



RIO TINTO PROJECTS

OYU TOLGOI UNDERGROUND PROJECT

PURCHASE ORDER

**GENERAL CONDITIONS
(AUGUST 2018)**

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PART A. Core General Conditions

1. Interpretation

1.1 In this Contract, unless the contrary intention appears:

"Accumulation Period" has the meaning given in Sub-clause 12.6.

"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:

- (a) 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 manager, directors or corporate management;
 - (iii) contract;
 - (iv) operating agreement;
 - (v) voting trust; or
 - (vi) otherwise,
- (b) used with respect to a Person, means the actual or legal ability to control the actions of that Person; and
- (c) used as a noun means an interest which gives the holder the ability to exercise any of the foregoing powers.

"Anti-Corruption Laws" means laws anywhere in the world which are intended to prohibit bribery and corruption, including:

- (a) *Bribery Act 2010* (United Kingdom);
- (b) Foreign Corrupt Practices Act of 1977 (United States of America);
- (c) Criminal Code Amendment (Bribery of Foreign Public Officials) Act 1999 (Australia);
- (d) Corruption of Foreign Public Officials Act (Canada);
- (e) Criminal Law of the People's Republic of China (People's Republic of China);
- (f) Law of Mongolia on Anti-Corruption; and
- (g) Law of Mongolia on Conflicts of Interest.

"Backcharge Amount" means a cost incurred by the Company which is the responsibility of (and which is payable by) the Contractor, whether in accordance with this Contract or otherwise, including in respect of:

- (a) work or services which are performed by the Company (whether or not at the Contractor's request), which fall within the Contractor's Works;
- (b) any costs incurred by the Company as a result of the Contractor's non-compliance with the provisions of this Contract or any act or omission of the Contractor; and
- (c) any costs incurred by the Company in connection with rectifying any defects, deficiencies or errors with the Works, during the warranty period set out in Clause 29.

"Business Day" means any day which is not a Saturday, a Sunday or a public holiday in the Country.

"Civil Code" means the Civil Code of Mongolia, as in force from time to time.

"**Claim**" means any action, suit, proceeding or demand of any kind whatsoever (including by or against any or all of the Company or its Personnel by the Contractor, the Contractor's Personnel or any third party).

"**Commencement Date**" has the meaning given in the Order Form.

"**Communications**" means all notices, notifications, invoices, certificates, approvals, appointments of representatives, consents, statements, reports, authorisations, ratifications, delegations, emails, Claims and other communications.

"**Company**" has the meaning given in the Order Form and its successors and assigns.

"**Company Representative**" means the Person described as the Company Representative in the Order Form or such other Person from time to time substituted in accordance with Sub-clause 2.2.

"**Company Rules**" means the Company's rules, requirements, policies and standards currently listed at <http://www.riotinto.com/aboutus/policies-standards-and-guidance-5243.aspx> or otherwise obtainable from the Company, including the Rio Tinto Business Practices and Standards.

"**Company's Personal Information**" means the Personal Information that the Company transfers to the Contractor from time to time in connection with this Contract.

"**Completion Date**" means the date provided for completion set out in the Order Form and as amended pursuant to these General Conditions.

"**Confidential Information**" has the meaning given in Sub-clause 10.1.

"**Consequences of Termination Provisions**" means Clause 33.

"**Contract**" has the meaning given in Sub-clause 1.3.

"**Contract IP**" means all Intellectual Property Rights (present or future) created, discovered or coming into existence in connection with the performance of this Contract (including all Intellectual Property Rights in anything developed by the Contractor or its Personnel in performance of this Contract).

"**Contract Price**" is the amount specified as such in the Order Form and further particularised in Schedule A (if any), as varied in accordance with this Contract.

"**Contract Specification**" means the specification referenced in the Order Form as amended by any Variation.

"**Contractor**" means the Person referred to as the Contractor in the Order Form and its successors and permitted assigns.

"**Contractor IP**" means the Intellectual Property Rights incorporated in anything supplied under this Contract and that:

- (a) are in existence at the Date of Agreement; or
- (b) come into existence after the Date of Agreement otherwise than in connection with this Contract,

that are not Contract IP or Rio Tinto IP.

"**Contractor's Insurance Policies**" means the Contractor's insurance policies specified in the Order Form.

"**Contractor Representative**" means the Person identified as such in the Order Form, or such other Person as replaced in accordance with Sub-clause 2.2.

"**Correct Invoice**" means an invoice which satisfies the requirements of Sub-clause 12.5.

"**Country**" means Mongolia.

"Customs Duties" means any tax or tariff imposed, claimed, levied or assessed by, or payable to, any Governmental Authority in relation to the import or export of Goods.

"Date of Agreement" has the meaning given in the Order Form.

"Default Notice" means a written notice specifying the breach alleged and requiring the other Party to remedy the breach.

"Direction" means any decision, demand, determination, direction, instruction, order, request or requirement of the Company Representative made to the Contractor under this Contract, in the form of a Direction Notice or such other form or manner as they consider appropriate from time to time.

"Dispute" means any dispute, question or difference of opinion between the Parties arising out of or in connection with this Contract.

"Documentation" means documentation, plans, designs, Reviewable Design Data, calculations, information, data, specifications, sketches, notes, samples, reports, maps, accounts, operating manuals, training materials and any other material specified in this Contract (and whether embodied in tangible or electronic form).

"Domestic Mongolian Contractor" means a contractor that is registered as a Mongolian business entity or individual and is a Mongolian taxpayer.

"Drawings" means the drawings required for the Contractor's performance of this Contract and includes drawings supplied to the Contractor by the Company Representative.

"EFT" means electronic funds transfer.

"End User" means any member of the Rio Tinto Group having an interest in the subject matter of this Contract including the use and enjoyment of such subject matter or the Project.

"EREI" means "exchange rate exposed items" which are items identified as such in the Schedules.

"Foreign Contractor" means a contractor that is not registered as a Mongolian business entity or individual.

"Foreign Sourced Items" means any labour, materials or other items which the Contractor has paid for in a currency other than Mongolian National Tugrik and which have been expressly set out in this Contract.

"Funders" means the Persons from which the funding for the Project may be obtained.

"General Conditions" means these general conditions.

"Goods" means the materials, supplies, plant, equipment, spare parts and other things intended to form or forming part of the Works.

"Governmental Authority" means any government (including any national, state, provincial, district, territorial, regional or local government) or governmental, semi-governmental, administrative, municipal, fiscal or judicial body, department, commission, authority, tribunal, board, agency or entity, any body politic, any ministry, inspectorate, official, public or statutory person or other statutory, supervisory or regulatory entity.

"Guarantor" has the meaning given in the Order Form.

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

"HSEC Requirements" means the applicable Law's and the Company's HSEC-related requirements, systems, standards, policies, management plans, programmes, licences and procedures, including those set out in Appendix C.

"Indirect Transaction Taxes" means any VAT, goods and services Tax, sales Tax, use or consumption/harmonised Tax or any similar or analogous Tax, imposed, claimed, levied or

assessed by, or payable to, any Governmental Authority in relation to the acquisition, receipt or sale of the supply, but does not include any related penalty, fine or interest thereon.

"Input Tax Credit" means any entitlement to a credit or reimbursement for, or offset against, reduction in or refund of, Indirect Transaction Tax.

"Insolvency Event" means the Contractor:

- (a) becomes insolvent or bankrupt;
- (b) has a receiving order made against it, or compounds with its creditors;
- (c) is placed under official management or carries on its business under a receiver, trustee, liquidator, provisional liquidator or administrator for the benefit of any of its creditors;
- (d) if it is a company, is wound up (not being a members' voluntary winding up for the purpose of amalgamation or reconstruction);
- (e) if it is a partnership, ceases to have all the partners comprising the partnership as at the Date of Agreement; or
- (f) suffers any event analogous to the events set out in paragraphs (a) – (e) above.

"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 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 trademarks, circuit layout designs and rights in relation to circuit layouts.

"Law" means any law, binding case law, legislation, statute, regulation, order, rule, subordinate legislation, decree, decree-law, treaty, notice or resolution of any Governmental Authority or any other document enforceable thereunder, in each case which affects or is applicable to this Contract, its performance or its subject matter and/or relates to a Party's rights and obligations under this Contract.

"Law of Mongolia on Anti-Corruption" means the Law of Mongolia on Anti-Corruption, as in force from time to time.

"Law of Mongolia on Conflicts of Interest" means the Law of Mongolia on Regulating Public and Private Interests in Public Service and Preventing Conflicts of Interest, as in force from time to time.

"Law of Mongolia on Construction" means the Law of Mongolia on Construction, as in force from time to time.

"Law of Mongolia on Fire Safety" means the Law of Mongolia on Fire Safety, as in force from time to time.

"Law of Mongolia on Licensing of Business Activities" means the Law of Mongolia on Licensing of Business Activities, as in force from time to time.

"Law of Mongolia on Mongolian Language" means the Law of Mongolia on Mongolian Language, as in force from time to time.

"Law of Mongolia on OSH" means the Law of Mongolia on Occupational Safety and Hygiene Safety, as in force from time to time.

"Law of Mongolia on Sending Labour Force Abroad and Receiving Labour Force and Specialists from Abroad" means the Law of Mongolia on Sending Labour Force Abroad and Receiving Labour Force and Specialists from Abroad, as in force from time to time.

"Law of Mongolia on Social Insurance" means

"Law of Mongolia on Value-Added Tax" means the revised Law of Mongolia on Value-Added Tax, as in force from time to time.

