



ANÚNCIO DE CONCURSO

Minas de Benga, Lda convida todas as partes interessadas a apresentarem propostas fechadas para a prestação dos seguintes serviços de:

TE095/2019

**Projeto de Beneficiamento de Rejeitos
(Construir, possuir e operar uma planta de beneficiamento de rejeitos / recuperação de carvão)**

Os documentos do concurso podem ser baixados no site da ICVL (www.icvl.in).

Como alternativa, os concorrentes podem obter uma cópia dos documentos do concurso enviando um email para:

Aniza.sidi@icvl.co.mz

RajendraKumar.Mishra@icvl.co.mz

As propostas deverão ser entregues no endereço abaixo até as 15:00 horas do dia 5 de Dezembro de 2019.

Buying@icvl.co.mz

Os pedidos de esclarecimento poderão ser enviados para o endereço electrónico abaixo até dia 21 de Novembro 2019

Email: **Aniza.sidi@icvl.co.mz**

RajendraKumar.Mishra@icvl.co.mz

TENDER ANNOUNCEMENT

Minas de Benga, Lda invites all interested parties to submit sealed bids for the provision of following services:

TE095/2019

**Tailing Beneficiation project
(To build, Own & Operate processing plant for Tailings Beneficiation/recovery of coal)**

The tender documents can be downloaded from the ICVL website (www.icvl.in).

Alternatively, intending bidders may obtain a copy of tender documents by sending an email to :

Aniza.sidi@icvl.co.mz

RajendraKumar.Mishra@icvl.co.mz

The bids shall be submitted to the email address below by 15:00 hrs on 5th December 2019,
Buying@icvl.co.mz

Clarification enquiries may be addressed to the email address below by the 21st November 2019

Email: **Aniza.sidi@icvl.co.mz**

RajendraKumar.Mishra@icvl.co.mz

MINAS DE BENGÁ, LDA. (“MBL”)

TETE, MOZAMBIQUE

Tender No: 095/2019

Volume 1 of 4

TENDER THROUGH INTERNATIONAL COMPETITIVE BIDDING FOR

**Tailings Beneficiation plant on BOO basis
AT THE BENGÁ MINE**

Dated: 14th November 2019

Last date of Bid Submission: 5th December 2019

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1. DISCLAIMER

- 1.1 The purpose of this document and any attachment thereto or part thereof (hereinafter "Document" or "Bid Document") is to provide interested parties with information to facilitate the formulation of their Techno Commercial Bid and Price Bid.
- 1.2 This document does not purport to contain all the information each Bidder may require. The Document may not be appropriate for all persons, and it is not possible for Minas de Benga, Lda. (hereinafter "MBL") MBL to consider the needs of each party who uses or reads the Document. The concerned parties should conduct their own investigations and analysis and should verify the accuracy, reliability and completeness of the information in the Document and may obtain independent advice from appropriate sources.
- 1.3 Neither MBL nor its employees make any representation or warranty as to the accuracy, reliability or completeness of the information in this Document.
- 1.4 Neither MBL nor its employees shall have any liability to any Bidder or any other person under the law of contract, tort, the principles of restitution or unjust enrichment or otherwise for any loss, expense or damage which may arise from or incurred or suffered in connection with the Document, or any matter deemed to form part of this Document, the award of the work, or the information supplied by or on behalf of MBL or its employees or otherwise arising in any way from the selection process for the tender.
- 1.5 The Document and the information contained herein are strictly confidential and privileged and are for the exclusive use of the party to whom it is issued. The Document must not be copied or distributed by the recipient to third parties other than, to the extent required by the applicable law or in confidence to the recipient's professional advisors, provided that such advisors are bound confidentiality restrictions at least as restrict as those contained in the Document. In the event that after the issue of this Document the recipient does not continue with its involvement in the bidding process for any reason whatsoever, the Document and the information contained herein must be kept confidential by such party and professional advisors at all times.
- 1.6 MBL reserves the right to change, modify, add, alter this Document or cancel the bidding process without assigning any reason thereof, at any time during the bidding process. All parties to whom this Document has been issued shall be intimated by such change. The Bidders or any third party shall not object to such changes/modifications/additions/alterations explicitly or implicitly. Any such objection by the Bidders shall make the Bidder's proposal liable for rejection by

MBL. Objection by any third party shall be construed as infringement on confidentiality and privileged rights of MBL with respect to the Document. MBL has the right to reject the bids submitted by the Bidders without assigning any reasons thereof.

- 1.7 The Bidder shall not make any public announcements with respect to this Bidding process or the Document. Any public announcements to be made with respect to this bidding process or the Document shall be exclusively made by MBL. Any breach by the Bidder of this clause shall be deemed to be non-compliance with the terms and conditions of the Document and shall render the Proposal liable for rejection. MBL's decision in this regard shall be final and binding upon the Bidder.
- 1.8 It is clarified that the provisions of point no 1.5, 1.6 and 1.7 shall not apply to information relating to this Document already available in the public domain prior to the issue of the Document.
- 1.9 Submission of Bid shall amount to undertaking for not challenging the provisions of the Bid Document
- 1.10 The Bidder shall bear all costs associated with the preparation and submission of the techno commercial and Price Bid. MBL shall not, under any circumstances, be responsible or liable for any such costs.
- 1.11 The Bid Document is not transferrable.

CHAPTER 2

Bid Process Timeline

2. BID PROCESS TIMELINE

S. No	Particulars	Date
1	Invitation to Bid	14.11.2019
2	Last Date of Seeking Clarifications on Bid Document	21.11.2019
3	Last Date & Time of Submission of Bid	05.12.2019 up to 15.00 hours (Mozambique standard time)
4	Opening of Techno Commercial Bid	05.12.2019 , 15.30 hours (Mozambique standard time)

CHAPTER 3

Definitions

3. DEFINITIONS

- 3.1 **"Agreement"** and/or **"Contract"** means Tailings Beneficiation Plant Agreement (including but not limited to Schedules, Attachments and Annexures), Bid Document or and any other agreement which may be entered into between MBL and Successful Bidder.
- 3.2 **"Authorized Representative(s) and Signatories"**: Each Bidder shall designate a maximum of two persons ("Authorized Representatives and Signatories") authorized to represent the Bidder in all matters pertaining to its bid. These designated persons should hold the Power of Attorney duly authorizing them to perform all tasks including but not limited to signing and submission of proposal; to participate in all stages of the bidding process; to conduct correspondence for and on behalf of the Bidder, with whom all communications by MBL in respect of this tender shall be deemed to be with the Bidder itself and to execute the Tailings Beneficiation Plant Agreement and any other documents required to give effect to the outcome of the Bidding process. The original Power of Attorney, duly notarized, in favor of the Authorized Representatives and Signatories shall be enclosed by the Bidder along with the covering letter.
- 3.3 **"Bidder"** shall mean a single corporate entity or a Consortium that submits a Bid in response to this Document.
- 3.4 **"Consortium"** shall mean a group of up to three (3) corporate entities (members) which have formed a Consortium for submission of the Bid in response to this Document.
- 3.5 **"Contract Execution Date"** means the date on which the Agreement/Contract is signed between MBL and the Successful Bidder or the LOI (Letter of Intent) is issued to the Successful Bidder, whichever is earlier
- 3.6 **"Commercial Production Date"** means the date of supply of Coking Coal to the Delivery Point, as communicated.
- 3.7 **"Commercial Production Period"** means period of seven (7) years from the date of Commercial Production Date
- 3.8 **"Contract Value"** means the total estimated quantity of Coking Coal to be produced during the Commercial Production Period multiplied by the Conversion Charge offered by the Successful Bidder plus applicable taxes.
- 3.9 **"Default Notice"** means a written notice specifying the default alleged and requiring the other Party to remedy the default.
- 3.10 **"Delivery Point"** means Coking Coal delivered at the conveyor belt of CV 804 of CHPP (Coal Handling and Processing Plant) as per the Scope of Work.

- 3.11 **"Dispute"** means any dispute, conflict, question or difference of opinion between the Parties concerning or arising out of or in connection with the Contract.
- 3.12 **"Document"** refers to this bid document and any other documents attached thereto or part thereof which comprises of definitions, rules of construction, description of the selection process, qualifying requirements and instruction to Bidders, corrigenda and addenda, if any issued at a later date to enable the Bidders to prepare their proposal for qualification.
- 3.13 **"Earnest Money Deposit"** shall mean the amount equivalent to USD 25,000 (Twenty Five Thousand United States Dollars) to be furnished by the Bidder towards bid security in the form of bank guarantee or wire transfer to MBL's bank account along with Part A of the bid.
- 3.14 **"Leader of the Consortium"** shall mean a corporate entity (member) of the Consortium who is designated to represent the Consortium in every transactions and decisions before any third parties including MBL.
- 3.15 **"MBL"** means Minas de Benga, Lda., a company incorporated under the laws of Mozambique, having its registered office/ place of business at Av. 24 de Julho, no. 1123, 4th Floor, Edifício 24, Maputo, Mozambique
- 3.16 **"Mine"** shall mean the open cast coal mine of MBL located at Benga locality, Moatize District, Tete Province, Mozambique
- 3.17 **"Net Worth"** is the sum total of paid up capital and free reserves.
- 3.18 **"Performance Bank Guarantee"** shall mean a sum equivalent to USD 100,000 (One Hundred Thousand United States dollars) in the form of bank guarantee towards performance security to be furnished by the Successful Bidder as per the terms and conditions of the Document.
- 3.19 **"Qualifying Requirements"** shall mean the requirements set forth in this Document for the purpose of evaluation and selection of the Successful Bidder including but not limited to Eligibility Criteria.
- 3.20 **"Successful Bidder"** or **"Contractor"** shall be the Bidder qualified as per the Qualifying Requirements to whom LOI (Letter of Intent) is issued.

CHAPTER 4

Geography

4. GEOGRAPHY

4.1 **Location**

The mine is located in Benga locality, Moatize district, in the Tete Province, in the north western Mozambique. The city of Tete is the provincial capital of Tete Province located on the southern side of the Zambezi River. Tete is 1,100 km by air from the capital Maputo, on the southern Mozambique coast and 590 km from the port of Beira. Access to the region is currently by air and road.

The mine is located between the regional centers of Tete and Moatize. The western margin of the Site is adjacent to the Rovubwe River, a major tributary to the Zambezi River, which flows along the south-west and southern boundaries of the mine. The eastern margin of the mine is adjacent to the tenement held by Vale.

4.2 **Climate**

The mine is influenced by the inter-tropical convergence zone, but is too far inland to experience the moderating influence of the sea. Temperatures are generally high and rainfall is low. Three seasons can be differentiated on the basis of rainfall and temperature: a hot, wet season; a cold, dry season; and hot, dry season.

The Hot, Wet Season: the rainy season lasts a few months, from late October/mid-November to about March. Rainfall is unreliable; the season usually begins abruptly and ends gradually, sometimes before mid-March but in other years extending well into April. The season is characterized by hot and humid conditions with average monthly temperatures of around 24 Degree C minimum and 35 Degree C maximum. Monthly rainfall is typically 140 mm.

The Cold, Dry Season: in some years, when the rains finish early, there is an extended transitional period into the cold, dry season, but normally it runs from May until temperatures rise sharply again in late August or early September. The coolest period is experienced during June/July; however, frost is unknown. Average monthly temperatures are typically around 18 degree C minimum and 32 degree C maximum. Monthly rainfall is typically <5mm.

The Hot, Dry Season: this extends from early September until the rains break in late October/mid-November. Highest temperatures (up to 36 degree C average monthly maximum) are recorded in late October.

4.3 **Topography**

Part of the mine comprises the flood plains of the Rovubwe and Zambezi Rivers, where the terrain is flat, rising away from the rivers onto the higher lying ground along the eastern boundary of the mine. This boundary is marked by a range of

low hills, which trend North West – South East and reach an elevation of around 250 m above sea level, which is some 125 m above the level of the Zambezi River at Tete. Beyond the river flood plains, the terrain is locally complex, with interlocking hills and shallow valleys predominating.

4.4 **Surface Water**

The surface water flow reflects both the seasonal fluctuations in rainfall and the natural topography. All runoff eventually drains to the two major river systems but due to the relatively flat terrain, scouring and erosion is not significant.

CHAPTER 5

Eligibility Criteria

5. ELIGIBILITY CRITERIA

5.1 Techno- Commercial Eligibility Criteria

- 5.1.1 The Bidder must have the demonstrable financial capability to set up the Tailings Beneficiation Plant on BOO basis.
- 5.1.2 The prospective bidder should have experience in mining/processing/ beneficiation in coal/any mineral industry.

5.2 Legal Eligibility for the Tender

- 5.2.1 The validity of the award of proposals will be subject to the completion of the following requirements by the Bidders:
 - a) Certificate of Registration as legal entity;
 - b) Articles of Association (as published in the Official Gazette);
 - c) Declaration stating that there is no foreclosure or a bankruptcy petition which may affect their financial capacity;
 - d) Business Licence or equivalent document issued by the competent authorities.
- 5.2.2 The Bidder who wins the tender may not assign its contractual or sub-contractual position without authorization of Minas de Benga, Lda.
- 5.2.3 Similarly, if the bids are submitted by Consortium, it has to be accompanied by the following documents:
 - a) The original or certified copy of the joint-venture agreement or document of incorporation as legal entity, which must define the terms and conditions of the Consortium, the period of its duration and the form of participation of the members of the Consortium,
 - b) Evidence of the delegation of powers by the members of the Consortium to the person who signs the proposal.
- 5.2.4 Successful Bidder will have to get itself registered in Mozambique as a legal entity incorporated in Mozambique as per the laws of the country.

5.3 Financial Eligibility Criteria of the Tender

- 5.3.1 The Bidder must have a profit making record of 1 year in the last 3 consecutive years and with a minimum net worth of total USD 2 million (Two Million United States Dollars).

The Bidder seeking qualification on financial eligibility criteria based on the strength of its Parent/holding Company shall furnish a corporate guarantee (as per Format

*15, Chapter 8) from the Parent/Holding Company along with the **TECHNO COMMERCIAL BID (Part-A)**.*

5.4 General Criteria

- 5.4.1 A Bidder shall furnish the relevant documents in support of its technical and financial capabilities, without which any claims pertaining to qualifying experience will not be accepted by MBL.
- 5.4.2 The audited annual reports along with the financial statements of the Bidding Company and its Parent/holding or Consortium partners wherever required, for the preceding 3 (three) financial years should be submitted by the Bidder.

CHAPTER 6

Instruction to Bidder

6. INSTRUCTION TO BIDDER

6.1 General Instructions

- a) Bidders are invited to present proposals for the tender for Tailings Beneficiation Plant on BOO (Build, Operate and Own) basis for providing Coking Coal to MBL. The minimum monthly production target should be specified as 5000 metric tons. However, the participating bidders can propose a plant of higher capacity and indicate a higher monthly production target.
- b) Proposals should be valid for a period of 120 (one hundred and twenty) days, counting from the last date of submission of the Bid, and the Bidders commit themselves not to withdraw or change such proposals unilaterally during that period. Bids with shorter validity period may be liable for rejection.
- c) Proposals omitting any requested information may be rendered invalid, at the discretion of Minas de Benga, Lda.

6.2 General Tender Conditions

6.2.1 Tender Documents

- a) Bidders shall ensure that the documents are complete and in accordance with the contents of the tender. Minas de Benga, Lda. accepts no liability for any errors or omissions in the proposal due to discrepancies, or similar, that has not been rectified during the tender period.
- b) Any conditions in the proposals that are contrary to the tender requirements may be considered invalid.
- c) All information accompanying proposals shall only serve as reference and will be considered jointly with the standard specifications.

6.2.2 Currency

All deposits (EMD and Performance Guarantee) made under this tender will be made in United States Dollars (USD).

Currency and payment of the conversion charge for coking coal by MBL to the Successful Bidder shall be “Meticais”.

6.2.3 Language

Proposals must be presented in English and the Contract shall be drafted and signed in English language.

6.2.4 General

- a) Bid must be in legible writing and all blank spaces in white must be completed in the Formats attached.

- b) Bid shall be submitted in 2 (two) parts, **“TECHNO COMMERCIAL BID (Part-A)”** and **PRICE BID (Part-B)**. Part A shall contain technical offer, legal document, commercial conditions and blank format of Price Bid (without any rate or amount) as a confirmation of Price Bid being unconditional. PRICE BID (Part-B) shall only contain the Conversion Charge Schedule duly filled in without any additional condition.
- c) Conversion Charge shall be presented separately in the Price Bid format and the Price Bid should be submitted in a separate cover. Conversion Charge should not appear anywhere except in the Price Bid to be submitted separately. The Price Bid shall be submitted in the PDF format which shall be password protected. The bidder will be asked to provide the password once they have qualified Techno commercially.

Any correction in the bid by use of products such as liquid correctors is strictly forbidden.

6.3 Submission of the proposals/Bids

6.3.1 Proposal/Bid shall be submitted accompanied by all duly completed attached documents. Proposals shall be presented in sealed envelopes. The two sealed envelopes consisting of Part A & Part B shall be submitted in another sealed envelope, bearing the reference **“TENDER FOR SETTING UP OF TAILINGS BENEFICIATION PLANT ON BOO BASIS AT MINAS DE BENGÁ, LDA. - TETE, MOZAMBIQUE”** and shall be submitted up to the date and time of submission of Bid mentioned in the tender document, either in hard copy or in soft copy. In the case of hard copy, two versions (Original + Copy) shall be submitted in the Tender Box located at MBL Training Centre in Tete, Bairro Comunal de Matundo, Estrada Nacional nº 7. Electronic submission shall be submitted to id: buying@icvl.co.mz.

6.3.2 On the envelope containing Techno Commercial bid the tenderer will write **“TECHNO COMMERCIAL BID (Part-A)”** and on the envelope containing Price Bid the Tenderer shall write **“PRICE BID (Part-B)”**. Both the envelope will be placed in one big envelope and tenderer will write **“SETTING UP OF A TAILINGS BENEFICIATION PLANT ON BOO BASIS (Tender number TE095/2019)”**.

6.3.3 If the documents are submitted electronically then the tenderer shall submit Techno commercial & Price Bid in separate e-mails with the subject clearly mentioning about **“TECHNO COMMERCIAL BID (Part-A)”** or **“PRICE BID (Part-B)”** so as to avoid opening of Price Bid before Techno commercial scrutiny.

6.3.4 On the e-mail containing Techno Commercial bid the tenderer will write **“TECHNO COMMERCIAL BID (Part-A) Setting up of a Tailings Beneficiation Plant on BOO**

basis **(Tender number TE095/2019)**” and on the e-mail containing Price Bid the Tenderer shall write **“PRICE BID (Part-B) Setting up of a Tailings Beneficiation Plant on BOO basis (Tender number TE095/2019)”**. If the file size of the Techno Commercial Bid exceeds 10 MB the bid can be submitted in parts. e.g. “Techno Commercial Bid Part A” 1 of 6; 2 of 6, so on and so forth.

6.4 **Signing of the Proposals**

Proposals submitted shall be signed by the Bidder’s Authorized representatives.

6.5 **The right of Minas de Benga, Lda to cancel or reject any proposal whatsoever**

Award of the work will be at the absolute discretion of MBL, which shall be final. MBL reserves to itself the right to cancel the tender process without assigning any reason whatsoever and without reimbursing for any costs, charges, expenses incidental to or incurred by any party to the tender process whomsoever, through or in connection with the preparation and submission of the bids.

A Bidder whose bid is not accepted or is rejected shall not be entitled to claim any costs, charges, expenses incidental to or incurred by the Bidder, through or in connection with the preparation and submission of the bid. Conditional bids may be rejected without assigning any reasons whatsoever.

6.6 **Responsibility of Minas de Benga, Lda. for expenses incurred by Bidders**

Minas de Benga, Lda. shall not be liable for any expenses incurred by Bidders in preparing and submitting their proposals or document.

6.7 **Confidentiality of the contents of the documents**

All communications/discussions in relation to the tender, irrespective of the submission of proposals, shall be treated by the Bidder as private and confidential.

6.8 **Late Proposals**

Proposals received after the closing hour of the tender, shall be declared null and void and shall not be taken into consideration.

6.9 **Tenderer to acquaint with the Local conditions and Rules & Regulations:**

Tenderer should, in their own interest, visit the work site to satisfy themselves as to the source of supply of the materials and sufficiency and adequacy thereof in

relation to the purposes for which they are intended. It will be presumed that Bidders have visited and seen the site at which the work is to be executed and that bids are based on a full knowledge of working conditions of soil, availability of materials, water, electric power, labor, transportation facilities, probable sites for labor camps and stores, go downs, and the extent of lead and lift and all other factors involved in the execution of the works. Such visit shall be undertaken by the Bidder at its own cost and MBL shall bear no liability for the same.

Any information or any matter derived from the tender documents or obtained from MBL shall not absolve or relieve the tenderer of any risk or of fulfilling all the terms and conditions of the bid including execution of all details which shall also cover incidental works not particularly mentioned in the tender documents but which, whether temporary or permanent, must evidently be required by reason for the nature of the works included in the tender. It shall be deemed that the tenderer has understood the position as set forth above while framing his bid.

Any neglect or omission or failure on the part of the Bidder in obtaining necessary and reliable information or on any other matter affecting the Bidder, shall not relieve the Bidder from any risk or liability or the entire responsibility for completion of the work in accordance with the Bidding Documents.

In their own interest, the Bidders are requested to familiarize themselves with the Tax laws, the Companies Act, the Customs Act and all other related acts and laws prevalent in Mozambique.

6.10 **Formats to be completed by Bidders (As per Chapter 8)**

Format 1 - Executive Summary: The executive summary should contain a one page write up about the Bidder, providing the Business Profile of the company and key achievements in different sectors including **Tailings Beneficiation**. (Chapter 8: Format 1)

Format 2 - Covering letter for Techno Commercial Bid: The covering letter is required to be submitted by the Bidder on their letter head. (Chapter 8; Format 2)

Format 3 - Submission of technical documents as per qualifying requirements: The covering letter is required to be submitted by the Bidder on their letter head. (Chapter 8: Format 3)

Format 4 - Submission of financial documents as per qualifying requirements: The covering letter is required to be submitted by the Bidder on their letter head. (Chapter 8: Format 4)

Format 5 - Submission of additional information: The covering letter is required to be submitted by the Bidder on their letter head. (Chapter 8: Format 5)

Format 6 - Price Bid: Bidders shall submit their financial proposal in the prescribed Price Bid format. (Chapter 8: Format 6)

Format 7 - EMD Bank Guarantee: Bank Guarantee for an amount of USD 25,000.00 (Twenty Five Thousand United States Dollars) in the prescribed format shall be submitted along with “**TECHNO COMMERCIAL BID (Part-A) Setting up of a Tailings Beneficiation Plant on BOO basis at Benga Mine (Tender number TE095/2019)**”. (Chapter 8: Format 7)

Format 8 - Performance Bank Guarantee: Bank Guarantee for an amount equivalent to 100,000 USD as per the prescribed format. (Chapter 8: Format 8)

Format 9 - Deviation: Bids submitted with deviations are liable for rejection. In case the Bidder feels some deviations as essential for the sake of clarity for such deviations, Bidder shall submit a separate deviation statement along with the technical bid as per the format. (Chapter 8: Format 9)

Format 10 – Capacity to sign documents: Bidders shall present evidence that the proposal has been signed by the Authorized Representative and shall duly complete Format 10. Lack of compliance with this requirement may lead to rejection of the proposal. (Chapter 8: Format 10)

Format 11 – Description of works carried: Bidders shall present a statement indicating their experience in Tailings Beneficiation work as described in this Document. To this purpose, Bidder shall complete the “List of Previous Works executed by the Bidder”, inserted in this document. (Chapter 8: Format 11)

Format 12 – Statement of Equipment and Machineries to be deployed: Bidder shall provide complete detail of the equipment and machineries to be deployed. (Chapter 8: Format 12)

Format 13 – Description of Vehicles to be used: Bidder shall submit complete list of vehicles to be deployed. (Chapter 8: Format 13)

Format 14 – Descriptions of workers: Bidder shall provide details of expected deployment of manpower with requisite qualification and experience (Chapter 8: Format 14). An indication of type and number of employees is provided at Annexure 'A' for reference.

Format 15 – Corporate Guarantee: The Bidding Company seeking qualification on financial eligibility criteria based on the strength of its Parent/holding Company shall furnish a corporate guarantee. (Chapter 8: Format 15)

6.10.1 Clarifications

- a) Bidders may seek clarifications, if required, on this Document as per timelines specified in this Document. Any request for clarification must be sent in writing by paper, mail to MBL's address or electronic mail to:

Technical Clarifications	Commercial Clarifications
Tarak.Nayak@icvl.co.mz	RajendraKumar.Mishra@icvl.co.mz

- b) Any clarification and amendment issued prior to the last date of submission of bids would be uploaded on the website, i.e. www.icvl.in. All Bidders are suggested to visit the site from time to time. In case any queries remain unreplied, it shall be construed that in respect of those queries, the respective stipulations of the Bidding Document shall continue to apply and/or no new stipulations are made with respect to those queries.
- c) Any Corrigendum/ Addendum /Clarification and /Amendment to this Document issued by MBL on www.icvl.in shall also be considered as an integral part of this Document.

