

MINAS DE BENGA, LDA (MBL)

TETE, MOZAMBIQUE

Tender No: TE090/2016

Volume 1 of 4

TENDER

THROUGH

INTERNATIONAL COMPETITIVE BIDDING

FOR

Setting up of a Thermal Power Plant on BOO Basis

AT THE BENGA LOCALITY, MOATIZE DISTRICT, TETE PROVINCE,
MOZAMBIQUE (“BENGA SITE”)

Dated: 27th of February 2017

Last date of Bid Submission: 27th of March 2017



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CHAPTER 1

Disclaimer

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 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	Issue of Invitation to Bid	27.02.2017
2	Last Date of Seeking Clarifications on Bid Document	21.03.2017
3	Last Date of Submission of Bid	27.03.2017 up to 15.00 hours (Mozambique Standard Time i.e. GMT + 2 hours)
4	Opening of Techno Commercial Bid	27.03.2017 up to 15.30 hours (Mozambique Standard Time i.e. GMT + 2 hours)

CHAPTER 3

Definitions

3. DEFINITIONS

- 3.1 **"Agreement"** and/or **"Contract"** means the agreement for the setting up of a Thermal Power Plant on BOO (Build, Own and Operate) basis (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 including but not limited to the Coal Purchase Agreement to be entered into between the Successful Bidder and MBL.
- 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 Agreement for Setting up of Thermal Power Plant on BOO basis and any other documents required to give effect to the outcome of the Bidding process. **"Bidder"** shall mean a single corporate entity or a Consortium that submits a Bid in response to this Document.
- 3.3 **"Bidder"** means a corporate entity or Consortium bidding for this tender
- 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 **"Annual Contracted Quantity" or "ACQ"** is the quantity of coal as per Clause 6.1 (e)
- 3.6 **"Contract Execution Date"** means the date on which the Agreement/Contract is signed between MBL and the Successful Bidder or LOI (Letter of Intent) is issued to the Successful Bidder, whichever is earlier.

- 3.7 **“Commercial Production Date”** means the date on which power shall be interconnected and evacuated/distributed by national/international grid. **“Commercial Production Period”** means the period starting from the Commercial Production Date till the renewal of current Mining Concession Contract of the Benga Mine, valid up to year 2035. This shall be extended by minimum of Five Years should the Mining Concession Contract of the Benga Mine be renewed.
- 3.8 **“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.
- 3.9 **“Earnest Money Deposit”** shall mean the amount equivalent to USD 500,000.00 (Five Hundred 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.
- 3.10 **“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.
- 3.11 **“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
- 3.12 **“Net Worth”** means net worth of the bidder calculated as below :-

Net Worth = Fixed Assets +Current Assets –Current Liability – Long term loans
- 3.13 **“Performance Bank Guarantee”** shall mean a sum equivalent to USD 20,000,000.00 (Twenty Million 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. The validity period of Performance Bank Guarantee shall be from the Contract Execution Date and shall cover the whole Term plus One Year.



- 3.14 **"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.
- 3.15 **"Successful Bidder"** 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 Site is located in Benga locality, Moatize district, in the Tete Province in 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 Site is located between the regional centers of Tete and Moatize. The western margin of the Site is adjacent to the Revuboe River, a major tributary to the Zambezi River, which flows along the south-west and southern boundaries of the Site. The eastern margin of the Site is adjacent to the tenement held by Vale.

4.2 Climate

The Site 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**

The Proposed site is located at the southern end of the Benga Coal Project mining lease. The Zambeze river flows between 500m and 1500m south of the site. The average elevation of the topography is approximately 124m above mean sea level (amsl). The site is covered in sparse to dense bushes. Streams drain predominantly to the south and west.

Immediately south and west of proposed site the topography drops away to the level of the Zambeze River at about 120m amsl. The area is typically also covered in sparse bush with streams draining to the south. There are a number of up to 6m deep incised gullies across the site.

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 should have developed Power plant/Power Plants with a total capacity of 300 MW out of which one Coal based thermal power project with a capacity of not less than 100 MW.
- 5.1.2 The Bidder should have Engineering and project management experience for establishing Coal based power plants.
- 5.1.3 The Bidder should have operated/be operating, a grid synchronized Power Plant
- 5.1.4 Demonstrate access to competent construction, commissioning, operation and maintenance contractors.

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 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 demonstrate financial capability to execute the job. The bidder should have a cumulative net worth of at least USD 100 Million (One hundred million United States Dollars) in the last audited financial report OR cumulative turnover of USD 100 Million (One hundred million United States Dollars) in three financial years out of last seven years.

5.3.2 The bidder should have Capability of equity funding for installation of more than 300 MW of power generation at Benga locality, Moatize District, Tete Province, Mozambique (“Benga site”).

5.3.3 The Bidders who are seeking financial strength based on their parent company shall submit Corporate Guarantee as per Format 12.

5.4 **General Criteria**

5.4.1 A Bidder shall furnish the relevant documents in support of its technical experience and financial strength as required in the Eligibility Criteria, without which any claims pertaining to qualifying experience will not be accepted by MBL. The Bidder should submit a copy of the contract agreement/ Work Order and certificate as documentary evidence in support of the experience.

5.4.2 The annual reports along with the financial statements of the Bidding Company and its Parent/holding wherever required, for the preceding 3 (three) financial years should be submitted by the Bidder.

5.4.3 Type of Thermal Power Plant proposed to be setup.

5.4.4 Land area required for setting up the Thermal Power Plant.





CHAPTER 6

Instruction to Bidder

6. INSTRUCTION TO BIDDER

6.1 General Instructions

- a) Bidders are invited to present proposals for the tender for setting up of a 440 MW Thermal Power Plant on BOO basis at the Benga site, Tete, Mozambique as per Format 13 (Chapter8) based on Coal supplied by MBL, as per clause no 6.1 (e).
- b) Proposals should be valid for a period of 180 (one hundred and Eighty) 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.
- d) The plant shall be commissioned within 36 (Thirty Six Months) from the Contract Execution Date.
- e) MBL shall make available upto 3 Million tonne of coal. The annual availability of each type of coal is given below. The Bidder shall indicate the annual quantity of each type of coal to be made available by MBL , at Format 13. It is to be noted that the coal required has to sourced only from MBL and the coal supplied by MBL is strictly for the use in the Power Plant and cannot be sold.

