

**CONFIDENTIALITY AGREEMENT**

**Between**

**Minas de Benga, Limitada**

(hereinafter referred to as "MBL" or "Discloser")

NUIT 400148066

Av. 24 de Julho, no.1123, 4º Piso

Edificio 24

Maputo – Mozambique

and

---

(hereinafter referred to as the "Recipient")

NUIT \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

## CONTENTS

	<u>Page No</u>
Definitions.....	3
Background.....	4
Liability .....	4
Confidentiality obligations.....	5
Intellectual Property.....	6
Acceptance of liability .....	6
Warranties .....	6
Survival and overriding provisions .....	7
Return of Confidential Information.....	7
Breach.....	7
General .....	8

## 1. Definitions

1.1 "Party" means either MBL/Discloser or the Recipient, as the case may be.

1.2 "Confidential Information" includes, but is not limited to:

- (a) trade secrets, know-how, inventions, computer programmes, intellectual property rights and applications, technical data and product or process specifications related to MBL;
- (b) methods of conducting the business of MBL, including but not limited to, the development and marketing of products, the protection of new products and the marketing thereof, accounting policies and systems, costings, prices and profit margins;
- (c) the identity of MBL contracting third parties and the type of contracts concluded with such parties;
- (d) any other category of information relating to MBL's business which may reasonably be regarded by MBL as being secret;

but excludes

- (e) information which, at the time of disclosure, was in the public domain;
- (f) information which at the time of disclosure was already known by the Recipient and is not the subject of prior or other secrecy agreements between the Parties;
- (g) information which, after disclosure, becomes published or generally available to the public or in the public domain through no fault of the Recipient;
- (h) information which is the same as that acquired from third parties and is not subject to similar secrecy limitations;
- (i) information which the Recipient is required by law to disclose.

1.3 "Connected Persons" means:

- (j) in relation to a natural person, any relative or any business entity in which he or she has or may acquire an interest;
- (k) in relation to a member of a partnership, any other member, and any connected person in relation to any member of such partnership;
- (l) in relation to a company, its holding company or subsidiary companies, and the directors and employees of the said companies;

- 1.4 "Engagement" means the business arrangement concluded or about to be concluded between the Parties, or any contract now in existence or which may come into existence between the Parties.

## **2. Background**

The Recipient acknowledges that:

- 2.1 The Discloser launched the Global open tender for coal mining operation services under tender no. MBL/TM/2024-25/01 dated 17.07.2024 ("Tender");
- 2.2 Under the Tender, the Discloser uploaded the latest pit shell, lead and lift data of mine for prospective bidders for their reference and evaluation before participating into the bid; and
- 2.3 Prospective bidders may be interested to perform their own survey, before bidding, at their sole and exclusive risk, to evaluate the data provided by the Discloser under the Tender.

## **3. Liability**

- 3.1 The Recipient shall obtain and maintain all the permits, licenses, registrations and approvals related to the performance of the \_\_\_\_\_ survey/survey report and shall give all notices required to be obtained or given by Law or any Government Agency for the performance of \_\_\_\_\_ survey/survey report, and will be responsible for any penalties, fines, charges or other levies or costs that may arise if such licenses or permits are not obtained or maintained.
- 3.2 The Recipient shall perform \_\_\_\_\_ survey and/or survey report exclusively to evaluate the data and information provided by the Discloser for the exclusive purpose of preparing and submitting the bid;
- 3.3 The Recipient shall perform \_\_\_\_\_ survey and/or survey report at their sole and exclusive risk;
- 3.4 The Recipient shall bear the full cost of the \_\_\_\_\_ survey and/or survey report or any other cost;
- 3.5 The Discloser will not certify the findings of the \_\_\_\_\_ survey and/or survey report performed by the Recipient.

- 3.6 The Recipient will be liable to the Discloser and any third parties, in accordance with the Law, for any losses or damages arising from the acts or omissions of the Recipient or its personnel in the performance of the of this agreement.
- 3.7 No provision of this agreement shall, or shall be read as intending to, exclude liability of the Recipient for gross negligence, wilful misconduct, fraud or fraudulent misrepresentation.
- 3.8 The Discloser shall not be liable to the Recipient for any delay in performing \_\_\_\_\_survey/survey report to the extend that such delay or failure is caused by an event or circumstance that is beyond the reasonable control of the Disclosure, and which by its nature could not have been foreseen by the Disclosure, if it could have been foreseen, was unavoidable, provided that the Disclosure shall use all reasonable endeavours to mitigate the effect of the such event or circumstance.

#### **4. Confidentiality obligations**

The Recipient hereby agrees:

- 4.1 To keep secret any Confidential Information of the Discloser which may be disclosed to it or to which it gains access in consequence of the Tender, and not to disclose any part thereof to any third party without the prior written consent of the Discloser, which it may in its sole discretion withhold;
- 4.2 Not to use nor permit the use of any of the Confidential Information for any purpose other than strictly for the purpose of the Tender;
- 4.3 To ensure that all employees, advisors, consultants or other contractors or sub-contractors to whom Confidential Information is disclosed or any other work product or document derived from the Tender are legally bound under the terms of their employment agreements or otherwise to keep the Confidential Information confidential and not to use the Confidential Information except for the purpose of the Tender;
- 4.4 Not to allow any parties, other than those identified in subclause 4.3 to gain access to the Confidential Information of the Discloser.

