an arrangement with M/s. Kanan Devan Hills Plantation Company Limited to avail the required land for setting up the Solid waste to Energy project at Munnar, Distt. Idukki, Kerala. The documentation shall be done at the cost and responsibility of the Concessionaire. Wherever any clearance, permission or licence is to be obtained for the purpose, they shall arrange to duly obtain the same. The Concessionaire shall execute the Project on the land provided to it by the Kanan Devan Hills Plantation Company Private Limited (KDHPCL) on lease or otherwise for the MSW Waste to Energy Project. If the project is not executed and commissioned as provided in this Agreement within 3 years from the date of this Agreement or having commenced operation, the project remains idle for a period exceeding 6 months, KDHPCL will have the right to take back the possession of land in which event the Concessionaire shall vacate from the land leased without claiming any compensation whatsoever.

#### **6.2.1 Rights, Title and Use of the Project Land**

The Concessionaire shall have the right to the use the Project Site in accordance with the provisions of this Concession Agreement and Lease and Site Access Agreement and for this purpose, it may regulate the entry into and use of the same by third parties. The Concessionaire shall not part with or create any Encumbrance on the whole or any part of the Project Land or Project Site.

6.2.2 The Concessionaire shall not, without the prior written approval of the Local Body and/or KDHPCL, use the Project Land for any purpose other

than for the purpose of the Project and purposes incidental or ancillary thereto.

## **ARTICLE VI: CONSTRUCTION WORKS**

### **7.1 Construction Works**

7.1.1 The Concessionaire shall adhere to the requirements of the Project and achieve the commencement of the operations of the Plant on or before the Commencement Date.

7.1.2 The Concessionaire shall use the Site for the purpose of implementing the Project in a phased manner as per pre-agreed implementation schedule and in accordance with Good Industry Practice.

7.1.3 The Concessionaire may undertake Construction Works by itself or through a Contractor possessing requisite technical, financial and managerial expertise/capability; but in either case, the Concessionaire shall remain solely responsible to meet the construction requirements of the Project.

7.1.4 The Concessionaire shall, before commencement of Construction Works;

- (a) have requisite organization and designate and appoint suitable officers/representatives as it may deem appropriate to supervise the Project, to liaise with the Local Body(LB) and to be responsible for all necessary exchange of information required pursuant to this Concession Agreement;
- (b) construct, provide and maintain a reasonably furnished site office.

7.1.5 The Project shall be deemed to be complete and ready to commence operations when it has complied with all required approvals and permits and the requirements of the Agreement.

## **ARTICLE VIII: COMMENCEMENT OF OPERATIONS**

### **8.1 Commencement Date**

8.1.1 The Concessionaire shall commence operations of the Project within a period of 12-15 (twelve to fifteen) months from date of signing of this Concession Agreement ("Effective Date") or 12 months from the date of Power Purchasing Agreement whichever is earlier. Upon completion of construction and its readiness to commence the operations to process the MSW Waste in accordance with this Concession Agreement, the Concessionaire shall advise the Local Body (LB) and KSEBL (State Discom) regarding the same by way of a written notice and shall intimate a date for commencement of operations ("Commencement Date"), which has to be

scheduled within the 12-15 (twelve to fifteen) months period from the signing of this Concession Agreement

8.1.2 The Commencement Date will not be extended unless and until there are certain exceptional circumstances as decided by the Local Body (LB) in line with the authority of the Local Body(LB) and that the Concessionaire shall be advised of such proceedings and be provided with opportunity to comment and be heard before the decision of the Local Body(LB) is taken. No extension of the commencement date shall be given without the prior approval in writing of KDHPCL.

## **8.2 Operations And Maintenance**

### 8.2.1 Delivery of MSW Waste

The Local Body (LB) shall supply the Assured Waste Quantity of un segregated MSW at the Plant Site either by itself or through its nominated agencies at no cost to the Concessionaire.

### 8.2.2 Delivery of MSW Waste after Commencement Date

From the Commencement Date to the end of the Concession Period, the Local Body (LB) shall ensure supply and make available to the Concessionaire each day, the Assured Waste Quantity, in accordance with terms of this Agreement.

### 8.2.3 Measurement of MSW Delivered

- (a) The Concessionaire shall use a Weighbridge to be constructed at the Receipt Point to: -
  - (i) weigh the MSW delivery trucks, take the dimensions of the delivery trucks, determine the weight of the consignment and determine the density of the consignment; generate and maintain an electronic data base for each delivery and provide a print out of the specifications and details for each consignment, as stated in sub-clause (i) above (such print out is hereinafter referred to as "Daily Weight Sheet").
  - (ii) Additionally, the Concessionaire shall provide weight receipt in duplicate to the driver of the truck.
- (b) The Weighbridge shall be operated and maintained by the Concessionaire at its own cost.
- (c) Each consignment shall be first weighed at the Weighbridge. The Local Body (LB) or its transporters or agents shall provide the weight and volume of each empty delivery trucks, in order to enable the due operation of the Weighbridge.

8.2.4 The Concessionaire shall operate and maintain the Plant in accordance with the recommendations of the Original Equipment Manufacturers or Technology Provider and as per the Standard Industry Practice.

8.2.5 The Concessionaire may undertake operations and maintenance of the Plant by itself or through a Contractor possessing requisite technical, financial and managerial expertise/capability; but in either case, the Concessionaire shall remain solely responsible to meet the Project requirements of its operations and maintenance as per this Agreement.