S No	Description	Tonnage available per annum
1	Thermal Coal	300,000
2	Low Heat Value Coal	2,500,000
3	Tailings	200,000

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 of the Contract

All deposits and payments will be made in United States Dollars (USD).

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 signed & stamped (without any rate or amount) as a confirmation of Price Bid being unconditional. **PRICE BID (Part-B)** shall only contain the Price Schedule duly filled in without any additional condition.
- c) Price shall be presented separately in the Price bid format and the price bid should be submitted in a separate cover. Price should not appear anywhere except in the price bid to be submitted separately.

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 A THERMAL POWER PLANT ON BOO BASIS AT MINAS DE BENGA, LDA- TETE, MOZAMBIQUE, Reference: TE090/2016”** 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: sourcing@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 Thermal Power Plant on BOO basis (Tender number TE090/2016)”**.
- 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 Thermal Power Plant on BOO basis (Tender number TE090/2016)”** and on the e-mail containing price bid the Tenderer shall write **“PRICE BID (Part-B) Setting up of a Thermal Power Plant on BOO basis (Tender number TE090/2016)”**. 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. will 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, labour, transportation facilities, probable sites for labor camps and stores, go downs and all other factors involved in the execution of

the works. Such visit shall be undertaken by the Bidder at their 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 the power sector. (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 500,000.00 (Five Hundred Thousand United States Dollars) in the prescribed format shall be submitted along with **“TECHNO COMMERCIAL BID (Part-A) Setting up of a Thermal Power Plant on BOO basis (Tender number TE090/2016) “**. (Chapter 8: Format 7)

Format 8 - Performance Bank Guarantee: Bank Guarantee for an amount equivalent to USD 20 Million (Twenty Million United States Dollars) 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 of power plant operation works 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 – 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 12)

Format 13 – Capacity: The covering letter is required to be submitted by the Bidder on their letter head. (Chapter 8; Format 13)

6.11 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 powerplant.tender@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 un-replied, 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.

6.12 EMD & Conditions for refund of EMD

- a) The Bid must be accompanied with an EMD of US\$500,000.00 (Five Hundred Thousand United States Dollars) in the form of Bank Guarantee or Bank Transfer.

EMD Bank Guarantee should be as per Format 7 issued by/through a reputed commercial bank in Mozambique and shall be valid for the period of validity 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.

In the case of Electronic Transfer, Each bid should be accompanied by proof of transfer (SWIFT etc.) of the Earnest Money of US\$500,000.00 (Five Hundred 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 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 offer;
- 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.

6.13 Performance Bank Guarantee:

The Successful Bidder shall furnish Performance Bank Guarantee equivalent to USD 20 Million (Twenty Million United States Dollars) of the Contract Value within 21(twenty one) days of the Contract Execution Date. The Performance Bank Guarantee submitted should be issued by a reputed commercial bank acceptable to MBL.

The Performance Bank Guarantee shall be released only on commissioning of the Power Plant and completion of all contractual obligations including submission of another Performance Bank Guarantee equivalent to six months supply of coal.

Performance Bank Guarantee will not carry any interest.

6.14 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, 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.
- h) MBL's determination that one or more of the events specified under this section has occurred shall be final and conclusive.

6.15 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.

6.16 Rules of Construction

- 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.
- 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.
- A reference to any gender includes the other gender.
- 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.
- The terms “include” and “including” shall be deemed to be suffixed with the words "without limitations", whether or not so followed.
- In case of Common Clauses appearing elsewhere in the tender documents, the clause in volume 1 of the tender document shall prevail.

6.17 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 **Setting up of a 440 MW Thermal Power Plant on BOO basis** and its operation 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 all 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 under the Agreement between MBL and the Consortium.
- 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 without prior written approval of MBL.

7.2 Bid Price Basis

- 7.2.1 The Bidder shall quote in their proposal, price per tonne for each type of coal (Low Heat Value Coal, Thermal Coal & Tailings). The price shall be quoted as per the Price Bid format (Format 6) which will form the basis for evaluation of the bid.

7.2.2 Price Variation formula

The price per tonne is subjected to variation, whenever there is variation in the Platts Thermal Coal index price (symbol CSRBM01) FOB Richards Bay 6000 NAR average for the month over the same average for the previous month The revised price per tonne of each of the three coals shall be calculated as per the formula below.

$$R = P \times \frac{RT}{T}$$

Where R = Revised price per tonne of coal

P = Price per tonne of coal

RT = Platts index average for the month

T = Platts index average for the previous month .

Base price for calculating the variation in price is the average Platts Thermal Coal index price (symbol CSRBM01) FOB Richards Bay 6000 NAR for the month of March 2017.

7.3 Bid Evaluation Criteria

The Bid shall be evaluated on the basis of quantity of coal required as per clause 6.1(e), multiplied by corresponding Price offered per tonne of coal by the Bidder, as per Format 6, and the Agreement shall be concluded with the party from whom maximum revenue is realized.

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.
- 7.4.2 Before signing of the Agreement, a detailed Quality Assurance Program to be followed for the execution of the Agreement will be mutually discussed and agreed to and such agreed program shall form a part of the Agreement.

7.5 Completeness of the Agreement

- 7.5.1 All other works, which may not have been specifically mentioned but which are absolutely essential or necessary for the efficient Setting up of a Thermal Power Plant on BOO basis shall be deemed to have been included in the Agreement and shall be performed by the Successful Bidder without extra charge. All obligations related to Setting up of a Thermal Power Plant on BOO basis shall be deemed to be included in all respects whether details are mentioned in the Specification/Scope of Works or not.

7.6 Failure to Execute Agreement

- 7.6.1 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 lower rate. In the event of such failure, the difference between the price accepted in the Agreement already entered into and the price 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.

7.7 Equipment Specification

- 7.7.1 All the equipment shall be of the best class and capable of satisfactory operation in tropics with humid atmospheric conditions, without distortion or deterioration.

