

# Oyu Tolgoi Purchase Order General Conditions for Services (& Associated Goods)

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## 1. Definitions and interpretation

### 1.1 Definitions

In these General Conditions and the Contract the following terms have the meanings set out below:

**Accumulation Period** means the period commencing on the first day of a calendar month and ending on the last day of that calendar month.

**Associated Goods** means the goods (if any) identified in the Purchase Order that are to be supplied by the Service Provider.

**Affiliate** means any corporation, company, partnership, limited partnership, limited liability company, joint venture, or other form of enterprise, which controls, is controlled by, or is under common control with, a Party. Control, when used as a verb, means the ability, directly or indirectly through one or more intermediaries, to direct or cause the direction of the management and policies of such entity through (i) legal or beneficial ownership of voting securities or membership interests; (ii) the right to appoint managers, directors or corporate management; (iii) contract; (iv) operating agreement; (v) voting trust; or otherwise; and when used with respect to a person, means the actual or legal ability to control the actions of that person; and when used as a noun means an interest which gives the holder the ability to exercise any of the foregoing powers.

**Applicable Laws** means any local, state, provincial, territorial, national or federal laws, legislation, statutes, regulations, rules, treaties and orders of a Government Agency which are applicable in the jurisdiction(s) where the Services are to be performed and used or which relate to a Party's rights or obligations under the Contract.

**Business Day** means any day which is not a Saturday, a Sunday or a public holiday and on which banks are open for business in the place in respect of which an obligation is to be performed or, in respect of Clause 33, the place to which a Notice is sent.

**Cancellation Date** is defined in Clause 28.2(b)(iii).

**Claim** means any action, suit, proceeding or demand of any kind.

**Commercial Invoice** means an invoice or other document, including without limit a credit note or debit note, in a form that is valid under the Applicable Law of the jurisdiction in which a liability to pay Indirect Transaction Taxes is imposed, claimed, levied or assessed, which must be held by a person for that person to be able to claim Input Tax Credits.

**Company** means Oyu Tolgoi LLC.

**Company Competencies** is defined in Clause 19.5(b).

**Company Induction Courses** is defined in Clause 19.5(a).

**Company Representative** is, initially, as defined in the Purchase Order, and includes:

- (a) such other person as the Company may, in writing, substitute for that representative; or
- (b) any person authorised by that representative to perform any of that representative's powers, duties, discretions or authorities.

**Company's Personal Data** means the Personal Data that the Company transfers to the Service

Provider from time to time in connection with the Contract.

**Confidential Information** means the Contract, and any information (in whatever form) or Documentation of a confidential nature (or which the Service Provider or its Personnel ought reasonably to know to be confidential) which relates to the business, affairs or activities of the Company and members of the Rio Tinto Group (including in relation to the Services) and which:

- (a) is disclosed to the Service Provider or its Personnel by or on behalf of the Company;
- (b) is generated by the Service Provider or its Personnel in performing the Services; or
- (c) otherwise comes to the knowledge of the Service Provider or its Personnel.

**Consignment Stock** means Goods that are delivered to the Delivery Point by the Service Provider and title remains with the Service Provider and may be ordered by the Company in accordance with Clause 4.2.

**Contract** is defined in Clause 2.1.

**Contract Price** is defined in Clause 10.1.

**Customs Duties** means any tax or tariff imposed, claimed, levied or assessed by, or payable to, any Government Agency in relation to the import or export of Goods.

**Deducted Amount** is defined in Clause 14.2.

**Defects Liability Period** means (as applicable) the period identified as such in the Purchase Order or, where such period is not identified in the Purchase Order, the period of 1 year following the receipt of a particular Associated Good by the Company.

**Delivery Point** means the place identified in the Purchase Order for delivery of any Associated Goods.

**Dispute** is defined in Clause 29.1.

**Dispute Notice** is defined in Clause 29.1.

**Dispute Representative** is defined in Clause 29.2(a).

**Documentation** includes plans, designs, drawings, calculations, engineering information, data, specifications, sketches, notes, samples, reports, maps, accounts, operating manuals, training materials and any other material specified in the Contract (and whether embodied in tangible or electronic form).

**Domestic Mongolian Service Provider** means a service provider that is registered as a Mongolian business entity or individual and a Mongolian taxpayer.

**Excise Duties** means any tax imposed, claimed, levied or assessed by, or payable to, any Government Agency in relation to the production or manufacture of Goods.

**Facilities** means any accommodation, sustenance, transportation services at the Site, medical or toilet facilities.

**Force Majeure** means an event or cause which is beyond the control of the Party claiming force majeure, not able to be overcome by the exercise of reasonable care, proper precautions and the consideration of reasonable alternatives with the intention of avoiding the effects of the force majeure by that Party, and which could not have been

reasonably foreseen, and includes (subject to satisfying the requirements of the foregoing):

- (a) an act of God (other than adverse weather);
- (b) cyclones, fire, flood; or
- (c) acts of war, acts by Mongolian Government Agencies, acts of public enemies, terrorist acts, riots or civil commotions.

**Foreign Service Provider** means a service provider that is not registered as a Mongolian business entity or individual and Mongolian taxpayer.

**Government Agency** means any government or governmental, regulatory, semi-governmental, administrative, municipal, fiscal or judicial body, department, commission, authority, tribunal, agency, bureau, Official, minister, Crown corporation, or entity, dispute settlement panel or body or other law-, rule- or regulation-making or entity.

**HSEC** means health, safety, environment and community.

**HSEC Management Plan(s)** is defined in Clause 19.4(a).

**HSEC Policies and Standards** is defined in Clause 19.3(a).

**Indemnified Parties** means the Company and the Company's Personnel.

**Indirect Transaction Taxes** means any value added tax, goods and services tax or similar tax including, without limit, sales, use or consumption taxes, imposed, claimed, levied or assessed by, or payable to, any Government Agency, but does not include any related penalty, fine or interest thereon.

**Input Tax Credit** means any entitlement to a credit for, or offset against, reduction in or refund of, Indirect Transaction Taxes, in relation to any acquisition or the receipt of any supply.

**Intellectual Property Rights** means all industrial and intellectual property rights whether protectable by statute, at common law or in equity, including all copyright and similar rights which may subsist or may hereafter subsist in works or any subject matter, rights in relation to inventions (including all patents and patent applications), trade secrets and know-how, rights in relation to designs (whether or not registerable), rights in relation to registered or unregistered trade marks, circuit layout designs and rights in relation to circuit layouts, but excludes non-assignable moral rights and similar non-assignable personal rights of authors and producers.

**Joint Venturers** means, in respect of a Joint Venture, the participants in that Joint Venture.

**Liabilities** means damages, Claims, losses, liabilities, costs and expenses of any kind.

**Mongolian VAT Receipt** means a receipt that complies with the requirements of Mongolian Value Added Tax (VAT) Law.

**Mongolian Workplace Payment** means the Mongolian workplace fee imposed under the Law of Mongolia on Sending Labour Force Abroad and Receiving Labour Force and Specialists from Abroad for foreign (non-Mongolian) workers in Mongolia who are engaged in the performance of Services (or delivery of any Associated Goods) hereunder (whether employed by the Service Provider or by Sub-contractors).

**Official** includes:

- (a) any officer or employee of any Government Agency, or any person acting in an official capacity on behalf of any such Government Agency;
- (b) any officer, employee or official of a political party;
- (c) any candidate for political office; or
- (d) any officer or employee of a public international organisation (for example, the United Nations, IMF or World Bank).

**Offshore Services** means Services physical performed or provided outside the territory of Mongolia and are exempt from withholding tax.

**OSH Laws** means the Labour Law enacted on 14 May 1999, Law of Mongolia on Occupational Safety and Health enacted on 22 May 2008 and the Norms for Establishing a Council and Employing a Health and Safety Officer by Order No. A/114 of the Minister of Labour of Mongolia issued June 22 2015, the Regulation for Organizing Occupational Safety and Health training and exams by Order No. A/33 of the Minister of Labour of Mongolia issued February 5, 2016 and associated laws, norms and regulations, as introduced and amended from time to time.

**Onshore Services** means Services physical performed or provided inside the territory of Mongolia and such Services may be and liable to 20% withholding tax (subject to applicable tax treaty exemption or reduction in rates).

**Party** means a party to the Contract.

**Payment Term** is defined on the Purchase Order.

**Personal Data** means information relating to identifiable individuals and includes (but is not limited to all information relating to individuals that is protected by privacy laws or data protection laws in the country where:

- (a) the individuals are located; or
- (b) the data relating to those individuals is processed.

**Personnel** means:

- (a) in relation to the Service Provider, any of its employees, Sub-contractors (including Sub-contractors' Personnel), agents and representatives involved either directly or indirectly in the performance of the Services;
- (b) in relation to the Company or a member of the Rio Tinto Group, any of its past or present officers, employees, agents or representatives; and
- (c) in relation to a Sub-contractor, any of its employees, agents or representatives involved either directly or indirectly in the performance of the Services.

**Processing** means collecting, holding, using, transferring, destroying and any other dealing.

**Purchase Order** means an individual purchase order issued by the Company to the Service Provider in respect of the performance of Services or the provision of Associated Goods which shall be subject to the terms of the Contract.

**Rio Tinto Group** means the dual listed company structure incorporating Rio Tinto plc and Rio Tinto Limited and including:

- (a) any Affiliate of Rio Tinto plc or Rio Tinto Limited;
- (b) any unincorporated joint venture in which Rio Tinto plc or Rio Tinto Limited or any Affiliate of Rio Tinto plc or Rio Tinto Limited has a participating interest of not less than 50%;
- (c) any body corporate or unincorporated joint venture managed by Rio Tinto plc or Rio Tinto Limited or any Affiliate of Rio Tinto plc or Rio Tinto Limited (and includes Oyu Tolgoi LLC); and
- (d) such other entities as the Parties agree in writing.

