

DATED: 01 APRIL 2015

(1) INVEST MONGOLIA AGENCY

- and -

(2) BAGANUUR POWER LLC

CONCESSION AGREEMENT

On implementation of (Build-Operate-Transfer)
“BAGANUUR POWER PLANT” project

Ulaanbaatar

2015

CONTENTS

GENERAL CLAUSE

ONE. GENERAL PROVISION

TWO. DEFINITION OF TERMS AND INTERPRETATION OF THE AGREEMENT

- 2.1. Definition of terms
- 2.2. Interpretation and Application of the Agreement

THREE. CONCESSION ITEM AND GENERAL DESCRIPTIONS

- 3.1. Concession item
- 3.2. Type of Concession
- 3.3. Preconditions for the implementation of the Concession Agreement
- 3.4. Conditions for implementing the Concession Agreement
- 3.5. Concession Term
- 3.6. Concession Agreement Effectiveness
- 3.7. Extension of Concession Term
- 3.8. Amendment to the Concession Agreement
- 3.9. Exclusive rights of the Concessionaire
- 3.10. Prohibitions to the Concessionaire
- 3.11. Monitoring the Concession Agreement Implementation
- 3.12. Financial Closing Security and Performance Security
- 3.13. Concession Fee

FOUR. RIGHTS AND RESPONSIBILITIES OF THE PARTIES

- 4.1. Rights and Responsibilities of the Concession Grantor
- 4.2. Rights and Responsibilities of the Concessionaire

FIVE. OTHER ISSUES RELATED TO THE IMPLEMENTATION OF THE CONCESSION AGREEMENT

- 5.1. Use of land
- 5.2. Coal supply
- 5.3. Power purchase and sale, and tariffs
- 5.4. Insurance
- 5.5. Technical conditions and requirements
- 5.6. Financing and investment

SIX. REPRESENTATIONS AND WARRANTIES REPRESENTATIONS AND WARRANTIES

SEVEN. END OF TERM, SUSPENSION, AND TERMINATION

- 7.1. End of Concession Agreement term
- 7.2. Termination by Grantor
- 7.3. Termination by Concessionaire

- 7.4. Termination due to Force Majeure
- 7.5. Suspension of the Agreement
- 7.6. Notice for termination
- 7.7. In Case Amendments to the Agreement cannot be reached by both parties
- 7.8. Handing over the Concession item
- 7.9. Termination cost and Compensation

EIGHT. LIABILITIES

NINE. DISPUTE SETTLEMENT

TEN. MISCELLANEOUS

- 10.1. Application of the law
- 10.2. Change in law and mitigation measures
- 10.3. Force Majeure
- 10.4. Measures to be taken after Force Majeure events
- 10.5. Confidentiality
- 10.6. Intellectual Property
- 10.7. Notice delivery
- 10.8. Others

ATTACHMENTS.

GENERAL CLAUSE

THE CONCESSION AGREEMENT based on:

- Resolution of the State Great Hural (SGH) 64 “Approval of the Government policy on Public and Private Partnership”, 15 October 2009,
- Law on Concession adopted by the State Great Hural, 28 January 2010,
- Resolution of the Government of Mongolia (GOM) 317 “Approval of Concession Items”, 6 September 2013,
- Resolution of GOM No.88 from March 9th, 2015 “Granting the Concession Agreement”.

This Concession Agreement is concluded on 30 March 2015 BY AND BETWEEN:

1) Invest Mongolia Agency, pursuant to the approval to conclude this Agreement by the Resolution 88 of 2015 of the Government of Mongolia on behalf of the Government of Mongolia (hereafter referred to as the “Grantor” or “Authorized Entity”).

and

2) Baganuur Power LLC, a limited liability company incorporated under the Laws of Mongolia, (hereafter referred to as “Concessionaire”).

RECITALS:

- A. The Authorized Entity has announced a tender, accordingly, the consortium consisting of _____ (the “Consortium”) submitted a request for bid and qualified as a bidder.
- B. The Consortium submitted a bid and other supporting documents prescribed by the tender. The Consortium negotiated with the Authorized Entity on the conditions of the concession agreement which reflects the best mutual understanding. Therefore, the Consortium was selected as the winner of the tender.
- C. The Consortium, as agreed with Authorized Entity, _____ established as the Concessionaire, a legal entity which will be wholly owned by ____
- D. The Concessionaire established a Project Company to sign the concession agreement and finance, construct and operate the “BAGANUUR POWER PLANT” project (the “Project”).

ONE. GENERAL PROVISION

1.1. The purpose of this agreement is to regulate rights and obligations of the Authorised Entity and regulating organisations listed in 1.2 necessary for implementing the project, to specify Concessionaire’s activities to be implemented, conditions for performing the concession services, target area, special permits, rights and responsibilities of the

Concessionaire, conditions for making amendments to the concession agreement, monitoring the implementation, conclusion, completion, suspension, termination, transfer of property to government authority, defining rights and obligations of the parties in settling disputes.

1.2. The bellow listed organizations have the following rights and responsibilities in implementing the concession activities:

1.2.1. The state central authority in charge of energy affairs is to ensure the implementation of government decisions, to provide support and conditions for construction of the concession item, and to provide support and to grant special permit for starting the construction of the power plant, to monitor installation process of the plant, and to regulate the operational activities.

1.2.2. The Energy regulatory commission is to grant to the Concessionaire special permits related to the construction of the power plant, electricity production and supply of energy in compliance with the provisions 12, 13, 17 and 20 of the Law on Energy of Mongolia, and is to monitor conditions and requirements of special permissions, and to approve tariff according to the laws and regulations.

1.2.3. The state central authority in charge of construction affairs is to grant a special permit to Concessionaire to start construction work, to carry out monitoring and to enforce rules and requirements of the construction works and to support the implementation of the project, in accordance with the relevant laws on Construction.

1.2.4. The state central authority in charge of environmental affairs, in accordance with the provision 4, 5, 6 of the Law on Environmental Impact Evaluation, is to approve the General and Detailed Environmental Impact Assessment of The Project, Plan for protection of environment and Plan for environment monitoring and analysis and to monitor the implementation of above plans; and if necessary to review and analyze the reports on environmental impact assessment in compliance with the provisions 7 and 8 of the above mentioned Law.

1.2.5 The state central authority in charge of cultural affairs, in accordance with the provision 27.8 of the Law on Protecting the Cultural Heritage of Mongolia, is to conduct the pre-survey and research by professional paleontology, archeology, ethnic research organizations prior to issuance of the land; and to monitor the implementation of measures recommended by the relevant professional organizations.

1.3. The following attached agreements are to be the indivisible parts of the Concession agreement:

1.3.1.		
1.3.2.		
1.3.3.		
1.3.4.		
1.3.5.		
1.3.6.		

1.4. The State central authority in charge of energy affairs shall make decisions for amendments in Feasibility Study (Attachment 1) based on assessment of Science and Technological Council of Energy sector.

TWO. DEFINITION OF TERMS AND INTERPRETATION OF THE AGREEMENT

2.1. Definition of terms

As used in this Agreement terms:

2.1.1. **Labour force** means fulltime and part time workers, working on construction and operation of the Concession item, who signed labour agreement with the Concessionaire and the Operator of the Concession item.

2.1.2. **Operation starting period** means period for the State authorized commission to examine and confirm completion of the construction of first unit of the power plant, its normal reliable operation, pilot testing of power plant. For avoidance of doubts, Operation Term starts after Operation starting period.

2.1.3. **State authorized commission** means a committee established based on Government resolution 151 of 2012 and decree 98 of the Minister of Energy in 2013 responsible for examining and testing completion and acceptance of operation of the power plant.

2.1.4. **Environmental Impact Assessment** is determined as in the Law on Environmental Impact Evaluation, provision 4.

2.1.5. **Detailed Environmental Impact Assessment** means the detailed assessment made by the respective body subject to the Provision 8 of the Law on Environmental Impact Evaluation (Attachment 2).

2.1.6. **Building, installations** have the meaning as stated in the Law on Construction, Mongolia Provision 3.1.4.

2.1.7. **Construction work contract** means contract concluded according to the prior conditions of the Concession Agreement between the Concessionaire and contractor of construction work as per certified construction layout/plan.

2.1.8. **Special permit to perform construction work and service** means a special permit to be given to the Concessionaire according to the Article 14, Law on Construction, Mongolia.

2.1.9. **Scheduled Plan of Construction Work** means technological procedure, timetable of each stage of construction work including development of construction plans, building, commissioning as in Attachment 3.

2.1.10. **Completion of construction work** is the date of registration, according to the rules of accepting the buildings and constructions for operation. For the avoidance of doubt, the completion of construction work occurs after continuous 72 hours of test running of the first unit in full capacity.

2.1.11. **Documents of construction norms and standards** means rules, standards, instructions, guidance containing general requirements and principles of construction work.

2.1.12. **Technical condition of construction** is stated in the Law on Construction, Mongolia Provision 3.1.7.