7.8 Signing of Agreement

- 7.8.1 MBL shall conclude the Agreement with the Successful Bidder whose bid has been determined to be qualified, substantially responsive, and has been determined as the highest evaluated bid.
- 7.8.2 Notification of award of Agreement shall be made in writing through a Letter of Intent (LOI) to the Successful Bidder. The Successful Bidder shall acknowledge the receipt of the same in writing.
- 7.8.3 Till such time the formal Agreement is signed, the Letter of Intent issued by MBL to the Successful Bidder and its acknowledgement of receipt by the Bidder shall be construed as an Agreement and the terms and conditions contained in the Documents shall become applicable.
- 7.8.4 MBL shall send 1(one) copy of the Agreement to Successful Bidder within 7 (Seven) days of issue of Letter of Intent. The Successful Bidder shall furnish, before signing of the Agreement, appropriate power of Attorney or other relevant documents.
- 7.8.5 The Agreement shall be signed at the office of MBL in Maputo within seven days of reception of the Agreement by the Successful Bidder.
- 7.8.6 The Agreement shall be signed in Three (3) originals, duly bound. One will be handed over to the Successful Bidder and the remaining originals retained by MBL.
- 7.8.7 If the Successful Bidder 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.

7.9 Monthly Schedule

- 7.9.1 The monthly schedule of work to be carried will be finalized by MBL in consultation with the Successful Bidder at the beginning of Agreement.

7.10 Compensation for short delivery/lifting

7.10.1 The Successful bidder has to start lifting the coal as per the ACQ at the end of 36 months from the date of Contract Execution date.

7.10.2 If there is a delay in the start of lifting the coal, the Successful Bidder shall pay a compensation to MBL as below, which shall be calculated for each variety of the coal agreed to have been lifted :-

- a. Quantity agreed to lift in the month x 90% x Price per tonne of Coal x 0.5 (applicable from 37th month to 42nd month)
- b. Quantity agreed to lift in the month x 90% x Price per tonne of coal (applicable from 42nd month)

7.10.3 For or a year, in respect of each type of coal, if the level of supply by the seller falls below 90 percent of ACQ with respect to the year, the seller shall be liable to pay compensation to the Successful Bidder for such shortfall in terms of the following:-

$$\text{Compensation} = (\text{ACQ} \times 0.9 - \text{Actual quantity supplied}) \times \text{Price per tonne of coal} \times 0.25$$

7.10.4 For a year, in respect of each type of coal, if the level of lifting by the purchaser (Successful Bidder) falls below the 90 percent of ACQ with respect to the year, the Successful Bidder shall be liable to pay MBL for such shortfall in terms of the following:-

$$\text{Compensation} = (\text{ACQ} \times 0.9 - \text{Actual quantity lifted}) \times \text{Price per tonne of coal} \times 0.50$$

7.11 Measurement of quantities

Prior to commencement of operation, the parties shall carry out a detailed joint ground survey of the site that shall form the base to determine future material (Coal) volumes. Copy of the detailed ground survey shall be made available to the Successful Bidder.

7.11.1 Measurement of quantities shall generally be in accordance with the prescribed standards or such other standard acceptable to both parties. The volume of Coal moved shall be the difference in absolute volume from the original agreed starting surface, calculated on a month by month basis.

7.11.2 The Successful Bidder shall install Belt scale on the conveyors, which shall be jointly calibrated along with MBL. The reading of the Belt scale shall be used for the measured quantity, for Payment to MBL, by the Successful Bidder.

7.12 Payment for coal supplies

Invoices shall be issued for each month's supply and should be paid within 7 days of receipt to MBL account within 7 days.

7.13 Non-Exercise of Power Not to Constitute Waiver

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, the non-exercise thereof shall not constitute waiver of any of the 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, for which by any clause or clauses thereof is declared liable to pay compensation and the liability of the Successful Bidder for past and future compensation shall remain unaffected.

7.14 Competent and Statutory Persons

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

7.15 **Commencement of Work**

All the preliminary works such as deployment of manpower, equipment at site etc. should be completed in time and operation should commence immediately thereafter.

CHAPTER 8

Formats

FORMAT 1 - EXECUTIVE SUMMARY

(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 in the Power Plant sector.

- 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 (Coal based Power plant)
- 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

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

Sub: - Response to Bid Document for Setting up of a Thermal Power Plant on BOO basis (Tender number TE090/2016) "Services of MBL

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 Power Plant operator on BOO basis 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 2017

The period of validity of the bid shall not be less than 180 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

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

To
 Deputy 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 Thermal Power Plant on BOO basis

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:

Power Plant Experience

SNo	Period	Details of Power Plant with location	Owner / Contractor	Capacity of Power Plant	Type (thermal, solar,Hydro..)	Operational/Continuing
1						



2						
3						
etc.						

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 accordingly.
- 2) Supporting documents has to be enclosed with this letter



FORMAT 4 - SUBMISSION OF FINANCIAL DOCUMENTS AS PER QUALIFYING REQUIREMENTS

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

To,
Deputy 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 Thermal Power Plant on BOO basis

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 2015-16	FY 2014-15	FY 2013-14
Single Bidder / Leader of the consortium			
Member 2 (Applicable for Consortiums only)			
Member 3			

(Applicable for Consortiums only)			
Total			

Net worth (In million USD):

Particulars	Net worth
Single Bidder / Leader of the Consortium	
Member 2 (Applicable for Consortiums only)	
Member 3 (Applicable for Consortiums only)	
Total	

NB: Net Worth = Fixed Assets + Current Assets - Current Liability – Long term loans

Audited Balance sheet for the last three financial years FY 2015-16, 2014-15 and 2013-14 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.



FORMAT 5 - SUBMISSION OF ADDITIONAL INFORMATION

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

To,
Deputy 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 Thermal Power Plant on BOO basis

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 **Setting up of a Thermal Power Plant on BOO basis**
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 Thermal Power Plant on BOO basis

We, the undersigned, offer to Bid for Power Plant Operation on BOO basis in accordance with your Bid Document dated....., and our Price Bid is given below:

(Values in USD)

Description	Quantity required annually Tonnes	Basic price per tonne of COAL (In USD)
Thermal Coal		
Low Heat Value Coal		
Tailings		

- Note: 1. The above price is valid for 180 days from the Last date of submission of Bid.
2 . The Taxes and Duties as per Mozambique Law



Thanking You,

Yours faithfully,

(Signature, Name, Designation and Seal)



FORMAT 7 – EARNEST MONEY DEPOSIT (EMD) BANK GUARANTEE

..... (Name of the Bank)
 Address.....
 Guarantee No.
 A/c..... (Name of Bidder)
 Date of Expiry.....
 Limit to liability (Currency and Amount) USD 500,000 (Five Hundred Thousand United States Dollars).
 Invitation for Bid No..... Dated..... for Power
 Plant operation on BOO basis at Benga Site.