**Rio Tinto Limited** means Rio Tinto Limited (ABN 96 004 458 404) having its registered office at 33<sup>rd</sup> Floor, 120 Collins Street, Melbourne, Victoria, 3000.

**Rio Tinto plc** means Rio Tinto plc (Company No. 719885) of 2 Eastbourne Terrace, London W2 6LG, United Kingdom.

**Service Provider** means the Party (as identified in the Purchase Order) responsible for performing the Services.

**Service Provider Default Notice** is defined in Clause 28.1.

**Service Provider Insurances** is defined in Clause 25.1.

**Service Provider Representative** means the representative of the Service Provider identified in the Purchase Order.

**Services** means the work identified in the Purchase Order to be performed by the Service Provider and includes any supply of Associated Goods in accordance with the Contract.

**Site** means the Company's premises identified in the Purchase Order.

**Specifications** means the specifications for the Services and any modification of those specifications as directed by the Company Representative in accordance with the Contract.

**Sub-contractor** means any person engaged by the Service Provider in accordance with Clause 36 to perform all or any part of the Services on behalf of the Service Provider.

**Supply Chain** means all steps and processes involved in the provision of the Services to the Company, commencing with the sourcing of the Services and finishing with the utilisation of the Services by the Company.

**Tax or Taxes** means, unless the contrary intention is expressed, any and all taxes, including, without limitation, Indirect Transaction Taxes, excise, stamp, documentary, customs, import/export, payroll, personal, property, real property, interest equalisation, business, occupation, turnover, income, corporation, capital, profits, gains, gross receipts, or other taxes, fees, withholdings, imposts, levies, duties or other charges of any nature whatsoever or whensoever, together with any penalties, fines or interest thereon or similar additions thereto, imposed, levied or assessed by any Government Agency or otherwise payable. For the avoidance of doubt, "Taxes" includes Mongolian Workforce Payments.

**Tender** means the Service Provider's offer or counter-offer in writing to perform the Services whether described as a "tender" or "proposal" or otherwise.

**Term** is defined in Clause 7.

**Termination Notice** is defined in Clause 26.1.

## 1.2 Interpretation

Headings are for convenience only and do not affect interpretation. The following rules apply unless the context requires otherwise.

- (a) The singular includes the plural and conversely.
- (b) A gender includes all genders.
- (c) If a word or phrase is defined, its other grammatical forms have a corresponding meaning.
- (d) The meaning of general words is not limited by specific examples introduced by **including** or **for example**.
- (e) A reference to a person, corporation, trust, partnership, unincorporated body or other entity includes all of them.
- (f) A reference to a person or a Party includes a reference to that person's or Party's executors, administrators, successors, substitutes (including persons taking by way of novation), assigns (in the case of a person) and permitted assigns (in the case of a Party).
- (g) A reference to a Clause is a reference to a clause of these General Conditions.
- (h) A reference to an Act or legislation, includes a modification or re-enactment of it, a legislative provision substituted for it and a regulation or statutory instrument issued under it.
- (i) A reference to *use* in the context of dealing with Intellectual Property Rights includes using, exploiting, copying, adapting, creating derivative works, developing, modifying, disclosing and communicating
- (j) A reference to conduct includes, without limitation, an omission, statement or undertaking, whether or not in writing.
- (k) Where it is provided that the Service Provider will perform any act or provide any thing at its cost, this means the Service Provider will not be entitled to any additional compensation for such act or thing and the cost will be deemed to be included in the Contract Price.
- (l) Every exemption, limitation, defence, immunity, indemnity or other benefit contained in the Contract or otherwise to which the Company's Personnel, a member of the Rio Tinto Group or its Personnel is entitled will be held by the Company as trustee for the benefit of, and will extend to protect, the Rio Tinto Group member and those Personnel.
- (m) It is not necessary for the Company, a member of the Rio Tinto Group or their respective Personnel to incur expense or make payment before enforcing a right of indemnity conferred by the Contract.

- (n) If the date for payment of any monies under the Contract falls on a day that is not a Business Day, the payment will be due on the following Business Day.

## **2. Evidence of Contract and precedence of documents**

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### **2.1 Contract**

The **Contract** consists of the following documents:

- (a) the Purchase Order;
- (b) these General Conditions; and
- (c) any other document which is attached to, or incorporated by reference in, the Purchase Order or these General Conditions.

### **2.2 Precedence of Contract documents**

If there is any conflict or inconsistency between the documents constituting the Contract, unless otherwise provided, the documents will rank in order of precedence in accordance with the order in which they are listed in Clause 2.1.

### **2.3 Entire agreement**

- (a) The Contract contains the entire agreement between the Company and the Service Provider with respect to its subject matter and supersedes all prior communications and negotiations between the Company and the Service Provider in this regard, unless those communications expressly form part of the Contract.
- (b) No terms or conditions submitted by either party that are in addition to, different from or inconsistent with those contained herein or in the Purchase Order, including, without limitation, the Service Provider's printed terms and conditions, and any terms and conditions contained in any Service Provider's quotation, invoice, order acknowledgment, confirmation, acceptance, bill of lading or other instrument, shall be binding upon either party unless specifically and expressly agreed to in a writing signed by duly authorised representatives of both parties.

### **2.4 Amendment to be in writing**

No amendment or variation of the Contract is valid or binding on a Party unless made in writing and signed by the Service Provider and the Company.

## **3. Accuracy of information**

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### **3.1 No representation by Company**

The Company has endeavoured and will continue to endeavour (without being obliged to do so) to ensure the accuracy of any information provided to, or obtained by, the Service Provider or its Personnel through a conducted Site visit, a pre-bid conference or otherwise obtained by the Service Provider or its Personnel from the Company. However, the Company does not warrant or guarantee the accuracy, sufficiency or otherwise of such information and disclaims all responsibility for it. The Parties acknowledge that any information so provided is for the convenience of the Service

Provider only and does not form part of the Contract unless otherwise expressly agreed by the Parties in writing, and that any Tender submitted by the Service Provider and its subsequent execution and performance of the Contract is deemed to have been based on the Service Provider's own investigations and determinations.

### **3.2 Service Provider satisfied with accuracy**

The Service Provider agrees that it has satisfied itself as to the accuracy of any information given to it at any time prior to the execution of the Contract and accepts full responsibility for any use by it of such information including, without limitation, responsibility for any conclusions drawn by it from such information.

### **3.3 No relief**

Failure by the Service Provider to do all or any of the things it is deemed to have done under this Clause 3 will not relieve the Service Provider from any of its obligations under the Contract.

### **3.4 Company not liable**

The Company is not liable for any Liabilities incurred or suffered by the Service Provider as a result of its reliance in any way upon any information given to it by the Company.

## **4. Performance by Service Provider**

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### **4.1 Performance**

The Service Provider must perform the Services in accordance with the terms of the Contract and in consideration of the payment of the Contract Price by the Company.

### **4.2 Consignment Stock**

If a Contract includes the provision of Consignment Stock, the Service Provider must deliver Consignment Stock in accordance with the Contract. The Company is not taken to have purchased or ordered Consignment Stock until such time as it is removed from the warehouse or consumed by the Company.

## **5. Service Provider's warranties**

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### **5.1 Service Provider's warranties**

In addition to the warranty contained in Clause 32.1 and the warranty contained in Clause 6.2, the Service Provider warrants that:

- (a) all of the Services will be provided in an efficient manner in accordance with all applicable legislation and laws or regulations;
- (b) all of the Services will be of the highest standard and in accordance with the Company's specifications (where those specifications are made known to the Service Provider) or in the absence of such specifications, in accordance with any applicable standards set by the International Organization for Standardization (ISO) or where there are no such standards applicable internationally recognized standards;
- (c) in relation to the performance of the Services:

- (i) the Service Provider and its Personnel will exercise the standards of diligence, skill and care normally exercised by a similarly qualified and competent person in the performance of comparable work; and
  - (ii) any equipment used on-Site by the Service Provider will be in safe working condition, will comply with all legislation which is applicable to such equipment and will be operated by suitably qualified and competent Personnel, to the satisfaction of the Company; and
- (d) in relation to the provision of Associated Goods as part of the Services:
- (i) the Associated Goods will be of merchantable quality;
  - (ii) the Associated Goods will be free from defects in design, materials and workmanship, and suitable for the relevant purpose of those Associated Goods;
  - (iii) it has good and marketable title to the Associated Goods and the Company will receive title to the Associated Goods free of any charge or encumbrance; and
  - (iv) it will obtain at its cost all usual trade warranties and any warranties specifically requested by the Company and that on completion of the Services it will assign the benefit of any such unexpired warranties to the Company including any warranties obtained from the Service Provider's Sub-contractors.
- (e) all information and materials forming part of the Tender (if any) are true and correct in every respect and are not misleading or deceptive and the Service Provider has not withheld from the Company any information concerning the Service Provider, its experience or expertise which might reasonably be supposed to be material to the Company in determining whether or not to engage the Service Provider to provide the Services or the price at which or the terms on which the Company would be prepared to engage the Service Provider to provide the Services.

## 5.2 Copies of trade warranties

Copies of trade warranties referred to in Clause 5.1(d)(iv) must be supplied to the Company with Commercial Invoices.

## 6. Defects liability

### 6.1 Correction of deficient Services

Upon receipt of a notice from the Company Representative during the Term of any deficiency in the Services (except for a defect in any Associated Good, in respect of which Clauses 6.2, 6.3 and 6.4

apply), the Service Provider must correct such deficiency (including by way of providing such additional services necessary to correct such deficiency) at no cost to the Company prior to the time specified in the notice.

### 6.2 Warranty

The Service Provider warrants each Associated Good against any defect which arises during the Defects Liability Period.

