

**DATED**

**June 20, 2014**

(1) THE MINISTRY OF ECONOMIC DEVELOPMENT OF MONGOLIA FOR AND ON BEHALF  
OF THE GOVERNMENT OF MONGOLIA

**- and -**

(2) FIFTH COMBINED HEAT AND POWER PLANT LLC

**CONCESSION AGREEMENT**

relating to the design, financing, build, operation, maintenance and transfer of  
a 450 MW combined heat and power cogeneration facility known as CHP5,  
at Ulaanbaatar, Mongolia

## CONTENTS

1.	DEFINITIONS AND INTERPRETATION .....	4
2.	TERM AND CONDITIONS PRECEDENT .....	17
3.	IMPLEMENTATION OF THE PROJECT .....	20
4.	CONCESSIONAIRE AUTHORISATIONS .....	23
5.	CONSTRUCTION, OPERATION AND MAINTENANCE .....	24
6.	LIABILITY AND INDEMNIFICATION .....	29
7.	INSURANCE.....	33
8.	GOVERNMENT SUPPORT AND ASSISTANCE .....	36
9.	TAXES, CUSTOM DUTIES AND CURRENCY .....	38
10.	ASSIGNMENT OF CHP5 FINANCING DOCUMENTS AND SECURITY .....	39
11.	RESTRICTIONS ON ACQUISITIONS AND TRANSFERS OF SHARES AND ASSETS .	41
12.	FORCE MAJEURE .....	42
13.	TERMINATION.....	45
14.	RIGHTS AND OBLIGATIONS OF PARTIES UPON TERMINATION.....	50
15.	RESOLUTION OF DISPUTES.....	55
16.	REPRESENTATIONS AND WARRANTIES.....	59
17.	MISCELLANEOUS PROVISIONS.....	60

**THIS CONCESSION AGREEMENT ("Agreement")** is made on

... June 2014

**BY AND BETWEEN:**

- (1) **THE MINISTRY OF ECONOMIC DEVELOPMENT OF MONGOLIA** for and on behalf of **THE GOVERNMENT OF MONGOLIA ("GOVERNMENT")**; and
- (2) **FIFTH COMBINED HEAT AND POWER PLANT LLC**, a limited liability company incorporated under the Laws of Mongolia, with its principal office at 8F, Naiman Zovkhis Building, Seoul Street 21, Ulaanbaatar 14251, Mongolia ("**Concessionaire**").

**RECITALS:**

- A. The Government is encouraging private investment in the heating and electric power sector in Mongolia and in pursuit of this aim, the Government included the CHP5 Project in the list of concession items annexed to Government Resolution 198 of 2010.
- B. In September 2011, Government acting through the State Property Committee ("**SPC**") published a pre-qualification document inviting eligible persons to qualify for participation in a competitive bidding process for the concession to:
  - (i) design, finance, construct, operate and maintain the Plant;
  - (ii) undertake all activities required for the implementation of the CHP5 Project; and
  - (iii) transfer the Plant back to Government at the end of the Term, which is the twenty-fifth (25<sup>th</sup>) anniversary of the Commercial Operations Date of the Plant,together, the "**Concession**".
- C. In December 2011, the Government (acting through the SPC) issued a request for proposal inviting pre-qualified persons to submit their proposal for the Concession, such request for proposal ("**Request for Proposal**") stating that Government's aim is for the CHP5 Project to:
  - (i) meet the primary objectives of providing a cost efficient and reliable long term source of heat and power to meet the growing requirements of Ulaanbaatar;
  - (ii) be developed to the highest international standards based upon a bankable Public-Private Partnership project structure that ensures the generation of the required power and heat to agreed standards throughout the Term; and
  - (iii) provide a value-for-money solution.
- D. In response to the Request for Proposal, a consortium comprising International Power plc, Sojitz Corporation, POSCO ENERGY Co. Ltd. and Newcom LLC (the "**Consortium**" and each a "**Member of the Consortium**") submitted a proposal dated 7 May 2012 which included a technical proposal, a financial proposal and proposed amendments to the drafts of the Concession Agreement and the other CHP5 Project Agreements included by the Government in the Request for Proposal.
- E. The Government evaluated the proposals received from all bidders (including the Consortium's proposal) and on 5 July 2012, the Government selected the Consortium as the preferred bidder.

- F. From September 2012, the powers and responsibilities of the SPC with respect to the CHP5 Project were transferred to a joint working group which was established by the Ministry of Economic Development of Mongolia ("**MED**") and the Ministry of Energy to take responsibility, on behalf of MED and the Ministry of Energy, for the process of selecting the Concessionaire and finalising this Agreement and the other CHP5 Project Agreements.
- G. Following the decision to change the location of the site for the Project to the Site (as stated in the Government's Resolution 191 relating to the Government Cabinet meeting held on 22 December 2012), the Government sought clarifications on the proposals submitted by the bidders on 7 May 2012, and accordingly on 25 January 2013, the Government invited such bidders to each submit a revised proposal by way of a best and final offer which was submitted by the Consortium on 4 February 2013.
- H. The Government and the Consortium met on 5 February 2013 to discuss the Consortium's proposal set out in the Consortium's best and final offer and recorded the discussions in the Minutes of Meeting.
- I. The MED, the Ministry of Energy and the Consortium signed a memorandum of understanding on 26 August 2013 ("**MOU**") which, based on the Consortium's best and final offer dated 4 February 2013 and the Minutes of Meeting, confirms the Consortium's selection as the preferred bidder for the Concession.
- J. Following such selection as the preferred bidder, the Consortium incorporated *Fifth Combined Heat And Power Plant LLC* as the special purpose vehicle to enter into the agreements relating to the CHP5 Project (including this Agreement) in the capacity of Concessionaire and on the date of this Agreement, the initial shareholders of the Concessionaire are:
- (i) GDF Suez Energy Asia, Turkey and South Africa B.V., an Affiliate of International Power Ltd. (previously known as "*International Power plc*");
  - (ii) Blue Horizon UB Energy B.V., a wholly owned subsidiary of Sojitz Corporation;
  - (iii) POSCO ENERGY Co Ltd.; and
  - (iv) Newcom LLC,
- each an "**Initial Shareholder**".
- K. Therefore, the:
- (i) Government grants the Concessionaire the Concession and undertakes to provide certain support to the Concessionaire; and
  - (ii) Concessionaire undertakes to carry out the CHP5 Project,
- on the terms and conditions set out in this Agreement.
- L. [Redacted information]

## **IT IS AGREED:**

### **1. DEFINITIONS AND INTERPRETATION**

#### **1.1 Definitions**

The following capitalised terms when used in this Agreement including the Recitals above shall, unless the context otherwise requires, have the meanings stated below:

**"Abandonment"** means the voluntary cessation of construction or operation of the Plant (or a substantial part thereof) and the withdrawal of all or substantially all personnel (other than in accordance with the EPC Contract and/or Prudent Industry Practices) by the Concessionaire from the Site for reasons other than:

- (a) Power Purchaser Event of Default;
- (b) Government Event of Default ;
- (c) Heat Purchaser Event of Default;
- (d) Force Majeure Event;
- (e) termination of the Land Use Agreement by the counterparty of the Concessionaire under the Land Use Agreement;
- (f) termination of the Water Purchase Agreement by the Water Supplier; or
- (g) termination of any Coal Supply Agreement by the relevant Coal Supplier;

**"Additional Facilities"** means any facilities that the Parties mutually agree may have to be provided by the Concessionaire and/or included as part of the Plant, which may include:

- (a) facilities to protect the Site against flooding (including dams, dikes, diverting channels);
- (b) facilities to compensate material stability issues on the Site impacting on the foundations of the Plant (including works to compensate permafrost conditions);
- (c) change in technology used for the Plant cooling systems (including a change to air cooled condensers instead of cooling towers due to the risk of insufficient water available at the Site);
- (d) interconnection facilities (either air insulated or gas insulated switchyard);
- (e) Plant Ash handling facilities for transportation of such ash by railway;
- (f) remote Plant Ash yard and related facilities (including unloading and water treatment facilities);
- (g) main recirculation pumps (district heating side) and (if practicable) make-up water systems for the Heat Network; and
- (h) railway interconnection facilities at and immediately outside the Plant boundaries;

**"Affiliate"** means any Person that directly or indirectly through one or more intermediaries, Controls, or is Controlled by, or is under common Control with, another Person;

**"Agreement"** means this Concession Agreement, together with all clauses, recitals and schedules, dated as of the date specified on the first page above, as may be amended by the Parties from time to time in accordance with this Agreement;

**"Available Capacity"** has the meaning given to it in the Power Purchase Agreement;

**"Back-Up Metering System"** has the meaning given to it in the Power Purchase Agreement;

**"Baganuur Mine"** means a coal mine located approximately 130 kilometres east of Ulaanbaatar in Baganuur District in Ulaanbaatar, Mongolia;

**"Budget Law"** means the Budget Law of Mongolia of 23 December 2011;

**"Business Day"** means any Day on which banks are open for business in Mongolia other than a Saturday or Sunday;

**"Capacity Payments"** has the meaning given to it in the Power Purchase Agreement;

**"Capacity Test"** has the meaning given to it in the Power Purchase Agreement;

**"Change in Law"** means:

- (a) adoption, promulgation, repeal, modification or interpretation after the Cut-off Date by any Public Sector Entity of any Law of Mongolia (including a final, binding and non-appealable decision of any Public Sector Entity) including any change or amendment to the (i) Grid Code in existence at the Cut-off Date and (ii) ERC Waiver;
- (b) imposition by a Relevant Authority of any term or condition in connection with the issuance, renewal, extension, replacement or modification of any Concessionaire Authorisation after the Cut-off Date; or
- (c) imposition by a Relevant Authority of any additional Concessionaire Authorisations not required under the Laws of Mongolia as of the Cut-off Date,

that establishes either a change in cost or revenue due to a requirement for the activities required for the implementation of the CHP5 Project that is more or less restrictive than the most, or least restrictive requirements:

- (i) in effect as of the Cut-off Date;
- (ii) specified in any applications, or other documents filed in connection with such applications, for any Concessionaire Authorisation filed by the Concessionaire on or before the Commercial Operations Date for Unit 1; or
- (iii) agreed to by the Concessionaire in any CHP5 Project Agreement,

provided that:

- (A) any change to the tariff formulae under the Power Purchase Agreement, the Heat Purchase Agreement and this Agreement for the sale of electrical energy (including Available Capacity and Net Electrical Output) and heat (including Heat Output) imposed by any Public Sector Entity (including the ERC) shall in any event be deemed to be a Change in Law;

- (B) the adoption or imposition of any Laws of Mongolia, condition with respect to a Concessionaire Authorisation or additional Concessionaire Authorisation described in items (a), (b) and (c) above that is foreseeable at the Cut-off Date and set out in Schedule 13, shall not be a Change in Law; and
- (C) the introduction of the Investment Law dated 3 October 2013 shall not be a Change in Law;

**"CHP Mode"** has the meaning given to it in the Power Purchase Agreement;

**"CHP5 Financing Documents"** means loan and/or facility agreements, all related notes, indentures, hedging agreements, security agreements, guarantees and documents, agreements or other instruments providing security to the Lenders (including consents and acknowledgements of assignment and tripartite financial agreements in respect of documents assigned as security to the Lenders and other security agreements) and other documents signed or to be signed by the Concessionaire with the Lenders in relation to the CHP5 Project, including the construction and permanent financing (including any refinancing) of the Plant (or any part thereof) and implementation of the CHP5 Project, as such agreements, instruments, guarantees and documents may be amended from time to time, provided, however, that the term **"CHP5 Financing Documents"** shall not include any documents, agreements or other instruments in relation to the financing of equity, including equity bridge loan agreements;

**"CHP5 Project"** means all activities required for the development and operation of the Plant, including the:

- (a) possession of the Plant;
- (b) design, engineering, financing, refinancing, construction, procurement, permitting and testing of the Plant and Commissioning;
- (c) procurement, import, export (for repair, maintenance or refurbishment) and contracting for goods, equipment and services for the Plant;
- (d) the insuring, operation, maintenance and repair of the Plant;
- (e) the use of Coal as fuel for the Plant, the sale of Available Capacity and the generation and sale of Net Electrical Output and Net Heat Output; and
- (f) the recruitment, employment and training of staff for the Plant;

**"CHP5 Project Agreements"** means: (a) this Agreement, (b) Power Purchase Agreement, (c) Heat Purchase Agreement, (d) Water Purchase Agreement, (e) Land Use Agreement, (f) Coal Supply Agreements, (g) EPC Contract, and (h) such other agreements signed in connection with the CHP5 Project as the Parties may agree;

**"CLFME"** has the meaning given to it in Clause 12.1.1.2;

**"Closing Security"** means the unconditional, irrevocable, on-demand bank guarantee or letter of credit (and any replacement guarantee or letter of credit) in favour of the Government in a form reasonably acceptable to the Government on or before signing of this Agreement and issued by a financial institution acceptable to the Government in an amount of [*redacted information*], to secure the Concessionaire's obligation under Clause 2.2 and the Concessionaire's obligation to achieve the Effective Date and otherwise satisfy the conditions

set forth in Clause 2.2 that the Concessionaire is responsible for, by the Required Effective Date;

**"Closing Security End Date"** has the meaning given to it in Clause 3.2.1;

**"Coal"** means coal to be used by the Plant which shall be supplied by the Coal Suppliers;

**"Coal Suppliers"** means the Baganuur Mine and the Shivee-Ovoo Mine, and any other Persons the Parties agree may supply Coal to the Plant ;

**"Coal Supply Agreements"** means the agreements between the Coal Suppliers and the Concessionaire for the long term supply of Coal to be used by the Plant as approved by the Government in accordance with this Agreement and as may be amended in accordance with its terms by the parties thereto, subject to the approval of the Government;

**"Commercial Operations Date"** means, in respect of any Unit, the Day immediately following the date on which such Unit is Commissioned (which, in the case of Unit 3 shall also be the date on which the Plant is Commissioned and **"Commercial Operations Date for the Plant"** shall be construed accordingly);

**"Commercial Operations Period"** means the period beginning on the Commercial Operations Date for Unit 1 and ending on the last Day of the Term;

**"Commissioning"** means for each Unit, the undertaking of the Commissioning Tests;

**"Commissioning Tests"** has the meaning given to it in the Power Purchase Agreement;

**"Compensation Amounts"** means the compensation amounts specified in Schedule 2;

**"Concession"** has the meaning given in Recital B;

**"Concessionaire"** means the Party named at paragraph (2) on page 1 of this Agreement and its permitted successors and permitted assigns and any permitted transferee;

**"Concessionaire Authorisations"** means all approvals, consents, authorisations, notifications, concessions, acknowledgements, licences (including the Generation Licences and any construction licences), permits, decisions or similar items which is or are issued by a Relevant Authority and which the Concessionaire or any of its Contractors is required to obtain from any Relevant Authority and thereafter to continue to fulfil its obligations under this Agreement which for the avoidance of doubt shall not include the authorisations and approvals set out in Schedule 1, Part 1;

**"Concessionaire's BAFO"** means the document annexed at Schedule 1, Part 1, as amended by the Minutes of Meeting, and accepted under the MOU;

**"Concessionaire Event of Default"** has the meaning given to it in Clause 13.1;

**"Concessionaire Interconnection Facilities"** means the Concessionaire's interconnection facilities provided under the Power Purchase Agreement and the Heat Purchase Agreement;

**"Concessionaire Interconnection Works"** means the Concessionaire's interconnection works provided under the Power Purchase Agreement and the Heat Purchase Agreement;

**"Consequential Loss"** means in relation to this Agreement (including in respect of any claim made under or in connection with this Agreement), any indirect loss (including any costs, loss of production, loss of profit, loss of revenue, loss of contract, loss of goodwill, liability under



other agreements or to third parties suffered or incurred), whether or not the Party responsible knew (or ought to have known) that such indirect loss would likely be suffered;

**"Consortium"** has the meaning given in Recital D;

**"Construction Reports"** means reports to be submitted by the Concessionaire addressing the matters identified under Clause 5.3.1, together with such other matters as the Government may reasonably specify from time to time;

**"Construction Start Date"** means the date on which the Concessionaire authorises the EPC Contractor to commence the EPC Works in accordance with the EPC Contract as evidenced by a copy of the unconditional notice to proceed, such copy to be provided by the Concessionaire to the Power Purchaser;

**"Contractors"** means any of the Concessionaire's direct contractors or suppliers for the CHP5 Project and any of their direct sub-contractors integrally involved in the CHP5 Project, including the Coal Suppliers, EPC Contractor and (if any) O&M Contractor;

**"Control"** means with respect to a Person that is a corporation, the ownership, directly or indirectly, of more than fifty (50) per cent of the voting securities of such Person, and, with respect to a Person that is not a corporation, the power to direct the management or policies of such Person, whether by operation of law, by contract, or otherwise, and **"Controls"** and **"Controlled"** shall be construed accordingly;

**"Customs"** means the General Customs Authority of Mongolia and its relevant customs offices responsible for the collection of Custom Duties and the release of plant, machinery and equipment following import into or export out of Mongolia;

**"Custom Duties"** means all Taxes on or relating to the import into or export from Mongolia of plant, machinery and equipment levied by the Government;

**"Cut-off Date"** means 5 February 2013 or the latest date of agreement between the Parties made from time to time before the Effective Date in respect of any changes to the tariff set out in the Concessionaire's BAFO (or any subsequent document recording the tariff agreed between the Parties), such agreement to be the latest date of:

- (i) any amendment to this Agreement; or
- (ii) the Power Purchase Agreement or Heat Purchase Agreement (or any subsequent amendments to such agreements), which records such changes to the tariff;

**"Day"** means a period of twenty-four (24) hours, commencing at 00:00 of each day, and **"Daily"** shall be construed accordingly;

**"Delayed Payment Rate"** means the Bank of Mongolia policy rate per annum published from time to time and applicable to each day of delay plus three per cent (3%) calculated for the actual number of Days which the relevant amount remains unpaid on the basis of a three hundred and sixty five (365) day year;

**"Designated Bank Account"** shall mean the bank account in the name of the ADB Account B, Bank account number 021080245, Receiver SWIFT FRNYUS33, Beneficiary SWIFT ASDBPHMM and FEDWIRE system via Type Code 15;

**"Development Costs"** means the amount of *[redacted information]* in respect of the costs of the Government relating to the preparation of the tender for and the implementation of the

CHP Project (including the costs, fees and expenses of financial, engineering, legal and other consultants engaged directly or indirectly by the Government);

**"Dispatch"** has the meaning given to it in the Power Purchase Agreement or the Heat Purchase Agreement, as applicable;

**"Dispatched and Delivered Net Electrical Output"** has the meaning given to it in the Power Purchase Agreement;

**"Dispute"** means any dispute, disagreement or difference arising under, in connection with or relating to this Agreement, including any dispute or difference concerning the existence, legality, validity or enforceability of this Agreement or any provision hereof, or the obligations or performance of a Party under any provision hereof;