6.10.2 EMD & Conditions for refund of EMD

- a) The Bid must be accompanied with an EMD of US\$25,000.00 (Twenty Five Thousand United States Dollars) in the form of a Bank Guarantee or a Bank Transfer.

EMD Bank Guarantee should be as per Format 7 issued by/through a reputed commercial bank in Mozambique acceptable to MBL and shall be valid at least

for a period of 6 (six) months counting from the last date of submission of the Bid. Scanned copy of the EMD Bank Guarantee should accompany **“TECHNO COMMERCIAL BID (Part-A)”** of the Bid and the original be sent to MBL office by secured mail (which original sent by mail shall be received by MBL no later than the date and time of submission of Bid mentioned in the tender document).

In the case of Electronic Transfer, each bid should be accompanied by proof of transfer (SWIFT, etc.) of the Earnest Money Deposit of US\$25,000.00 (Twenty Five Thousand United States Dollars) to the bank account of MBL given below:

Bank Name	: Standard Bank (Mauritius) Limited,
Account Name	: Minas de Benga, Limitada
Account Number	: 0140052016801
BIC (SWIFT)	: SBICMUMU
Currency	: USD
Account type	: Current Account

- No interest will be paid on the EMD so deposited.
 - Offers submitted without specified EMD will be rejected summarily.
 - The EMD of all the Bidders shall be refunded in case the bidding process is cancelled by MBL.
 - EMD of other Bidders excluding Successful Bidder shall be refunded. The EMD of the Successful Bidder shall be returned after submission and acceptance of Performance Bank Guarantee by MBL.
- b) Without prejudice to any other rights available to it under the applicable Laws, MBL reserves the right to forfeit EMD of the Bidder without any notice of proof or damages to the Bidder on the occurrence of any one or more of the following events/circumstances:
- a. If the Bidder withdraws or modifies its offer unilaterally, partially or fully, during the validity period after submission of the Price Bid;
 - b. If there is any material misrepresentation of facts or in case the Bidder submits forged, bogus /or false certificates;
 - c. if any of the consortium member withdraws from the consortium before Contract Execution Date;
 - d. If the Successful Bidder fails to sign the Agreement and/or submit the Performance Bank Guarantee.

6.10.3 Performance Bank Guarantee

The Successful Bidder shall furnish Performance Bank Guarantee equivalent to USD 100,000 (one hundred thousand United States Dollars) within 21 (twenty one) days of the Contract Execution Date. The Performance Bank Guarantee submitted should be issued by a reputed commercial bank registered in Mozambique and acceptable to MBL.

Performance Bank Guarantee will not carry any interest. The Performance Bank Guarantee shall be released only on completion of all contractual obligations.

6.11 Disqualifications

Notwithstanding anything to the contrary contained herein and without prejudice to any of the rights or remedies of MBL, a Bidder may be disqualified and their Bid may not be considered for further evaluation for any of the reasons listed below:

- a) Misrepresentation by a Bidder in the Techno Commercial Bid.
- b) Failure by a Bidder to provide necessary and sufficient information as required and asked for in this Document.
- c) If a winding up/insolvency or other proceedings of a similar nature is initiated or pending against the Bidder.
- d) If any member of a Consortium is also a member in another Consortium in this tender.
- e) If the credentials of one company is utilized by more than one Bidder.
- f) If a Bidder does not meet or ceases to fulfil the prescribed financial and/or technical criteria mentioned in this Document.
- g) If information becomes known after the Bidder has been qualified, at any stage, to proceed with the bid process, which would have entitled MBL to reject or disqualify the relevant Bidder, MBL reserves the right to reject or disqualify the relevant Bidder at the time, or at any time, such information becomes known to MBL. Where such party is a Consortium, MBL may disqualify the entire Consortium, even if it applies to only one member of the Consortium.

MBL's determination that one or more of the events specified under this section has occurred shall be final and conclusive.

6.12 Clarification from Bidder

If at any time during the evaluation process MBL requires any clarifications, MBL reserve the right to request such information from any Bidder and the Bidder shall be obliged to provide the same.

6.13 Rules of Construction

- 6.13.1 Words imparting singular shall also include plural and vice-versa and any word defined in the singular shall have the corresponding meaning when used in the plural and vice versa.
- 6.13.2 The titles or headings in this Document are for convenience and easy reference only and shall not be taken into account for the purpose of construction or interpretation of this Document.
- 6.13.3 A reference to any gender includes the other gender.
- 6.13.4 Unless otherwise specified, a reference to a Chapter, Clause, Annexure, Schedule, Attachment or paragraph is a reference to a Chapter, Clause, Annexure, and Schedule, Attachment or paragraph of this Document.
- 6.13.5 The terms “include” and “including” shall be deemed to be suffixed with the words "without limitations", whether or not so followed.

6.14 Governing Law

This Document shall be governed by and interpreted in accordance with laws in force in Mozambique.

CHAPTER 7

Special Conditions of Contract

7. SPECIAL CONDITIONS OF CONTRACT

7.1 Condition for Consortium

- 7.1.1 Each and all members of the Consortium shall furnish an undertaking jointly for the successful operation of the Setting up of a Tailings Beneficiation Plant on BOO basis to MBL and shall be jointly and severally liable to MBL to perform all the contractual obligations. The agreement of association, joint-venture agreement or any other similar agreement between the members of the Consortium in such case should have been executed prior to the date of bid opening.
- 7.1.2 No member can be a member in other Consortium who takes part in this tender.
- 7.1.3 The Agreement between MBL and the Consortium shall be signed by the Mozambican incorporated company where all the members of the Consortium are shareholders in the same proportion as in the agreement of association, joint-venture agreement or any other similar agreement between the members of the Consortium.
- 7.1.4 The joint venture agreement in original or copy duly certified confirming the intent of all the members to form the Consortium shall be submitted along with the bid. It shall also distinctly show the financial participation of each member of the Consortium, scope of work and responsibilities of each member as regard to planning, execution and performance guarantee of the work.
- 7.1.5 The signatory of the Agreement shall be only of those holding a valid power of attorney.
- 7.1.6 One of the members in the joint venture agreement, agreement of association, or any other similar arrangement between the members of the Consortium shall be nominated as the leader of the Consortium ("Leader of the Consortium") and this nomination shall be evidenced by submitting a power of attorney signed by legally authorized signatories of all the members of the Consortium
- 7.1.7 The leader of the Consortium shall abide by the general terms and conditions specified by MBL and agreed notes discussed and signed during subsequent meetings.
- 7.1.8 The Leader of the Consortium shall be the only one who will be authorized to receive instructions for and on behalf of the Consortium, shall be primarily responsible for the total execution of the Agreement including all contractual obligations and receipt of payment due, in accordance with the provisions of the Contract.
- 7.1.9 All the members of the Consortium shall be liable jointly and severally for the execution of the Agreement in accordance with the terms and conditions of the

Agreement and statement to this effect shall be included in the joint venture agreement, agreement of association, or any other similar agreement between the members of the Consortium.

- 7.1.10 There shall be no conditional offer in the joint venture agreement, agreement of association, or any other similar agreement between the members of the Consortium agreement with regard to this tender.
- 7.1.11 During the tenure of this tender or the Agreement, the members of the Consortium shall not be altered (members, shareholding proportions, contractual obligations, etc.) without prior written approval of MBL.

7.2 Price Bid Basis

- 7.2.1 The Bidder shall quote in their proposal, an amount which the Bidder will charge per tonne of Coking Coal delivered at the Delivery Point (CV804 of CHPP), as per the Scope of Work for Tailings Beneficiation Plant on BOO basis. The amount charged per tonne of Coking Coal (hereinafter “Conversion Charge” per tonne of coking coal) shall be quoted as per the Price Bid format which will form the basis for evaluation of the bid.

7.2.2 Conversion Charge Variation formula

The following formula shall be adopted for calculation of variation, once in a year, in the conversion charge, ***subject to a maximum of 5% per annum or actual, whichever is lower*** after completion of each year from the Commercial Production Date:

$$P_R = P_O \times (a + b \times L1/L + c \times M1/M)$$

Where:

P_O = Existing Conversion Charge per tonne of Coking Coal delivered at Delivery Point (CV804 of CHPP) as quoted by the Contractor. In the 1st year of operation, the Existing Conversion Charge means the conversion charge agreed between MBL and the Successful Bidder on the Date of signing of agreement. In the subsequent years, the Existing Conversion Charge means the conversion charge applicable on the Date of each Revision of the Conversion Charge.

P_R = Revised Conversion Charge per tonne of Coking Coal delivered at Delivery Point (CV804 of CHPP). The Revised Conversion Charge means the conversion charge after reviewed and amended on the Date of each Revision of the Conversion Charge.

a = 0.20 = Fixed portion of the Conversion Charge not subject to variation

b = 0.25 = Labour portion of the Conversion Charge subject to variation

c = 0.55 = Material & Miscellaneous portion of the Conversion Charge subject to variation

L1= Revised Consumer Price Index, Mozambique

L = Base Consumer Price Index, Mozambique*

M1= Revised Consumer Price Index, RSA or equivalent

M = Base Consumer Price Index, RSA or equivalent*

RSA = Republic of South Africa or Equivalent

*The latest index/Conversion Charge available on the Date of Signing of Agreement or the last Revision Date of the Conversion Charge.

The base price shall be converted into USD by considering the exchange rate published by the Central Bank of Mozambique on the above notification dates.

The Contract Value will not be subject to variation in case the duration of the Agreement is extended by MBL due to reasons solely attributable to the contractor or any waiver in penalty is granted to the contractor by MBL.

7.3 Price Bid Evaluation

The Price Bid will be evaluated on the basis of Conversion Charge offered by the Bidder to MBL per each ton of Coking Coal delivered at the Delivery Point (Excluding tax) and the Agreement will be concluded with the Bidder who has offered the lowest Conversion Charge as per Format 6.

7.4 Contract Quality Assurance

- 7.4.1 The Bidder shall include in his proposal the Quality Assurance Program containing the overall quality management and procedures which he proposes to follow in the performance of the works during various phases. The bidder should meet specified quality parameters of coking coal as per Clause-7.5.3 below.

7.5 Terms and Conditions of delivery of Coking Coal and payment

- 7.5.1 All the Coking Coal produced at the Site (specific location where the Tailings Beneficiation plant is erected, and the storage and other facilities of the Successful Bidder are implanted at the Benga mine) through the removal and evacuation of tailings from Tailings Dam, transporting of tailings to the Tailings Beneficiation Plant and processing of tailings, shall be delivered only and exclusively to MBL and cannot be delivered, sold, given, donated or in any other manner transferred to any other entity, individual, person and/or company.
- 7.5.2 The Conversion Charge shall be inclusive of all expenses and costs incurred by the Successful Bidder, including but not limited to the erection of the Tailings Beneficiation Plant, the storage and any other facilities, the stockpile, the performance of activities of removal and evacuation of tailings from Tailings Dam and transporting of tailings to the Tailings Beneficiation Plant, processing of tailings and production of coking coal, dumping of reject coal at Tailings Dam and delivery of Coking Coal to the conveyor belt of CV 804 of CHPP, materials, labour and diesel.
- 7.5.3 Conversion Charge shall be due and payable provided that the Coking Coal delivered to the conveyor belt of CV 804 of CHPP meets the following specified technical specifications:
- a) Ash content of up to 10.5%% (ten point five per cent);
 - b) Moisture of 6% (six per cent)
 - c) **Sulphur: 0.8% (zero point eight per cent)**
- 7.5.4 All payments to the Contractor by MBL shall be made by cheque or by Electronic Funds Transfer (“EFT”) to a bank account nominated by the Contractor in Mozambique in local currency (Meticais).
- 7.5.5 The Contractor shall give 21 Working Days prior notice of any change to the Contractor's banking details.
- 7.5.6 Invoices from Contractor:
- (a) The Contractor shall submit a correct Invoice for the Conversion Charge due under the Contract.
 - (b) Correct Invoices shall be issued and delivered to the MBL's address no later than the last day of the calendar month.
 - (c) Invoices must comply with the requirements for a valid Tax Invoice, must be in terms and in a form acceptable to MBL, and must contain the following information:
 - (i) the number of the Contract to which the invoice relates;
 - (ii) a full description of the quantity of Coking Coal delivered in the period covered by the invoice;

- (iii) any further verification or documentation in relation to the invoice as is reasonably required by MBL;
- (v) the correct calculation of all amounts due to be paid, including Indirect Transaction Taxes and retention amounts where applicable; and
- (vi) any further information stipulated in any applicable Laws (including any information necessary to make the invoice a Tax Invoice) or by MBL.

7.5.7 MBL is placed under the special VAT (Value Added Tax) regularization regime (under Article 18 and following of Decree 78/2017 of 28 December), therefore, MBL shall pay the net value of the invoices (i.e., payment of invoices without paying VAT) and, in return, MBL will issue VAT Regularization Notes which will serve as basis for non-payment of VAT.

7.5.8 Invoice delivery shall follow the *“Vendor Guidance: ICVL purchase to pay process”* and, therefore, non-compliance with *“Vendor Guidance: ICVL purchase to pay process”* will result in invoice rejection by MBL’s internal services.

7.5.9 MBL shall make payment to the Contractor of all undisputed amounts within 60 Working Days following the last Day of the month in which the Correct Invoice is received by the Contractor. MBL may withhold any disputed amounts.

7.5.10 MBL may deduct from any money due or becoming due to the Contractor all debts and moneys due or becoming due by the Contractor to MBL and any Taxes which MBL may be required by Law to deduct. If MBL fails to deduct any amount, MBL may claim payment for that amount and the Contractor must pay that amount to MBL within 21 Working Days of receiving notice of the claim

7.6 Dumping of Reject Coal

7.6.1 All the Reject Coal coming out of the Tailings Beneficiation plant shall be dumped at the Tailings Dam and/or as indicated by MBL.

7.6.2 All the plans, rules, timings and procedures for the transportation of the Reject Coal from the Tailings Beneficiation Plant to the Tailings Dam as well as the dumping of the Reject Coal at the Tailings Dam shall be detailed and specified in by the bidder in its offer.

7.6.3 The dumping of the Reject Coal at the Tailings Dam shall follow and comply with all the Health, Safety and Environmental procedures.

7.7 Completeness of the Agreement

7.7.1 All other works, which may not have been specifically mentioned but which are absolutely essential or necessary for the efficient working of Tailings Beneficiation Plant shall be deemed to have been included in the Agreement and shall be performed by the Contractor/Successful Bidder without any extra charge. All obligations related to the erection of the Tailings Beneficiation Plant, the

storage and any other facilities, the stockpile, the performance of activities of removal and evacuation of tailings from Tailings Dam and transporting of tailings to the Tailings Beneficiation Plant, processing of tailings and production of coking coal, dumping of reject coal at Tailings Dam and delivery of Coking Coal to the conveyor belt of CV 804 of CHPP on BOO (Build, Operate and Own) basis, shall be deemed to be included in all respects whether details are mentioned in the Specification/Scope of Works or not and the only consideration payable by MBL shall be the Conversion Charge.

7.8 Failure to Execute Agreement

- 7.8.1 The Contractor/Successful Bidder failing to execute the order placed on them to the satisfaction of MBL under the terms and conditions set forth therein, will be liable to make good the loss sustained by MBL, consequent to the placing of fresh orders elsewhere at higher rate. In the event of such failure, the difference between the Conversion Charge accepted in the Agreement already entered into and the Conversion Charge at which fresh orders have been placed at a later date, consequent to non-fulfillment of the Agreement will be recovered from the Contractor/Successful Bidder.

7.9 Signing of Agreement and Equipment Specification

- 7.9.1 All the equipment shall be of the best class and capable of satisfactory operation in tropics with humid atmospheric conditions, without distortion or deterioration.
- 7.9.2 MBL shall conclude the Agreement with a company incorporated in Mozambique by the Successful Bidder (if the Successful Bidder is not a Mozambique incorporated company already) whose bid has been determined to be qualified, substantially responsive, and has been determined as the lowest evaluated bid. The shareholding of the company incorporated in Mozambique by the Successful Bidder shall be 99% (ninety nine per cent) shareholding held by the Successful Bidder and the remaining 1% (one per cent) shareholding held by the Mozambique incorporated company itself or a majority shareholder in the Successful Bidder.
- 7.9.3 Notification of award/adjudication of Agreement shall be made in writing through a Letter of Intent (LOI) to the Successful Bidder. This Letter of Intent will be in writing. The Successful Bidder shall acknowledge the receipt of the same in writing.
- 7.9.4 Till such time the formal Agreement is signed between MBL and the Successful Bidder's Mozambican incorporated company, the Letter of Intent issued by MBL

to the Successful Bidder and its acknowledgement of receipt by the Successful Bidder shall be construed as an Agreement and the terms and conditions contained in this Tender Documents shall become applicable.

- 7.9.5 MBL shall send 1 (one) copy of the Agreement to Successful Bidder within 21 (Twenty One) business days of issue of Letter of Intent. The Contractor/Successful Bidder shall furnish, before signing of the Agreement by the Mozambican incorporated company, appropriate power of Attorney or other relevant documents.
- 7.9.6 The Agreement shall be signed at the office of MBL within seven (7) days of reception of the Agreement by the Contractor/Successful Bidder.
- 7.9.7 The Agreement shall be signed in Three (3) originals, duly bound. One will be handed over to the Contractor/Successful Bidder/Mozambican incorporated company and the remaining originals shall be retained by MBL.
- 7.9.8 If the Successful Bidder/Mozambican incorporated company fails to sign the Agreement, the same shall constitute sufficient ground for the annulment of the LOI and also the forfeiture of EMD, in which event MBL may make the award to the next lowest evaluated responsive Bidder or call for new bids.

7.10 Monthly Processed Output Target

- 7.10.1 The Successful Bidder shall produce a minimum quantity of 5,000 (five thousand) tons of processed output of coking coal from the tailings, each month. The output quantity of coking coal shall be delivered to MBL at the Delivery Point (CV804 of CHPP) and MBL shall pay the Conversion Charge for each ton of coking coal received. Any shortfall from this minimum production shall attract penalty for the Contractor/ Successful Bidder on monthly basis.

7.11 Penalties for non-achievement of Production Target:

- 7.11.1 Penalty shall be applicable for lower production of coking coal than the minimum monthly production target agreed to between MBL and the successful bidder. In case there is no monthly production target set, the successful bidder will consider a production target quantity of 5,000 tons as specified monthly target. Penalty will be applicable on non-achievement of the specified target. The calculation of penalty shall be as under:

Penalty = Conversion Charge per Ton of Coking Coal delivered at Delivery Point (CV 804 of CHPP) x 0.10 x shortfall from the minimum specified target production quantity of coking coal after conversion from tailings

- 7.11.2 At its discretion, MBL reserves its right to regulate / restrict / enhance the specified monthly production target by +/- 30%, for which Successful Bidder will be notified..

If there is no requirement at all (complete stoppage) of Coking Coal by MBL in a particular month, then compensation shall be paid to the Contractor as below:

Compensation = Conversion Charge per tonne of coking coal delivered at delivery point (CV 804 of CHPP) x Fixed component i.e. 20% of the Conversion Charge on the quantity specified in Clause-7.11.1 above

- 7.11.3 Sample Calculation for penalty and compensation (based on an assumed conversion rate of USD 20 per metric ton):

Sample-1:

Monthly Production target agreed to between MBL and the Successful Bidder: 7000 metric tons.

Production during the month delivered at CV804 of CHPP: 5000 metric ton

Penalty payable by the bidder: $\text{USD } 20 * 0.10 * (7000 - 5000) = \text{USD } 4000$

Sample-2:

Agreed Monthly Production target: 6000 metric tons

Production during the month delivered at CV 804 of CHPP: 7000 metric tons

Penalty payable: NIL

Sample-3:

Agreed monthly production target: No target

Hence, minimum specified production target: 5000 metric tons

Production during the month delivered at CV 804 of CHPP: 4000 metric tons

Penalty payable: $\text{USD } 20 * 0.10 * (5000 - 4000) = \text{USD } 2000$

Sample-4:

Agreed monthly production target: 8000 metric tons

No delivery taken by MBL on CV 804 of CHPP as per its requirement

Compensation payable by MBL: $\text{USD } 20 * 0.20 * 5000 = \text{USD } 20000$

- 7.11.4 Stoppage of work for any reason including breakdown of machinery or manpower issues (other than force majeure) shall not be considered as ground for non-fulfillment of target.

- 7.11.5 MBL may, without prejudice to its any other method of recovery, deduct the amount of such penalty from any money in hands, due, or which may become

due, to the Successful Bidder/Contractor under the Agreement or from any other contract between the Successful Bidder/Contractor and MBL. The deduction of such penalty shall not relieve the Successful Bidder/Contractor of his obligation to complete the works and demonstrate the performance of any of his other obligation and liabilities under the Agreement/Contract.

7.11.6 MBL, if not satisfied with the progress of the mobilization, the commercial production or the compliance with any of the terms of the Agreement and in the event of failure of the Successful Bidder/Contractor to recoup the delays in the time frame notified by MBL, shall be entitled to terminate the Agreement.

7.11.7 In the event of such termination of the Agreement, MBL shall be entitled to recover through a penalty up to ten per cent (10%) of the Contract Value and forfeit the Performance Bank guarantee submitted by the Successful Bidder/Contractor, with the obligation of the Successful Bidder/Contractor to demobilize from the Site within the time period of 15 (fifteen) days from the date of termination of the Agreement.

7.12 Penalties for non-achievement of specified Quality:

For any deviations in the quality specifications laid down in Clause-7.5.3 above, the following rebate(s) / diminution in price will be allowed by the Successful Bidder in its invoice(s) covering the Coking Coal delivered at CV804 of CHPP:

S. N.	Technical Paramaters	Basis for application of Bonus/ Penalty in price	Penalty in US \$ per Metric Tonne
(1)	(2)	(3)	(4)
1.	Ash	Penalty for every increase of 1% (fractions pro-rata) in Ash content in excess of the specified 10.5% as per Clause-7.5.3 above; maximum up to 13.5% beyond which the coking coal will be rejected	1.2% of the Conversion Rate
2.	Sulphur	Penalty for every increase of 0.1% (fractions pro-rata) in Sulphur content in excess of specified 0.8% as per Clause-7.5.3 above; maximum up to 1% beyond which the coking coal will be rejected	1% of the Conversion Rate
3.	Total Moisture	If the Total Moisture (on "As received" basis) on CV804 of CHPP is in excess of 6%, the Weight of the Quantity produced shall be subject to adjustment for the purpose of invoicing i.e. the invoice weight shall be reduced by the excess percentage of Total Moisture over 6% @ 1.3% for every 1% increase over 6% (fractions pro-rata); up to the Absolute maximum limit of 12%.	

For the purpose of analysis, as per operations schedule of the Tailings Beneficiation Plant, coking coal samples shall be drawn 4 (four) times a day (consisting of 24 hours) at every 6-hours interval and the weighted average for the day shall be calculated for each of the technical parameter; to be applied on the daily production quantity. Accordingly, for the

purpose of invoicing, the monthly weighted average for each technical parameter as specified in Clause-7.12 shall be calculated and penalties, if any shall be applied.

7.13 Measurement of Coking Coal quantities for payment

- 7.13.1 Coking coal produced (converted) from tailings shall meet the specified technical / physical parameters on analysis. Samples therefore shall be taken on regular basis at product belt. For measurement of quantity, the product shall pass through a Hopper fitted with Load Cell. To ensure proper measurement of quantity, in case of any defect in the way feeder, it shall be the responsibility of the Successful Bidder to immediately rectify the same at his own risk and cost.
- 7.13.2 At the discretion of MBL, in the interest of plant production, alternatively, the Successful Bidder may be notified to bring the processed output of coking coal to CHPP area and form a separate stockpile for joint volumetric measurement by MBL and the Successful Bidder. The cost of transportation in such rare cases shall however be borne by the Successful Bidder.
- 7.13.3 Should the Coking Coal produced (converted) from tailings not meet the specified technical/physical parameters on analysis for over a period of 30 (thirty) consecutive of intermittent days, MBL shall be entitled to terminate the Agreement.

7.14 Non-Exercise of Power Not to Constitute Waiver

- 7.14.1 It is agreed that in any case in which any of the powers conferred upon MBL by the provisions of the agreement becomes exercisable and the same is not exercised by MBL, the non-exercise thereof shall not constitute waiver of any of the terms or conditions thereof, and such powers shall, notwithstanding such non-exercise, be exercisable in the event of any other case of default by the Successful Bidder/Contractor, for which any clause or clauses thereof is declared liable to pay compensation and the liability of the Successful Bidder/Contractor for past and future compensation shall remain unaffected.

7.15 Competent and Statutory Persons

- 7.15.1 The Firm/Company/Successful Bidder/Contractor shall appoint sufficient numbers of Staff, fully competent to do their work. The staff so appointed shall have proper qualification and status to work on behalf of the Successful Bidder and should be accountable. The Successful Bidder/Contractor shall employ the key statutory personnel such as Foreman to supervise the work as per statute.

The persons so appointed should have adequate qualification as per the extant provisions of Mozambique.

7.16 Commencement of Work

- 7.16.1 All the preliminary works such as deployment of manpower, equipment at site etc. should be completed and production should commence immediately thereafter to achieve the targets as per schedules.