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 (hereinafter called "Bidder") from demand under the terms and conditions of the tender (hereinafter called the said "Bidding Document") issued by MBL vide No.....for Power plant at Benga site 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 \$500,000.00 (Five Hundred 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\$500,000.00 (Five 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. However, our liability under this guarantee shall be restricted to an amount not exceeding US\$500,000.00 (Five Hundred 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\$500,000.00 (Five Hundred Thousand United States Dollars) and shall expire on unless a claim or demand is made on us in writing within 3(three) 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)



FORMAT 8 - PERFORMANCE BANK GUARANTEE

..... (Name of the Bank)
 Address.....
 Guarantee No.
 A/c..... (Name of Bidder)
 Date of Expiry.....
 Limit to liability (Currency and Amount)
 Letter of Intent /Agreement No.
 for Power Plant on BOO basis at Benga Site.

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 Power Plant Operation at Tete, Mozambique.

Whereas the (Name of the Successful Bidder) 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 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 US\$ 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 Successful Bidder) 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. 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..... (currency and amount) 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.

Yours faithfully

Dated day of.....

For..... (Name of the Bank)



FORMAT 9 - DEVIATION IF ANY NECESSARY

To,
Deputy 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 Thermal Power Plant on BOO basis

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 BIDDERS

The following list describes contracts of the same nature and extension, satisfactorily completed by me/us*:

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

Thanking You,

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

* As applicable.

FORMAT 12 – 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, represented by Krishnendu Nandy, in his capacity as Director, and by Dipak Chandulal, in his capacity as Legal Counsel, (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



FORMAT 13 - COVERING LETTER FOR CAPACITY OF THE PLANT OFFERED

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

Sub: - Response to Bid Document for Setting up of a Thermal Power Plant on BOO basis (Tender number TE090/2016)

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 Bid is in full conformity with these Documents. We, the undersigned Bidder having read & examined in detail the Requirements for selection of operator of Thermal Power Plant on BOO basis and hereby submit our response.

Thanking You,

Yours faithfully,

(Signature, Name, Designation and Seal)

INDICATIVE CHECK LIST

S No	Description	Yes/No	Reference page no of BID
1	Proof showing the development of Power Plants with a cumulative capacity of 300 MW out of which one Coal based thermal power project must have capacity not less than 100 MW		
2	Proof showing that the Bidder is operating/operated successfully, a grid synchronized Power Plant		
3	Access to competent construction, commissioning, operation and maintenance contractors.		
4	Certificate of Registration as legal entity		
5	Articles of Association (as published in the Official Gazette)		
6	Declaration stating that there is no foreclosure or a Bankruptcy		
7	Business License or equivalent document issued by the competent authorities		
8	The original or certified copy of the joint-venture agreement, if applicable		
9	Evidence of the delegation of powers by the members of the Consortium to the person who signs the proposal		
10	Minimum net worth of total USD 100 million or Turnover of 100 Million in any three years out of seven years.		
11	Copy of the contract agreement/ Work Order		
12	The annual reports for the preceding three financial years		
13	Format 1 - Executive Summary		
14	Format 2 - Covering letter for Techno Commercial Bid		
15	Format 3 - Submission of technical documents as per qualifying requirements		

16	Format 4 - Submission of financial documents as per qualifying requirements		
17	Format 5 - Submission of additional information		
18	Format 6 – Stamped blank Price Bid with Techno commercial offer (Part A)		
19	Format 6 - Price Bid duly filled in with (Part B)		
20	Format 7 - EMD Bank Guarantee		
21	Format 10 – Capacity to sign documents		
22	Format 11 – Description of works carried		
23	Format 12 – Corporate Guarantee, if applicable		
24	Format 13 - Capacity of Power Plant Proposed		
25	An EMD of US\$500,000 (Five Hundred Thousand USD) in the form of Bank Guarantee or Proof of Bank Transfer as a part of Techno Commercial Bid Part A.		
26	All the pages of the tender document signed and stamped and submitted with the bid		
27	Project Execution detail in Bar Chart		

MINAS DE BENGA, LDA (MBL)

TETE, MOZAMBIQUE

Tender No: TE090/2016

Volume 2 of 4

SCOPE OF WORK

FOR

SETTING UP OF A THERMAL POWER PLANT

ON BOO BASIS

**AT THE BENGA LOCALITY, MOATIZE DISTRICT, TETE PROVINCE,
MOZAMBIQUE (“BENGA SITE”)**

Dated: 27.02.2017

Last date of Bid Submission: 27th of March 2017

1.0 **Background of the company:**

1.1 Minas de Benga, Lda (MBL) is a company registered under the laws of Mozambique. The company owns an opencast coal mine in Tete province (Moatize district), Mozambique, namely Benga coal mine. MBL is the ultimate subsidiary of International Coal Ventures Pvt. Ltd. (ICVL), a New Delhi (India) based company registered under the laws of India. ICVL 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.

2.0 **Benga Mine Operations – An Overview:**

2.1 Benga Coal Mine is a multi-seam (Seams B to N), open cast operation with over 200 million tonnes of proven coal reserves. It started mining in the later part of 2011. After acquiring the mine in October, 2014, MBL continued mining operations till December, 2015. Coal washery operations, however, continued till April 2016 for washing the RoM coal stock.

2.2 The seams C and D were being mined at the time of takeover in the south pit of the mine while mining from the upper Seam E started in 2015. The average stripping ratio was about 4.65 BCM/ tonne of RoM.

2.3 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 coal 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. Post-takeover, 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 has so far been exported to India for consumption by the promoter companies of ICVL in their own steel plants.

2.4 The coking coal produced at CHPP is hauled by trucks to the railway siding, about 15 km away. It is then loaded there into company owned trains for transportation to the Beira port at a distance of about 590 Km. The fleet consists of 15 locomotives (3100 HP each) and 310 wagons with average carrying capacity of 62 tonnes. CFM, the owner of the rail track, charges rail access fee on the coal transported.

2.5 At Beira port, Coal Terminal TCC-8 which has been constructed jointly by Vale (68%) and MBL (32%) is used for loading coal into Handymax vessels (35000 tonnes). Both jointly have a Take or Pay agreement with the Port Operator for 5 MTPA capacity, out of which MBL has a reservation of 32% capacity which translates into 1.6 Mtpa. Beira port being a Tidal Port, has

low draft of about 9.5 meters thereby restricting both the vessel size as well as the sailing time (day time of high tides).