"Liabilities" means damages, Claims, demands, losses, liabilities, liquidated sums, charges, costs and expenses of any kind whatsoever or howsoever arising.

"Mediation Notice" has the meaning given in Sub-clause 18.4.

"Mongolian Workplace Payments" 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 provision of the Goods and/or Works under this Contract (whether employed by the Contractor or by sub-suppliers or Sub-contractors).

"Mongolian VAT" means any amount imposed on Goods under Chapter 3 of the Law of Mongolia on Value-Added Tax.

"Order Form" means the purchase order form issued by the Company in respect of the Works.

"Party" means a party to this Contract.

"Payment Date" has the meaning given in the Order Form.

"Person" means a firm or body corporate or unincorporated, a collective person as well as a natural person.

"Personal Information" means information relating to an individual, as more specifically described in applicable Laws.

"Personnel" means:

- (a) in relation to the Contractor, any of its employees, Sub-contractors (including Sub-contractors' Personnel), agents and representatives involved either directly or indirectly in the performance of this Contract;
- (b) in relation to the Company, any of its past or present officers, employees, agents or representatives, members of the Rio Tinto Group and End Users (including the Personnel of each of the foregoing); and
- (c) in relation to a Sub-contractor, any of its employees, Sub-contractors (including Sub-contractors' Personnel), agents or representatives involved either directly or indirectly in the performance of the Sub-contract.

"Plant and Equipment" means the items listed in Schedule F (if any) and all other machinery, plant, equipment, tools, consumables, temporary buildings, appliances, scaffolding, formwork and other items of a similar nature used for or in relation to the performance or maintenance of this Contract (but not including any Goods).

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

"Project" has the meaning given in the Order Form.

"Related Body Corporate" means a subsidiary or a holding company or any other subsidiary of that holding company; subsidiary and holding company have the meanings given to them under section 1159 of the Companies Act 2006 (UK).

"Representatives" means the Company Representative and the Contractor Representative, and **"Representative"** means either of them as the context requires.

"Reviewable Design Data" means all Drawings, design documents, reports, plans, software, formulae, calculations, models, details and specifications of materials, goods and workmanship, and all other data prepared by or on behalf of the Contractor in relation to the design, construction, testing and/or operation of the Works.

"Rio Tinto Business Practices and Standards" means:

- (a) Rio Tinto Group's policies entitled "The Way We Work", "The Supplier Code of Conduct" and the "Business integrity standard"; and
- (b) the Company's policy entitled "Oyu Tolgoi LLC Integrity Principles".

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

- (a) any Related Body Corporate of Rio Tinto plc or Rio Tinto Limited;
- (b) any unincorporated joint venture in which Rio Tinto plc or Rio Tinto Limited or any Related Body Corporate 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 Related Body Corporate of Rio Tinto plc or Rio Tinto Limited; and
- (d) such other entities as the Parties agree in writing.

"Rio Tinto IP" means the Intellectual Property Rights of the Company or any member of the Rio Tinto Group (as the case requires) which:

- (a) are in existence at the Date of Agreement; or
- (b) come into existence after the Date of Agreement otherwise than in connection with this Contract.

"Rio Tinto Limited" means Rio Tinto Limited (ACN 004 458 404) having its registered office at 33rd Floor, 120 Collins Street, Melbourne, Victoria 3000, Australia.

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

"SIAC Arbitration Rules" means the Arbitration Rules of the Singapore International Arbitration Centre.

"Site" means the location(s) specified in the Order Form.

"Standards" means those engineering, construction and technical standards or norms), design criteria, specifications specified in this Contract and to the extent that they are different and require a higher standard, Mongolian standards and codes of practice or, subject to the Company's approval, any other applicable international standards and codes of practice of an equivalent or higher standard.

"Sub-contract" means any agreement, arrangement or understanding between the Contractor and any Person, as well as any lower tier sub-contract whether or not in writing, to perform all or any part of the Contractor's obligations under this Contract on behalf of the Contractor including any supplier.

"Sub-contractor" means any Person engaged under a Sub-contract and, where the context requires, also includes the Sub-contractor's Personnel.

"Taxes" means all taxes, levies, duties and assessments of whatever kind, including sales taxes, VAT, income taxes, stamp duties, import/export taxes, Customs Duties, excise taxes, social and health insurance and workplace payments (including Mongolian Workplace Payments).

"Tax Invoice" means an invoice or other document, (including a credit note or debit note) clearly identifying the amount of Indirect Transaction Taxes payable, in a form which is valid under the applicable tax Laws of the jurisdiction where the Indirect Transaction Taxes are imposed, claimed, levied or assessed, which, if applicable, would enable the Company to claim an Input Tax Credit.

"Term" means the period commencing on the Commencement Date and ending on the earlier of:

- (a) the date that all obligations under this Contract have been performed, including with respect to any defects; or
- (b) the date this Contract is terminated.

"Termination Value" means the monetary value of the relevant part of the Works performed, to be determined by the Company Representative having regard to the Order Form and Schedule A. The Termination Value must not exceed the Contract Price under any circumstance.

"Trade Warranties" means usual and customary trade warranties from the Sub-contractors and any other trade warranties which the Company requires the Contractor to procure from the Sub-contractors.

"Variation" means adding to, omitting from, increasing, decreasing, changing the character or quality of the Works.

"VAT" means value-added (or other similar) taxes.

"Works" means the supply and manufacture of Goods and all other things to be performed and the product thereof (as the context requires) in accordance with this Contract including all things required by the Order Form.

1.2 The following rules apply unless the context requires otherwise.

- (a) The singular includes the plural and the converse also applies.
- (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) Unless otherwise provided, any number of days prescribed will be determined by excluding the first and including the last day and "day" means a calendar day.
- (f) A reference to a Law includes a modification, re-enactment or substitution for it, and a requirement issued under or derived from it.
- (g) A reference to "use" in the context of dealing with Intellectual Property Rights includes using, keeping, exploiting, copying, adapting, creating derivative works, developing, modifying, disclosing and communicating.
- (h) A reference to conduct includes an omission, statement or undertaking, whether or not in writing.
- (i) Nothing in this Contract is to be interpreted against a Party on the ground that the Party put forward this Contract or the relevant part of it.
- (j) Nothing in this Contract shall entitle a Party to recover twice in respect of the same loss.

1.3 The Contract consists of the following documents only:

- (a) the Order Form and all documents attached to the Order Form or incorporated in the Order Form; and
- (b) the General Conditions,
- (c) (collectively referred to as the "**Contract**").

- 1.4 The Contract is formed once the Contractor acknowledges receipt of the Order Form in writing by signing the Order Form. However, the performance of any requirements of the Order Form by the Contractor, without signature of the Order Form, will be deemed to be an acceptance of this Contract on the terms contained in this Contract submitted to the Contractor by the Company, unless the Company notifies the Contractor to the contrary.
- 1.5 The Contractor will have no entitlement to any extension of time or any increase to the Contract Price or any other compensation of any kind for any event (including conduct or negligence of the Company) unless such entitlement is expressly provided for under this Contract.
- 1.6 Subject to any express provisions of this Contract to the contrary, the obligations of each Party are to be performed at that Party's own cost and expense.
- 1.7 All references to:
- (a) approvals, consents and permissions to be given by the Company or the Company Representative; or
 - (b) agreements to be made between the Company or the Company Representative on the one hand and the Contractor on the other,
- under this Contract must be interpreted as requiring such approvals, consents, permissions and agreements to be in writing.
- 1.8 If two or more documents contain, or a Party to this Contract contends that the documents contain, different standards or requirements, then the higher standard or more onerous requirement will apply.
- 1.9 Where the Contractor is required to provide information, under this Contract, such information must be provided in writing and delivered in full to the Company Representative.

2. **Representatives**

- 2.1 Each Party must appoint a Representative with full authority to act on its behalf for all purposes of this Contract, except amendment of this Contract.
- 2.2 Representatives may be replaced on giving written notice to the other Party.
- 2.3 The Company Representative is appointed by and is entitled to act in the best interests of the Company.

3. **Contractor's Obligations**

- 3.1 The Contractor must comply with all of its obligations under this Contract and any requirements set out in the Schedules, Appendices and other Contract documents.
- 3.2 Save where it is expressly stated in this Contract that something will be provided by the Company, the Contractor must provide everything necessary for and necessarily incidental to the proper performance of this Contract.
- 3.3 The Contractor must comply and ensure that each of its Personnel comply with the following:
- (a) all Laws and Governmental Authority requirements;
 - (b) the Company Rules;
 - (c) the HSEC Requirements;
 - (d) the Directions of the Company Representative;
 - (e) all permits and licences; and
 - (f) all applicable Standards.

- 3.4 The Contractor must obtain and maintain all permits, licences, registrations and approvals (save for any permits, licences, registrations, approvals or notices that are expressly designated as the responsibility of the Company in this Contract), comply with any requirements of any permits, licences, registrations and approvals (whether obtained by the Contractor or otherwise) and give all notices required to be obtained or given by Law or any Governmental Authority for the performance of this Contract.
- 3.5 If the Order Forms states, the Contractor must, within 20 Business Days of the Commencement Date, provide to the Company a parent company guarantee in a form acceptable to the Company, duly executed by the Guarantor. Notwithstanding any other provision of this Contract, the Company is not obliged to pay the Contractor any amount until the Contractor has complied with this Sub-clause 3.5.
- 3.6 Without limiting Sub-clause 3.3(b), in performing the Works, the Contractor must and must ensure that its Personnel:
- (a) comply or otherwise act in a manner consistent with the Rio Tinto Business Practices and Standards;
 - (b) permit the Company to access to the Contractor's premises, any of its documentation and data (including documents stored in electronic form) and to interview the Contractor's Personnel in connection with this Contract, as necessary for the Company's Personnel to verify, monitor and audit the Contractor'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 (Talk to Peggy) programme; 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.