7.16 Force Majeure

- 7.16.1 If the Successful Bidder/Contractor is prevented from discharging its obligation under this Agreement by reason of an unforeseeable and unavoidable event beyond its reasonable control including war, blockade, revolution, terrorist activities, civil commotions, political unrest, plague or other epidemics, destruction of facilities, infrastructures and/or materials by fire or flood or other natural calamity, then the time for delivery shall be extended by the time or times, during which processing and production is prevented by any such causes as hereinabove mentioned.
- 7.16.2 The party invoking protection under this clause shall put the other party on notice and shall likewise notify the cessation of such causes.
- 7.16.3 The delivery shall be resumed by the Party/Parties within 5 (five) days from the date of cessation of the *Force Majeure* cause.
- 7.16.4 Should there be any interruptions in the delivery of the Coking Coal due to *Force Majeure* circumstances, the period of offtake of the Coking Coal by MBL and/or the period of delivery of the Coking Coal by the Successful Bidder, as the case may be, shall automatically stand extended, equal to the actual duration of the causes interrupting the delivery of the Coking Coal by the Successful Bidder/Contractor plus a period of 5 (five) days to enable the affected party to make suitable arrangements for normalization of works.

7.17 Contractor/Successful Bidder default

- (a) If the Contractor is in default of this Contract:
- (i) MBL may send the Contractor a Default Notice stating the intention of MBL to terminate the Contract under this clause if the Contractor fails to remedy the default; or

- (ii) if, in MBL's reasonable opinion, the default is not capable of remedy, MBL may, forthwith terminate the Contract on giving notice to the Contractor.
- (b) If the Contractor fails to:
- (i) remedy the default in a manner satisfactory to MBL within 20 working days of the Default Notice unless other time period is agreed in writing by the Parties; or
 - (ii) provide adequate assurance (in the opinion of MBL) within 5 working Days of the Default Notice that the default will be remedied within a reasonable time; or
 - (iii) remedy the default within a reasonable time after providing such assurances,
- then MBL may, on giving notice to the Contractor:
- (iv) forthwith terminate the Contract; or
 - (v) suspend payment under the Contract until the default has been remedied.

7.18 Liability and Indemnity

- 7.18.1 The Contractor/Successful Bidder will be liable to MBL and any third parties, in accordance with the Law, for any losses or damages arising from the acts or omissions of the Contractor or its Personnel in the performance of this Contract.
- 7.18.2 Neither Party shall be liable to the other for any loss of profit or indirect or contingent loss or damage sustained by the other Party, or for any penal or special damages.
- 7.18.3 No provision of this Contract shall be read as intending to exclude liability of either Party for gross negligence, wilful misconduct, fraud or fraudulent misrepresentation.
- 7.18.4 The Contractor shall indemnify, hold harmless, defend and keep indemnified MBL and its Personnel against all liabilities caused, whether wholly or in part, directly or indirectly by:
 - a) any breach by the Contractor or its Personnel of any of the Contractor's obligations (including any warranty) under the Contract;
 - b) any non-compliance with any Law, or any penalty imposed for breach of any Law in connection with the performance or non-performance of the Contract caused by any act or omission of the Contractor or its Personnel;

- c) any act or omission by the Contractor or its Personnel arising out of the performance of the Contract;
- d) any illness, injury or death of any person, or any loss or destruction of or damage to any property which is caused by the Contractor or its Personnel, in connection with the Contractor's performance or non-performance or breach of the Contract, or any other act or omission of the Contractor or its Personnel;
- e) any actual or alleged contamination, pollution or public or private nuisance arising directly or indirectly out of the acts or omissions of the Contractor or its Personnel; or
- f) any legal costs on attorney and client scale for legal action to enforce the Contractor's indemnification obligations under this Clause.

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

7.19 Arbitration

7.19.1 All disputes arising in connection with the Agreement, which are not settled by agreement between the parties, shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce, Paris, France, by a Sole Arbitrator appointed in accordance with the said Rules and the Award made in pursuance thereof shall be binding on the parties. The Arbitrator shall give a reasoned award. The venue and seat of arbitration shall be New Delhi, India.

CHAPTER 8

Formats

FORMAT 1

EXECUTIVE SUMMARY

The Executive Summary is required to be submitted by the Bidder

The executive summary should contain a one page write up about the Bidder/ Consortium, providing the Business Profile of the company and key achievements.

- a) Name of the Bidder
- b) Constitution (Supporting Documents)
- c) Name of the Leader of the Consortium
- d) Details of the Consortium (If applicable)
- e) Role Envisaged for each of the Members of the Consortium
- f) Details of Experience (Different areas including Tailings Beneficiation)
- g) Contact details
- h) Name of the Contact Person Address for communication Phone/Fax/Email
- i) Signature of Authorized Signatory
- j) Seal of the Company or of the Leader of the Consortium

FORMAT 2
COVERING LETTER FOR TECHNO COMMERCIAL BID

(The covering letter is required to be submitted by the Bidder/Leader of the Consortium on its letter head)

- a) Bidder's Name:
- b) Full Address:
- c) Telephone no:
- d) Email Address:
- e) Fax No.

To,
General Manager (Procurement)
Minas de Benga, Limitada
Estrada Nacional, No. 7, Tete

Sub: - Response to Bid Document for Setting up of a Tailings Beneficiation plant to provide Coking Coal

We ----- (Name of the Bidder/Leader of the Consortium) having registered office at --
-----having examined in detail and understood the terms and conditions stipulated in the aforesaid Documents and subsequent corrigendum, if any, and confirm that our Techno Commercial Bid is in full conformity with these Documents. We, the undersigned Bidder having read & examined in detail the Qualifying Requirements for selection of Coking Coal provider through Tailings Beneficiation Plant and hereby submit our response.

Contact Person

Details of the contact person are furnished as under:

Name

Designation

Company Address

Phone No.

Fax No.

Email address

Please find enclosed herewith our Techno Commercial Bid in response to the documents issued by MBL vide Tender no. ----- dated ----- (Date of Tender) and its subsequent corrigendum No (s) ----- (Bidder to insert corrigendum no issued, if any by MBL subsequent to issue of Document)

Dated the ----- day of ----- of 2019

The period of validity of the bid shall not be less than 120 days from the last date of submission.

Thanking You,

Yours faithfully,

(Signature, Name, Designation and Seal)

**FORMAT 3****SUBMISSION OF TECHNICAL DOCUMENTS AS PER QUALIFYING REQUIREMENTS**

(The covering letter is required to be submitted by the Bidder/Leader of the Consortium on its letter head)

To,
General Manager (Procurement)
Minas de Benga Limitada
Estrada Nacional, No 7, Tete

Dear Sir,

Sub: Submission of Technical Qualification documents for Setting up of a Tailings Beneficiation plant to provide Coking Coal

I/ We ----- (The legal name of the Bidder)

OR

I/ We, the Bidding Consortium, consisting of ----- and -----,

confirm that I/we have the requisite technical experience as mentioned in the Qualifying requirements as given below:

1) Mining Experience

SNo	Period	Details of Tailings Beneficiation plant with location	Owner / Contractor	Qty of Tailings in MTPA

Thanking You,

Yours faithfully,

(Signature, Name, Designation and Seal)

NOTE:

- 1) In case the Financial Year as per the audited financial statement is different from 1st April to 31st March as specified here, the Bidder/Bidding Consortium may mention the Financial Year as per the audited financial statements and furnish the production details of coal and overburden accordingly.
- 2) Supporting documents has to be enclosed with this letter.

FORMAT 4**SUBMISSION OF FINANCIAL DOCUMENTS AS PER QUALIFYING REQUIREMENTS**

(The covering letter is required to be submitted by the Bidder/Leader of the Consortium on its letter head)

To,
General Manager (Procurement)
Minas de Benga, Limitada
Estrada Nacional, No. 7, Tete

Dear Sir,

Sub: Submission of Financial Qualification Document for Setting up of a Tailings Beneficiation Plant on BOO basis to provide Coking Coal

I ----- (The legal name of the Bidder)

OR

We, the Consortium, consisting of.....and -----
confirm that we have the requisite Financial Qualifying documents as given below:
Table for Bidder (In Millions of USD)

Turnover (in million USD):

Particulars	FY 2018-19	FY 2018-17	FY 2016-17
Leader of the consortium			
Member 2			
Member 3			

Total			
-------	--	--	--

Net worth (In million USD):

Particulars	Net worth
Leader of the Consortium	
Member 2	
Member 3	
Total	

Audited Balance sheet for the last three financial years FY 2018-19, 2017-18 and 2016-17 is enclosed herewith.

Thanking You,

Yours faithfully,

(Signature, Name, Designation and Seal)

NOTE:

In case the Financial Year as per the audited financial statement is different from 1st April to 31st March as specified here, the Bidder/ Bidding Consortium may mention the Financial Year as per the audited financial statements and furnish the financial details accordingly.



TE095/2019

FORMAT 5
SUBMISSION OF ADDITIONAL INFORMATION

To,
General Manager (Procurement)
Minas de Benga, Limitada
Estrada Nacional, No. 7, Tete

Dear sir,

Sub: Submission of additional information in response to Setting up of a Tailings Beneficiation Plant on BOO basis to provide Coking Coal

We ----- (Name of the Bidder) are furnishing the following additional information apart from those already mentioned in this documents, which in our opinion strengthens our case for being well qualified to undertake the Tailings Beneficiation Plant on BOO basis to provide Coking Coal.

The following are the list of documents/ information provided by us:

Thanking You,

Yours faithfully,
(Signature, Name, Designation and Seal)

**FORMAT 6****PRICE BID**

(The Price Bid is required to be submitted by the Bidder/ Leader of the Consortium on letter head-)

To,
Minas de Benga, Limitada
Estrada Nacional no. 7, Tete
Mozambique

Dear Sir,

Sub: Submission of Price Bid for Setting up of a Tailings Beneficiation Plant on BOO basis to provide Coking Coal

We, the undersigned, offer to Bid for **Setting up of a Tailings Beneficiation Plant on BOO basis to provide Coking Coal** to Minas de Benga, Lda in accordance with your Bid Document dated....., and our Price Bid is given below:

Table 1

(Values in USD)

Description	*Basic Conversion Charge (In USD)	Taxes	*Total Conversion Charge
Conversion Charge per Tonne of Coking Coal delivered at the product conveyor belt (CV804 of CHPP) as per the Scope of Work			

**The quote should be both in figures and words. In case of any conflict between the figures and words, the quote given in words shall prevail.*



TE089/2016

Our Price Bid shall be binding upon us up to expiration of the validity period of the Bid.

Thanking You,

Yours faithfully,

(Signature, Name, Designation and Seal)



TE089/2016

FORMAT 7
EARNEST MONEY DEPOSIT (EMD) BANK GUARANTEE

..... (Name of the
Bank)
Address.....
...
.....Guarantee No.
.....
A/c Messrs..... (Name of Bidder)
Date of Expiry.....
Limit to liability (Currency and Amount) USD 25,000 (Twenty Five Thousand United States
Dollars).
Invitation for Bid No. dated.....
For..... (Name of Facilities)

Subject: Earnest Money Deposit Bank Guarantee.

Date 201...

To,

Minas de Benga, Limitada
Estrada Nacional no. 7, Tete
Mozambique

Dear Sir,

In consideration of the Minas de Benga, Lda (hereinafter called "MBL"), which expression shall unless repugnant to the subject or context include his successors and assigns, having agreed to exempt M/s ----- (hereinafter called "Bidder") from demand under the terms & conditions of the tender (hereinafter called the said "Bidding Document"), issued by MBL vide No.....for Setting up of a Tailings Beneficiation Plant on BOO basis to provide Coking Coal , from deposit of EMD in the form of Electronic Transfer for the due fulfilment by the Bidder of the terms and conditions contained in the said Bidding Document including any amendments thereto on production of first demand Bank Guarantee for US \$25,000 (Twenty Five Thousand United States Dollars):

1. We (Name of the Bank) do hereby expressly irrevocably and unreservedly undertake to unconditionally pay to you merely on your written demand, without referring it to the Bidder, without referring to the merits of the request and without protest and demur, an amount not exceeding US\$25,000 (Twenty Five Thousand United States Dollars). Any such demand made on us shall be conclusive as regards the amount due and payable by us under this guarantee. However, our liability under this guarantee shall be restricted to an amount not exceeding US\$25,000 (Twenty Five Thousand United States Dollars).
2. Notwithstanding anything to the contrary we agree that your decision as to whether the Bidder has committed a breach of any terms and conditions of the tender conditions shall be final and binding on us and we shall not be entitled to ask you to establish your claim or claims under this Guarantee but shall pay the same forthwith without any assessment, objection or excuse.
3. We undertake to pay to you any money so demanded notwithstanding any dispute or disputes raised by the Bidder in any suit or proceeding pending before any court or Tribunal or arbitration relating thereto, our liability under these presents being absolute and unequivocal. The payment so made by us under this Guarantee shall be a valid discharge of our liability for payment there under.
4. This guarantee shall come into force from the date of issue of this guarantee and shall remain irrevocably valid and in force initially up to unless a demand or claim under this guarantee is made on us in writing on or before, we shall be discharged from all liability under this guarantee.
5. We ----- Bank, further agree with you that you shall have the fullest liberty without our consent and without affecting in any manner our obligations



hereunder to vary any of the terms and conditions of the said Bidding Document and we shall not be relieved from our liability by reason of any such variation.

6. It shall not be necessary for Minas de Benga, Lda ("MBL") to proceed against the Bidder before proceeding against the Bank and the Guarantee herein contained shall be enforceable against the Bank, notwithstanding any security which MBL may have obtained from the Bidder at this time when proceedings are taken against Bank hereunder be outstanding or unrealised.
7. Notwithstanding anything contained herein before our liability under this guarantee is restricted up to a sum of US\$25,000 (Twenty Five Thousand United States Dollars) and shall expire on unless a claim or demand is made on us in writing within 6 (Six) months after the expiry date all your rights shall be forfeited and we shall stand relieved and discharged from our liabilities hereunder.
8. We, the said Bank undertake not to revoke this guarantee during its currency except with the previous consent of MBL in writing and agree that any change in the constitution of MBL or the Bidder or the said Bank shall not discharge our liability hereunder dated..... day offorBank.

Yours faithfully,

For

(Name of the Bank)



TE089/2016

FORMAT 8
PERFORMANCE BANK GUARANTEE

..... (Name of the Bank)
Address.....

...

Guarantee No.

A/c Messrs..... (Name of Bidder)

Limit to liability (Currency and Amount): USD 100,000 (one hundred thousand United States Dollars)

Letter of Intent /Agreement No.

.....

For (Name of Facilities)

Subject: Performance Bank Guarantee.

Date 201

To,

Minas de Benga, Limitada

Estrada Nacional no. 7, Tete

Mozambique

Dear Sir,

We refer to the Letter of Intent / Agreement (hereinafter called the "Contract") Reference No. dated between Minas de Benga, Lda ("MBL") and (Name



of the Successful Bidder/Contractor) for the Setting up of a Tailings Beneficiation Plant on BOO basis to provide Coking Coal.

Whereas the (Name of the Successful Bidder/Contractor) has undertaken to produce a Bank guarantee under the Contract including any amendment thereto, to secure its obligations to you for the performance of the Contract including the guarantees and warranty of MBL's Facilities.

1. We (Name of the Bank) do hereby expressly on first demand, irrevocably and unreservedly undertake to unconditionally pay to you merely on your written demand and without referring to(Name of the Contractor) and the Contract and without referring to the merits of the request and without protest and demur an amount not exceeding USD 100,000 (one hundred thousand United States Dollars) . Any such demand made on us shall be conclusive as regards the amount due and payable by us under this guarantee.
2. Notwithstanding anything to the contrary we agree that your decision as to whether -----(Name of the Contractor) has committed a breach of any terms and conditions of the Contract shall be final and binding on us and we shall not be entitled to ask you to establish your claim or claims under this Guarantee but shall pay the same forthwith without any objection or excuse.
3. We undertake to pay to you any money so demanded notwithstanding any dispute or disputes raised by the party in any suit or proceeding pending before any court or Tribunal or arbitration relating thereto, our liability under these presents being absolute and unequivocal.
4. The payment so made by us under this Guarantee shall be a valid discharge of our liability for payment thereunder.
5. This guarantee shall come into force from the date of issue of this guarantee and shall remain irrevocably valid and enforce initially up to 6 (six) months after the Agreement expiry date.
6. This guarantee shall not in any way be affected by you taking any securities from the or by the winding up, dissolution, insolvency or death as the case may be of the We shall not be entitled to proceed against the assets of the at your site.
7. In order to give full effect to the Guarantee herein contained, you shall be entitled to act as if we were your principal debtors in respect of all your claims against, hereby guaranteed by us as aforesaid and we hereby expressly waive all our surety ship and



other rights, if any, which are in any way inconsistent with the above or any other provisions of this Guarantee.

8. The Bank undertakes to renew this Bank Guarantee from time to time and in case Bank fails to extend the validity of the Bank Guarantee prior to its expiry, the same shall be deemed to be invoked by MBL
9. This guarantee is in addition to any other guarantee or guarantees given to you by us.
10. This guarantee shall not be discharged by any change in the constitution of the or us, nor shall it be affected by any change in your constitution or by any amalgamation or absorption thereof or therewith but will ensure for and be available to and effaceable by the absorbing or amalgamated company or concern.
11. Notwithstanding anything contained herein before our liability under this guarantee is restricted up to a sum of USD 100,000 (one hundred thousand United States Dollars) and shall expire on unless a claim or demand is made on us in writing within six months after the expiry date all your rights shall be forfeited and we shall stand relieved and discharged from our liabilities hereunder.
12. We have full power to sign this guarantee under the delegations of powers and notification made under general regulation and resolutions in this regard.

Your faithfully

Dated day of

For (Name of the Bank)



TE089/2016

FORMAT 9
DEVIATION IF ANY NECESSARY

To,
General Manager (Procurement)
Minas de Benga Limitada
Estrada Nacional, No. 7, Tete

Dear Sir,

Sub: Deviations from the Bid Document for Setting up of a Tailings Beneficiation Plant on BOO basis to provide Coking Coal

Yours faithfully,
(Signature, Name, Designation and Seal)



FORMAT 10
CAPACITY TO SIGN DOCUMENTS

I/We*, signed below, am/are* duly authorized to sign the Tender documents representing as per the articles of Association/Power of Attorney/Resolution*, a certified copy of which is attached.

Thanking You,

Yours faithfully,
(Signature, Name, Designation and Seal)

* As applicable.

FORMAT 11**DESCRIPTION OF WORKS CARRIED OUT BY THE BIDDER**

The following list describes contracts of the same nature and extension, satisfactorily completed by

Sl. No	Name of work	Work Order No. and Date	Name of Organization	Total Value of Work in USD	Date of Starting of Work	Date of Completion (as per scheme)	Actual time of Completion	Reason for delay if any	Value of work as per completion in USD
--------	--------------	-------------------------	----------------------	----------------------------	--------------------------	------------------------------------	---------------------------	-------------------------	--

me/us*:



TE089/2016

--	--	--	--	--	--	--	--	--	--

Thanking You,

Yours faithfully,
(Signature, Name, Designation and Seal)

* As applicable.



FORMAT 12
STATEMENT OF EQUIPMENT & MACHINERIES TO BE DEPLOYED FOR THE WORK

Thanking You,

Yours faithfully,
(Signature, Name, Designation and Seal)



FORMAT 13
DESCRIPTION OF LIGHT VEHICLES TO BE USED IN THIS AGREEMENT

Thanking You,

Yours faithfully,
(Signature, Name, Designation and Seal)

FORMAT 14
DESCRIPTION OF WORKERS

Bidders shall distinguish in the table below the workers they intend to employ in the Agreement. The various categories must be indicated, in accordance with the needs.

CATEGORY	NUMBER
(a)	
(b)	
(c)	
(d)	
(e)	
(f)	

Specify the name, qualifications and experience of the Operations Manager:

Specify the name, qualifications and experience of the Contract Manager:

Thanking You,

Yours faithfully,

(Signature, Name, Designation and Seal)

FORMAT 15
CORPORATE GUARANTEE

CORPORATE GUARANTEE

This guarantee ("**Guarantee**") dated as of the ____ day of _____, 201__, is made and entered into by _____ [Name of Guarantor], a corporation incorporated or a legal entity duly organized under the laws of _____, having its head office at _____ [Address of Guarantor] ("**Guarantor**"), in favour of Minas de Benga, Limitada, a company incorporated under the laws of Mozambique, having its head office at Avenida 24 de Julho, 1123, 4th Floor, Edifício 24, Maputo, Mozambique, taxpayer with NUIT 400148066, registered at the Registrar of Legal Entities under number 18006 (hereinafter "**MBL**")

Whereas

Guarantor's subsidiary [Name of the Subsidiary] ("**Subsidiary**") has submitted a document on _____ expressing interest in participating in the tender _____ ("**Tender**"), for the provision of _____ to MBL.

MBL and the Subsidiary will enter into an agreement for the provision of the aforesaid works, if the Subsidiary is the Successful Bidder in the Tender (the "Agreement").

The Subsidiary has requested that Guarantor guarantee the obligations of the Subsidiary under the Tender and the Agreement (the "Guaranteed Obligations"), in accordance with the terms of this Guarantee.

Now it is hereby agreed as follows:

1. In consideration of the premises, the Tender, the Agreement, and other and valuable consideration, the Guarantor hereby covenants and agrees absolutely, irrevocably and unconditionally with MBL, its successors and assigns that:

- a) The Subsidiary shall properly, diligently and in good time observe the provisions of and perform and discharge any and all its obligations contained in or arising from the Tender and the Agreement, as supplemented and amended from time to time.
- b) If the Subsidiary defaults in any manner whatsoever in the due and proper performance of the Tender and the Agreement, or commits any breach of the provisions thereof or any of the due duties mentioned in the Tender and the Agreement, the Guarantor shall, forthwith upon written request from MBL so to do, assume and properly and diligently perform and discharge any and all of said obligations or duties remaining unfulfilled.
- c) Guarantor shall pay to MBL on demand all monies due and owing by the Subsidiary to MBL under the Tender and/or the Agreement or pursuant to any claim made by MBL relating to or arising out of the Tender or the Agreement.
- d) This Guarantee shall be a primary obligation of the Guarantor and accordingly MBL shall not be obliged before enforcing this Guarantee to take any action in court or against the Subsidiary, to make any claim against or any demand to the Subsidiary, to enforce any other security held by MBL in respect of the obligations of Subsidiary under the Tender and/or the Agreement or to exercise any diligence against the Subsidiary.
- e) Guarantor shall, on demand, indemnify and hold MBL harmless from and against any and all losses and expenses, of whatsoever nature (including, without limitation, all legal fees and expenses), in any way connected with the breach by the Subsidiary of its obligations contained in or arising from the Tender and/or the Agreement, and any supplement or amendment thereto, and/or breach by the Guarantor of the duties described herein, whether or not any such breach is caused, wholly or in part, by negligence of the Subsidiary or the Guarantor.
- f) Any clauses providing limitation of liability or indemnities in favour of Subsidiary in the Tender and/or the Agreement shall also apply to Guarantor. The total liability and indemnity in the Guarantee shall therefore not exceed the accumulated liabilities and indemnities in the Tender and the Agreement.



2. This Guarantee shall be in addition to, and not in substitution for, any right or remedies that MBL may have against the Subsidiary arising under the Tender and/or the Agreement or otherwise, and the Guarantor shall not be released from the obligations hereunder by reason of any time or forbearance granted by MBL to the Subsidiary or the Guarantor.
3. In the event of any claim or dispute arising out of or relating to this Guarantee, the provisions of the Agreement (whose draft will be provided before the Subsidiary submits its bid, if any), with regard to the applicable law and conflict resolution, shall apply as if fully repeated herein. An award obtained pursuant to the Tender and/or Agreement by the MBL against the Subsidiary shall also be binding on Guarantor.

As witness the hand of the duly authorised representative of the _____
(name of the Guarantor):

Name of the Guarantor's representative

Signature

Date

SCHEDULE

SNo	Activity	Days
1.	Award of LOI	0
2.	Sending of Agreement (business days)	21
3.	Signing of Agreement	28
4.	Submission of Performance Bank Guarantee	21
5.	Start of mobilization of equipment and Manpower	0
6.	Erection and commissioning of the Plant	210
7.	Start of Commercial Production	240

INDICATIVE CHECK LIST FOR SUBMISSION OF BID

S No	Description	Yes/No	Reference page no of BID
1	Capability to mobilize all equipment, facilities & Manpower		
2	The prospective bidder should have successfully executed/ or successfully executed/running one Tailings Beneficiation Plant		
3	Certificate of Registration as legal entity		
4	Articles of Association (as published in the Official Gazette)		
5	Declaration stating that there is no foreclosure or a Bankruptcy		
6	Business License or equivalent document issued by the competent authorities		
7	The original or certified copy of the joint-venture agreement, if applicable		
8	Evidence of the delegation of powers by the members of the Consortium to the person who signs the proposal		
9	Profit making record of 1 year in the last 3 years		
10	Minimum net worth of total USD 2 million		
10	Copy of the contract agreement/ Work Order and certificate of Tailings Beneficiation Plant		
11	The annual reports for the preceding three financial years		
12	Format 1 - Executive Summary		
13	Format 2 - Covering letter for Techno Commercial		

	Bid		
14	Format 3 - Submission of technical documents as per qualifying requirements		
15	Format 4 - Submission of financial documents as per qualifying requirements		
16	Format 5 - Submission of additional information		
17	Format 6 – Stamped blank Price Bid with Techno commercial offer (Part A)		
18	Format 6 - Price Bid duly filled in with (Part B)		
19	Format 7 - EMD Bank Guarantee		
20	Format 10 – Capacity to sign documents		
21	Format 11 – Description of works carried		
22	Format 12 – Statement of Equipment and Machineries to be deployed		
23	Format 13 – Description of Vehicles to be used		
24	Format 14 – Descriptions of workers		
25	Format 15 – Corporate Guarantee, if applicable		
26	An EMD of US\$25,000 (Twenty Five Thousand USD) in the form of Bank Guarantee or Proof of Bank Transfer as a part of Techno Commercial Bid Part A.		