- 2.1.13. **Build-Operate-Transfer type of Concession** means, according to the Law on Concession, provision 4.1.1, the Concessionaire shall build the Concession item with its own and its own raised funds, operate it within term of agreement and transfer upon expiry of the Agreement to the state property as per conditions stated in the Agreement.
- 2.1.14. **Independent engineer** means nominated by mutual decision of both the respective authority and Concessionaire (technical or financial experts) or nominated in due course by the respective authority and Concessionaire consultant engineer/engineers/expert/experts, and their duties are ascribed by the Monitoring Agreement.
- 2.1.15. **Monitoring Agreement** means the contract(s) concluded between the Concessionaire and independent engineer, as reviewed by the Grantor, to monitor scheduled plans of construction work prior to the operational stage as attached in Attachment 10.
- 2.1.16. **Product supply point** means the point where the line with installed power meter and controlling counter for registering the volume of produced power supply is connected to the power transmission line.
- 2.1.17. **Commercial operation date (Day to start producing and selling power)** means the date when one of two power generators has been adjusted, pilot tested, ran in full capacity for 72 hours, to be operational, and approved by the State Authorized Commission. The commercial operation date is also the date of completion of the construction work.
- 2.1.18. **Land Use Agreement** means the agreement concluded between the Concessionaire and respective local authority in charge for the land affairs to conform conditions and rules for using land mentioned in Article 1.3.2 of the Agreement.
- 2.1.19. **Performance Security** means the guarantee required from Concessionaire subject to Article 3.12 of the Concession Agreement.
- 2.1.20. **Agreement Effective Date** means the date the agreement is signed by authorized/legal representatives of and chopped by the parties.
- 2.1.21. **Preconditions for implementing the Agreement** are the conditions stated in Article 3.3 of the Agreement.
- 2.1.22. **Force Majeure Event** means any event or circumstance that is unforeseen or unpredictable, beyond the intentional, unintentional action or inaction of the Concessionaire mentioned in the Provision 10.3 of the Agreement.
- 2.1.23. **Project** means construction and operation of Baganuur power plant and its Related Structures and Auxiliary Facilities under this Concession Agreement.
- 2.1.24. **Related structures** mean the roads, bridges, water and sewage system, plugs, engineering installations for fuel and coal transfer, and other installations located inside the power plant and the land as defined in the Feasibility Study (Attachment 1).
- 2.1.25. **Auxiliary facilities** mean residential facilities, one school, one kindergarten, one playground, and shops located outside the premises of the power plant as outlined in Feasibility Study. The school and kindergarten will be funded and constructed by the Concessionaire and transferred to the Grantor upon completion, and should be limited to the scope of satisfying the needs of the Project. The Grantor owns the school and kindergarten and assumes the risks related

thereto after the transfer. The Concessionaire is entitled hereby to use, operate and profit from the residential facilities, the playground and the shops during the concession term.

2.1.26. **Related Contracts** mean the contracts listed in Article 1.3“General Provisions of the Agreement”.

2.1.27. **Maintenance service** means services required during operational period of the concession item to meet technical standards, rules including repair work, improvement, renovation, capital repair services.

2.1.28. **Design, Layout Plan** means feasibility study and working layouts, geological feasibility study reports, geodesy layouts, estimate of total budget for the construction work.

2.1.29. **Regulating entity** means the state agencies entitled to grant necessary permits, special permits, set tariff and price rates, approve and endorse rules and regulations related to implementation of the Concession or its services.

2.1.30. **kW** means kilowatts.

2.1.31. **kWh** means kilowatts per hour.

2.1.32. **Grantor** means the Invest Mongolia agency of Mongolia, on behalf of the Government of Mongolia.

2.1.33. **Concessionaire** is Baganuur Power LLC a recipient of the Concession. The Concessionaire is established with the sole purpose to implement the Project and it shall not be engaged in any other projects or business activities during the Project period.

2.1.34. **Concession** means the special concession right granted by the Grantor to Concessionaire, identified in Provision 3.9. of the Agreement and under Mongolian Law and regulations.

2.1.35. **Concession Agreement Date** means the date when the Agreement is legalized by signing.

2.1.36. **Concession term** means the period stated in Article 3.5.1 of the Agreement.

2.1.37. **Starting date of the Concession Term** has the meaning stated in Article 3.5.2 of the Agreement.

2.1.38. **Starting date of Construction Term** means the later date of satisfying the followings: i) the financing agreements are executed, and ii) the permits for construction of the Project are issued.

Starting date of Construction Term is the same day as the Starting date of Concession Term.

2.1.39. **Concession item** is as defined in Article 3.1 of this Agreement.

2.1.40. **Date for complete transfer and handing over the Concession Item** is the date stated in Article 7.8.2 of this Agreement.

2.1.41. **Commission for handing over the Concession Item** is as stated in Article 7.8.1 of this Agreement, commissioned with the respective duties.

2.1.42. **Operation of the Concession Item** means use of the object in accordance with conditions defined in this Agreement.

2.1.43. **MW** means megawatts.

- 2.1.44. **Power supply** means volume of electric power produced and supplied through Product Sale Point measured in kWh.
- 2.1.45. **Coal** means extracted from coal mine and to be used for power plant's source of energy.
- 2.1.46. **Coal Purchase Agreement** means the contract concluded between the Coal Mine, the Concessionaire upon conditions and regulations of coal supply in accordance with contract stated in Article 1.3.1 of the Agreement.
- 2.1.47. **Tax** means any taxes, charges, and fees the Concessionaire is imposed to pay in accordance with Law on Taxation of Mongolia.
- 2.1.48. **Feasibility Study** (hereafter FS) is the document containing technical conditions, economical assessments, estimates, studies for building, operating the power plant and production of power defined in Attachment 1 of the Agreement, approved by the Science and Technological Council of the state central authorized entity in charge of energy affairs.
- 2.1.49. **Project site/Premises** means the land being possessed or used by the Concessionaire for implementing of the Project activities, according to the purpose and conditions stated in the Land Use Agreement.
- 2.1.50. **Shareholder Resolution** means the resolution made by the shareholder of the Concessionaire with regard to the establishment of the Concessionaire (Attachment 11).
- 2.1.51. **Water Use Agreement** means the contract concluded between Concessionaire and respective government authority in charge of water affairs to conform conditions and rules for use of water resources, the contract mentioned in Article 1.3.5. of the Agreement.
- 2.1.52. **Water resources** mean surface water, underground water and grey water to be used by the Project.
- 2.1.53. **Operation term** means period for the Concessionaire to operate Power Plant and produce power starting from commercial operation date of the Project until the expiration of the Concession Term.
- 2.1.54. **Concessionaire's related parties** mean a legal entity, person that possesses controlling interest of the Concessionaire; person or legal entity whose controlling interest is being possessed by the Concessionaire.
- 2.1.55. **Lenders** mean the financial institutions or entities concluded financing agreement with the Concessionaire to provide financial support for the Project under the Agreement.
- 2.1.56. **Calendar Year** means period from January 1st until December 31st of every year.
- 2.1.57. **Calendar quarter** means consecutive three months of the year (1st quarter) January, February, March, (2nd quarter) April, May, June, (3rd quarter) July, August, September, (4th quarter) October, November, December.
- 2.1.58. **Calendar month** means any month of the calendar year.
- 2.1.59. **Measuring equipment** means electricity meter and electricity monitor counter together.
- 2.1.60. **Controlling interest** means one third or more of the common stock issued by the Concessionaire.

2.1.61. **Power** means electric power to be received and utilized by the Concessionaire in the process of building and commencing the Power plant with contract from the Central Energy System and the electric power to be generated and provided by the Concessionaire.

2.1.62. **Power plant** means coal-fired thermal power plant to be built in Baganuur district with power generation capacity 2 x 350 MW each as described in FS under the condition of Build-Operate-Transfer type of Concession Agreement. The power plant covers consisting parts of the plant, power transmission line, and the Related Structures.

2.1.63. **Power Purchase Agreement** (hereafter PPA) means electric power sale and purchase agreement concluded between the Concessionaire and “National Power Transmission Grid” State Owned Stock Company of Mongolia.

2.1.64. **Special permit for construction of the Power Plant** is the permit that is granted for construction works of power plants in accordance with the Law on Energy, Mongolia, Article 20.

2.1.65. **Investment** means the estimated amount proposed in the Feasibility Study covering all costs and expenses incurred by the Concessionaire in implementing the power plant project, inclusive of the costs and expenses spent by the consortium in bidding, winning the bid of project, and in negotiating and signing the agreement.

2.1.66. **Loss/Losses** shall be losses of the Concessionaire in implementing the power plant project, which include but are not limited to the followings: 1) all direct costs, expenses, fees, taxes, fines, damages, claims; 2) indirect costs, losses, fees, taxes, fines, claims and damages; 3) expected profits in operating the Project.

2.1.67. **Intellectual property** shall have the meaning in Article 10.6.1. It shall include but is not limited to FS, drawings/plans of Power plant, related structures and auxiliary facilities, technical documentations, construction plan, operation documents, user instructions, know-how etc.

Designated bank account shall mean the bank account in the name of _____

2.2. Interpretation and Application of the Agreement

The Agreement shall be interpreted and applied according to the following:

2.2.1. The headings are for convenience only and shall be ignored in construing this Agreement.

2.2.2. If the singular presents the plural, plural presents singular, then numbers shall present the meaning other than where the context determines otherwise, the singular includes the plural and vice versa.

2.2.3. References to Clauses of the Law, rules, decisions, orders, methodology, similar legislative references shall include later made amendments.

2.2.4. Amendments and changes to the Agreement, attachments shall be considered legal acting document as a part of the Agreement and attachments.

2.2.5. Unless otherwise interpreted in the Agreement, the generally recognised technical and commercial terms shall have the same recognised meaning.