3.0 Setting up of Thermal Power Plant on BOO Basis

- 3.1 It shall primarily include the setting up of a 440 MW thermal power plant on **Build, Own & Operate (BOO)** basis at a designated site within the mine leasehold area (“Benga site”).
- 3.2 It would include the interconnection to the national/international grid including use for a dedicated user.
- 3.3 The full project design as originally approved should have a capacity of 440 MW.
- 3.4 The land required for the Thermal Power Plant shall be leased by MBL on a long term lease or close legal framework to the Successful Bidder in line with the procedures and provisions of MBL and in compliance with Mozambican Law.

There is no private ownership of land in Mozambique. Land is property of the State. The Land Law, however, grants private entities the right to use and benefit from the land. Although the land itself cannot be sold, leased (in the conventional terms), mortgaged or alienated in any way, buildings, infrastructure and improvements built on land may be mortgaged and sold. Rights to use land may be transferred by means of the sale of the buildings, improvements and infrastructure erected on the land, provided some procedures are followed.

- 3.5 A blend of thermal coal/ low heat value coal/tailings supplied from the Benga Coal Mine (captive source), would be used in the Power Plant. The details of the quality of the three products are as below:

- **Thermal coal** with an ash content of 27.5% to 28% and an approximate 24.5 MJ/kg to 25.3 MJ/kg (5850 Kcal/kg to 6020 kcal/kg) Gross Calorific Value ad constituting about 10% of ROM production;
- **Low heat value coal/power Grade Coal** with 50% to 60% ash and about 12.55 MJ/kg to 14.40 MJ/kg (3000 kcal/kg to 3440 kcal/kg) Gross Calorific Value ad constituting about 50% of ROM coal; and
- **Tailings coal** with 21.21 MJ/kg to 26.92 MJ/kg (5065 kcal/kg to 6430 kcal/kg) f give Gross Calorific value ad constituting about 5% of ROM coal. Tailing dam 1 is full. Quantity can be made available from tailing dam 1 and 2; interested party will have to make its own arrangements for evacuation and transportation.

4.0 **Scope of work:**

The indicative scope of work includes but is not limited to the following:

- 4.1 Providing necessary finances for Design, Engineering, procurement, development, building, owning, operating and maintaining a the 440 MW power plant with all necessary equipment and services on a BOO (Build, Own and Operate) implementation model; all works, goods, licences and services related to Manufacture, Assembly, Testing at Works, Inspection at Works, Transportation, Insurance, Supply, Receipt and Handling at Site, Civil and Structural Works, Erection, Testing and Commissioning including Performance Guarantee Tests and Guarantee & Warranty obligations, complete technical documentation of the project with suitable capacity of Boiler (of Suitable technology based on available coal parameters), Turbine and Generator, Balance of Plant Package essentially comprising of Coal transportation and Handling System, Ash Handling System, Water supply, Circulating water System, Fire Protection System, Make up water System, Water Treatment and Effluent Treatment System, RCC Chimney, Cooling Tower, Switch Yard package, Transmission line inter connection with nearest grid, Power Plant & Sub-Station C&I including DCS, Station Lighting, Pipe racks and cable racks, Inter Plant Communication and Miscellaneous Civil, Mechanical, and Electrical package along with supply of mandatory spares tools & tackles.
- 4.2 Supply all necessary finance for the design, materials, equipment, accessories, resources, services and construction works, both of a temporary and permanent nature as well as the operation of the Power Plant; Project management; detailed survey; detailed engineering for all technical disciplines; complete technical documentation of the project, procurement of all necessary equipment and services; all works, goods, licences and services related to the construction of the power plant, construction of power transmission line/inter-connection, commissioning, start-up and operation including marketing and sale of electricity, as owner of the Power Plant Project facilities and installations (“Production Facility”).
- 4.3 The re-structuring of Benga Energia, SA, a Mozambican company with Mauritius shareholding structure, which is the existing project vehicle.
- 4.4. Negotiating, entering into and signing of Power Purchase Agreement / term sheet with Electricity Authorities of Mozambique (EDM) and the power off-taker for sale of power.
- 4.5 Negotiating, entering into and signing of the EPC (Engineering, Procurement and Construction) contract (for the power plant building`s construction) with the counterparty chosen by the Successful Bidder;

- 4.6 Negotiating, entering into and signing of the Financing contract/Loan agreement with the financing institutions;
- 4.7 Negotiating, entering into and signing of the Technology contract;
- 4.8 Negotiating, entering into and signing of the contract with the Power Transmission Company (for grid connection);
- 4.9 Negotiating, entering into and signing of the Coal Purchase Agreement with MBL;
- 4.10 Negotiating, entering into and signing of the Build, Own and Operate Agreement with MBL;
- 4.11 Obtaining all applicable operating licences, labour and immigration authorisation and any investment project authorisation or other investment related authorisations, generation, transport and sale of electricity authorizations, as per the applicable Mozambican legal requirements;
- 4.12 If the bidder is not a Mozambican company, then any Successful Bidder is subject to the timely incorporation and registration of a Mozambican company, including but not limited to tax, labour and operating licence registration.
- 4.13 Building conveyor/any other system, if required, with all its accessories for transport of Thermal coal, Low heat value coal and tailings from dump area/tailing pond area/Washery (CHPP) to power plant location.
- 4.14 The time taken for erection, commissioning and testing of power plant shall be 24 to 36 months step wise from the date of placement of order.
- 5.0 **Obligations of MBL:**
- 5.1 MBL will supply coal to the project for 20 years with an option to source power for its own mine operation.
- 6.0 **Build**
- 6.1 Installation of production facility in the designated area within a stipulated period of 36 months along with the distribution network for evacuation of power.
- 6.2 MBL shall provide the land on a long term lease or close legal framework in compliance with Mozambican Law for the setting up of the Production Facility by the Successful Bidder.
- 6.3 The Successful Bidder shall obtain necessary approval/sanction of the Plan for installation of the Power Plant of adequate capacity prior to commencement of the installation. MBL shall approve/comment on the necessary documents within fifteen days of submission.