MINAS DE BENGGA, LDA (MBL)

TETE, MOZAMBIQUE

Tender No: TE095/2019

Volume 2 of 4

SCOPE OF WORK

FOR

**Setting up of a Tailings Beneficiation Plant on BOO
Basis**

AT THE BENGGA MINE

Dated: 14th November 2019

Last date of Bid Submission: 5th December 2019

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1.1 INTRODUCTION

1.1.1 Background of the company

Minas de Benga, Lda (MBL) is a company registered under the laws of Mozambique. The company owns an opencast coal mine in Benga Locality, Moatize District, Tete Province, Mozambique, namely Benga coal mine. MBL is the ultimate subsidiary of International Coal Ventures Pvt. Ltd. (ICVL India), a New Delhi (India) based company registered under the laws of India. ICVL India is a Joint Venture company promoted by some of the largest steel/ mining sector public companies of India, namely Steel Authority of India Limited (SAIL), Rashtriya Ispat Nigam Limited (RINL) and NMDC Ltd.

1.1.2 Benga Mine Operations – An Overview

1.1.2.1 Benga Coal Mine is a multi-seam open cast operation with over 200 million tonnes of proven coal reserves.

1.1.2.2 The mine has a state of the art coal handling, processing and preparation facility (CHPP) that has been operating since 2012, having a designed capacity to process 5.3 MTPA Run-of-Mine (ROM) coal. The ROM coal after washing in the CHPP produces three products namely Hard Coking Coal at 10% to 13.5% ash (HCC); Thermal Coal (TC) at 27.5% to 28% ash and Low Heat Value Coal at 50% to 60% ash (Power Grade Coal). In addition, Tailings having a good heat value, are also generated from CHPP. Hard Coking Coal (at 13.5% Ash level), Thermal Coal and Low Heat Value Coal have been produced ideally in the ratio of 35:10:50 with the balance 5% as Tailings Coal. Coking Coal with 13.5% ash is being exported to India for consumption by the promoter companies of MBL in their own steel plants.

1.1.2.3 Presently, MBL has an arrangement for 4.2 MW of power for its operational requirement. For the proposed Tailings Beneficiation Plant, there will be additional power requirement.

1.1.2.4 The CHPP (Coal Handling & Processing Plant) of Benga Mines has capacity to process 5.3 MTPA of ROM Coal (at 80% capacity). Of the total ROM Feed quantity, around 5% of the input is collected as Tailings in the Tailing Dam (i.e. around 230,000 MTPA). The tailings produced in Coal Handling & Processing Plant are discharged in the Tailings dam.

1.1.2.5 The Tailing Dam TC1 (TC1) is full and the Tailing Dam TC2 (TC2) is currently being used to collect the tailings. Once the TC2 is filled, TC3 shall be made operational.

1.1.2.6 Present stock at TC1 is around 618,000 tons and that at TC2 is around 620,000 tons. The total current stock of the Tailings thus is around 1.2 Million Tonne in the Tailings dam (TC1 and TC2). Currently, the tailings will have to be fed from

TC2 only. In future, tailings from TC1 can be fed in the Tailings Beneficiation Plant, which is presently covered and in future the cover needs to be removed by the Bidder for processing. Besides, TC3 is also under construction and expected to become operational from July'2020. Next year July'2020 onward, Tailings generated from the CHPP will be discharged in TC3. It is expected that the production of tailings will continue at least for next 3 years.

- 1.1.3 Extraction and Processing Requirement** It shall primarily include the extraction of 453,600 Tonne per year (+/- 30%) of Tailings, its processing to produce Coking Coal of specified quality and dumping back the reject coal into the Tailings Dam; along with the associated activities. Monthly capacity of the tailings which shall be fed in the plant will be 37,800 MT of Tailings.

1.2 TAILINGS OPERATIONS

1.2.1 Responsibilities and liabilities of Successful Bidder regarding the Scope of Work

The successful bidder shall be responsible and liable for carrying out all the activities/Work, comprising the payment of all the costs and expenses for supplies, erection, testing, commissioning of Tailings Beneficiation Plant, equipment & facilities, consumables, fuels & lubricants, tires, explosives, storage, procurement of spares & parts, manpower, security, water, electricity, delivery of coking coal to the Delivery Point (conveyor belt CV 804 of CHPP) at CHPP or from adjacent Stock Piles created by the Successful Bidder as per the instructions of MBL, etc. as well as any main, ancillary or associated activities (in compliance with all applicable laws, which inter-alia would include industry, mining, safety, environment, labor, compensation, etc.), including but not be limited to the following:

1. Build, own and operate the Tailings Beneficiation Plant of adequate size commensurate with the plans for the extraction of tailings, processing of tailings, production of coking coal and dumping of reject coal throughout the Contract period, and including creating necessary operating facilities of workshops, stores & offices as well as applicable labor, vehicle and mining safety and security standards.
2. Equipment procurement, including the supply of all equipment in the plant, including TBSs, cyclones, flotation cells, thickeners, filters, reagents facilities, valves, instrumentation, and conveyors with gearbox equipment, etc. required for operation of the plant.
3. Responsible for fabrication and supply of all structural and conveyor steelwork, conveyor guarding, plate-work, electrical and instrumentation equipment, MCCs, electrical cabling work, sheeting, piping, instrumentation cabling and equipment, etc.

4. Construction and installation shall include civil, structural steel and plate work, installation of OEM equipment, thickener and floc plant, conveyor installation, piping and valves, electrical and instrumentation equipment and cabling, etc.
5. Responsible to recover the tailings (tailings from TC2 at present and from TC1 in the future as decided by MBL, will be recovered for processing) without causing any damage. In case of any damage, repair has to be carried out at the bidder's cost. For recovery of tailings from the Tailings Storage Facility (TSF) or Tailings Cell (TC), the bidder may use hydraulic monitors, and the resulting slurry may be transported by a pipeline system to the TSF or TC of the coal processing plant.
6. Mechanical, electrical, instrumentation, chute-work, tanks, piping & valves and non-process equipment, as well as civil and structural maintenance, etc. once the plant is operational.
7. Consumables for the TSF / TC retreatment plant would include screen panels, filter cloth, lubricants, hydro-cyclones wear parts and other minor parts and equipment as per the design.
8. Full commissioning of the plant including installation, compliance of mechanical, electrical and instrumentation equipment, cold commissioning, hot commissioning, client equipment compliance inspection and sign off.
9. To ensure continuous supply of coking coal to MBL without disruption with a yield of 36 % of coking coal.
10. The reject (tailings) generated after processing of coking coal shall be again put in the tailings dam at appropriate location as per the environmental rules and regulations. Dry disposal of tailings in cakes may be allowed.
11. The successful bidder shall ensure that the CHPP (Coal Handling & Processing Plant) does not stop or adversely affected due to inoperation or wrong operation of Tailings Beneficiation Plant which affects the minimum output of coking coal volumes.
12. To make the equipment available and to meet the work requirement, as well as to meet the applicable labor, vehicle and mining safety and security standards. To arrange for security with in the mine precincts including the HEMM, mine facilities etc.
13. All necessary licenses, permits, consents and approvals necessary to perform the activities under this document and the Contract.
14. Land clearing and grubbing of all areas necessary to complete the activities under this tender and the Contract and disposal of vegetative and related matter.

15. All activities associated with clearing, grubbing and top soil management, shall be in compliance with the applicable Mozambican Laws, Environmental Management Plan and Environmental License for the Benga Mine Project and any other applicable rules and regulations.
16. The induction and training of all Successful Bidder`s personnel.
17. Processing, loading and haulage of coking coal and delivering the same on the coking coal conveyor belt CV 804 of CHPP The conduct of operations in such a way as to reduce the amount of waste and coal loss as waste to minimum.
18. Dewatering of the working area; water control, drainage, pumping of water and flood management at Successful bidder`s own cost by constructing dams, sumps installing suitable capacity pumps for drainage of water to ensure that the production continues at stipulated rate. Water usage, drainage, dams, etc., shall be constructed and operated in compliance with the Environmental Management Plan and Mozambican water and mining legislation.
19. Management of Site water run-off control.
20. Suppression, prevention & control of dust emissions using water or any other suitable product.
21. Prevention of dirty water exiting the Site in an uncontrolled manner and strict control of all water into the relevant clean and dirty categories.
22. Fire prevention and control in the area of operations.
23. Lighting, fencing and provision of civil amenities.
24. Adequate expertise, supervision and labor for the operation and maintenance of equipment, vehicles, tools and tackles.
25. All fuel, lubricants and other consumables as well as spare parts and accessories (including tires) and related maintenance and repair operations required for continuous operation of the machines & vehicles.
26. All duties, taxes, charges and costs associated with the permanent or temporary import of equipment, machinery and any other goods.
27. To fulfill all the obligations in respect of the local employees as well as the permitted expatriate employees as are required by the Mozambican labor law and immigration legislation.
28. Open book administration and record keeping of the services.
29. Storage, retention, collection, recycling and disposal (including transport wherever applicable) of all used oil, and grease, disposable filters and other waste liquids etc., as per environmental policies & procedures, environment Management Plan and Environment License & environmental regulations, waste management regulations and other applicable legislations.

30. To arrange for security within the mine precincts including the HEMM, Tailings Beneficiation Plant, etc.
31. For the avoidance of doubt, the responsibility in respect of arrangement of HEMM spares, explosives, diesel, tires, etc. shall be of the Successful Bidder only.
32. The Successful Bidder shall supply, erect, commission and maintain facilities required for production/processing.
33. The Successful Bidder shall be responsible for the cost or expense of any adjustment or relocation of any infrastructure and for provision to be required for the operation of Tailings Beneficiation Plant. .
34. The Successful Bidder shall be responsible for completion of the work under the Contract and shall be responsible for all necessary plant, equipment, and facilities as approved by MBL to carry out the activities under this tender and the contract. This shall include, without limitation, the supply of material, plant, labor, supervision, spare parts, tools, drawings and data, services and each and every item of expense necessary for the delivery of coking coal from Tailings dam facility at the scheduled production rate.
35. The Successful Bidder is also required to outline a statement of the operating methodology it proposes to carry out the activities under this tender and the Contract.
36. The Successful Bidder shall be responsible for all the travel, accommodation, cleaning, messing & retrenchment formalities of its personnel.
37. The working hours will be governed by Mozambique law and the same will be subject to approval by MBL.
38. The Successful Bidder will be required to formulate concrete comprehensive management plan for all visitors, independent contractors and agents entering the site, to be approved by MBL.
39. Daily reporting to MBL in electronic form of details of all tasks undertaken by all items of Plant and Personnel for both operational and maintenance performance tracking and Daily Production & Stock report as per agreed format.
40. Maintain clean and safe working environments.
41. The Successful Bidder will be responsible for mobilization to the site of all the equipment, the Successful Bidder's personnel, vehicles, etc. required for operation. Only the machinery inspected and approved by MBL will be permitted on the site.

42. The Successful Bidder will be responsible for demobilization of the extraction and processing equipment and other equipment with prior approval of MBL.
43. The Successful Bidder will be responsible for any additional mobilization and demobilization of the equipment with prior approval from MBL.

1.2.2 Other responsibilities and liabilities of the Successful Bidder

The successful bidder shall be also responsible and liable for the following:

1. To ensure and guarantee that the Plant shall have a minimum life of 7 (seven) years of operation.
2. To ensure and guarantee that the plant shall be made operational in a period of 8 (eight) months after the issuance of the LOI ("Letter of Intent").
3. If the bidder is not a Mozambican company, then any adjudication is conditional and subject to the timely registration of a company in Mozambique, as well as its tax, labor, operating license and other required registrations.
4. To obtain all necessary permits, consents and approvals necessary for executing the Service Contract with MBL, including any Investment Authorization from the Government of Mozambique as well as any license required to comply with the Environmental Management Plan and all other regulatory requirements of the Environmental License.

- 1.2.3** The successful bidder shall be accountable for the non-performance and/or the non-compliance of any of the activities, timings, tasks, obligations, duties and other actions and/or omissions stated in clauses 1.2.1 and 1.2.2 above.

1.3 ADMINISTRATION

1.3.1 Progress of the Works

MBL may in its absolute discretion and from time to time issue instructions to the Successful Bidder in connection with the following and such instructions shall be complied with by the Successful Bidder forthwith:

1. The method or manner of the execution, doing or performance of the Work under the Contract generally and each part thereof;
2. The suspension of the Work under the Contract or any part thereof;
3. The time or times within which the Work or any part thereof is to be commenced and/or completed;
4. The time or times when and the manner in which the Work under the Contract is to be done or performed or is not to be done or performed;

5. Any written records data and information which MBL requires the Successful Bidder to keep and maintain and which shall be available for inspection and copying by MBL at the Site at all reasonable times.
6. The Successful Bidder shall at its own cost and expense and with all reasonable expedition re-perform or remedy any part of the Work which, in the opinion of MBL, is defective or is not executed in accordance with the Contract and/or MBL instructions and MBL shall be under no obligation to make any payment to the Successful Bidder for any such re-performance or remedial Work.

1.3.2 Licenses, Permits, Consents and Approvals

Successful Bidder shall be responsible for acquiring and maintaining all licenses, permits, consents and approvals. This includes all necessary permits for the storage and use of explosives, if any.

All licenses, permits, consents and approvals necessary to complete the activities under this tender and the Contract are the responsibility of the Successful Bidder.

All costs associated with meeting the Successful Bidder's requirements for licenses, permits, consents and approvals under this clause shall be the responsibility of the Successful Bidder and no additional charges will be made by the Successful Bidder on MBL.

1.3.3 Supervision by the Successful Bidder

The Successful Bidder will provide adequate supervision of the Work at all times as approved by MBL.

1.3.4 Planning

MBL will provide necessary plan and give instruction as far as the area of tailings dam is concerned, where from the Tailings shall be extracted and also where the process rejects shall be dumped. removed.

1.3.5 Successful Bidder Reporting

The Successful Bidder shall provide all the information and reports in an electronic format approved by MBL. All production and equipment operating statistics will be derived based on definitions agreed to by MBL.

1.3.6 Daily Reports

The Successful Bidder shall, prior to 0900 hours (9 a.m.) on each day during the Contract term, submit a full and accurate report in respect of the work performed by the Successful Bidder on the previous working day including, on a shift by shift basis, without limitation:

1. Details of the extraction and processing activities of the Successful Bidder;
2. Loading units employed by the Successful Bidder;

3. Day works;
4. Any identified hazards;
5. Any accidents or incidents occurring in the course of the performance of the Work under this tender and the Contract, whether involving lost time or otherwise;
6. Other information which may impact on the current or future performance of the Work under the Contract;
7. Statistics on utilization, efficiencies, scheduled hours, work hours and effective production hours by equipment item and equipment productivities;
8. Equipment maintenance report on all equipment noting the availability, downtime, reason for downtime, planned services, expected date and time of release from workshop; and
9. Other information as requested by MBL either, on a regular basis or, from time to time.

1.3.7 Monthly Reports

1. Production summary covering all items in the daily report described above;
2. All information required for the effective processing of the monthly claim;
3. Any and all reports required by the statutory authorities;
4. Equipment maintenance report summarizing major and minor maintenance incurred on all equipment and a summary of the main work carried out on each machine;
5. Maintenance plans including the forecast shutdown maintenance;
6. Safety report including a separate summary and status of each incident and accident that occurred during the month;
7. Rehabilitation and environmental compliance report, including a summary and status of each incident and accident that occurred during the month;
8. Other information as requested by MBL either, on a regular basis or, from time to time; and other information which may impact on the current or future performance of the work under the Contract.

1.3.8 Progressive Signing off

As portions of the Work under the Contract are completed and if considered appropriate by MBL, the Successful Bidder shall submit to MBL, within thirty (30) days of completion of the portion of the work under the Contract, relevant documentation justifying completion.

1.3.9 Security

The Successful Bidder shall comply at all times with the Site security guidelines as determined by MBL.

1.3.10 Successful Bidders Sub Contractors

The Successful Bidder shall be required to formulate a comprehensive management plan for all independent contractors, visitors or agents entering the Site. The Successful Bidder shall supply, initially and from time to time, documentation to MBL identifying potential risk areas with an emphasis on how the Successful Bidder's management plan/system will ensure compliance with all Site policies and procedures.

It is the Successful Bidder responsibility to ensure that sub-contractors follow all Site approved policies and procedures. Failure to do so may lead to refusal of Site entry for non-compliant sub-contractors.

The Successful Bidder is required to indicate the sub-contractors whom the Successful Bidder intends to subcontract any part of the Work under the Contract.

1.4 SITE RULES AND PROCEDURES

The Successful Bidder shall ensure that all persons employed by it and all persons brought onto the Site by it, agree to be bound and will comply, without reservation, with the applicable rules and procedures of MBL including, without limiting the generality of the foregoing, security rules, safety, health and environment systems, standards, insurance of equipment & labour (occupational illness , accident in the work place etc.), public liability insurance rules and procedures and any other Site regulations and the directions and requests of the MBL pursuant to any such rules and regulations.

It is the Successful Bidder's responsibility to ensure that all suppliers and visitors to the Successful Bidder follow all Site approved policies and procedures. Failure to do so may lead to refusal of Site entry for non-compliant suppliers or visitors.

1.5 MOBILIZATION AND DE-MOBILIZATION

1.5.1 Mobilization

The successful bidder shall be responsible for mobilization to the site of the all the equipment, the Successful Bidder's personnel, the Successful Bidder's plant and facilities, and all other items/services required to be supplied or provided by the Successful Bidder to complete the work under the Contract, including but not limited to support equipment, light vehicles, initial material, consumables, stocks and spares. Only approved machinery is to be permitted on site. The Successful Bidder shall ensure that all mobile equipment is clean. The equipment should be in

good running condition inspected and approved by MBL. All equipment must comply with the mining legislation and in particular mine safety regulation.

Prior to the mobilization of any equipment to Site, the Successful Bidder must inform the MBL in writing of the type, specification and condition of the equipment. Only approved machinery is to be permitted on Site.

Prior to commissioning on Site, all equipment, plant, facilities and other items required to be supplied by the Successful Bidder to complete the Work under the Contract must be inspected and approved by MBL. The inspection shall include but not be limited to checks of the general suitability and safe working condition of the equipment. With prior approval from MBL and provided that the costs and expenses are born by the Successful Bidder, the inspection may be scheduled to take place off site before the equipment is dispatched to Site. This will enable the Successful Bidder to make any modifications or changes to the equipment that may be necessary, in a more amenable environment than perhaps exists initially at the Site.

1.5.2 Demobilization

All activities associated with any type of demobilization (including equipment but not limited to support equipment, light vehicles, initial materials, consumables, stocks and spares, apart from those items specifically approved in writing beforehand as remaining on Site upon completion of the Work under the Contract) shall be the responsibility of the Successful Bidder, including all associated costs, taxes and customs duties.

Only those spare parts, maintenance materials and consumable supplies owned by the Successful Bidder are to be removed by the Successful Bidder at any time during or at the end of, the Contract.

No items of plant or equipment shall be de-mobilized from Site without approval of MBL. One (1) month prior notice of an intention to demobilize equipment shall be given. Acceptance of the demobilization shall be at the discretion of MBL.

The Successful Bidder shall be responsible for de-mobilization of the Successful Bidder's equipment, the Successful Bidder's personnel, the Successful Bidder facilities and all other items supplied or provided by the Successful Bidder upon completion of the Work under the Contract.

1.5.3 Additional Mobilization and Demobilization

If the Successful Bidder is to replace any item it shall obtain the prior concurrence from MBL.

1.6 EARTHWORKS, ROADS AND WINDROWS

1.6.1 Road Construction

1. While some site roads required for the Contract term will be in existence at the Contract Execution Date, several access roads and haul roads will require to be progressively constructed. The construction will be responsibility of the Successful Bidder.
2. All existing light and heavy vehicle access and haul roads at the site shall be maintained in good working condition to the required width for the safe and efficient operation of the Successful Bidder's Equipment and MBL vehicles or as specified by MBL. Such maintenance will include regular grading and watering for dust suppression. Such roads include, but are not limited to, from the Pits to the Waste Dumps, ROM coal Facility area, surface facilities and stockpiles.
3. Any new roads constructed during the course of the work under the Contract will also be the responsibility of the Successful Bidders.
4. The material for the road construction shall be sourced by the Successful Bidders and shall be spread, watered and compacted to a standard approved by MBL and suitable for all weather use by the Successful Bidders Equipment.

1.7 FACILITY AND SERVICES

1. The Successful Bidder shall supply, erect, commission and maintain facilities required for storage, processing, production and stockpiling. The removal of all the facilities after completion of the job will be the responsibility of the Successful Bidder.
2. The Successful Bidder shall be responsible of any adjustment or relocation of any infrastructure and for provision to be required for the operation of Tailings facility.
3. The Successful Bidder shall be responsible for completion of the work under the Contract and shall be responsible for all necessary plant, equipment, and facilities as approved by MBL to carry out the work under the Contract. This shall include, without limitation, the supply of material, plant, labor, supervision, spare parts, tools, drawings and data, services and each and every item necessary for the delivery of coking coal from Tailings dam to CHPP conveyor belt.
4. MBL has in place an energy conservation policy which the Successful Bidder is required to follow. This is designed to minimize waste of energy, and all power consumed to provide supporting services to the Successful Bidder Facilities.

1.7.1 Facilities and Services Provided by MBL

MBL will facilitate the availability of the following services:

1. Water (responsibility however will lie with the successful bidder to get the same from the Zambezi river to the site);
2. Electricity of 22kv (responsibility however will lie with the successful bidder to get the same from the existing source to the site, including the construction of any power lines).

MBL will facilitate the availability of water and electricity, the cost of which shall be fully borne by the Successful Bidder. The bidder shall indicate its requirement of water and electricity to MBL well in advance on monthly / yearly basis.

1.7.2 Coking Coal Facility, Coking Coal Stockpile and Process Plant

The Successful Bidder shall place coking coal into the conveyor belt operated by MBL. If stock piling is required then the same shall be responsibility of Successful bidder only. The full responsibility of delivery of coking coal, operation of the plant and management of the stockpile shall be the responsibility of the successful bidder only.

1. The Successful Bidder shall be responsible for all the travel, transportation to and from Site, accommodation, cleaning, messing and retrenchment and all other costs relating to its personnel;
2. Working Hours;
3. The working hours will be governed by Mozambique law and the same will have to be approved by MBL;
4. Successful Bidder's Sub-Contractors;
5. The Successful Bidder will be required to formulate concrete comprehensive management plan for all visitors, independent contractors and agents entering the site, to be approved by MBL.

1.8 GENERAL

1.8.1 Working hours

The Successful Bidder shall nominate the basis of its shift roster. The proposed working hours must be in accordance with Mozambique Law and the Operational Labor Agreement.

MBL may reasonably alter the hours of work at any stage during the term of this Contract and the Successful Bidder shall abide by the changes.

Work may only be carried out when adequate supervisory capacity is available to ensure the health, safety and welfare of the Successful Bidder's Personnel at all times and in accordance with all relevant Law.

1.8.2 Inclement Weather

The Successful Bidder acknowledges and accepts full responsibility for any and all operational delays due to inclement weather such as rainfall, electrical storms, high winds and any other weather events. No additional cost shall be borne by MBL in any way resulting from such events.

1.8.3 Coal loss and dilution

It is an essential requirement of the Contract that the Successful Bidder conducts its operations in such a way as to maximize production of coking coal of specified quality and also to minimize the wastes during the extraction and processing of the tailings.

1.9 MAINTENANCE OF ROAD, LIGHTING AND OTHER AMENITIES

The Successful Bidder is required to maintain all roads within the Site to a reasonable and safe standard including regular grading and watering for dust suppression. As a minimum all site roads will be graded each month.

Provision of suitable road sheeting material;

1. The provision of suitable lighting for safe working condition and statutory requirement with all civil amenities shall be arranged by the Successful Bidder;
2. All existing light should be maintained in good condition.

1.9.1 Dust Suppression

It will be the responsibility of the Successful Bidder to arrange for the dust suppression in the working area. Water required for the dust suppression will be arranged by the Successful Bidder from Zambeze river. Dust levels will be continuously monitored by MBL to ensure compliance with environmental standards. The Successful Bidder will be required to have effective dust suppression to avoid exceeding these dust limits.

Dust in the work areas shall be adequately suppressed by water trucks of a suitable capacity fitted with spray bars or other methods of water dispensing for effective dust control as approved in writing by MBL.