4. Assignment and Sub-Contracting

- 4.1 The Company may assign or novate this Contract on giving prior written notice to the Contractor.
- 4.2 The Contractor may not assign or novate this Contract or any part thereof except with the prior consent of the Company. The Company may, in the Company's absolute discretion, refuse to consent or approve without giving reasons or may give that consent or approval on whatever terms and conditions the Company may think appropriate.
- 4.3 The Contractor must not Sub-contract the performance of this Contract or any part thereof without the prior consent of the Company Representative.
- 4.4 No Sub-contract or assignment (whether with or without the consent of the Company Representative or the Company) will in any way relieve the Contractor from full responsibility for the performance of this Contract.
- 4.5 Acts of the Contractor shall be deemed to include acts of the Contractor's Personnel and the Contractor's obligations shall include the obligation to procure compliance by the Contractor's Personnel with such obligation.

5. Information provided by the Company

Unless the Company Representative notifies the Contractor otherwise in writing, any information provided by or on behalf of the Company or the Company Representative to the Contractor is not guaranteed as to accuracy, sufficiency or otherwise and the Contractor is responsible for any reliance placed on the same.

6. Contractor's Personnel

6.1 The Contractor:

- (a) acknowledges that it and the Contractor's Personnel have obligations to make payments to the social insurance fund administered by the Mongolian Governmental Authority under the Law of Mongolia on Social Insurance to the extent that any of the Contractor's Personnel performs any of part of the Works in the territory of Mongolia; and
- (b) undertakes to ensure that it and its Personnel fulfil the obligation to make payments to the social insurance fund under the Law of Mongolia on Social Insurance.

6.2 If any of the Contractor's Personnel perform any part of the Works in Mongolia, the Contractor must procure and maintain the life and health insurance required under the Law of Mongolia on OSH. If the Contractor fails to comply with this requirement and the Company incurs any Liability as a result, the Company may recover the Liability incurred as a Backcharge Amount.

7. Variations

7.1 Variations Directed by the Company Representative

- (a) The Company Representative may at any time Direct the Contractor to perform a Variation.
- (b) Within two days of receiving the Direction, the Contractor must submit to the Company Representative a statement advising of its opinion of the impact of the Variation on the Contract Price and the Completion Date.
- (c) Within 10 Business Days of receiving the Direction, the Contractor must submit to the Company Representative a detailed statement of the impact of the Variation on the Contract Price and the Completion Date (if any).
- (d) If requested by the Company Representative, the Contractor must provide further information relating to the statements referred to in Sub-clauses 7.1(b) and 7.1(c).
- (e) If the Contractor does not comply with any of the Sub-clauses 7.1(b), 7.1(c) or 7.1(d):
 - (i) the Company Representative may in its sole discretion reject any Claims or request by the Contractor for any change to the Contract Price and/or the Completion Date; and
 - (ii) the Contractor will be deemed to have agreed to perform the Variation without any extension of time or change to the Contract Price.
- (f) Within 10 Business Days of the Contractor complying with the requirements of Sub-clauses 7.1(c) or 7.1(d) (whichever is the later), or within such further time as may be required by the Company Representative, the Company Representative will:
 - (i) determine the change to the Contract Price and the Completion Date (if any) in connection with the Variation; and
 - (ii) issue a "Contract Variation" document.
- (g) Any Dispute in connection with the Company Representative's determination under Sub-clause 7.1(f) may be referred to the dispute resolution procedure set out in Clause 18.

7.2 Variation initiated by Contractor

- (a) If the Contractor reasonably believes that a Variation in the Works has occurred in the absence of a Direction by the Company Representative, the Contractor must, within two days of the occurrence of the circumstance, submit a notice in writing to the Company Representative of the potential Variation.

- (b) Within 10 Business Days of the notice referred to in Sub-clause 7.2(a), the Contractor must submit to the Company Representative a statement:
 - (i) setting out the reasons why the Contractor believes that there is a Variation; and
 - (ii) advising of its opinion of the impact of the claimed Variation on the Contract Price and the Completion Date (if any).
- (c) If requested by the Company Representative, the Contractor must provide further information relating to the statements referred to in Sub-clause 7.2(b).
- (d) If the Contractor does not comply with any of Sub-clauses 7.2(a), 7.2(b) or 7.2(c):
 - (i) the Company Representative may in its sole discretion reject any Claims or request by the Contractor for any change to the Contract Price and/or the Completion Date; and
 - (ii) the Contractor will be deemed to have agreed to perform the Works without any extension of time or change to the Contract Price.
- (e) Within 10 Business Days of the Contractor complying with the requirements of Sub-clauses 7.2(b) or 7.2(c) (whichever is the later), or within such further time as may be required by the Company Representative, the Company Representative will determine whether:
 - (i) the Variation is for the Contractor's convenience; or
 - (ii) the Variation has been caused by circumstances for which the Contractor is responsible.
- (f) If the Variation is determined to be for the Contractor's convenience or caused by circumstances for which the Contractor is responsible, the Contractor will not be entitled to any change to the Contract Price and the Completion Date.
- (g) Notwithstanding Sub-clause 7.2(f), the Company Representative may, in its absolute discretion:
 - (i) allow a change to the Contract Price and the Completion Date; and
 - (ii) issue a "Contract Variation" document.

For the avoidance of doubt, the Company Representative may, in its discretion under this Sub-clause 7.2(g) in the Contractor's favour.
- (h) If the Variation is determined to have been caused by circumstances for which the Contractor is not responsible, the Company Representative will:
 - (i) determine the change to the Contract Price and the Completion Date (if any) in connection with the Variation; and
 - (ii) issue a "Contract Variation" document.
- (i) Any Dispute in connection with the Company Representative's determination under Sub-clause 7.2(e), 7.2(f) and 7.2(h) or the Company Representative's exercise of discretion under Sub-clause 7.2(g) may be referred to the dispute resolution procedure set out in Clause 18.

7.3 Valuing Variations

The value of the Variation (whether an increase or decrease to the Contract Price) will be calculated as set out below.

- (a) To the extent that the Schedules specify the rates applicable to the Variation, those rates will be used.

- (b) If the Schedules do not contain any rate applicable to the Variation in question and there is to be an increase to the Contract Price, the value of the Variation will be at the lowest reasonable cost consistent with sound practices.
- (c) If the Schedules do not contain any rate applicable to the Variation in question and there is to be a decrease to the Contract Price, the value of the Variation will be at reasonable market cost consistent with sound practices.

8. **Publicity**

Except as required by Law or as otherwise permitted by this Contract, the Contractor may not make any public announcements or disclosures or place any advertisements in relation to this Contract or the Project without the prior consent of the Company.

9. **Privacy and Data Protection**

9.1 In addition to its obligations under Law, the Contractor agrees to:

- (a) only Process the Company's Personal Information for the purposes of this Contract;
- (b) put into place and maintain appropriate technical and organisational measures against unauthorised and/or unlawful Processing of or access, loss, destruction, misuse, modification, disclosure or damage to the Company's Personal Information; and
- (c) take all necessary steps to ensure that its Processing of the Company's Personal Information will be fair and lawful and, for this purpose, the Contractor may reasonably enquire of the Company as to the manner in which the Company obtained the Company's Personal Information.

9.2 If an individual complains to the Company that the Contractor (or any of its Personnel) has handled his or her Personal Information inappropriately, the Company will promptly give the Contractor sufficient details about the complaint to minimise any further misuse.

9.3 If an individual complains to the Contractor that the Contractor (or any of its Personnel) has handled his or her Personal Information inappropriately, the Contractor must:

- (a) promptly inform the Company of the complaint; and
- (b) if the individual has consented, provide the Company with the Personal Information that is the subject of the complaint.

10. **Confidentiality**

10.1 The Contractor must not and must ensure that each of its Personnel do not, without the express prior consent of the Company, use (other than as is necessary for the performance of this Contract) or divulge to third parties:

- (a) any information relating to this Contract or the Project;
- (b) any information relating to the operations of the Company or its Personnel;
- (c) any matters relating to the affairs of the Company or its Personnel;
- (d) the Company's Personal Information; or
- (e) the Company's rates of wages and conditions for workers and employees, (the "**Confidential Information**").