### 6.3 Commencement of Defects Liability Period

In respect of each Associated Good (excluding Consignment Stock), the Defects Liability Period will commence on and from the date that Associated Good is accepted by the Company in writing. In respect of Consignment Stock the Defects Liability Period commences on the date that the Associated Good is issued from the Company's warehouse.

### 6.4 Rectification of defects

Upon receipt of a notice from the Company Representative of any defect in any Associated Good during the Defects Liability Period due to defective design, materials, workmanship, unmerchantable quality or unfitness for intended purpose, the affected items or parts must be redesigned, repaired or replaced as appropriate by the Service Provider at no cost to the Company prior to the expiration of the time specified in the notice.

### 6.5 Service Provider failure to rectify

If the Service Provider fails to (as the case requires):

- (a) correct any deficiency in the Services identified by the Company pursuant to Clause 6.1; or
- (b) rectify any defect in any Associated Good identified by the Company pursuant to Clause 6.4,

the Company may correct any deficient Services or rectify any defect in any Associated Good (as the case may be) at the Service Provider's risk and cost and any costs and expenses incurred by the Company will be recoverable from the Service Provider as a debt due and payable.

## 7. Term

The Contract will commence on the earlier of the date of acknowledgement of receipt of the Purchase Order by the Service Provider or the date the Service Provider commences to perform the Services, and will remain in force, unless terminated earlier in accordance with the Contract, until the completion by the Service Provider of all of its obligations under the Contract (*Term*).

## 8. Representatives

### 8.1 Performance

The Services must be performed by the Service Provider in accordance with the Contract and in accordance with any directions of the Company Representative pursuant to the provisions of the Contract.

### 8.2 Company Representative

- (a) The Company Representative is responsible for giving directions for and on behalf of the Company as provided in the Contract.

- (b) Directions given to the Service Provider by any person other than the Company Representative will not bind the Company unless ratified by the Company Representative.

### 8.3 Service Provider Representative

- (a) The Service Provider Representative is responsible for liaising with the Company Representative in relation to any of the matters referred to in Clause 8.2, and the Service Provider Representative will have full power to legally bind the Service Provider in respect of all matters arising out of the Contract.
- (b) Any direction which the Company Representative gives to a Service Provider Representative is deemed to have been given to the Service Provider for and on behalf of the Company and the Service Provider must comply with that direction accordingly. Any communication given, or document signed, by a Service Provider Representative is deemed to have been given or signed by the Service Provider and will bind the Service Provider. Matters within the knowledge of a Service Provider Representative are deemed to be within the knowledge of the Service Provider.
- (c) Either Party may from time to time revoke the appointment of its representative and appoint another person as its representative and that Party must give notice of such revocation and appointment to the other Party.

## 9. Delivery, title and risk

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### 9.1 Delivery

The Service Provider must deliver the Associated Goods (if applicable) to the Delivery Point. Time is of the essence in relation to the obligation to complete delivery of Associated Goods to the Delivery Point on or before the date specified in the Contract.

### 9.2 Title

Full unencumbered title to each Associated Good will pass to the Company upon the earlier of:

- (a) the Company making payment in full to the Service Provider for that Associated Good; or
- (b) the Associated Good being delivered to the Delivery Point and (if applicable) inspected in accordance with Clause 18 and accepted by the Company Representative.

### 9.3 Risk

Risk in each Associated Good will remain with the Service Provider until its delivery to, and acceptance by the Company Representative.

## 10. Contract Price

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### 10.1 Contract Price

The **Contract Price** means the aggregate amount payable (excluding Indirect Transaction Taxes

payable in accordance with Clause 11) by the Company to the Service Provider in relation to the Services.

### 10.2 Contract Price to be inclusive

- (a) All expenses incurred by the Service Provider in relation to the provision of the Services, including, without limitation, travel expenses and subsistence expenses, will be deemed to be included in the Contract Price and the Contract Price includes any applicable Taxes.
- (b) The Service Provider must separately disclose to the Company details of any Customs Duties included in the Contract Price.

## 11. Taxes

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### 11.1 Taxes, Indirect Transaction Taxes and Withholding Tax – Foreign Service Provider

- (a) If the Service Provider is a Foreign Service Provider then the provision of this Clause 11.1 shall apply.
- (b) The Service Provider is responsible at its own cost for complying with all Applicable Laws, regulations and administrative requirements of any Government Agency relating to Taxes.
- (c) Payment of Taxes
  - (i) Except as provided in Clause 11.1(c)(ii) below, the Service Provider is responsible for paying (which term, for purposes of this Clause 11.1(c)(i), includes withholding and remitting, as applicable) any and all Taxes arising or imposed by or under the authority of any Government Agency anywhere in the world in connection with the performance of the Services (or delivery of any goods) under this Contract. In this respect, the Service Provider shall apply for and use its best endeavors to receive the benefit of all VAT credits and refunds available under Applicable Law. The Service Provider shall also consult and cooperate with the Company in seeking, and use its best endeavors to obtain, exemptions from or reductions in customs and import duties payable on materials or components intended for incorporation into goods (if any). All Taxes payable by the Service Provider shall be included in the Contract Price and shall not be in addition to the Contract Price.
  - (ii) Subject to Clause 11.1(c)(iii) below, the Company is responsible for paying the following Taxes arising or imposed by or under the authority of the government of Mongolia in connection with the performance of



- Services (or delivery of any goods) under this Contract for any Services performed (or any Goods delivered) within the territory of Mongolia, Company is responsible for paying any Mongolian Value-Added Tax imposed on such Services (or goods) under Chapter 3 of the Mongolian Value-Added Tax Law ("Mongolian VAT"); and
- (iii) The Company shall pay any Taxes under Clause 11.1(c) by direct payment to the relevant Mongolian tax authority if direct payment is permitted by law. If direct payment is not permitted by law, the Service Provider shall pay such Taxes and the Company shall reimburse the Service Provider therefor.
  - (d) As the Service Provider is not a registered Mongolian business entity and taxpayer, the Company will deduct withholding tax from payments to the Service Provider if required under Mongolian law. In such circumstances, commencing with the first Commercial Invoice submitted by the Service Provider, the Company will deduct from payments to Service Provider the withholding tax that Company is legally obligated to withhold, remit such tax to the appropriate Government Agency, and forward the appropriate receipts or similar documentation to Service Provider evidencing such remittance. Such withholding taxes payable by Company will be included in the Contract Price, not in addition to the Contract Price.
  - (e) A domicile certificate will be required if the Service Provider provides Onshore Services and if the Service Provider's country has a double tax treaty with Mongolia. If the Service Provider is Foreign Service Provider, then the Service Provider must provide with its first invoice and annually thereafter to the Company hereunder this valid certificate of domicile from its applicable taxation authority. If the Service Provider fails to provide a valid certificate of domicile, or if such certificate of domicile fails to demonstrate to the Company's reasonable satisfaction that the Service Provider is entitled to an exemption from or a reduced rate for any Mongolian withholding tax in accordance with a double-taxation treaty between Mongolia and the Service Provider's country of domicile, then the Company shall deduct withholding tax at the full standard rate under Mongolian law in accordance with the General Conditions.
  - (f) If the Foreign Service Provider as a result of providing any Onshore Services within the territory of Mongolia causes a permanent establishment to arise within Mongolia, then it shall inform the Company as soon as possible, register itself for Mongolian income tax purposes, and file its own tax returns and pay its own taxes on the income earned from providing these Onshore Services within the territory of Mongolia. The Company will then not deduct any withholding taxes during the period the permanent establishment exists and the Service provider will accordingly indemnify the Company from any tax liability arising from failing to deduct this withholding tax including any associated fines, penalties and interest.
  - (g) The Service Provider must issue separate Commercial Invoices for all:
    - (i) Goods; and
    - (ii) Onshore Services;
    - (iii) Offshore Services; and
    - (iv) expenses that are stated as cost reimbursable.
  - (h) Upon written request from the Company, the Service Provider must provide to the Company:
    - (i) any and all other information and forms necessary to enable the Company to comply with any request for tax information from any Government Agency, including company registration and VAT registration certificates; and
    - (ii) Commercial Invoices in form and substance satisfactory to the Company.
  - (i) If a payment by the Company to the Service Provider hereunder does not include a withholding tax deduction but such deduction was required under applicable law, or if a payment to the Service Provider hereunder does include a withholding tax deduction but under applicable law such deduction was required to be made at a higher rate, then the Service Provider shall reimburse or otherwise pay the Company the amount that should have been deducted or deducted at a higher rate within fourteen (14) days of receiving an official receipt (or certified copy thereof) or other documentation evidencing the amount that was required to have been deducted or deducted at a higher rate.
  - (j) Service Provider releases, indemnifies and shall defend the Company from and against any and all liabilities, claims, damages, losses and expenses (including reasonable attorneys' fees, fines, penalties and interest thereon) arising from the Service Provider or any Sub-contractor's failure to discharge its obligations with respect to Taxes and tax laws.