1.9.2 Fire Prevention

The Successful Bidder shall take all possible precautions to prevent fires of any nature in the general vicinity of his operations, including but not limited to the stockpile, and shall be responsible for all damages from fire due directly or indirectly to his own activities or to those of his employees or to the activities of its agents or its employees.

1.10 MANAGEMENT OF THE SITE WATER CONTROL & PREVENTION FROM FLOODING

The Successful Bidder shall make provisions for effective water control, drainage, transferring of water and flood management by providing dams, sumps, installing suitable capacity pumps for drainage of water so that the production should continue at given rate at all time

1.10.1 Activities

The Successful Bidder shall at all times endeavor to obtain all necessary pumps, pipes and pipe fittings in a timely manner and be responsible for the day-to-day installation, operation and maintenance of the transfer pumps (including refueling and daily service checks) of all dewatering infrastructure.

1.10.2 Operator Licenses

The Successful Bidder shall ensure that all Equipment operators hold appropriate licenses and /or site proficiency pass outs for the operation of the Equipment and have been tested and approved to operate by way of competency testing.

1.10.3 Collection and disposal of all waste material

The Successful Bidder shall be responsible to arrange for all his waste oils to be stored, retained and collected for recycling as per the environmental policies and procedures of MBL, the Benga mine Project Environment Plan and License and environmental regulations, waste management regulations and other applicable legislation. Waste grease and disposable filters must be transported offsite for recycling or re-use, using an approved transport company.

1.11 MANAGEMENT

All activities associated with management, supervisory, service and clerical personnel, off-site personnel support, tools, equipment & service vehicles, computing, communication equipment and infrastructure maintenance are in responsibility of Successful Bidder..

1.11.1 Day works

On specific requests of MBL in cases of exigencies, the Successful Bidder is obliged to provide the equipment and labour to MBL on its request for any purpose other than extraction and processing activities of the successful bidder as per the contract. The rates for such equipment and labour however may be mutually agreed on case to case basis.

1.12 MEASUREMENT OF QUANTITIES FOR STARTING OF OPERATIONS**1.12.1 Survey before removal of tailings for starting operations**

There will be a Joint survey by MBL and Successful Bidder to establish initial profile before start of mining operation and to set survey control points across the Site for future material volume computation. These control points shall be securely

delineated and marked for access by both MBL surveyor and Successful Bidder surveyor.

In case of any dispute, MBL's position will prevail.

1.12.2 Monthly Mining Survey

MBL shall, at the end of each month, carry out a survey of the area of Tailings Storage Facility (TSF) or Tailings Cell (TC) during the Month. Copies of the survey data will be made available to the Successful Bidder in both hard copy and electronic media at no charge.

1.12.3 Survey on Completion of Contract

On completion of the Contract, there will be a joint survey by MBL and the Successful Bidder in order to verify the total material volume computations.

In case of any dispute, MBL's position will prevail.

1.13 LAND CLEARING AND GRUBBING

Land clearing and grubbing will be the responsibility of the successful bidder.

1.14 EMPLOYEE, INDUSTRIAL AND COMMUNITY RELATIONS

1.14.1 Employee Relations

The Successful Bidder is responsible at all times for the due and proper conduct of all employee relations in respect of Work under the Contract.

Within thirty (30) days of the Contract Execution Date, the Successful Bidder shall develop and submit to MBL a Site Specific Employee Relations Management Plan for confirmation and ratification by MBL. The Successful Bidder is required to outline its Employee Relations Management Plan. This process shall be consistent with MBL's employee relations procedures, workplace requirements and philosophies, and at all times be the responsibility of the Successful Bidder, albeit MBL shall at all times be kept informed of developments.

MBL shall require the Successful Bidder to address, but not be limited to the following, in the Employee Relations Plan:

1. Recruitment and selection criteria
2. Fair treatment process
3. Induction, ongoing training, development and termination
4. Drug and alcohol abuse management
5. AIDS and hepatitis management
6. Safety, Health and Environment Management Plan, including training and awareness schedule
7. Occupational Health and Workplace Rehabilitation
8. OH&S reporting and monitoring methodologies

9. Employee Performance Management, and
10. Employee Environmental Awareness.

The Successful Bidder shall at all times be encouraged to develop for discussion further initiatives in relation to the Employee Relations Plan that would assist in developing an integrated approach.

1.14.2 Industrial Relations

The Successful Bidder is responsible at all times for the due and proper conduct of all industrial relations in respect of Work under the Contract.

Within thirty (30) days of the Contract Execution Date, the Successful Bidder shall develop and submit to MBL a Site Specific Industrial Relations Management Plan for confirmation and ratification by MBL. The Successful Bidder is required to outline its proposed Industrial Relations Management Plan. This process shall at all times be the responsibility of the Successful Bidder but MBL shall at all times be kept informed of developments.

MBL shall require the Successful Bidder to address, but not be limited to, the following in the Industrial Relations Management Plan:

1. Details of industrial relations arrangements (union membership and awards/agreements) that have applied to the Successful Bidder's work on sites over the previous 3 years
2. Any industrial awards or agreements to which the Successful Bidder is currently bound
3. The industrial award, agreement or employment arrangements that shall apply to all work undertaken on Site
4. Details of the employment conditions including rates of pay, allowances and general employment benefits
5. Details of union membership
6. Procedures for the recruitment and engagement of personnel for the Site, plus strategies for ensuring:
7. A harmonious industrial relations environment is achieved and maintained, and
8. High standards of OH&S are achieved.

1.14.3 Community Relations

MBL has a policy of developing and maintaining good and productive relationships with the local community. The Successful Bidder is responsible at all times for the due and proper conduct of all its Personnel with regard to community relations. The Successful Bidder is to follow the directives and intention in this Community Relations Management Plan at all times, noting that MBL reserves the right to alter the plan at any time.

Within thirty (30) days of the Contract Execution Date, the Successful Bidder shall develop and submit to MBL, a Site specific response on how it will incorporate MBL's Community Relations Management Plan in its Work under the Contract, for confirmation and ratification by MBL.

The Successful Bidder is encouraged to:

1. Hire persons from the local region
2. Train and improve the skills of local unskilled employees
3. Provide apprenticeships, traineeships or similar industrial training and/or educational assistance to persons within the local community.
4. Take an active role, where reasonable, in developing business opportunities within the local community.
5. Purchase items from the local region
6. Encourage further development of services from the local region

1.15 ENVIRONMENTAL MANAGEMENT

1.15.1 Environmental Management Plan

The Successful Bidder is responsible at all times for the due and proper conduct in relation to protecting the environment in respect of Work under the Contract.

The Successful Bidder is required to outline the basis of its proposed Environmental Management. Within thirty (30) days of the Contract Execution Date, the Successful Bidder shall submit to MBL a Site Specific Environmental Management Plan for confirmation and ratification by MBL. This process shall at all times be the responsibility of the Successful Bidder but MBL shall at all times be kept informed of developments.

The Successful Bidder will ensure that all of its Personnel are made aware of their duties and responsibilities as outlined in the Site Environmental Management Plan.

Ameliorative measures to rectify breaches with the environmental statutory requirements, Site conditions or Site policies by the Successful Bidder's sub-contractors and associates will be at the Successful Bidder's expense. The Successful Bidder must ensure, where applicable, that sub-contractors and associates fulfill all inspection, auditing and reporting functions required. The Successful Bidder will maintain records to demonstrate compliance with this requirement.

MBL's representative may direct the Successful Bidder to amend or revise the Successful Bidders Site Environmental Management Plan from time to time. The Successful Bidder shall submit all proposed amendments or revisions of the Successful Bidders Site Environmental Management Plan (whether directed by

Successful Bidder Representative or otherwise) for approval by MBL's Representative.

In connection with the submission of any amendments or revisions of the Successful Bidder's Site Environmental Management Plan:

1. If so directed by MBL's Representative, the Successful Bidder shall provide additional information;
2. If MBL's Representative rejects part or all of a submission, the Successful Bidder shall, within 7 days, submit an amended or new plan; and
3. Once MBL's Representative notifies the Successful Bidder of the approval of a proposed plan or of a revision or amendment, it shall become the Successful Bidders Site Environmental Management Plan and the changes will be effective immediately.

The Successful Bidder shall attend regular meetings with and report to MBL's Representative on its implementation of and compliance with the Successful Bidder's Site Environmental Management Plan.

1.15.2 Equipment

The Successful Bidder shall ensure that all equipment is restricted to established roads and working places at all times. No equipment will be driven or operated on undisturbed ground except in the case of land clearing for which approval is to be obtained.

1.15.3 Ground Disturbance

MBL is committed to the principle that all operations will be carried out with minimum practical disturbance to the existing vegetation and natural landform. It is the responsibility of the Successful Bidder to obtain necessary licenses prior to undertaking any clearing activities.

1.15.4 Storage of Hydrocarbons

All hydrocarbon containers will be stored in bounded areas according to MBL's Environmental policies, Law, license conditions, regulations and industry good practice.

All drums of capacity 200 litres or more will be stored within one of the following:

1. A compacted earthen floor and bund with a spillage capacity of at least 20% of the total hydrocarbon stored within the bund. If suitable compaction cannot be attained the bund will require lining with HDPE.
2. A concrete floor and bund with a spill holding capacity of 20% of the total hydrocarbon stored in the drums.

3. A concrete floor within a workshop with the floor bounded on three sides and the fourth open to enable any spillage to enter the drainage system and ultimately be retained by the waste oil collection system.
4. A concrete floor within a workshop with perimeter drainage installed to direct any spillage to the waste oil separation and collection system.

In addition, in all cases:

1. All drums stored vertically will be held individually or as groups on steel or plastic grates over drip or spillage trays with a capacity to hold 220 liters (1.1 times the capacity of a drum).
2. All drums stored horizontally will be located on suitable holding tables over a steel or plastic drip tray with a capacity of 220 liters.
3. Each row of horizontal drums will have a sand drip tray under each row of outlet (supply) valves.

All drums with capacity less than 200 liters are required to be stored on steel or plastic grates or shelving located over a concrete floor either bounded with a storage capacity of 20% of the total volume of stored materials, or unbounded with drainage to an approved oil separator and storage tank.

1.15.5 Collection and Disposal of Waste Oil

The Successful Bidder is responsible to arrange for all his waste oils to be stored, retained and collected for recycling as per the environmental policies and procedures of MBL. Wherever possible, waste sump and other oils are to be placed directly into waste oil tanks rather than mixed with water. At no stage is waste oil to be stored in open 200 liter drums. Waste oil is to be transported off Site for recycling or re-use, using an approved transport company.

1.15.6 Collection and Disposal of Waste Grease and Disposable Filters

The Successful Bidder is responsible to arrange for all his waste grease and disposable filters to be collected in sealable 200 liter drums. Waste grease and disposable filters must be transported offsite for recycling or re-use, using an approved transport company.

All sealable 200 liter drums containing the waste grease and disposable filters will be stored in bounded areas according to the environmental policies and procedures of MBL, Law, statutory requirements, license conditions, regulations and industry good practice.

1.15.7 Disposal of Tyres

The Successful Bidder is encouraged to consider negotiating a tyre supply Contract that includes collection and return of used tyres to the supplier / manufacturer.

MBL's environmental approvals do not allow for disposal of tyres on Site, even within contained Waste Dumps.

The Successful Bidder must report to MBL on a quarterly basis method of disposal and the number of tyres disposed of during that period. The Successful Bidder must regularly liaise with MBL to determine suitable alternative disposal methods.

1.15.8 Disposal of Batteries

The Successful Bidder is encouraged to consider negotiating a battery supply contract that includes collection and return of used batteries to the supplier / manufacturer. MBL's environmental approvals do not allow for disposal of batteries on site, even within contained Waste Dumps.

The Successful Bidder must report to MBL on an annual basis the method of disposal and the number of batteries disposed of during that period. The Successful Bidder must regularly liaise with MBL to determine suitable alternative disposal methods.

1.15.9 Recycling Policy

The Successful Bidder shall comply with MBL's policy of recycling dry waste. At all-time the Successful Bidder must attempt to maximize the recycling of suitable wastes including but limited to the following items;

1. Paper and cardboard, and
2. Wood, glass, plastic, PVC, HDPE.

1.15.10 Domestic Rubbish Tip

The capacity of domestic rubbish disposal is limited on the Site and the Successful Bidder is not encouraged to use this facility except for rubbish that cannot otherwise be disposed of or recycled.

The following materials are suitable for disposal in landfill at the Site:

1. Kitchen and household (domestic) solid wastes.
2. Office wastes that cannot be recycled, including food scraps.
3. Inert building rubbish (including concrete may be placed within a waste dump and buried).
4. Clean fill from building or associated excavations (may be placed within a waste dump and buried).

The following materials are not to be disposed in landfill at the Site:

1. Oil, grease or fuel of any type
2. Oil filters or oily rags

3. Chemicals
4. Medical wastes
5. Metal scrap, conveyor belting, rubber
6. Batteries
7. Tires

1.15.11 Environmental Incidents

All environmental incidents, whether large or small, must be reported to MBL. An “environmental incident” is an action that causes infringement of any of the approved standards of operation and agreed environmental control measures. These may include but not be limited to the following:

1. Harm or potential harm to vegetation, soil structure, groundwater, atmosphere, surface water or fauna;
2. Generation of excessive dust;
3. Generation of excessive noise;
4. Excessive air over pressure caused by blasting
5. Excessive ground vibration caused by blasting
6. Any release of contaminated waste, hydrocarbon, or chemical;

MINAS DE BENGGA, LDA (MBL)

TETE, MOZAMBIQUE

Tender No: TE095 /2019

Volume 3 of 4

GENERAL CONDITIONS

FOR

SETTING UP OF A TAILINGS BENEFICIATION PLANT ON

BOO BASIS

AT THE BENGGA MINE

Dated: 14th November 2019

Last date of Bid Submission: 5th December 2019

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A. CORE GENERAL CONDITIONS

1. INTERPRETATION

1.1 In this Contract, unless the contrary intention appears:

"Affiliated Entity" means, in relation to a Party, a subsidiary or a holding company or any other subsidiary of that holding company. A company is a "subsidiary" of another company, its "holding company", if that other company:

- (a) Holds a majority of the voting rights in it, or
- (b) is a member or shareholder of it and has the right to appoint or remove majority of its board of directors, or
- (c) is a member or shareholder of it and controls alone, pursuant to an agreement with other members or shareholders, a majority of the voting rights in it, or
- (d) If it is a subsidiary of a company that is itself a subsidiary of that other company.

"Civil Code" means the Civil Code approved by Decree Law 47.344 and in force in the Republic of Mozambique, as amended, re-enacted or substituted from time to time.

"Civil Procedure Code" means the Civil Procedure Code approved by Decree Law 44.129 and in force in the Republic of Mozambique, as may be amended, re-enacted or substituted from time to time.

"Claim" means any judicial or extra-judicial action, suit, proceeding or demand of any kind (including by or against any or all of the Company, the Contractor Personnel or any third party).

"Commencement Date" or **"Contract Execution Date"** means the date on which the Agreement is signed between MBL and the Successful Bidder or LOI (Letter of Intent) is issued to the successful bidder, whichever is earlier.

"Communications" means all notices, notifications, invoices, certificates, approvals, appointments of representatives, consents, statements, reports, authorisations, ratifications, delegations, Claims and other communications (other than day to day communications).

"Company" has the meaning given in the Form of Agreement and includes its successors and assigns.

"Company Representative" means the Person identified as such in the Form of Agreement, as replaced in accordance with Sub-clause 2.2.

"Company Rules" means the Company's rules, requirements, policies and standards as obtainable from the Company, including but not limited to the HSEC Requirements.

"Completion Date" means the relevant date provided for completion of the Services as set out in the Form of Agreement and as amended pursuant to Clause 6 or 7.

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

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

"Contract Price" means the sums payable to the Contractor for the performance of the Services in accordance with the Form of Agreement and Schedule A (if any), as varied in accordance with the Contract.

"Contract Objectives" means the objectives for which the Contract is executed, as may be described in the Contract Specification.

"Contract Specification" means the specification referenced in the Form of Agreement and any modification thereto in accordance with the Contract.

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

"Contractor IP" means the Contractor's Intellectual Property Rights which are incorporated in anything supplied under the Contract and which:

- (a) Are in existence at the Commencement Date; or
- (b) Come into existence after the Commencement Date otherwise than in connection with the Contract.

"Contractor's Insurance Policies" means any insurance policy the Contractor is required to maintain under terms of the Contract.

"Contractor Representative" means the Person identified as such in the Form of Agreement, as replaced in accordance with Sub-clause 2.2.

"Correct Invoice" means an invoice which satisfies the requirements of Sub-clause 10.3 and the requirements of the Law applicable from time to time.

"Country" means the country in which the Site is located, as identified in the Form of Agreement.

"Customs Duties" means any Tax or tariff imposed, claimed, levied or assessed by, or payable to, any Government Agency in relation to the import or export of Goods, and includes any bond or guarantee imposed by any Government Agency in lieu of such Tax or tariff.

"Day" means a calendar day.

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

"Direction" means any decision, demand, determination, direction, instruction, order, request or requirement of the Company Representative made to the Contractor under the Contract.

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

"Documentation" means, but is not limited to, documentation, plans, designs, Drawings, calculations, engineering information, data, specifications, sketches, notes, samples, reports, maps, accounts, operating manuals, training materials and any other material specified in the Contract (and whether embodied in tangible or electronic form).

"Drawings" means the drawings required for the performance of the Services and includes drawings as may be supplied to the Contractor by the Company Representative.

"EFT" means electronic funds transfer.

"Form of Agreement" means the form evidencing the Contract between the parties in respect of the Services.

"General Conditions" mean the General Conditions of the Services Contract.

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

"Government Agency" means any public administration's body which undertakes administrative functions (including State bodies, at a national, state, provincial, district, regional or local level, bodies of local municipal

Administration and bodies of public institutes, public companies and para-state companies, public associations and public foundations when undertaking administrative functions), concessionaires of State assets when using their authority powers, Courts, Bank of Mozambique and Constitutional Council

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

"HSEC Requirements" means the Company's health, safety, environmental and community related requirements, requisites, systems, standards, policies, plans, rules and procedures, including those set out in Appendix C.

"ICC Arbitration Rules" means the Rules of Arbitration of the International Chamber of Commerce.

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

"Insolvency Event" means the Contractor:

- (a) stops or suspends, or threatens to stop or suspend, payment of all or a class of its debts;
- (b) becomes insolvent or bankrupt within the meaning of the Civil Procedure Code or other applicable Law;
- (c) is placed under judicial or administrative management or carries on its business under a receiver, trustee, administrator, liquidator, provisional liquidator or director for the benefit of its creditors or any of them, or any step preliminary to the appointment of a receiver, trustee, administrator, liquidator, provisional liquidator or provisional administrator is taken;
- (d) if it is a company, is wound up (not being a members' voluntary winding up for the purpose of amalgamation or reconstruction);
- (e) has an application or order made, proceedings commenced, a resolution passed or proposed in a notice of meeting, an application to a court made or other steps taken against or in respect of it for its winding up or dissolution or for it to enter into an arrangement, compromise or composition with or assignment for the benefit of its creditors, or class of them or any of them;
- (f) if it is a partnership, ceases to have all the partners comprising the partnership as at the date of the Contract; or
- (g) if it is an individual, commits an act of bankruptcy or makes a compromise or composition with or assignment of his property in favor of creditors; or
- (h) Suffers any event analogous to the events set out in paragraphs (a) – (g) above in any jurisdiction where it is incorporated or resident.

"Intellectual Property Right" means all industrial and intellectual property rights whether protectable by statute, by the Paris Convention for the Protection of Industrial Property Rights of 20th March 1883 (with all amendments thereto), by use

and custom, at common law or in equity, including all copyright, industrial property rights, and similar or related rights which may subsist in works or any subject matter, rights in relation to inventions (including all patents and patent applications), trade secrets and know-how, rights in relation to designs (whether or not register able), rights in relation to registered or unregistered trademarks, circuit layout designs and rights in relation to circuit layouts.

"Law" means any rule issued by a Government Agency, including without limitation, law, decree-law, order, resolutions, notices, Court rules and judgments and any other Court decisions which are binding, treaties and international agreements, any subordinate legislation or other document enforceable under any law, statute, regulation, rule or subordinate legislation at a district, provincial or national level, and includes the modification or re-enactment of it, which affects or is applicable to the Services and/or relates to a Party's rights and obligations under the Contract.

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

"Nominated Currency" means the currency specified in the Form of Agreement.

"Official" means:

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

"Party" means a party to the Contract.

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

"Personnel" means:

- (a) in relation to the Contractor, any of its employees, Sub-contractors (including Sub-contractors' Personnel), agents and representatives involved either directly or indirectly in the performance of the Contract;
- (b) in relation to the Company, employees, agents or representatives; and
- (c) In relation to a Sub-contractor, any of its employees, agents or representatives involved either directly or indirectly in the performance of the Sub-contract.

"Project" has the meaning given in the Form of Agreement.

"Representatives" means the Company Representative and the Contractor Representative identified in the Form of Agreement, and "Representative" means either of them as the context requires.

"Services" or **"Work"** means all things to be performed by the Contractor in accordance with the Contract including all things required by the Contract Specification/Scope of Work (as may be amended or varied in accordance with the Contract) and any ancillary works, Goods or services that can reasonably be expected to be provided in conjunction with services described in the Contract Specification.

"Site" means the Benga mine, located at the Benga locality, Moatize District, Tete Province, Mozambique.

"Special Conditions" or **"Scope of Work"** means the Special Conditions of Contract or Scope of Work, if any, which are incorporated into this Contract and which add to the clauses of these General Conditions.

"Standards" means international standards and codes of practice or other applicable standards and codes of practice expressly specified in the Contract Specification.

"Sub-contract" means any agreement, arrangement or understanding between the Contractor and any Person, whether or not in writing, to perform all or any part of the Services on behalf of the Contractor.

"Sub-contractor" means any Person engaged by the Contractor to perform all or any portion of the Contractor's obligations under the Contract on behalf of the Contractor, and, where context requires, includes also the Sub-contractor's employees, agents, consultants and invitees.

"Tax" means, unless the contrary intention is expressed, any and all taxes, including, without limitation, Indirect Transaction Taxes, excise duty, stamp, customs, import/export, payroll, personal income, property, real property, municipal property tax, interest equalization, business, occupation, and industry, turnover, income, profits, gains, gross receipts, corporation income, inheritance and donations taxes, immovable asset transfer tax, specific gaming tax, national reconstruction tax, motor vehicle tax, fuel tax, municipal taxes of any nature, notarial fees, or other taxes, fees, withholdings, imposts, levies, duties or other charges of any nature, together with any penalties, fines or interest or similar additions, imposed, levied or assessed by any Government Agency or otherwise payable.

"Tax Benefit" means, individually or collectively, the fiscal benefits to which the Company may be entitled to under the terms of the applicable Law or as mineral title holder, including but not limited to those which are granted to the Company by the Government of Mozambique, in respect of exploration, mine development and construction and mining operations, including an exemption from or reduction of Customs Duties, Indirect Transaction Taxes and certain other Taxes on permanent

imports into and exports to outside of Mozambican customs territory, subject to the terms of the applicable Law.

"Tax Invoice" means an invoice or other equivalent document, including without limit, credit note or debit note or sale note, in a form that is valid under the applicable Law of the jurisdiction in which a liability to pay Indirect Transaction Taxes or any other Tax is imposed, claimed, levied or assessed, and which serves as an accountancy document for the Company.

"Tax Laws" means all of the Laws, rules, treaties, conventions, requirements and procedures of the relevant jurisdiction where Tax and Indirect Transaction Taxes are imposed, claimed, levied or assessed.

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

- (a) The date that all Services are completed in accordance with the Contract; or
- (b) The date the Contract is terminated pursuant to the Contract or otherwise at Law.

"Trade Warranties" means the trade warranties, including warranties against defects and warranties of fitness for purpose, provided by the Sub-contractors and specified in the Form of Agreement, and any and all usual and customary trade warranties from the Sub-contractors.

"UNCITRAL Arbitration Rules" means the Arbitration Rules of the United Nations Commission on International Trade Law in force at the date of this Contract.

"Variation" means a direction by the Company to alter, amend, omit, reduce or add to any part or parts of the Services, tasks, materials, Goods or personnel to be provided or performed by the Contractor, to reduce or increase the quantity of Services, or to change any specified Standards, dimensions, quality of materials, method, specified sequence or timing of the Services.

"Variation Notice" means a formal written document of Variation to be signed by the Company and the Contractor stating the Variation to the Services directed by the Company Representative and the adjustments (if any) in the Contract Price and/or the Completion Dates.

"Working Day" means any day which is not a Saturday, a Sunday or a national public holiday in the Country or a public holiday at the Site.

1.2 The following rules apply unless the context requires otherwise.

- (a) The singular includes the plural and the converse also applies.
- (b) A gender includes all genders.
- (c) If a word or phrase is defined, its other grammatical forms have a corresponding meaning.