8.2.6 The Concessionaire shall, during the Concession Period;

- i) have requisite organization and designate and appoint suitable officers/ representatives as it may deem appropriate to supervise the Project, to deal with the Local Body(LB) and State Discom and to be responsible for all necessary exchange of information required pursuant to this Concession Agreement;
- ii) construct, provide and maintain a reasonably furnished site office and accommodation at the Project Site;
- iii) For the purposes of determining that the Plant is being maintained in accordance with this Agreement, the Concessionaire shall with due diligence carry out all necessary and periodical Tests. The Concessionaire shall maintain proper record of such Tests and the remedial measures taken to cure the defects or deficiencies, if any, indicated by the Test results.

#### **ARTICLE IX: RIGHTS OF THE PARTIES**

Local Body (LB) and the Concessionaire shall, in addition to other rights as mentioned in this Concession Agreement, have the following respective rights:

##### 9.1.1 Right to Access and Receive MSW Waste

The Concessionaire shall have the right to access, receive, inspect and weigh the MSW Waste and segregate any Rejected Waste and process the MSW Waste received from the Local Body (LB) at the Project Site during the tenure of the Concession Agreement.

9.1.2 The daily waste collected by Local Body(LB) shall be un-segregated and be delivered to the Site without prior commercial separation of solid waste materials suitable for processing at the Plant for the purposes of the Power Project.



## **9.2 Right of disposal of Received Material**

The Concessionaire shall be entitled to sell or dispose, any materials delivered to the Site; and any other by-products, recyclables derived, fuel generated or produced from the Plant arising out of processing of the MSW Waste. The Concessionaire shall have the right to sell or dispose such products, at such price and to such persons and using such marketing and selling arrangements as it may deem appropriate.

## **9.3 Benefits of the Project to Accrue Directly to the Concessionaire**

Subject to provision of this Agreement the Local Body (LB) hereby agrees that if there is any financial or Income Tax benefits or otherwise in respect or on account of the Project they shall accrue directly and exclusively to the Concessionaire alone and the Local Body (LB) hereby undertakes that it shall not claim or file any application claiming such benefits to the prejudice of the Concessionaire. The Local Body (LB) agrees to facilitate the grant or receipt of all such benefits by the Concessionaire, whether on its own behalf or on behalf of the Local Body (LB) and for the purpose to give all recommendations, no-objections, authorizations etc. The Parties hereby agree that the Project is a waste to energy project and that all revenues including revenue from scrap sale are derived from the performance/ execution of the waste processing and management project.

## **9.4 Non-Interference by the Local Body (LB)**

- (a) The Local Body(LB) covenants with the Concessionaire that the Local Body(LB) or any of its officials, officers, employees or workmen shall not, any time, during the Concession Period interfere or obstruct in the functioning, running and overall management of the Plant and in any matter in relation to or connected therewith except as provided in this Concession Agreement.
- (b) The Local Body (LB) shall have no right, title or interest to the technology that would be used by the Concessionaire in the development, operation and maintenance of the Power Plant. The Local Body (LB) agrees that any technology that may be employed by the Concessionaire in the development, operation and maintenance of the Plant would be proprietary technology obtained under specific license and the Local Body(LB) hereby undertakes that it shall not violate or cause a breach of the license agreements of the Concessionaire for such technology.

## **ARTICLE X: OWNERSHIP OF PLANT & HANDOVER OF THE PLANT LAND**

### **10.1. Ownership during and after the Concession Period**

Without prejudice and subject to the Concession Documents and Land Lease Agreement, the ownership of the Plant, including all improvements made therein by the Concessionaire and all immovable (Excluding Project Site) and movable assets including equipment and machinery and vehicles, during the term of the Concession Period and thereafter shall at all times remain with the Concessionaire. For avoidance of doubt it is made clear that land provided by KDHPCL (Land Owner) to Concessionaire as Project Site, shall always be under the ownership of KDHPCL and Concessionaire shall have no right to transfer the project site in any manner whatsoever including sale, lease, mortgage, lien, charge etc.

### **10.2 Concessionaire's Obligations**

(i) The Concessionaire shall, on the date of expiry of the Concession Period (in case of non-renewal) or subject to Article 12.6.2 upon Termination of this Concession Agreement, hand back the peaceful possession of the Plant Land /Site to KDHPCL in normal operating condition.

(ii) At least 3 (three) months before the expiry of the Concession Period, a joint inspection of the Plant shall be undertaken by the Local Body (LB), KDHPCL and the Concessionaire. The Concessionaire shall promptly assist in preparing the necessary documentation for the proper handing over of the Plant Site to KDHPCL at least 2 (two) months prior to the expiry of Concession Period.

(iii) In the event, the Concessionaire or Local Body(LB) does not wish to extend or renew the concession agreement, the Concessionaire shall be under an obligation to dismantle and dispose the entire Plant, including all movables and embedded machineries forming part of the Plant, in the manner as it deems fit and bear all costs for the same. The Concessionaire shall handover the peaceful vacation of Land to KDHPCL. In case the Concessionaire is able to receive proceeds from the sale of the Plant or machineries, the Concessionaire shall be entitled to retain all the proceeds received to set off against its expenses.