10.2 Save in respect of Sub-clauses 10.1(d) and 10.1(e), Sub-clause 10.1 does not prevent the Contractor from using and disclosing information which:

- (a) at the time of the first disclosure by the Company was already in the lawful possession of the Contractor in written form;

- (b) is or becomes generally available to the public otherwise than by disclosure in breach of the terms of this Contract; or
 - (c) becomes available to the Contractor from a third person legally entitled to possess the information and provide it to the Contractor, if the use or disclosure accords with the right or permission legally granted to the Contractor by that third person.
- 10.3 Sub-clause 10.1 does not prevent the Contractor from disclosing (but not using) information if:
 - (a) such disclosure is required by Law;
 - (b) the Contractor informs the Company in advance of any such disclosure and the Company grants it approval; and
 - (c) the Contractor attempts to restrict disclosure and distribution of the information as far as is permitted by Law.
- 10.4 The Contractor must not take and must not permit photographs to be taken or sketches to be drawn of anything to be delivered under this Contract or of any part of the premises or operations of the Company or its Personnel except for the purpose of the performance of this Contract or with the express prior consent of the Company.
- 10.5 At the Company's request, the Contractor must, as soon as reasonably practicable, deliver up, delete or destroy all physical and electronic documents containing Confidential Information, including all copies and anything derived from Confidential Information.
- 10.6 The Contractor acknowledges that this Clause 10 is for the benefit not only of the Company but also any member of the Rio Tinto Group that has an interest in any information that is the subject of this Clause.
- 11. **Intellectual Property**
- 11.1 Contractor IP

The Contractor grants to the Company a non-exclusive, transferable, royalty free, irrevocable and perpetual licence to use and sub-license all Contractor IP for the purposes of or in connection with the business of the Rio Tinto Group or the Project.
- 11.2 Contract IP

The Contractor agrees that all Contract IP is vested in the Company and is the Company's property as and when created and the Contractor assigns and must ensure that all of its Personnel assign all their respective right, title and interest in and to the Contract IP (whether created before, on or after the Commencement Date) to the Company without any encumbrances.
- 11.3 Contractor warranty

The Contractor warrants that:

 - (a) the Contractor has the right to grant to the Company the licence under Sub-clause 11.1; and
 - (b) the Contractor has the right to assign all Contract IP to the Company in accordance with Sub-clause 11.2.
- 11.4 Rio Tinto IP
 - (a) The Contractor acknowledges and agrees that the Company or any member of the Rio Tinto Group (as the case requires) remains the owner of all Rio Tinto IP.
 - (b) The Contractor must not challenge the validity of, register or attempt to register any interest in or otherwise deal with the Rio Tinto IP or the Contract IP, or allow any other Person to do so.

- (c) The Contractor must not use the Rio Tinto IP or the Contract IP or allow any other Person to do the same for any purpose other than to perform its obligations under this Contract.

12. Payment

12.1 Contract Price

- (a) In consideration of the satisfactory performance of this Contract, the Company must pay to the Contractor the Contract Price.
- (b) The Contract Price is subject to rise and fall only if a rise and fall mechanism is specified in Schedule A. Otherwise, the Contractor will not be entitled to a change to the Contract Price for any rise and fall in costs.

12.2 The Contractor may submit a Correct Invoice each month for amounts due to the Contractor in accordance with this Contract.

12.3 If any amounts are to be paid to the Contractor in a manner subject to control by any Governmental Authority, payment is not due until the Company receives the necessary authorisations, registrations and consents required for the making of that payment, which may include but is not limited to, approval by or registration with a Governmental Authority or as required by Law. The Contractor shall provide all documentation, support and assistance necessary or requested by the Company or the Governmental Authority for the purpose of obtaining such authorisation, registration and/or consent.

12.4 Payment by EFT

- (a) Unless otherwise agreed by the Company and Contractor, all payments to the Contractor will be made by EFT to a bank account nominated by the Contractor.
- (b) The Contractor is responsible for ensuring that the banking details provided to the Company are correct and current. Any change to the Contractor's banking details must be provided to the Company, in the form required by the Company Representative, 21 Business Days prior to the date required for the changes to come into effect.

12.5 Invoices

- (a) Invoices submitted by the Contractor must:
 - (i) state the Company name as notified by the Company;
 - (ii) state the Company address as notified by the Company;
 - (iii) state the Contract title and number as notified by the Company;
 - (iv) comply with the requirements for a valid Tax Invoice;
 - (v) state the order number as generated by the Company's integrated SAP system;
 - (vi) contain the correct calculation of all amounts due to be paid, including Indirect Transaction Taxes and retention amounts where applicable;
 - (vii) state the date that the invoice is issued;
 - (viii) contain a description of all items to which the invoice relates, including, where relevant, dates and locations;
 - (ix) be supported by such additional information as is required by the Company; and
 - (x) otherwise comply with the invoicing instructions set out in Appendix F.

- (b) any part of the Works performed at a location inside the territory of Mongolia shall be invoiced separately from any part of the Works performed at a location outside the territory of Mongolia.

12.6 Payment Terms

- (a) All Correct Invoices will be accumulated for a period commencing on the first day of a calendar month and ending on the last day of that calendar month ("**Accumulation Period**"). Unless the Company disputes any amount invoiced by the Contractor, and subject to each Party's express rights under this Contract to withhold payment or make deductions or set offs, the Company will make payment to the Contractor of all undisputed amounts for a Correct Invoice on or before the Payment Date.
- (b) The Company may withhold any disputed amounts.

12.7 Set-off

The Company may deduct from any money due or becoming due to the Contractor all debts and moneys due or becoming due by the Contractor or its Personnel to the Company.

12.8 Backcharges

- (a) The Company Representative may provide the Contractor with Tax Invoices for any Backcharge Amounts which have been incurred by the Company.
- (b) The Backcharge Amounts, which the Company shall be entitled to invoice the Contractor for in accordance with Sub-clause 12.8(a) shall be calculated as follows:
 - (i) labour – to be calculated as the actual cost incurred by the Company, plus 55% to cover payroll additives;
 - (ii) materials – to be calculated as the actual supplier and freight invoice cost, on the basis that the materials are to be delivered to the Site;
 - (iii) equipment – to be calculated as the actual third-party rental costs or the Company's equipment rental rates, whichever may be applicable;
 - (iv) sub-contracts / sub-contractors engaged by the Company – to be calculated as the actual costs incurred by the Company in engaging a sub-contractor; andplus,
 - (v) an additional amount equal to 25% of the sum of those amounts referred to in Sub-clauses 12.8(b)(i) to 12.8(b)(iv) shall be added by the Company, on account of the indirect costs and overhead, supervision and administration costs of the Company; and
 - (vi) Taxes incurred by the Company in performing work connected in any way with the Backcharge Amounts.
- (c) The Company may deduct from any money due or becoming due to the Contractor the amount of any Tax Invoice issued under Sub-clause 12.8(a). Where there is no deduction in accordance with this Sub-clause 12.8(c), Tax Invoices issued under Sub-clause 12.8(a) must be paid by the Contractor within 15 Business Days.
- (d) If the Contractor disagrees with a Tax Invoice the Contractor must, within 10 Business Days of receipt, provide the Company Representative with details in writing of any perceived discrepancy and any supporting information that the Company Representative requires and pay or allow the deduction of the undisputed amount. The Company Representative will then determine whether the disputed amount is due and issue a statement accordingly and a payment or deduction will be due to reflect the same.

- (e) Exercise by the Company of its rights under this Sub-clause 12.8 shall not be in lieu of, nor is it a waiver of, the Company's other rights, whether under this Contract or otherwise, in connection with either the Backcharge Amounts or matters to which the Backcharge Amounts have been incurred.
- (f) If a seat on a flight between Ulaabaatar and the Site that has been reserved for the Contractor's use is not used by the Contractor, the airfare of the unused seat will be deemed to be a Backcharge Amount.
- (g) If accommodation that has been reserved for the Contractor's use is not used by the Contractor, the cost of the unused accommodation will be deemed to be a Backcharge Amount.
- (h) Notwithstanding Sub-clause 12.8(a), the Company may, at its option, recover a Backcharge Amount by reducing the Contract Price by way of a Variation issued under Clause 7.

12.9 Deductions

- (a) The Company may deduct from any money due or becoming due to the Contractor all debts and moneys due or becoming due by the Contractor or its Personnel or Sub-contractors to the Company and any Taxes which the Company may be required by Law to deduct or remit from time to time.
- (b) If the Company fails to withhold or deduct an amount referred to in Sub-clause 12.9(a), the Company may claim payment for that amount and the Contractor must pay that amount to the Company within 15 Business Days of receiving notice of the claim.

12.10 Adjustment for Exchange Rate Fluctuation

- (a) To the extent that there are any EREI, the Parties agree to reflect the principle that no Party will be out of pocket in relation to the EREI on account of changes in the foreign exchange rate fluctuation.
- (b) The Parties will use the mechanism detailed in the Schedules to give effect to the principle stated in Sub-clause 12.10(a).
- (c) In the event that this Sub-clause 12.10 is legally unenforceable, the Parties agree to negotiate a mutually acceptable alternative arrangement that is consistent with the general principle that neither Party should be harmed or benefit to the detriment of the other due to foreign exchange rate fluctuation.

13. Taxes

13.1 Taxes, Indirect Transaction Taxes and Withholding Taxes – Foreign Contractor

- (a) If the Contractor is a Foreign Contractor then the provisions of this Sub-clause 13.1 shall apply.
- (b) The Contractor is responsible at its own cost for complying with all applicable Law, regulation and/or administrative requirement of any Governmental Authority relating to Taxes.

Payment of Taxes

- (c) Except as provided in Sub-clause 13.1(d), the Contractor is responsible for paying (which, for purposes of this Clause 13 shall include withholding and remitting, as applicable) any and all Taxes arising or imposed by or under the authority of any Governmental Authority anywhere in the world in connection with the provision of the Goods and/or Works (and in this respect, the Contractor shall apply for and use its best endeavours to receive the benefit of all withholding tax credits and refunds available under any applicable Law).