THREE. CONCESSION ITEM AND GENERAL DESCRIPTIONS

3.1. Concession item

3.1.1. Concession item shall include 1) possession and use of land granted for the purpose of implementing the Project, 2) the Power plant to be built with the Concessionaire's or its self-raised funds, 3) consisting parts of the Power plant, related structures, auxiliary facilities, 4) products from operating the power plant and including power and heating, 5) all by-products from operating the power plant including without limitation solid and liquid wastes; 6) income from the sale of the products and by-products, 7) income and benefits from rental services of the auxiliary facilities and other facility of the power plant, 8) intellectual property, and 9) other income and benefits.

3.1.2. Know-how and other project related intellectual property shall belong to the Concessionaire.

3.1.3. Consisting parts of Power plant, basic installations and equipments of related structure and auxiliary facilities, detailed plan of engineering lines, detailed layout of equipment and engineering lines, connection scheme and their technological solutions, specifications and transmission lines shall be described in FS (Attachment 1 of the Agreement).

3.1.4. The power plant, related structures, auxiliary facilities (excluding the school and the kindergarten), architecture, products and other property built, formed, obtained or produced through the construction or operation of the Project shall be possessed by the Concessionaire.

3.2. Type of Concession

3.2.1. This Concession belongs to Build-Operate-Transfer type of concession in accordance with the Article 4.1.1 of Law on Concession, Mongolia and Provision 29, Attachment to the GOM decision 317 of 2013.

3.3. Preconditions for Implementing the Concession Agreement

3.3.1. The execution or completion of all Attachments to this Agreement shall be the precondition of the implementation of this Concession agreement. The parties shall sign and complete all Attachments within _ after the execution of this Concession agreement.

3.3.2. The Concessionaire is entitled to submit to the Grantor and attach to the Agreement below listed preconditions necessary to carry out prior to implementing the Agreement within six (6) months from execution of this Concession Agreement.

1) Original copy of the contracts and agreements attached to the Agreement referred to in the Article 1.3.1-1.3.6 of this Agreement.

2) Original copy of general environmental impact assessment to be done according to the legislation on environment and certified by the respective authorized entity (attachment 2 of the agreement).

3) Original copy of the Project General Layout (Attachment 12 of the Agreement).

3.3.3. The Grantor is obliged to accomplish the following as preconditions prior to implementing the Agreement within __ from execution of this Concession agreement:

- 1) Legitimate documents essential to the implementation of the Project as follows:
Government decree authorizing the signing of this agreement,

- 2) Original copy of the Detailed Plan for improving the coal supply, approved together with the management of Baganuur mining and local authorities and the Concessionaire,
- 3) The Grantor shall make its best efforts to assist the Concessionaire in achieving the preconditions stated in Article 3.3.2.

3.3.4. The Concessionaire and the Grantor shall submit to the other party an official notice informing its completion of the above mentioned preconditions to be met prior to implementing the Agreement. The receiving party shall reply and confirm in writing the preconditions being met within 5 working days upon receiving the aforementioned official notice from the sender, only when both parties have satisfy the preconditions, will the parties proceed to implementation of the agreement.

3.4. Conditions for implementing the Concession Agreement

3.4.1. The Agreement shall be implemented according to the following conditions:

- 1) The Project shall be implemented in accordance with the FS (Attachment 1 of the Agreement) and the FS together with this Agreement shall be the basic Document of the Project.
- 2) The Concessionaire shall carry out and finance with its own and self-raised funds for the development and approval of the FS; development, revision, certification of Construction Plans; purchase of construction materials, equipment, machinery, related devices and their installation, assembling, testing, operation commencing, production of power, operational period maintenance service, capital repair of main and subsidiary machinery and renovation.
- 3) Amount, conditions, schedule of financing shall be made according to the Article 5.6 of this Agreement.
- 4) Number of contracting foreign workers, expatriates shall be approved by the state central authorized entity in charge of labour affairs in accordance with Provision 4.1 of the Law on Export and import of labour.
- 5) The following special permits shall be obtained from the respective authorized entities by the Concessionaire in accordance with the Law on Energy, Law on Construction and other laws of Mongolia:
 - 1/ special permit for construction of energy facilities;
 - 2/ special permit for assembling energy installations and construction of energy facilities;
 - 3/ special permit for construction work and services;
 - 4/ special permits required for the transportation related to the Project.

A complete list of permits necessary for the implementation of the Project to be provided by the Grantor is listed as Attachment 9.

3.5. Concession Term

3.5.1. The Concession term includes Construction term and Operation term. The Concession term is__ years plus extended period as confirmed between the Parties in accordance with this Agreement.

3.5.2. The Concession term starts from the later date of satisfying the following_

3.5.3. The completion of construction work occurs on the date of completion of the continuous __ hours of test running of the first unit in full capacity.

3.5.4. The Operation term starts on the date after the date of completion of the continuous __ hours of test running of the first unit in full capacity.

3.6. Concession Agreement Effectiveness

3.6.1. Act of signing the Agreement by Parties and putting their stamps shall provide the parties with legal guarantee to implement their full rights and authorization for fulfilling their obligations. The power of attorney of the authorized representatives of the parties shall be attached to the Agreement as Attachment 16.

3.6.2. The Agreement shall become effective upon signing of the Agreement. Preconditions in Article 3.3 shall be fulfilled prior to the parties' implementation of the Agreement. The Concessionaire has the right not to proceed with implementation of the Agreement before the preconditions (excluding Attachments 3, 11, 12, 15) are met, and under such circumstance, the Concessionaire shall not be deemed as in breach of its obligations under the Agreement.

3.7. Extension of Concession Term

3.7.1. The extension of Concession term includes extension of Construction term and extension of Operation Term.

3.7.2 Extension of the construction term of the Agreement may occur in the following situations:

- 1) Interruption, delay of the Concession Agreement activities due to the government;
- 2) Interruption, delay of the Concession Agreement activities caused by unexpected conditions or Force Majeure;
- 3) If Concession investment is increased or project design plan is changed due to requests or demands of the Authorized Entity / government;
- 4) If the Grantor fails to perform its obligations under this agreement within the time limit provided herein or in a timely manner, causing the delay for the use of land, water, heating, internet, communications, cable, or sewage etc., or causing the delay of obtaining relevant permits or licenses;
- 5) Interruption, interference or claims of neighbouring residents, government entities, other organizations or entities affecting the progress of the construction which shall be accompanied by evidence accepted by the Grantor;
- 6) If the government and regulating entities but not limited to listed in Article 1.2 fails or delays to provide or issue permits, licenses or documents necessary for the construction of the Project;
- 7) When heritage/treasures/natural resources/scientific discovery/fossil remains are found on the premise of the Project, leading to the delay of construction;
- 8) When the design change proposed by the Concessionaire is approved by the Grantor/government;
- 9) The Grantor fails to perform its obligations under this Agreement, causing delay of the construction.

In the situation the construction term is extended, the Concession term shall be extended accordingly for the same period.

3.7.3. Extension of Operation term of the Agreement may occur in the following situations:

- 1) Interruption, delay of the Concession Agreement activities due to government and the term shall be extended for the interrupted or delayed period.
- 2) Interruption, delay of the Concession Agreement activities caused by unexpected or Force Majeure conditions and extension shall be for the postponed period when the Concession Agreement activities are possible to re-establish.
- 3) The Grantor shall extend the Concession term if unforeseen circumstances arise which have a financial impact on the Concessionaire or which may lead to imposing or increased tariff, taxes, costs, fees, and payment for the population.
- 4) If Concession investment is increased due to requests or demands of the Authorized Entity/ government, the extension shall be granted for a period sufficient for the Concessionaire to recover the increased budget amount and Losses.
- 5) If the Grantor fails to perform its obligations under this agreement within the time limit provided herein or in a timely manner, causing the delay for the use of land, water, heating, internet, communications, cable, or sewage etc., or causing the delay of obtaining relevant permits or licenses then the term of concession shall be extended for a period equal to or longer than the delayed period so as to recover the Loss resulted there from.
- 6) If the coal is not supplied adequately or timely or in the quality agreed to in the Coal Purchase and Sale Agreement, or the improvement of the coal mine production capacity is not completed on time, causing a deficiency of coal supply or lower production than scheduled in this Agreement, and the Baganuur Coal Mine fails to compensate Concessionaire in accordance with the Coal Purchase and Sale Agreement, then the Concession Term shall be extended.
- 7) If the buyer to the Power Purchase Agreement fails to purchase the amount of power agreed therein, and fails to compensate Concessionaire in accordance with the PPA, then the Grantor shall compensate for Concessionaire's Losses to the effect as if the buyer has fully performed its duty under the PPA, or if Concessionaire agrees and solely at discretion of Concessionaire, extend the Concession term.
- 8) If the operation of the Project is adversely affected due to interruption, interference or claims of neighbouring residents, government entities, other organizations or entities.
- 9) If the government and regulating entities including but not limited to listed in article 1.2 fail or delay to provide or issue permits, licenses or documents necessary for the operation of the project, then the concession term shall be extended to alleviate the adverse impact on the concessionaire.
- 10) Heritage/ treasures/ natural resources/ scientific discovery/ fossil remains are found on the premise of the Project, leading to adverse effect on the operation of the Project.
- 11) The Grantor fails to perform its obligations under this Agreement, causing Loss to the Concessionaire.

In the situation the Operation term is extended, the Concession term shall be extended accordingly for the same period.

3.7.4. Unprofitable business due to mismanagement of the Concessionaire shall not become a reason for extending the concession term of the Project.

3.7.5. Upon approval by Energy regulatory commission, the tariff determined in Feasibility Study can be changed to increase by Grantor and Concessionaire within the term set in Article 3.5.1 of this Agreement, due to the tariff changes according to the Law on Energy.