## **ARTICLE XI: FORCE MAJEURE AND CHANGE IN LAW**

### **11.1 Force Majeure Event**

Any of the following events which is beyond the control of the Party claiming to be affected thereby ("Affected Party") and which the Affected Party has been unable to overcome or prevent despite exercise of due care and diligence, and results in Material Adverse Effect shall constitute Force Majeure Event:

- (a) earthquake, flood, inundation and landslide;

- (b) storm, tempest, hurricane, cyclone, lightning, thunder or other extreme atmospheric disturbances;
- (c) fire
- (d) acts of terrorism;
- (e) strikes, public agitations, labor disruptions or any other industrial disturbances;
- (f) action of a Government Agency having Material Adverse Effect including but not limited to;
  - (i) acts of expropriation, compulsory acquisition or takeover by any Government Agency of the Project or any part thereof or of the Concessionaire's rights in relation to the Project,
  - (ii) Any judgment or order of a court of competent jurisdiction or statutory authority in India made against the Concessionaire in any proceedings which is non-collusive and duly prosecuted by the Concessionaire, and
  - (iii) any unlawful, unauthorized or without jurisdiction refusal to issue or to renew or the revocation of any Applicable Permits, in each case, for reasons other than Concessionaire's breach or failure in complying with the requirements of the Project, Applicable Laws, Applicable Permits, any judgment or order of a Governmental Agency or of any contract by which the Concessionaire is bound.
- (g) Early determination of this Concession Agreement by the Government / Local Body (LB) for reasons of National Emergency or National Security;
- (h) Any failure or delay of Concessionaire caused by any of the sub-articles (f) and (g) hereinabove, for which no offsetting compensation is payable to the Concessionaire by or on behalf of the Contractor.
- (i) War, hostilities (whether declared or not), invasion, act of foreign enemy, rebellion, riots, weapon conflict or military actions, civil war, ionizing radiation, contamination by radioactivity from nuclear fuel, any nuclear waste, radioactive toxic explosion, volcanic eruptions, any failure or delay of a Contractor caused by the events mentioned in this sub-clause for which no offsetting compensation is payable to the Concessionaire by or on behalf of the Contractor.

## **11.2 Notice of Force Majeure Event**

- (a) As soon as practicable and in any case within 7 (Seven) days of the date of occurrence of a Force Majeure Event or the date of knowledge thereof, the affected party shall notify the other Party of the same setting out, inter alia, the following in reasonable detail:
  - (i) The nature and extent of the Force Majeure Event;
  - (ii) The estimated Force Majeure Period;

(iii) The nature of and the extent to which, performance of any of its obligations under this Concession Agreement is affected by the Force Majeure Event;

(iv) The measures which the affected party has taken or proposes to take to alleviate/mitigate the impact of the Force Majeure Event and to resume performance of such of its obligations affected thereby; and

(v) Any other relevant information concerning the Force Majeure Event, and /or the rights and obligations of the Parties under this Concession Agreement.

(b) As soon as practicable and in any case within 5 (five) days of notification by the affected party in accordance with the preceding article (a), the Parties shall meet, hold discussions in good faith and where necessary conduct physical inspection/survey of the Plant in order to:

(i) assess the impact of the underlying Force Majeure Event,

(ii) to determine the likely duration of Force Majeure Period and,

(iii) To formulate damage mitigation measures and steps to be undertaken by the Parties for resumption of obligations of the performance of which shall have been affected by the underlying Force Majeure Event.

(c) The affected party shall during the Force Majeure Period provide to the other Party regular (not less than weekly) reports concerning the matters set out in the preceding article (b) as also any information, details or document, which the other Party may reasonably require.

### **11.3 Performance of Obligations**

If the affected party is rendered wholly or partially unable to perform any of its obligations under this Concession Agreement because of a Force Majeure Event, it shall be excused from performance of such obligations to the extent it is unable to perform the same on account of such Force Majeure Event provided that:

(a) Due notice of the Force Majeure Event has been given as required by the preceding Article 11.1;

(b) The excuse from performance shall be of no greater scope and of no longer duration than is necessitated by the Force Majeure Event;

(c) the affected party has taken all reasonable efforts to avoid, prevent, mitigate and limit damage, if any, caused or is likely to be caused to the Plant as a result of the Force Majeure Event and to restore the Project Facilities, in accordance with the Good Industry Practice and its relative obligations under this Concession Agreement;

(d) when the affected party is able to resume performance of its obligations under this Concession Agreement, it shall give to the other Party written notice to that effect and shall promptly resume performance of its

obligations hereunder, the non-issue of such notice being no excuse for any delay for resuming such performance;

(e) the affected party shall continue to perform such of its obligations which are not affected by the Force Majeure Event and which are capable of being performed in accordance with this Concession Agreement;

(f) Any insurance proceeds received shall be, entirely applied to repair, replace or restore the assets damaged on account of the Force Majeure Event, or in accordance with Good Industry Practice

(g) Neither Party hereto shall be liable in any manner whatsoever to the other party in respect of any loss, damage, cost, expenses, claims, demands and proceedings relating to or arising out of occurrence or existence of any Force Majeure Event.

#### **11.4 Termination due to Force Majeure Event**

##### **(a) Termination**

(i) If a Force Majeure Event, excluding events described under Articles 11.1 (f), 11.1(g), 11.1(h) and 11.1(i), continues or is in the reasonable judgment of the Parties likely to continue beyond a period of 120 (one hundred and twenty) days, the Parties i.e Local Body and Concessionaire may mutually decide to terminate this Concession Agreement

(ii) Notwithstanding anything inconsistent contained in this Concession Agreement, if a Force Majeure Event is an event described under Articles 11.1 (f), 11.1 (h) or 11.1 (i), and the same subsists for a period exceeding 365 (three hundred and sixty-five) days, then either Party shall be entitled to terminate this Agreement.