- 6.4 The Commissioning of the Production Facility shall be under periodical inspection of representatives of MBL.
- 6.5 The Contractors and its workers and the employees of the Successful Bidder entrusted with the job of installation and commissioning of the Production Facility on BOO basis shall require to follow and apply the safety rules as well as other rules applicable inside MBL.
- 6.6 During the installation of the Production Facility, the Successful Bidder shall take all necessary precautions for any untoward incident inside the Works besides the area earmarked for installation of the Production Facility and shall indemnify MBL for any accident, loss or damage to the employees or property of MBL.
- 6.7 The Successful Bidder shall adhere to the schedule or Bar Chart of commissioning of the Production Facility and in no case the Successful Bidder shall delay in commissioning the Production Facility due to any reason whatsoever other than Force Majeure.
- 6.8 For any delay in commissioning of the Production Facility, the Successful Bidder shall compensate MBL for the loss suffered by the MBL.
- 6.9 The Successful Bidder shall take necessary permission and License, if any, applicable for installation & commissioning of the Production Facility as required from time to time from the appropriate authority including the Local Authority.
- 6.10 The Successful Bidder shall be the owner to the Civil Structures, Building and Production Facility during the Term except the Land.
- 6.11 The Successful Bidder shall follow all statutory provisions including Labour Laws and Industrial Laws for installation of the Production Facility.
- 7.0 **Own**
- 7.1 The Successful Bidder shall ensure that after the installation of the Production Facility within the aforesaid period of 36 (thirty six) months they shall declare the same in writing to MBL.
- 7.2 The Successful Bidder shall take all necessary steps for obtaining License / Permission from the appropriate authority for owning the Production Facility under their own management.
- 7.3 The Successful Bidder shall take necessary steps for declaring one of its Director or Proprietor, as the case may be as Occupier of the said Production Facility and follow all the rules and regulations prescribed under the legislation of Mozambique.
- 7.4 The Successful Bidder shall indemnify MBL against any claim or damage, demand and any other expenses incurred by MBL for defending such claims / demand made by any

authority due to the commission, omission and negligence on the part of the Successful Bidder in complying with any of the statutory provisions being the Owner of the Production Facility.

8.0 Operate

8.1 The Successful Bidder shall ensure that installation & commissioning of the Production Facility is completed within 36 (thirty six) months counting from the Contract Execution Date.

8.2 The Successful Bidder shall engage its personnel/ employees and workers directly or/ and indirectly through contractors for operating the Production Facility after its commissioning.

8.3 The Successful Bidder shall obtain all necessary permissions and License from the appropriate authority for operating the Production Facility and producing power and its distribution.

9.0 Statutory/ Regulatory clearances:

9.1 While there is an existing Environment Licence for the Power Plant, depending on the actual design, construction and operation proposed by the Successful Bidder, Mozambican environmental regulations may require update and /or amendments to the licence as well as its renewal on the expiry date.

9.2 The site location is secured by a land title held by MBL.

9.3 There is also an agreement in principle for access to transmission infrastructure and to transmission servitude. The Successful Bidder will be responsible for all other regulatory compliance for going forward.

10.0 The Successful Bidder will be eligible to provide mine operation services only after commissioning of the 440 MW Thermal Power Plant.

MINAS DE BENGA, LDA (MBL)

TETE, MOZAMBIQUE

Tender No: TE090/2016

Volume 3 of 4

GENERAL CONDITIONS

FOR

THERMAL POWER PLANT ON BOO BASIS

**AT THE BENGA LOCALITY, MOATIZE DISTRICT,
TETEPROVINCE, MOZAMBIQUE (“BENGA SITE”)**

Last date of Bid Submission: 27th of March 2017

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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 unless otherwise stated.

"**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**" means the General Conditions of the Services Contract.

"**Goods**" or "**Equipment**" 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 favour 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 March 20th 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 registerable), 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 judgements 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" or **"Manpower"** means:

- (a) in relation to the Contractor, any and all of its employees, Sub-contractors (including Sub-contractors' employees), 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 but not limited to all things required by the Contract Specification and/or 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 and/or Scope of Work.

"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, 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 equalisation, 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 derivate 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";
- (c) the "Special Conditions" or "Scope of Work";
- (d) the "Specification", and
- (e) 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 comply 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

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.

7.3. 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).

7.4. 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 authorisation, 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 authorisation, 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, 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 authorisations, 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 endeavour 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, authorised 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 its 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; lightning; 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 fulfil 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 fulfil 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 maintain 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 or 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 judgement 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 neighbouring 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 neighbouring 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 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.

FORMAT OF FORM OF AGREEMENT

SERVICES CONTRACT (SHORT FORM)

FORM OF AGREEMENT

Contract Number Date Project Company name Company registration number Tax number Address Fax number Telephone number Company name Company registration number Tax number Address Fax number Telephone number Name of Company's representative E-mail address Address Telephone number Fax number

Contractor name	<input type="text"/>
Contractor registration number	<input type="text"/>
Tax number	<input type="text"/>
Address	<input type="text"/>
Telephone number	<input type="text"/>
Fax number	<input type="text"/>

Name of Contractor's representative	<input type="text"/>
E-mail address	<input type="text"/>
Address	<input type="text"/>
Telephone number	<input type="text"/>
Fax number	<input type="text"/>

Commencement date	<input type="text"/>
Site location	<input type="text"/>
Site access date (if applicable)	<input type="text"/>
Completion date	<input type="text"/>
Place/country of payments to Contractor	<input type="text"/>
Nominated currency	<input type="text"/>
Special Conditions attached	<input type="radio"/> Yes <input type="radio"/> No

Description of Services <i>(as described in detail in the Specification)</i>	<input type="text"/>
---	----------------------

Trade Warranties <i>(specify any critical items for which trade warranties will be required)</i>	<input type="text"/>
---	----------------------

Contract Price not to exceed <i>(the Contract Price is exclusive of Value Added Tax and other Indirect Transaction Taxes, as applicable)</i>	<input type="text"/>
---	----------------------

The Contractor shall perform and complete the Services in accordance with the following:

1. This Form of Agreement
2. Special Conditions (if any)
3. General Conditions for Short Form Services Contract (ICVL SCGC SHORT FORM - v5 - 05 01 2015 - ENGLISH)
4. Specifications (it must, among other things, define the Contract Objective, contain full description of the Services and Scope of Services, including sub-categories of Services, details of any deliverables and reports, responsibility for accommodation, etc.)