3.7.6. The extended period mentioned in Article 3.7.2 and 3.7.3 shall be long enough for the Concessionaire to recover its Loss resulted from the above mentioned situations.

3.8. Amendment to the Concession Agreement

3.8.1. The Parties are entitled to amend or change the Agreement with mutual consent.

3.8.2. The Concessionaire has right to propose amendment(s), changes to the Agreement according to the Provision 23.2 and 23.3 of the Law on Concession of Mongolia.

3.8.3. The Parties shall be guided by the following rules when amendment is required:

- 1) The consent for amendments shall be submitted to the other party in written form in person or through the established means of communication in between the Parties not less than 30 (thirty) calendar days prior the scheduled date of adopting the amendments. The legal representatives of the other party must be informed.
- 2) According to the part 1 of 3.8.3, the recipient party shall send notice of approval or disapproval of the proposed amendments to the other party within 30 (thirty) calendar days after the receipt of the notice.

3.8.4. Amendments, changes to the Agreement shall become effective upon signing the made changes, amendments based on the mutual consent of the Parties.

3.8.5. In case, the Parties hold different opinion regarding the amendments and changes to the Agreement, the Initiator of the proposal shall organise meetings and both parties together shall take all necessary actions to reach mutual consent.

3.8.6. In case the Parties could not reach agreement on the suggested changes and amendments, the initiator of the proposal shall resend the notice of the suggested changes and amendments or notice of rejecting own proposal.

3.9. Exclusive rights of the Concessionaire

3.9.1.

- 1) _____
- 2) _____
- 3) _____
- 4) _____
- 5) _____
- 6) _____

3.9.2. _____

3.9.3. _____

3.9.4. _____

3.9.5. _____

3.9.6. _____

3.10. Prohibitions to the Concessionaire

3.10.1.

3.10.2. Concessionaire shall be prohibited to conduct the following acts without written permission of the Grantor except for the purpose of Project financing.

- 1)
- 2)
- 3) to transfer the Concessionaire's rights and obligations through restructuring which will result in loss of its controlling interest of the Project;
- 4)
- 5) to change shareholders of the Concessionaire and conclude agreement with third party regarding the change;
- 6) to interrupt the performance stated in the Agreement and FS in violation of the Agreement by transferring the assignment which is stipulated explicitly not transferrable by the Agreement to others.

3.10.3. Transfer of the Concession item shall be guided by the procedure stated in Article 3.10.2 of the Agreement and Article 27 and 32 of the Law on Concession, Mongolia.

3.10.4. In cases the Concessionaire has to transfer the Project to the lenders under the financing agreements, the lenders are entitled to designate a third party accepted by the Grantor to receive the Project.

3.11. Monitoring the Concession Agreement Implementation

3.11.1. The Grantor of Concession and regulating organisations stated in General Provision of this Agreement shall monitor implementation of the Agreement subject to the related legislation.

3.11.2. The Grantor and Concessionaire shall jointly designate highly qualified independent engineer to monitor implementation of the Project, and Concessionaire shall conclude the Monitoring Agreement with independent engineer (Attached schedule, work plan) reporting shall be developed in cooperation with Concessionaire. Budget for Monitoring shall be included in the Monitoring Agreement and funded by Concessionaire.

3.11.3. The authorized entity in charge of providing special permits for constructing energy sector constructions grant permits, according to the legislation, to Concessionaire based on comprehensive analysis of Concessionaire's selected technology and equipment whether they meet technological needs described in the FS whether they were used or outdated; whether Investment, Income, Expense, Profitability estimates are reasonable; financial capability, manpower, proven experience; and monitor the implementation of the permit requirements with charges for failure to fulfil requirements.

3.11.4. State central and subsidiary entities in charge of Construction and Energy Affairs shall provide the Concessionaire with special permits for construction work, services and energy sector construction and installation work; examine whether the Concessionaire's construction design and layout plans, technical conditions meet legal requirements and criteria; whether safety regulations are complied; and monitor implementation of the permit requirements.

3.11.5. The State central authority in charge of Energy Affairs shall monitor the implementation of the technical, technological and other conditions described in FS (Attachment 1 to the Agreement).

3.11.6. The State central authorities in charge of Construction and Energy Affairs shall monitor application of standards and legislation in construction design and layout plans.

3.11.7. The State central authorities in charge of Construction and Energy Affairs and their subsidiaries shall monitor the application by the Concessionaire of the legislation, the technical conditions and requirements set by the authorized entities, safety rules and regulations in implementing the scheduled plan of construction, in production testing, operating, and energy production.

3.11.8. The Grantor shall monitor whether the Concessionaire performs works and services agreed upon the Agreement according to the related legislation and FS following timetable; whether necessary funding activities are carried out according to the schedule.

3.11.9. If the independent engineer identifies non-compliance issues during the construction, it shall notify Concessionaire in writing. If the Concessionaire fails to solve the issues within 30 (thirty) days, independent engineer can report to the Grantor.

If the Grantor and the Concessionaire fail to reach agreements, the Parties shall appoint an independent inspector to settle the matter at cost of the Concessionaire.

3.11.10. The State central entity in charge of Environmental issues and its regional subsidiaries shall monitor in the respective area according to the legislation.

3.11.11. The independent engineer shall be responsible for monitoring the commissioning of the Power Plant.

3.11.12. The State central entity in charge of Energy Affairs shall carry out monitoring application of legislations on Energy in production and operation stage of the Power plant.

3.11.13. The regulatory entity in charge of power tariff and its regulations approves the tariff for the produced power based on this Agreement and also the methodology and rules stated in the laws and regulations on Energy and implement monitoring over application.

3.12. Financial closing security and Performance security

3.12.1. Financial closing security

- 3.12.1.1. _____
- 3.12.1.2. _____
- 3.12.1.3. _____
- 3.12.1.4. _____

3.12.2. Performance security

- 3.12.2.1. _____
- 3.12.2.2. _____
- 3.12.2.3. _____.
- 3.12.2.4. _____

3.12.3. The Grantor has the following rights regardless of any other possible measures could be taken.

- 3.12.3.1. _____
- 3.12.3.2. _____.
- 3.12.3.3. _____
- 3.12.3.4. _____

3.13. Concession fee

3.13.1. _____

- (1) _____
- (2) _____
- (3) _____
- (4) _____;
- (5) _____

FOUR. RIGHTS AND RESPONSIBILITIES OF THE PARTIES

4.1. Rights and responsibilities of the Concession Grantor

4.1.1. In addition to the rights, provided by Law of Mongolia the Grantor possess the following rights:

- 1) to require the Concessionaire to build and operate the Power Plant in accordance with technological and technical capacity defined by FS and in the Agreement.
- 2) to terminate the Agreement, to suspend the Concessionaire's rights and responsibilities, to replace the Concessionaire, to transfer the Concession item subject to the provisions of the Law and the Agreement.
- 3) to nominate with the consent of the Concessionaire an independent inspector for independent conclusion to be made if the Grantor and the Concessionaire conclude such activity is necessary in the process of monitoring the implementation of the Agreement.
- 4) to take all necessary steps to fulfil preconditions and other conditions stated in the Agreement for its implementing.
- 5) to demand the Power Plant equipment, quality of materials, technological criteria to meet the respective International and National Standards as specified in Attachment 15.
- 6) if Concessionaire sees that the investment and financing needs to be increased which results in the adjustment of power tariff, the Grantor shall examine, require justification in each time from the Concessionaire and shall present to the Government for the approval.
- 7) to demand termination of the Agreement in situation defined in the provision 3.10 of the Agreement and to appeal provided that Concessionaire breaches the Agreement according to Provision 7.2.
- 8) to designate own accredited representative as agreed by Concessionaire for executing the monitoring the Agreement implementation, in accordance with the Monitoring Agreement (Attachment 10) at the Concessionaire's cost.
- 9) to receive copies of documentations, manuals, and instructions and operating know-how on operating and exploiting the Power Plant, related structures and

auxiliary facilities in the process of transfer and to receive the original copies of security pass-codes during handing over the Concession item.

- 10) to require obligatory insurance policies as outlined in Article 5.4 of the Agreement.
- 11) in the case of violation of the Construction work schedules, to define reasons of failure, to notify and advise the Concessionaire to follow schedules of Construction work, and cooperate with the Concessionaire to find out solutions to illuminate the reasons of failure.

4.1.2. The Grantor of Concession has the following responsibilities:

- 1) The Grantor shall advise the Concessionaire, considering those failures are not sufficient to terminate the Agreement, in case, if conditions for the implementation of the Agreement was not met, scheduled construction plan of the Power plant, related structures and auxiliary facilities was delayed, faulted due to failure of the Concessionaire.
- 2) Collaboration with local authorities, rail department and other regulating entities within the legal framework in order to provide access of way, coal, water, cable, communication, sewage, heating, and power to the Project site and stable price for coal and for power purchased during the construction of the Power plant from the Central Energy System. The Grantor shall coordinate with the related parties to ensure such access.
- 3) For the purpose of implementation of the Project, to provide the Concessionaire with support defined in Articles 21.1.8, 30.1.3 of the Law on Concession and other related laws and policies of Mongolia with respect to permits, licenses, land use, and tax/duty exemption as well as support in other areas such as water supply, communication, cable, foreign employment etc., and shall submit suggestions to the Government, regarding related decisions to be made in accordance with laws and related legislative acts.
- 4) Support the Concessionaire for finalizing the attachments and ensure the attachments to be concluded.
- 5) To submit to the Government for the Agreement extension in situation defined in Article 3.7 of the Agreement, and get the approval.
- 6) To grant the respective compensations as defined in the Article 7.9, and in Article 3.7 when Government considered not to extend the Agreement.
- 7) If the Grantor's parties in the Related Contracts failed to perform their responsibilities thereof, then the Grantor shall take measures to ensure that these Contracts are fully performed or make remedies immediately and compensate for Loss of the Concessionaire.
- 8) The Grantor shall ensure Baganuur coal mine will expand its coal production capacity to ensure that coal is supplied to the Concessionaire as per the Coal Purchase Agreement in the quality and quantity suitable for the commercial operation of the Project.
- 9) Grantor shall guarantee the power purchaser purchase power at the amount and price stated in the PPA.
- 10) The Grantor shall ensure that the Project land is used in conformity of its designated use according to planning regulations, that it is free of any

encumbrances and that the use of land during the concession term will not be interrupted or disturbed.

