

# **Subscription Agreement**

between

**Bo-Zizi Projects Proprietary Limited**

and

**Nogana Mining Projects Proprietary Limited**

and

**Dataforce Construction and Projects Proprietary Limited**

and

**Surface Minerals Reclamation Proprietary Limited**

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## Subscription Agreement

**Parties**      **Bo-Zizi Projects Proprietary Limited**  
**Nogana Mining Projects Proprietary Limited**  
**Dataforce Construction and Projects Proprietary Limited**  
**Surface Minerals Reclamation Proprietary Limited**

### 1      **Introduction**

- 1.1      The Subscribers wish to subscribe for the Subscription Shares on the terms and subject to the conditions set out in this Agreement.
- 1.2      The Company is willing to issue the Subscription Shares to the Subscribers on the Subscription Date on the terms and subject to the conditions set out in this Agreement.

### **It is agreed**

### 2      **Definitions and interpretation**

- 2.1      In this Agreement:
- (1)      **Agreement** means this subscription agreement;
  - (2)      **Business Day** means any day other than a Saturday, Sunday or official public holiday in South Africa;
  - (3)      **Company** means Surface Minerals Reclamation Proprietary Limited (Registration No. 2019/536672/07), a private company duly incorporated in accordance with the laws of South Africa;
  - (4)      **Ordinary Shares** means no par value ordinary shares in the share capital of the Company;
  - (5)      **Parties** means the Company and the Subscribers, and **Party** means, as the context requires, any one of them;
  - (6)      **Signature Date** means the date of the last signature to this Agreement;
  - (7)      **South Africa** means the Republic of South Africa as constituted from time to time;
  - (8)      **Subscribers** means:
    - (a)      Bo-Zizi Projects Proprietary Limited (Registration No. 2012/226127/07), a private company duly incorporated in accordance with the laws of South Africa;
    - (b)      Nogana Mining Projects Proprietary Limited (Registration No. 2017/192741/07), a private company duly incorporated in accordance with the laws of South Africa; and

- (c) Dataforce Construction and Projects Proprietary Limited (Registration Number: 2015/216399/07), a private company incorporated in terms of the laws of South Africa;
  - (9) **Subscription Date** means the Signature Date;
  - (10) **Subscription Price** means the amount which is set out against each Subscriber's name in Schedule 1;
  - (11) **Subscription Shares** means that number of Ordinary Shares which is set out against each Subscriber's name in Schedule 1; and
  - (12) **Warranties** means the warranties provided by the Company to the Subscribers as contemplated in clause 4 as set out in Schedule 2 and **Warranty** shall have a corresponding meaning.
- 2.2 Any reference in this Agreement to:
- (1) a **clause** is, subject to any contrary indication, construed as a reference to a clause of this Agreement;
  - (2) **law** is construed as any law including common law, statute, constitution, decree, judgment, treaty, regulation, directive, by-law, order or any other measure of any government, local government, statutory or regulatory body or court having the force of law;
  - (3) **person** is construed as a reference to any natural or juristic person, firm, company, corporation, government, state, agency or organ of a state, association, trust or partnership (whether or not having separate legal personality).
- 2.3 Where a word or expression is given a particular meaning, other parts of speech and grammatical forms of that word or expression have a corresponding meaning.
- 2.4 The headings do not govern or affect the interpretation of this Agreement.
- 2.5 If any provision in a definition confers rights, or imposes obligations on any Party, effect is given to it as a substantive provision of this Agreement.
- 2.6 Unless the context indicates otherwise an expression which denotes any gender includes both the others; reference to a natural person includes a juristic person; the singular includes the plural, and the plural includes the singular.
- 2.7 Any number of days prescribed in this Agreement excludes the first day and includes the last day.
- 2.8 Unless the context indicates otherwise if the day for payment of any amount or performance of any obligation falls on a day which is not a Business Day, that day will be the next Business Day.
- 2.9 The words "including" and "in particular" are without limitation.
- 2.10 Any reference to legislation is to that legislation as at the Signature Date, as amended or replaced from time to time.
- 2.11 Any reference to a document or instrument includes the document or instrument as ceded, delegated, novated, altered, supplemented or replaced from time to time.
- 2.12 A reference to a Party includes that Party's successors-in-title and permitted assigns.