Insert Specification Number (SN); Revision Number (RN); and Revision Date (RD)

5. Schedules (tick those that apply and are herein attached):

- | | |
|--|---|
| <input type="radio"/> Schedule A Remuneration Schedule
<input type="radio"/> Schedule A.1 Lump Sum Schedule
<input type="radio"/> Schedule A.2 Schedule of Rates
<input type="radio"/> Schedule A.3 Not used
<input type="radio"/> Schedule A.4 Not used
<input type="radio"/> Schedule A.5 Company Nominated Sub-Contractors
<input type="radio"/> Schedule A.6 Rates for Variations
<input type="radio"/> Schedule A.7 Optional Items
<input type="radio"/> Schedule A.8 Labour Rate Changes / Rise and Fall Formula
<input type="radio"/> Schedule A.9 Currency Exchange Rate Adjustment
<input type="radio"/> Schedule A.10 Fuel Consumption and Pricing
<input type="radio"/> Schedule A.11 Customs Duties
<input type="radio"/> Schedule A.12 Milestones
<input type="radio"/> Schedule A.13 Not used | <input type="radio"/> Schedule B Spare Parts
<input type="radio"/> Schedule C Labour Force and Materials
<input type="radio"/> Schedule D Cash Flow Forecast
<input type="radio"/> Schedule E Contractor's Key Persons
<input type="radio"/> Schedule F Statement of Major Plant and Equipment Programme
<input type="radio"/> Schedule G List of Proposed Sub-Contracts
<input type="radio"/> Schedule H Not used
<input type="radio"/> Schedule J Lubrication Schedule
<input type="radio"/> Schedule K Service Maintenance and Special Tools
<input type="radio"/> Schedule L Technical Data provided by Contractor
<input type="radio"/> Schedule M Contractor's Methodology
<input type="radio"/> Schedule N Drawing and Data Requirements
<input type="radio"/> Schedule O Not used |
|--|---|

6. Appendices (tick those appendices that apply and are herein attached, where component of Services involves On-Site work):

- | | |
|--|---|
| <input type="radio"/> Appendix A Specific Site Requirements
<input type="radio"/> Appendix B Conditions of Employment
<input type="radio"/> Appendix C Health, Safety & Environmental Requirements | <input type="radio"/> Appendix D Quality System Requirements
<input type="radio"/> Appendix E Tax Concession |
|--|---|

This Contract is made and signed in (place) in originals (three originals whenever the Contractor is not a Mozambique registered entity or is not a Mozambique resident entity) being one for each Party (and the third one, if existent, for the Central Bank of Mozambique)

Signed by its authorised signatories on behalf of (insert Company name)

Signature

Signature

Date: ____/____/20____

Date: ____/____/20____

Name (please print) _____

Name (please print) _____

Title (please print) _____

Title (please print) _____



Signed by its authorised signatories on behalf of *(insert Company name)*

Signature

Date: _____ / _____ / 20 _____

Name *(please print)* _____

Title *(please print)* _____

Signature

Date: _____ / _____ / 20 _____

Name *(please print)* _____

Title *(please print)* _____

Signed by its authorised signatories on behalf of *(insert Contractor name)*

Signature

Date: _____ / _____ / 20 _____

Name *(please print)* _____

Title *(please print)* _____

Signature

Date: _____ / _____ / 20 _____

Name *(please print)* _____

Title *(please print)* _____

FORMAT OF SCHEDULE A**SCHEDULE OF RATES**

Description	Quantity required annually Tonnes	Basic price per tonne of COAL (In USD)
Thermal Coal		
Low Heat Value Coal		
Tailings		

MINAS DE BENGA, LDA (MBL)

TETE, MOZAMBIQUE

Tender No: TE090/2016

Volume 4 of 4

HEALTH, SAFETY, ENVIRONMENT AND COMMUNITY DOCUMENT

FOR

THERMAL POWER PLANT ON BOO BASIS

AT THE BENGA LOCALITY, MOATIZE DISTRICT,
TETE PROVINCE, MOZAMBIQUE (“BENGA SITE”)

Dated: 27.02.2017

Last date of Bid Submission: 27.03.2017

Title	Date issued	Version Number	Next review date	Page
PROC-0003: Occupational Exposures Management Procedure	07 May 2015	0	07 May 2018	Page 1 of 22



PROC-0003: Occupational Exposures Management Procedure

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

Title	Date issued	Version Number	Next review date	Page
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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.

The exposure management plan shall include:

- Designated work areas
- Workplace monitoring

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- 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 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

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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.

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.

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- 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.

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.

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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.

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.

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- 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.

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 dosimetry 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.

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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.

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.

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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.

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.

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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.
- 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

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

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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.

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.

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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.

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.

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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.
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).

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	
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9. Training / Competencies Required