**"Dollars"** or **"\$"** and **"US\$"** means the lawful currency of the United States of America;

**"Effective Date"** has the meaning given to it in Clause 2.2.1;

**"Environmental Expert"** means a reputable environmental consulting firm selected by the Concessionaire and agreed to by the Government;

**"Environmental Liabilities"** means all Loss (including reasonable costs of investigation, testing, containment, removal, clean-up, abatement or remediation, whether or not quantified in an amount) relating to either (i) the presence in the environment of Hazardous Materials attributable to the Plant or the Site, or (ii) the performance of any obligation under any CHP5 Project Agreement, in violation of any Laws of Mongolia and/or any Environmental Standards;

**"Environmental Standards"** means, collectively, (i) World Bank Environmental Guidelines and (ii) all environmental guidelines and occupational health and safety standards promulgated by the Government or any other Public Sector Entity, including any environmental impact assessment or study and any related environmental management plan in respect of the CHP5 Project;

**"EPC Contract"** means the agreement or agreements to be signed by the Concessionaire and the EPC Contractor for the EPC Works or any part thereof as such agreement may, subject to this Agreement, be amended by the parties thereto;

**"EPC Contractor"** means POSCO Engineering & Construction Co., Limited or any other Contractor appointed by the Concessionaire and not objected to by the Government under Clause 5.8, for the carrying out of the EPC Works under the EPC Contract;

**"EPC Works"** has the meaning given to it in the Power Purchase Agreement;

**"ERC"** means the Energy Regulatory Commission of Mongolia and any successor or substitute Public Sector Entity with power and jurisdiction over the electricity and power generation and distribution sectors in Mongolia;

**"ERC Waiver"** has the meaning given to it in the Power Purchase Agreement;

**"Exchange Rate"** means [redacted information];

**"Expert"** has the meaning given to it in Clause 15.2.1;

**"Feasibility Studies"** means the feasibility studies undertaken or to be undertaken by the Concessionaire as described in the Concessionaire's BAFO and more particularly set out in Schedule 12 **Error! Reference source not found.**;

**"Force Majeure Event"** has the meaning given to it in Clause 12.1;

**"Foreign Currency"** means any legal currency other than Togrogs;

**"Generation Licences"** means the licences issued by the ERC permitting the generation of heat and electricity by the Concessionaire from the Plant in accordance with the terms and conditions of each such licence;

**"Government"** means the Government of Mongolia;

**"Government Bank Account"** shall mean the bank account in the name of the MED, Beneficiary's bank Treasury fund, Beneficiary name Ministry of Finance, Bank account number 900036409;

**"Grid Code"** has the meaning given to it in the Power Purchase Agreement;

**"Grid System"** has the meaning given to it in the Power Purchase Agreement;

**"Guaranteed Revenues"** means all payments required to be made to the Concessionaire by the Power Purchaser and the Heat Purchaser under the Power Purchase Agreement and the Heat Purchase Agreement, respectively, as and when due thereunder;

**"Hazardous Material"** means any pollutant, contaminant, solid waste, hydrocarbon product, toxic or hazardous substance or waste, or any flammable, explosive or radioactive materials, in each case regulated under or subject to any Laws of Mongolia;

**"Heat Network"** means the district heating facilities owned by the Heat Purchaser for the transmission and distribution of heat;

**"Heat Output"** has the meaning given to it in the Heat Purchase Agreement;

**"Heat Purchase Agreement"** means the Heat Purchase Agreement in the form annexed at Schedule 6 **Error! Reference source not found.**, Part 2, to be signed by the Heat Purchaser and the Concessionaire for the purchase and sale of heat generated by the Plant, as may be amended (subject to this Agreement) in accordance with its terms by the parties thereto;

**"Heat Purchaser"** means the Ulaanbaatar Heat Network State-Owned Joint Stock Company, a joint-stock company incorporated under the Laws of Mongolia, with its principal office located at Ulaanbaatar, Mongolia and its successors and permitted assigns;

**"Initial Shareholder"** has the meaning given in Recital J, and includes permitted successors, assigns, and transferees;

**"Insolvency Event"** means any of the Concessionaire, the Power Purchaser or the Heat Purchaser making a composition or arrangement with creditors or becoming bankrupt or insolvent or effecting a transfer of property to the creditors' advantage or signing a fiduciary agreement in the creditors' favour or being a company:

- (a) making a proposal for a voluntary arrangement for a composition of debts or scheme of arrangement to be approved in accordance with relevant legislation; or
- (b) having a provisional liquidator appointed; or

- (c) having a winding up order made; or
- (d) passing a resolution for voluntary winding up; or
- (e) having an administrator or administrative receiver appointed; or
- (f) having an application made for an inventory of its assets to be taken as part of, or as precursor to, any of the circumstances above; or
- (g) being unable to pay its debts;

**"Investor"** means the holder, from time to time of Ordinary Share Capital, as well as the holders of any securities that are convertible at the option of the holder into Ordinary Share Capital;

**"Land Use Agreement"** means the land use agreement in the form annexed at Schedule 6, Part 4, to be signed by the counterparty to the Concessionaire under the Land Use Agreement (as lessor) and the Concessionaire (as lessee) in respect of the Site, as may be amended by the parties thereto from time to time;

**"Lapse of Concessionaire Authorisation"** means any Concessionaire Authorisation:

- (a) ceasing to remain in full force and effect or not being renewed or replaced within the time period prescribed by the applicable Laws of Mongolia upon application in the Prescribed Form and payment of all Prescribed Fees having been properly and timely made and diligently pursued in accordance with the applicable Laws of Mongolia;
- (b) not being issued upon application in the Prescribed Form and payment of all fees required under the applicable Laws of Mongolia having been properly and timely made and diligently pursued; or
- (c) being made subject, upon renewal, amendment or otherwise, to any terms or conditions that materially and adversely affect a Party's ability to perform its obligations under any CHP5 Project Agreements notwithstanding such Party's compliance with the applicable procedural and substantive requirements of such Concessionaire Authorisation;

**"Laws of Mongolia"** means the national laws of Mongolia, international treaties ratified or acceded by Mongolia, the interpretation of laws made by the Supreme Court of Mongolia and all orders, resolutions, ordinances, rules, by-laws, regulations, procedures, guidelines, methodologies, decrees, judicial decisions, other legislative, executive or judicial normative acts, or other directives issued by any Public Sector Entity under the foregoing, in force from time to time;

**"Lenders"** means the financial institutions that are party to the CHP5 Financing Documents or subsequent financial institutions that become parties to the CHP5 Financing Documents as notified to the Government, together with their respective successors and assigns;

**"Lien"** means any mortgage, pledge, hypothecation, liens, security interests, conditional and instalment sales agreement, encumbrance, claim or charge of any kind;

**"Long Stop Date"** means *[redacted information]*;

**"Loss"** means any loss, damage, liability, payment or obligation (excluding any Consequential Loss) and all costs and expenses incurred in connection therewith (including reasonable legal fees);

**"MED"** has the meaning given in Recital F;

**"Member of the Consortium"** has the meaning given in Recital D;

**"Metering System"** has the meaning given to it in the Power Purchase Agreement;

**"Minimum Indemnification Amount"** means the amount equal to US\$200,000 (two hundred thousand United States Dollars);

**"Ministry of Justice"** means the Ministry of Justice of Mongolia;

**"Minutes of Meeting"** means the minutes of the meeting dated 5 February 2013 between the Concessionaire and the Government, annexed at Schedule 11, Part 2;

**"Month"** means a calendar month according to the Gregorian calendar, beginning at 24:00 on the last Day of the preceding month and ending at 24:00 on the last Day of that month and Monthly shall be construed accordingly;

**"MOU"** has the meaning given in Recital I;

**"MPFME"** or **"Mongolian Political Force Majeure Event"** has the meaning given to it in Clause 12.1.1.1;

**"MW"** means megawatt or one million (1,000,000) Watts;

**"Net Electrical Output"** has the meaning given to it in the Power Purchase Agreement;

**"Net Heat Output"** has the meaning given to it in the Heat Purchase Agreement;

**"Notices"** has the meaning given to it in Clause 17.1.1;

**"Notice of Intent to Terminate"** has the meaning given to it in Clause 13.3;

**"O&M Agreement"** means the agreement (if any) to be signed by the Concessionaire and the O&M Contractor for the operation and maintenance of the Plant, as may be amended (subject to this Agreement) in accordance with its terms by the parties thereto;

**"O&M Contractor"** means the Contractor (if any) appointed by the Concessionaire for the operation and maintenance of the Plant and not objected to by the Government under Clause 5.8;

**"Offtaker"** means the Power Purchaser or the Heat Purchaser, and **"Offtakers"** means both of them;

**"Ordinary Share Capital"** means any shares of the Concessionaire with voting or other rights of management and control and any securities of the Concessionaire that are convertible into such shares at the option of the holder;

**"Party"** means each of the Government and the Concessionaire, and **"Parties"** means both of them;

**"Performance Security"** means an unconditional, irrevocable and transferable on demand bank guarantee in favour of the Government, the Power Purchaser and the Heat Purchaser substantially in the form set out in Schedule 5 and which is issued by a bank or other financial institution which is reasonably acceptable to the Government, the Power Purchaser and the Heat Purchaser as security for performance of the Concessionaire's obligations under the Power Purchase Agreement, the Heat Purchase Agreement and this Agreement in the amount of [redacted information], including any replacement of such guarantee;

**"Person"** means any person, firm, company, corporation, society, government, state-owned stock company, state or agency of a state (including any Public Sector Entity), or any association or partnership (whether or not having separate legal personality) of two or more of the foregoing;

**"Plant"** means the coal-fired combined heat and power generation plant located on the Site together with the Concessionaire Interconnection Facilities having a design gross power generation capacity in Condensing Mode of approximately 450 MW (gross) comprising the three (3) Units each with an electrical generation capacity of 135 MW in CHP Mode (at the Reference Condition) and design heat supply capacity in CHP Mode of 587 MWt to be designed, financed, built, operated and maintained by the Concessionaire during the Term, whether completed or at any stage in its construction, including the design documents, all energy and heat producing equipment and auxiliary equipment, heat recovery steam generators and associated equipment, water transportation and treatment systems, the Metering System, Back-up Metering System and all spare parts and consumables (including Coal) stored at the Site, as further described in and complying with the Technical Specifications;

**"Plant Ash"** means the fly ash, bottom ash or other ash produced from the operation of the Plant (or any part thereof);

**"Power Purchase Agreement"** means the agreement in the form annexed at Schedule 6, Part 1, to be signed by the Power Purchaser and the Concessionaire for the purchase and sale of electrical energy and generating capacity from the Plant, as may be amended (subject to this Agreement) in accordance with its terms by the parties thereto;

**"Power Purchaser"** means the National Electricity Transmission Grid Joint Stock Company, a state-owned joint-stock company incorporated under the Laws of Mongolia, and any of its permitted successors and assigns;

**"Power Purchaser Interconnection Facilities"** has the meaning given to it in the Power Purchase Agreement;

**"Prescribed Fee"** means with respect to any Concessionaire Authorisation, the charge or fee, if any, prescribed by the Laws of Mongolia;

**"Prescribed Form"** means with respect to any Concessionaire Authorisation, the form, if any, (including all information and detail) prescribed by the Laws of Mongolia for the application for, or renewal of, such Concessionaire Authorisation;

**"Proposed Material Amendment"** means the meaning given to it in Clause 5.8.1;

**"Protected Assets"** means the Grid System, Heat Network, the electric generation assets and equipment owned by any Public Sector Entity (excluding the Plant), the electric distribution assets and such other assets agreed by the Parties;

**"Prudent Industry Practices"** means the exercise of that degree of skill, diligence, prudence and foresight which would reasonably and ordinarily be expected in the heat and power generation industry generally from a prudent and experienced generator and operator engaged in the same or similar type of undertaking or activity under the same or similar circumstances and conditions to those pertaining in Mongolia and generally recognised by generators and operators internationally and, in doing so in the general conduct of its undertaking, seeking, in good faith, to perform its contractual obligations and complying with applicable laws, standards and regulations, including those pertaining to health, safety and the environment;

**"Public Sector Entity"** means:

- (a) the Government, the Parliament of Mongolia, any subdivision of either or any local or municipal governmental authority with jurisdiction over the Concessionaire or the CHP5 Project;
- (b) any department, authority, instrumentality, agency, or judicial body of any entity set out in (a) above;
- (c) courts and tribunals in Mongolia;
- (d) corporate entities which are wholly-owned by the Government; or
- (e) any commission or regulatory agency, authority or body having jurisdiction over the Concessionaire, or the CHP5 Project;

**"Reference Capital Cost Component"** has the meaning given to it in Schedule 1 of the Power Purchase Agreement;

**"Relevant Authority"** means a Public Sector Entity from which a Concessionaire Authorisation is to be obtained or which otherwise has jurisdiction under the Laws of Mongolia with respect to the CHP5 Project, the Power Purchaser, the Heat Purchaser or this Agreement (as the case may be);

**"Related Dispute"** means any dispute arising under or in connection with any of the CHP5 Project Agreements that is related to any Dispute between the Parties under this Agreement;

**"Required Commercial Operations Date"** means in respect of:

- (a) Unit 1, [*redacted information*];
- (b) Unit 2, [*redacted information*]; and
- (c) Unit 3, [*redacted information*],

from the Effective Date, as such dates may be extended under this Agreement or the Power Purchase Agreement;

**"Required Effective Date"** means [*redacted information*];

**"Scheduled Outage"** has a the meaning given to it in the Power Purchase Agreement;

**"Shivee-Ovoo Mine"** means a coal mine located 260 kilometers of south-east of Ulaanbaatar in Shiveeovi Soum in Govisumber Aimag, Mongolia;

**"SIAC Rules"** has the meaning given to it in Clause 15.3.1;

"Site" has the meaning given to it in the Land Use Agreement;

"Site Access Date" means [redacted information];

"Site Baseline Report" means the report on the conditions of the Site produced by the Environmental Expert which describes the geological, geotechnical and environmental condition of the Site and highlights all material matters, including any Environmental Liabilities;

"SPC" has the meaning given in Recital B;

"Stabilisation Certificate" means the stabilisation certificate or similarly entitled document under the Investment Law of Mongolia dated 3 October 2013;

"System Operator" has the meaning given to it in the Power Purchase Agreement;

"Tax" means any tax, charge, impost, tariff, duty, basis for assessing taxes (including the rates of or periods for depreciation of assets for tax assessment purposes), fiscal concession or allowance imposed by or payable to a Public Sector Entity, including all direct or indirect, national or local taxes, charges, fees and payments as described in Article 5 of the General Taxation law of Mongolia and any value added tax, sales tax, water or environmental or energy tax, import or customs duty, withholding tax, excise tax, tax on Foreign Currency or foreign exchange transactions or property tax, but shall not include any fee or charge payable to a Public Sector Entity as consideration for goods or services provided by such Public Sector Entity in relation to a commercial activity carried out by such Public Sector Entity;

"Technical Specifications" means the technical requirements and specifications set out in this Agreement (including the document annexed at Schedule 3), together with the technical requirements set out in the Power Purchase Agreement and the Heat Purchase Agreement (including the Technical Specifications as defined in such agreements);

"Term" has the meaning given to it in Clause 2.1.4;

"Termination Costs" means:

- (a) all sales, value added, transfer or property taxes and any other costs imposed on the Concessionaire by any Public Sector Entity as a result of termination of this Agreement, transfer of the Concessionaire's right, title and interest in the CHP5 Project to Government and payment of any Compensation Amount; and
- (b) where termination of this Agreement occurs prior to the Commercial Operations Date for the Plant, all amounts outstanding and payable by the Concessionaire to the EPC Contractor but only (i) to the extent that the EPC Contract is terminated, and (ii) with respect to work completed by the EPC Contractor in accordance with the EPC Contract and not yet paid for by the Concessionaire and for which no amount under the CHP5 Financing Documents has been disbursed by the Lenders or equity commitments, individually and in total, of the Members of the Consortium or their Affiliates has been provided;

"Termination Date" means the date that any termination of this Agreement shall be effective as provided in Clause 13.3.3 or the date of termination of this Agreement under Clauses 13.5, 13.6 or 13.7;

"Termination Notice" means a written notice of termination of this Agreement issued by the Government or the Concessionaire, as the case may be, under Clause 13.3.3;



**"Termination Invoice"** has the meaning given to it in Clause 14.9.1;

**"Togrogs"** or **"MNT"** means the lawful currency of Mongolia;

**"Transfer Date"** has the meaning given to it in Clause 14.9.2;

**"Transferable Assets"** has the meaning given to it in Clause 14.10.1;

**"Tripartite Financial Agreement"** means the tripartite agreement to be signed under Article 28.2 of the Concessions Law between the Government, the Concessionaire and the Lenders (or their agent or trustee) in the agreed form under English law, such form to be consistent with the form required by international financial institutions for a project financing of a project similar to the CHP5 Project;

**"Unit"** has the meaning given to it in the Power Purchase Agreement;

**"Unit 1"** means the first Unit to successfully complete the Commissioning Tests;

**"Unit 2"** means the second Unit to successfully complete the Commissioning Tests;

**"Unit 3"** means the third Unit to successfully complete the Commissioning Tests;

**"Water Purchase Agreement"** means the agreement in the form annexed at Schedule 6, Part 3, to be entered into between the Water Supplier and the Concessionaire in respect of the water requirements of the Plant throughout the Term, as may be amended (subject to this Agreement) in accordance with its terms by the parties thereto;

**"Water Supplier"** means the counterparty to the Water Purchase Agreement, and its legal successors;

**"World Bank Environmental Guidelines"** means the latest published World Bank Group's Environmental, Health and Safety Guidelines as in effect at the Cut-off Date; and

**"Year"** means each twelve (12) Month period commencing on 24:00 on the Commercial Operations Date for the Plant and ending on the Day before the anniversary thereof.

## **1.2 Rules of Interpretation**

In this Agreement:

1.2.1 the headings are for convenience only and shall be ignored in construing this Agreement;

1.2.2 other than where the context determines otherwise, the singular includes the plural and vice versa;

1.2.3 references to Clauses, Recitals and Schedules are, unless otherwise specified references to clauses, recitals and schedules to this Agreement and references to a clause or Part in a schedule shall be a clause, paragraph or part to the respective schedules unless otherwise specified;

1.2.4 unless otherwise provided:

1.2.4.1 references to time are references to time in Ulaanbaatar, Mongolia; and

- 1.2.4.2 references to a time of Day are, unless otherwise stated, predicated on the 24 hour timing convention;
- 1.2.5 unless otherwise provided, any notice, consent, approval, waiver or direction permitted or required to be given under this Agreement shall be given in writing;
- 1.2.6 unless otherwise provided, whenever a consent or approval is required by a Party from the other Party, such consent or approval shall not be unreasonably withheld or delayed;
- 1.2.7 in carrying out its obligations and duties under this Agreement, each Party shall have an implied obligation of good faith;
- 1.2.8 the words "**include**," and "**including**" shall not be construed as limiting the generality of preceding words;
- 1.2.9 where capitalised terms and expressions used in this Agreement are not defined in Clause 1.1, they shall have the meanings given in the Power Purchase Agreement or Heat Purchase Agreement (as applicable);
- 1.2.10 references to a Party are references to a party to this Agreement, including that Party's assigns or transferees permitted in accordance with this Agreement and its successors in title;
- 1.2.11 the Schedules (and any schedules or tables thereto) to this Agreement form part of this Agreement, and capitalised terms and abbreviations used in the Schedules (and such schedules or tables) which are not defined therein shall have the meanings given to them in Clause 1.1 of this Agreement;
- 1.2.12 a reference to "**judgment**" (other than the "**judgment**" of a Party) includes any order, injunction, determination or award in any jurisdiction; and
- 1.2.13 a reference to a "**law**" includes civil, common or customary law and any constitutional decree, judgement, legislation, order, ordinance, regulation, statute, treaty or other legislative measure, in each case of any jurisdiction (and "**lawful**" and "**unlawful**" shall be construed accordingly).