- 11) The Grantor shall ensure the working permits for foreign technicians and managing staff quota each year to satisfy the need for the Project during the Concession term.
- 12) The Grantor shall provide all necessary assistance and ensure, within the scope of related legislations, that the Concessionaire obtain all permits required for the transportation for the Project.
- 13) The Grantor, the representatives or designated persons of the Grantor and regulating organizations shall not illegally interrupt, the construction or operation of the Project in performing their duties under this agreement or provided by law,
- 14) The Concessionaire may conclude Investment Agreement under the Law on Investment of Mongolia.
- 15) The Grantor shall provide all assistance and ensure that the Concessionaire obtain all other permits required for the implementation of the Project.

4.2. The rights and responsibilities of the Concessionaire

4.2.1. The Concessionaire entitled to the exclusive rights outlined in Article 3.9 of the Agreement along with the rights defined hereinafter:

- 1) To require the Grantor to fulfil its obligations as per the Agreement.
- 2) To get support and assistance from the Grantor of Concession in obtaining the special permits for implementing the Agreement, and in concluding attached Agreements in accordance with laws and related legislative acts.
- 3) To propose changes to the conditions, works and services of the Agreement.
- 4) To propose modifications of technological layouts, changes to the technical solutions to the State entity in charge of Energy affairs to get the approval.
- 5) Concession item which can be used for public use, can be utilized for additional income and the rate is subject to the Concessionaire.
- 6) To run business in the framework of the law and legislation, to make independent decisions on the issues excluding the prohibition of this Agreement and issued with special permits.
- 7) After end of the Agreement the Concessionaire may provide consultation in maintenance work of power plant with the Grantor's permit.
- 8) Free of foreign currency exchange and to remit to foreign country freely.
- 9) Rights to use the land free of any encumbrances for the Project.
- 10) Right to sign design, supervision, procurement, construction, operation, maintenance and other related contracts with a third party for the purpose of implementing the Project.
- 11) During the construction period of the Project, the Concessionaire shall hire a certain number of local workforce and during the operation period of the power plant, highly skilled and professional foreign workforce should be accompanied by the local and domestic workforce to specialize.
- 12) For material design change the Concessionaire shall implement after approval of Grantor, other design change can be implemented without approval of

Grantor, but to provide notice to the independent engineer. Material design change will be defined in (Attachment 1 of the Agreement).

4.2.2. The Concessionaire shall not perform the activities ascribed in Article 3.10 of the Agreement and is obliged to the following:

- 1) To secure continuous performance of the work of this Agreement.
- 2) To complete construction of the Concession item as per conditions prescribed in FS (Attachment 1 of the Agreement) and in this Agreement, to commission, to provide maintenance service, modernisation according to the standards, to support operation of installations without effects on their capacity, technical criteria, and quality.
- 3) To submit in due course requested reports, information regarding the implementation of the Agreement to the Grantor and other regulatory entities as required by related laws.
- 4) By the end of the Concession term, to hand over the main and auxiliary facilities of the Power plant and other supplementary equipment that satisfy the quality requirements stated in the Agreement with all documents, instruction manuals and know-how translated into Mongolian or English and the pass code to the Grantor or to its nominee. The documents, instructions, manuals and any other files to be transferred to the Grantor shall be deemed as intellectual property of the Concessionaire, the user's right is licensed to the Grantor for the sole purpose of operating and maintaining the Power Plant within its designed life.
- 5) To hand over to the authorized representative of Grantor the blueprint of the construction drawings and the instruction manuals of each equipment, translated into Mongolian (except technical materials which can be handed over in English).
- 6) To submit to the Grantor the scheduled plan of the construction work of Contractor, its timetable and to monitor and report daily performance to the Grantor on a semi-annual basis.
- 7) To meet the deadline of the construction work set in the Article 3.5 of the agreement, completing operational test, to be fully responsible for any consequences occurred due to its own and Contractor's failure or delay in funding that resulted in delay of the Project operation.
- 8) To cooperate with the nominated authorized representative of the Grantor according to the Monitoring Agreement (Attachment 10).
- 9) To cooperate with the regulatory entities and local authorities for the purpose of running the Power plant in full capacity.
- 10) Any case of increasing investment and funding must be examined by the Grantor and submitted to the Government for the approval.
- 11) The Concessionaire must be free of any debts, outstanding payments loan, and receivables during transfer the Concession item.
- 12) To obtain special permits that are not considered by the Agreement but required for implementing the Agreement, permits that shall be required in the future, and keep the permits valid within the Contract term until the transfer of the Concession item under the corresponding laws and regulations. The Grantor shall provide assistance in obtaining these special permits under the corresponding laws and regulations.

- 13) To comply standards, rules and regulations issued by a competent authority in construction of the energy structures, assembling and installation of the equipment, maintenance, operation and production, to develop and comply safety regulations in conformity with the respective standards.
- 14) The profits earned from public infrastructures and services, rented or giving for rent shall be accurate and included in financial statements and balance sheet.
- 15) To file the financial reports, records and statements in accordance with the Mongolian Law and to pay relevant taxes within the legal timeframe.
- 16) The commissioning of the constructions shall be guided by the “Rules of commissioning the buildings and constructions”, adopted by the authorized entity, and the construction must be handed over to the authorized commission by the targeted time with good rating.
- 17) To be fully responsible for repair service of the construction during the term of the Agreement.
- 18) The construction repair service shall be performed by the competent and experienced contractor and the cost shall be funded by Concessionaire’s and its self-raised funds.
- 19) Concessionaire shall provide information about financing agreements for the Project to Grantor.
- 20) The Concessionaire shall bear fee and salaries and other expenses of the nominated external expert regarding the construction process and the whole operation of the Power plant in case of violations due to the Concessionaire’s mistaken activities, as per Article 4.1.1.3 of the Agreement, and for the accredited representative as per Article 4.1.1.8 of the Agreement.

FIVE. OTHER ISSUES RELATED TO THE IMPLEMENTATION OF THE CONCESSION AGREEMENT

5.1. Use of Land

5.1.1. The land on which to build the Concession item shall be issued to the Concessionaire based on this Concession Agreement by the local authority governing land affairs. The land shall be clear of any encumbrances when delivered to the Concessionaire. The land under the Concession Agreement shall consist of land for the Power Plant, the land for the Related Structures, the land for the Auxiliary Facilities, and temporary land for construction of Power Plant.

5.1.2. The land shall be ready for construction of the Concession item when delivered to the Concessionaire. The Grantor shall ensure that all the legal procedures and requirements under Mongolian law related to the use of the land for the purpose of this Concession Agreement, such as, planning of the land for use for the Power Plant, Related Structures, and Auxiliary Facilities, has been completed. The Grantor shall ensure that all the requisition of the land, and related relocation and demolition, or relocation or removal of public utilities on the land (if applicable) completed prior to the delivery of the land to the Concessionaire. The Concessionaire shall pay land use fee in accordance with the Law on Land Fee and Land use agreement.

5.1.3. The Concessionaire shall use the land only for the purpose of building the Concession Project, according to the conditions defined in the Land Use Agreement.

5.1.4. The terms and conditions for Land Use Agreement (Attachment 5 of the Agreement) shall be compliant with Law on Land of Mongolia.

5.1.5. The land granted as per Land Use Agreement (Attachment 5 of the Agreement) shall not be, under any circumstances, confiscated during the period of validity of the Concession Agreement.

5.1.6. The Concessionaire is responsible for using the land in accordance with Detailed Environmental Impact Assessment, according to the Land Use Agreement (Attachment 5 of the Agreement), and fulfilling the requirements of the Law on Land and Law on Environment to improve the effectiveness of using the land.

5.1.7. The Concessionaire shall only pay land use fee in accordance with the Land Use Agreement and the Law on Land, Law on Land rent, and Law on Underground wealth of Mongolia.

5.1.8. The Grantor shall provide all necessary assistance and ensure the normal use by the Concessionaire of the land for the Power Plant, the Auxiliary Facilities, and the temporary land in accordance with the Land Use Agreement during the Concession term.

5.1.9. The Grantor of Concession shall provide all relevant assistance under the corresponding laws and regulations and ensure the coordination from related other land use right owners during the implementation of the Concession Project.

5.1.10. If the Grantor breaches its obligations under this Article 5.1, it shall compensate the Concessionaire for all relevant Loss incurred by the Concessionaire as a result of the breach, or if the Concessionaire agrees, to extend the Construction term and Concession term to cover all the Loss incurred by the Concessionaire.