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

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

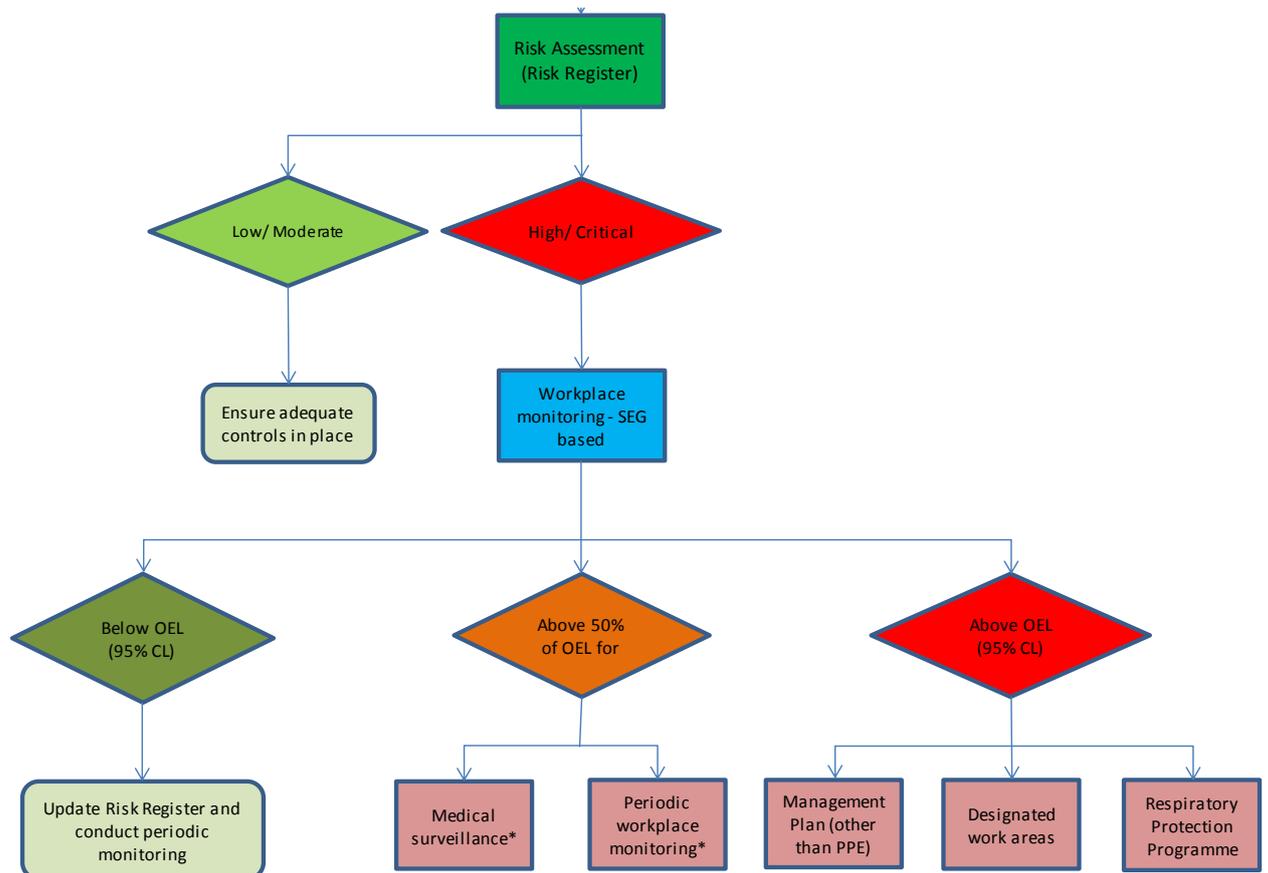
This document shall be reviewed as follows:

- ◆ 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;
- ◆ As a result of relevant audit findings.

12. Appendices

Management of Chemical Exposures Process Flowchart

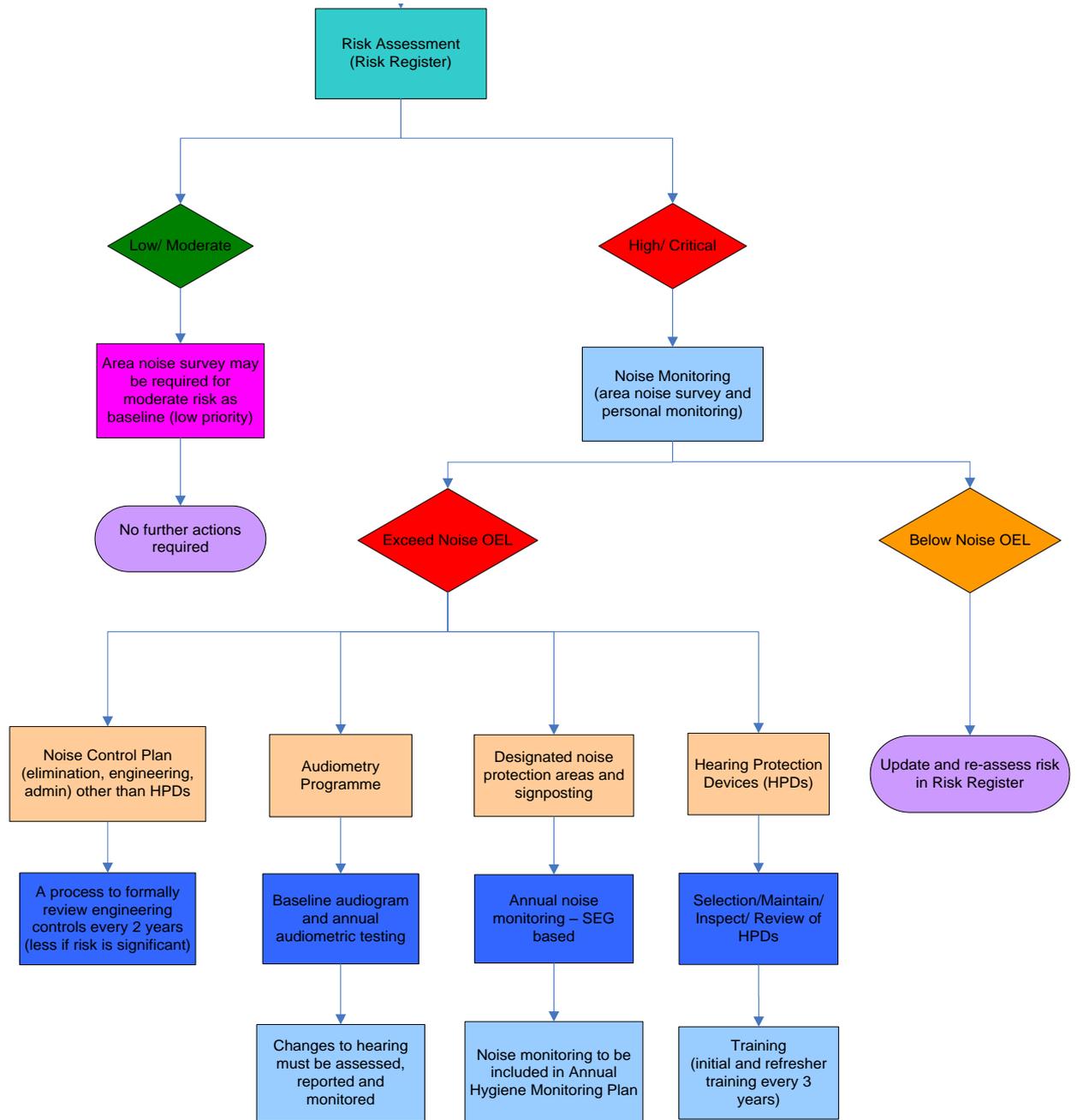
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Note: * Both medical surveillance and periodic workplace monitoring will be required when airborne contaminant level exceed the OEL

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Hearing Conservation Process Flowchart



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