##### **(b) Termination Notice**

If either Party aforesaid, having become entitled to do so, decides to terminate this Concession Agreement pursuant to the preceding article (a), it shall issue Termination Notice setting out;

- (i) in sufficient detail the underlying Force Majeure Event;
- (ii) the Termination Date which shall be a date occurring not earlier than 120 (One hundred twenty) days from the date of Termination Notice;
- (iii) the estimated Termination Payment including the details of computation thereof if any and;
- (iv) any other relevant information.

**(c) Obligation of Parties**

Following issue of Termination Notice by either Party, the Parties shall promptly take all such steps as may be necessary or required to ensure that;

- (i) The Termination Payment, if any, payable to either party in accordance with the following clause (d) is paid by the other party on the Termination Date and
- (ii) The Plant Land/Site is handed back to KDHPCL by the Concessionaire on the Termination Date free from all Encumbrances.

**(d) Termination Arrangement**

Upon Termination of this Concession Agreement due to a Force Majeure Event, Termination Arrangements shall be made to the Concessionaire by Local Body (LB) in accordance with the following:

(i) If Termination is due to a Force Majeure Event, described under Articles 11.1 (a), to 11.1(e), no Termination Payment shall be made by the Local Body (LB) to the Concessionaire but, the Concessionaire shall be entitled to receive and appropriate;

(a) the proceeds of any amounts under insurance policies and  
(b) retain the Plant, along with the entire project facilities except land, and shall be entitled to sell the Plant and/or the project facilities, in part or full, or use the same as it deems fit, but vacate the Project Site on the Termination Date.

(ii) If Termination is due to the occurrence of any other event described under Articles 11.1(f), 11.1(g) or 11.1(h), 11.1 (i) the Local Body (LB) shall pay to the Concessionaire Termination Payment equal to one-year compensation computed on an average monthly power and water generation bills of the Concessionaire and the Concessionaire shall hand back the vacant possession of the project land or project site to the Land Owner.

(iii) On termination, as aforesaid the Concessionaire shall be entitled to retain the Plant, along with the entire Project Facilities except land, and shall be entitled to sell the Plant and/or the Project Facilities, in part or full, or use the same as it deems fit, provided that concessionaire shall vacate the Project Site on the Termination Date.

**11.5 Liability for other losses, damages etc.**

Save and except as expressly provided in this Article 11, neither Party hereto shall be liable in any manner whatsoever to the other Party in respect of any other loss, damage, cost, expense, claims, demands and proceedings relating to or arising out of occurrence or existence of any Force Majeure Event.

## 11.6 Changes in Law

11.6.1 Change in Law shall mean the occurrence or coming into force of any of the following, after the appointed date:

- a) The enactment of any new law including laws related to environment;
- b) The repeal, modification or re-enactment of any existing law;
- c) A change in the interpretation or application of a law by a court of record; Provided that Change in Law shall not include:
  - i) Coming into effect, after the appointed date, of any provision or statute which is already in place as of the appointed date,
  - ii) Any new law or any change in the existing law under the active consideration of or in the contemplation of any government as of the appointed date which is a matter of public knowledge.

11.6.2 Subject to Change in Law resulting in Material Adverse Effect and subject to the Concessionaire taking necessary measures to mitigate the impact or likely impact of Change in Law on the Project, if as a direct consequence of a Change in Law, the Concessionaire is obliged to incur additional costs, the Local Body (LB) shall subsequently reimburse to the Concessionaire such amount as required to compensate the Concessionaire.

11.6.3 Upon Occurrence of a Change in Law, the Concessionaire may, notify the Local Body (LB) of the following:

- (i) The nature and the impact of Change in Law on the Project;
- (ii) In sufficient detail, the estimate of the Additional Cost likely to be incurred by the Concessionaire on account of Change in Law;
- (iii) The measures, which the Concessionaire has taken or proposes to take to mitigate the impact of Change in Law, including in particular, minimizing the Additional Cost, such Additional Cost shall be borne by the Concessionaire.
- (iv) The relief sought by the Concessionaire.

11.6.4 Upon receipt of the notice of Change in Law issued by the Concessionaire pursuant to preceding sub-clause, the Local Body (LB) and the Concessionaire shall and take all such steps as may be necessary to quantify the quantum of the Additional Cost.

11.6.5. It is hereby clarified by the parties hereto that as far as KDHPCL is concerned, its obligation under this Agreement is only to make available to the Concessionaire, the Project site mentioned in the schedule hereunder, on lease on terms to be mutually agreed upon, but subject to such restrictions as may be imposed by the Government or any other authority. If KDHPCL is unable to make available the Project site on account of any such restrictions, the Local Body and Concessionaire may by taking suitable steps get such restrictions removed to enable KDHPCL to make available the land on lease to the Concessionaire. It is hereby clarified

again that notwithstanding anything herein contained under no circumstances, KDHPCL shall be liable for payment of any compensation to the other parties herein or to any other person, for anything done or omitted or failed to be done under this Agreement or for any other reason.

11.6.6. The entire work relating to the Project is to be confined to the Project site and no other part of the land belonging to KDHPCL is permitted to be used or shall be used for the purpose of the Project, in any manner, except for the collection of waste for the purpose of the Project.

## **ARTICLE XII: EVENTS OF DEFAULT AND TERMINATION**

### **12.1 Events of Default**

Event of Default shall mean either Concessionaire Event of Default or Local Body (LB) Event of Default or both as the context may admit or require.