- (d) Subject to Sub-clause 13.1(e), the Company is responsible for paying the following Taxes arising or imposed by or under the authority of the government of Mongolia:
 - (i) for the provision of Goods and/or Works within the territory of Mongolia:
 - (A) any Mongolian VAT; and
 - (B) after the Commencement Date, any increase in or any new Mongolian excise tax to be assessed against goods (if any) delivered hereunder; and
 - (ii) for the provision of Goods and/or Works outside the territory of Mongolia, VAT and Customs Duties imposed by the government of Mongolia.
- (e) The Company shall pay any Taxes under Sub-clause 13.1(d) by direct payment to the relevant Mongolian tax authority if direct payment is permitted by law (and if direct payment is not permitted by law, the Contractor shall pay such Taxes and the Company shall reimburse the Contractor in respect of any such payment).
- (f) All Taxes payable by the Contractor shall be included in the Contract Price and shall not be in addition to the Contract Price.
- (g) The Contractor shall consult and co-operate with the Company in seeking, and use its best endeavours to obtain, exemptions from or reductions in customs and import duties payable on materials or components intended for incorporation into the Goods or Works (if any).
- (h) As the Contractor is a Foreign Contractor, the Company will:
 - (i) deduct withholding tax from payments to the Contractor if required under any applicable Law;
 - (ii) remit such tax to the appropriate Governmental Authority; and
 - (iii) forward the appropriate receipts or similar documentation to the Contractor evidencing such remittance

For the avoidance of doubt, withholding taxes payable by the Company will be included in, and not in addition to, the Contract Price.

- (i) A domicile certificate will be required if the Contractor provides Works within the territory of Mongolia and if the Contractor's country has a double-tax treaty with Mongolia. If the Contractor is a Foreign Contractor and believes that it is exempt from paying withholding tax or that the Company should not be deducting withholding tax, the Contractor must include with its first invoice to the Company issued under this Contract and annually thereafter to the Company valid certificates of domicile from all applicable taxation authorities. If the Contractor fails to provide valid certificates of domicile, or if such certificates of domicile fail to demonstrate to the Company's satisfaction that the Contractor 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 Contractor's country of domicile, then:
 - (i) the Contractor shall be required to pay such withholding tax at the full standard rate under any applicable Law; or
 - (ii) where the Company is required by any applicable Law to pay or withhold such withholding tax, the Company shall be entitled to deduct from payments to the Contractor the withholding tax that the Company is legally obligated to pay or withhold (as the case may be), remit such tax to the appropriate Governmental Authority, and forward the appropriate receipts or similar documentation to the Contractor evidencing such remittance,

- (j) and for the avoidance of doubt, such withholding taxes payable by the Company will be included in, and not in addition to, the Contract Price.
- (k) If the Contractor as a result of providing any Works 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 the Works within the territory of Mongolia. The Company will then not deduct any withholding taxes during the period the permanent establishment exists and the Contractor will accordingly indemnify the Company from any tax liability arising from failing to deduct this withholding tax including any associated fines, penalties and interest.
- (l) The Contractor must issue separate commercial Tax Invoices for all:
 - (i) Goods;
 - (ii) Works performed within the territory of Mongolia;
 - (iii) Works performed outside the territory of Mongolia; and
 - (iv) expenses that are stated as cost reimbursable accompanied by third party receipts as proof of payment attached and a breakdown of reimbursable items. When submitting its cost reimbursable expenses under this Sub-clause 13.1(l)(iv), the Contractor must include a timesheet which details the name of the responsible Person, the dates and hours worked, the job descriptions and the locations where the Works was performed. The third party receipts or other proof of expenses included with the Tax Invoice must be sufficient to demonstrate that the items described as cost reimbursable in this Contract have actually been incurred by the Contractor.
- (m) Upon written request from the Company, the Contractor shall 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 Governmental Authority, including company registration and VAT registration certificates;
 - (ii) commercial Tax Invoices in form and substance satisfactory to the Company; and
 - (iii) VAT receipts in a form that complies with the requirements of any applicable Law.
- (n) If a payment made by the Company to the Contractor does not include a withholding tax deduction but such deduction was required under applicable Law, or if a payment made to the Contractor does include a withholding tax deduction but under applicable Law such deduction was required to be made at a higher rate, then the Contractor shall reimburse or otherwise pay the Company the amount that should have been deducted or deducted at a higher rate within 10 Business 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.
- (o) The Contractor 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) arising from the Contractor or any Sub-contractor's failure to discharge its obligations with respect to Taxes and applicable tax Laws.

13.2 Taxes, Indirect Transaction Taxes and Withholding Taxes – Domestic Mongolian Contractor

- (a) If the Contractor is a Domestic Mongolian Contractor then the provisions of this Sub-clause 13.2 shall apply.
- (b) The Contractor is responsible at its own cost for complying with all applicable Laws, regulations and/or administrative requirements of any Governmental Authority relating to Taxes. The Company will deduct withholding tax from payments to the Contractor if required under any applicable Law (and for the avoidance of doubt, such withholding taxes payable by the Company will be included in, and not in addition to, the Contract Price).

Payment of Taxes

- (c) The Contractor is responsible for paying (which term, for purposes of this Sub-clause 13.2(c), includes withholding and remitting, as applicable) any and all Taxes arising or imposed by or under the authority of any Governmental Authority anywhere in the world in connection with the provision of the Goods and/or Works under this Contract (and in this respect, the Contractor shall apply for and use its best endeavours to receive the benefit of all VAT credits and refunds available under any applicable Law).
- (d) All Taxes payable by the Contractor shall be included in the Contract Price and shall not be in addition to the Contract Price. For the avoidance of doubt, the Contract Price excludes any Mongolian VAT payable by the Company.
- (e) The Contractor shall consult and co-operate with the Company in seeking, and use its best endeavours to obtain, exemptions from or reductions in customs and import duties payable on materials or components intended for incorporation into the Goods or Works (if any).
- (f) Upon written request from the Company, the Contractor shall 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 Governmental Authority, including company registration and VAT registration certificates;
 - (ii) commercial Tax Invoices in form and substance satisfactory to the Company; and
 - (iii) VAT receipts in a form that complies with the requirements of any applicable Law.
- (g) The Contractor 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) arising from the Contractor or any Sub-contractor's failure to discharge its obligations with respect to Taxes and applicable tax Laws.
- (h) As the Contractor is a company registered in Mongolia, the Contractor acknowledges that if this Contract specifies that the Company will provide the Contractor with accommodation, food or flights then:
 - (i) the Company will issue a commercial Tax Invoice to the Contractor for the cost associated with such accommodation, food or flights (plus any VAT applicable on accommodation, food or flights); and
 - (ii) to the extent the Contractor does not exceed the accommodation, food or flights allowance specified in this Contract and Sub-clauses 12.8(f) or 12.8(g) do not apply, the Contractor may issue a commercial Tax Invoice to the Company of an amount equal to the invoice provided by the Company.

13.3 Customs Duties

Provisions applicable to Goods imported on FCA (Incoterms 2010) basis

- (a) The following provisions will apply to the Goods supplied on FCA (Incoterms 2010) basis.
 - (i) The Company will be responsible for all Customs Duties assessed by or payable to Mongolian Governmental Authorities.
 - (ii) The Contractor will be responsible for and remit payment of all Customs Duties assessed by or payable to any Governmental Authority (except those referred to in Sub-clause 11.3(a)(i)) and any other foreign shipping charges.
 - (iii) The Contractor must provide the Company with all documents and information necessary for the Company to:
 - (A) complete the application to import the Goods into Mongolia;
 - (B) comply with all applicable Laws in relation to applications or certifications for Customs Duties concessions or bilateral free trade agreements (or equivalent), in each case in form and substance satisfactory to the Company; and
 - (C) enable the Company to import the Goods into Mongolia free of Customs Duties, where it is possible to do so through the use of bilateral free trade agreements (or equivalent).
 - (iv) If the Contractor receives any Customs Duties refunds or savings, the Contractor must pass on the benefit of any Customs Duties refunds or savings to the Company.

Provisions applicable to Goods imported on DDP (Incoterms 2010) basis or otherwise imported in the Contractor's name and incorporated into the Works

- (b) The following provisions will apply to the Goods supplied on DDP (Incoterms 2010) basis or otherwise imported in the Contractor's name and incorporated into the Works.
 - (i) The Contractor will be responsible for:
 - (A) completing all applications for exporting from the place of origin and importing the Goods into Mongolia;
 - (B) complying with all regulatory requirements (including any consents, permits and licenses) associated with exporting and importing the Goods;
 - (C) paying all applicable Customs Duties and any other levies, fees or costs associated with exporting and importing the Goods.
 - (ii) Where possible, the Contractor must ensure that the Goods may be imported free of Customs Duties through the use of applicable bilateral free trade agreements (or equivalent).
 - (iii) If the Contractor receives any Customs Duties refunds or savings, the Contractor must pass on the benefit of any Customs Duties refunds or savings to the Company.
 - (iv) The Contractor must ensure that all Goods:
 - (A) delivered to the Company; or
 - (B) imported in the Contractor's name and incorporated into the Works, are accompanied by copies of Mongolian customs declaration documents.

- (v) If requested by the Company Representative, the Contractor must provide all information and documents relating to the importation of Goods.

14. Insurance

14.1 Contractor's Insurances

The Contractor must:

- (a) effect and maintain the Contractor's Insurance Policies throughout the Term and any additional period as the Company deems necessary, in relation to risks or occurrence arising, or may arise, out of the performance of this Contract;
- (b) effect and maintain throughout the Term any other insurance policies required under any applicable Law; and
- (c) insure its employees for life and health insurance coverage in the amount of not less than 36 months' average salary if those employees are working in high risk jobs as required under the Law of Mongolia on OSH.