## **2. TERM AND CONDITIONS PRECEDENT**

### **2.1 Effectiveness of Term**

- 2.1.1 On the date of this Agreement, only Clauses 2, 3.2, 3.4, 3.5, 4.1.2, 10.3, 12.1.1.1(b), 12.1.1.1(f), 12.1.1.2, 12.2, 12.3, 12.4, 15, 16 and 17 shall become effective.
- 2.1.2 As soon as any amendments to this Agreement and the other CHP5 Project Agreements have been agreed, the Government shall give notice to the Concessionaire of the proposed date of signing of the agreed amendments to this Agreement which shall not be less than ten (10) Business Days from the date of such notice. If the Concessionaire fails or refuses to sign the document giving effect to the agreed amendments to this Agreement on the date notified by the Government in accordance with this Clause 2.1.2, the Government shall be entitled to claim the full amount under the Closing Security as the sole and exclusive remedy for such failure or refusal.

- 2.1.3 From the signing of the amendments to this Agreement as contemplated pursuant to Recital L, the:
- 2.1.3.1 Concessionaire shall use its reasonable endeavours to cause the satisfaction of the conditions set out in Clauses 2.2.1.1, 2.2.1.2, 2.2.1.3, 2.2.1.4, 2.2.1.5(a), 2.2.1.6, 2.2.1.7 and 2.2.1.10(b) and in the case of Clause 2.2.1.9, the Concessionaire's obligations in respect of the tax incentives and stabilisations benefits referred to therein shall be limited to making timely application in the Prescribed Form and payment of all Prescribed Fees (if any); and
- 2.1.3.2 Government shall use its reasonable endeavours to cause the satisfaction of the conditions set out in Clauses 2.2.1.5(b), 2.2.1.6(a) and 2.2.1.6(b) (in respect of the notices specified therein), 2.2.1.8, 2.2.1.10(a), 2.2.1.11, 2.2.1.12 and 2.2.1.13.
- 2.1.4 This Agreement shall become effective in its entirety upon the occurrence of the Effective Date and shall, unless terminated earlier in accordance with the terms of this Agreement, continue in full force and effect until the twenty-fifth (25th) anniversary of the Commercial Operations Date of the Plant (the "**Term**").

## **2.2 Conditions Precedent and Termination**

- 2.2.1 The Effective Date shall be the date on which the following conditions precedent have either been satisfied or waived by the relevant Party in accordance with this Clause 2.2 ("**Effective Date**"):
- 2.2.1.1 delivery to the Government of the Power Purchase Agreement, Heat Purchase Agreement, Water Purchase Agreement, Land Use Agreement and Coal Supply Agreements, each signed and delivered by the Concessionaire and the other parties thereto, together with copies of the executed EPC Contract (where such copy may be redacted to omit details of the price and such other commercially sensitive information which is of a confidential and proprietary nature) and O&M Agreement (if any), subject to the Government using its reasonable endeavours to secure the agreement of the counterparty to the Concessionaire under each of the Power Purchase Agreement, Heat Purchase Agreement, Water Purchase Agreement, Land Use Agreement and Coal Supply Agreements to such agreements;
- 2.2.1.2 delivery to the Government of the (a) signed CHP5 Financing Documents, (b) base case financial model agreed between the Concessionaire and the Lenders and (c) Performance Security in accordance with Clause 3.2.4;
- 2.2.1.3 a notice by the Concessionaire confirming (a) that the financing available under the CHP5 Financing Documents together with equity commitments provides the Concessionaire with sufficient financing for, among other things, the design, construction, testing, completion, and Commissioning of the Plant (following agreement between the parties hereto to the principal repayment schedule to be attached at Schedule 4**Error! Reference source not found.**), (b) the availability of commitments for such equity as is required by the Concessionaire to satisfy the requirements of the Lenders, and (c) the satisfaction or

- waiver (by the Lenders) of the conditions precedent for the initial availability of funds under the CHP5 Financing Documents (except for those conditions precedent that are dependent on the Effective Date being achieved) and that such funds are available for disbursement;
- 2.2.1.4 a letter from an insurance broker or insurance consultant to the Concessionaire that the insurance required under this Agreement, the Power Purchase Agreement and the Heat Purchase Agreement is in effect;
  - 2.2.1.5 an opinion of legal counsel to (a) the Concessionaire and (b) the Ministry of Justice, in each case substantially in the form attached hereto as Schedule 7;
  - 2.2.1.6 payment of the Togrog equivalent of the Development Costs by the Concessionaire to the Government, such payment to be made as follows:
    - (a) an amount, as notified by the Government to the Concessionaire prior to the Effective Date, to the Designated Bank Account; and
    - (b) the amount specified in this Clause 2.2.1.6 less the amount notified under (a) above, to the Government Bank Account;
  - 2.2.1.7 a certificate of an authorized officer of the Concessionaire, dated the Effective Date, stating that each of the representations of the Concessionaire set forth in Clause 16.1 is true and correct in all material respects as if made on such date;
  - 2.2.1.8 a certificate of an authorized officer of the Government, dated the Effective Date, stating that each of the representations of the Government set forth in Clause 16.2 is true and correct in all material respects as if made on such date;
  - 2.2.1.9 receipt by the Concessionaire from the applicable Relevant Authority of confirmation (which may be in the form of a Stabilisation Certificate) evidencing to the reasonable satisfaction of the Concessionaire that the Concessionaire has been granted the tax incentives and stabilisation benefits the Parties agree the Concessionaire should be entitled to;
  - 2.2.1.10 delivery of the Tripartite Financial Agreement signed (a) by the Government and (b) by the Concessionaire and by or on behalf of the Lenders;
  - 2.2.1.11 delivery to the Concessionaire of written confirmation and/or resolution from the ERC approving or authorising the purchase by the Power Purchaser and Heat Purchaser from the Concessionaire of power and heat, at the price stipulated in the Power Purchase Agreement and the Heat Purchase Agreement, respectively; and
  - 2.2.1.12 delivery to the Concessionaire of evidence that all the Government Approvals set out in Schedule 1, Part 1, that the Parties agree shall be

required to be provided as conditions for the Effective Date, have been issued;

2.2.1.13 delivery of the Government's approval to the Schedule, pursuant to Clause 10.3.2.

2.2.2 Subject to Clause 2.2.3, if the Effective Date does not occur on or before the Required Effective Date, then, unless the Parties otherwise agree, this Agreement shall terminate in its entirety without notice and without further action by the Government or the Concessionaire. Upon such termination, the Parties shall have no further obligations or liabilities under this Agreement, except as provided in Clause 2.2.3.

2.2.3 Upon termination of this Agreement under Clause 2.2.2, the Government shall be entitled to claim the full amount under the Closing Security only if the failure to achieve the Effective Date by the Required Effective Date was by reason of the Concessionaire's failure or refusal under Clause 2.1.2 or it being in breach of its obligations set out in Clause 2.1.3.1. The amount of the Closing Security represents the Government's actual damages and Loss for the Concessionaire's delay in achieving the Required Effective Date and recovery of the amount under the Closing Security and termination under Clause 2.2.2 are the sole and exclusive remedies for a delay in achieving the Effective Date by the Required Effective Date.

### **2.3 Feasibility Studies**

The Concessionaire shall carry out the Feasibility Studies at its cost.

## **3. IMPLEMENTATION OF THE PROJECT**

### **3.1 Grant of Concession and Implementation of CHP5 Project**

3.1.1 The Government grants a concession to the Concessionaire to undertake the CHP5 Project in accordance with the terms of this Agreement.

3.1.2 The Concessionaire shall design, finance, construct, Commission, operate and maintain the Plant in accordance with all applicable Laws of Mongolia, the Concessionaire Authorisations, the Environmental Standards, this Agreement, and the other CHP5 Project Agreements.

3.1.3 Subject to Clause 3.1.4, the Government shall provide the Site on the Site Access Date to the Concessionaire in a construction-ready condition, cleared of all buildings or other structures, either above or below ground, that would interfere with, delay or increase the cost of construction of the Plant. Without limiting the generality of the foregoing, prior to the Site Access Date, the Government shall remove all above ground structures from the Site and dig up and remove from the Site all underground pipes, cables, tanks or other structures (including caves and historical archaeological artefacts) and complete any remediation work at the Site required by the Laws of Mongolia (including the removal of any Hazardous Materials and the Environmental Standards) or to prepare the Site for construction of the Plant (including any levelling works that may be required to contain and divert water flows). The CHP5 Task Force shall discuss and make recommendations to the Parties in respect of the specific works that the Government is required to carry out under this Clause 3.1.3.

- 3.1.4 The Concessionaire may agree, upon receipt of a request from the Government, to carry out some or all of the works that the Government is required to carry out under Clause 3.1.3 upon terms and conditions (including the costs and expenses) to be agreed between the Parties and shall reimburse such agreed costs and expenses through an agreed tariff adjustment.
- 3.1.5 The condition of the Site on the Effective Date shall be determined by the Environmental Expert and set out in the Site Baseline Report. Without prejudice to Clause 6.2, the Concessionaire shall be entitled to:
- 3.1.5.1 a day-for-day extension to the Required Commercial Operations Date for each Unit and for the Plant (as applicable) for each day of delay caused to the achievement of the Commercial Operations Date for each such Unit and for the Plant by reason of the delay by the Government in complying with its obligations under Clause 3.1.3 provided that the Concessionaire shall not be entitled to such extension to the extent that such delay would have nevertheless been experienced by the Concessionaire; and
- 3.1.5.2 be indemnified by the Government for all its Loss incurred, suffered or sustained as a result of the Government's breach of Clause 3.1.3 which is not recoverable under Clause 6.2.1 or pursuant to any insurance policies or from any other person.
- 3.1.6 The Concessionaire shall be entitled to compensation with respect to the Concession and the CHP5 Project as provided in this Agreement, the Power Purchase Agreement and the Heat Purchase Agreement.
- 3.1.7 The Concessionaire shall meet the minimum capital and other requirements of the Laws of Mongolia with respect to an entity of its type. At the date of this Agreement, the amount of paid in capital of the Concessionaire is [*redacted information*].

### **3.2 Concessionaire Closing Security and Performance Security**

- 3.2.1 The Concessionaire shall procure that the Closing Security is issued on or about fifteen (15) Business Days as of the date of signing of this Agreement by the Parties and remains valid and binding until the earlier of (i) the expiry of the period of sixty (60) Days following the Required Effective Date and (ii) the date which is three hundred and sixty-five (365) Days after the date of commencement of validity of the Closing Security ("**Closing Security End Date**").
- 3.2.2 If the Closing Security, notwithstanding Clause 3.2.1, has an expiry date prior to the Closing Security End Date, the Concessionaire shall no later than forty-five (45) Days before the Closing Security End Date procure the issue of a replacement Closing Security with an expiry date no earlier than the Closing Security End Date from the same issuer (and in the same form) as the Closing Security to be replaced or from another financial institution acceptable to the Government.
- 3.2.3 The Government shall return the Closing Security to the Concessionaire no later than twenty (20) Business Days after the earlier to occur of the Effective Date and the Closing Security End Date.

3.2.4 The Concessionaire shall procure the issue of the Performance Security on or before the Effective Date as security for its obligations under the Power Purchase Agreement, the Heat Purchase Agreement and this Agreement. The Performance Security shall remain in full force and effect until the later of sixty (60) Days after the occurrence of the Commercial Operations Date for the Plant or the resolution of any Dispute in accordance with Clause 15 relating to the Commercial Operations Date for the Plant, provided that if the Performance Security (and any replacement thereof procured under this Clause 3.2.4) is scheduled to expire prior to such date, then the Concessionaire shall procure the issuance of a replacement Performance Security in the amount of the undrawn balance of such Performance Security no later than thirty (30) Days prior to such expiry and if the Concessionaire fails to procure such replacement by the period specified the Government shall be entitled to immediately encash in full the undrawn balance of the Performance Security as security for performance of the Concessionaire's obligations provided under the Power Purchase Agreement, the Heat Purchase Agreement and this Agreement.

3.2.5 If:

3.2.5.1 the Concessionaire is liable to pay any amounts to the Government, the Power Purchaser or the Heat Purchaser, and the Concessionaire fails to make any such payments when due; or

3.2.5.2 each of the Government, the Power Purchaser or the Heat Purchaser is entitled to claim under the Performance Security,

the Government shall be entitled to draw or collect such amounts (including acting on behalf of the Power Purchaser and Heat Purchaser in respect of any such amounts which the Power Purchaser and/or Heat Purchaser is entitled to claim), from the Performance Security upon presentation of a certificate of an authorized officer of the Government stating that amounts shown in the invoice accompanying the certificate are due and payable by the Concessionaire to the Government, the Power Purchaser or the Heat Purchaser under this Agreement, the Power Purchase Agreement or the Heat Purchase Agreement, respectively, provided that receipt of such amounts by the Government which the Power Purchaser or Heat Purchaser is entitled to claim under the Power Purchase Agreement or Heat Purchase Agreement, respectively, shall be a valid discharge of the Concessionaire's liability in respect of any such claim but only to the extent of such amount received by the Government.

### **3.3 Plant Ash Disposal**

*[redacted information].*

### **3.4 CHP5 Task Force**

Upon the signing of this Agreement, the Parties shall set up a task force of members comprised of representatives of each Party who shall have no authority or power individually or collectively to make decisions or bind the Parties but who will establish facts to assist the Parties to resolve matters relating to the CHP5 Project that the Parties agree to refer to the task force (the "**CHP5 Task Force**").

### **3.5 Government and Concessionaire Relationship Management**

- 3.5.1 The Parties agree that an effective arrangement for managing the relationship between them in relation to the CHP5 Project would be beneficial to both Parties provided that such arrangement does not create additional obligations on either Party or prevent a Party from exercising its rights under this Agreement.
- 3.5.2 The CHP5 Task Force shall explore the most appropriate arrangement for managing the relationship between the Parties and any arrangement agreed between the Parties shall be recorded in minutes of meeting of the CHP5 Task Force.

## **4. CONCESSIONAIRE AUTHORISATIONS**

### **4.1 Concessionaire Authorisations**

- 4.1.1 From the date of signing of the Power Purchase Agreement, the Concessionaire shall, at its own cost and expense apply for, diligently pursue, procure the issue of and, following receipt, maintain (and, where applicable, cause its Contractors to procure and maintain) the Concessionaire Authorisations.
- 4.1.2 Subject to compliance by the Concessionaire with its obligation to apply for, diligently pursue, procure the issue of and following receipt maintain the Concessionaire Authorisations (or cause its Contractors to procure and maintain, where applicable) in accordance with Clause 4.1.1, upon receiving a request from the Concessionaire so to do, the Government shall provide reasonable assistance to the Concessionaire to procure issue of or renew any Concessionaire Authorisations (including those that it has not, or its Contractors have not, received after making timely and proper application in the Prescribed Form and payment of the Prescribed Fee), provided, however, that where the Concessionaire makes any such request of the Government, the Concessionaire shall:
- 4.1.2.1 provide evidence demonstrating its compliance with its obligation to apply for, diligently pursue, procure the issue of and following receipt maintain the Concessionaire Authorisations (or cause its Contractors to procure and maintain, where applicable) together with a written explanation as to why it reasonably considers such Concessionaire Authorisation should have been issued or renewed (as applicable) on or before the date of such request;
  - 4.1.2.2 notwithstanding the making of any such request, continue diligently to pursue the issue or renewal of any such Concessionaire Authorisation;
  - 4.1.2.3 at the same time as it submits its request, disclose to the Government the full details of the actions which the Concessionaire has, taken and will continue to take to procure the issue of or renew such Concessionaire Authorisation;
  - 4.1.2.4 provide the Government with such assistance and information as the Government may reasonably request; and



- 4.1.2.5 bear all reasonable out-of-pocket costs and expenses reasonably incurred by the Government providing the assistance required under this Clause 4.1.2.

## **4.2 Status of Consent Applications**

- 4.2.1 The Concessionaire shall provide to the Government, at least Monthly prior to the Commercial Operations Date for the Plant, and at least quarterly thereafter, reports:
  - 4.2.1.1 listing its schedule for submitting Concessionaire Authorisation applications, including any renewal application;
  - 4.2.1.2 on the status of any Concessionaire Authorisation applications then outstanding, notifications of the granting or denial of the issue on renewal of any Concessionaire Authorisation;
  - 4.2.1.3 of notifications of any violations of any Concessionaire Authorisation.
- 4.2.2 Each report shall include copies of all applications and notifications referred to in the report not previously provided and shall summarise any problems regarding any Concessionaire Authorisation (or application therefor) that may materially affect the Concessionaire's obligations under this Agreement or any other CHP5 Project Agreement.

## **4.3 Notice of a Lapse of Concessionaire Authorisation**

The Concessionaire shall submit a report under Clause 4.2 within fifteen (15) Days after becoming aware of any Lapse of Concessionaire Authorisation.

## **5. CONSTRUCTION, OPERATION AND MAINTENANCE**

### **5.1 Construction, Operation, and Maintenance of the Plant**

- 5.1.1 The Concessionaire shall:
    - 5.1.1.1 design, engineer, construct, install, Commission; and
    - 5.1.1.2 operate and maintain,
- the Plant at its expense and may appoint the EPC Contractor (in the case of (Clause 5.1.1.1)) and the O&M Contractor (in the case of (Clause 5.1.1.2)) to do so provided that any such appointment shall not relieve the Concessionaire of any of its obligations or liabilities.

### **5.2 Construction of the Plant**

- 5.2.1 The Concessionaire shall commence and prosecute, or shall procure the commencement and prosecution of, the EPC Works as soon as reasonably practicable following the Effective Date.
- 5.2.2 The Concessionaire shall ensure that the EPC Works shall be carried out with all proper skill and care and in all material respects in accordance with the Technical Specifications, the Laws of Mongolia (including the Concessionaire Authorisations), the Environmental Standards and Prudent Industry Practices, so that the Plant has a useful life of not less than the Term.