5.2. Coal supply

5.2.1. The source of coal supply for the Power Plant shall be Baganuur Coal Mine. The Grantor shall ensure that the Baganuur Coal Mine's coal shall supply to the Power Plant in priority.

5.2.2. The consistency of the volume of coal supply, its quality, price stability shall be regulated by the Agreement to be concluded between the Concessionaire and the Baganuur Coal Mine on "Coal Purchase Agreement" stated in the General Provision 1.3.1 of the Agreement (Attachment 4 of the Agreement).

5.2.3. The Grantor of Concession shall provide all necessary assistance and ensure that the Concessionaire have close cooperation with Baganuur Coal Mine management and local government authorities to achieve normal operation of the coalmine. The Grantor shall ensure that Baganuur Coal Mine expands its capacity to supply coal to the Power Plant at sufficient quantity to meet the needs of the Power Plant to generate the contract amount of electricity as required by the PPA.

5.2.4. If the quality and quantity of coal of Baganuur Coal Mine does not meet the requirements of the Power Plant, the Grantor shall provide all necessary assistance and ensure that the Concessionaire obtain coals at sufficient quantity to meet the needs of the Power Plant to generate the contract amount of electricity as required by the PPA from other nearby coal mines, and at quality no less than the coal from Baganuur Coal Mine, at price not higher than the price of coal from Baganuur Coal Mine. The Concessionaire may take all necessary steps to provide stability of coal supply by concluding coal purchase agreements using the newly allocated sources of coal supply nearby the Power Plant with all necessary assistance from the Grantor.

5.2.5. The Grantor shall provide all necessary assistance and coordination to ensure that the management of the coalmine and the local authorized entities cooperate according to the activities outlined in the FS (Attachment 1 of the Agreement) to support the stable operation of the Baganuur Mine, to expand the Baganuur Mine by completion of the Power Plant, and work together towards ensuring stable coal supply of the Power Plant.

5.2.6. The Grantor shall compensate the Concessionaire for all the Losses incurred by the Concessionaire for shortage of coals from Baganuur Coal Mine and/or for using replacement coal from other coal mines.

5.3. Power purchase and sale, and tariffs

5.3.1. The Grantor shall provide all necessary assistance to ensure that the Concessionaire conclude power purchase agreements with relevant power distribution companies and obtain power for the construction works and the commissioning of the Power Plant.

5.3.2. The Grantor shall provide all necessary assistance and ensure that the Concessionaire concludes Power Purchase Agreement, stated in the general provision Article 1.3.3 of the Concession Agreement (Attachment 6 of this Agreement), with National Electricity Transmission Grid to govern the sale of power produced by the Power Plant. The Grantor shall guarantee that National Electricity Transmission Grid purchase the contract amount of electricity from the Power Plant in accordance with Power Purchase Agreement. Otherwise, the Grantor shall compensate the Concessionaire for all the Losses.

5.3.3. The Grantor shall guarantee the implementation of the PPA and the obligation and responsibility of the purchaser under the PPA.

5.3.4. The power purchase tariff shall be denominated and settled in Mongolian tugrik equal to the United States Dollar amount agreed to in the PPA.

5.3.5. The agreed party shall purchase the electricity generated by the Power Plant which exceeds the contract amount of electricity in accordance with the rules of the National Grid and Dispatching regulations.

5.3.6. If the power generated by the Power Plant is not purchased at the amount and tariff agreed to in the PPA, the Grantor shall compensate the Concessionaire for the Losses it incurs.

5.3.7. If the power generated by the Power Plant is rejected or partly rejected to be interconnected to the National Electricity Transmission Grid, the Grantor shall compensate the Concessionaire for the Losses it incurs.

5.3.8. Measuring equipment certified by the State institution for energy standards and measurements shall be applied, after commissioning the Power Plant, for measuring and counting the power produced and supplied to National Electricity Transmission Grid.

5.3.9. Issues related to measuring and counting produced and supplied electric power, usage and possession of counting and controlling meters shall be regulated by the PPA.

5.4. Insurance

5.4.1. The Concessionaire shall have casualty insurance for Concession item against the accident at each stage during the implementation of the Concession Agreement in compliance with provision 26.5 of the Law on Concession, Mongolia.

5.4.2. The Concessionaire is responsible for all damages and losses occurred due to not fulfilling its obligation for insurance coverage as stated in the provision 5.4.1 of the Agreement.

5.5. Technical conditions and requirements

5.5.1. The Grantor shall ensure that the Concessionaire obtain, before starting the Construction work, the decisions and permits granting rights to connect the construction to the sources of heating, water supply, sewerage system, communication, power, radio, and security systems from the authorized entities.

5.5.2. The State monitoring of the technical conditions of the construction shall be carried out by the state inspectors from the professional inspection agency, according to the respective legislation. The monitoring shall not interrupt the normal construction and operation of the Power Plant.

5.5.3. The State central authority in charge of Energy Affairs shall in accordance with the law of Mongolia and FS establish the criteria and technical conclusions for testing and conforming technical conditions and readiness of the main and assisting installations, and other equipment of the Power Plant for commissioning and handing over the Power Plant according to the Agreement.

5.5.4. The Grantor shall compensate the Concessionaire for all the Losses incurred by the Concessionaire if the power, heating, water, and other conditions required for the normal construction and/or operation of the Power Plant is not obtained for reasons not attributable to the Concessionaire, or the price for such public utilities are higher than the agreed price.

5.6. Financing and Investment

5.6.1. The Concessionaire and its related party are obliged to confirm their financial capability as required in the provision 13, part 13.3.1 of the Law on Concession, Mongolia and provision 3.4.1.3 of the Agreement.

5.6.2. The amount of the budget and investment must meet the amount stated in FS. The amount of the budget and investment is final and must be stable. Changes are subject to the Government decisions, provided, that in such situation the Grantor shall compensate the Concessionaire for all the Losses in the way agreed to by the Concessionaire.

5.6.3. The amount and schedule of investment shall be implemented according to the FS.

5.6.4. The cost of the Power Plant, project financing, and profitability estimate are to be calculated in guidance with the FS (Attachment 1 of the Agreement) and the budget of Construction Plans. For calculating the cost of the Concession item, which is included in financial statement of the Concessionaire, the income and profit estimate is calculated according to the schedule of investment repayment by that time's exchange rate from the Central bank of Mongolia. Starting from the operation period, the parties shall agree on the residual cost amount of concession item within the first quarter of the year annually.

SIX. REPRESENTATIONS AND WARRANTIES REPRESENTATIONS AND WARRANTIES

6.1. In connection with the implementation of the Agreement, the following representations and warranties are provided to the parties and third party:

6.1.1. The Concessionaire is established according to the laws of Mongolia, registered in the Registration as legal and foreign invested entity and fulfils its obligations under the laws and agreements.

6.1.2. The company established for the Project purpose shall not engage in any other projects and business during the Project term.

6.1.3. The Agreement is concluded based on the confirmation by the Governing body of the Concessionaire for the decision of the Concessionaire to conclude the Agreement according to the respective legislation and founding documentations and to carry out rights and responsibilities entitled by the Agreement.

6.1.4. The Concessionaire has necessary funds, reliable financing sources, financially capable to implement the Project.

6.1.5. The responsibilities by the Agreement are legal and compulsory and the parties are fully responsible for consequences of breaching its obligations by the Agreement.

6.1.6. The parties are obliged to comply with Civil law and other related laws of Mongolia in relation to the Agreement.

6.1.7. The Agreement does not violate or contradict Concessionaire's previously concluded agreements and contracts with third party and the Concessionaire's agreements, negotiations, memos, decisions and orders concerning its property and rights for possession.

6.1.8. There are no dispute being handled by the courts, no cases filed against the Concessionaire by a third party, no execution of court decisions that might seriously affect implementation of the Project or create negative impact on it.

6.1.9. The Concessionaire shall transfer all rights related to the Concession item to the Grantor upon expiry of the Agreement term in accordance with Handover Program in Attachment 14 of this Agreement, except for the intellectual property that belongs to the Concessionaire.

6.1.10. All information provided by the Concessionaire to the Grantor and /or the government entities shall be accurate and complete.

6.1.11. The Grantor has completed all legal procedures and has obtained all legal power, authorization, and rights under the law of Mongolia to grant the Concession and conclude this Concession Agreement, and to undertake the rights and obligations under this Concession Agreement.

SEVEN. END OF TERM, SUSPENSION, AND TERMINATION

7.1. End of Concession Agreement Term

7.1.1. The Concession Agreement shall terminate upon the following:

- (1) mutual understanding;
- (2) the term or the extended term of Concession expires;
- (3) termination of the Agreement as per Article 7.2, 7.3, and 7.4 of the Agreement.

7.1.2. The Concessionaire's right to possess and use the Concession item shall be terminated upon termination of the Agreement and the Concessionaire shall hand over the Concession item to the Grantor subject to the provision 7.8 of the Agreement.

7.1.3. The rights and responsibilities of the Concessionaire shall be transferred to the Grantor temporarily and granted to the new Concessionaire according to the provision 7.8 of the Agreement in case the Agreement is terminated as per provision 7.2 of the Agreement, provided, if the situation under Article 3.10.4 takes place, the Concessionaire shall transfer its rights and obligations under the Agreement to the Lenders or entities specified by the Lenders in accordance with the financing agreements.

7.1.4. The rights of the Concessionaire under Article 7.9, Article 8, Article 9, 10.1, 10.5, 10.6 shall survive the termination of the Concession Agreement.