14.2 Further requirements

- (a) The Contractor's Insurance Policies must, unless prohibited by Law, be endorsed to:
 - (i) insure the Company and its Personnel for their respective rights and interests;
 - (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 party;
 - (iii) waive all express or implied rights of subrogation against the Company and its Personnel; and
 - (iv) include a clause that provides that a breach of condition or term of insurance by one insured will not adversely affect the cover provided to another insured under the policy,save that Sub-clauses 14.2(a)(i) and 14.2(a)(ii) will not apply in respect of any policy for professional indemnity insurance or workers' compensation/employer's liability insurance.
- (b) If the Contractor's Insurance Policies 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 and, in the event of a loss, is payable by the Contractor. The Company reserves the right to require the Contractor to reduce the amount of any self-insured retention, excess or deductible where such amount is considered by the Company to be unreasonable in the circumstances of this Contract.
- (c) The Contractor's Insurance Policies must be insured or reinsured with reputable insurer with a security rating from A.M. Best of not less than "A", and if required for Works in the Country, be issued (unless otherwise agreed by the Company) by an insurance company licensed by the Financial Regulatory Committee of Mongolia and on terms and conditions consistent with prudent risk management practice.
- (d) No provision contained in this Clause 14 will limit the Contractor's liability including its liability to indemnify the Company in accordance with this Contract.
- (e) Within the timeframe stipulated in the Schedules, each time the policies are renewed or varied, and/or upon request of the Company Representative, the Contractor must provide the Company Representative with an insurance certificate of currency or such other evidence as the Company Representative may require that the Contractor and its Sub-contractors are insured in accordance with this Contract.

- (f) In the event that the Contractor fails to comply with its obligations under this Clause 14 the Company may, at its sole option and without being under any duty or obligation to do so, effect and maintain such insurances and the costs of such insurances will be treated as a Backcharge Amount.
- (g) The Contractor must ensure that the Contractor's Insurance Policies are not varied to the detriment of the Company, cancelled or allowed to lapse.
- (h) The Contractor must ensure that its Sub-contractors have the benefit of or effect and maintain insurances equivalent to the Contractor's Insurance Policies under this Contract in respect of the scope of the Sub-contract.

15. Local Suppliers

- 15.1 The Contractor must, in the performance of this Contract, use personnel, suppliers and manufacturers available locally or if not available locally then otherwise available within the Country, except in those cases where the Contractor can demonstrate it is not possible to do so (taking into account price, quality, delivery and service) or not consistent with internationally accepted Standards and codes. This includes:
- (a) giving local personnel, suppliers and manufacturers a fair and reasonable opportunity to tender or quote; and
 - (b) giving preference to personnel, suppliers and manufacturers in the following order:
 - (i) those available locally;
 - (ii) those available within the Country;
 - (iii) those tenders, arrangements or proposals that include local or Country based participation;
 - (iv) all others.
- 15.2 Except as otherwise agreed by the Company Representative , the Contractor must include in any Sub-contract the same obligations as are referred to in Sub-clause 15.1 and must report to the Company Representative concerning such Sub-contractor's implementation of that condition.
- 15.3 The Contractor must, within 1 month of the Commencement Date and at monthly intervals thereafter or such other times as nominated by the Company Representative, submit to the Company Representative in the form required by the Company Representative a report concerning the Contractor's implementation of its obligations under this Clause 15.

16. Business Integrity

- 16.1 Compliance with relevant requirements and policies
- (a) The Contractor must comply with all applicable Laws and requirements relating to its obligations under this Contract.
 - (b) It is the intent of the Parties that no payments or transfers of value will be made which have the purpose or effect of public or commercial bribery, or acceptance of or acquiescence in, extortion, kickbacks, or other unlawful or improper means of obtaining business.
 - (c) The Contractor represents and warrants that it has not offered, paid, promised to pay, authorised the payment of or transferred money or anything of value to any Person (including a government official or private individual or enterprise) to secure any improper advantage or benefit in relation to the matters contemplated by the Contract, either directly or indirectly through a third party.

- (d) The Contractor must not directly or indirectly offer, pay, promise, give, authorise, solicit or accept any bribe or other undue advantage (of whatever nature or amount, including facilitation payments) to be made to or received from any Person (including a government official, private individual or enterprise) in order to obtain, retain or direct business or to influence or secure any other improper advantage or benefit in connection with the Contract.
- (e) The Contractor has not and will not violate Anti-Corruption Laws or engage in any conduct that would have violated the same had such conduct occurred in the jurisdiction in which such Laws apply in connection with the Contract. The Contractor must immediately notify the Company if any Person approaches the Contractor for the purpose of any bribery or other corrupt activity concerning the Company or the Rio Tinto Group.
- (f) The Contractor represents that it is familiar with the Rio Tinto Business Practices and Standards.
- (g) The Contractor covenants that should the Company notify it of any concerns that there has been a breach of the provisions of this Sub-clause 16.1, it must cooperate in good faith with the Company or the Rio Tinto Group in determining whether such a breach has occurred. If the Company or the Rio Tinto Group determines in its sole discretion that there has been such a breach or that the Contractor has taken any action that would create a material risk of liability for the Company or the Rio Tinto Group under any applicable Law, it may treat the breach as a breach that is not capable of remedy and to exercise any rights it may have under this Contract upon the occurrence of the breach that is not capable of remedy, but without regard to any waiting periods or cure periods specified in this Contract.
- (h) The Contractor must require its Personnel to agree to and comply with contractual provisions substantially identical to those contained in this Sub-clause 16.1.
- (i) The Contractor must, on request by the Company or the Rio Tinto Group from time to time, confirm in writing that it has complied with its obligations under this Sub-clause 16.1 and provide any information requested by the Company or the Rio Tinto Group to have such access to the Contractor's books, accounts and records (and to take copies thereof) as necessary in order to verify compliance with provisions of this Contract.

16.2 Audit Rights

- (a) The Contractor must allow the Company, the Rio Tinto Group and any auditors or other advisers of the Company or the Rio Tinto Group to access any of the Contractor's premises, Personnel and relevant records as may be required in order to:
 - (i) undertake verification that the Contractor did not, before the Commencement Date, engage in any conduct that may constitute a contravention of any Anti-Corruption Law or Rio Tinto Business Practices and Standards in relation to the making of this Contract;
 - (ii) undertake verification that the Works are being performed and all obligations of the Contractor are being performed in accordance with this Contract;
 - (iii) investigate any suspected or alleged contravention of any Anti-Corruption Law; or
 - (iv) fulfil any legally enforceable request by any Governmental Authority.
- (b) The Contractor must provide the Company or the Rio Tinto Group (and their auditors and other advisers) with all reasonable cooperation, access and assistance in relation to any audit. The Company, the Rio Tinto Group and their third party representatives

will have the right to immediately access and take copies of any records and any other information held at the Contractor's premises and to meet with the Contractor's Personnel to audit the Contractor's compliance with its obligations under this Contract. The Contractor must give all necessary assistance to the conduct of such audit during the term of this Contract and for a period of 3 years after termination or the Final Completion.

16.3 Conflicts

- (a) The Contractor represents and warrants that:
 - (i) it does not have any direct or indirect interests that conflict, or possibly may conflict, with the interests of the Company or the Rio Tinto Group; and
 - (ii) it will avoid a situation in which it can have a direct or indirect interest that conflicts, or possibly may conflict, with the interests of the Company or the Rio Tinto Group.
- (b) The Contractor must promptly notify the Company if, at any time during the term of this Contract, its circumstances, knowledge or awareness changes such that it would not be able to repeat the warranties set out in this Sub-clause 16.3 at the relevant time.
- (c) If the Contractor is not able to repeat the warranties set out in this Sub-clause 16.3 at any time this will constitute a breach of this Contract and the Company will be entitled to terminate with immediate effect and without regard to any waiting periods or cure periods specified in the Contract. The Contractor will not be entitled to claim compensation or any further remuneration.

17. Termination and Default

17.1 Contractor default

- (a) If the Contractor breaches this Contract:
 - (i) the Company Representative or the Company may send to the Contractor a Default Notice requiring the Contractor to remedy the breach; or
 - (ii) if, in the Company's or the Company Representative's opinion, the breach is not capable of remedy, the Company may, forthwith terminate this Contract on giving notice to the Contractor.
- (b) If the Contractor fails to:
 - (i) remedy the breach in a proper manner satisfactory to the Company within 10 Business Days of the Default Notice;
 - (ii) provide adequate assurance (in the opinion of the Company or the Company Representative) within 10 Business Days of the Default Notice that the default will be remedied within a reasonable time; or
 - (iii) remedy the breach within a reasonable time after providing such assurances, then the Company may on giving notice to the Contractor:
 - (iv) forthwith terminate the whole or any part of this Contract; or
 - (v) suspend payment under this Contract until the breach has been remedied.

17.2 Insolvency

- (a) If an Insolvency Event occurs, the Company may terminate this Contract immediately on notice to the Contractor or to any other Person in whom the rights and obligations under this Contract may have become vested.

- (b) The Contractor must give immediate notice to the Company of an Insolvency Event if one occurs.

17.3 Termination for convenience

In addition to any other rights the Company has under this Contract, the Company may at any time, in its absolute discretion including for the purposes of having the subject matter of this Contract performed by itself or another contractor, terminate this Contract in whole or in part by giving the Contractor not less than three Business Days' notice of its intention to do so. If the Company purports to terminate under any other provision of this Contract and it is subsequently determined that the Company was not entitled to do so, such termination will be deemed to be a termination under this Sub-clause 17.3 and the Consequences of Termination Provisions will apply accordingly.

17.4 Company default

- (a) If the Company fails to make a payment which is due to the Contractor under this Contract, and in respect of which:
 - (i) the Company is not entitled, whether under this Contract or otherwise, to suspend, withhold or set off; and
 - (ii) there is no Dispute as to the Company's liability to pay,the Contractor may give a Default Notice to the Company stating the intention of the Contractor to terminate this Contract under this Sub-clause 17.4 if the Company fails to make payment within 30 Business Days of the Default Notice.
- (b) If the Company fails to make the payments referred to within 30 Business Days of the Default Notice without just cause, the Contractor may by notice to the Company:
 - (i) forthwith terminate this Contract; or
 - (ii) suspend performance of this Contract notwithstanding any provisions to the contrary contained in this Contract.