- 2.13 A time of day must be construed as a reference to Johannesburg time.
- 2.14 The rule of interpretation that, in the event of ambiguity, the contract must be interpreted against the Party responsible for the drafting of the contract does not apply.
- 2.15 The termination of this Agreement does not affect those of its provisions which expressly provide that they will operate after termination, or which must continue to have effect after termination, or which must by implication continue to have effect after termination.

### **3 Subscription**

3.1 On the Subscription Date each Subscriber shall:

- (1) subscribe for the Subscription Shares at the Subscription Price; and
- (2) pay the Subscription Price in cash to the Company, free from any exchange or bank commission and free of any withholding or deduction, including, without limitation, any taxes, charges, levies or duties that may be levied on such payment, into such bank account as may be designated by the Company for this purpose.

3.2 On the Subscription Date, and against receipt by the Company of payment of the relevant Subscription Price, the Company shall allot and issue Subscription Shares to the Subscribers in accordance with the provisions of clause 3.1 and shall:

- (1) procure that the securities register of the Company is updated to reflect the Subscribers as the registered holders the Subscription Shares;
- (2) deliver to each Subscriber:
  - (a) a certificate in respect of its Subscription Shares; and
  - (b) a copy of the Company's board of directors' resolutions approving and authorising the conclusion of this Agreement and all transactions contemplated in this Agreement.

3.3 The Parties acknowledge and agree that all costs and duties associated with the creation, issue and allotment of the Subscription Shares shall be borne and paid by the Company.

### **4 Warranties**

4.1 The Company gives to the Subscribers the Warranties, it being agreed that:

- (1) the Warranties shall also be deemed to be representations and undertakings by the Company in favour of the Subscribers;
- (2) insofar as any of the Warranties is promissory or relates to a future event, it shall be deemed to have been given as at the due date for fulfilment of the promise or for the happening of the event, as the case may be;
- (3) each Warranty shall be presumed to be material unless the contrary is proved;
- (4) each Warranty shall prima facie be deemed to be a representation of fact inducing the Subscribers to enter into this Agreement; and
- (5) each Warranty shall be a separate warranty and shall in no way be limited or restricted by reference to or inference from the terms of any other Warranty.

- 4.2 The Subscribers are entering into this Agreement relying upon the Warranties.
- 4.3 Unless otherwise stated or otherwise required by the context, the Warranties shall apply as at the Signature Date and the Subscription Date and during the period between those dates.
- 4.4 Where the same facts may give rise to a claim under this clause 4, or under any other provision of this Agreement, the amount of such claim shall not be reckoned twice in determining the aggregate value of claims.

## 5 **Breach**

- 5.1 Should any Party (**Defaulting Party**) breach of any of the provisions of this Agreement, then another Party (**Aggrieved Party**) may give the Defaulting Party 14 Business Days written notice or such longer period of time as the Aggrieved Party may specify in the notice, to remedy the breach. If the Defaulting Party fails to comply with the notice, the Aggrieved Party may:

- (1) claim immediate performance by the Defaulting Party of all of the Defaulting Party's obligations that are due for performance; or
- (2) subject to clause 5.2 cancel this Agreement upon written notice to the Defaulting Party where the breach constitutes a material breach,

in either event without prejudice to the Aggrieved Party's right to claim damages or to exercise any other rights that the Aggrieved Party may have under this Agreement or in law.