7.2. Termination by Grantor

If any of the following events or situations occur and the Concessionaire fails to correct or cure such events or situations within ___ after receiving written notification of the defaults from the Grantor, the Grantor is entitled to terminate the Concession Agreement before its expiry with a ___ prior notification in writing:

7.2.1. In case of defaults of the Concessionaire:

- (1) The Concessionaire carried out prohibited activities stated in the provision 3.10.1 and 3.10.2 of the Agreement with no consent of the Grantor;
- (2) The Concessionaire is liquidated or bankrupted(except for the purpose of internal reorganization with consent of Grantor under which situation the Concession item and the rights and obligations of the Concessionaire are transferred to the newly restructured or reorganized entity);
- (3) Due to a default of the Concessionaire the Concessionaire fails to achieve financing for the Project in accordance with the Agreement;
- (4) The Concession item is used or possessed for the different purpose than agreed and the violation has material adverse effects on the implementation of the Project.

7.2.2. The Concession Agreement may be terminated on Government decision for the purpose of national security, defence, and public interest.

7.3. Termination by Concessionaire

If any of the following events or situations occur and such events or situations cannot be corrected or cured within ___ after written notification of the defaults is issued by the Concessionaire, the Concessionaire is entitled to compensation from the Grantor for all the losses, damages, costs, or expenses it incurs as a result of the defaults, or at its discretion, to terminate the Concession Agreement before its expiry with -- prior written notification in writing:

- (1) The Grantor of the Concession decides to terminate the Agreement on the basis which is not defined by law and the Agreement.
- (2) nationalization, expropriation, mobilisation of the property.
- (3) Rejection to grant or renew Project related permits with no legal reasons; cancellation of the permits, with reasons other than stated in the legislation.
- (4) The Grantor of Concession decides to terminate the Concession Agreement before its expiry for the purpose of national security or in the state of emergency.
- (5) Grantor of Concession or any other government authorities of Mongolia adopt and enforce changes to the law that have negative effect on the implementation of the Project.

- (6) Grantor and relevant other government authorities fail to perform its duties and responsibilities in accordance with law, or improperly interfere with the construction and operation of the Concessionaire, which causes adverse effects to the construction and operation of Project by the Concessionaire.
- (7) For reasons not attributable to the Concessionaire, the Concessionaire fails to obtain right to use the land, to obtain coal supply of the quality and quantity agreed to in the Coal Purchase Agreement, or to sell power produced by the Power Plant at the quantity and price agreed to in the PPA, or to obtain water or other conditions, and any of such situations continue for a period of at least three months.
- (8) The Grantor fails to compensate the Concessionaire in accordance with the provisions of this Agreement.

7.4. Termination due to Force Majeure

7.4.1. In the following situations it shall be deemed that it is impossible to continue the Agreement due to Force Majeure and either party is entitled to terminate the Agreement:

- (1) The Concession item has been seriously destroyed by Force Majeure events and situations under Article 10.3;
- (2) The turnover of the Concession item is not sufficient to cover the recovery cost of the loss and damages of the Concession item caused by the Force Majeure event and the Parties are not in position to fund restoration;
- (3) It becomes certain that the situations set out in Article 10.3 of the Agreement shall continue for over three months.

7.5. Suspension of the Agreement

7.5.1. In the following cases Concession term shall be suspended, the Concessionaire shall continue implementing the Agreement after such suspension. The Concession term shall be extended for a period of time equal to the term of suspension:

- (1) Force Majeure;
- (2) The Grantor of Concession fails to provide Concessionaire related documents and special permits.

7.6. Notice for Termination

7.6.1. The Parties shall deliver their suggestion and Notice of termination in writing.

7.6.2. Within __ after issuing the Notice of Termination, the parties shall meet to examine the situation, conduct discussions on reducing consequences of termination, and cooperate to minimise possible risks.

7.6.3. If the Grantor submitted a Notice of Termination to the Concessionaire due to its serious breach of obligations under the Agreement then the Concessionaire shall inform in advance the Investor/s of the Concessionaire of the Termination Notice.

7.6.4. If the Concessionaire is not willing to take decisive measures to eliminate serious violation, to improve situation, or the Concessionaire is not competent in the situation then the Grantor of the Concession shall inform Investor(s) of the Concessionaire in writing of the situation, to provide extra time, directly communicate with Investor(s) for planning and implementing the necessary measures and to submit suggestions.

7.6.5. If the Agreement does not prescribe otherwise, in situations that Force Majeure situations continue to exist, or the assignments for eliminating serious violations

are not fulfilled, then the Agreement shall be considered terminated after three months after submitting the Notice of Termination, or upon expiry date of submitting reply set by the Civil Law of Mongolia.

7.7. In Case Amendments to the Agreement cannot be reached by both parties

If provision 3.8.6 occurs, the Parties shall continue to enforce the original terms of the Agreement.

7.8. Handing over the Concession item

7.8.1. Upon the decision of the Grantor on handing over the Concession item, the Grantor of the Concession shall immediately nominate the Handing over commission.

7.8.2. Deadline of handing over, composition of the commission, guideline of its actions shall be approved by both the Grantor and the Concessionaire.

7.8.3. Upon expiry of the Concession term, the Concession item shall be transferred to the Grantor or to its nominee without any payment if there is no outstanding payment under the Concession Agreement. In such circumstances, the transfer shall be conducted in accordance with Attachment 14 of the Agreement. The obligations of the Parties that have not been finished before the expiry shall continue to be performed.

7.8.4. If the Agreement is terminated in accordance with Article 7.1.1(1), 7.2, 7.3, and 7.4 of the Agreement, Concession item and all rights and obligations of the Concessionaire shall be handed over to the Grantor of the Concession or its nominee after the respective termination compensations calculated and paid in accordance with Article 7.9 of the Agreement. After receiving the full payments of termination compensation, the Concessionaire shall free the Concession item within the time frame agreed between the Concessionaire and the Grantor.

7.8.5. After settling all outstanding payments, the Commission shall follow the below listed principles in handing over the Concession item:

- 1) To list properties that shall belong to the Government, Grantor, the local government, or the Concessionaire;
- 2) To develop and suggest for consideration the plan for possible refinancing, reorganising, transferring rights and obligations in case of closure or bankruptcy of the Concessionaire.
- 3) A professional committee shall confirm and endorse the quality and conditions of the Concession item.
- 4) The certificate of handing over shall be issued and verified.

The details of hand over of the Concession item shall be in accordance with the Handover Program in Attachment 14 of the Agreement.

7.8.6. The Concessionaire shall perform general repair of the Concession item within one (1) year before the expiration of the Agreement, except if the Concession Agreement is terminated early in accordance with Article 7.1.1(1), 7.2, 7.3, or 7.4.

7.8.7. If the Concessionaire disobeys its obligations under Article 7.8.5 of the Agreement, the Grantor is allowed to remind once in writing the Concessionaire to fulfil its obligation. If the Concessionaire continues to disregard its obligation then the Concessionaire is obliged to transfer to the Grantor's account the budget for the required repair.

7.8.8. Before settling all outstanding payments under the Concession Agreement, Concessionaire shall have right to reject hand-over of the Concession item.

7.9. Termination compensation

7.9.1.

7.9.2.

7.9.3.

7.9.4.

7.9.5.

7.9.6.

7.9.7.

EIGHT. LIABILITIES

8.1. The respective party shall carry the following penalties for violation if the parties shall consider the following violations of the Agreement shall not become the reason for terminating the Agreement.

8.1.1. Except the Agreement provides otherwise, the party caused direct or indirect damage to the other party by violating or inappropriate performance of its obligations assigned by the Agreement shall compensate the factual damages caused to the other party. If the responsible party disagrees with the amount of compensation then the victim shall resort to arbitration to define the size of damage.

8.1.2. The parties shall carry out following responsibilities for violation of their obligations:

- 1) If the hand over does not meet the requirements set in the Hand Over Program (Attachment 14), the Concessionaire shall repair, modify, or supplement the equipment, machinery and appliances.
- 2)

8.1.3. If the parties disagree with the size of damage, they have right to resort to arbitration.

8.1.4. The Concessionaire is responsible for any damages caused to the Grantor or any third party by careless, intentional, accidental action or non-action of the Concessionaire, its workers, officials, representatives, nominees or project performers, workers of contracted performers.

8.1.5. If the Grantor breaches any of its obligations under Clause 4.1.2, the Grantor shall compensate the Concessionaire for relevant Losses suffered by the Concessionaire as a result of the breach.

8.1.6. The Grantor shall make its best efforts in fulfilling its obligations in satisfying the preconditions under 3.3.1 and 3.3.3, the failure of which shall constitute a breach of the Grantor's obligations under this Agreement. As a result, the Grantor shall return the bid security to the Concessionaire and compensate Concessionaire for its loss which includes but is not limited to investment in so far and other related losses.

8.1.7. The Concessionaire shall not be deemed to be in breach of the Agreement if the situations in Article 3.7.2 cause delay of the completion of the construction of the Project. The performance security shall not be forfeited in such case and Concessionaire's Losses shall be compensated by respective responsible party.

8.1.8. When situations in Article 3.7.2 and 3.7.3 occur, the Concessionaire is entitled to monetary compensation, or when it otherwise agrees and solely at its discretion, other remedies made by the Grantor.