17.5 Effect of termination

- (a) In the event of either Party giving a notice of termination in accordance with this Clause 17 or 18, this Contract will terminate on the date that the notice is received or such later date as is specified in the notice.
- (b) No action taken by the Company under this Clause 17 will limit the rights, remedies, powers, authorities, discretions, accrued Liabilities and accrued obligations of the Parties (all of which will continue in full force and effect as if there had been no such termination).

17.6 Sole Termination Rights

The Parties' rights to terminate are limited to those expressly set out in this Contract and all other termination rights are excluded.

18. **Dispute Resolution**

18.1 If at any time there is any Dispute, then the Representatives must, as a condition precedent to the commencement of any proceedings in respect of the Dispute, confer in an endeavour to settle such Dispute.

18.2 Notwithstanding the existence of any Dispute, the Parties must continue to perform all of their obligations under this Contract without prejudice to their position in respect of any Dispute.

18.3 Representatives to seek resolution

If the Representatives are unable to resolve the Dispute following the conferral process referred to in Sub-clause 18.1, either Party may, following the conclusion of the conferral

process, give to the other Party a notice specifying the Dispute and requiring its resolution under this Sub-clause 18.3. Thereafter, the Dispute will be referred to a senior manager of each Party for resolution.

18.4 Mediation

If the Company and the Contractor are unable to resolve the Dispute following the conferral process referred to in Sub-clause 18.3, either Party may, following the conclusion of the conferral process, by written notice to the other Party (the "**Mediation Notice**") submit the Dispute to mediation. Neither Party may serve a Mediation Notice to the other Party for a period of 20 Business Days (or within such other period as the Parties may agree in writing) following the delivery of the notice referred to in Sub-clause 18.3.

18.5 Arbitration

If the Dispute has not been settled pursuant to Sub-clause 18.4, within 50 Business Days following the date of the Mediation Notice (or within such other period as the Parties may agree in writing), either Party may refer the Dispute to be finally resolved by arbitration in accordance with the SIAC Arbitration Rules in force at that time, which rules will be deemed to be incorporated into this Contract by reference in this Sub-clause 18.5. The arbitral tribunal will consist of three arbitrators, with one to be appointed by each Party and the chairperson to be chosen by the two Party appointed arbitrators. The seat of the arbitration will be Singapore and the language of the arbitration will be English.

19. **Accounts and Records**

19.1 The Contractor must keep for a period of not less than 12 months after the end of the Term, a complete set of books, accounts and records in accordance with good and accepted accounting principles showing all its expenditure under this Contract and all supporting information on an open book basis.

19.2 At any time until 12 months after the end of the Term, the Company or its nominees have the right to inspect and verify the accounts and records referred to in Sub-clause 19.1 and the Contractor must give the Company proper opportunity so to inspect and verify together with proper facilities for such inspection and verification.

20. **Notices**

20.1 All Communications must be made in writing in English.

20.2 The Communications must be:

- (a) attached to an email, delivered by courier or delivered personally, in each case, to the number or address specified in the Agreement Schedule; or
- (b) delivered by hand to the other Party's Representative.

20.3 The Communications will be deemed to have been received if delivered by courier, delivered personally or electronically as an email attachment:

- (a) if it is transmitted or delivered by 5.00 pm (at the place of receipt) on a Business Day – on that day; or
- (b) otherwise, on the following Business Day.

20.4 Either Party may from time to time by written notice substitute a new address or email address for any of the addresses or email addresses in the Order Form.

21. **Indemnity**

21.1 The Contractor indemnifies the Company and its Personnel against all Liabilities caused by:

- (a) any breach by the Contractor or its Personnel of any of the Contractor's obligations (including any warranty) under this Contract; or
- (b) any illness, injury or death of any person, or any loss or destruction of or damage to any property which is caused by the Contractor or its Personnel.

21.2 Each indemnity in this Contract is a continuing obligation separate and independent from the Contractor's other obligations.

21.3 The Contractor must not bring any Claim arising out of or connected with this Contract or its subject matter against any of the Company's Personnel.

22. **Governing Law**

22.1 The Contract is governed by the Laws of England.

22.2 The Parties:

- (a) agree that the choice of governing law set out in Sub-clause 22.1 is a genuine choice, which has been freely made by each of the Parties; and
- (b) shall be deemed to have taken such independent legal or other advice, prior to the execution of this Contract, as may be necessary in the circumstances, in order to satisfy themselves as to the appropriateness of the choice of governing law set out in Sub-clause 22.1.

22.3 Where this Contract is executed in both English and Mongolian language versions, if there is any discrepancy between Mongolian and English language versions of this Contract, then the English version shall prevail.

23. **Third Party Rights**

23.1 Subject to Sub-clause 23.2, no provision of this Contract is intended to confer a benefit on, or be enforceable by, any Person who is not a party to this Contract, and no Person who is not a Party to this Contract shall have any rights under either the Contracts (Rights of Third Parties) Act 1999 (UK) or the Civil Code.

23.2 The Company's Personnel may enforce all clauses intended to be for their benefit including Clause 21.

24. **Waiver and Amendment**

24.1 The waiver or relaxation partly or wholly of the terms of this Contract will:

- (a) be valid only if in writing and signed by the Company;
- (b) apply to a particular occasion only;
- (c) not be continuing unless expressed to be so; and
- (d) not constitute a waiver or relaxation of any other condition or term.

24.2 Amendments to this Contract will only be valid if made in writing.

25. **Entire Agreement**

The Contract, as amended from time to time in accordance with its provisions, represents the entire agreement between the Parties and supersedes all prior arrangements whether written or oral and all letters of intent, notices of award, purchase orders, understandings, representations and documents (if any) including any tender in relation to the subject matter of this Contract or any performance given prior to the Date of Agreement.

26. Severance

- 26.1 Any provision of this Contract which is prohibited or unenforceable in any jurisdiction will be read as amended and such additional provisions will be implied so as to give effect to the intent of the Parties and the enforcement of the same to the maximum extent possible.
- 26.2 In countries where perpetual obligations or licences are not permitted, licences and obligations granted under this Contract that are expressed to be perpetual will be for the maximum term permitted by Law in that country and perpetual elsewhere.

27. Financing Arrangements

27.1 Financing Assistance

The Contractor must provide documents and other assistance as the Company may request in connection with the financing of the Project.

27.2 Direct Agreement

If required by the Company, the Contractor must enter into, and if required by the Funders, must procure that the Guarantor also enters into:

- (a) a direct agreement in the form required by the Funders; and/or
- (b) any other document which is requested by the Funders.

27.3 Interface with Funders

- (a) The Contractor must, when requested to do so by the Company, provide information to and co-operate with the Funders and the Funders' representatives and agents.
- (b) The Company must co-ordinate and is responsible for all interfaces with the Funders and the Funders' representatives and agents.

PART B. Purchase General Conditions

28. Works

- 28.1 The Contractor warrants that the Works and each element of the Works (including the Goods):
- (a) will be fit for the purpose for which the Works is required and will otherwise comply with this Contract;
 - (b) will comply with applicable Standards;
 - (c) will have and will satisfy all necessary licences, permissions and/or approvals in accordance with all applicable Laws, including the Law of Mongolia on Construction and the Law of Mongolia on Licensing of Business Activities;
 - (d) will comply with applicable Laws; and
 - (e) will be performed to the highest standard of care, skill and diligence that would normally be expected of a reputable and competent Person carrying out services similar to the Works.
- 28.2 The Contractor must proceed with due diligence and complete the Works by the Completion Date.
- 28.3 The Contractor warrants that it has good and marketable title to the Goods.
- 28.4 The Contractor must obtain for the benefit of the Company and its Personnel all Trade Warranties and provide them to the Company prior to practical completion.

29. Warranty

- 29.1 The Contractor warrants the Works and each part of the Works against any defect under normal working conditions for a period of 12 months from the later of the Completion Date or termination of this Contract.
- 29.2 During the Term and the above period, the Contractor, at its own expense, will make good or replace (as the case may be) any defective Works, so that it is in a proper working condition as quickly as possible, and the Contractor will be responsible for any damage to other parts of the Works or the property of the Company which may be caused by the defect or by the making good or replacement of the defective Works.
- 29.3 If the Contractor fails to remedy the defect and any direct or consequential damage within a reasonable period of receiving written notice from the Company to do so, to the satisfaction of the Company, the Company may, without limiting any other right the Company may have against the Contractor in respect of the defect:
- (a) return any defective Works to the Contractor at the Contractor's expense;
 - (b) treat the failure to remedy the defect as a breach under Clause 17; and/or
 - (c) remedy such defect itself at the Contractor's risk and expense.
- 29.4 If the Works is returned under Sub-clause 29.3(a), the Contractor must reimburse the Company for any amounts paid to the Contractor pursuant to an invoice or otherwise in respect of the returned Works.
- 29.5 The rectification of any defect or breach by the Contractor must be performed at the Site unless the Company agrees otherwise.

30. Inspection and Testing

- 30.1 The Company has the right to inspect or test any part of the Works at any time and any Goods whether or not they are on Site.

- 30.2 Any inspection or test carried out pursuant to this Clause 30 does not relieve the Contractor from any of its responsibilities and obligations under this Contract in relation to the provision of the Works.
- 30.3 The exercise of the Company's rights set out in this Clause 30 will be without prejudice to any other rights and remedies which the Company may have in relation to those Works.