- 5.2.3 The Concessionaire shall carry out and complete the EPC Works such that each Commercial Operations Date occurs on or before its corresponding Required Commercial Operations Date.
- 5.2.4 The Concessionaire shall cause all equipment which is permanently installed by the EPC Contractor as part of the Plant to be new and unused at the time of such installation and to otherwise comply with the requirements of Schedule 3 (Technical Specifications).
- 5.2.5 The Concessionaire shall at all times keep the Plant free and clear of all Liens except for Liens arising by operation of law.

### **5.3 Operation and Maintenance**

- 5.3.1 The Concessionaire shall operate and maintain the Plant (or any part thereof) in accordance with the terms of this Agreement and the other CHP5 Project Agreements the Laws of Mongolia, the Environmental Standards, the Concessionaire Authorisations and Prudent Industry Practices.
- 5.3.2 Notwithstanding anything contained in this Clause 5 to the contrary, the Concessionaire shall be entitled to engage its own personnel and operate the Plant (or any part thereof) or, if the O&M Agreement then in effect has been terminated by the Concessionaire in accordance with its terms, engage some or all of the personnel of the former O&M Contractor and operate the Plant (or any part thereof), in either case with prior notice to the Government.
- 5.3.3 Without limiting its approval of the Power Purchase Agreement, the Government acknowledges and approves the right of the Power Purchaser under clause 5.14.1 of the Power Purchase Agreement to temporarily enter into and operate the Plant (or any part thereof).

### **5.4 Submission of Reports and Information**

- 5.4.1 The Concessionaire shall submit, or cause to be submitted, to the Government (with copies to each of the Offtakers) the following documents on or before the specified dates:
  - 5.4.1.1 beginning from the Effective Date and ending on the expiry of the warranty period under the EPC Contract, Construction Reports (in such form and in such content as the Government may reasonably require detailing (i) all construction activities in respect of the CHP5 Project (including any updates to the construction milestone schedule) for each Month, delivered no later than ten (10) Days after expiry of each such Month and (ii) any condition or event and/or any change in such condition or event that could reasonably be expected to delay the occurrence of a Commercial Operations Date, promptly upon the Concessionaire becoming aware of such condition or event;
  - 5.4.1.2 at least ten (10) Days prior to the scheduled commencement of testing of the Plant (or any part thereof) and Commissioning, a preliminary start-up and test schedule;
  - 5.4.1.3 within twenty (20) Business Days of the Construction Start Date, a copy of the certificate of insurance for the 'EPC Contractor's All Risk Insurance Policy' and, as soon as available, a copy of such policy,

and as soon as is available but in any event on or before the Commercial Operations Date for Unit 1, copies of all insurance policies and certificates of insurance detailed in Schedule 10 together with all updates thereof promptly upon issue;

5.4.1.4 as soon as available, but no later than fifteen (15) Days following each Commissioning Test, two copies of all results of such Commissioning Test, including tests of major equipment included in the Plant (or any part thereof), tests of electricity metering equipment; and

5.4.1.5 no later than thirty (30) Days following each successful Commissioning Test, for the major items of plant incorporated into the Plant (or any part thereof), one copy, as received by the Concessionaire under the EPC Contract, of all the manufacturers' specifications and manufacturers' operation manuals.

5.4.2 The Concessionaire shall provide the Government with a copy of all notices and information required to be provided to the Heat Purchaser or the Power Purchaser under the Heat Purchase Agreement or the Power Purchase Agreement, respectively, during the period from the Effective Date until expiry of the Term or earlier termination of this Agreement.

5.4.3 Each Party shall notify the other Party in a timely manner upon becoming aware of any changes to the information provided to the other Party under Clause 5.4.

## **5.5 Government Observation Visits**

5.5.1 The Government shall be entitled, from time to time upon reasonable prior notice to the Concessionaire, to observe the progress of the EPC Works (including the Concessionaire Interconnection Works) and the operation and maintenance of all or any part of the Plant.

5.5.2 The Government shall ensure that its officers, employees or authorised representatives shall not unreasonably cause any interference with or disruption to the activities of the Concessionaire or its Contractors on the Site and shall comply with the applicable safety regulations and procedures in force at the Site which are made available to the Government from time to time.

## **5.6 Commissioning**

Without limiting the generality of Clauses 5.4 and 5.5, the Concessionaire shall deliver to the Government a copy of any notice or document delivered to the Power Purchaser and the Heat Purchaser under the Power Purchase Agreement or the Heat Purchase Agreement regarding any testing of the Plant (or any part thereof) and the Commissioning, and the Government shall be entitled to attend and observe any such testing and Commissioning.

## **5.7 Delay**

5.7.1 If the Commercial Operations Date for any Unit or the Plant does not occur by the Required Commercial Operations Date specified therefor, the Concessionaire shall pay the Government, the Power Purchaser under the Power Purchase Agreement or the Heat Purchaser under the Heat Purchase Agreement, as contractual penalties, the amount equal to the Togrog equivalent specified below

per day or part of day of delay until the Commercial Operations Date for the applicable Unit or the Plant (as applicable) occurs:

- 5.7.1.1 [redacted information] for delay in the Commercial Operations Date for Unit 1 by the Required Commercial Operations Date for Unit 1;
- 5.7.1.2 [redacted information] for delay in the Commercial Operations Date for Unit 2 by the Required Commercial Operations Date for Unit 2; and
- 5.7.1.3 [redacted information] for delay in the Commercial Operations Date for the Plant by the Required Commercial Operations Date for the Plant,

provided that:

- (a) the Concessionaire shall not be liable for any contractual penalties that are due for the period of any delay to the Commercial Operations Date of any Unit or the Plant beyond the Long Stop Date; and
- (b) if any amount of contractual penalties payable under this Clause 5.7.1 is paid to the Power Purchaser under the Power Purchase Agreement and/or or the Heat Purchaser under the Heat Purchase Agreement, the Concessionaire's liability to the Government for such amount under this Clause 5.7.1 shall be discharged in full.

5.7.2 The Concessionaire shall pay any amount referred to in Clause 5.7.1 within ten (10) Business Days of receipt of an invoice in respect of such amount, provided that if the Concessionaire fails to pay such amount, the Government and/or the Offtakers shall be entitled to set off any such amount from any payments due and/or payable by Government and/or the Offtakers under or in connection with this Agreement, the Power Purchase Agreement or the Heat Purchase Agreement or draw any such amount under the Performance Security until it has been fully drawn, provided that notwithstanding the Performance Security is fully drawn the Concessionaire shall remain liable for any such amount or any other amounts that remain due.

## **5.8 EPC Contract, Coal Supply Agreements and O&M Agreement**

5.8.1 The Concessionaire shall provide the Government with a certificate of a duly authorized officer of the Concessionaire setting out any proposed amendment (a "**Proposed Material Amendment**") to the EPC Contract, the Coal Supply Agreements or the O&M Agreement (in each case in the form provided in accordance with Clause 2.2.1) that would result in (i) a change in the EPC Contractor or the O&M Contractor or the Coal Supplier or (ii) a change in the boiler and/or steam turbine (or any material component thereof) as to either its company or country of manufacture, or (iii) a material change in the operations of the Plant, in each case no later than sixty (60) Business Days prior to signing of the agreement in respect of any Proposed Material Amendment provided that where the Proposed Material Amendment is urgent and could not be foreseen by the Concessionaire, the Concessionaire may provide such certificate to the Government no later than thirty (30) Business Days prior to the signing of such agreement.

- 5.8.2 The Government shall then have the right, but not the obligation, to review any certificate provided under Clause 5.8.1 and may notify the Concessionaire within fourteen (14) Business Days of receipt of such certificate that it objects to the Proposed Material Amendment (in accordance with Article 8.1.3 of the Concessions Law), providing reasons for such objection. Following any such notification by the Government, the Parties shall consult for a period of fourteen (14) Business Days from the date of the notification with a view to reaching agreement on the Proposed Material Amendment and if they fail to do so within such period and the Proposed Material Amendment is required for the implementation of the CHP5 Project then such Proposed Material Amendment shall be deemed to be agreed by the Government unless it relates to a change in the EPC Contractor in which event such Proposed Material Amendment shall not be agreed and the Concessionaire shall not be entitled to implement that Proposed Material Amendment.
- 5.8.3 If the Government (in accordance with Article 8.1.3 of the Concessions Law) does not object to a Proposed Material Amendment within the fourteen (14) Business Days of receipt of the certificate provided under Clause 5.8.2, the Government shall be deemed not to object to such Proposed Material Amendment.
- 5.8.4 Subject to Clauses 5.8.2 and 5.8.3, within fifteen (15) Days after the signing of any Proposed Material Amendment, the Concessionaire shall (i) deliver to the Government a copy of each such Proposed Material Amendment, as applicable, with information that is confidential or proprietary deleted therefrom and (ii) make available to an authorized representative of the Government, during normal business hours and upon reasonable notice by the Government, at the Concessionaire's address specified in Clause 17.1.1, a complete copy of the Proposed Material Amendments, provided that such representative may not make any photocopies or other mechanical reproductions of such documents.

## **5.9 Coordination among the Government, Power Purchaser and the Heat Purchaser**

- 5.9.1 The Government shall procure that all notices and information required to be provided to the Concessionaire by the Power Purchaser under the Power Purchase Agreement and by the Heat Purchaser under the Heat Purchase Agreement and by the System Operator, including relating to:
- 5.9.1.1 dispatch (including load forecasts, planning, load curves, maintenance and other outages);
  - 5.9.1.2 design and construction of the Plant (or any part thereof) and any interconnection facilities provided by the Offtakers (including construction and operation and maintenance reports);
  - 5.9.1.3 maintenance requirements with respect to the Grid System, the Power Purchaser Interconnection Facilities, the Heat Network and the Heat Purchaser Interconnection Facilities, including details of the occurrence of conditions that could reasonably have an impact on the design, construction, operation and maintenance of the Plant (or any part thereof);
  - 5.9.1.4 testing of the Plant (or any part thereof) and such interconnection facilities, including heat rate, output, and capacity tests; and

- 5.9.1.5 the amount and calculation of the Energy Payment (as defined in the Power Purchase Agreement) and Heat Payment (as defined in the Heat Purchase Agreement) payable under each of the Power Purchase Agreement and the Heat Purchase Agreement, respectively, and any supplementary charges payable, including details of the calculations, meter readings, fuel costs, and such other information needed or relevant in the determination of the amounts payable,

are provided by each Offtaker and the System Operator to the Concessionaire in a coordinated manner and within any times stipulated under the relevant CHP5 Project Agreements so as not to result in the Concessionaire being unable to comply with its obligations under this Agreement, the Power Purchase Agreement, the Heat Purchase Agreement and any applicable Laws of Mongolia (including the Grid Code) or to meet or comply with any requests of either of the Offtakers or the System Operator where to fail to so comply would result in the Concessionaire being in breach of its obligations to the applicable Offtaker or the System Operator, as the case may be.

## **6. LIABILITY AND INDEMNIFICATION**

### **6.1 Limitation of Liability**

Except with regard to payments required to be made by either Party in respect of:

- 6.1.1 indemnification under Clauses 3.1.5.2, 6.2.1.1 and 6.2.1.2;
- 6.1.2 Guaranteed Revenues;
- 6.1.3 Compensation Amounts; or
- 6.1.4 contractual penalties under Clause 5.7,

neither Party shall be liable to the other Party, in contract, warranty or tort, including negligence or absolute or strict liability, breach of statutory duty or otherwise, for any matter arising out of or in connection with this Agreement in respect of Consequential Loss suffered by the other Party.

### **6.2 Indemnification**

6.2.1 Except as specifically provided elsewhere in this Agreement, the Government shall fully indemnify and defend the Concessionaire, for itself and as trustee for its officers, directors and employees, against, and hold the Concessionaire, its officers, directors and employees, harmless from, at all times after the date hereof:

- 6.2.1.1 any and all Loss incurred, suffered, sustained or required to be paid, directly or indirectly by or sought to be imposed upon, the Concessionaire, its officers, directors and employees, for personal injury or death to persons or damage to property arising out of any negligent or intentional act or omission by the Government in connection with this Agreement, but only to the extent that the Concessionaire does not receive proceeds under any insurance policies or from another party in respect of such Loss, provided that to the extent the Concessionaire does receive any such proceeds after recovering its Loss from the Government under this Clause 6.2.1, it shall promptly pay such proceeds to the Government;

6.2.1.2 any and all Environmental Liabilities incurred, suffered, sustained or required to be paid directly or indirectly by or sought to be imposed upon the Concessionaire, its officers, directors and employees, for:

- (a) personal injury or death to persons or damage to property arising out of the condition of the Site on or before the Effective Date, as such condition is described in the Site Baseline Report; and
- (b) the clean-up or remediation of the Site in respect of the condition of the Site on or before the Effective Date, as such condition is described in the Site Baseline Report,

but only to the extent that the Concessionaire does not receive proceeds under any insurance policies or from another party in respect of such Environmental Liabilities, provided that to the extent the Concessionaire does receive any such proceeds after recovering its Loss from the Government under this Clause 6.2.1, it shall promptly pay such proceeds to the Government.

6.2.2 The Concessionaire shall fully indemnify and defend the Government, for itself and as trustee for every other Public Sector Entity and each of their officials, officers, directors and employees, against, and hold each Public Sector Entity, and each of their officials, officers, directors and employees, harmless from, at all times after the date hereof, any and all Loss (including any Environmental Liability) incurred, suffered, sustained or required to be paid, directly or indirectly, by, or sought to be imposed upon, any Public Sector Entity or its officials, officers, directors or employees for personal injury or death to persons or damage to property arising out of any negligent or intentional act or omission by the Concessionaire in connection with this Agreement or any other CHP5 Project Agreement, but only to the extent that the applicable Public Sector Entity or its officials, officers, directors or employees is not entitled to receive proceeds (including pursuant to any insurance) from another party in respect of such Loss.

6.2.3 The provisions of this Clause 6.2 shall survive for a period of two (2) Years following expiry or earlier termination of this Agreement.

### **6.3 Assertion of Claims to Exceed Minimum Indemnification Amount**

6.3.1 Each Party shall be solely liable, and shall not be entitled to assert any claim for indemnification under any indemnity expressly set out in this Agreement (other than the indemnity set out in Clause 3.1.5.2 for which this Clause 6.3 shall not apply), for its Loss that would otherwise be the subject of indemnification under this Agreement, until all such Loss, in the aggregate, during the then-current Year, exceeds the Minimum Indemnification Amount, in which event it shall be entitled to recover all such Loss. For the purposes of this Clause 6.3, a Loss (or claim for indemnification) shall be deemed to arise in the Year the event giving rise to such Loss (or claim for indemnification) occurred, or if the event is continuing in more than one Year, in the Year such event ends.

6.3.2 Where a Party's Loss in any Year is an amount in MNT, for the purposes of Clause 6.3.1, the Minimum Indemnification Amount for such year shall be converted into MNT at the Exchange Rate.

## **6.4 Fines and Penalties**

Any fines or other penalties incurred by a Party for non-compliance with the applicable Laws of Mongolia, unless they result directly from an act or omission of the other Party (in which case, they shall be reimbursed by the other Party), shall not be reimbursed by the other Party but shall be the sole responsibility of the non-complying Party.

## **6.5 Defence of Claims**

6.5.1 The indemnifying Party shall be entitled, at its option and expense and with counsel of its selection, to assume and control the defence of any claim, action, suit or proceeding in respect of, resulting from, relating to or arising out of any matter for which it is obliged to indemnify the indemnified Party under this Clause 6, subject to the prior approval of the indemnified Party provided, however, it gives prompt notice of its intention to do so to the indemnified Party, and reimburses the indemnified Party for the reasonable costs and expenses incurred by the indemnified Party prior to assumption by the indemnifying Party of such defence.

6.5.2 Unless and until the indemnifying Party acknowledges its obligation to indemnify the indemnified Party and assumes control of the defence of a claim, suit, action or proceeding in accordance with Clause 6.5.1, the indemnified Party shall have the right, but not the obligation, to contest, defend and litigate, with counsel of its own selection, any claim, action, suit or proceeding by any third party, alleged or asserted against such indemnified Party in respect of, resulting from, related to or arising out of, any matter for which it is entitled to be indemnified hereunder, and the reasonable costs and expense thereof shall be subject to the indemnification obligations of the indemnifying Party hereunder.

6.5.3 The indemnified Party shall provide the indemnifying Party and its advisers with such information and assistance relating to a claim, suit, action or proceeding as the indemnifying Party shall reasonably request, provided that the cost of the provision of information and assistance shall be at the indemnifying Party's expense.

6.5.4 The obligations of indemnifying Party under this Clause 6 shall not extend to any liability arising from:

6.5.4.1 the settlement or compromise of any action, claim, suit or proceeding brought against the indemnified Party;

6.5.4.2 the admission by the indemnified Party of any claim; or

6.5.4.3 the taking by the indemnified Party of any action (unless required by law or applicable legal process) which might reasonably be expected to prejudice the successful defence of the action or claim,

without, in any such case, the prior consent of the indemnifying Party.

6.5.5 Upon assumption by the indemnifying Party of the control of the defence of a claim, suit, action or proceeding, the indemnifying Party shall reimburse the indemnified Party for the reasonable costs and expenses of the indemnified Party in the defence of the claim, suit, action or proceeding prior to the indemnifying Party acknowledgment of the indemnification and assumption of the defence.



- 6.5.6 Neither Party shall be entitled to settle or compromise any claim, action, suit or proceeding without the prior consent of the other Party, provided, however, that after agreeing to indemnify the indemnified Party, the indemnifying Party may settle or compromise any claim without the approval of the indemnified Party.
- 6.5.7 For purposes of this Clause 6.5, the term "**indemnified Party**" includes each Person for whom the Government or the Concessionaire, as applicable, is acting as trustee in respect of indemnification.

## **6.6 Notice of Claims**

Each Party shall promptly notify the other Party of any Loss, claim, proceeding or other matter in respect of which it is or it may be entitled to indemnification under this Clause 6. Such notice shall be given as soon as is reasonably practicable after the relevant Party becomes aware of such Loss, claim, proceeding or other matter.