8.1.9. The Grantor shall ensure the attachment agreements listed under Article 1.3 signed by relevant responsible entities. The Grantor shall guarantee that relevant responsible entities shall perform their obligations under these attachment agreements to ensure the normal construction and operation of this Project. If the relevant responsible entities breach their obligations under these attachment agreements, the Grantor shall use its best efforts to cure such breaches, and shall compensate the Concessionaire for all relevant losses, costs, expenses, and damages suffered by the Concessionaire as a result of the breach, or if the Concessionaire agrees and entirely at discretion of the Concessionaire, to extend the Construction Term and the Concession Term.

8.1.10. If changes in law cause any Losses to the Concessionaire, the Grantor shall compensate the Concessionaire for the Losses.

NINE. DISPUTE SETTLEMENT

9.1. The parties shall first aim to handle any disputes occurred in relation to or arise out of this Agreement through negotiation in peaceful manner.

9.2. Disputes shall be submitted to Singapore International Arbitration Center for arbitration according to its Rules of Arbitration, in case if the Parties cannot reach agreement through negotiation. Arbitration shall be conducted according to the following principles:

9.2.1. Arbitration tribunal shall be composed of __ arbitrators,

9.2.2. Arbitrators shall be nominated according to the Rules of Arbitration of Singapore International Arbitration Centre,

9.2.3. Arbitration process shall be conducted in English language,

9.2.4. Arbitration process shall be conducted according to the procedure set by the Rules of Arbitration of Singapore International Arbitration Centre.

9.2.5. Arbitration shall be held in Singapore.

9.2.6. The Singapore International Arbitration Center shall apply law in accordance with this Agreement.

9.3. The arbitration award shall be final and legally binding on all parties.

TEN. MISCELLANEOUS

10.1. Application of the law

10.1.1. The applicable law of solving any disagreements occurred under the Agreement shall be guided by the Mongolian legislations, and their official interpretations. Any issues that are not regulated by the Agreement shall be regulated by the existing legislation, rules and regulations of Mongolia.

10.2. Change in law and mitigation measures

10.2.1. If any changes in Mongolian domestic legislations, policies, government decisions as well as its international treaties or agreements would affect the

implementation of the Agreement or the rights and benefits of the parties, the Grantor shall inform in written form to the Concessionaire of such changes.

10.2.2. The Grantor shall specify the change in law and legislation of Mongolia as well as International treaties entered into by Mongolia that were effective during the term of the Agreement. As a result, further legal changes to the conditions of implementing the Agreement are inevitable. The written notice shall include:

- 1) Source of information and content of the made changes.
- 2) Comprehensive analyses of possible or already existing effects of the law modifications or changes on benefits of the parties and future implementation of the Project.
- 3) Proposal of measures to be taken in relation to the changes.

10.2.3. The recipient party entitled to forward own proposal within 30 days after receipt of the notice and to reach mutual understanding.

10.2.4. The right to propose termination shall start in case the parties unable to agree on amendments to the Agreement necessary due to changes of the legislation within term set by the Article 10.2.3 of the Agreement.

10.2.5. If situations under Article 7.3 (5) exist, it shall be regarded as a default of the Grantor and the Concessionaire shall be entitled to termination as per Article 7.3 and termination compensation according to Article 7.9 of the Agreement.

10.3. Force Majeure

10.3.1. Any of the following events and situations shall constitute Force Majeure events and classified as non-political factors:

- (1) Flood, earthquake, land slide, explosion, fire, strong wind, intense rain, cold snap snow storm or other devastating natural situations, meteorite damage, geological disaster, etc.,
- (2) Epidemic, contagious diseases and quarantine.

10.3.2. Any of the following events, situations shall constitute Force Majeure events and classified as political factors:

- (1) War, fight, invasion, armed conflict or attack, siege, trade embargo; disorder, terror, revolution, uprising, conspiracy to take the state power; act of sabotage and hostage for the political purpose;
- (2) Nationwide, industrial strikes and uprisings;
- (3) Civil movement, demonstrations, riot against operation of the Power plant, Political movement.

10.4. Measures to be taken after Force Majeure events

10.4.1. When other than stated in the Article 7.4 of the Agreement situations and conditions of Force Majeure provided in Article 10 of the Concession Agreement disappear it is considered Force Majeure situations have vanished and the respective Party shall resume implementation of its suspended rights and duties.

10.4.2. If it is impossible for the party affected by the Force Majeure event to continue its suspended rights and obligations after Force Majeure event, the Parties shall solve the problem through negotiation and if required, make necessary amendments to the Agreement.

10.4.3. If the Parties cannot reach agreement on amendments to the rights and obligations stipulated in the Agreement after a Force Majeure event ceases, and if the situations as provided in Article 7.4 exist, the Concession Agreement may be terminated in accordance with Article 7.4.

10.4.4. The Force Majeure event shall not become a reason to free the respective Party's obligations from outstanding payments if the Party did not settle those payments before Force Majeure event.

10.4.5. In case, if the authorised organisation proves that the party affected by the Force Majeure event is not competent to continue its agreement obligations due to Force Majeure then the necessary arrangements shall be taken for reimbursement of damages through insurance policy.

10.4.6. If the insurance policy for the Force Majeure shall not provide sufficient compensation to cover all damages then the parties shall carry equal responsibilities for the rest of damages caused by the Force Majeure event, and the team of independent experts shall be recruited to identify the size of damages.

10.4.7. If the affected party did not pay its obligations before the Force Majeure event and, according to the conclusions of independent experts, stipulated in the provision 10.4.6 of the Agreement, the insurance policy for Force Majeure does not provide the affected party with sufficient compensation to cover all damages caused by Force Majeure, then the decision to free the affected party from payments is upon the Grantor.

10.4.8. The Concessionaire has no right to delay or refuse the performance of its agreement obligations for a period longer than the period affected by Force Majeure.

10.5. Confidentiality

10.5.1. The Parties shall ensure confidentiality of all confidential agreements, documentations, and information as per this Agreement.

10.5.2. Confidential documentations comprise construction plans, all documents related to construction work of the building, insurance, operation, maintenance, management, project financing. Any documents and information on the rights and obligations of the respective party (either technical or business) received under the Agreement shall not be used for any other purpose than implementation of the rights and duties provided by the Agreement. If a party has any loss or damage due to disclosing of confidential information of the agreement, the party has the right for compensation of such losses to be paid by the disclosing party in accordance with Civil law of Mongolia.

10.6. Intellectual Property

10.6.1. Intellectual Property includes all proprietary information received by Grantor from the Concessionaire pursuant to this Concession Agreement. In particular, Intellectual Property shall be deemed to include, but is not limited to, the FS, any patent, patent application, any drawing, any design, layout plan, detailed plan of engineering lines, detailed layout of equipment and engineering lines, connection scheme, technological solutions, any trade secret, invention, idea, know-how, process, formula related to the Project whether in written, graphic or electronic form.

10.6.2. Intellectual Property shall remain Concessionaire's property. The Grantor shall use the Intellectual Property only for the internal use at the Power Plant, and shall have no rights to make, sell, license, sublicense or transfer the Intellectual Property. Grantor shall not reproduce the Intellectual Property, or disassemble, improve, change or otherwise reverse engineer the Intellectual Property. Grantor shall maintain the confidentiality of the Intellectual Property and shall not disclose it.10.6.3.Grantor

acknowledges that any breach of this Article 10.6 or its confidentiality obligations under this Agreement by it or its employees, agents, consultants, or affiliates will result in irreparable harm to the Concessionaire, so the Concessionaire shall be entitled to any other remedies under law in addition to monetary damage.

10.7 Notice delivery

10.7.1. Notices, proposals, letters of the Agreement to be delivered in person or through carrier, facsimile, e-mail to the below address, if the parties not agreed otherwise:

<u>To the Grantor of Concession:</u>	<u>To the Concessionaire:</u>
Invest Mongolia Agency	Baganuur Power LLC

10.7.2. The parties are obliged to inform the other party in 14 (fourteen) days in advance of the changes of its address, phone number, fax number, e-mail address.

10.7.3. In case of delivery in person, the receipt of the notice shall be confirmed by signing up the delivery of document by the recipient.

10.7.4. In case of carrier delivery, the receipt of the notice shall be confirmed by signing up the receipt form of carrier by the recipient. In case of carrier service delays, the notice shall be delivered in person or through fax.

10.7.5. In case of fax, the receipt of the notice shall be confirmed by the fax machine slip notifying successful delivery to the recipient.

10.7.6. In case of e-mail, the receipt of the notice shall be confirmed by the confirmation e-mail from the recipient.

10.7.7. The day of receipt of notice by the recipient shall be considered the date of receipt.

10.8 Others

10.8.1. The parties shall bear own expenses in relation to the Agreement.

10.8.2. It shall not become a basis for termination of the Agreement if one of the parties did not fulfil the provisions, conditions, rights and duties of this Agreement and taking measures in this regard in any circumstances shall not effect rights of any party.

10.8.3. The agreement does not aim the parties to establish partnership or joint company and it is prohibited to conclude any agreements or provide guarantees on behalf of each other.

10.8.4. If it is not stated otherwise in the Agreement, this agreement is a basic document expressing all bilateral agreements of the parties and shall replace verbal engagements, negotiations, understandings reached before its conclusion regarding the content of this agreement.

10.8.5. The Agreement shall be executed in English and Mongolian, each shall be prepared with two copies. Each copy has the equal legal validity. In case of any discrepancy among the English and Mongolian versions, the English version shall prevail. The working language shall be English.

The parties signed this Agreement on 01 April 2015 in Ulaanbaatar.

IN WITNESS WHEREOF, the Parties have signed this Agreement as of the date first above written.

Invest Mongolia Agency

Baganuur Power LLC