- (d) The meaning of general words is not limited by specific examples introduced by including or for example.
- (e) A reference to a Person or a Party includes a reference to that Person's or Party's executors, administrators, successors, substitutes (including Persons taking by way of novation), assigns (in the case of a Person) and permitted assigns (in the case of a Party).
- (f) A reference to a Clause or Schedule is a reference to a clause of, or schedule to, these General Conditions.
- (g) A reference to a Law includes a modification or re-enactment of it, a legislative provision substituted for it and a regulation or statutory instrument issued under it.
- (h) A reference to "use" in the context of dealing with Intellectual Property Rights includes using, exploiting, copying, adapting, creating derivative works, developing, modifying, disclosing and communications.
- (i) A reference to days (other than a reference to Working Days), months, or years, shall be a reference to calendar days, months or years, as the case may be.
- (j) Unless otherwise provided, any number of days prescribed shall be determined by excluding the first and including the last day or, where the last day falls on a day that is not a Working Day, the next succeeding Working Day.
- (k) All references to monetary amounts shall be amounts in the currency referred to in the Form of Agreement unless expressly stated otherwise.
- (l) Nothing in this Contract is to be interpreted against a Party on the ground that the Party put forward the Contract or the relevant part of it.

1.3 The Contract consists of the following documents only:

- (a) the "Form of Agreement" and all documents attached to the Form of Agreement or incorporated in the Form of Agreement;
- (b) the "General Conditions"; and
- (c) the "Special Conditions" or "Scope of Work",
- (d) The "Document" containing the conditions of Tender, as defined in the tender documents, collectively referred to as the "**Contract**".

1.4 The Contractor shall have no entitlement to make any claim for any extension of time or any increase to the Contract Price or any other compensation of any kind for any event (including conduct by or negligence of the Company) except as expressly provided for under this Contract.

1.5 Without prejudice to any express provisions of this Contract to the contrary, the obligations of either Party are to be performed at that Party's own cost and expense.

2. REPRESENTATIVES

2.1 Each Party's Representative shall have full authority to act on that Party's behalf for all purposes of this Contract, except authority to amend this Contract.

- 2.2 Representatives may be replaced on giving written notice to the other Party.

3. **CONTRACTOR'S OBLIGATIONS**

- 3.1 The Contractor shall comply with all of its obligations under this Contract including any requirements set out in the Schedules, Appendices, Annexures and other Contract documents.
- 3.2 Save for where it is expressly stated in this Contract that something will be provided by the Company, the Contractor shall provide everything necessary for the proper performance of the Contract.
- 3.3 The Contractor shall comply and ensure that each of its Personnel complies with the following where applicable:
- (a) All Laws and Government Agency requirements;
 - (b) All customs and practices of any countries to be visited for the purposes of the performance of the Contract;
 - (c) The Company Rules;
 - (d) The HSEC Requirements;
 - (e) The Directions of the Company Representative or a Person appointed by the Company Representative;
 - (f) All applicable Standards; and
 - (g) All permits, authorizations, approvals and licenses.
- 3.4 The Contractor shall obtain and maintain all permits, licenses, registrations and approvals related to the performance of this Contract and shall give all notices required to be obtained or given by Law or any Government Agency for the performance of the Contract, 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.
- 3.5 The Contractor shall supply all Personnel necessary for the proper performance of the Contract. Such Personnel must be appropriately qualified, competent, experienced and skilled to perform the works or services in respect of which they are engaged.

4. **ASSIGNMENT AND SUB-CONTRACTING**

- 4.1 The Company may assign the Contract or propose that it be substituted by novation, on giving prior written notice to the Contractor. By signing this Contract the Contractor is deemed to consent to any such assignment of the Contract in terms of article 424.2 of the Civil Code.

- 4.2 The Contractor shall not assign or novate the Contract or any part thereof except with the prior written consent of the Company. The Company may, in the Company's absolute discretion, refuse to consent or approve without giving reasons or may give that consent or approval on whatever terms and conditions the Company may think appropriate.
- 4.3 The Contractor shall not Sub-contract the performance of the Contract or any part thereof without the prior written consent of the Company (not to be unreasonably withheld).
- 4.4 No Sub-contract or assignment (whether with or without the consent of the Company) shall in any way relieve the Contractor from responsibility for the performance of the Contract.

5. INFORMATION PROVIDED BY THE COMPANY

Unless the Company Representative notifies the Contractor otherwise in writing, information provided by or on behalf of the Company or the Company Representative is not guaranteed as to accuracy, sufficiency or completeness and may not be relied upon by the Contractor.

6. EXTENSIONS OF TIME

- 6.1 The Company Representative may extend the Completion Date for any reason in its absolute discretion where the Company so authorizes.
- 6.2 The Company Representative shall alter the Completion Date to accommodate a Variation in accordance with Clause 7 or to reflect any delay in the performance of the Contract caused by a breach of this Contract by the Company.

7. VARIATIONS

- 7.1 The Company Representative may notify the Contractor in writing to perform a Variation or the Contractor may propose in writing a Variation for the approval in writing by the Company Representative. The Contractor shall comply with a Variation notified in writing and shall be bound by the conditions of that Variation as though the Variation was included in the Contract.

7.2 Cost of Variation

- (a) To the extent that the rates in the Form of Agreement or Schedule A apply, they shall be used by the Contractor to calculate the cost of a Variation, but otherwise the cost of a Variation shall be estimated by the Contractor at the lowest reasonable and direct cost consistent with sound practices and such cost of a Variation shall be subject to approval by the Company.

- (b) The Contractor shall not be entitled to claim or receive any remuneration or compensation in connection with the Variation other than as specified in the preceding Sub-clause (a).

7.3 Variation procedure

- (a) As soon as possible, but in any event, within 7 Working Days of the date on which:

- (i) A Variation is notified by the Company Representative; or
 - (ii) The Company Representative makes a request for the Contractor to provide information about a proposed Variation,

The Contractor shall submit to the Company Representative a statement advising of its opinion of the impact of the Variation on the Contract Price, the Completion Date and/or the operations of the Company (if any).

- (b) If the statement required from the Contractor by Sub-clause 7.3(a) is submitted later than the relevant time limit, any claims submitted in connection with the relevant Variation may, at the sole discretion of the Company Representative, be time barred.
- (c) If the Company Representative approves the Contractor's statement submitted under Sub-clause 7.3(a), the Company Representative shall prepare a Variation Notice. The Variation Notice shall accord with the Contractor's statement as approved by the Company Representative and shall be binding on the Parties.
- (d) If the Company Representative does not approve the Contractor's statement submitted under Sub-clause 7.3(a) and the Company Representative and the Contractor are unable to agree upon the impact of the Variation on the Contract Price and/or the Completion Date, then such impact shall be determined by the Company Representative who shall prepare a Variation Notice.
- (e) If the Contractor does not agree with the Variation Notice then the matter shall be deemed to be in Dispute and shall be resolved in accordance with the provisions of Clause 13. Any disagreement or Dispute hereunder shall in no way relieve the Contractor of its obligation to comply with any Variation Notice.

8. PUBLICITY

Except as required by Law or regulatory requirement or as otherwise permitted by the Contract, the Contractor may not make, and must ensure that each of its Personnel does not make, any public announcements or disclosures or place any advertisements in relation to the Contract or the Project, without the prior written consent of the Company.

9. **CONFIDENTIAL INFORMATION**

9.1 The Contractor must not and must ensure that each of its Personnel does not, without the express prior written consent of the Company, use (other than as is necessary for the good performance of the Contract) or divulge to third parties, any information relating to the Contract, the Project, or the Company or an End User.

9.2 Sub-clause 9.1 does not prevent the Contractor from using and disclosing information which:

- (a) At the time of the first disclosure by the Company was already in the lawful possession of the Contractor in written form;
- (b) Is or becomes generally available to the public otherwise than by disclosure in breach of the terms of this Contract; or
- (c) becomes available to the Contractor from a third person legally entitled to possess the information and provide it to the Contractor, if the use or disclosure accords with the right or permission legally granted to the Contractor by that third person.

9.3 Sub-clause 9.1 does not prevent the Contractor from disclosing information if such disclosure is required by Law.

9.4 The Contractor acknowledges that this Clause 9 is for the benefit of the Company that has an interest in any information that is the subject of this Clause.

9.5 **Contractor IP**

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

9.6 **Contract IP**

The Contractor agrees that all Contract IP is vested in the Company and is the Company's property as and when created and the Contractor assigns and must ensure that all of its Personnel assign all their respective right, title and interest in and to the Contract IP to the Company.

9.7 **Contractor warranty**

The Contractor warrants that:

- (a) The Contractor has the right to grant to the Company the license under Sub-clause 9.5 ; and

- (b) The Contractor has the right to assign all Contract IP to the Company in accordance with Sub-clause 9.6.

10. PAYMENT

10.1 Contract Price

- (a) In consideration for the good performance of the Contract, the Company shall pay to the Contractor the Contract Price.
- (b) The Contract Price is inclusive, without limitation, of all expenses and costs incurred by the Contractor in performing the Contract. The Company shall not bear or reimburse any such expenses and costs except as expressly specified in Schedule A.

10.2 Payment Method and Conditions

- (a) Unless otherwise agreed by the Company and Contractor, all payments to the Contractor shall be made by cheque or by EFT to a bank account nominated by the Contractor, in the Nominated Currency specified in the Form of Agreement.
- (b) The Contractor shall give 21 Working Days prior notice of any change to the Contractor's banking details.
- (c) If the Contract provides that any amounts are to be paid to the Contractor:
 - (i) Outside the Republic of Mozambique; or
 - (ii) In a manner subject to control by any Government Agency,

payment is conditional upon the Company receiving the necessary authorization, approval, registration and consents required for the making of that payment, which may include but is not limited to, approval by or registration with a Government Agency or as required by applicable Law and proof of payment or exemption from any applicable tax as further detailed in Clause 11. The Contractor shall provide all documentation, support and assistance necessary or requested by the Company, the competent Government Agency for the purposes of obtaining such authorization, approval, registration and/or consent.

10.3 Invoices

- (a) The Contractor shall submit a Correct Invoice for amounts due under the Contract.
- (b) Correct Invoices shall be issued and delivered to the Company's address no later than the fifth (5th) day following the end of the period to which the Services refer

to. Except as otherwise agreed between the Parties, the Services shall refer to a full calendar month.

- (c) Invoices must comply with the requirements for a valid Tax Invoice, must be in terms and in a form acceptable to the Company, and must contain the following information:
- (i) The number of the Contract to which the invoice relates;
 - (ii) A full description of the Services provided in the period covered by the invoice;
 - (iii) Details of the place where the Services were carried out;
 - (iv) Any further verification or documentation in relation to the invoice as is reasonably required by the Company, including evidence of reimbursable costs claimed;
 - (v) The correct calculation of all amounts due to be paid, including Indirect Transaction Taxes and retention amounts where applicable; and
 - (vi) Any further information stipulated in any applicable Laws (including any information necessary to make the invoice a Tax Invoice), or by the Company.

10.4 Payment Terms

The Company shall make payment to the Contractor of all undisputed amounts within 30 (thirty) Working Days following the last Day of the month in which the Correct Invoice is received by the Company. The Company may withhold/recover any amounts, including but not limited to disputed amounts, penalty amounts, etc. and necessary information shall be given to the Contractor.

10.5 Deductions and Set-off

- (a) The Company may deduct from any money due or becoming due to the Contractor all debts and moneys due or becoming due by the Contractor to the Company and any Taxes which the Company may be required by Law to deduct.
- (b) If the Company fails to deduct an amount referred to in Sub-clause 10.5(a), the Company may claim payment for that amount and the Contractor must pay that amount to the Company within 5 (five) Working Days of receiving notice of the claim.

11. TAXES

- 11.1 Unless expressly specified otherwise, all amounts payable under or in connection with this Contract, (including any amount by way of reimbursement, indemnity, damages or otherwise) are inclusive of Taxes.

11.2 Withholding Taxes

The Contractor is responsible for its own Taxes, irrespective of the jurisdiction in which such Taxes are assessed or imposed. If the Company is required by any Law to make a deduction or withholding from any payment to the Contractor for or on account of any Taxes, the Company is entitled to make that deduction or withholding unless the Contractor provides the Company with valid documentation (received prior to the date when the payment is to be made) showing to the satisfaction of the Company that an exemption or reduction applies.

11.3 Temporary Imports

Where Contractor's Goods are imported into Mozambican customs territory under a temporary import regime for the purposes of the Contract, the Contractor is responsible for compliance with all applicable Law and procedures and the terms and conditions of any temporary import permit issued by the relevant Government Agency, including the payment of any clearance fees, provision of any required security or bond, as well as for re- exportation of such Goods. Any Taxes, fines or related charges arising from the non-compliance by the Contractor of the required temporary importation procedures shall be for the Contractor's sole account.

11.4 Permanent Imports

- (a) The Contractor shall comply strictly with the legal, customs, transit, fiscal and other procedures and requirements applicable in accordance with the applicable Law. In the event that any Tax Benefit applies to the import of any goods, any duty, tax or other charge payable as a result of the Contractor's failure to comply with the procedures and requirements that are conditions for the application of the Tax Benefit shall be solely for the account of the Contractor.
- (b) The Contractor shall make any application for any Tax Benefit or other exemptions, reductions or rebates requested by the Company. Where any such application is successful, the Contractor will pass on to the Company the full economic benefit of the exemption, reduction or rebate, as the case may be.
- (c) If the Company deems that any Taxes or charges have been inappropriately levied or that an exemption, reduction or rebate of Taxes or other charges applies, the Company may, by written notice to the Contractor, require the Contractor to contest payment of such Taxes or charges subject to the direction of the Company. Where any such contest is successful, the Contractor

will pass on to the Company the full economic benefit of the exemption, reduction or rebate, as the case may be.

11.5 Liability in case of non-compliance

Without prejudice to any other provision in this Contract in terms of which the Contractor is responsible for payment of Taxes and charges on imports of Goods into Mozambican customs territory, failure by the Contractor to comply with any of the conditions and requirements of Sub-clauses 11.3 and 11.4, or to follow the applicable procedure, shall result in the Contractor being solely liable for all Taxes, fines, penalties or other charges (the payment of which would otherwise be exempt, reduced or rebated) applied to the import of Goods and other transactions as a result of the failure to comply and, if initially paid for by the Company, may be deducted from any payment of the Contract Price.

11.6 Indirect Transaction Taxes

- (a) In this Sub-clause 11.6, supply shall have the meaning given to it in Sub-clause 11.6(b).
- (b) If Indirect Transaction Taxes are payable on a supply, transfer or sale (supply) made under or in connection with this Contract, and if the Contractor making that supply is liable, under the applicable Law, to pay, or collect and remit, the Indirect Transaction Taxes to the appropriate Government Agency, the Company receiving that supply shall pay to the Contractor an additional amount equal to the Indirect Transaction Taxes payable by the Contractor in respect of the supply. The recipient Company must pay the additional amount to the Contractor on the date when payment for the supply is made (or part thereof), subject to a Tax Invoice being received prior to payment date. This Sub-clause 11.6(b) does not apply to the extent that the consideration for the supply is expressed to be inclusive of Indirect Transaction Taxes.
- (c) The Contractor shall ensure that each invoice it presents to the Company in respect of any Indirect Transaction Taxes is a Tax Invoice. If the Contractor fails to provide the Company with a Tax Invoice within the time period required by applicable Law of the relevant jurisdiction, the Company may withhold payment of the amount payable on account of Indirect Transaction Taxes, either pursuant to Sub-clause 11.6(b) or as part of the consideration where that consideration is expressed to be inclusive of Indirect Transaction Taxes, until such time as a Tax Invoice is received.
- (d) Any reference in:
 - (i) This Contract to a cost, expense or other liability ("Cost") incurred by a Party; or

(ii) The calculation of consideration or of any indemnity, reimbursement or similar amount to a Cost, must exclude the amount of any Indirect Transaction Taxes.

(e) Each Party will take all reasonable steps to co-operate with and provide all necessary assistance to the other Party to ensure so far as possible that the Taxes treatment is accepted by the relevant Government Agency, including the provision of Tax Invoices, proof of payment, proof of source and/or origination and other documentation for this purpose.

11.7 Responsibility

The Contractor shall seek its own tax advice and will at all times comply with applicable Tax Laws of the relevant jurisdiction where Tax and Indirect Transaction Taxes are imposed, claimed, levied or assessed.

12. TERMINATION AND DEFAULT

12.1 Contractor default

(a) If the Contractor is in default of this Contract:

- (i) the Company Representative or the Company may send the Contractor a Default Notice stating the intention of the Company to terminate the whole or any part of Contract under this Sub- clause 12.1 if the Contractor fails to remedy a default; or
- (ii) If, in the Company's or the Company Representative's reasonable opinion, the default is not capable of remedy, the Company may, forthwith terminate the Contract on giving notice to the Contractor.

(b) If the Contractor fails to:

- (i) Remedy the default in a manner satisfactory to the Company within 10 Working Days of the Default Notice unless other time period is agreed in writing by the Parties; or
- (ii) provide adequate assurance (in the opinion of the Company or the Company Representative) within 10 Working Days of the Default Notice that the default will be remedied within a reasonable time, which reasonable time shall be acceptable to the Company; or
- (iii) Remedy the default within a reasonable time after providing such assurances, and then the Company may on giving notice to the Contractor:
- (iv) Forthwith terminate the whole or any part of the Contract; or

- (v) take such action as the Company deems necessary to cure the default, including engaging a third party to carry out or complete the performance of the Contract (the cost of such action so taken by the Company being recoverable from the Contractor as a debt due to the Company by the Contractor); or
- (vi) Suspend payment under the Contract until the default has been remedied

12.2 **Insolvency**

- (a) If an Insolvency Event occurs, the Company may terminate the Contract immediately on notice in writing to the Contractor or to any other Person in whom the rights and obligations under this Contract may have become vested.
- (b) The Contractor shall give immediate notice in writing to the Company of an Insolvency Event if one occurs.

12.3 **Termination for convenience**

In addition to any other rights the Company has under this Contract, the Company may at any time, in its discretion, terminate the Contract in whole or in part by giving the Contractor not less than 90 (ninety) calendar days' notice.

12.4 **Company default**

- (a) If the Company fails without due cause to make a payment which is due to the Contractor under the Contract, and in respect of which:
 - (i) the Contractor has submitted a Correct Invoice;
 - (ii) All authorizations, consents and registrations that may be required from or with any Government Agency for the purposes of payment have been obtained;
 - (iii) The Company is not entitled, whether under the Contract or otherwise, to suspend, withhold or set off; and
 - (iv) there is no Dispute as to the Company's liability to pay, the Contractor may give a Default Notice to the Company stating the intention of the Contractor to terminate the Contract under this Sub-clause 12.4 if the Company fails to make payment within 30 Working Days.
- (b) If the Company fails to make the payments referred to within 30 (thirty) Working Days of the Default Notice without just cause, the Contractor may by giving not less than 90 (ninety) Working Days' notice to the Company:

- (i) Terminate the Contract; or
- (ii) Suspend performance of the Contract notwithstanding any provisions to the contrary contained in the Contract.

12.5 Effect of termination

- (a) In the event of either Party giving a notice of termination in accordance with this Clause 12, the Contract shall terminate on the date above mentioned or otherwise as mentioned in the notice.
- (b) No action taken or document issued by the Company under Clause 12 will limit the rights, remedies, powers, authorities and discretions and accrued Liabilities and obligations of the Parties (all of which shall continue in full force and effect as if there had been no such termination).
- (c) Clauses 1, 5, 8, 9, 11, 12, 13, 14, 15, 19, 20, 21, 22, 23, 24 and 25 and any other provision intended to survive termination of the Contract or required to give effect to termination will survive termination of the Contract.

13. DISPUTE RESOLUTION

13.1 If at any time there is any Dispute, then the Company Representative and the Contractor Representative shall, as a condition precedent to the commencement of any proceedings in respect of the Dispute, forthwith confer in and endeavor to settle such Dispute.

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

13.3 Representatives to seek resolution

- (a) If the Company Representative and the Contractor Representative are unable to resolve the Dispute within 30 Working Days of first meeting, either Party may give to the other Party a notice (Dispute Notice) specifying the Dispute and requiring its resolution under this Clause 13.
- (b) Within 10 Working Days following the receipt of the Dispute Notice the Dispute shall be referred to a senior executive officer of each Party for resolution.
- (c) Should the a senior executive officer of each Party fail to reach an agreement in any or all matters in Dispute, before commencement of any arbitration proceeding, the Dispute shall be referred to conciliation according to the conciliation rules of UNCITRAL. Conciliation must take place irrespective of the willingness of the parties to go through conciliation proceedings. The number of Conciliator shall be one (1) appointed by both Parties, the language of the Conciliation proceedings shall be English, and the place of

Conciliation proceedings shall be Maputo, Mozambique. Any dispute which still exists after termination of the conciliation proceedings shall be decided by arbitration.

13.4 Arbitration

- (a) If the Company and the Contractor are unable to resolve the Dispute within 20 Working Days after the senior executive officers first conferring, or within such other period as the Parties may agree in writing, such Dispute shall be finally settled by arbitration in accordance with the following Sub-clauses.
- (b) Where the value of the arbitration claim is less than two million United States Dollars (USD 2,000,000), the Dispute shall be submitted to arbitration under the UNCITRAL Arbitration Rules by a sole neutral arbitrator appointed in accordance with the procedure established in the UNCITRAL Arbitration Rules. If the Parties are unable to agree on the appointment of a sole arbitrator within 30 Days of the appointment proposal made in accordance with this procedure, the appointing entity shall be the International Chamber of Commerce (ICC) in accordance with the ICC Rules as the Appointing Authority in CDUDMI and other *Ad Hoc* Arbitrations. The seat of the arbitration shall be Maputo, or as otherwise determined by agreement between the Parties. The language for the arbitration shall be English.
- (c) Where the value of the arbitration claim is greater than two million United States Dollars (USD 2,000,000), the Dispute shall be submitted to arbitration under the ICC Arbitration Rules (save that no requirements of the ICC Arbitration Rules as to the nationality of the arbitrator shall apply) by three arbitrators, one appointed by each Party and the chairman chosen by the two Party appointed arbitrators. The seat of the arbitration shall be New Delhi, India but the arbitral tribunal shall have discretion to hold hearings in any location it sees fit, or as otherwise determined by agreement between the Parties. The language for the arbitration shall be English.
- (d) The value of the arbitration claim, for the purposes of determining the jurisdiction of the arbitral tribunal to settle the Dispute, is the monetary amount, value or damage which is sought to be recovered by the claimant in the arbitration, or which is otherwise the subject matter of the Dispute. Any interest included in the claim shall be disregarded in the calculation. The value of the arbitration claim shall be determined by the arbitral tribunal:
 - (i) In the case of arbitration under the UNCITRAL Arbitration Rules, as soon as the arbitral tribunal has been constituted or upon communication of the statement of claim to each of the arbitrators, if this is later; and
 - (ii) In the case of arbitration under the ICC Arbitration Rules, as soon as the Request for arbitration (as defined in the ICC Arbitration Rules) has been transmitted to the arbitral tribunal.

- (e) If any Party enters a plea concerning the jurisdiction of the arbitral tribunal on the basis of the value of the claim, the arbitral tribunal must rule on such a plea as a preliminary question.

13.5 The arbitration decision shall be binding and final, and shall be enforceable in any judicial court having jurisdiction.

14. ACCOUNTS AND RECORDS

14.1 The Contractor shall keep for a period of not less than 24 months after end of the Term, a complete set of accounts and records in accordance with good and accepted accounting principles showing all its expenditure under the Contract and all supporting information on an open book basis.

14.2 The Company may, at its discretion, request the Contractor to provide evidence, in a form satisfactory to the Company, that any Indirect Transaction Taxes paid by the Company to the Contractor have been paid or properly accounted for to the relevant Government Agency in due time. Any payments to the Contractor may be withheld, and the time for payment referred to in Clause 10.4 shall be suspended, until the Contractor provides such evidence.

14.3 At any time until 24 months after the end of the Term, the Company or its nominees shall have the right to inspect and verify the accounts and records referred to in Sub-clauses 14.1 and 14.2, and the Contractor shall give the Company proper opportunity so to inspect and verify together with proper facilities for such inspection and verification.

15. NOTICES

15.1 All Communications shall be made in writing in English, except as otherwise required by Law.

15.2 In those cases where, by Law, any written communication by the Parties must be in Portuguese, the Portuguese version shall be accompanied by an English version, which the Parties acknowledge and accept to be bound to for purposes of sub-clause 15.1.

15.3 The Communications must be:

- (a) Facsimiled;
- (b) attached to an email;
- (c) delivered express (either locally or internationally) by an international courier; in each case, to the number or address (physical address or e-mail address) specified in the Form of Agreement; or
- (d) Delivered by hand to the other Party's Representative.

- 15.4 The Communications shall be deemed to have been received:
- (a) If delivered express (either locally or internationally) by an international courier, when delivered to the Party to whom the Communication is addressed;
 - (b) If delivered personally, sent by facsimile or electronically as an email attachment:
 - (i) If it is transmitted or hand delivered by 4.30 pm (at the place of receipt) on a Working Day – on that day; or
 - (ii) Otherwise, on the following Working Day.

16. **CONFLICTS OF INTEREST**

16.1 **Warranty**

The Contractor warrants that as at the date of the Contract it has not carried on business, entered into any financial arrangements or undertaken any obligation which would in any way interfere or conflict with the performance of the Contract by the Contractor and its Personnel under the Contract.