## **5. Intellectual Property**

- 5.1 The intellectual property and copyright in any information, documents or other material provided by the Discloser to the Recipient or any work product derived from the Tender, documents or other material are and shall remain the property of the Discloser;
- 5.2 The intellectual property and copyright on all studies, models, opinions, drawings, digital data or any other work product or document made by the Recipient within the scope of Tender are exclusive property of the Discloser.

## **6. Acceptance of liability**

- 6.1 The Recipient acknowledges and agrees that the unauthorised disclosure or use of any of the Confidential Information by it or a third party may cause irreparable loss, harm or damage to the Discloser, thus the Recipient indemnifies and holds the Discloser harmless against any loss or expense, claim or demand suffered by it pursuant to a breach hereof by the Recipient, or any of its Connected Persons;
- 6.2 The Recipient hereby accepts liability for any acts of its Connected Persons who have gained or gain access to the Confidential Information, and indemnifies the Discloser against any loss or damage, claim or demand, including legal costs, which may be suffered or incurred by the Discloser as a result thereof;

## **7. Warranties**

- 7.1 The Discloser reasonably believes the data and information it discloses to the Recipient in terms hereof to be accurate. However, notwithstanding the disclosure of any data and information to the Recipient, the Discloser makes any warranty as to the value or accuracy thereof. Where the Recipient relies upon any of the data and information provided by the Discloser in fulfilling its obligations in terms of the Tender, it shall be responsible to check the accuracy of the data and information relied upon. The Discloser shall not be liable for any loss or damage, claim or demand incurred or received by the Recipient or any of its Connected Persons, in relying upon the data and information disclosed to it, and the Recipient hereby indemnifies the Discloser against any such loss or damage, claim or demand.

## **8. Survival and overriding provisions**

- 8.1 The confidentiality obligations contained in this agreement will commence on the date of signature hereof and shall survive the termination of any current or future Engagement;
- 8.2 The confidentiality obligations contained in this agreement will prevail over, and operate independently of any Engagement, notwithstanding any stipulation in any such Engagement to the effect that the written document contains all of the terms and conditions pertaining to the Engagement in question. The Parties concur that any signature of a contract containing such a term shall not be regarded as a waiver of their respective rights or obligations contained in this agreement.

## **9. Return of Confidential Information**

- 9.1 The Recipient shall share with the Discloser immediately a copy of the survey data/report, in hard and soft copy, upon conducting the survey;
- 9.2 The Recipient not awarded the Tender work shall delete and destroy all survey data/report and any other data derived from the Tender, hard and soft copies, within one month after communication that the Tender work was not awarded to the Recipient and must procure that anyone who had access to the survey data/report or any other data derived from the Tender does likewise. If so requested by the Discloser, Recipient shall promptly certify such destruction in writing;

## **10. Breach**

10.1 Should the Recipient commit a breach of any of the provisions of this agreement, then the Discloser shall be entitled, in addition to any other rights which it may have in law, to:

- (m) bring an application in any Court or competent jurisdiction for the granting of an interdict against the Recipient in breach to prevent any further breach of the terms of this agreement; and
- (n) bring an application or action in any Court of competent jurisdiction, suspending or terminating (whether temporarily or permanently) any Engagement then in force between the Parties if the Discloser, acting

reasonably, believes that the breach of this agreement is fundamentally detrimental to the continuation of the Engagement or generally to its interests.

10.2 Any such action or application shall be preceded by reasonable notice in the circumstances, save in circumstances where the Discloser is entitled as of law to bring an urgent application without notice to the Recipient.

## **11. General**

- 11.1 This agreement shall be construed and applied in accordance with the laws of Mozambique.
- 11.2 Each party irrevocably and unconditionally submits to the jurisdiction of the courts of the jurisdiction specified in the preceding clause and the courts of appeal from them for determining any dispute concerning this agreement.
- 11.3 For the purposes of this agreement, the Discloser Confidential Information shall be deemed to be its sole and exclusive property.
- 11.4 No concession or indulgence which the Discloser may at any time grant to the Recipient shall be deemed to constitute a novation of or an amendment to this agreement or a waiver of its rights.
- 11.5 If any portion of this undertaking is found to be void or unenforceable, the remaining portions thereof shall remain binding and enforceable with the same effect as though the void or unenforceable portions were deleted;
- 11.6 The provisions of this agreement shall bind the successors in title of both Parties;
- 11.7 No contract varying, adding to or deleting from this agreement, and no waiver of any right under this agreement will be effective unless reduced to writing and signed by either Party;
- 11.8 If the Recipient is obliged to disclose any of the Confidential Information as a result of a Court Order, then it shall immediately inform the Discloser thereof to enable it to object to the compelled disclosure, but whether or not the Discloser raises any objection and whether or not it is successful, the Recipient may produce only such Confidential Information as is required strictly to comply with the Court Order, as determined by the Discloser, acting reasonably.



11.9 The Recipient undertakes to co-operate with the Discloser to ensure the maintenance of secrecy regarding the Confidential Information and to notify the Discloser as soon as a breach or threatened breach of this agreement occurs. If the Recipient becomes aware of a breach or threatened breach of this agreement by one or more of its employees, it shall assist the Discloser in enforcing the provisions of this agreement and any confidentiality undertaking which may have been signed by any of them.

**SIGNED by MBL**

\_\_\_\_\_  
Name \_\_\_\_\_  
Position \_\_\_\_\_  
Date \_\_\_\_\_

\_\_\_\_\_  
Name \_\_\_\_\_  
Position \_\_\_\_\_  
Date \_\_\_\_\_

**SIGNED by the Recipient**

\_\_\_\_\_  
Name \_\_\_\_\_  
Position \_\_\_\_\_  
Date \_\_\_\_\_