## **6.7 Double Jeopardy under Power Purchase Agreement and Heat Purchase Agreement**

- 6.7.1 Except Disputes or breaches related to clause 2.3 (Concessionaire Consents), clause 11 (Insurance), clause 13 (Taxes) and clause 15 (Termination) of the Power Purchase Agreement or the Heat Purchase Agreement, settlement or waiver by the Power Purchaser or the Heat Purchaser of any Dispute or breach under the Power Purchase Agreement or the Heat Purchase Agreement, as the case may be, shall be binding on the Government with respect to an issue or claim based on the same facts or acts or omissions by the Concessionaire. Settlement or waiver of any Dispute or breach related to clause 2.3 (Concessionaire Consents), clause 11 (Insurance), clause 13 (Taxes) and clause 15 (Termination) of the Power Purchase Agreement or the Heat Purchase Agreement shall be effective only if agreed by both the Power Purchaser or the Heat Purchaser, as the case may be, and the Government.
- 6.7.2 Notwithstanding any other provision in this Agreement to the contrary, the Power Purchaser or the Heat Purchaser, as the case may be, shall be responsible in the first instance for pursuing any claim against the Concessionaire based upon a failure of the Concessionaire to satisfy its obligations under the Power Purchase Agreement or the Heat Purchase Agreement, as the case may be. The Government shall not bring any proceedings (or other than through the Power Purchaser or Heat Purchaser, as the case may be, cause any proceedings to be brought) against the Concessionaire for any breach of its obligations under this Agreement if the Power Purchaser or the Heat Purchaser, as the case may be, has fully pursued, or is then pursuing, a claim or claims against the Concessionaire based upon an alleged breach of the Power Purchase Agreement or the Heat Purchase Agreement, as the case may be. A final, non-appealable order issued in a proceeding initiated by the Power Purchaser or the Heat Purchaser, as the case may be, and based upon a claim of a breach of the Power Purchase Agreement or the Heat Purchase Agreement, as the case may be, shall be with prejudice to, and shall, preclude any proceedings against the Concessionaire that the Government could otherwise bring for breach by the Concessionaire of substantially the same obligations under this Agreement.
- 6.7.3 Nothing in this Clause 6.7 shall prevent the Government and the Power Purchaser or the Heat Purchaser from separately initiating proceedings to terminate this Agreement and the Power Purchase Agreement or the Heat Purchase Agreement, as the case may be, under Clause 14.1 and Clause 14.3 of this Agreement and

clause 15.1 and clause 15.4 of the Power Purchase Agreement or the Heat Purchase Agreement, as the case may be.

## **7. INSURANCE**

### **7.1 Maintenance of Insurance Policies**

7.1.1 Subject to the provisions of this Clause 7, the Concessionaire, at its sole cost and expense, shall obtain and maintain, or cause to be obtained and maintained, from the Effective Date (or, upon agreement of the Government, such date of commencement of the EPC Works) the policies of insurance set forth on Schedule 10 in the amounts set forth in this Agreement and during the periods specified in this Agreement, with financially sound insurer(s) satisfactory to the Government; provided, however, that such amounts may be changed from time to time with the prior consent of the Government; and provided, further, that the Concessionaire shall not be in breach of its obligations hereunder if and to the extent that (i) any particular insurance is not available to it under commercially reasonable terms and for commercially reasonable rates for reasons other than any negligence or default by, or condition (financial or otherwise) of, the Concessionaire or (ii) the Concessionaire is unable to obtain (having exercised all reasonable efforts) any endorsements or written acknowledgements required under this Agreement.

7.1.2 To the extent that the insurance required under Clause 7.1.1 is available to the Concessionaire but not at commercially reasonable rates due to the occurrence of a MPFME or such other event or occurrence that, had it affected the Concessionaire directly, would have been a MPFME, then, upon receipt of notice by the Government or the Power Purchaser from the Concessionaire, the additional cost of such insurance attributable to the occurrence of such MPFME or other event, as determined by an Expert in accordance with the provisions of Clause 15.2, shall be recoverable by the Concessionaire from the Power Purchaser and treated as a Pass-Through Item under the Power Purchase Agreement, unless the Government, or, with the approval of the Government, the Power Purchaser elects to procure such insurance on behalf of the Concessionaire with insurers of a rating not less than the Concessionaire's existing insurer(s) or the insurers with whom such insurance was procured by the Concessionaire prior to the occurrence of the MPFME and deduct the insurance cost component of the then prevailing Capacity Payments. The Government or Power Purchaser, as the case may be, shall, within fifteen (15) Business Days of procuring such insurance, provide to the Concessionaire receipts for the payment of premia and copies of the certificates of insurance or policies of insurance obtained by the Government or Power Purchaser, as the case may be, and the Concessionaire shall provide such information together with details of such insurance cost component as the Government or Power Purchaser, as the case may be, may require to verify the amount of such deduction. The Concessionaire shall be named as an additional insured in any insurance so procured under this Clause 7.1.2 and shall be named as a loss payee (subject to any assignment of insurance proceeds to the Lenders). Any Pass-Through Item or deduction of the insurance cost component provided for in this Clause 7.1 shall cease to be paid by the Power Purchaser and recoverable by the Concessionaire as soon as the Expert determines (upon the request of either Party) that the rates of such insurance required under Clause 7.1.1 are no longer affected by such event or other event and are available at commercially reasonable rates.

- 7.1.3 Nothing in this Clause 7.1 shall prevent the Concessionaire, at its sole cost and expense, from procuring and maintaining insurance in addition to the insurance required under this Clause 7.
- 7.1.4 Any insurance policies or cover placed by the Concessionaire shall be placed through a competitive process and, if placed with local insurance companies, include reinsurance with reputable underwriters having satisfactory financial strength.

## 7.2 Maintenance of "Occurrence" Form Policies

The insurance coverage required under Clause 7.1 and any "umbrella" or excess coverage shall be "occurrence" form policies. In the event the Concessionaire has "claims made" form coverage, the Concessionaire must obtain prior approval of all "claims-made" policies from the Government.

## 7.3 Policy Endorsements

7.3.1 Subject to Clause 7.4, the Concessionaire shall cause the insurers to provide the following endorsements in respect of the policies required to be provided under Clause 7.1:

7.3.1.1 the Government and any Public Sector Entity as the Government may specify ("**Insured PSE**"), the Power Purchaser and the Heat Purchaser, and their respective directors, officers and employees shall be additional insureds under such policies with respect to claims arising out of or in connection with this Agreement other than policies relating to workmen's compensation and automobile liability;

7.3.1.2 the insurance shall be primary with respect to the interest of the Government, any Insured PSE, the Power Purchaser and the Heat Purchaser, and their respective directors, officers, and employees and any other insurance maintained by them is excess and not contributory with such policies;

7.3.1.3 the following cross liability clause shall be included in the liability insurance policy:

*"In the event of claims being made by reason of:*

*(a) personal and/or bodily injuries suffered by any employee or employees of one insured hereunder for which another insured hereunder is or may be liable; or*

*(b) damage to property belonging to any insured hereunder for which another insured is or may be liable,*

*then this policy shall cover such insured against whom a claim is made or may be made in the same manner as if separate policies have been issued to each insured hereunder, except with respect to the limits of insurance".*

7.3.1.4 the insurer shall waive all rights of subrogation against the Government, any Insured PSE, the Power Purchaser and the Heat Purchaser, and their respective officers, directors and employees; and

7.3.1.5 notwithstanding any provision of the policy, the policy may not be cancelled or renewed or materially changed by the insurer without giving thirty (30) Days' notice to the Government, any Insured PSE, the Power Purchaser and the Heat Purchaser except in the case of non payment, in which case it will be ten (10) Days with prior notice to the Government, any Insured PSE, the Power Purchaser and the Heat Purchaser. All other terms and conditions of the policy shall remain unchanged.

#### **7.4 Endorsements to Fire and Perils and Machinery Breakdown Policies**

The Concessionaire shall cause the insurers to provide the endorsements referred to in Clauses 7.3.1.1, 7.3.1.2, 7.3.1.4 and 7.3.1.5 in the fire and perils and machinery breakdown policies covering the Plant (or any part thereof) as required by Clause 7.1.

#### **7.5 Certificates of Insurance**

7.5.1 Not later than thirty (30) Days after the date any of the insurance policies and coverage required to be in effect in accordance with Clause 7.1 are issued or renewed in accordance with their terms, the Concessionaire shall cause its insurers or agents to provide the Government, any Insured PSE, Power Purchaser and the Heat Purchaser with certificates of insurance evidencing the policies and endorsements referred to in Clause 7.1. Failure by the Concessionaire to obtain the insurance coverage or certificates of insurance required by this Clause 7 shall not in any way relieve or limit the Concessionaire's obligations and liabilities under any provision of this Agreement. If the Concessionaire shall fail to procure or maintain any insurance required under this Clause 7, then the Government and, with the approval of the Government, the Power Purchaser or the Heat Purchaser, shall have the right to procure such insurance in accordance with the requirements of Schedule 10 and shall be entitled to offset or deduct the premiums paid for such insurance against any amounts owed to the Concessionaire under the terms of this Agreement or, the Power Purchase Agreement or the Heat Purchase Agreement. The Concessionaire shall be named as the loss payee on any such insurance procured by the Power Purchaser or the Heat Purchaser under this Clause 7.5. The Concessionaire shall provide the Power Purchaser, Heat Purchaser and the Government with copies of receipts or statements from the Concessionaire's insurers or other evidence reasonably acceptable to the Government verifying payment by the Concessionaire of the premiums in respect of such insurance.

#### **7.6 Insurance Reports**

The Concessionaire shall provide Government and Insured PSE, the Power Purchaser and the Heat Purchaser with copies of any underwriters' reports or other reports received by the Concessionaire from any insurer.

#### **7.7 Application of Proceeds**

Subject to Clause 10.2, the requirements of the CHP5 Financing Documents, the Concessionaire shall promptly apply any and all insurance proceeds received by it in respect of damage to or loss of the Plant or any part thereof toward the repair, reconstruction or replacement of the Plant (or any part thereof).

## **7.8 Claims under Insurance**

The Concessionaire shall:

- 7.8.1 use its best endeavours to pursue all claims and to maximise recovery of proceeds under any insurance policies required to be obtained and maintained under this Clause 7 in respect of loss and/or damage to the Plant which could reasonably result in termination of this Agreement and payment of any Compensation Amounts provided that such obligation shall only extend until assignment to the Government of the rights to claim under any such insurance policies (as referred to in Clause 14.4) whereupon the Concessionaire shall only to the extent necessary be required to provide reasonable efforts to assist the Government in respect of any such claims; and
- 7.8.2 provide to the Government all information with respect to such claims reasonably requested by the Government, within ten (10) Days of any such request.

## **8. GOVERNMENT SUPPORT AND ASSISTANCE**

### **8.1 Forms of Financial Support Guaranteed Revenues, Compensation Amounts and other Commitments**

Under the Concessions Law the Government shall provide the following support to the Concessionaire and the CHP5 Project:

- 8.1.1 a guarantee of the Guaranteed Revenues;
- 8.1.2 the compensation payable to the Concessionaire under this Agreement in the form of the Compensation Amounts; and
- 8.1.3 the other commitments of the Government under this Agreement (including the obligation to clean up the Site under Clause 3.1.3) and the Concessions Law.

### **8.2 Guaranteed Revenues**

- 8.2.1 The Government irrevocably and unconditionally guarantees to pay to the Concessionaire on demand, and in the currency in which the same falls due for payment, all amounts constituting Guaranteed Revenues which are at any time payable by the Power Purchaser or the Heat Purchaser to or in favour of the Concessionaire under or in connection with the Power Purchase Agreement or the Heat Purchase Agreement, respectively.
- 8.2.2 The Government irrevocably and unconditionally agrees to indemnify the Concessionaire in full on demand against any or all Loss, suffered or incurred by the Concessionaire arising from or in connection with the failure of either of the Power Purchaser or the Heat Purchaser fully and promptly to pay the Guaranteed Revenues when due and payable under the Power Purchase Agreement and the Heat Purchase Agreement, respectively.
- 8.2.3 The Government acknowledges and agrees that its obligations under this Clause 8.2 are and at all times shall be a continuing security and shall remain in full force and effect until the complete performance, observance and compliance by the Power Purchaser and the Heat Purchaser of all the terms and conditions of the Power Purchase Agreement and the Heat Purchase Agreement, respectively (including with respect to the payment of the Guaranteed Revenues) and none of

its liabilities under this Clause 8.2 shall be reduced, discharged or otherwise affected by:

- 8.2.3.1 any amendments, alterations or supplements to the Power Purchase Agreement or the Heat Purchase Agreement, any extension of time for payment of any amounts due under the Power Purchase Agreement or the Heat Purchase Agreement or any concession, release, waiver or other indulgence granted to the Power Purchaser or the Heat Purchaser; or
- 8.2.3.2 any invalidity, illegality or unenforceability in or of the terms of any agreement or other commitment to which the Power Purchaser or the Heat Purchaser are or may become a party, including any invalidity in the Power Purchase Agreement or the Heat Purchase Agreement, their avoidance or their termination; or
- 8.2.3.3 any disability, incapacity, change in ownership, change in status or restructuring of the Power Purchaser or the Heat Purchaser; or
- 8.2.3.4 an Insolvency Event or a change in the constitution of the Power Purchaser or the Heat Purchaser; or
- 8.2.3.5 any forbearance, failure, omission or delay by or on the part of the Concessionaire in asserting any of its rights against the Power Purchaser or the Heat Purchaser; or
- 8.2.3.6 any other act or omission, which in the absence of this provision, might operate to exonerate the Government,

and the Government hereby waives any requirement for notice to it of any such event.

8.2.4 The obligations and liabilities expressed to be undertaken by the Government under this Clause 8.2 are those of primary obligor and not merely as a surety. The Concessionaire shall not be obliged before taking steps to enforce any of its rights and remedies under this Clause 8.2:

- 8.2.4.1 to first take action against the Power Purchaser or the Heat Purchaser and any other Person;
- 8.2.4.2 to make or file any claim in a bankruptcy, liquidation, administration or insolvency of the Power Purchaser or the Heat Purchaser and any other Person; or
- 8.2.4.3 to make demand, enforce or seek to enforce any claim, right or remedy against the Power Purchaser or the Heat Purchaser and any other Person.

8.2.5 The liability of the Government under this Clause 8.2 to pay the Guaranteed Revenues shall not exceed the aggregate liability of the Power Purchaser and the Heat Purchaser under the Power Purchase Agreement and the Heat Purchase Agreement, respectively.

8.2.6 All sums payable under this Clause 8.2 shall be paid to the Concessionaire in full, free of any present or future taxes, levies, duties, charges, fees or withholdings and without any deduction, restriction, conditions, withholding, set-off or

counterclaim whatsoever; and if the Government is compelled by law to make any deduction or withholding, the Government will gross up the payment so that the net sum received by the Concessionaire will be equal to the full amount which the Concessionaire would have received had no such deduction or withholding been made.

8.2.7 Any demand, notification or certificate given by the Concessionaire specifying amounts due and payable under or in connection with any of the provisions of this Clause 8.2 shall, in the absence of manifest error, be conclusive and binding on the Government.

### **8.3 Waiver of Rights of Subrogation**

The Government will not, prior to the expiry of the Term or earlier termination of this Agreement, exercise any rights which it may have against the Power Purchaser and/or the Heat Purchaser by reason of the Government's performance of its obligations under this Clause 8 or by reason of any amount being payable, or liability arising, under this Clause 8, to take the benefit (in whole or in part and whether by way of subrogation or otherwise) of any rights of the Concessionaire under this Agreement, the Power Purchase Agreement and/or the Heat Purchase Agreement.

### **8.4 Government Assistance**

8.4.1 The Government shall use reasonable efforts to assist, to the extent requested:

8.4.1.1 the Concessionaire in obtaining Customs clearance for the import of plant, machinery, equipment and materials whether by the Concessionaire or its Contractors for the CHP5 Project;

8.4.1.2 the foreign personnel staff of the Concessionaire and its Contractors to obtain visas and work permits required for entry into and departure from Mongolia for the CHP5 Project;

8.4.1.3 with the Concessionaire's engagement in discussion with the Ministry of Finance and any Relevant Authority in relation to payment, exemption or reimbursement of Taxes in respect of the CHP5 Project; and

8.4.1.4 to secure any available tax incentives and stabilisation benefits from any Relevant Authority, as required by the Concessionaire.

8.4.2 The Government shall provide such support and assistance to the Concessionaire as is specified in Schedule 1, Part 2 in respect of the availability of Foreign Currency in Mongolia, the convertibility of Togrog into Foreign Currency, the transfer of funds (including dividends) to and from Mongolia and the other matters specified in such part.

## **9. TAXES, CUSTOM DUTIES AND CURRENCY**

### **9.1 Currency**

Unless otherwise agreed, all payments to be made under this Agreement, the Power Purchase Agreement and the Heat Purchase Agreement shall be made in Togrogs.

## 9.2 Taxes and Custom Duties

The Concessionaire shall pay all Taxes and Custom Duties in accordance with the Laws of Mongolia, subject to any exemptions, incentives, and other benefits granted to the Concessionaire from time to time.

## 10. ASSIGNMENT OF CHP5 FINANCING DOCUMENTS AND SECURITY

### 10.1 Assignment

No assignment or transfer by a Party of this Agreement or such Party's rights or obligations hereunder shall be effective without the prior consent of the other Party, except as provided in Clause 10.2.

### 10.2 Creation of Security

For the purpose of financing or refinancing the Plant the Concessionaire may under the CHP5 Financing Documents assign to or create a security interest in favour of the Lenders in its rights and interests under:

- 10.2.1 this Agreement;
- 10.2.2 any agreement or document included within or contemplated by the CHP5 Project Agreements;
- 10.2.3 the Ordinary Share Capital;
- 10.2.4 any present and future movable, immovable and intellectual property owned by the Concessionaire;
- 10.2.5 the present and future revenues or any of the rights or assets of the Concessionaire, or actionable claims of the Concessionaire; and
- 10.2.6 any other present or future right, interest, property or asset of any kind of the Concessionaire wherever situated;

provided that it is acknowledged and agreed that unless otherwise agreed, the Concessionaire has no ownership interest in the Plant or, without prejudice to its rights under the Land Use Agreement, the Site, including any movable or immovable property related thereto, and may not grant to any Lender any assignment thereof or security interest therein (including any Lien).

### 10.3 Term Sheet and Repayment Schedule

- 10.3.1 Prior to:
  - 10.3.1.1 [*redacted information*], the Concessionaire shall deliver to the Government the term sheet agreed with the Lenders in respect of terms for the financing of the CHP5 Project;
  - 10.3.1.2 the signing of the CHP5 Financing Documents, the Concessionaire shall deliver to the Government (i) the base case financial model agreed between the Concessionaire and the Lenders and (ii) for the Government's approval, a schedule ("**Schedule**") reflecting the material terms of the CHP5 Financing Documents including:



- (a) the principal repayment schedule for debt and principal repayments during the loan term;
- (b) the maximum debt and principal amounts and interest rate or rates (or mark-up or other term denoting the return paid to lenders on debt);
- (c) any schedules or formulae in the CHP5 Financing Documents for the computation of fees and charges payable to the Lenders upon the winding up for early termination of the loans under the CHP5 Financing Documents; and
- (d) the equity commitments, individually and in total, of the Initial Shareholders.