#### 12.1.1 Concessionaire Event of Default

Any of the following events shall constitute an Event of Default by the Concessionaire ("Concessionaire Event of Default") unless such event has occurred as a result of the Force Majeure Event or one or more reasons set out in Article 3.6:

- (a) The Concessionaire has failed to adhere to the schedule for completing the construction of the Plant and such failure is likely to delay achievement of Commencement Date beyond 120 (one hundred twenty) days;
- (b) The Concessionaire is in material breach of any of its obligations under this Agreement and the same has not been remedied for more than 90 (ninety) days;
- (c) A resolution for voluntary winding up has been passed by the shareholders of the Concessionaire;
- (d) Any petition for winding up of the Concessionaire has been admitted and liquidator or provisional liquidator has been appointed or the Concessionaire has been ordered to be wound up by Court of competent jurisdiction, except for the purpose of amalgamation or reconstruction with the prior consent of the Local Body(LB) , provided that, as part of such amalgamation or reconstruction and the amalgamated or reconstructed entity has unconditionally assumed all surviving obligations of the Concessionaire under this Agreement;
- (e) The Concessionaire has abandoned the Project for the reasons of Technology Failure or otherwise;
- (f) The Concessionaire has unlawfully repudiated this Concession Agreement or has otherwise expressed an intention not to be bound by this Concession Agreement;
- (g) The Concessionaire has failed to accept the waste supplied or made available on the plant site by Local Body (LB) in



accordance with schedule herein, for a continuous period of 30 (Thirty) days for reasons attributed to unplanned Maintenance shutdown as indicated by the Concessionaire in the O & M requirements [to be submitted to Local Body (LB)] in any given month. In case of planned shutdown maintenance, the Concessionaire and the Local Body(LB) shall take adequate measure to accommodate the planned shutdown for maintenance, including but not limited to the ongoing delivery of waste,

- (h) The Concessionaire is declared insolvent,
- (i) Any other breach/ default affecting smooth functioning of the Project.

#### 12.1.2 Local Body(LB) Event of Default

Any of the following events shall constitute an Event of Default by Local Body("LB Event of Default") unless such event has occurred as a result of the Force Majeure Event:

- (i) Local Body(LB) has failed to supply the Minimum Assured Waste Quantity for a continuous period of 30 (Thirty) days;
- (ii) Local Body(LB) is in Material Breach of any of its obligations under this Concession Agreement and has failed to cure such breach within 60 (sixty) days of receipt of notice thereof issued by the Concessionaire;
- (iii) Local Body(LB) has unlawfully repudiated this Concession Agreement or otherwise expressed its intention not to be bound by this Concession Agreement;
- (iv) Local Body(LB) has unreasonably withheld or delayed grant of any approval or permission which the Concessionaire is obliged to seek under this Concession Agreement, and thereby caused or likely to cause Material Adverse Effect;
- (v) Any representation made, or warranties given by the Local Body (LB) under this Agreement has been found to be false or misleading.
- (vi) There is no longer an effective Power Purchasing Agreement in place between the Concessionaire's SPV and the KSEBL (State Discom) for the supply and purchase of the electricity as per the terms and conditions of this Agreement.

### **12.2 Termination**

#### 12.2.1 Termination for Concessionaire's Event of Default

- (a) Without prejudice to any other right or remedy which the Local Body(LB) may have in respect thereof under this Agreement, upon the

occurrence of Concessionaire Event of Default, the Local Body(LB) shall be entitled to terminate this Concession Agreement by manner as set out under Article 12.2.1 (b) to Article 12.2.1 (e).

(b) If the Local Body (LB) decides to terminate this Concession Agreement pursuant to preceding article 12.1.1, it shall in the first instance issue a preliminary notice ("LB Preliminary Notice") to the Concessionaire.

(c) Within thirty (30) days of receipt of the LB Preliminary Notice, the Concessionaire, shall submit to Local Body(LB) in sufficient detail, the manner in which it proposes to cure the underlying Event of Default (the "Concessionaire's Proposal to rectify"). In case of non-submission of the Concessionaire's Proposal to rectify within the said period of 30 (thirty) days, Local Body(LB) shall be entitled to terminate this Agreement by issuing a Final Termination Notice in the manner prescribed under Article 12.3.

(d) If the Concessionaire's Proposal to Rectify is submitted within the period stipulated there for, the Concessionaire shall have further period of 90 (ninety) days to remedy/cure the underlying Event of Default. The Concessionaire's Proposal to Rectify shall contain, amongst other things, right of the Concessionaire to negotiate and resolve the issue with Local Body (LB). Upon receipt of the Concessionaire's Proposal to rectify, Local Body (LB) shall co-operate with the Concessionaire and shall attempt to mutually resolve the issue with the Concessionaire.

(e) If, however the Concessionaire fails to remedy/cure the underlying Event of Default within such further period allowed, Local Body (LB) shall be entitled to terminate this Concession Agreement, by issue of Final Termination Notice in the manner prescribed under Article 12.3.

#### 12.2.2 Termination for Local Body(LB) Event of Default

(a) Without prejudice to any other right or remedy which the Concessionaire may have in respect thereof under this Agreement, upon the occurrence of Local Body (LB) Event of Default, the Concessionaire shall be entitled to terminate this Concession Agreement by manner as set out under Article 12.2.2 (b) and Article 12.2.2(c).