**11.2 Taxes, Indirect Transaction Taxes and Withholding Tax – Domestic Mongolian Service Provider**

- (a) If the Service Provider is a Domestic Mongolian Service Provider then the provision of this Clause 11.2 shall apply.
- (b) The Service Provider is responsible at its own cost for complying with all Applicable Laws, regulations and administrative requirements of any Government Agency relating to Taxes.
- (c) Payment of Taxes
  - (i) The Service Provider is responsible for paying (which term, for purposes of this Clause 11.2(c), includes withholding and remitting, as applicable) any and all Taxes arising or imposed by or under the authority of any Government Agency anywhere in the world in connection with the performance of the Services (or delivery of any goods) under this Contract. In this respect, the Service Provider shall apply for and use its best endeavors to receive the benefit of all VAT credits and refunds available under Applicable Law. The Service Provider shall also consult and cooperate with the Company in seeking, and use its best endeavors to obtain, exemptions from or reductions in customs and import duties payable on materials or components intended for incorporation into goods (if any). All Taxes payable by the Service Provider shall be included in the Contract Price and shall not be in addition to the Contract Price.
- (d) Upon written request from the Company, the Service Provider must provide to the Company:
  - (i) any and all other information and forms necessary to enable the Company to comply with any request for tax information from any Government Agency, including company registration and VAT registration certificates;
  - (ii) Commercial Invoices in form and substance satisfactory to the Company; and
  - (iii) Mongolian VAT Receipts in a form that complies with the requirements of Mongolian Value-Added Tax Law.
- (e) Service Provider releases, indemnifies and shall defend the Company from and against any and all liabilities, claims, damages, losses and expenses (including reasonable attorneys' fees, fines, penalties and interest thereon) arising from the Service Provider or any sub-Service Provider's failure to

discharge its obligations with respect to Taxes and tax laws.

- (f) As the Service Provider is a company registered in Mongolia, the Service Provider acknowledges that if the Contract specifies that the Company will provide the Service Provider with accommodation, food or flights then:
  - (i) the Company will issue a Commercial Invoice to the Service Provider for the cost associated with such accommodation, food or flights including the VAT applicable on accommodation, food or flights; and
  - (ii) the Service Provider may issue a Commercial Invoice the Company an amount equal to the invoice provided by the Company.

**12. Customs and Excise Duties**

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- (a) Where the Company elects to acquire Associated Goods and the Service Provider is the importer of record, the Service Provider will:
  - (i) be responsible for, and remit payment of all Customs Duties assessed by or payable to any Government Agency as well as any other foreign shipping charges; and
  - (ii) use its best endeavours to ensure that any Associated Goods are imported free of Customs Duties including, without limit, through the use of applicable bilateral free trade agreements (or the equivalent).
- (b) Regardless of the shipping or freight terms used, the Service Provider will, at the Company's request, provide the Company with all information and documentation necessary for the Company to comply with Applicable Laws in relation to applications or certifications for Customs Duties concessions or bilateral free trade agreements (or the equivalent), in each case in form and substance satisfactory to the Company. Where the Company succeeds in such applications, the Service Provider will obtain Custom Duties refunds and pass on any Customs Duties savings to the Company.
- (c) Regardless of the shipping or freight terms used, the Service Provider must provide all documentation as required by the Company prior to delivery of the Associated Goods to the relevant freight forwarding company. The Service Provider acknowledges that where the Company is responsible for freight costs then the Company's freight forwarding company may refuse to take the Associated Goods if the documentation is incomplete or inaccurate and the Associated Goods will not be considered delivered until the documentation is complete and correct.

## 13. Payments to Service Provider

### 13.1 Method of payment

- (a) Unless otherwise provided in the Contract, all payments required to be made to the Service Provider by the Company pursuant to the Contract in relation to the performance of the Services must be made in the currency specified in the Purchase Order by electronic funds transfer into the Service Provider's nominated bank account.

### 13.2 Commercial Invoices

- (a) The Service Provider must, unless otherwise agreed with the Company, render a Commercial Invoice to the Company in relation to the provision of the Services or Associated Goods at the end of each month during the period in which the Services or Associated Goods are provided and calculated by reference to the prices, fees or other amounts specified in the Purchase Order.
- (b) Commercial Invoices must be in a form acceptable to the Company and must contain the following information:
  - (i) the number of the Purchase Order to which the Commercial Invoice relates;
  - (ii) a brief description of the Services provided in the period covered by the Commercial Invoice; and
  - (iii) any further verification or documentation in relation to the Commercial Invoice as is reasonably required by the Company.

### 13.3 Payment of Commercial Invoices

Subject to Clauses 13.4, 14, 25.8(e)(i) and 28.2(b), the Company must pay to the Service Provider the amount shown on the Commercial Invoice by the Payment Date.

### 13.4 Disputed Commercial Invoices

If the Company disputes any amount shown on a Commercial Invoice, it must notify the Service Provider within 21 days of receipt of the Commercial Invoice and must pay any amounts not in dispute in accordance with Clause 13.3, provided that the payment by the Company of any amount the subject of a disputed Commercial Invoice is not to be considered as an acceptance of the amount in dispute or of the Company's liability to make that payment.

### 13.5 Errors or exceptions in invoicing

Without limiting Clause 13.3, if the Service Provider discovers or is advised of any errors or exceptions relating to its invoicing for the Services, the Service Provider and the Company will jointly review the nature of the errors or exceptions, and the Service Provider must, if appropriate, take prompt corrective action and adjust the relevant invoice or refund overpayments.

## 14. Deduction from payments

### 14.1 Deductions

The Company may:

- (a) deduct from any moneys due or becoming due to the Service Provider pursuant to Clause 13.3 the following amounts (plus any Indirect Transaction Taxes in respect of such deductions payable in accordance with Clause 14):
  - (i) all debts and moneys due from the Service Provider or its Personnel to the Company;
  - (ii) all Liabilities which the Company may have paid, suffered or incurred and which or for which the Service Provider or its Personnel is or are liable to bear, pay or reimburse to the Company (including pursuant to any indemnity contained in the Contract); and
  - (iii) the cost of remedying any performance of the Services, or defective or damaged Associated Goods below a standard acceptable to the Company; or
- (b) without prejudice to the Company's rights pursuant to any other provision of the Contract, if the Service Provider fails to perform any of its obligations under the Contract, without notice withhold payment of all or part of any amount payable to the Service Provider under the Contract, until the matter has been remedied.

### 14.2 Deductions and withholdings required by law

- (a) If the Company is required by law to withhold or deduct any amount (**Deducted Amount**) from an amount payable under the Contract, the Deducted Amount will be treated as having been paid to the Service Provider when it is withheld or deducted and the Company will not be liable to pay any amount on account of the Deducted Amount to the Service Provider.
- (b) If the Company fails to withhold or deduct a Deducted Amount, the Company may:
  - (i) give notice to the Service Provider demanding payment of an amount equal to the Deducted Amount and the Service Provider will pay that amount to the Company within 30 days of receiving the notice;
  - (ii) deduct an amount equal to the Deducted Amount from any amounts payable by the Company to the Service Provider and the amount so deducted will be treated as having been paid to the Service Provider when it is deducted and the Company will not be liable to pay any amount on account of the

Deducted Amount to the Service Provider; or

- (iii) recover an amount equal to the Deducted Amount by a combination of a demand under Clause 14.2(b)(i) and deducting an amount under Clause 14.2(b)(ii),

and in each case where the failure to withhold or deduct the Deducted Amount arises as a result of any act, omission or oversight of the Service Provider, the Deducted Amount will include any fines, penalties or interest payable by the Company in respect of the Deducted Amount.

#### **14.3 Notification of withholding or deductions**

The Company must notify the Service Provider of the details of any amounts withheld or deducted pursuant to Clauses 14.1 or 14.2.

#### **15. No minimum purchase or exclusivity**

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##### **15.1 No minimum purchase**

Nothing in the Contract obliges the Company to request or acquire any minimum level of Services from the Service Provider.

##### **15.2 No exclusivity**

The Contract is not evidence of, nor does it create, an exclusive relationship between the Company and the Service Provider in respect of the Services (or any aspect of it).

#### **16. Service Provider Personnel**

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##### **16.1 Service Provider Personnel**

The Service Provider is required to supply all Personnel necessary for the proper performance of the Services. Such Personnel must be appropriately qualified, competent and skilled to perform the relevant part of the Services in respect of which they are engaged.

##### **16.2 Engagement of Personnel**

The Service Provider must ensure that all Personnel of the Service Provider engaged to provide any part of the Services comply with Clauses 30 and 32 with respect to Confidential Information and Intellectual Property Rights.

##### **16.3 Company may object to Personnel**

The Company Representative may object to any of the Service Provider's Personnel who, in the opinion of the Company Representative, is lacking in appropriate skills or qualifications, engages in misconduct or is incompetent or negligent. The Service Provider must remove such Personnel upon receipt from the Company Representative of notice requiring it to do so and must not re-employ that person in connection with the Services without the prior written consent of the Company Representative. In addition, the Service Provider must at its cost replace such removed Personnel with suitably qualified, competent, skilled and approved Personnel.

##### **16.4 Service Provider responsibilities**

- (a) Unless otherwise specified in the Contract, the Service Provider is responsible for providing all necessary visas and work

permits required for its Personnel to complete the Services (if applicable).

- (b) Without limiting Clause 26, the Service Provider is responsible for making all payments to the Mongolian Government with respect to the engagement of its Personnel pursuant to Applicable Laws, including but limited to all payments for Social Insurance required to be made pursuant to the Law of Mongolia on Social Insurance.

- (c) If applicable, the Service Provider is responsible for:

- (i) the supply of all labour, supervision, tools, equipment, materials, safety equipment and other requirements necessary for the Service Provider to provide any Services in accordance with the Contract;

- (ii) providing for the movement of its Personnel on the Site at all times and all vehicles (if applicable) and drivers used for this purpose must be properly licensed and all vehicles must comply with the requirements of any applicable road safety and traffic laws, legislation and regulations; and

- (iii) the health and safety of its Personnel at the Site.

#### **17. Packing, despatch and transport**

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##### **17.1 Service Provider responsible**

The Service Provider is responsible, at its cost, for packing and transporting the Associated Goods to the Site.

##### **17.2 Where Company to arrange transport**

If, pursuant to the terms of the Contract, the Company is obliged to arrange transport of all or some of the Associated Goods, then the Service Provider must notify the Company Representative of the details of those Associated Goods ready for despatch in sufficient time to enable transport to be arranged.