- 10.3.2 The Government shall evaluate the Schedule to ensure that it is consistent with the term sheet delivered to the Government pursuant to Clause 10.3.1.1 and the financial model delivered pursuant to Clause 10.3.1.2 and shall notify the Concessionaire of its approval or of any objections to the Schedule within ten (10) Business Days of its receipt thereof. The Parties shall discuss and seek to resolve such objections and agree if necessary such amendments to the Schedule. The Schedule once approved by the Government shall reflect and be consistent with the CHP5 Financing Documents and shall be deemed to be incorporated in Schedule 4. Schedule 4 shall only be amended from time to time, notwithstanding any amendments to the CHP5 Financing Documents, with the approval of the Government.
- 10.3.3 Each loan agreement constituting part of the CHP5 Financing Documents shall provide that any contract penalties (including liquidated damages) received by the Concessionaire from its EPC Contractor for delay, shall be used to meet any obligation of the Concessionaire to make payment for contractual penalties under Clause 5.7 of this Agreement.
- 10.3.4 The Concessionaire shall provide the Government with a copy of the loan agreements executed by the Concessionaire on or before the Effective Date, but no later than ten (10) Business Days after the Effective Date.
- 10.3.5 Following the Effective Date, the Concessionaire shall deliver to the Government, copies of any amendment to the executed CHP5 Financing Documents within ten (10) Days of such amendment. The Concessionaire shall not execute any amendment affecting the repayment of principal (including any refinancing or restructuring of payment obligations under any CHP5 Financing Document) or enter into any loan agreement for secured debt or otherwise incur any additional secured debt without submitting to Government, no less than fifteen (15) Days prior to the signing of the instrument of such amendment or such new loan agreement, as applicable, a schedule ("**Revised Schedule**") setting forth the proposed revised principal repayment schedule and the other principal financial terms (including those terms referred to in Clauses 10.3.1.2(a) to 10.3.1.2(d), inclusive) and any material modifications related thereto. Any reduction in the principal repayment schedule or interest rate under the CHP5 Financing Documents shall be shared with the Power Purchaser and shall result in a reduction in the Reference Capital Cost Component to provide [*redacted information*] of the benefits of such reduction to the Power Purchaser. The Government shall notify the Concessionaire of any objections to the Revised Schedule within ten (10) Business Days of receipt of the Revised Schedule,

which objection shall be evaluated on the basis that the benefits of any reduction in the principal repayment schedule or interest rate under the CHP5 Financing Documents have been shared with the Power Purchaser as provided above and shall be subject to an amendment of the Power Purchase Agreement to incorporate such reduction in the Reference Capital Cost Component. At the request of Government, prior to the signing of such amendments or new CHP5 Financing Documents, the Concessionaire shall deliver to the Government, in form satisfactory to the Government, assurances, undertakings or agreements that no alteration or enhancement as a result of such refinancing or new or additional debt financing shall increase in any respect the financial obligations of the Government hereunder or under its obligations under Clause 8.2 or affect in any way the right of the Government to acquire the Concessionaire's right, title and interest in the Transferable Assets free and clear of all Liens upon its payment of the applicable Compensation Amount under this Agreement. Where Government agrees to any such amendment or new CHP5 Financing Document that would impact the principal repayment schedule, or any other provision set out in Schedule 4, the Parties shall amend Schedule 4 accordingly.

10.3.6 The Concessionaire shall be deemed to have submitted a Revised Schedule to the Government at the time that it submits terms and conditions for carrying out modification works under clause 13.6.1 of the Power Purchase Agreement or a Report under clause 14.5.5 of the Power Purchase Agreement. The Government shall be deemed to have consented to the Revised Schedule if the Concessionaire and the Power Purchaser agree to such terms and conditions or the Report (as applicable) in which event the principal repayment schedule in Schedule 4 shall be deemed to be amended to incorporate all agreed changes to such principal repayment schedule as proposed in such terms and conditions or the Report (as applicable).

## **11. RESTRICTIONS ON ACQUISITIONS AND TRANSFERS OF SHARES AND ASSETS**

### **11.1 Acquisition of Shares or Assets**

11.1.1 The Government will not and shall procure that the Power Purchaser and the Heat Purchaser will not expropriate, compulsorily acquire, nationalize, or otherwise compulsorily procure any Ordinary Share Capital or material assets (except as provided in Clause 14.1 or in connection with the exercise of any rights relating to any of its security interest in such assets) of the Concessionaire.

11.1.2 Notwithstanding clause 11.1.1, nothing in this Agreement shall be construed as a waiver by the Government of the Government's exercise of its power of eminent domain exercised in accordance with the Laws of Mongolia.

### **11.2 Restriction on Transfer of Shares**

11.2.1 The Concessionaire shall, to the extent permitted by the Laws of Mongolia, not register or give effect to any purported transfer of Ordinary Share Capital that is not in compliance with the following provisions of this Clause 11.2.

11.2.2 The Concessionaire shall not issue any Ordinary Share Capital and shall ensure that each Member of the Consortium shall not transfer or otherwise dispose of the Ordinary Share Capital owned directly or through one or more Affiliates of each such member (including the Initial Shareholders) at any time:

- 11.2.2.1 prior to the Commercial Operations Date for the Plant, except for a transfer of Ordinary Share Capital:
- (a) required by any Laws of Mongolia or by order of a court, tribunal, or other Public Sector Entity with appropriate jurisdiction;
  - (b) resulting from the creation or enforcement of a security interest in or over any Ordinary Share Capital in accordance with the CHP5 Financing Documents; or
  - (c) to which the Government has given its prior approval, such approval not to be unreasonably withheld; and
- 11.2.2.2 after the Commercial Operations Date for the Plant if following such issuance, transfer or disposal, such Members of the Consortium in aggregate own directly or through one or more Affiliates of each such member (including the Initial Shareholders) less than [redacted information] of the outstanding Ordinary Share Capital, except for a transfer of Ordinary Share Capital:
- (a) required by any Laws of Mongolia or by order of a court, tribunal, or other Public Sector Entity with appropriate jurisdiction;
  - (b) resulting from the creation or enforcement of a security interest in or over any Ordinary Share Capital in accordance with the CHP5 Financing Documents; or
  - (c) to which the Government has given its prior approval, such approval not to be unreasonably withheld.

## 12. FORCE MAJEURE

### 12.1 Definition of Force Majeure

12.1.1 A "**Force Majeure Event**" shall mean any event or circumstance or combination of events or circumstances (including the effects thereof) that is beyond the reasonable control of a Party and that, materially and adversely affects the performance by such affected Party of its obligations under this Agreement (including the Concessionaire or the ability of the Power Purchaser or Heat Purchaser to deliver or receive energy or heat from the Plant (or any part thereof), as applicable) provided that such material and adverse effect could not have been prevented, overcome or remedied in whole or in part by the affected Party through the exercise of reasonable diligence and care, including in the case of the Concessionaire, taking action to protect the Plant (or any part thereof) that ought reasonably be taken in light of the probability of the occurrence of such event, the probable effect of such event if it should occur, and the likely efficacy of the protection measures. "**Force Majeure Events**" shall include each of the following events and circumstances (including the effects thereof) to the extent that each satisfies the above requirements:

12.1.1.1 the following political events that occur inside or directly involve Mongolia (each a "**MPFME** "):

- (a) any act of war (whether declared or undeclared), invasion, armed conflict or act of foreign enemy, blockade, embargo, revolution, riot, insurrection, civil commotion;
  - (b) any Lapse of Concessionaire Authorisation that shall have existed for fourteen (14) consecutive Days or more; or
  - (c) any strike, work-to-rule, go-slow, or analogous labour action that does not only affect the Party claiming such Force Majeure Event;
  - (d) the failure of any of the Coal Suppliers to supply Coal including as a result of the invalidity or unenforceability of the Coal Supply Agreement, breach, unavailability or shortage of Coal for any reason or any force majeure event (as defined in the relevant Coal Supply Agreement) affecting a Coal Supplier;
  - (e) failure by the Water Supplier to supply water including as a result of the invalidity or unenforceability of the Water Purchase Agreement, breach, unavailability or shortage of water for whatever reason (including by reason or any force majeure event (as defined in the Water Purchase Agreement) affecting the Water Supplier;
  - (f) failure by the counterparty of the Concessionaire under the Land Use Agreement to make the Site available to the Concessionaire in accordance with the Land Use Agreement including as a result of the invalidity or unenforceability of the Land Use Agreement; or
  - (g) chemical contamination, radioactive contamination or ionizing radiation.
- 12.1.1.2 any Change in Law (to the extent satisfying the requirements as a Force Majeure Event, each a "**CLFME**"); or
- 12.1.1.3 the following other events (each an "**Other Force Majeure Event**"):
  - (a) lightning, fire, earthquake, flood, storm, cyclone, typhoon or tornado; or
  - (b) any Lapse of Concessionaire Authorisation that shall have existed for less than fourteen (14) consecutive Days; or
  - (c) any strike, work-to-rule, go-slow or analogous labour action that does only affect the Party claiming such Force Majeure Event; or
  - (d) fire or explosion; or
  - (e) epidemic or plague; or
  - (f) act or campaign of terrorism or political sabotage.

- 12.1.2 Force Majeure Events shall not include the following events or circumstances:
- 12.1.2.1 late delivery or interruption in the delivery of machinery, equipment materials, spare parts or consumables (including fuel, other than Coal);
  - 12.1.2.2 a delay in the performance of any Contractor;
  - 12.1.2.3 breakdown in machinery or equipment; or
  - 12.1.2.4 normal wear and tear or random flaws in materials machinery or equipment; or
  - 12.1.2.5 unavailability of funds.

except to the extent that (in the case of sub-Clauses 12.1.2.1, 12.1.2.2, 12.1.2.3 and 12.1.2.4 only) such events or circumstances are caused by an event or circumstance that is itself a Force Majeure Event.

- 12.1.3 Except to the extent any of the provisions of this Clause 12.1 are expressed to be effective from the date of this Agreement pursuant to Clause 2.2.1, neither Party shall be entitled to claim any Force Majeure Event on or prior to the Effective Date.

## **12.2 Notification of Obligations**

Subject to Clause 12.1.3, if by reason of any Force Majeure Event, a Party is wholly or partially unable to carry out its obligations under this Agreement, or in the case of the Concessionaire any of the CHP5 Project Agreements, such Party shall:

- 12.2.1 give the other Party notice of such Force Majeure Event as soon as practicable, but in any event, not later than the later of two (2) hours after becoming aware of the occurrence of such Force Majeure Event or six (6) hours after the resumption of any means of providing notice between the Parties; and
- 12.2.2 give the other Party a second notice, describing such Force Majeure Event in reasonable detail and to the extent which can be reasonably determined at the time of such notice, providing a preliminary evaluation of the obligations affected, a preliminary estimate of the period of time that the affected Party shall be unable to perform such obligations and other relevant matters as soon as practicable, but in any event, no later than five (5) Days after the initial notice given under Clause 12.2.1;
- 12.2.3 when appropriate or when reasonably requested to do so by the other Party, provide further notices to the other Party more fully describing such Force Majeure Event and its causes and providing or updating information relating to the efforts to avoid and/or to mitigate the effects thereof and estimates, to the extent practicable, of the time that it reasonably expects it shall be unable to carry out any of its affected obligations due to such Force Majeure Event;
- 12.2.4 notify the other Party of:
  - 12.2.4.1 the cessation of such Force Majeure Event (where such event was of a type that was ongoing); and

12.2.4.2 its ability (or its inability, together with an estimate of the date it will be able) to recommence performance of its obligations under this Agreement,

as soon as possible and in any event not later than seven (7) Days after the cessation of such Force Majeure Event.

12.2.5 If the affected Party does not give notice within the time limit specified in Clause 12.2.1, it may do so at a later time but it shall only be excused for its failure or delay under Clause 12.4 from the date such notice is given and not from commencement of such Force Majeure Event.

### **12.3 Duty to Mitigate**

The Party affected by a Force Majeure Event, including a Change in Law, shall use all reasonable efforts (and shall ensure that its Contractors use all reasonable efforts) to promptly take steps to mitigate the effects of a Force Majeure Event, including a Change in Law, which shall include the payment of reasonable sums of money by or on behalf of such Party for such mitigation steps which are reasonable in light of the likely efficacy of such mitigation steps.

### **12.4 Delay Caused by Force Majeure**

Subject to Clauses 12.1.3 and 12.2, so long as the Party affected by a Force Majeure Event has complied with Clause 12.3, then (a) such Party shall not be liable for any failure or delay in performing its obligations (other than an obligation to make a payment) under this Agreement during such Force Majeure Event and (b) any deadline for performance of any obligation of such Party under this Agreement shall be extended provided that such Party shall have no entitlement to any relief under this Clause 12.4 (including any such extension) to the extent that such failure or delay would have nevertheless been experienced by it had such Force Majeure Event not occurred.

## **13. TERMINATION**

### **13.1 Concessionaire Events of Default**

The following events shall be events of default by the Concessionaire (each a "**Concessionaire Event of Default**") which if not cured within the time period permitted (if any) to cure, shall give rise to the right on the part of the Government to terminate this Agreement under Clause 13.3, provided that no such event shall be a Concessionaire Event of Default if it results from (i) the Government's breach of this Agreement, (ii) a breach by the Power Purchaser of the Power Purchase Agreement, (iii) a breach by the Heat Purchaser of the Heat Purchase Agreement or (iv) a Force Majeure Event:

13.1.1 failure of the Concessionaire to achieve the:

13.1.1.1 Construction Start Date within [*redacted information*] following the Effective Date; or

13.1.1.2 Commercial Operations Date for the Plant on or before the Long Stop Date;

13.1.2 after the Construction Start Date an Abandonment by the Concessionaire without prior consent of the Government and which continues for a period of [*redacted information*];

- 13.1.3 other than the assignments, transfers or disposals permitted under Clauses 10.1, 10.2 or 11, the assignment or transfer or disposal of the rights or obligations in the assets identified in Clause 10.2 without obtaining the prior consent of the Government or the transfer, conveyance, loss or relinquishment of the Concessionaire's right to operate the Plant (or any part thereof) or to occupy the Site to any Person (other than the Power Purchaser under the Power Purchase Agreement and the EPC Contractor under the EPC Contract) without the prior approval of the Government;
- 13.1.4 except for the purpose of amalgamation or reconstruction that does not affect the ability of the amalgamated or reconstructed entity, as the case may be, to perform its obligations under this Agreement, the occurrence of any of the following events:
- (a) any proceeding being validly instituted under the Laws of Mongolia for the dissolution of the Concessionaire that is not stayed or suspended in sixty (60) days;
  - (b) the passing of a resolution by the shareholders of the Concessionaire for the winding up of the Concessionaire;
  - (c) the voluntary filing by the Concessionaire of a petition of bankruptcy, moratorium or other similar relief;
  - (d) the appointment of a provisional liquidator in a proceeding for the winding up of the Concessionaire after notice to the Concessionaire and due hearing, which appointment has not been set aside or stayed within sixty (60) Days of such appointment; and
  - (e) the making by a court with jurisdiction over the Concessionaire of an order winding up the Concessionaire that is not stayed or reversed by a court of competent authority within sixty (60) Days;
- 13.1.5 any statement, representation or warranty by the Concessionaire in this Agreement proving to have been incorrect, in any material respect, when made or when deemed to have been made and such failure or incorrect statement, representation or warranty having a material and adverse effect on the Concessionaire's ability to perform its obligations under this Agreement;
- 13.1.6 except for any breach otherwise addressed in this Clause 13.1, any material breach or default by the Concessionaire of this Agreement (including the purchase of Coal other than under a Coal Supply Agreement without the consent of the Government and/or the Power Purchaser or Heat Purchaser but without prejudice to the Concessionaire rights under clause 14.3 of the Coal Supply Agreements) that is not remedied within [redacted information] after notice from the Government stating that a material breach of this Agreement has occurred that could result in the termination of this Agreement, identifying such material breach in reasonable detail, [redacted information];
- 13.1.7 any default by the Concessionaire in the making of any undisputed payment or payments required to be made by it under this Agreement by the due date that continues unpaid for [redacted information];
- 13.1.8 any of the Power Purchase Agreement, the Heat Purchase Agreement, the Land Use Agreement or the Water Purchase Agreement is terminated as a result of a

breach or default by the Concessionaire under any such agreement, or any material undertaking of the Concessionaire under any such agreement becomes unlawful, unenforceable, invalid or void except as a result of a Force Majeure Event.

### 13.2 Government Events of Default

The following events shall be events of default by the Government (each a "**Government Event of Default**") which if not cured within the time period permitted (if any) to cure, shall give rise to the right on the part of the Concessionaire to terminate this Agreement under Clause 13.3, provided that no such event shall be a Government Event of Default (i) if it results from a breach by the Concessionaire of the Power Purchase Agreement, the Heat Purchase Agreement or this Agreement, or (ii) if it occurs as a result of a Force Majeure Event (except in the case of Clause 13.2.1):

- 13.2.1 any default or defaults by the Government in the making of any undisputed payment or payments required to be made by it hereunder on the due date for payment in this Agreement herein that continues unpaid for [*redacted information*];
- 13.2.2 any material breach or default by the Government of or under this Agreement that is not remedied within [*redacted information*] after notice from the Concessionaire to the Government stating that a material breach of the Agreement has occurred that could result in the termination of this Agreement, identifying such material breach in reasonable detail and demanding remedy thereof, [*redacted information*];
- 13.2.3 any of the Power Purchase Agreement, the Heat Purchase Agreement, the Land Use Agreement, any Coal Supply Agreement or the Water Purchase Agreement is terminated as a result of a breach or default under any such agreement by the Power Purchaser, the Heat Purchaser, the counterparty of the Concessionaire under the Land Use Agreement, the Coal Supplier or the Water Supplier, respectively;
- 13.2.4 the expropriation, compulsory acquisition, or nationalization by the Government or any Public Sector Entity of (i) any Ordinary Share Capital, or (ii) any material asset or right of the Concessionaire (except as contemplated by the CHP5 Project Agreements), including any condemnation or expropriation of all or part of the Site under the Land Use Agreement;
- 13.2.5 any procurement by the Government or any Public Sector Entity of any Ordinary Share Capital if the result would be for the Government or any such Public Sector Entity to acquire Control of the Concessionaire or its management (and there shall be an irrebuttable presumption that the ownership by the Government or any such Public Sector Entity of more than twenty five (25%) per cent of the Ordinary Share Capital shall constitute such Control);
- 13.2.6 the obligations of the Government or the rights of the Concessionaire under Clause 8.2 are rescinded or repudiated, or the Government takes any action without cause that evidences an intention to rescind or repudiate such obligations or rights; or
- 13.2.7 any statement, representation or warranty by the Government in this Agreement proving to have been incorrect, in any material respect, when made or when deemed to have been made and such failure or incorrect statement, representation



or warranty having a material and adverse effect on the Government's ability to perform its obligations under this Agreement.

### **13.3 Termination Notices**

13.3.1 Upon the occurrence of a Government Event of Default or a Concessionaire Event of Default, as the case may be, that is not cured within the applicable cure period, if any, the non-defaulting Party may initiate termination of this Agreement by delivering a notice ("**Notice of Intent to Terminate**") of its intent to terminate this Agreement to the defaulting Party. The Notice of Intent to Terminate shall specify in reasonable detail the Concessionaire Event of Default or the Government Event of Default, as the case may be, giving rise to such notice.