(b) If the Concessionaire decides to terminate this Concession Agreement pursuant to proceeding Article 11.1.2 it shall in the first instance issue a preliminary notice ("Concessionaire Preliminary Notice") to Local Body (LB). Within 30 (thirty) days of receipt of Concessionaire Preliminary Notice, Local Body(LB) shall forward to the Concessionaire its proposal to remedy/cure the underlying Event of Default (the "LB Proposal to Rectify"). In case of non-submission of Local Body (LB) Proposal to Rectify within the period stipulated there for, Concessionaire shall be entitled to terminate this Concession Agreement by issuing Final Termination Notice.

(c) If Local Body(LB) Proposal to Rectify is forwarded to the Concessionaire within the period stipulated there for, Local Body(LB) shall have further period of 90 (ninety) days to remedy/cure the underlying Event of Default. If, however Local Body (LB) fails to remedy/cure the underlying Event of Default within such further period allowed, the Concessionaire shall be entitled to terminate this Agreement by issuing a Final Termination Notice.

### **12.3 Final Termination Notice**

If a Party having become entitled to do so decides to terminate this Concession Agreement pursuant to the preceding Article 12.2.1 or 12.2.2, it shall issue Final Termination Notice setting out:

- (a) in sufficient detail the underlying Event of Default;
- (b) the Termination Date which shall be a date occurring not earlier than 60 days from the date of Final Termination Notice;
- (c) the estimated termination payment if any, including the details of computation thereof as stipulated in this Agreement and,
- (d) Any other relevant information.

### **12.4 Obligation of Parties**

Following issue of Final Termination Notice by either Party, the Parties shall promptly take all such steps as may be necessary or required to ensure that;

- (a) Until Termination the Parties shall, to the fullest extent possible, discharge their respective obligations so as to maintain the continued operation of the Project Facilities.
- (b) The termination payment if any, payable by Local Body (LB) in accordance with the Article 12.6.2 is paid to the Concessionaire on the Termination Date and the Plant Land/Site as on the Termination Date, is handed back to Land Owner or Lessor by the Concessionaire within 180 (one hundred eighty) days of the Termination Date free from all Encumbrance.

### **12.5 Withdrawal of Final Termination Notice**

Notwithstanding anything inconsistent contained in this Concession Agreement, if the Party who has been served with the Final Termination Notice, cures the underlying Event of Default to the satisfaction of the other Party at any time before the termination occurs, the Final Termination Notice shall be withdrawn by the Party which had issued the same. Provided that the Party in breach shall compensate the other Party for any direct costs/consequences occasioned by the Event of Default, which caused the issue of the Final Termination Notice.

## **12.6 Rights of Parties upon Termination**

### 12.6.1 Rights of the Local Body(LB) upon Termination

(a) Upon Termination of this Concession Agreement on account of Concessionaire Event of Default, the Concessionaire would not be entitled to any compensation from the Local Body (LB).

(b) Upon Termination of this Agreement for any reason whatsoever, the Local Body (LB) shall have the power and authority to:

(i) instruct the Concessionaire to remove plant and machinery and return vacant possession of land within 180 (one hundred eighty) days of such termination; and

(ii) If the Concessionaire fails or is unable to comply with (i) then after a reasonable period the Local Body may eventually take possession and control of the Plant including all equipment, all or any tools and plants, material installed or stored and thereafter the Concessionaire shall not have any rights whatsoever in the said plant including all equipment, all or any tools and plants, material installed or stored.

(c) Notwithstanding anything contained in this Concession Agreement, the Local Body (LB) shall not, as a consequence of Termination or otherwise, have any obligation whatsoever including but not limited to obligations as to compensation for the loss of employment, continuance or regularization of employment, absorption or re-employment on any ground, in relation to any Person in the employment of or engaged by the Concessionaire in connection with the Plant.

### 12.6.2 Rights of Concessionaire upon Termination

Upon Termination of this Agreement on account of Local Body (LB) Event of Default:

(i) the Local Body (LB) shall, as a consequence of its event of default:

(a) instruct the Concessionaire to handover the vacant possession of Plant Land/Site to the Land Owner notwithstanding the completion status of the Plant on an "as is where is basis" from the Concessionaire on payment to the Concessionaire, a termination payment not less than One year's compensation computed on average monthly power generation bills.

(b) In the event the Local Body (LB) refuses to pay the termination payment as mentioned above, the Concessionaire shall retain the Plant and may hold the possession of land; and the Concessionaire shall be entitled to claim compensation, as may be mutually decided between the Local Body

(LB) and the Concessionaire, for losses related to project ("Appropriate Compensation") as may arise directly or indirectly from Local Body (LB) Event of Default.

(ii) the Local Body (LB) shall, within a period as mutually agreed upon for days from the date when the Termination payment or Appropriate Compensation is decided, pay the Termination payment or Appropriate Compensation, as the case may be to the Concessionaire.

(iii) Notwithstanding anything contained herein, the Local Body (LB) shall not be entitled to terminate this Concession and instruct the concessionaire to vacate possession of Plant Land unless and until Local Body (LB) pays the termination payment or appropriate compensation to the Concessionaire.

(iv) Notwithstanding anything contained herein, in event of LBs failure to make the termination payment or appropriate compensation to the Concessionaire, the concessionaire in terms of Land Lease Agreement may handover the possession of Project land to the Land Owner and shall have available recourse under the Law to recover the termination payment or appropriate compensation from the Local Body (LB).