- 5.2 Neither Party shall be entitled to cancel this Agreement subsequent to the Subscription Date.
- 5.3 Any cancellation is without prejudice to any claim that a Party may have in respect of any breach of the terms and conditions of this Agreement by another Party arising prior to the date of cancellation.
- 5.4 For the avoidance of doubt, the Parties hereby record and agree that cancellation of this Agreement by one Party as a result of a breach by a Defaulting Party shall constitute a cancellation of the Agreement only insofar as it applies to the Defaulting Party.

## 6 **Dispute resolution**

- 6.1 Any dispute or difference arising from, or in connection with, this Agreement, including the interpretation, implementation, effect, rectification, cancellation or any alleged breach thereof, shall be determined in Johannesburg in arbitration in accordance with the rules (the **Rules**) of the Arbitration Foundation of Southern Africa (**AFSA**) by no less than three arbitrators appointed by AFSA, it being the intention of the Parties that, if possible, the arbitration should be held and concluded within 20 Business Days after it has been demanded.
- 6.2 The Parties irrevocably agree that the decision in these arbitration proceedings:
- (1) shall be final and binding on them;
  - (2) shall be carried into effect; and
  - (3) may be made an order of any court of competent jurisdiction.

- 6.3 The provisions of clause 6.2 shall not preclude a Party from bringing any proceedings for urgent relief in a competent Court pending arbitration in terms of this clause.

## **7 General**

- 7.1 This Agreement is the whole agreement between the Parties in regard to its subject matter.
- 7.2 No addition to or variation or consensual cancellation of this Agreement, including this clause 7, has effect unless in writing and signed by the Parties.
- 7.3 No indulgence by a Party to another Party, or failure strictly to enforce the terms of this Agreement, is to be construed as a waiver or be capable of founding an estoppel.
- 7.4 The Parties undertake to do everything reasonable in their power necessary for or incidental to the effectiveness and performance of this Agreement.
- 7.5 Save as is specifically provided in this Agreement, no Party is entitled to cede any of its rights or delegate any of its obligations under this Agreement without the prior written consent of the other Parties.
- 7.6 Any illegal or unenforceable provision of this Agreement may be severed and the remaining provisions of this Agreement continue in force.

## **8 Notices and addresses**

### **8.1 Notices**

Any notice, consent, approval or other communication in connection with this Agreement (**Notice**) will be in writing in English.

### **8.2 Addresses**

- (1) Each Party chooses the physical address and fax number corresponding to its name below as the address to which any Notice must be sent.

#### **(a) Bo-Zizi Projects Proprietary Limited**

Physical address: 20 Numbi Avenue  
Leachville  
Brakpan  
1541

Email address: tshidim@ndizafinance.co.za

#### **(b) Nogana Mining Projects Proprietary Limited**

Physical address: 420 Blinkblaar Street  
Xanadu Eco Park  
Hartbeespoort  
0216

Email address: petermotlana@gmail.com

**(c) Dataforce Construction and Projects Proprietary Limited**

Physical address: 115 Taft Avenue  
Brakpan  
Benoni  
1550

Email address: moeketsi2010@gmail.com

**(d) Company**

Physical address: 206 First Avenue  
Maria Steyn Park  
Edenvale  
1610

Email address: tshidim@ndizafinance.co.za

- (2) Any Party may by Notice to the other Parties change its address.

**8.3 Effective on receipt**

- (1) Any Notice takes effect when received by the recipient (or on any later date specified in the Notice) and, unless the contrary is proved, is deemed to be received:
- (a) on the day of delivery, if delivered by hand to a responsible person at the recipient's physical address in 8.2. If delivery is not on a Business Day, or is after ordinary business hours on a Business Day, the Notice is deemed to be received on the Business Day after the date of delivery;
  - (b) if sent by email before 16h00, be presumed to have been received on the date of successful transmission of the email. Any email sent on or after 16h00 or on a day which is not a Business Day will be presumed to have been received on the following Business Day.
- (2) Despite anything to the contrary in this Agreement, a Notice actually received by a Party is effective even though it was not sent, or delivered, or sent and delivered to its address in 8.2.