##### **17.3 Preparation for transport**

The Service Provider must pack and protect all Associated Goods ready for despatch in accordance with best practice having regard to methods of carriage and handling and to weather conditions through which they will pass whilst being transported to the Site. The Service Provider must provide and fit all lifting and handling devices required for lifting and handling the Associated Goods in transit.

##### **17.4 Notification of despatch dates**

The Service Provider must notify the Company Representative promptly of the date of despatch of each item and the estimated date of arrival at the Site.

#### **18. Inspection**

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##### **18.1 Inspection**

- (a) The Company Representative has the right to inspect any of the Associated Goods at

any time to determine whether the Associated Goods are in accordance with the Contract and are to the standard provided for in the Contract.

## 18.2 Access

- (a) The Service Provider must ensure that the Company has access to the Associated Goods at all times and the Service Provider must provide all facilities necessary for the supervision, inspection and testing of all Associated Goods at the Site or wherever the Associated Goods are stored or in the course of manufacture.

## 18.3 Cost of inspections

- (a) Subject to Clause 18.3(b), if upon inspection after a direction by the Company Representative to dismantle or open up any part of an Associated Good, the Associated Good so inspected is in accordance with the Contract, the whole of the expense incurred as a result of the dismantling or opening up and reassembly will be borne by the Company. If the Associated Good is found not to be in accordance with the Contract the whole of the expense so incurred, including without limitation, any costs associated with putting that Associated Good into a condition which is in accordance with the Contract, will be borne by the Service Provider.
- (b) If the Company Representative gives the Service Provider reasonable notice that the Company Representative wants to inspect any portion of an Associated Good before it is assembled, and the Service Provider assembles that Associated Good without first giving the Company Representative a reasonable opportunity to inspect, any expense incurred as a result of dismantling or opening up and reassembling that Associated Good will be borne by the Service Provider.

## 19. Health, safety, environment and community

### 19.1 Application of Clause

This Clause 19 applies to the extent the Service Provider or any of its Personnel are required to be on, or near the vicinity of, the Site for the purposes of the Services.

### 19.2 Service Provider acknowledgement

The Service Provider acknowledges that there is a direct relationship between the Service Provider's HSEC performance and the success of the Company's business.

### 19.3 Compliance with health, safety, environmental and community laws, policies and standards

The Service Provider agrees to comply, and to ensure that its Personnel comply, with:

- (a) without limiting Clause 22, the Company's HSEC policies and associated standards applicable from time to time (a copy of which

has been provided to the Service Provider) (**HSEC Policies and Standards**);

- (b) without limiting Clause 23, all relevant HSEC legislation and laws in force from time to time;
- (c) the HSEC conditions contained in this Clause 19; and
- (d) the approved HSEC Management Plan.

### 19.4 Health, Safety, Environmental and Community Management Plan

- (a) If it has not already been finalised as part of the submissions of the Service Provider's Tender (if any), the Service Provider must, within 30 days after the date of the Contract, submit proposed HSEC management plan(s) (**HSEC Management Plan(s)**) in accordance with the HSEC Policies and Standards, for review by the Company Representative.
- (b) The Company Representative will review the proposed HSEC Management Plan(s) and provide the Service Provider with any request for amendments within 10 Business Days of receipt of the proposed HSEC Management Plan(s). The Service Provider must resubmit the proposed HSEC Management Plan incorporating amendments requested by the Company Representative within 3 Business Days of receiving the Company's comments.
- (c) The Company may prevent or suspend the Service Provider and its Personnel from working on-Site unless and until the HSEC Management Plan(s) and any requested amendments to it have been approved by the Company Representative.
- (d) The Company Representative may at any time direct the Service Provider to amend the approved HSEC Management Plan(s) to adequately reflect any amendments to the relevant HSEC legislation and laws or the HSEC Policies and Standards.
- (e) The Service Provider must keep a copy of the approved HSEC Management Plan(s) at its on-Site office or work area at all times during the Term.

### 19.5 Induction courses

- (a) Each of the Service Provider's Personnel must attend all appropriate and relevant induction courses required by the Company (**Company Induction Courses**).
- (b) Where, pursuant to the operating rules for specific areas of the Company, any of the Service Provider's Personnel are required to have specific skills for the performance of the Services (**Company Competencies**), the induction and training requirements in relation to those Company Competencies must:
  - (i) be included in the HSEC Management Plan(s);

- (ii) to the extent they are not set out in the Specifications, be confirmed with the Company Representative; and
  - (iii) be undertaken by the relevant Personnel prior to the commencement of any work on, or near the vicinity of, the Site.
- (c) Unless otherwise agreed:
- (i) the Company will arrange and pay for the Company Induction Courses and will be responsible for the costs of Service Provider Personnel attending the Company Induction Courses; and
  - (ii) the Service Provider will arrange and pay for all training courses in respect of Company Competencies and will be responsible for the costs of Service Provider Personnel attending such training courses.
- (d) The Service Provider must arrange and provide at its own cost training for its Personnel in accordance with the requirements of the OSH Laws and must retain all training records (including exam results) for its Personnel at its premises.
- (e) Any person visiting the Service Provider on Site to meet Personnel working on the Site, and who is not performing any type of manual work, will also be required to attend the relevant Company Induction Courses. However, this requirement will not apply if the visitor is accompanied at all times whilst on Site by a person who has attended all relevant Company Induction Courses, and has Company Competencies in relation to access to the Site.

#### 19.6 Service Provider to remain liable

Nothing in this Clause 19 (including the approval of the HSEC Management Plan(s)) limits or removes any obligation or duty imposed on the Service Provider or any of its Personnel (whether under the Contract or otherwise) to secure or have regard to the health and safety of any of its Personnel.

### 20. Right of audit by Company

#### 20.1 Audit

The Service Provider and its Personnel must permit the Company to have access to the Service Provider's premises, any of their documentation and data (including documents stored in electronic form) and to interview the Service Provider's Personnel in connection with the Services, as necessary for Company Personnel to verify, monitor and audit the Service Provider's compliance with:

- (a) the HSEC Management Plan(s) and the HSEC conditions set out in Clause 19; and
- (b) the Company policies identified in Clause 22.

#### 20.2 Action by Service Provider

Without limiting any other rights or remedies available to the Company as a result of the Service

Provider's non-compliance with any of the conditions, policies and standards referred to in Clause 20.1, if deficiencies are identified by an audit undertaken under Clause 20.1, the Service Provider must take prompt corrective action and notify the Company of such action.

### 21. Access to Site

#### 21.1 Access

Without limiting Clause 25.8(e) or this Clause 21, the Company will grant to the Service Provider access to the Site on and from the date of the Contract and the Service Provider must give the Company Representative at least 7 days' notice before commencing the Services on the Site.

#### 21.2 Service Provider obligations

- (a) Prior to commencement of the Services on the Site, the Service Provider must notify the Company Representative of its normal times and periods of work and must give the Company Representative at least 24 hours' notice of any alteration in its working hours or periods of work.
- (b) The Service Provider must at all times consult with the Company Representative and obtain 14 days' prior written approval for any action likely to interfere with the Company's operations. The Company Representative must reply to any such request within 7 days of receipt of such request.

#### 21.3 Right to deny access and removal from Site

If the Service Provider or its Personnel fail to comply with any of the requirements of Clause 18 or this Clause 21, then the Company Representative may in its discretion:

- (a) deny that person or those persons access to the Site or permit such access subject to terms and conditions the Company Representative thinks appropriate; and/or
- (b) require the Service Provider and/or any of its Personnel to remove any material or substance from the Site at the Service Provider's cost.

and the Service Provider must, at its own cost, ensure such request is immediately complied with and take all possible action to ensure the protection and safety of all works, personnel and the environment.

#### 21.4 No exclusive possession

The Service Provider acknowledges that nothing in the Contract confers on it exclusive possession of the Site and that it will only be granted access to the Site to the extent deemed necessary by the Company Representative for the performance of the Services.

### 22. Compliance with Company policies

#### 22.1 Oyu Tolgoi LLC Policies

During the Term, the Service Provider must, and must ensure that its Personnel, comply with each of the rules and policies of the Company or the Rio

Tinto Group, as notified by the Company from time to time by notice to the Service Provider in writing.

## 22.2 Rio Tinto Business Practices and Standards

In performing the Contract, the Service Provider must, and must ensure that its Personnel:

- (a) comply or otherwise act in a manner consistent with the Rio Tinto Group's policies entitled "*The way we work*", "*The Supplier Code of Conduct*" and the "*Business Integrity Standard*" (together the **Rio Tinto Business Practices and Standards**) which are available at: <http://www.riotinto.com/aboutus/policies-standards-and-guidance-5243.aspx>;
- (b) permit the Company to have access to the Service Provider's premises, any of its documentation and data (including documents stored in electronic form) and to interview the Service Provider's Personnel in connection with the Services, as necessary for Company Personnel to verify, monitor and audit the Service Provider's compliance with the Rio Tinto Business Practices and Standards;
- (c) report all actual, alleged or suspected non-compliance with the Rio Tinto Business Practices and Standards to the Company or through the Rio Tinto Group's Speak-OUT program; and
- (d) cooperate promptly and fully with the Company in any investigation of an alleged or suspected breach of the Rio Tinto Business Practices and Standards.

## 23. Laws

### 23.1 Compliance with laws

During the Term, the Service Provider must:

- (a) comply with all applicable legislation, laws and Government Agency requirements relating to its obligations under the Contract and ensure that each of its Personnel does the same; and
- (b) in relation to the provision of the Services, at its cost:
  - (i) obtain all necessary notices;
  - (ii) give all necessary notices;
  - (iii) pay all necessary fees, deposits and Taxes,

and, if requested by the Company, must provide evidence of the matters referred to in this Clause 23.1(b).