16.2 **Conflicts of interest**

The Contractor must ensure that neither it nor any of its Personnel carry on business, enter into any financial arrangements or undertake any obligation which would in any way interfere or conflict with the performance of the Contract by the Contractor and its Personnel under the Contract, without the prior written consent of the Company.

16.3 **Indemnity**

Without limiting Clause 19 the Contractor indemnifies the Company and must keep the Company indemnified in respect of any Liabilities incurred or sustained by the Company as a result of any breach by the Contractor of the warranties contained in Clause 16.1 or the undertakings contained in Clause 16.2.

17. **BUSINESS INTEGRITY**

17.1 **Establishment of Procedures**

The Contractor must establish and maintain procedures, policies and precautions to prevent its Personnel from making, receiving, providing or offering gifts, entertainment, payments, loans or other consideration to Personnel of the Company or the ICVL Group for the purpose of influencing such Personnel to act contrary to the best interests of the Company. This obligation will apply to the activities of Personnel in their relations with Company Personnel arising from the Contract

17.2 Improper advantage or benefit to Official

- (a) The Contractor represents and warrants that it has not offered, paid, promised to pay, authorized the payment of or transferred money or anything of value to an Official to secure any improper advantage or benefit in relation to the matters contemplated by the Contract, either directly or indirectly through a third party.
- (b) The Contractor must not, directly or indirectly, in connection with the Contract, offer, pay promise to pay or authorize the giving of money or anything of value to an Official, or to any other person, while knowing or being aware of a high probability that all or a portion of such money or thing of value may be offered, given or promised, directly or indirectly to an Official, for the purpose of influencing the act, decision or omission of such Official to obtain or retain business related to the Contract, to direct business related to the Contract to any person, or to obtain any improper advantage or benefit.
- (c) The Contractor must not directly or indirectly, in connection with the Contract, offer or make unofficial payments or offer anything of value to any official to secure or expedite a routine action or service to which an individual or company is prohibited.
- (d) The Contractor represents that no Official or close relative of an Official has any direct or indirect ownership or other legal or beneficial interest in it or any of its Affiliated Entities, or in the contractual relationship established by the Contract, and that no such Official serves as an officer, director, employee, or agent of the Contractor.
- (e) The representations, warranties and obligations under this Clause 17.2 will continue throughout the Term.

17.3 Notification regarding change of interests

The Contractor agrees to promptly notify the Company in writing of any changes in the direct or indirect ownership in the Contractor or it's Affiliated Entities that would make it or them an Official. The Contractor covenants that should the Company notify it of any concerns that there has been a breach of the provisions of Clauses 17.2 or this Clause 17.3, it must cooperate in good faith with the Company in determining whether such a breach has occurred. If the Company determines in its sole discretion that there has been such a breach or that the Contractor has taken any action that would create a material risk of liability for the Company under any applicable law, it may treat the breach as an event of default and exercise any rights it may have under the Contract upon the occurrence of an event of default, but without regard to any waiting periods or cure periods specified in the Contract.

17.4 Notification of failure to comply with Clause

The Contractor agrees to notify the Company promptly upon discovery of any instance where the Contractor or any of its Personnel fail to comply with this Clause 17.

18. LIABILITY

18.1 Subject to Sub-clause 18.2 the Contractor will be liable to the Company and any third parties, in accordance with the Law, for any losses or damages arising from the acts or omissions of the Contractor or its Personnel in the performance of this Contract.

18.2 No provision of this Contract shall, or shall be read as intending to, exclude liability of either Party for gross negligence, willful misconduct, fraud or fraudulent misrepresentation.

18.3 Neither Party shall be liable to the other for any delay or failure (including any stoppage or reduction of its operations) in performing its obligations under the Contract to the extent that such delay or failure is caused by an event or circumstance that is beyond the reasonable control of that Party, and which by its nature could not have been foreseen by such Party or, if it could have been foreseen, was unavoidable, provided that the Party shall use all reasonable endeavors to mitigate the effect of the Force Majeure event or circumstance on the performance of its obligations and resume performance under the Contract.

(a) Promptly, or upon becoming aware of the Force Majeure event or circumstance (being such Force Majeure event or circumstance limited to: act of war, declared or undeclared; sabotage; invasion; armed conflict; act of foreign enemy; embargo; revolution; insurrection; act of terrorism; industrial action excluding those industrial actions resulting from breakdown and/or employer/employee relationship between the parties relating on Force Majeure and its employees; lightening; earthquake; floods; storm; fire; cyclone; typhoon; tornado; chemical or radioactive contamination; epidemic or plague), or as soon as reasonably practicable after the start of the Force Majeure event or circumstance but no later than 48 (forty eight hours) hours from its start, the Party must notify the other Party, in writing, of the Force Majeure event or circumstance, its nature, the date and time on which it started, its cause and its likely or potential duration, and the effect of the Force Majeure event or circumstance on its ability to perform any of its obligations under the Contract and, when appropriate or when reasonably requested to do so by the other Party, update such information.

(b) If any Force Majeure event or circumstance prevent the Contractor from carrying out its obligations under the Contract for a continuous period of more than 5 (five) days, the Company may terminate this Contract immediately by giving written notice to the Contractor.

- (c) The Contractor shall not in any event be entitled to compensation for demobilization, stand down or other time or any other losses whatsoever.

19. INDEMNITY

- 19.1 The Contractor shall indemnify, hold harmless, defend and keep indemnified the Company and its Personnel against all Liabilities caused, whether wholly or in part, directly or indirectly by:
- (a) any breach by the Contractor or its Personnel of any of the Contractor's obligations (including any warranty) Under the Contract;
 - (b) Any non-compliance with any Law, or any penalty imposed for breach of any Law in connection with the performance or non-performance of the Contract caused by any act or omission of the Contractor or its Personnel;
 - (c) Any act or omission by the Contractor or its Personnel arising out of the performance of the Contract;
 - (d) any illness, injury or death of any person, or any loss or destruction of or damage to any property which is caused by the Contractor or its Personnel, in connection with the Contractor's performance or non- performance or breach of the Contract, or any other act or omission of the Contractor or its Personnel;
 - (e) Any actual or alleged contamination, pollution or public or private nuisance arising directly or indirectly out of the acts or omissions of the Contractor or its Personnel; or
 - (f) Any legal costs on attorney and client scale for legal action to enforce the Contractor's indemnification obligations under this Clause.
- 19.2 Each indemnity in the Contract is a continuing obligation separate and independent from the Contractor's other obligations.

20. GOVERNING LAW AND LANGUAGE

- 20.1 The Contract is governed by the Laws of the Republic of Mozambique.
- 20.2 This Contract is drafted in English.

21. THIRD PARTY RIGHTS

- 21.1 No provision of the Contract is intended to confer a benefit on, or be enforceable by, any person who is not a party to the Contract.

22. WAIVER

The waiver partly or wholly of the terms of the Contract shall:

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

23. ENTIRE AGREEMENT

The Contract, as amended from time to time in accordance with its provisions, represents the entire agreement between the Parties and supersedes all prior understandings and representations.

24. SEVERANCE

Any provision of the Contract which is invalid or unenforceable in any jurisdiction shall be enforced to the maximum extent possible so as to give effect to the intent of the Parties, or, if incapable of such enforcement, shall be ineffective only as to that jurisdiction and to the extent of the prohibition or unenforceability. This does not invalidate the remaining provisions of the Contract nor does it affect the validity or enforceability of that provision in any other jurisdiction.

25. NUMBER OF ORIGINALS

The Contract shall be executed in the number of originals stipulated in the Form of Agreement.

B. SERVICES GENERAL CONDITIONS**26. CONTRACTOR STATUS**

- 26.1 This Contract does not create a relationship of agency between the Parties, and the Contractor shall have no authority to represent the Company or act in its name.

27. SERVICES

- 27.1 The Contractor must perform the Services, as well as any additional services which may be agreed between the Parties, with the highest standard of care, skill and diligence that would normally be expected of a reputable and competent Person carrying out services similar to the Services in order to fulfill the Contract Objectives.

27.2 The Contractor undertakes that the Services and each element of the Services:

- (a) Will be fit for the purpose for which the Services are required, which shall include (without limitation) that the Services and the deliverables rendered by the Contractor can lawfully be used to fulfill the objectives of the Project;
- (b) Will comply with the Contract;
- (c) Will comply with applicable Standards; and
- (d) Will comply with all applicable Laws.

27.3 The Contractor shall complete the Services within the agreed timeframes and by the Completion Date.

27.4 The Contractor shall attend meetings with the Company and the Company's Personnel and nominated consultants, whenever necessary and when requested by the Company.

28. **CONTRACTOR'S PERSONNEL**

28.1 The Contractor must not remove from performance of the Services any Personnel in the list in Schedule E ("**Key Personnel**"), without the prior written approval of the Company Representative.

28.2 If the Company so determines, Key Personnel and any new Personnel replacing Key Personnel will be required to enter into confidentiality agreements on terms required by the Company.

28.3 The Company Representative may direct the Contractor to remove a member of the Contractor's Personnel from the performance of the Contract if in the opinion of the Company Representative, that Personnel is lacking in appropriate skills or qualifications, engages in inappropriate conduct or is incompetent or negligent. The Contractor must comply with such direction immediately and must promptly replace such Personnel at no extra cost to the Company. The Contractor must not re-assign the removed Personnel to the performance of the Contract at any time thereafter.

28.4 The Contractor is responsible for obtaining and maintains valid visas and/or work permits, as and if applicable, for all its expatriate Personnel, before commencement of any Services, and for any penalties, fines, charges or other levies or costs that may arise in case such visas and/or work permits are not obtained or maintained.

29. **SUSPENSION OF SERVICES**

29.1 **Company's Suspension**

The Company may:

- (a) At any time, in its absolute discretion and for its convenience; or

- (b) If the Company, acting reasonably, forms the opinion that it is necessary:
 - (i) Because of an act, default or omission of:
 - A. the Company or its Personnel; or
 - B. the Contractor, a Sub-contractor or their Personnel;
 - (ii) To comply with an order of a court or competent Government Agency;
 - (iii) For the protection or safety of any person or property; or
 - (iv) Because suspension of work under a contract upon which the Services depend prevents the carrying out of the Services,

Direct the Contractor to suspend the carrying out of the whole or part of the Services for such time as the Company sees fit.

29.2 Contractor's Suspension

If the Contractor wishes to suspend the carrying out of the whole or part of the Services, otherwise than pursuant to Sub-clause 12.4(b)(ii), the Contractor shall obtain the Company's prior written approval. The Company may approve the suspension and may impose conditions of approval in its absolute discretion.

29.3 Effects of Suspension

The Contractor shall do all things possible to reduce any expense or cost consequent upon the suspension. The suspension shall not vitiate the Contract.

29.4 Prolonged Suspension

- (a) If suspension of the whole or a substantial part of the Services under Sub-clause 29.1 continues for more than 180 consecutive Days, then the Company shall either:
 - (i) By notice to the Contractor terminate the Contract with effect from a specified date (no greater than 7 Days after the date of the notice); or
 - (ii) Direct the Contractor to recommence the suspended Services as soon as reasonably practicable.
- (b) Subject to paragraph (c) below, if the Company gives a notice under Sub-clause 29.4(a) (i) above, then such notice shall be treated as if it were a termination notice under Sub-clause 12.3 and the Contract were terminated under that clause.

- (c) If the direction to suspend is issued under Sub-clause 29.1(b) (i) a notice under Sub-clause 29.4(a)(i) shall be treated as if it were a termination notice under Sub-clause 12.1(a)(i) and the Contract were terminated under Sub-clause 12.1.

29.5 Claim

The Contractor will not be entitled to any claim, and will not be entitled to standby rates, in connection with the suspension when the Services are suspended:

- (i) Pursuant to Sub-clauses 29.1(b)(i)B, 29.1(b)(ii) or 29.2, or
- (ii) pursuant to Sub-clauses 29.1(b)(iii) or 29.1(b)(iv), where the Contractor or its Personnel made the protection, safety or suspension of work necessary.

29.6 Standby and recommencement

- (a) If the Services are suspended for any reason, the Company may direct the Contractor to keep certain Contractor Personnel on standby and the Contractor must comply.
- (b) Subject to Sub-clause 29.5, standby rates, if any, will be paid in accordance with Schedule a (Remuneration Schedule), in respect of Contractor Personnel whom the Company has directed be kept on standby.
- (c) The Contractor shall promptly recommence performance of the Services or the relevant part of the Services on receiving notice from the Company to do so.

30. CONSEQUENCES OF TERMINATION

30.1 In the event of either Party giving a termination notice in accordance with Clause 12, the Contractor must:

- (a) Immediately cease performance of the terminated Services subject to any Directions made by the Company Representative or Company;
- (b) Comply in all respects with any Directions contained in the termination notice or given by the Company or Company Representative;
- (c) Immediately take all possible action to mitigate any Liabilities incurred by it as a result of such termination;
- (d) within 5 Working Days after the termination notice, provide the Company with a detailed report in such form as the Company may require in relation to the Services performed up to and including the date of the termination notice;
- (e) Return to the Company any items issued to the Contractor by the Company during the Term as soon as reasonably practicable; and

(f) Provide the Company with any Documentation and Drawings (whether complete or incomplete) prepared by or on behalf of the Contractor.

30.2 Clauses 30 and 32 shall survive termination of this Contract.

30.3 If the Contract is terminated under Sub-clause 12.1 or 12.2:

(a) The Company Representative shall certify its reasonable estimate or the actual amount of:

(i) All payments made to the Contractor;

(ii) All losses and additional costs arising in connection with all prior breaches by the Contractor or with the termination; and

(iii) all costs, charges and expenses of any nature, incurred by the Company in carrying out and completing the balance of the Services or such part thereof taken out of the Contractor's hands or arising from the termination and any associated delay;

Less

(iv) The Contract Price.

(b) If the amount certified under Sub-clause 30.3(a) is positive, it will be a debt due by the Contractor to the Company which may be deducted from any amounts due or becoming due to the Contractor and/or by judgment in any court of competent jurisdiction.

30.4 If the Contract is terminated under Sub-clause 12.3 or 12.4 the Contractor is entitled to recover from the Company (less any amounts previously paid and subject to any rights which the Company may have to suspend, withhold, or set off payments):

(a) The Contract Price of all parts of the Services performed in accordance with the Contract at the date of termination and not included in a previous invoice; and

(b) Costs reasonably incurred by the Contractor in the expectation of completing the whole of the Services and not included in any other payment by the Company,

Provided the Contractor has taken all reasonable steps to mitigate these amounts.

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

31. LOCAL SUPPLIERS

31.1 The Contractor shall, in the performance of the Contract (in respect of parts of the Contract performed on Site):

- (a) use suppliers and manufacturers available locally or if not available locally then otherwise available within the Country, except in those cases where the Contractor can demonstrate that such suppliers or manufacturers do not offer competitive prices or internationally comparable quantities, qualities and delivery schedules; and
- (b) When hiring Personnel, give preference to Mozambique citizens from the local or neighboring communities or, if not available locally then otherwise from within the Country, except in those cases where the Contractor can demonstrate that the necessary skills and expertise are not locally available or are available in insufficient quantity.

31.2 For the avoidance of doubt, the obligations in sub-clause 31.1 include, without limitation:

- (a) Giving local Personnel, suppliers and manufacturers a fair and reasonable opportunity to tender or quote;
And
- (b) Giving preference to Personnel, suppliers and manufacturers in the following order:
 - (i) Those available locally;
 - (ii) Those available within the neighboring communities;
 - (iii) Those available within the Country;
 - (iv) Those tenders, arrangements or proposals that include local or Country based participation;
 - (v) All others.

31.3 Except as otherwise agreed in writing by the Company Representative, the Contractor shall include in any Subcontract the same obligations as are referred to in Sub-clauses 31.1 and 31.2, and shall report to the Company Representative concerning such third party's implementation of that condition.

31.4 The Contractor shall, within 1 month of the Commencement Date and at monthly intervals thereafter or such other times as nominated by the Company Representative, submit to the Company Representative in the form required by the Company Representative a report concerning the Contractor's implementation of its obligations under this Clause 31.4.

32. INSURANCE

32.1 Contractor's Insurance Policies

The Contractor shall, at its expense, effect and maintain:

- (a) throughout the Term and for a further 3 years thereafter, indemnity insurance to a minimum value of two million United States Dollars (USD 2,000,000) for each and every claim in respect of liability arising by reason of any act, error or omission of the Contractor or the Contractor's Personnel in the performance of the Services; and
- (b) throughout the Term, if the performance of the Contract requires the Contractor to use plant and equipment, insurance covering all loss of and damage to the plant and equipment for its replacement value (or require the owner of the plant and equipment to maintain such insurance); and
- (c) throughout the Term, workers' compensation and employers' liability insurances covering all Liabilities, whether arising under Law or customary law, in relation to the death of, or injury to, any employee of the Contractor or any person deemed to be an employee of the Contractor; and
- (d) throughout the Term, insurance to a minimum value of two million United States Dollars (USD 2,000,000) for each and every claim, covering all Liabilities in respect of any medical expenses, injury to, or death of, any person not being a person who at the time of the occurrence is engaged in or upon the service of the insured under a contract of service or apprenticeship, or any loss, damage or destruction to property not belonging to nor in the care, custody or control of the insured; and
- (e) throughout the Term, if the performance of the Contract involves the use of vehicles, third party liability insurance covering all Liabilities in respect of any injury to, or death of, any person or any loss, damage or destruction to any property arising from the use of motor vehicles.

32.2 Policy requirements

- (a) All of the Contractor's Insurance Policies must, unless prohibited by Law, be endorsed to:
 - (i) insure the Company and its Personnel for their respective rights and interests;
 - (ii) Include a cross liability clause, noting that each of the parties comprising the insured shall be considered as a separate entity, and the insurance applies as if a separate policy has been issued to each party;

(iii) Waive all express or implied rights of subrogation against the Company and its Personnel; and

(iv) Include a clause that provides that a breach of condition or term of insurance by one insured will not adversely affect the cover provided to another insured under the policy,

Save that (i) and (ii) above shall not apply in respect of any policy for professional indemnity insurance or workers' compensation/employer's liability insurance policies.

- (b) If the Contractor's Insurance Policies are subject to the application of any self-insured retention, excess or deductible, the amount of the self-insured retention, excess or deductible must be declared to the Company and, in the event of a loss, is payable by the Contractor. The Company reserves the right to require the Contractor to reduce the amount of any self-insured retention, excess or deductible where such amount is considered by the Company to be unreasonable in the circumstances of the Contract.
- (c) The Contractor's Insurance Policies must be taken out with a reputable insurer approved by the Company, and on terms and conditions consistent with prudent risk management practice.
- (d) No provision contained in this Clause 32 will limit the Contractor's liability including its liability to indemnify the Company in accordance with the Contract.
- (e) Before the Commencement Date and each time the policies are renewed or varied, the Contractor must provide the Company with an insurance certificate of currency or such other evidence as the Company may require that the Contractor and its Sub-contractors are insured in accordance with the Contract.
- (f) In the event that the Contractor fails to comply with its obligations under Clause 32 the Company may, at its sole option and without being under any duty or obligation to do so, effect and maintain such insurances and deduct the costs of such insurances from any moneys due to the Contractor.
- (g) The Contractor must ensure that the Contractor's Insurances are not varied to the detriment of the Company, cancelled or allowed to lapse.
- (h) The Contractor will ensure that its Sub-contractors have the benefit of or effect and maintain insurances equivalent to the insurances required to be effected and maintained by the Contractor under this Contract.

C. SITE PROVISIONS

33. SITE

33.1 The Contractor shall comply with all Site rules notified to the Contractor by the Company Representative, including without limitation those governing the conduct of the Contractor's Personnel at and about the Site. The Company reserves the right from time to time to make and revise any such rules and the Contractor will comply fully with such rules, as revised.

33.2 Unless otherwise expressly specified in the Contract, the Contractor is responsible for the cost of transporting its Personnel to and from the Site and will provide for the movement of its Personnel on the Site at all times.

33.3 In the event of any breach of Sub-clause 33.1, the Company may:

(a) Require the Contractor, the Contractor's Personnel, and/or any other Person to leave the Site immediately;

And

(b) Require the Contractor and/or any of its Personnel to remove any material or substance from the Site at the Contractor's cost, and the Contractor must ensure such request is immediately complied with and take all possible action to ensure the safety of all Personnel.

34. OTHERS ON SITE

34.1 The Contractor must co-operate with the Company and must not prevent the Company and any other contractors and suppliers (whether employed or engaged by the Company or not) from properly carrying out their work, and shall give them any information or data reasonably necessary or expedient to ensure proper performance of their respective work.

34.2 The Contractor is not entitled to any extension of any Completion Dates, increase in the Contract Price, damages, costs or any other financial or other compensation as a result of any interference from other contractors and suppliers (whether employed or engaged by the Company or not).

35. HEALTH, SAFETY, ENVIRONMENT AND COMMUNITY

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

35.2 The Contractor must comply, and ensure all Contractor Personnel on Site comply with the HSEC Requirements and all directions given by the Company Representative.

D. GOODS**36. GOODS/EQUIPMENTS**

- 36.1 The Company shall be entitled at its discretion to require to the Contractor that the Goods used by the Contractor in the performance of the Services are purchased from a certain supplier for a reduced cost and any such benefit resulting from the reduction in the cost of the Goods shall be fully passed on/transferred to the Company by adjusting the Contract Price.
- 36.2 The Contractor warrants all Goods/Equipment used by it are against any defect, and warrants that all Goods shall be fit for the purposes for which they are intended, for a period up to the end of the Term or such other periods specified in the Contract.

MINAS DE BENGÁ, LDA (MBL)
TETE, MOZAMBIQUE

Tender No: TE095/2019

Volume 4 of 4

HEALTH, SAFETY, ENVIRONMENT AND COMMUNITY DOCUMENT

FOR

SETTING UP OF A TAILINGS BENEFICIATION PLANT ON BOO BASIS

AT THE BENGÁ MINE

Dated: 14th November 2019

Last date of Bid Submission: 5th December 2019

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Approval

	Position	Signed	Date
Owner	Occupational Hygiene Advisor		
Reviewed 1	Health & Safety Superintendent		
Reviewed 2	HSE Manager		
Approved by	General Manager Benga Operations.		

Revisions

Rev	Date	Revision description

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1. Purpose

The purpose of this Procedure is to define the strategy by which ICVL shall actively minimise the health risks associated with working in the coal mining environment by systematically identifying, evaluating and controlling exposure to workplace health hazards; and also to comply with national legislation.

2. Scope

This Procedure is applicable to all ICVL Operations including Benga, Exploration, and Coal Chain.

3. CHEMICAL EXPOSURES

3.1 Risk Assessment

A qualitative risk assessment shall be conducted and documented in ICVL Risk Register to determine potential exposure to particulate and gas/ vapour.

Risk assessment shall be reviewed during the design of new workplaces, introduction of new equipment or during process change.

3.2 Exposure Management Plan

Risk assessments shall determine the need to implement the exposure management plan. An exposure management plan is required when:

- The 95 per cent upper confidence limit of an SEG's mean exposure concentration for agents resulting in chronic effects, such as total inhalable dust, respirable dust, respirable crystalline silica, asbestos or non-asbestos fibrous materials, exceeds the relevant Occupational Exposure Limits (OELs); or
- Agents with an acute effect, such as particulate hazards, or gases (e.g. carbon monoxide, hydrogen sulphide, ammonia, etc), or vapours exceed 50 per cent of the relevant OEL; or
- There is no quantitative data and the risk assessment indicates a high or critical inherent risk of exposure to the contaminant.

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The exposure management plan shall include:

- Designated work areas
- Workplace monitoring
- Medical surveillance
- Exposure controls
- Respiratory protection
- Emergency preparedness

Designated work areas shall:

- Be identified and mapped, signposted or otherwise clearly communicated to employees working in the area. Signposting, where necessary, shall use appropriate wording or symbols on signs to identify the hazard;
- Have a documented respiratory protection programme based on suitable risk assessment and standards, which is applied to all personnel working in the areas;
- Conduct exposure monitoring of employees (SEGs) periodically; and
- Have a formal review of the practicality of engineering controls at least every two years, or less where it is a critical control for a significant risk.

Designated work areas shall be documented in ICVL Risk Register.

3.3 Workplace Exposure Monitoring

3.3.1 Personal Monitoring

Personal exposure monitoring of employees and contractors are determined based on ICVL Risk Register.

In the absence of Mozambican legislation, the exposure monitoring methodology, equipment, laboratory analysis and records shall comply with ICVL and/ or internationally recognized standards.

For known human carcinogens (e.g. crystalline silica, asbestos), mutagenic and reproductive toxicants, exposure data shall be statistically valid on an annual

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basis. If three or more years of statistically significant data are less than 25 per cent of the OEL, or below the detection limit, then monitoring periodicity can go out to once every three years, provided the process or work organisation (including maintenance) remains unchanged.

3.3.2 Area Monitoring

Area monitoring shall be conducted where risk assessment indicates the possible presence of levels of gas or vapour sufficient to cause health effects or a safety incident in less than one shift (e.g. methane gas in coal drilling, confined space entry). Continuous monitoring is required as long as the potential for harm exists.