31. **Delivery**

- 31.1 If the performance of this Contract requires the Contractor to transport Goods to or from the Site, unless advised otherwise by the Company in writing, the Contractor will maintain insurance covering the loss of or damage to the Goods during transit, regardless of whether the Company has paid for those Goods. Such insurance must note the Company as a party insured under the policy.
- 31.2 The Contractor must promptly notify the Company Representative of the date of despatch of any Goods manufactured off the Site and its estimated date of arrival at the Site.
- 31.3 The Contractor must not bring or have delivered to the Site any Goods unless it has first received the Company Representative's approval. Approval may be given on such terms and conditions as the Company Representative may see fit.
- 31.4 Unless otherwise specified, the Contractor will be responsible for the packing, transporting and unloading of all Goods delivered to the Site (and must comply with the requirements set out in Appendix E), whether supplied by or to the order of the Contractor or the Company.
- 31.5 If this Contract specifies that the Company will arrange transport of the Goods, the Contractor must provide the Company Representative with full details of those Goods ready for despatch in sufficient time for transport to be arranged.
- 31.6 The Contractor must indemnify the Company and its Personnel for any Liabilities caused by any inaccuracy or incompleteness of any import application it prepares or any information it provides for the purposes of an import application to be prepared by the Company or the Company's Personnel.

32. **Property and Risk**

- 32.1 Property in, and ownership of, the Works or any part of the Works will pass to the Company on the earlier of:
- (a) payment for the Works (and, if part payment, only to the extent of the value of the part payment);
 - (b) in respect of Goods supplied from outside of Mongolia, at the point of dispatch outside of Mongolia;
 - (c) in respect of Goods supplied from within Mongolia, at the time the Goods enter the Site; or
 - (d) incorporation of any part of the Works with any Works or other property already owned by the Company.
- 32.2 Notwithstanding Sub-clause 32.1, the risk in the Works, regardless of ownership, will remain with the Contractor until acceptance of the Works by the Company.
- 32.3 The Contractor waives any lien it may have over the Goods which are delivered to the Company pursuant to this Contract, and the Contractor must obtain a similar waiver from any relevant Sub-contractor.

33. **Consequences of Termination**

- 33.1 In the event of either Party giving a notice of termination in accordance with Clause 17, the Contractor must:

- (a) immediately cease performance of the terminated Works or part of the Works subject to any Directions made by the Company Representative or Company;
- (b) comply in all respects with any Directions contained in the termination notice or otherwise given by the Company or Company Representative;
- (c) immediately take all possible action to mitigate any Liabilities incurred by it as a result of such termination;
- (d) within five Business Days after the termination notice, provide the Company with a detailed report in such form as the Company Representative may require in relation to the Works performed and Goods supplied up to and including the date of the termination notice;
- (e) return to the Company any items issued to the Contractor by the Company during the Term as soon as reasonably practicable; and
- (f) provide the Company with any Documentation (whether complete or incomplete) prepared by or on behalf of the Contractor.

33.2 If this Contract is terminated under Sub-clauses 17.1 or 17.2:

- (a) the Company Representative will certify its reasonable estimate or the actual amount of:
 - (i) the cost of carrying out and completing the balance of the Works;
 - (ii) all payments made to the Contractor;
 - (iii) outstanding Backcharge Amounts; and
 - (iv) all liabilities and additional costs arising in connection with all prior breaches (including delay) by the Contractor or the termination; less
 - (v) the Contract Price or where not a lump sum, the Company Representative's reasonable estimate of the Contract Price had the Works been completed in accordance with this Contract; and
- (b) if the amount certified under Sub-clause 33.2(a) is positive, it will be a debt due by the Contractor to the Company which may be deducted from any amounts due or becoming due to the Contractor.

33.3 If this Contract is terminated under Sub-clauses 17.3 or 17.4 the Contractor shall be entitled to recover from the Company (less any amounts previously paid and subject to any rights which the Company may have to suspend, withhold, or set off payments):

- (a) the Termination Value of all parts of the Works performed in accordance with this Contract at the date of termination; and
- (b) the cost of any Goods and/or materials ordered in connection with the performance of the Works which have been delivered to the Contractor, or for which the Contractor is liable to accept delivery provided that such Goods and/or materials become the property of the Company;
- (c) the transportation costs incurred by the Contractor in removing its Personnel and property from the Site (which, for the avoidance of doubt, shall not include any costs incurred by the Contractor in terminating the employment of any of its employees as a result of the contract being terminated in accordance with either Sub-clauses 17.3 or 17.4);
- (d) the cost of complying with any Directions of the Company Representative or Company on termination; and
- (e) any cancellation fee(s) payable by the Contractor to its Sub-contractors in accordance with the terms of any sub-contract which has been entered into by the Contractor,

provided that all such costs are reasonable and the Contractor has taken all steps to mitigate these amounts.

- 33.4 The Contractor will not be entitled to recover any loss of profits arising as a result of termination.

PART C. Site Provisions

34. Site

34.1 The Contractor must comply with all Site rules notified to the Contractor by the Company Representative, including any site specific requirements set out in Appendix A.

34.2 Unless otherwise expressly specified in this Contract, the Contractor is responsible for the cost of transporting its Personnel to and from the Site.

34.3 In the event of any breach of Sub-clause 3.3(c) or Sub-clause 34.1, the Company may:

- (a) require the Contractor and/or any of its Personnel to leave the Site immediately; and
- (b) require the Contractor and/or any of its Personnel to remove any material or substance from the Site at the Contractor's cost,

and the Contractor must ensure such request is immediately complied with and take all possible action to ensure the safety of all Personnel.

34.4 The Contractor must ensure that all guidance, information and safety instructions must be prepared in both English and Mongolian along with any relevant foreign language(s) (whenever it is necessary) and comply with the requirements under the Law of Mongolia on Mongolian Language.

35. Access

35.1 The Company will give the Contractor access to the Site as specified in the Order Form or as otherwise agreed in writing.

36. Others on Site

36.1 The Contractor will not have exclusive possession of the Site, but only access to the areas allocated by the Company Representative as are necessary, in the opinion of the Company Representative, to enable it to perform the Works.

36.2 The Contractor must co-operate with and not impede the Company, its Personnel or any other contractors and suppliers (whether employed or engaged by the Company or not) and give them any information or data necessary or expedient to ensure proper performance of their respective work.

36.3 The Contractor is not entitled to any Claim as a result of any interference from other contractors and suppliers (whether employed or engaged by the Company or not).

37. Health, Safety, Environment and Community

37.1 The Contractor is responsible for the health and safety of its Personnel.

37.2 The Contractor must submit proposed HSEC plans for review by the Company Representative within 10 Business Days of a request by the Company Representative to do so and in any case prior to commencing the Works. The Contractor must ensure that all HSEC plans comply with all Company Rules, all Laws and the Model Regulation (Plan) prepared by the Ministry of Labour and Health of Mongolia in accordance with the Law of Mongolia on OSH.

37.3 The Company Representative will review the proposed HSEC plans and provide the Contractor with approval of the HSEC plan or any request for amendments.

37.4 The Contractor must resubmit the proposed HSEC plan incorporating amendments requested by the Company Representative within 3 Business Days of receiving the Company Representative's comments. The procedure in Sub-clause 37.3 and this Sub-clause will continue to apply until the HSEC plan is approved by the Company Representative.

- 37.5 The Company Representative may suspend performance of the Works or prevent access to the Site until the HSEC plans have been approved.
- 37.6 The Company Representative may at any time request the Contractor to amend the approved HSEC plans, in which case the procedure in Sub-clauses 37.2, 37.3 and 37.4 will apply.
- 37.7 The Contractor must comply, and ensure all Contractor's Personnel on Site comply with the current approved HSEC plans and with all applicable Laws, as they relate to HSEC.
- 37.8 The Contractor must not, as a result of any act, omission or default of the Contractor or its Personnel, cause the Company to breach any obligation which the Company has specifically assumed under any applicable Law in relation to HSEC.
- 37.9 The Contractor indemnifies the Company and its Personnel against any losses, liabilities, damages, costs (including legal fees) and expenses incurred or awarded as a result of any breach of this Clause 37 and/or any breach of applicable Laws (in so far as they relate to HSEC) by the Contractor or any of its Personnel.
- 37.10 The Contractor must at its own cost ensure all Contractor's Personnel receive appropriate HSEC training that meets the requirements of HSEC regulation(s) issued by the Ministry of Labour and Health of Mongolia.
- 37.11 The Contractor must ensure that it spends the minimum amount required under the Law of Mongolia on OSH on prevention measures and activities in relation to HSEC.
- 37.12 The Contractor must comply with the fire safety requirements and obligations stated under the Law of Mongolia on Fire Safety.

PART D. Other Provisions

38. Contracting Entity

38.1 The Parties acknowledge that the Company enters into this Contract in its own right and for its own benefit and also in its capacity as trustee for and for the benefit of the End Users and this intent and trusteeship shall not in any way be limited by any rights granted directly to such End Users under this Contract or otherwise.

38.2 Where ownership of anything is granted to, or any other rights are held by, the Company under this Contract, the Company shall hold the same in its own right or in its capacity as trustee for the relevant End Users, in each case to the extent appropriate having regard to the interests of the Company and the End Users in the Project and the subject matter of this Contract.

39. Survival

39.1 Any provision of this Contract that expressly or by implication is intended to come into or continue in force on or after termination of this Contract will remain in full force and effect.