13.3.2 Following delivery of the Notice of Intent to Terminate, the Party in default may continue to undertake efforts to cure the Concessionaire Event of Default or the Government Event of Default, as the case may be, for a period of fifteen (15) Days commencing on the delivery date of such notice in the case of a failure by either Party to make payments or for a period of thirty (30) Days commencing on the delivery of such notice in the case of any other Concessionaire Event of Default or Government Event of Default, as the case may be, and if the default is cured at any time prior to the delivery of a Termination Notice in accordance with Clause 13.3.3 then the non-defaulting Party shall have no right to terminate this Agreement in respect of such cured Concessionaire Event of Default or Government Event of Default, as the case may be.

13.3.3 Subject to the provisions of Clause 13.4 and the Tripartite Financial Agreement, upon expiration of the cure period described in Clause 13.3.2 and unless the Parties shall have otherwise agreed or unless the Concessionaire Event of Default or Government Event of Default, as the case may be, giving rise to the Notice of Intent to Terminate shall have been remedied, the Party having given the Notice of Intent to Terminate may terminate this Agreement by delivering a notice ("**Termination Notice**") to the other Party, whereupon this Agreement shall terminate on the date ("**Termination Date**") specified in the Termination Notice, which shall not be earlier than ten (10) Business Days or later than twenty (20) Business Days following the date of delivery of the Termination Notice to the other Party and the provisions of Clause 14 shall apply.

### **13.4 Notice to the Government of the Heat Purchaser's or Power Purchaser's Default**

The Concessionaire shall not seek to terminate the Power Purchase Agreement or the Heat Purchase Agreement without simultaneously providing to the Government a copy of any notice given to the Power Purchaser or the Heat Purchaser, as the case may be, under clauses 15.4 and 15.5 of the Power Purchase Agreement or the Heat Purchase Agreement, as the case may be.

### **13.5 Termination of CHP5 Project Agreements due to Other Force Majeure Events**

13.5.1 If the Power Purchase Agreement or the Heat Purchase Agreement is terminated under clause 14.6 of the Power Purchase Agreement or the Heat Purchase Agreement as the result of an Other Force Majeure Event, this Agreement shall automatically terminate on the date of termination of the Power Purchase Agreement or Heat Purchase Agreement (as applicable).

13.5.2 Either Party may terminate this Agreement upon the occurrence of an Other Force Majeure Event that prevents either Party for a continuous period of nine (9) Months from performing a material obligation under this Agreement.

### **13.6 Termination of CHP5 Project Agreements due to MPFME, CLFME or Change in Law**

13.6.1 This Agreement shall terminate upon notice by either Party to the other:

13.6.1.1 if the Power Purchase Agreement or the Heat Purchaser Agreement is terminated under clause 14.6 of the Power Purchase Agreement or the Heat Purchase Agreement as the result of a MPFME or CLFME;

13.6.1.2 if:

(a) any material undertaking of the Government, the counterparty to the Concessionaire under the Land Use Agreement, the Water Supplier, the Power Purchaser, the Heat Purchaser or any Coal Supplier under this Agreement, the Land Use Agreement, the Water Purchase Agreement, the Power Purchase Agreement, the Heat Purchase Agreement or Coal Supply Agreements, as applicable becomes unenforceable, invalid or void for any reason (including as a result of any Change in Law); or

(b) (A) it becomes unlawful for the Concessionaire, the Lenders or Investors to make or receive any payment, to perform any obligation or to enjoy or enforce any material right under any CHP5 Project Agreement to which they are a party, or (B) any such payment, the performance of any such material obligation or the enjoyment or enforcement of any such material right becomes unenforceable, invalid or void for any reason (including as a result of any Change in Law),

and in each case, any such effect of which continues for more than [*redacted information*] without such material undertaking or entitlement to make or receive any payment or perform any obligation or enjoy or enforce any material right being enforceable, valid, no longer void and/or lawful (as applicable),

13.6.1.3 any Change in Law places any material restrictions or limitations (beyond those restrictions or limitations that are in existence on the date of signing of this Agreement) on the ability of the Concessionaire to exchange Togrogs for Foreign Currency or for Investors to repatriate any capital, dividends, distributions or other proceeds from the Concessionaire (provided that such distributions do not arise in connection with a breach of this Agreement), and such restrictions or limitations remain in place for more than [*redacted information*] without an arrangement being provided to exempt the Concessionaire or its Investors from all such restrictions and limitations.

13.6.2 The Government may terminate this Agreement upon the occurrence of an MPFME or CLFME that prevents either Party for a continuous period of nine (9) Months from performing a material obligation under this Agreement.

### **13.7 Termination by the Government at its option**

- 13.7.1 The Government may at any time issue a notice to the Concessionaire to terminate this Agreement for any reason whatsoever (other than a reason to which any of Clauses 13.1, 13.2, 13.5 or 13.6 apply), whereupon this Agreement shall terminate upon expiry of a period of thirty (30) Days from the date of such issue.
- 13.7.2 If the Government terminates this Agreement under this Clause 13.7, the Government shall pay to the Concessionaire the Compensation Amount set forth in Row 5 of the compensation table set out in Schedule 2 and the Plant shall be transferred to the Government or its designee in accordance with Clauses 14.9 and 14.10.

### **13.8 Other Remedies**

- 13.8.1 In the period following the issue of a Notice of Intent to Terminate or a notice under Clause 13.7, the Concessionaire shall, without prejudice to any other provision of this Agreement (including Clause 14, continue to perform its obligations under this Agreement and take such steps and cooperate with the Government, Power Purchaser, Heat Purchaser and/or any other Public Sector Entity as the Government may reasonably require to ensure an orderly transfer of the Plant on the Transfer Date.
- 13.8.2 Subject to Clause 6.1, the exercise of any right of a Party to terminate under this Agreement, does not preclude the Party from exercising other remedies that are provided in this Agreement or are available at law.
- 13.8.3 The Government acknowledges and agrees that damages alone may not be an adequate remedy for any breach of the terms of this Agreement by the Government and the Concessionaire shall therefore be entitled to the remedies of injunction, specific performance, interim order or other similar relief for any threatened or actual breach of the terms of this Agreement.
- 13.8.4 Remedies are cumulative and the exercise of, or failure to exercise, one or more remedy by a Party shall not limit or preclude the exercise of or constitute a waiver of, other remedies by that Party; provided that the remedies and Compensation Amounts provided in Clause 14 are the exclusive remedies available to each Party with respect to any termination of this Agreement as a consequence of the events described in Clause 14 therein.

## **14. RIGHTS AND OBLIGATIONS OF PARTIES UPON TERMINATION**

### **14.1 Concessionaire Event of Default**

If the Government terminates this Agreement under Clause 13.1 as a result of a Concessionaire Event of Default or the Power Purchase Agreement and/or the Heat Purchase Agreement is terminated as a result of a Concessionaire Event of Default, the Government or its designee may elect at its option to purchase or otherwise assume all of the Concessionaire's right, title and interest in and to the Plant which shall transfer to the Government or its designee upon payment to the Concessionaire of the Compensation Amount set forth in Row 1 of the compensation table set out in Schedule 2 in accordance with the transfer provisions set out in Clause 14.9 and Clause 14.10.

## **14.2 Government Event of Default or Termination Order**

If this Agreement is terminated under Clause 13.7 or the Concessionaire terminates this Agreement under Clause 13.2 as a result of a Government Event of Default, the Government or its designee shall be required to purchase or otherwise assume all of the Concessionaire's right, title and interest in and to the Plant which shall transfer to the Government or its designee upon payment to the Concessionaire of the Compensation Amount set forth in Row 2 of the compensation table set out in Schedule 2 in accordance with the transfer provisions set out in Clauses 14.9 and 14.10.

## **14.3 Termination Following a Prolonged Force Majeure Event or Termination of Certain CHP5 Project Agreements**

In the event of a termination of this Agreement under:

14.3.1 Clause 13.5, or

14.3.2 Clause 13.6,

the Government or its designee shall be required to purchase or otherwise assume all of the Concessionaire's right, title and interest in and to the Plant, which shall transfer to the Government or its designee upon payment to the Concessionaire of the Compensation Amount set forth in Row 3 with respect to Clause 14.3.1 and Row 4 with respect to Clause 14.3.2 of the compensation table set out in Schedule 2 in accordance with the transfer provisions set out in Clause 14.9 and Clause 14.10.

## **14.4 Use of Certain Insurance Proceeds**

Whenever the Power Purchase Agreement is terminated under clause 15 thereof, or the Heat Purchase Agreement is terminated under clause 15 thereof, or this Agreement is otherwise terminated, following a Force Majeure Event and the Government is obligated to pay compensation to the Concessionaire under this Clause 14 and the Concessionaire is entitled to claim insurance proceeds in respect of any loss or damage to the Plant, subject to the Concessionaire's compliance with Clause 7.8, the Compensation Amount payable by the Government in respect of such termination of this Agreement shall be reduced by the amount of any such proceeds received by the Concessionaire prior to the Transfer Date provided that if the proceeds of any such claim are not recovered by the Concessionaire by such date the Concessionaire shall assign to the Government all rights in respect of such claim (including the entitlement to be paid the insurance proceeds) and shall do all acts (including the entry into of any agreement and providing notice to the insurer or insurers) as the Government may reasonably request in order to effect such assignment.

## **14.5 Assignment and Assumption of Coal Supply Agreements and other CHP5 Project Agreements**

In the event of a termination of this Agreement and the termination of the Power Purchase Agreement and the Heat Purchase Agreement and the transfer of the Plant to the Government or its designee in accordance with the provisions of this Clause 14, at the election of the Government, the Concessionaire shall assign one or both of the Coal Supply Agreements and other CHP5 Project Agreements then in effect to the Government or any designee of the Government.

## 14.6 Reimbursement

In the event of a termination of this Agreement for any reason other than a Government Event of Default, or termination under Clause 13.7, the Concessionaire shall without prejudice to the Concessionaire's other liabilities, be liable to Government for all its damages including all costs and expenses (including reasonable attorneys' fees and expenses) relating to the CHP5 Project incurred by the Government, the Heat Purchaser and the Power Purchaser prior to the termination.

## 14.7 Obligations Upon Termination

Upon expiration or earlier termination of this Agreement, the Parties shall have no further obligations hereunder except for obligations that arose prior to or arise upon such expiration or termination and obligations that expressly survive such expiration or termination under this Agreement, provided, however, that notwithstanding anything to the contrary in this Agreement, the rights and obligations set out in Clause 8, Clause 14, Clause 15 and Schedule 1 shall survive any termination or expiration of this Agreement until all provisions are fulfilled and all funds payable hereunder by the Government are received by the Concessionaire or the Lenders, including proceeds from the enforcement by the Lenders of the security created by the Concessionaire under the CHP5 Project Agreements have been repatriated.

## 14.8 Conditions of Transfer

### 14.8.1 On the Transfer Date:

14.8.1.1 the Concessionaire shall cause the Site and the Plant (including any part thereof) to be free and clear of all Environmental Liabilities and Hazardous Materials, except such Environmental Liabilities and Hazardous Materials as are contained and maintained on the Site and/or the Plant in accordance with Prudent Industry Practices and all applicable Laws of Mongolia (and which have been notified to the Government or which have been caused by a Force Majeure Event or Change in Law or a Government, Power Purchaser or Heat Purchaser breach or default), provided that the Concessionaire shall have no obligation to cause the Site to be in a better condition than the condition of the Site on the Effective Date as such condition is described in the Site Baseline Report; and

14.8.1.2 if an Environmental Expert determines that the condition of the Site or the Plant is not free and clear of Environmental Liabilities and Hazardous Materials by reference to the condition described in the Site Baseline Report as provided in Clause 14.8.1.1, the Government may deduct from any amount payable to the Concessionaire the cost determined by the Environmental Expert of remediating or otherwise correcting the Site or the Plant or may invoice the Concessionaire for such amount.

### 14.8.2 In connection with the termination of this Agreement upon expiration of the Term:

14.8.2.1 the Concessionaire shall perform the tests described in Schedule 8 ("**End of Term Tests**") and shall comply with the requirements set out in **Error! Reference source not found.** If the End of Term Test results demonstrate that the Plant requires repair and/or replacement of equipment and parts, the Concessionaire shall carry out such

corrective action as is required to meet the requirements of Schedule 9;

- 14.8.2.2 Subject to the provisions of this Agreement, the Concessionaire shall transfer possession and control of the Plant to an entity nominated by the Government at no charge, free and clear of any Liens, Environmental Liabilities and Hazardous Materials, except such Environmental Liabilities and Hazardous Materials as are (i) contained and maintained in accordance with Prudent Industry Practices and all applicable Laws of Mongolia and have been notified to the Government or (ii) are described in the Site Baseline Report. The Government shall procure that such transferee shall accept such transfer of the Plant. If the Plant does not satisfy the requirements of Schedule 9, the Concessionaire shall immediately take such actions as will cause the Plant to comply with such requirements and if it fails to do so within thirty (30) Days of the expiration of the Term, the Government may take such measures as may reasonably be required for the Plant to comply with such requirements, at the sole expense of the Concessionaire.
- 14.8.2.3 Such transfer shall include, for the major items of the equipment and facilities incorporated into the Plant, intellectual property rights in respect thereof held by the Concessionaire (which may be satisfied through the provision of a license granted for a period of not less than five (5) Years from the date of the transfer, the terms and scope of which shall be reasonably satisfactory to the transferee), copies of all manufacturers' specifications, manufacturers' operation manuals, equipment history and operation diary, and signed and sealed copies of all as-built drawings for the Plant, including the civil and architectural works, and the Concessionaire shall ensure that all relevant contracts (including license agreements) allow for the transfers contemplated by this Clause 14.8.2 and Schedule 9.
- 14.8.2.4 Such transfer shall comply with the requirements of Schedule 9, and shall be free of all Mongolian taxes, including any capital transfer or assignment tax.
- 14.8.2.5 At least twenty-two (22) Months prior to expiration of the Term, the Concessionaire shall deliver to the Government a security deposit in an amount equal to [redacted information].
- 14.8.2.6 The Concessionaire shall provide its good faith estimate of the cost of the End of Term Tests and the final transfer overhaul described in Schedule 9 to the Government based on the plan described in Clause 14.8.2.7 at least eighteen (18) Months prior to the expiration of the Term. The Government may, by notice to the Concessionaire prior to the expiration of the Term, dispute any part of the estimate provided by the Concessionaire. Any such Dispute shall be referred to the Expert. The Expert's determination of the amount shall be binding on both parties. If the Term expires prior to the date on which the Expert provides its ruling on the Dispute, or if the Government does not dispute the estimate provided by the Concessionaire, the amount of the security deposit required under Clause 14.8.2.5 shall be [redacted information], provided that the amount of such security deposit shall be immediately adjusted if the

Expert subsequently determines that the estimated cost of the End of Term Tests and the final transfer overhaul described in Schedule 9, either exceed or are less than (as the case may be) the amount estimated by the Concessionaire. The security deposit shall be issued in favour of the Government and the transferee referred to in Clause 14.8.2.2 and in the same form as the Performance Security but in the amount determined in this Clause 14.8.2, such security to be valid for one (1) Year from the date of transfer of the Plant.

14.8.2.7 Twenty-four (24) Months prior to the expiration of the Term, the Concessionaire shall deliver to the Government a plan consistent with Prudent Industry Practices and reasonably acceptable to the Government setting out the anticipated costs and activities associated with the final transfer overhaul of the Plant as referred to in Schedule 9 and the transfer of the Plant. If the Government, acting reasonably, does not agree on the costs and activities anticipated by the Concessionaire in such transfer plan and the Parties cannot agree on the costs and activities, the Dispute shall be resolved in accordance with Clause 15, provided always that the Concessionaire's obligations under the transfer plan shall be limited to the scope set out in Schedule 9. The plan shall also describe the reserves to be maintained by the Concessionaire to cover these anticipated costs and activities. The Concessionaire shall maintain adequate reserves to complete the transfer obligations required by schedule 9 and shall provide such evidence as the Government shall request from time to time in time in order to ensure compliance with this Clause 14.8.2.7.

14.8.3 The requirements set out in Clause 14.8.2 shall not apply to termination of this Agreement under Clause 13 and shall only apply to termination of this Agreement upon expiry of the Term.

## **14.9 Payment of Compensation Amounts**

14.9.1 As soon as reasonably practicable and in any event no later than thirty (30) Days after the Termination Date, the Concessionaire shall submit an invoice to the MED (on behalf of the Government) setting out the amounts payable by the Government ("**Termination Invoice**"), if any, to the Concessionaire under this Clause 14. The Termination Invoice shall be accompanied by a certification of a reputable international accountancy firm, agreed upon by the Parties or otherwise appointed by the President of the Institute of Chartered Accountants for England and Wales, experienced in the methods of valuation of utility assets, verifying the calculation of all of the elements listed in the Termination Invoice, which calculation shall be used in the preparation of the Termination Invoice.

14.9.2 The Government shall pay to the Concessionaire the amount shown in the Termination Invoice [*redacted information*] no later than thirty (30) Days following receipt thereof. On the date that such payment is made by the Government, the Land Use Agreement shall terminate and the Transferable Assets shall be transferred to the Government ("**Transfer Date**") in accordance with Clause 14.10.

14.9.3 Payments of amounts due and payable in respect of any Termination Invoice not made by the Government by the date specified in Clause 14.9.2 shall bear interest at a rate per annum equal to the Delayed Payment Rate.

- 14.9.4 If any Tax is imposed on or withheld from payments made by the Government to the Concessionaire under this Clause 14, then such payments to the Concessionaire shall be increased by an amount such that the Concessionaire will receive the same amount which it would in exchange for the Transferable Assets had no such Tax been imposed or withheld.
- 14.9.5 The Parties acknowledge and agree that it would be difficult or impossible to determine at the date of this Agreement with absolute precision the amount of damages that would or might be incurred by the Concessionaire or the Government as a result of the termination of this Agreement (and the Heat Purchaser or the Power Purchaser as a result of termination of the Power Purchase Agreement or the Heat Purchase Agreement). The Parties agree that the termination amounts provided under this Clause 14.9 and Schedule 2 are the Parties' reasonable and genuine pre-estimates for the actual damages and losses that may reasonably be anticipated from such termination and each Party waives to the fullest extent permitted by law any claim that such compensation is void or unenforceable for any reason whatsoever.

#### **14.10 Transfer of the Plant to the Government following Termination**

- 14.10.1 On the Transfer Date, upon full payment by the Government of the amount due in the Termination Invoice under Clause 14.9, the Concessionaire shall transfer to the Government or its designee and the Government shall acquire from the Concessionaire, all of the Concessionaire's right, title and interest in and to the Transferable Assets free of all Liens. The "**Transferable Assets**" shall comprise the Plant, the Site and the Back-Up Metering System, in each case together with all equipment and machinery, including spare parts and vehicles and all operating manuals and design drawings relating thereto.
- 14.10.2 Where required under this Agreement, the Concessionaire shall transfer the Transferable Assets to the Government or its designee, as applicable, on the Transfer Date.