Area monitoring can be used to assist the exposure assessment but cannot replace personal monitoring for particulate and gas/ vapour.

3.4 Reporting of Workplace Monitoring Results

Workplace monitoring results shall be provided to the employee or contractor who was monitored. Reporting shall be done in a formal report, memorandum, e-mail or verbally (toolbox talk) but shall be documented.

When the monitoring results exceed the ICVL Occupational Exposure Limit (OEL) with current control measures deemed inadequate it shall be reported as a health incident to ensure mitigation actions are taken. This will ensure that control measures are reviewed, assessed and improved.

3.5 Medical Surveillance

ICVL employees and contractors shall be submitted to a medical surveillance programme when:

- The SEG time weighted average (TWA) mean exposure to respirable crystalline silica, total inhalable dust, respirable dust, lead or asbestos dust is greater than 50 per cent of the relevant OEL;
- ICVL medical provider considers that it is advisable; or
- There is a legal requirement for medical monitoring.

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Where risk assessment indicates a risk of a respiratory condition, assessment programs shall include chest x-rays and lung function tests.

3.6 Exposure Controls

Where the exposure to particulate and gas/ vapour is likely to exceed the Action Level (i.e. the exposure levels above 50 per cent of the relevant OEL), suitable control measures based on the risk assessment shall be implemented. Elimination or substitution controls shall be considered as first priority.

Engineering controls

- Where elimination or substitution is not practicable, engineering controls shall be used to reduce exposure levels.
- The use of dust suppression methods and dust collection devices to minimise particulate emissions shall be considered.
- If the employee is working in an enclosed area, the area shall be well ventilated and/ or ventilation systems (e.g. exhaust ventilation, air conditioning) shall be available to provide protection.
- All engineering control equipment and monitors shall be maintained to operate to design specifications.

Administrative

- Rotation of tasks to minimise exposure.
- Decrease duration of exposure by limiting long work hours and overtime.

Personal Protective Equipment (PPE)

- Implement and maintain the Respiratory Protection Programme.

3.7 Respiratory Protection Programme

A Respiratory Protection Programme for the use of respiratory protective devices (RPDs) such as respirators, dust masks, shall be developed and implemented for the designated work areas.

RPDs shall be used only as the last consideration to control exposure to particulate and gas/ vapour.

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The respiratory protection programme shall include:

- Selection of RPDs where factors such as adequacy of protection to hazardous substances, compatibility with the work tasks and comfort and allowance for adequate communication shall be considered;

If respirators are going to be used, a respirator management program shall be developed and implemented.

For air-supplied RPDs, breathing air shall be effectively filtered and/or isolated from plant and instrument air, and isolated from sources of nitrogen and carbon monoxide potential exposure. The quality of the breathing air shall be checked for conformance with national or international standards.

4. HEARING CONSERVATION

4.1 Risk Assessment

Qualitative noise assessment shall be conducted and documented in ICVL Risk Register.

Where noise exposure is identified as a potential health risk hazard further evaluation shall be conducted using quantitative assessment and/or other investigation and monitoring techniques as applicable.

- A quantitative noise assessment shall be conducted for high and critical inherent risk identified in the Risk Register.
- Quantitative assessment shall be conducted through noise surveys and personal noise monitoring (dosimetry).
- Noise from sources producing average levels in excess of 85 dB(A) for a 8-hour time weighted average or its equivalent or peak impulse noise levels in excess of 140 dB(C) shall be designated noise area.
- A hearing conservation programme shall be implemented for the noise protection areas (designated areas).

Noise risk assessment shall be conducted during the design of new operations, introduction of new equipment or changes to process.

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4.2 Noise Exposure Management Programme

Quantitative risk assessments shall determine the need to implement hearing conservation programme.

The hearing conservation programme shall include:

- Noise monitoring;
- Designated noise protection areas;
- Noise control plan;
- Exposure controls including training and use of hearing protective devices; and
- Audiometric testing.

4.3 Noise Monitoring

Work Area Noise Surveys

- Noise surveys shall be carried out where the risk assessment has identified high or critical inherent risk or when it likely noise exposure exceeds 85 dB(A).
- Noise surveys shall be conducted as part of baseline monitoring and whenever there is a change in the production process or new equipment is installed or used.
- If peak (impulse) noise exceeds 140 dB(C) during noise surveys employees working in the area will automatically be included in the hearing conservation programme.
- Noise surveys shall be based on the use of a sound level meter (SLM), with 3 dB exchange rate, and A-weighting and impulse noise measurement capability and calibrated as per the manufacturer's method.
- Workplace noise sources shall be identified and characterized by a competent person using a SLM. When risk assessments indicate a need to describe personal noise exposures adequately, a noise integrating dosimeter is required.

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Personal Noise Monitoring (Dosimetry)

- Personal noise monitoring will be carried out on identified Similar Exposure Group (SEG) to ascertain noise exposure levels in the designated noise areas.
- Monitoring shall be based on the use of dosimeter with 3 dB exchange rate, the A weighting scale, and impulse noise measurement capability and calibrated as per manufacturer's method.
- When SEG dosimeter indicates that the 95-percentile value of a 8-hour mean exceeds 85 dB (A) (Leq8hr) personnel classified in that SEG shall be included in the hearing conservation programme.
- Noise monitoring results shall be communicated to the area personnel and management.
- Personal noise monitoring sampling shall be conducted on annual basis for the designated noise protection areas and documented in ICVL Annual Hygiene Monitoring Plan.
- Only trained and competent person(s) shall conduct noise monitoring.

4.4 Designated Noise Protection Areas

All identified noise protection areas shall be documented in ICVL Designated Noise Protection Areas and updated as required.

All designated noise protection areas shall be identified, mapped (where practicable) and clearly communicated to employees who work in the area. Appropriate symbols and wording shall be used.

4.5 Noise Control Plan

Noise control measures shall be incorporated into the planning and design phases for new or modified workplaces, facilities or equipment.

Control measures particularly engineering controls shall be incorporated to annual HSE improvement planning process to ensure control measures are reviewed and improved where practicable.

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The noise control plan shall include a description of the area, process and equipment identified and usage. Noise reduction strategies shall incorporate hierarchy of control methodology:

- **Elimination**
- **Substitution**
 - Replace noisy equipment with quieter equipment
- **Engineering**
 - Reduction of noise at source
 - Isolation/ enclosing of noise
 - Isolation/ enclosing of worker
 - Additional noise reduction such as acoustical treatment
 - Lessening metal-to-metal contact
 - Reducing escaping high velocity air or steam
 - Muffling motors or air compressors to reduce noise contact
 - Maintenance of equipment to reduce vibrations on bearings or shafts
 - Adding dampening material to thin shell reverberant surfaces on machines
- **Administration**
 - Training
 - Work schedules
 - Rotation to minimise exposure

A documented process shall be developed for inspection, assessment and maintenance of the engineering controls and noisy equipment to ensure that the equipment continues to operate to design specifications.

4.6 Hearing Protection Devices

Hearing Protection Devices (HPD's) shall be provided where other controls are not feasible or as an interim measure while control of noise is being achieved by other means. They shall be selected, fitted and maintained in accordance with local regulatory requirements or to international standards.

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HPD's shall align to ICVL approved PPE.

Noise awareness training shall be provided to employees and contractors as part of the hearing conservation programme. Training shall include:

- The proper use of hearing protection devices and their limitations
- Recognition of signs and symptoms of hazardous noise exposure
- Preventative measures to reduce noise exposure
- Audiometric testing requirements; and
- Refresher training provided at least once every three years.

Hearing Conservation training is required for all SEGs working in the Designated Noise Protection Areas and provided by Training Department in alignment with HSE Department.

4.7 Audiometric Testing

Audiograms will be required upon initial hiring and two yearly for all personnel with noise exposure exceeding 85 dB(A) Leq8hr or 140 dB(C) for impulse noise as designated by their SEGs.

Audiometric testing shall be performed to local regulatory requirements.

ICVL Occupational Health Centre is responsible for the management of the audiometry programme.

5. MANUAL HANDLING

5.1 Manual tasks

Healthy work is characterised by dynamic whole body movements involving low to moderate exertions, comfortable postures, and frequent rest breaks or changes of task. Where the handling of loads is involved, these factors shall be considered:

- Infrequently.
- With light loads or low levels of force.

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- With a compact load.
- With the load held close to the body.
- Between mid-thigh and shoulder height.
- With use of both hands.
- Without sudden release of energy (jerking).
- Without twisting movements.
- Without side bending of the trunk.
- With freedom of movement.
- With adequate training.
- With no sharp edges or corners likely to inflict cuts.
- With no risk of impact from moving objects.

5.2 Workplace assessment

The workplace assessment shall consider manual handling tasks, including a consideration of the environmental conditions, working methods as well as organisational and individual factors

5.2.1 Manual handling risk assessment

The manual handling risk assessment requires hazard identification and risk rating. An occupational hygiene approach that utilises similar exposure groups (SEGs) or tasks is recommended.

Hazard identification

Hazard identification shall be carried out using a combination of the following techniques:

Design Analysis - All designs of new (or redesigns of existing) plant, equipment and processes shall be analysed (for manual handling risks) by the responsible Project Engineer in conjunction with plant process and engineering personnel prior to acceptance. Consideration shall be given to common process and engineering maintenance functions.

- Injury / Illness Statistics Analysis - All incidents involving strains or sprains shall be investigated and assessed by the appropriate Superintendent to

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determine whether they were the result of an inherent risk in plant, equipment or work practices.

- Workplace Inspection and Employee Consultation - All workplaces shall be inspected for the presence of manual handling risks arising from the design, construction, and maintenance of any plant, equipment, or processes. In the case of new equipment, inspection shall be done prior to commissioning.
- Environmental considerations - manual handling performed in non-neutral thermal environments (defined by ISO 7730:1995 as temperatures between 19 degrees C and 26 degrees C, 30-70% relative humidity and air velocity less than or equal to 0.2 m/s) is associated with an increase in manual handling risk and shall be subjected to additional risk assessment.

Once a risk has been discovered it shall be treated as any other form of physical risk and included on a physical risk survey form for the plant / site area in question.

5.3 Control of manual handling risks

Once a risk has been established with any manual handling operation the primary objective shall be to redesign the manual handling task to:

- Eliminate the risk; or
- Control the level of risk (utilising the hierarchy of controls); and
- Ensure employees involved receive appropriate training in safe manual handling techniques

Where redesign of the manual handling activity is not possible, or as a temporary measure, the objectives shall be to:

- Provide mechanical aids; and/or
- Arrange for team lifting techniques.
- Ensure employees involved receive appropriate training in safe manual lifting techniques; and

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- Provide personal protective equipment

5.4 Organisational and individual measures

Management considerations

- There shall be an effective change management system that prevents rapid and “knee-jerk” changes, provides good communication of the change, allows adequate time for feedback opportunities of those affected by the change and allows time for consolidation of the change.
- Roles, responsibilities and accountabilities need to be clearly defined:
 - **Project Engineers** shall ensure that full risk analysis, including manual handling issues, is carried out on projects under their control. No project shall be incorporated into operating plant until the risk of employees sustaining an injury from manual handling activities has been minimised as part of the final project audit.
 - **Superintendents or Team Leaders** shall:
 - Ensure that a full risk analysis, including manual handling issues, is carried out on existing plant and equipment under their control, and that a prioritised programme of rectification is established. Risk identification shall encompass both operating and maintenance aspects, and execution shall include employee representatives from both areas of responsibility. Risk identification shall be repeated whenever circumstances change.
 - Review all accidents resulting from manual handling activities to determine whether they were the result of an inherent risk in plant, equipment or work practices.
 - **Managers** shall ensure that:
 - Plant and equipment used in the workplace is designed to eliminate or minimise manual handling. Where elimination is not practical they shall be designed, constructed, and maintained to be, as far as practical, safe and without risk to health and safety when manual handling is necessary
 - The work practices carried out in the workplace and the working environment are designed to be, as far as workable, safe and without risk to health and safety;
 - **Employees:**
 - Shall use safe manual handling techniques.
 - Shall use mechanical aids, personal protective equipment, or team-lifting techniques, where they have been provided, and where they have received appropriate training in their use.
 - Shall report unsafe conditions.

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- Shall be encouraged to keep an adequate level of physical fitness and physical activity at work and at home.

Training

The company shall provide all employees with training and information on correct practices of manual handling.

6. Responsibilities

Role	Responsibility
Manager and Superintendent	<ul style="list-style-type: none">– Ensure the Occupational Exposure Management Procedure is implemented and maintained.– Ensure adequate resources are available to conduct workplace monitoring.– Ensure there is documented process for inspection, assessment and maintenance of the engineering controls.– Ensure equipment and machine including engineering controls continue to operate to design specifications.– Maintain written administrative controls where required.
Contractors	<ul style="list-style-type: none">– To implement Occupational Exposures Management Procedure where required.– To comply with the Occupational Exposures Management Procedure requirements.– To provide medical surveillance to their employees in accordance with this Procedure.

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**Occupational
Hygiene Advisor**

- Assist Supervisors, Contractors and Management in the risk assessment of Health hazards.
 - Assist Area Supervisors, Contractors and Management with occupational hygiene monitoring and control plans if risk is determined.
 - Ensure regular monitoring is conducted as required by the regulatory entities.
 - Develop and facilitate the implementation of the Occupational Exposures Management Procedure, including training, selection of appropriate protection devices and controls when required.
 - Review of workplace monitoring, respiratory protection, medical surveillance, noise monitoring, hearing conservation and audiometric programmes on periodic basis.
-

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Supervisors

- Assist employees and contractors in identifying health hazards using risk assessment tools such as Take 5.
- Implement the Occupational Health programmes within their area of supervision when required.
- Ensure personnel working in designated areas are compliant to the use of health protection devices.
- Ensure personnel are afforded the opportunity to participate in the medical surveillance programme.
- Notify and consult personnel of workplace monitoring results.
- Remind workers of health consequences from exposure to airborne contaminants, excessive noise exposures and mitigation controls through toolbox talks, safety meeting, etc.
- Report all health incidents or complaints to HSE Department.

All Employees

- Identify health hazards using Take 5 or Job Hazard Analysis (JHA) where required.
- Use appropriate health protection devices (dust masks, half-face respirators, ear plugs, ear muffs) in designated work areas for the entire exposure time when required.
- Participate in the Occupational Health programmes, including medical surveillance and audiometric testing if required.
- Report any defects in equipment and machine including engineering controls that may result in adverse health effects.

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- Occupational Health Center**
- Administer and manage the medical surveillance and audiometric programmes.
 - Maintain records of lung function and audiometric testing and follow-up notifications.
 - Report any changes to the individual health conditions to HSE Department, Managers, Superintendents, Supervisors and Employees
-

7. Definitions

Term	Definition
Audiometric Testing	Hearing test to evaluate the hearing threshold level measured in decibels as a function of frequency measured in hertz (audiogram).
Decibel (dB)	Unit of measurement of sound level, either A-weighted (A) or C-weighted peak (C).
Dosimetry	Personal monitoring using a dosimeter to measure average personal noise exposure over a period of time, generally expressed as a time weighted average and/ or per cent dose.
Engineering Noise Control	A control measure (not including the use of a personal hearing protector) that reduces the noise to which a person is exposed by the design or modification of the physical working environment.
Hearing Protection Device (HPD)	A device, or pair of devices, worn by a person or inserted in the ears of a person to protect from excessive noise, e.g. ear plugs, ear muffs, etc.
Hearing Conservation Programme	A hearing conservation programme comprises risk assessment, noise monitoring, noise controls and protection, training and audiometric testing.
Noise	Unwanted or excessive sound.

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Noise exposure	The amount of sound energy the unprotected ear of a person is exposed to noise.
Noise Induced Hearing Loss	Occupational noise-induced hearing loss means hearing impairment arising from exposure to excessive noise at work.
Noise Surveys	A noise survey is considered area monitoring using a sound level meter (SLM) to measure the noise levels of the work areas by mapping and/ or noise contours.
OEL	Occupational Exposure Limit.
Particulate	Generic term used in this procedure to refer to dusts, mists, smokes and fumes.
Respirable Dust	Inhaled dust particles which can penetrate to the smallest airways of the lungs. Generally considered to be 5 µm or less in aerodynamic diameter.
Respiratory Protection Programme	A programme to manage particulate/ gas/ vapour exposures. It comprises of risk assessment, exposure monitoring, controls and protection, training and health surveillance.
RPDs	Respiratory Protection Devices: dust masks, half-face respirators, full-face respirators and Self-Contained Breathing Apparatus (SCUBA).
Sound Level Meter (SLM)	Sound Level Meter is used to measure noise levels during a noise survey.
Smoke	Carbon or soot particles less than 1.0 micron in size. These small, gas-phase particles created by incomplete combustion consist predominantly of carbon and other combustible materials.
Vapour	Gaseous phase of a substance ordinarily liquid or solid at room temperature (25°C) and atmospheric pressure (760 mmHg).

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8. Performance / Monitoring Indicators

Type of Document	Document Title	Frequency	Location
Report	Chemical Exposures Report	Baseline and Annual	Shared Drive
Report	Noise Monitoring Report	Baseline and Annual	Shared Drive

9. Training / Competencies Required

Designation	Training / Competencies required
Audiometric Testing	Trained, certified or demonstrate competency
Occupational	Trained, certified or demonstrate competency
Hygiene Monitoring	

10. References

Type of Document	Document Title	Document Number
Mozambique Legislation	General Regulations on Occupational Health and Safety in Industrial Premises:	
Mozambique Legislation	Technical Safety & Health Regulations in Geological Activities and Mining	Decree Nr 61/2006

11. Review Criteria

This document shall be reviewed as follows:

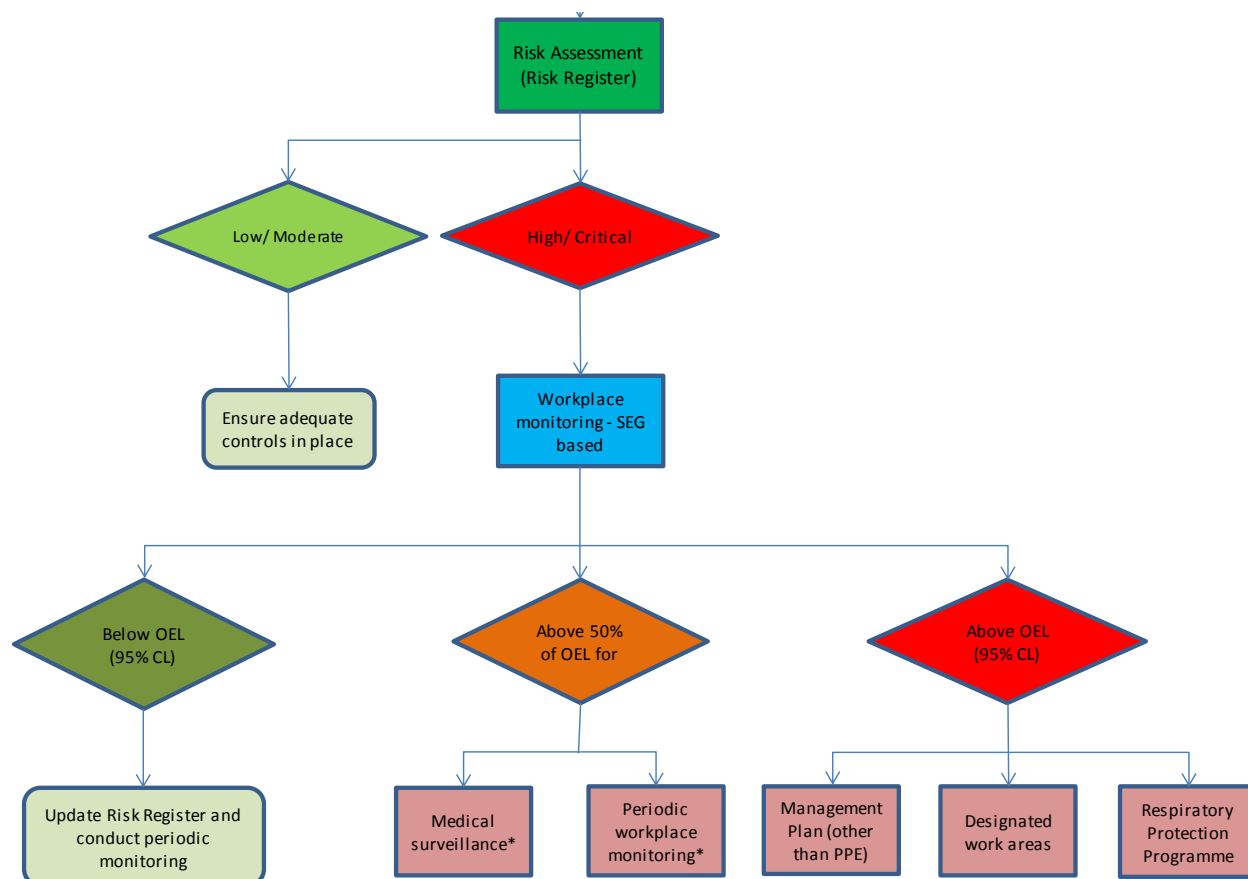
- ◆ At least every THREE years;
- ◆ When there is a change of method and/or technology that may affect the accuracy of this document;
- ◆ When there has been a significant event to which this document was relevant;

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- ◆ As a result of relevant audit findings.

12. Appendices

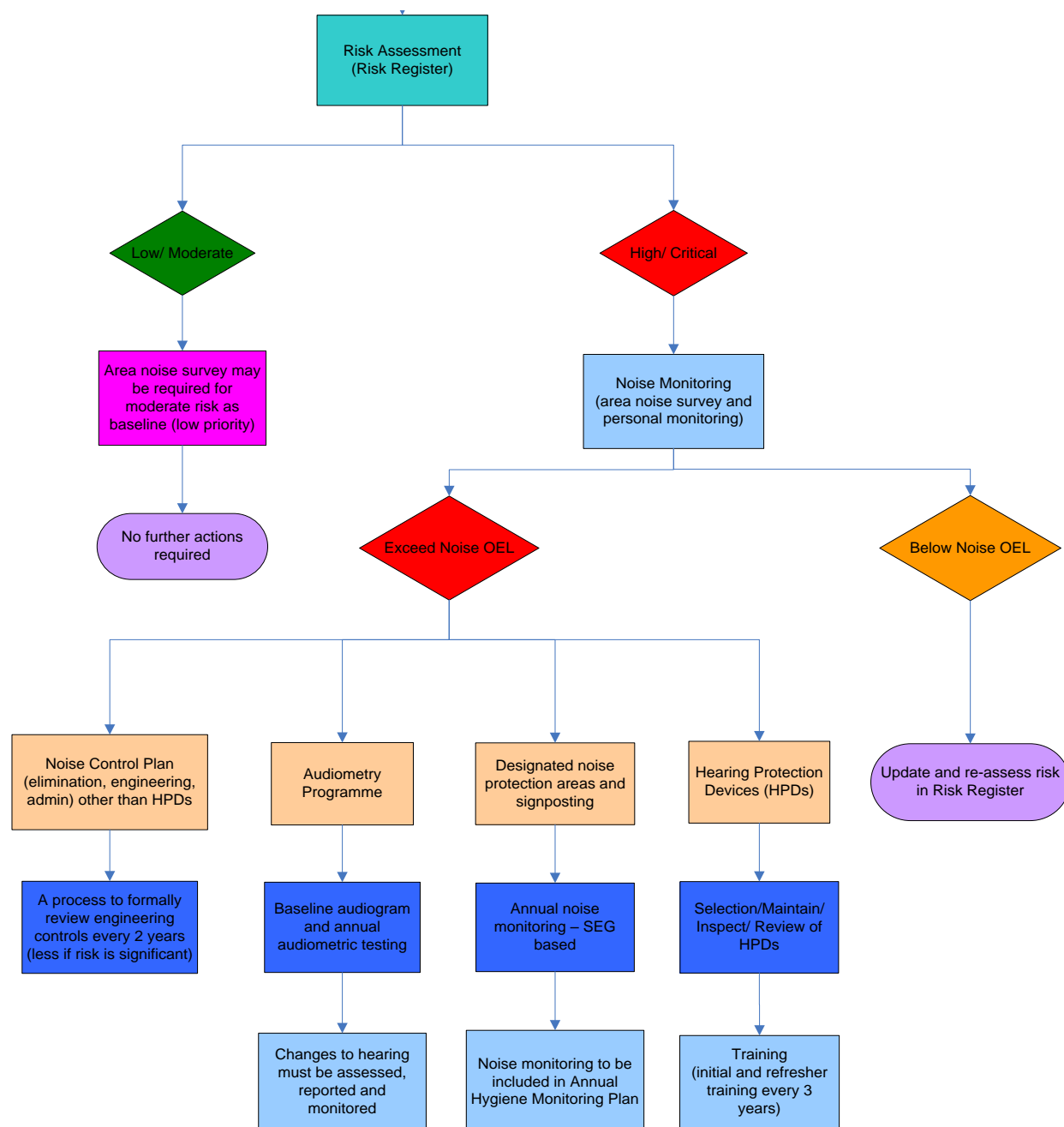
Management of Chemical Exposures Process Flowchart



Note: * Both medical surveillance and periodic workplace monitoring will be required when airborne contaminant level exceed the OEL

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Hearing Conservation Process Flowchart



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