**8.4 Service of legal process**

- (1) Each Party chooses its physical address referred to in clause 8.2(1) as its address at which legal process and other documents in legal proceedings in connection with this Agreement may be served (*domicilium citandi et executandi*).
- (2) Any Party may by Notice to the other Parties change its address at which legal process and other documents in legal proceedings in connection with this Agreement may be served to another physical address in South Africa.

**9 Applicable law**



This Agreement is governed by South African law.

10     **Jurisdiction**

The Parties unconditionally consent and submit to the non-exclusive jurisdiction of the Gauteng Local Division, Johannesburg of the High Court of South Africa in regard to all matters arising from this Agreement.

11     **Counterparts**

This Agreement may be executed in counterparts, each of which will be an original and which together constitute the same agreement.

12     **Costs**

Each Party shall pay its own costs incurred by it for the preparation, signing and performance of this Agreement.

### **Schedule 1: Subscription Shares and Subscription Price**

<b>Subscriber</b>	<b>Subscription Shares</b>	<b>Subscription Price</b>
<b>Bo-Zizi Projects Proprietary Limited</b>	35 Ordinary Shares	R35.00
<b>Nogana Mining Projects Proprietary Limited</b>	40 Ordinary Shares	R40.00
<b>Dataforce Construction and Projects Proprietary Limited</b>	25 Ordinary Shares	R25.00

## **Schedule 2: Warranties**

- 1 Expressions defined in the Agreement shall bear the same meaning in this Schedule as that assigned to them in the Agreement.
- 2 The Company hereby warrants to the Subscribers on the basis set out in clause 4 that:
  - 2.1 the Company is duly incorporated as a company with limited liability according to the laws of South Africa;
  - 2.2 the Company has the permission and authority to enter into, and perform its obligations under, this Agreement and is duly authorised to issue the Subscription Shares to the Subscribers;
  - 2.3 on the Subscription Date the Subscribers shall acquire free and unencumbered title to the Subscription Shares;
  - 2.4 no other person or body has any option or right in respect of the Subscription Shares;
  - 2.5 the Company has not taken any action, nor have any proceedings been served on or notified to the Company, nor have any steps been taken or proceedings started or threatened against the Company for its winding up, business rescue or dissolution or for it to enter into any arrangement or composition for the benefit of creditors or for the appointment of a liquidator, business rescue practitioner, curator or similar officer, nor has any execution or other similar process been commenced or undertaken in respect of the assets of the Company.
  - 2.6 No steps will have been taken and the Company is not aware of any steps pending or threatened against the Company for its deregistration.

Signed at \_\_\_\_\_ on the \_\_\_\_\_ day of \_\_\_\_\_ 2020.

For and on behalf of:

**Bo-Zizi Projects Proprietary Limited**

\_\_\_\_\_  
Name: Sinnah M Mohulatsi  
Capacity: Director  
Who warrants authority

Signed at \_\_\_\_\_ on the \_\_\_\_\_ day of \_\_\_\_\_ 2020.

For and on behalf of:

**Nogana Mining Projects Proprietary Limited**

\_\_\_\_\_  
Name: Peter Motlana  
Capacity: Director  
Who warrants authority

Signed at \_\_\_\_\_ on the \_\_\_\_\_ day of \_\_\_\_\_ 2020.

For and on behalf of:

**Dataforce Construction and Projects Proprietary Limited**

\_\_\_\_\_  
Name: Jonas M Mokoena  
Capacity:  
Who warrants authority

Signed at \_\_\_\_\_ on the \_\_\_\_\_ day of \_\_\_\_\_ 2020.

For and on behalf of:

**Surface Minerals Reclamation Proprietary Limited**

\_\_\_\_\_  
Name: Peter Motlana  
Capacity: Director  
Who warrants authority