### **15. RESOLUTION OF DISPUTES**

#### **15.1 Resolution by Parties**

- 15.1.1 If a Dispute arises, the Parties shall first attempt in good faith to settle such Dispute by mutual discussions in accordance with the provisions of Clause 15.1.2.
- 15.1.2 The Party alleging the existence of a Dispute shall give to the other Party notice setting out the material particulars of the Dispute. Representatives from each of the Parties shall meet in Ulaanbaatar, Mongolia and attempt in good faith to resolve the Dispute within fifteen (15) Days after the date of receipt of such notice by the relevant Party.
- 15.1.3 If the Dispute is not resolved within thirty (30) Days after the date of receipt of notice referred to in Clause 15.1.2 by the relevant Party (or within such longer period of time as the Parties may agree), then the provisions of Clause 15.2 and Clause 15.3 shall apply, as appropriate.
- 15.1.4 During the period within which the Parties' representatives are meeting in good faith to resolve the Dispute, the Parties shall faithfully continue to perform their respective obligations under this Agreement that are not in Dispute.



## 15.2 Determination by Expert

- 15.2.1 If the Parties are unable to resolve a Dispute in accordance with Clause 15.1, then either Party, in accordance with this Clause 15.2, may refer the Dispute to an expert ("**Expert**") for consideration of the Dispute and to obtain a determination from the Expert as to the resolution thereof. Notwithstanding the foregoing, in accordance with Clause 15.2.14 and 15.2.15, either Party may require that any Dispute be referred for resolution to arbitration under Clause 15.3 without first referring it to an Expert.
- 15.2.2 The Party initiating submission of the Dispute to the Expert shall provide the other Party with a notice stating that it is submitting the Dispute to an Expert and nominating the person it proposes to be the Expert. Within seven (7) Days of receiving such notice, the other Party shall notify the initiating Party whether such person is acceptable and if such nominated expert is not acceptable to the responding Party, the responding Party shall propose a person to be the expert. If the Party receiving such notice fails to respond or notifies the initiating Party that the person is not acceptable or nominates an expert that is not acceptable to the initiating Party, the Parties shall meet within five (5) Business Days and discuss in good faith for a period of five (5) Days to agree upon a person to be the Expert. Failing agreement on the Expert within the said five (5) Days, the ICC International Centre for Expertise shall be directed by either Party to select the Expert and the selection of the Expert by the relevant selecting entity shall be binding on the Parties; provided however, unless the Parties otherwise agree, the Expert shall not be a national of the jurisdiction of either Party or of the jurisdiction of any Investor or group of Investors holding directly or beneficially more than five per cent (5%) of the Concessionaire nor shall any such Expert be an employee or agent or former employee or agent or have a material interest in the business of any such Person.
- 15.2.3 Without prejudice to the Parties' right to proceed to arbitration under Clause 15.3, if the Expert has been appointed, but is unable to or unwilling to complete the consideration of the Dispute and provide a determination, another Expert shall be appointed by agreement between the parties or, failing agreement within five (5) Days of the Parties being notified that the Expert is so unable or unwilling to provide a determination, the ICC International Centre for Expertise shall be directed by either Party to select another Expert in accordance with Clause 15.2.2 .
- 15.2.4 Consideration of the Dispute by the Expert shall be initiated by the Party who is seeking consideration of the Dispute by concurrently submitting to both the Expert and the other Party within five (5) Days of the date of selection of the Expert, written materials setting forth:
- 15.2.4.1 a description of the Dispute;
  - 15.2.4.2 a statement of the initiating Party's position and whether a hearing is requested by such Party; and
  - 15.2.4.3 copies of records supporting the initiating Party's position.
- 15.2.5 Within ten (10) Days of the date that a Party has submitted the materials described in Clause 15.2.4, the other Party may submit to the Expert, with copies to the other Party:
- 15.2.5.1 a description of the Dispute;

- 15.2.5.2 a statement of such Party's position and, whether a hearing is requested by such Party; and
- 15.2.5.3 copies of any records supporting the Party's position.
- 15.2.6 Each Party shall make available all relevant documents and information within their control relating to the Dispute to the Expert. Each party shall be entitled to receive copies of the records submitted to the Expert by the other Party pursuant this Clause 15.2.6.
- 15.2.7 Each Party shall designate at least one (1) person knowledgeable about the issues in Dispute who shall be available to the Expert to answer questions and provide any additional information requested by the Expert. Except for such person, a Party shall not be required to, but may, provide oral statements or presentations to the Expert or make any particular individuals available to the Expert. If a hearing is requested by either Party under Clauses 15.2.4 or 15.2.7, the Expert shall nominate a time and place for a hearing of the Parties on the Dispute.
- 15.2.8 The Expert shall provide a determination within twenty (20) Days after the ten (10) Day response period provided in Clause 15.2.6 has run or within such further time as is agreed by the Parties.
- 15.2.9 The proceedings shall be without prejudice to any Party and any evidence given or statements made in the course of this process may not be used against a Party in any other proceedings save to the extent that such proceedings relate to the enforcement of any determination of an Expert which is expressed to be valid and binding in accordance with Clause 15.2.13.1. The process shall not be regarded as an arbitration and the laws relating to commercial arbitration shall not apply.
- 15.2.10 Subject to Clause 15.2.13.1, if a Party does not accept the determination of the Expert with respect to the Dispute or if the Expert has not provided a determination within the time period specified in Clause 15.2.8, either Party may initiate arbitration proceedings in accordance with Clause 15.3.
- 15.2.11 The costs of and incidental to the engagement of an Expert shall be borne by the Parties.
- 15.2.12 The failure of any Party to comply with the provisions and time periods set out in this Clause 15.2 and Clause 13 shall not prevent (i) the Expert from proceeding and/or (ii) subject Clause 15.2.13 any Party from requesting that the Expert proceedings be terminated and the matter referred immediately to arbitration in accordance with Clause 15.3.
- 15.2.13 An Expert's decision shall, in absence of manifest error or fraud, be final and binding on the Parties:
  - 15.2.13.1 where the Parties have agreed in writing at the time that the decision of the Expert shall be final and binding; or
  - 15.2.13.2 where the Dispute is not one to which Clause 15.2.14 applies and neither Party has served a notice on the other Party within twenty-one (21) Days of the Expert's determination having been notified to it, stating its intention to refer the matter in Dispute to arbitration, and/or the notifying Party has failed to commence the procedure to

refer the Dispute to arbitration within a further ten (10) Day period after receiving such notice.

15.2.14 Either Party may at any time refer a Dispute directly to arbitration under Clause 15.3 without reference to an Expert under this Clause 15.2.

15.2.15 The amount if any which becomes payable by one Party to the other as a result of a binding decision by the Expert shall be due and payable within seven (7) Days of notification of the decision, unless the Expert orders otherwise.

### **15.3 Arbitration**

15.3.1 Any Dispute arising out of or in connection with this Agreement that has not been resolved following the procedures set forth in Clauses 15.1 and 15.2 or has been required by a Party to be referred to arbitration without reference to an Expert and shall be settled by arbitration [*redacted information*].

15.3.2 [*redacted information*].

15.3.3 [*redacted information*].

15.3.4 The arbitration award shall be final and binding on the Parties.

### **15.4 Related Disputes**

15.4.1 If any Dispute has been referred to an Expert for a final and binding determination under Clause 15.2 or to arbitration under Clause 15.3 and such Dispute raises issues of fact or law that, in whole or in material part are, in the opinion of the arbitrators, substantially the same as issues of fact or law already pending in international arbitration proceedings in connection with any Related Dispute, such issues shall, to the extent permitted under the Laws of Mongolia, be consolidated with such Related Dispute, unless such consolidation would, in the opinion of the arbitrators, produce manifest injustice, substantial hardship to the Government or the Concessionaire or cause significant delay in the determination of the Dispute between the Government and the Concessionaire or in the determination of any Related Dispute in which the Government is involved.

### **15.5 Performance**

The Government unconditionally and irrevocably (i) agrees that the signing, delivery and performance by it of this Agreement constitute private and commercial acts and (ii) waives any claim that the signing, delivery and performance by it of this Agreement constitutes by an administrative act.

### **15.6 Sovereign Immunity; Jurisdiction**

15.6.1 [*redacted information*]:

15.6.1.1 [*redacted information*];

15.6.1.2 [*redacted information*]; and

15.6.1.3 [*redacted information*].

15.6.2 [*redacted information*].

## **16. REPRESENTATIONS AND WARRANTIES**

### **16.1 Concessionaire Representations and Warranties**

The Concessionaire, as of the date of this Agreement, represents and warrants to the Government as follows:

- 16.1.1 it is duly organised, validly existing and in good standing under the laws of Mongolia and has the corporate power and lawful authority to carry on its business;
- 16.1.2 it has the full legal right, power and authority required to enter into this Agreement and the other CHP5 Project Agreements to which it is a party and to perform fully its obligations hereunder and thereunder;
- 16.1.3 it has obtained all required approvals necessary to authorise and enable it to sign, deliver and perform the terms of this Agreement;
- 16.1.4 no additional consent, approval, authorisation or order of any foreign governmental agency or body or any court is required for the signing of this Agreement, the Concessionaire's performance hereunder or for the consummation of the transactions contemplated hereby;
- 16.1.5 neither the signing of this Agreement nor the performance of the transactions contemplated under this Agreement will result in a violation of, or constitute a default under, any statute or regulation or any order or decree of any court or governmental authority binding upon the Concessionaire or its property, or violate or result in a default under any of the terms and provisions of its articles of association;
- 16.1.6 did not violate the Laws of Mongolia or submit false documents in connection with the tender process for the award of the Concession; and
- 16.1.7 this Agreement constitutes the legal, valid and binding obligations of the Concessionaire, enforceable against it in accordance with its terms.

### **16.2 Government Representations and Warranties**

The Government, as of the date of this Agreement, represents and warrants to the Concessionaire as follows:

- 16.2.1 the MED has been authorised by the Government to sign this Agreement and all other documents which the MED is required to sign in relation to the CHP5 Project on behalf of the Government and to perform the obligations hereunder and thereunder;
- 16.2.2 neither the signing of this Agreement nor the performance of the transactions contemplated under this Agreement will result in a violation of, or constitute a default under, any statute or regulation or any order or decree of any court or governmental authority binding upon the Government or its property;
- 16.2.3 the Government has taken all necessary actions and fulfilled all obligations required by the Government to ensure the due authorisation and authority to carry out the Government's obligations under this Agreement and the other CHP5 Project Agreements to which the Government is a party;

- 16.2.4 this Agreement and all of the other CHP5 Project Agreements executed by the Government have been duly authorised and approved in accordance with the Laws of Mongolia and comply with all requirements of the Laws of Mongolia, including the Law of Mongolia on Concessions, adopted on 28 January 2010 (as amended); and
- 16.2.5 this Agreement and all other CHP5 Project Agreement to which the Government is a party constitutes the legal, valid and binding obligation of the Government, enforceable against it in accordance with its terms; and
- 16.2.6 this Agreement constitutes the legal, valid and binding obligations of the Government, enforceable against it in accordance with its terms.

## **17. MISCELLANEOUS PROVISIONS**

### **17.1 Notices**

- 17.1.1 Except as otherwise expressly provided in this Agreement, all notices to be given or made under or in connection with the Agreement including requests, consents, refusals, approvals, settlements, waivers, demands, acknowledgements, agreements, confirmations, elections and other communications ("**Notices**") shall be in writing, shall be addressed for the attention of the persons notified pursuant to this Clause 17.1 and shall either be delivered personally or sent by courier, registered or certified mail or facsimile. The addresses for service of the Parties and their respective addressees and facsimile numbers shall be as notified by each Party to the other on or prior to the date of this Agreement.
- 17.1.2 Either Party may change the address, addressee or facsimile number to which Notices are to be delivered to it by giving not less than five (5) Days' prior notice to the other Party.
- 17.1.3 No Notice shall be effective until received or deemed received. All Notices shall be deemed to have been received by the receiving Party:
- 17.1.3.1 when presented if personally delivered;
  - 17.1.3.2 on the date shown by a facsimile transmission report or confirmation in the case of Notices sent by facsimile; or
  - 17.1.3.3 five (5) Business Days after being delivered to a reputable international courier for express delivery.

### **17.2 Governing Law and Jurisdiction**

This Agreement and any Dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual Disputes) shall be governed by and construed in accordance with the Laws of Mongolia.

### **17.3 Amendment**

An amendment or modification of this Agreement shall be effective or binding on a Party only if it is in writing and duly executed by or on behalf of each of the Parties. No amendment of the Heat Purchase Agreement or the Power Purchase Agreement shall increase the liability of the Government under this Agreement, unless such amendment is approved in writing by the Government.

#### **17.4 Third Parties**

Except for any rights expressly granted to the Lenders in this Agreement, this Agreement is intended solely for the benefit of the Parties and nothing in this Agreement shall be construed to create any rights in, duty to, standard of care to, or any liability to, any Person not a Party.

#### **17.5 No Waiver**

17.5.1 No default by either Party in the performance of or compliance with any provision of this Agreement shall be waived or discharged except with the express consent of the other Party.

17.5.2 No waiver by either Party of any default by the other in the performance of or compliance with any of the provisions of this Agreement shall operate or be construed as a waiver of any other or further default whether of a like or different character.

#### **17.6 Relationship of the Parties**

17.6.1 This Agreement shall not be interpreted or construed to create an association, joint venture or partnership between the Parties or to impose any partnership obligation or liability upon either Party.

17.6.2 Neither Party shall have any right, power or authority to enter into any agreement or undertaking for, to act on behalf of, or be an agent or representative of, or to otherwise bind, the other Party, and neither Party shall hold itself out to any third-party as having such right, power or authority.

#### **17.7 [redacted information]**

17.7.1 [redacted information].

17.7.2 [redacted information].

17.7.3 [redacted information].

#### **17.8 Entirety**

This Agreement and the documents to be signed or provided under it constitute the entire Agreement between the Parties with respect to the subject matter of this Agreement and supersedes all prior written or oral agreements between them with respect to such matter.

#### **17.9 Assignment**

17.9.1 No assignment or transfer by a Party of this Agreement or such Party's rights or obligations hereunder shall be effective without the prior consent of the other Party, except as provided in Clause 17.9.2.

17.9.2 Notwithstanding the provision of Clause 17.9.1, for the purpose of financing the CHP5 Project, the Concessionaire may under the CHP5 Financing Documents, assign to, or create a security interest in favour of the Lenders in or over the Concessionaire's rights and interest under or under this Agreement.

## **17.10 Confidentiality**

- 17.10.1 This Agreement and all information disclosed hereunder or in connection with this Agreement shall be treated as confidential and (except as provided in Clauses 17.10.3 and 17.10.4) such information shall not be disclosed in whole or in part by either Party.
- 17.10.2 This obligation does not apply to information that (when used or disclosed) has been made public other than through a breach of this Agreement, or has been, or could have been, lawfully acquired by the Party:
- 17.10.3 Notwithstanding the provisions of Clause 17.10.1, neither Party shall be required to obtain the prior consent of the other in respect of disclosure of information:
- 17.10.3.1 to directors, officers and employees of such Party or to any Person directly or indirectly through one or more intermediaries controls or is controlled by or is under common control with, any Person;
- 17.10.3.2 to persons professionally engaged by or on behalf of such Party;
- 17.10.3.3 to any government department or any governmental or regulatory agency having jurisdiction over such Party but only to the extent that such Party is required by law to make such disclosure;
- 17.10.3.4 to:
- (a) any lending or other financial institution in connection with the financing of such Party's operations; or
- (b) any bona fide intended assignee or transferee of the whole or any part of the rights and interests of the disclosing Party under this Agreement,
- but (in either case) only to the extent required in connection with obtaining such finance or in respect of such proposed assignment ; or
- 17.10.3.5 to any Expert or arbitrator appointed under the terms of this Agreement,
- provided that the disclosing Party shall use its reasonable endeavours to ensure that the recipients of the disclosed confidential information keep such information on the same terms of confidentiality as in this Clause 17.10.
- 17.10.4 The Government may make this Agreement available to the general public to the extent the Government is required to do so by the Laws of Mongolia.
- 17.10.5 This Clause 17.10 shall survive termination or expiry of this Agreement for a period of thirty-six (36) Months from the date of such termination or expiry.

## **17.11 Successors and Assigns**

This Agreement shall be binding upon, and inure to the benefit of, the Parties and their respective permitted successors and permitted assigns.

#### **17.12 No Liability for Review**

No review and approval by the Government or any Relevant Authority of any agreement, document, instrument, drawing, specifications or design proposed by the Concessionaire nor any inspection of the EPC Works or the Concessionaire Interconnection Works shall relieve the Concessionaire from any liability that it would otherwise have had for its negligence in the preparation of such agreement, document, instrument, drawing, specification or design or the carrying out of such works or failure to comply with the applicable Laws of Mongolia with respect thereto or to satisfy the Concessionaire's obligations under this Agreement, nor shall the Government be liable to the Concessionaire or any other Person by reason of its review or approval of an agreement document, instrument, drawing, specification or design or such inspection.

#### **17.13 Affirmation**

The Concessionaire hereby declares that it has not obtained or induced the procurement of this Agreement, the Power Purchase Agreement or the Heat Purchase Agreement or any contract, consent, approval, right, interest, privilege or other obligation or benefit related to this Agreement or the CHP5 Project from the Government or any Public Sector Entity through any corrupt or illegal business practice.

#### **17.14 Counterparts**

This Agreement may be executed any number of counterparts and this has the same effect as if signature on the counterparts were on a single copy of the Agreement.

#### **17.15 Severability and Invalidity**

- 17.15.1 If any term or provision of this Agreement is declared invalid, unenforceable or illegal by the courts of a jurisdiction to which it is subject, such provision shall be severed and, the remaining provisions of this Agreement shall remain in full force and effect and shall not be affected by such determination in any way.
- 17.15.2 The illegality, invalidity or unenforceability of any provision of this Agreement in whole or in part under the law of any jurisdiction shall not affect its legality, validity or enforceability under the law of any other jurisdiction.
- 17.15.3 The Parties will negotiate in good faith with a view to agreeing one or more provisions which may be substituted for any such invalid, illegal or unenforceable provision and which is satisfactory to the Government and produce as nearly as is practicable in all the circumstances the appropriate balance of the commercial interests of the Parties. No failure to agree upon such provisions shall be susceptible to dispute resolution under Clause 15.

*[intentionally left blank]*



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

**THE MINISTRY OF ECONOMIC DEVELOPMENT OF MONGOLIA FOR AND ON BEHALF OF THE GOVERNMENT OF MONGOLIA**

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Name: Batbayar Nyamjav  
Title: Minister of Economic  
Development  
Date: June 20, 2014

**FIFTH COMBINED HEAT AND POWER PLANT LLC**

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Name: Benoit Ribesse  
Title: Executive Director  
Date: June 20, 2014