### 23.2 Consequences of breach

- (a) The Service Provider agrees that it will notify the Company promptly upon discovery of any instance where the Service Provider or any of its Personnel fail to comply with Clauses 19, 22 and 23.
- (b) In addition to those consequences identified elsewhere in the Contract, the Company may treat a breach of Clauses 19, 22 and 23

as an event of default and to exercise any rights it may have under the Contract upon the occurrence of an event of default, but without regard to any waiting periods or cure periods specified in the Contract.

## 24. Force Majeure

### 24.1 Notice of Force Majeure

A Party will not be liable for any delay or failure to perform any of its obligations under the Contract (other than an obligation to pay money) if as soon as possible after the beginning of the Force Majeure affecting the ability of the Party to perform any of its obligations under the Contract, it gives a notice to the other party that complies with Clause 24.2.

### 24.2 Force Majeure notice

A notice given under Clause 24.1 must:

- (a) specify the obligations the Party cannot perform;
- (b) fully describe the Force Majeure;
- (c) estimate the time during which the Force Majeure will continue; and
- (d) specify the measures proposed to be adopted to remedy or abate the Force Majeure.

### 24.3 Obligation to remedy and mitigate

The Party that is prevented from carrying out its obligations under the Contract as a result of Force Majeure must:

- (a) remedy the Force Majeure to the extent reasonably practicable and resume performance of its obligations as soon as reasonably possible; and
- (b) take all action reasonably practicable to mitigate any Liabilities suffered by the other Party as a result of its failure to carry out its obligations under the Contract.

## 25. Insurances

### 25.1 Service Provider Insurances

The Service Provider is required, at its cost, to effect and maintain throughout the Term any additional period the Company deems necessary, each of the insurances described in Clauses 25.2, 25.3, 25.4, 25.5, 25.6 and 25.7 (**Service Provider Insurances**) in relation to risks or occurrences arising, or which may arise, out of the performance of the Contract.

### 25.2 General and Product Liability Insurance

- (a) Insurance covering all Liabilities in respect of any injury to, or death of, any person not being a person who at the time of the occurrence is engaged in or upon the service of the insured under a contract of service or apprenticeship, or any loss, damage or destruction to any property not belonging to nor in the care, custody or control of the insured, however caused. Such insurance must provide cover to an amount of not less than United States Dollars \$1,000,000 for each and every claim.

- (b) The insurance outlined in Clause 25.2(a) must, unless prohibited by law, be endorsed to:
- (i) insure the Company and its Personnel for their respective rights and interests arising out of the performance of the Contract;
  - (ii) include a cross liability clause, noting that each of the parties comprising the insured will be considered as a separate entity, and the insurance applies as if a separate policy has been issued to each such party;
  - (iii) waive all express or implied rights of subrogation against the Company and its Personnel arising out of the performance of the Contract;
  - (iv) cover "goods in the physical and legal control of the Service Provider" for an amount not less than the value of the "goods" held off the Site; and
  - (v) include a clause that provides that a breach of a condition or term of insurance by one insured will not adversely affect the cover provided to another insured under the policy.

### **25.3 Workers' Compensation and Employer's Liability Insurances**

Workers' compensation and employers' liability insurances covering all Liabilities, whether arising under statute, common law or civil law, in relation to the death of, or injury to, any employee of the Service Provider or any person deemed to be an employee of the Service Provider in accordance with Applicable Laws. If the Service Provider is required to perform Services at the Site and its Personnel are Mongolian then the Service Provider must carry workers' compensation and employers' liability insurances in addition to those required by Applicable Laws as requested by the Company.

### **25.4 Service Provider's Plant and Equipment**

If the performance of the Contract requires the Service Provider to use or provide for use plant and equipment that will be used at the Site in connection with the Contract, the Service Provider must maintain or require the owner of such plant and equipment (except where the owner of such plant or equipment is the Company or a member of the Rio Tinto Group) to maintain insurance covering all loss and damage to the Service Provider's plant and equipment, for its replacement value. The insurance must, unless prohibited by law, waive all express or implied rights of subrogation against the Company and its directors, officers and employees.

### **25.5 Goods in transit**

If the performance of the Contract requires the Service Provider to transport Associated Goods to or from the Site, unless otherwise advised by the Company in writing, the Service Provider will maintain insurance covering loss of or damage to the Associated Goods during transit, regardless of whether the Company has paid for those Associated Goods. Such insurance must note the company as a party insured under the policy.

### **25.6 Motor Vehicle/Automobile Third Party Liability Insurance**

- (a) If the performance of the Contract requires the Service Provider or its Personnel to use or provide for use motor vehicles, the Service Provider must maintain or require the owners of such motor vehicles to maintain third party liability insurance covering all Liabilities in respect of any injury to, or death of, any person or any loss, damage or destruction to any property arising from the use of such motor vehicles.
- (b) The insurance outlined in Clause 25.2(a) must, unless prohibited by law, be endorsed to:
  - (i) insure the Company and its Personnel for their respective rights and interests arising out of the performance of the Contract;
  - (ii) include a cross liability clause, noting that each of the parties comprising the insured will be considered as a separate entity, and the insurance applies as if a separate policy has been issued to each such party;
  - (iii) waive all express or implied rights of subrogation against the Company and its Personnel arising out of the performance of the Contract; and
  - (iv) include a clause that provides a breach of a condition or term of insurance by one insured will not adversely affect the cover provided to another insured under the policy.

### **25.7 Professional Indemnity Insurance**

If the performance of the Contract includes or is related to the provision of professional advice or services, the Service Provider must effect and maintain throughout the Term and for a period of not less than 3 years after termination of the Contract or completion of the Service Provider's obligations under the Contract, professional indemnity insurance in respect of any negligent acts, errors or omissions in the advice or services provided by the Service Provider under the Contract. Such insurance must provide cover to an amount of not less than United States Dollars \$1,000,000 for each and every claim.

### **25.8 Insurance terms**

- (a) If the Service Provider Insurances are subject to the application of any self-insured retention, excess or deductible, the amount of the self-insured retention, excess or



deductible must be declared to the Company. The Company reserves the right to require the Service Provider to reduce the amount of any self-insured retention, excess or deductible where such amount is considered by the Company as being unreasonable in the circumstances of the Contract.

- (b) The Service Provider Insurances must be underwritten by a reputable insurer with a security rating from A.M. Best of not less than "A" and on terms and conditions consistent with prudent risk management practice.
- (c) No provision contained in this Clause 25 will limit the Service Provider's liability in relation to the indemnities in the Contract.
- (d) Before performing any of the Services, and each time the policies are renewed or varied, the Service Provider must provide the Company with an insurance certificate of currency or such other evidence as the Company may reasonably require that the Service Provider and its Sub-contractors are insured in accordance with the Contract.
- (e) In the event that the Service Provider fails to, or fails to ensure that its Sub-contractors, effect or keep in force any of the insurances required pursuant to the Contract, the Company may do one or more of the following:
  - (i) effect and maintain such insurances and deduct the costs of such insurances from any moneys due to the Service Provider;
  - (ii) refuse the Service Provider and its Personnel access to all or any part of the Site; and/or
  - (iii) treat the failure to insure as a default under the Contract.
- (f) All Service Provider Insurances must not be varied to the detriment of the Company or its Personnel, cancelled or allowed to lapse unless the Service Provider has received a written consent from the Company Representative.

#### **25.9 Notification under Service Provider's policy**

If the Service Provider becomes aware of an event which may give rise to a claim involving the Company under any policy of insurance effected by the Service Provider as required by this Clause 25, the Service Provider must notify the Company and must ensure that the Company is kept fully informed of subsequent action or developments concerning the claim.

#### **25.10 Sub-contractors' insurance**

The Service Provider must ensure that its Sub-contractors have the benefit of or effect and maintain insurances similar to the Service Provider Insurances required to be effected by the Service Provider.

#### **25.11 Insurance claims and payment of insurance excess**

- (a) The Service Provider will be responsible for the payment of any excess or deductible relating to the insurances effected by the Service Provider and the Service Provider will not be entitled to recover from the Company any excess or deductible so paid by the Service Provider.
- (b) The Service Provider will be responsible for the payment of any excess or deductible relating to the insurances effected by the Service Provider where the Company makes a claim under such policy, to the extent that the Company determines that the Service Provider or any of its Personnel were responsible for the loss or damage.

### **26. Indemnities**

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#### **26.1 Acknowledgement**

The Service Provider acknowledges that if it enters on to the Site, it does so at the Service Provider's own risk. The Service Provider must ensure that its Personnel are also aware that they enter onto the Site at their own risk.

#### **26.2 Indemnity**

Subject to Clause 26.3, the Service Provider will indemnify (and will keep indemnified) the Indemnified Parties from and against all Liabilities that any Indemnified Party suffers, sustains or incurs, arising from any one or more of the following:

- (a) the breach by the Service Provider or its Personnel of any of the Service Provider's obligations (including any warranty) under the Contract and/or any Purchase Order;
- (b) any negligent act or omission or wilful misconduct by the Service Provider or its Personnel arising out of the performance of the Contract and/or any Purchase Order; or
- (c) any claim made against the Company or any member of the Rio Tinto Group by any of the Service Provider's Personnel in respect of relevant legislation concerning income tax, workers' compensation, annual leave, long service leave, superannuation or any applicable award, determination or agreement of a competent industrial tribunal.

#### **26.3 Exclusions**

The Service Provider will not be liable under Clause 26.2 to the extent that the Liability was caused, or contributed to, by (as the case requires) the Company's negligent acts or omissions or wilful misconduct.

#### **26.4 No requirement for expense before enforcing indemnity right**

It is not necessary for the Company, a member of the Rio Tinto Group or their respective Personnel to incur expense or make payment before enforcing a right of indemnity conferred by the Contract.