## **12.7 Accrued Rights of Parties**

Notwithstanding anything to the contrary contained in this Concession Agreement, Termination pursuant to any of the provisions of this Concession Agreement shall be without prejudice to accrued rights of either Party including its right to claim and recover money, damages and other rights and remedies which it may have in law or contract. The rights and obligations of either Party under this Agreement, including without limitation those relating to the Termination Payment, shall survive the Termination but only to the extent such survival is necessary for giving effect to such rights and obligations. It is hereby clarified that KDHPCL shall have no liability to pay any compensation or any other payment to any of the other parties or to any other person in or in connection with anything done or omitted to be done under this Agreement.

## **ARTICLE XIII: DISPUTE RESOLUTION**

### **13.1 Amicable Resolution/Arbitration**

13.1.1 Unless prohibited by any Applicable Law in force all claims, disputes, difference, or questions of any nature arising between parties of this Agreement, whether during or after the termination of this Agreement shall be referred to Arbitration. The Arbitration will be conducted in accordance with the Arbitration and Conciliation Act, 1996. The appointment of Arbitrator shall be done with mutual consent of the Concessionaire and Local Body and the decision of Arbitrator shall be final binding on both the parties. Both the parties mutually agree and confirm that the arbitration

proceedings shall be held at District Idukki, Kerala and shall be conducted in the English/Hindi language.

### 13.1.2 Insurance

Concessionaire Obligation: - Concessionaire shall at its cost and expense, obtain and maintain, during the term, all such insurances (in addition to those mandated by applicable laws) as may be required as per Good Industry Practices. The insurance shall be comprehensive and shall cover damages caused by the Project facilities to Local Body (LB's) property or damage to any third property/ person. The aforesaid insurance policies shall be in force by making timely payment of premiums and submitting the copies of the insurance policies to the Local Body (LB) every year. The Concessionaire shall indemnify & keep indemnified Local Body(LB) against all losses and claims for injuries or damaged to any person or property whatsoever which may arise out of or in consequence of the construction, operation & maintenance of the Project Facilities and against all claims, demands, proceedings, damages, costs, charges and expenses whatsoever respect of or in relation thereto. The Concessionaire shall cover all the personnel required to operate and maintain the Project Facilities with an insurance cover against accidents as required under Solid Waste Management Rules, 2016.

13.1.3 Un-insurable Risks: - If during the Concession Period, any risk which has been previously insured becomes un-insurable due to the fact that the insurers have ceased to insure such a risk and therefore insurance cannot be maintained/re-instated in respect of such risk, the Concessionaire shall not be deemed to be in breach of its obligations regarding insurance under this Agreement.

13.1.4 Insurance proceeds: - Unless otherwise provided herein, the proceeds of all insurance policies received shall be promptly applied by Concessionaire towards repair, renovation, restoration or reinstatement of the Project Facilities or any part thereof which may have been damaged or destroyed. Concessionaire may designate the technology partner as the loss payees under the insurance policies or assign the insurance policies in their favour, as security for the financial and technical assistance provided by them to the Project.

## **ARTICLE XIV: REPRESENTATIONS AND WARRANTIES**

### **14.1 Representations and Warranties of the Concessionaire**

The Concessionaire represents and warrants to the Local Body (LB) that:

- (a) It is duly organized, validly existing and in good standing under the laws of India;
- (b) It has full power and authority to execute, deliver and perform its obligations under this Concession Agreement and to carry out the transactions contemplated hereby;

- (c) It has taken all necessary corporate and other action under Applicable Laws and its constitutional documents to authorize the execution, delivery and performance of this Agreement;
- (d) It has the financial standing and capacity to undertake the Project;
- (e) This Concession Agreement constitutes its legal, valid and binding obligation enforceable against it in accordance with the terms hereof;
- (f) The execution, delivery and performance of this Concession Agreement will not conflict with, result in the breach of, constitute a default under or accelerate performance required by any of the terms of the Concessionaire's Memorandum and Articles of Association;
- (g) No bribe or illegal gratification has been paid or will be paid in cash or kind by or on behalf of the Concessionaire to any person to procure the Concession.

#### **14.2 Representations and Warranties of the Local Body (LB)**

The Local Body (LB) represents and warrants to the Concessionaire that:

- (a) It has full power and authority to grant the Concession;
- (b) It has taken all necessary action to authorize the execution, delivery and performance of this Concession Agreement;
- (c) This Concession Agreement constitutes its legal, valid and binding obligation enforceable against it in accordance with the terms hereof;

#### **14.3 Representations and Warranties of the Land Owner (KDHPCL)**

The Land Owner M/s Kanan Devan Hills Plantation Company Private Limited (KDHPCL) represents and warrants to the Concessionaire that:

- (a) It has full power and authority to sign concession in respect to grant the land on lease or otherwise for the Project;
- (b) It has all the valid and legal rights to provide the Project Site to the Concessionaire free from all sorts of Encumbrances;
- (c) There are no suits or other legal proceedings pending or threatened in respect of the Project Land.

### **ARTICLE XV: MISCELLANEOUS**

#### **15.1 Governing Law and Jurisdiction**

This Concession Agreement shall be governed by the laws of India. Courts at District Idukki, Kerala, will have jurisdiction over all matters arising from this Concession Agreement.

#### **15.2 Amendments**

This Concession Agreement together with the Schedules, Annexures, Addendum, Concessionaire's Proposal, Land Lease Agreement, LBs order etc. constitute a complete and exclusive set of the terms of the Agreement between the Parties on the subject hereof and no amendment or

modification hereto shall be valid and effective unless agreed to by both the parties hereto and evidenced in writing.

### **15.3 Interest and Right of Set Off**

Any sum which becomes payable under any of the provisions of this Concession Agreement by one Party to the other Party shall, if the same be not paid within the time allowed for payment thereof, shall be deemed to be a debt owed by the Party responsible for payment thereof to the Party entitled to receive the same. Such sum shall until payment thereof, carry interest at prevailing prime lending rate of State Bank of India plus 2% (Two percent) per annum from the due date for payment thereof until the same is paid to or otherwise realized by the Party entitled to the same. Without prejudice to any other right or remedy that may be available under this Concession Agreement or otherwise under law, the Party entitled to receive such amount shall also have the right of set off:

Provided that the stipulation regarding interest for delayed payments contained in this Article 15.3 shall neither be deemed nor construed to authorize any delay in payment of any amount due by a Party nor be deemed or construed to be a waiver of the underlying breach of payment obligations.

### **15.4 Waiver**

15.4.1 Waiver by either Party of any default by the other Party in the observance and performance of any provision of or obligations under this Concession Agreement:

- (a) shall not operate or be construed as a waiver of any other or subsequent default hereof or of other provisions or obligations under this Concession Agreement;
- (b) shall not be effective unless it is in writing and executed by a duly authorized representative of such Party; and
- (c) shall not affect the validity or enforceability of this Concession Agreement in any manner.

15.4.2 Neither the failure by either Party to insist on any occasion upon the performance of the terms, conditions and provisions of this Concession Agreement or any obligation hereunder nor time or other indulgence granted by a Party to the other Party shall be treated or deemed as waiver/breach of any terms, conditions or provisions of this Concession Agreement.

### **15.5 Survival Termination of this Agreement**

- (a) Survival of provision after Termination of this Agreement shall not relieve the Concessionaire or the Local Body(LB) of any obligations already incurred hereunder which expressly or by implication survives Termination hereof, and



- (b) Except as otherwise provided in any provision of this Concession Agreement expressly limiting the liability of either Party, shall not relieve either party of any obligations or liabilities for loss or damage to the other party arising out of or caused by acts or omissions of such party prior to the effectiveness of such termination or arising out of such termination.

### **15.6 Notices**

Unless otherwise stated, notices to be given under this Concession Agreement including but not limited to a notice of waiver of any term, breach of any term of this Concession Agreement and termination of this Concession Agreement, shall be in writing and shall be given by hand delivery, recognized international courier, mail and delivered or transmitted to the Parties at their respective addresses set forth below:

**The LB:**

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**The Concessionaire:**

Managing Director,  
A.G. Dauters Waste Processing Private Limited,  
B-2, Dhawan deep Building, 6, Jantar Mantar Road, New Delhi-110001

Or at such address, telex numbers or facsimile number as may be duly notified by the respective Parties from time to time and shall be deemed to have been made or delivered.

(a) in case of any communication made by letter, when delivered by hand, by recognized international courier, Email or by mail (registered, return receipt requested) at that address, and when transmitted properly addressed to such telex number or facsimile number.

### **15.7 Severability**

If for any reason whatsoever any provision of this Concession Agreement is or becomes invalid, illegal or unenforceable or is declared by any court of competent jurisdiction or any other instrumentality to be invalid, illegal or unenforceable, the validity, legality or enforceability of the remaining provisions shall not be affected in any manner, and the Parties shall negotiate in good faith with a view to agreeing upon one or more provisions which may be substituted for such invalid, unenforceable or illegal provisions, as nearly as is practicable:

Provided that failure to agree upon any such provisions shall not be subject to dispute resolution under this Concession Agreement or otherwise.

**15.8 No Partnership**

Nothing contained in this Concession Agreement shall be construed or interpreted as constituting a partnership between the Parties. Neither party shall have any authority to bind the other in any manner whatsoever.

**15.9 Language**

All notices required to be given under this Agreement and all communications, documentation and proceedings which are in any way relevant to this Concession Agreement shall be in writing and in English/Hindi language.

**15.10 Exclusion of Implied Warranties etc.**

This Concession Agreement expressly excludes any warranty, condition or other undertaking implied at law or by custom or otherwise arising out of any other agreement between the Parties and any representation by any Party not contained in a binding legal agreement executed by the Parties.

**15.11 Counterparts**

This Concession Agreement may be executed in two counterparts, each of which when executed and delivered shall constitute an original of this Concession Agreement but shall together constitute one and only the Concession Agreement.

IN WITNESS WHEREOF THE, PARTIES HAVE EXECUTED AND DELIVERED THIS AGREEMENT AS OF THE DATE FIRST ABOVE WRITTEN, SIGNED, SEALED AND DELIVERED

**For Munnar Grama Panchayat (LB)**  
**(LB)**

**For Devikulam Grama Panchayat**

(.....)

(.....)

Name:  
Designation:  
Date:  
Seal:

Name:  
Designation:  
Date:  
Seal:

**For M/s A.G. Dauters Waste Processing Pvt. Ltd.**  
(for and on behalf of Langenburg Technologies LLC, USA), the  
**Concessionaire**

(.....)

Name:  
Designation:  
Date:

Seal:

For **M/s Kanan Devan Hills Plantation Company Pvt. Ltd.** (Land Owner or Lessor)

(.....)

Name:  
Designation:  
Date:

Seal:

In the presence of:

Name:  
Designation:

(.....)

Name:  
Designation:

(.....)

**SCHEDULE-'A'**

**(Details of Project Site)**