## 27. No fault termination

### 27.1 Termination Notice

The Company may terminate the Contract or any part of it by giving the Service Provider not less than 30 days' notice of its intention to do so (**Termination Notice**).

### 27.2 Obligations upon receipt of Termination Notice

Upon receipt of a Termination Notice, the Service Provider must:

- (a) immediately take all possible action at its cost to ensure the safety of all Personnel and the protection of all Associated Goods;
- (b) immediately take all possible action to mitigate any Liabilities incurred by it as a result of such termination; and
- (c) take any other action reasonably required by the Company in relation to the termination.

### 27.3 Obligations upon termination

On the date of termination specified in the Termination Notice, the Service Provider must:

- (a) immediately cease performance of the Services in accordance with, but only to the extent specified in, the Termination Notice;
- (b) provide the Company with a detailed report in such form as the Company may require in relation to the Services performed up to and including the date of receipt of the Termination Notice;
- (c) return to the Company any items issued to the Service Provider by the Company during the Term;
- (d) offer the Company first right of refusal to purchase any of the Service Provider's equipment used for the purposes of the Contract to be purchased by the Company at its depreciated value or such other value as agreed by the Parties; and
- (e) take any other action relating to the termination of the Contract as the Company may reasonably require.

### 27.4 Service Provider compensation

- (a) Following termination of the Contract by the Company pursuant to this Clause 27, the Service Provider is entitled to recover from the Company out-of-pocket expenses which it has incurred or will incur solely as a result of the Contract and which it is unable to otherwise recover or mitigate, including as a result of (if applicable):
  - (i) removing the Service Provider's plant and equipment from the Site; and
  - (ii) transporting Service Provider Personnel back to their place of engagement.
- (b) The amounts outlined in Clause 27.4(a) represent the only amounts or Liabilities

recoverable from the Company by the Service Provider following a termination of the Contract by the Company in accordance with this Clause 27.

## 28. Service Provider Default

### 28.1 Service Provider Default Notice

If the Service Provider breaches any term of the Contract, the Company may serve a notice of default (**Service Provider Default Notice**) on the Service Provider containing the information specified in Clause 26.2.

### 28.2 Service Provider Default Notice requirements

A Service Provider Default Notice must:

- (a) either require that the breach be remedied within a specified period of not less than 30 days after service of the Service Provider Default Notice on the Service Provider or state that the breach is incapable of remedy; and
- (b) state that if the breach is not remedied within the period specified in the Service Provider Default Notice or is incapable of remedy, then the Company may by further notice to the Service Provider do one or more of the following:
  - (i) elect wholly or partly to suspend payment under the Contract until the breach has been remedied by the Service Provider;
  - (ii) take such action as the Company deems necessary to cure the breach (the cost of such action so taken by the Company being recoverable from the Service Provider as a debt due to the Company by the Service Provider); or
  - (iii) terminate the Contract or any part of it with effect from a specified date (**Cancellation Date**).

### 28.3 Obligations upon termination

If the Company gives notice pursuant to Clause 28.2(b)(iii), the Contract is terminated from the Cancellation Date and the Service Provider must:

- (a) cease performance of the Services in accordance with, but only to the extent specified in, the Service Provider Default Notice;
- (b) immediately take all possible action at its cost to ensure the safety of all Personnel and the protection of all Goods;
- (c) immediately take all possible action to mitigate any Liabilities incurred by it as a result of such termination;
- (d) offer the Company first right of refusal to purchase any of the Service Provider's equipment used for the purposes of the Contract to be purchased by the Company at its depreciated value or such other value as agreed by the Parties; and

- (e) take any other action reasonably required by the Company in relation to the termination.

#### 28.4 No prejudice

Notwithstanding the terms of any Service Provider Default Notice, no action taken by the Company under this Clause 28 will prejudice the existence of any of its rights and remedies under the Contract which the Company may have as a result of the relevant breach.

### 29. Dispute Resolution

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#### 29.1 Dispute

In the event of any dispute, question or difference of opinion between the Company and the Service Provider arising out of or under the Contract (**Dispute**), a Party may give to the other Party a notice (**Dispute Notice**) specifying the Dispute and requiring its resolution under this Clause 29.

#### 29.2 Dispute Representatives to seek resolution

- (a) If the Dispute is not resolved within 7 days after a Dispute Notice is given to the other Party, each Party must nominate one representative from its senior management to resolve the Dispute (each, a **Dispute Representative**).
- (b) If a negotiated resolution to the Dispute is not forthcoming after thirty (30) days (or such other period of time to which the Parties may agree), Service Provider and Company agree that such Dispute shall be submitted to binding arbitration in the Singapore International Arbitration Centre under the UNCITRAL Arbitration Rules. The language to be used in the arbitral proceedings shall be English and the place of arbitration shall be Singapore. The arbitration will be conducted by one (1) impartial arbitrator to be mutually agreed upon by the Parties, or a panel of three (3) arbitrators if the Parties are unable to agree upon a single arbitrator within thirty (30) days after the first demand for arbitration by one Party to the other (where each Party will appoint one arbitrator and the appointed arbitrators will select an additional arbitrator). The arbitrators, the Parties, their Dispute Representatives and participants shall hold the existence, contents and result of any arbitration in confidence, except to the limited extent necessary to enforce a final settlement agreement, to obtain enforcement of the arbitrators' decision and award, or as otherwise required by Applicable Law.
- (c) The arbitrators shall be bound by, and shall strictly enforce the terms of, this Contract and shall not limit, expand or otherwise modify its terms. The arbitrators shall endeavour to conclude the proceedings and issue their award within 6 months from their appointment. Each Party will bear its own expenses for any such binding arbitration proceedings. The decision and award shall be conclusive and binding upon all Parties and judgment upon the award may be

entered in any court of competent jurisdiction.

#### 29.3 Performance of obligations during Dispute

During the existence of any Dispute, the Parties must continue to perform all of their obligations under the Contract without prejudice to their position in respect of such Dispute, unless the Parties otherwise agree.

#### 29.4 Urgent interlocutory relief

Nothing in this Clause 29 prevents a Party from seeking any urgent interlocutory relief which may be required in relation to the Contract.

### 30. Confidentiality

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#### 30.1 Obligation of confidentiality

The Service Provider undertakes and agrees:

- (a) to hold in strict confidence all Confidential Information and not to disclose or permit or cause the Confidential Information to be disclosed to any person other than any of its Personnel who require the Confidential Information for the purposes of providing the Services; and
- (b) not to make use of the Confidential Information (including duplicating, reproducing, distributing, disseminating or directly or indirectly deriving information from the Confidential Information), except and solely to the extent necessary for the performance of the Services,  
unless the Service Provider has obtained the prior written consent of the Company to do so (which consent may be withheld by the Company in its discretion or given on such terms as it sees fit).

#### 30.2 Exceptions

Clause 30.1 does not apply to:

- (a) information after it becomes generally available to the public other than as a result of the breach of this Clause 30 or any other obligations of confidence imposed on the Service Provider; or
- (b) the disclosure of information in order to comply with any applicable law or legally binding order of any court, Government Agency or recognised stock exchange, provided that prior to such disclosure the Service Provider gives notice to the Company with full particulars of the proposed disclosure.

#### 30.3 Breach of consent

The breach of any of the conditions contained in a consent granted pursuant to Clause 30.1 will be deemed to be a breach of the Contract.

#### 30.4 Service Provider acknowledgment

The Service Provider acknowledges that this Clause 30 is for the benefit of not only the Company but also any member of the Rio Tinto Group that has any interest in any Confidential Information.

### 30.5 Indemnity

Without limiting Clause 26, the Service Provider indemnifies the Company and each member of the Rio Tinto Group, and must keep them indemnified, in respect of any Liabilities incurred or sustained by them resulting from a breach of this Clause 30 by the Service Provider or its Personnel.

### 30.6 Additional obligations

The obligations in this Clause 30 are in addition to and do not diminish the obligations of the Service Provider in respect of secret and confidential information at common law or under any statute or trade or professional custom or use.

### 30.7 Return of Confidential Information

If requested by the Company, whether prior to or after the expiry or earlier termination of the Contract, the Service Provider must promptly deliver to the Company all Confidential Information in the custody, possession or control of the Service Provider or any of its Personnel.

### 31. Public announcements

Except as required by any applicable law or regulatory requirement or as otherwise permitted by the Contract, the Service Provider may not make any public announcements or disclosures as to the Contract, or otherwise in relation to the subject matter of the Contract, without the prior written consent of the Company. In this regard, no media release or public announcement will be made in relation to the existence of the Contract without the Company's written approval and should such approval be given, then the wording of such release and the manner of publication must first be approved in writing by the Company.

### 32. Intellectual Property Rights

#### 32.1 Service Provider Intellectual Property Rights

The Company acknowledges that the Service Provider retains ownership of the Intellectual Property Rights of the Service Provider used or created under the Contract and/or in the provision of the Services. To enable the Company to enjoy the benefit of the Services for the purpose of or in connection with the Rio Tinto Group's business the Service Provider grants to the Company a non-exclusive, transferable, royalty free, irrevocable and perpetual licence to use such Intellectual Property Rights for that purpose.

#### 32.2 Third party Intellectual Property Rights

The Service Provider warrants that to the extent that it uses or proposes to use the Intellectual Property Rights of any third party in the provision of the Services, or to the extent the Company will use or might propose to use the Intellectual Property Rights of any third party in the use and enjoyment of the Services:

- (a) it has obtained, or will obtain at no further cost to the Company, from the relevant third party all necessary licences and consents to use, or assignments of, such Intellectual Property Rights; and
- (b) that it will not breach any of the licences or assignments referred to in Clause 32.2(a).

### 32.3 Indemnity

- (a) Without limiting Clause 26, the Service Provider indemnifies the Company and must keep the Company indemnified in respect of any Liabilities incurred or sustained by the Company resulting from any actual or alleged infringement of any Intellectual Property Rights of any third party arising out of or caused by:
  - (i) the performance of the Services by the Service Provider;
  - (ii) the performance or operations of any other plant, machinery, tools, equipment, process, work, material, matter, thing or method used or supplied by the Service Provider; or
  - (iii) the use and enjoyment of the Services by the Company.
- (b) The Service Provider must notify the Company immediately the Service Provider becomes aware of a Claim being threatened or made against the Company in relation to any of the matters covered by the indemnity in Clause 32.3(a).
- (c) The Company may require the Service Provider to conduct any litigation that may arise from a Claim referred to in Clause 32.3(b) and all negotiations for settlement of that Claim. However, the Service Provider must not make any settlement or consent to any judgment, order or verdict against the Company without the Company's prior written consent.

### 32.4 Procurement of Intellectual Property Rights

If the Company is prevented from (as the case requires) utilising all or any part of the Services as a result of any Claim in relation to an infringement of Intellectual Property Rights, the Service Provider must (at its cost) take all reasonable steps to procure for the Company the right to (as the case requires) utilise the Services or the relevant part of the Services for the purpose for which it was intended.

### 32.5 Procedure where Intellectual Property Rights cannot be procured

If the Service Provider cannot procure the rights referred to in Clause 32.4 within a reasonable time (but not exceeding 60 days unless the Company Representative otherwise agrees), it must notify the Company Representative accordingly and the Company Representative may direct the Service Provider to immediately (at the Service Provider's cost):

- (a) alter the Services or the relevant part of the Services to avoid infringement or violation of the Intellectual Property Rights or any of them;
- (b) (as applicable) re-perform or replace the Services affected or the relevant part of the Services with work or Services which do not infringe or violate the Intellectual Property Rights; or

- (c) discontinue provision of the Services and reimburse the Company any compensation and other moneys already paid to the Service Provider and pay to the Company any costs or other expenses that may have been paid or incurred by the Company in connection with the discontinued Services.

### **33. Notices**

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#### **33.1 Form of Notices**

Any notice, demand, consent or other communication (**Notice**) given or made pursuant to the Contract:

- (a) must be in writing;
- (b) must, where given by the Company, be signed or authorised by the Company Representative, a manager from the Company's procurement department, or a duly authorised representative of the Company; and
- (c) may be delivered by prepaid post, by hand or by facsimile to the Party to whom the Notice is addressed at its address shown in the Contract or such other address as that Party may have notified to the other Party.

#### **33.2 Notices deemed given**

A Notice will be taken to be duly given:

- (a) in the case of delivery by hand, when delivered;
- (b) in the case of delivery by post, 2 Business Days after the date of posting (if posted to an address in the same country) or 7 Business Days after the date of posting (if posted to an address in another country); or
- (c) in the case of facsimile, on receipt by the sender of a transmission control report from the despatching machine showing the relevant number of pages and the correct destination fax machine number or name of the recipient and indicating that the transmission has been made without error,

but if the result is that a Notice would be taken to be given or made on a day that is not a Business Day or the Notice is sent or is later than 4.00pm (local time) it will be taken to have been duly given or made at the commencement of business on the next Business Day.

### **34. Costs**

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#### **34.1 Each Party to bear its own costs**

Each Party must bear its own costs arising out of:

- (a) the negotiation, preparation and execution of the Contract; and
- (b) except as expressly provided otherwise in the Contract, any transaction contemplated by the Contract.

#### **34.2 Stamp duty**

All stamp duty which may be payable in any relevant jurisdiction on or in connection with the Contract,

any Purchase Order or other document related to the Contract will be borne by the Service Provider.

### **35. Status of Service Provider**

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#### **35.1 Independent contractor**

At all times during the Term, and in the provision of the Services, the Service Provider is an independent contractor and will not act as, or be or be regarded as, an agent or employee of the Company, and the Service Provider and its Personnel will not be entitled to any benefits which would ordinarily accrue to any employee of the Company by virtue of their status as an employee.

#### **35.2 Partnership and joint venture suppliers**

Where the Service Provider comprises more than one person they will be bound jointly and severally and by executing the Contract accept joint and several liability for any loss or damage that may be suffered or occasioned and any sum that may be or may become payable to the Company under the Contract.

### **36. Assignment and sub-contracting**

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#### **36.1 Consent required**

The Service Provider is not permitted to assign or sub-contract all or any part of the Contract without the prior written consent of the Company Representative, such permission being at the Company Representative's discretion and on whatever terms and conditions the Company Representative may think appropriate, including requiring the proposed assignee or Sub-contractor to be bound by any or all of the provisions of the Contract.

#### **36.2 Obligations survive assignment or sub-contract**

The Service Provider acknowledges that no permitted assignment or sub-contract in any way relieves the Service Provider from the performance of any of its obligations under the Contract.

#### **36.3 Status of Sub-contractor**

As between the Service Provider and the Company, the Sub-contractor will be considered the agent and employee of the Service Provider. For the purposes of the Contract, the acts and omissions of each Sub-contractor and its Personnel will be deemed to be the acts and omissions of the Service Provider.

### **37. Privacy and data protection**

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#### **37.1 Personal Data**

Each Party agrees to comply with their obligations under the Applicable Laws in respect of Personal Data obtained by or disclosed to them pursuant to the Contract.

#### **37.2 Warranty**

Each Party warrants to the other Party that it has complied with the Applicable Laws in obtaining any Personal Data disclosed by it pursuant to the Contract.

#### **37.3 Data protection**

In addition to its obligations under the Applicable Laws, the Service Provider agrees to:

- (a) only Process the Company's Personal Data for the purposes of the Contract;
- (b) not disclose the Company's Personal Data to any other person without the Company's prior written consent, unless the disclosure is required by law;
- (c) immediately notify the Company that the disclosure of the Company's Personal Data may be required by law;
- (d) put into place and maintain appropriate technical and organisational measures against unauthorised and/or unlawful Processing of the Company's Personal Data;
- (e) put into place and maintain appropriate technical and organisational measures against unauthorised access, loss, destruction, misuse, modification, disclosure or damage to the Company's Personal Data; and
- (f) take all necessary steps to ensure that its Processing of the Company's Personal Data will be fair and lawful and, for this purpose, the Service Provider may reasonably enquire of the Company as to the manner in which the Company obtained the Company's Personal Data.

#### 37.4 Individual complaints

- (a) If an individual complains to the Company that the Service Provider (or any of its Personnel) has, in the performance of the Contract, handled his or her Personal Data inappropriately, the Company must promptly give the Service Provider sufficient details about the complaint to minimise any further misuse.
- (b) If an individual complains to the Service Provider that the Service Provider (or any of its Personnel) has, in the performance of the Contract, handled his or her Personal Data inappropriately, the Service Provider must:
  - (i) promptly inform the Company of the complaint; and
  - (ii) provided the individual has consented, provide the Company with the Personal Data that is the subject of the complaint.

#### 37.5 Service Provider indemnity

Without limiting Clause 26, the Service Provider indemnifies the Company and must keep the Company indemnified in respect of all Liabilities incurred by or awarded against the Company relating to any breach by the Service Provider of its obligations under the Applicable Laws or this Clause 37.

#### 38. Waiver

A failure to exercise, or any delay in exercising any right, power or remedy by a Party does not operate as a waiver. A single or partial exercise of any right, power or remedy does not preclude any other or further exercise of that or any other right, power or

remedy. A waiver is not valid or binding on the Party granting that waiver unless made in writing.

#### 39. Further assurances

Each Party agrees to do all things and execute all deeds, instruments, transfers or other documents as may be necessary or desirable to give full effect to the provisions of the Contract and the transactions contemplated by it.

#### 40. Severability

##### 40.1 Severability

Any provision of the Contract which is prohibited or unenforceable in any jurisdiction is ineffective as to that jurisdiction to the extent of the prohibition or unenforceability. This does not invalidate the remaining provisions of the Contract nor does it affect the validity or enforceability of that provision in any other jurisdiction.

##### 40.2 Negotiation in good faith

Where a provision is prohibited or unenforceable, the Parties must negotiate in good faith to replace the invalid provision by a provision which is in accordance with the applicable law and which must be as close as possible to the Parties' original intent and appropriate consequential amendments (if any) will be made to the Contract.

#### 41. Governing law

##### 41.1 Governing Law

The Contract, and all non-contractual obligations arising out of or in connection with it, and the arbitration agreement contained within this Contract, shall be governed by and construed in accordance with the laws of England and Wales. Each Party submits to the non-exclusive jurisdiction of the Courts exercising jurisdiction in Singapore.

##### 41.2 UN Convention – International Sale of Goods

The United Nations Convention on Agreements for the International Sale of Goods, as well as any other similar Applicable Law, is hereby disclaimed to the maximum extent permitted by Applicable Laws.

##### 41.3 Rights of third parties

No person who is not a Party to the Contract shall have any rights under the Contracts (Rights of Third Parties) Act 1999, except in relation to a member of the Rio Tinto Group or the Company's Personnel claiming pursuant to an indemnity.

#### 42. Survival of terms

- (a) The following Clauses will survive expiration or termination of the Contract: 5 (Service Provider's Warranties), 11 (Taxes), 14 (Deduction from Payments),

25 (Insurances), 26 (Indemnities), 29 (Dispute Resolution), 30 (Confidentiality), 32 (Intellectual Property Rights), and 37 (Privacy and Data Protection).

- (b) Each indemnity in the Contract is a continuing obligation separate and independent from the Service Provider's other obligations and survives termination or expiry of the Contract.

#### **43. Contract language**

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This Contract was drafted in English and any translation hereof was from English. In the event of any conflict or question regarding the content, meaning or interpretation of this Contract, the English-language provisions will prevail.