



NEC3 ENGINEERING AND CONSTRUCTION SUBCONTRACT

AGREEMENTS AND CONTRACT DATA

for a contract between

SOUTHEY CONTRACTING (PTY) LTD

and

for

**IN RESPECT OF PROVISION OF SCAFFOLDING AND INSULATION SERVICES AT THE DUVHA
POWER STATION**

Documents prepared by:

<i>Employer's address</i>
Duvha Power Station Witbank

FORM OF AGREEMENT

- 1 In this Agreement, terms in italics are identified in the Contract Data and defined terms which have capital initials have the meaning given to them in the NEC Engineering and Construction Subcontract 3rd Edition June 2005.
- 2 The Parties to this Agreement are the *Contractor* and the *Subcontractor* as identified in the Contract Data.
- 3 This contract between the Parties comprises the documents entitled
- Agreements and Contract Data
 - Price List
 - Works Information
- and all the documents, or parts of documents appended to or referred to by any of these documents.
- 4 The *Subcontractor* undertakes to fulfil his obligations in terms of this contract and in particular as stated in core clause section two of the *conditions of subcontract*.
- 5 The *Contractor* undertakes to fulfil his obligations in terms of this contract and in particular to pay to the *Subcontractor* the amount due in accordance with the *conditions of contract*.

Signed at _____ on behalf of **SOUTHEY CONTRACTING (PTY) LTD**

(the Contractor)

on this _____ day of _____ 2020

in the presence of the undersigned witnesses, by:

Name (*Please print name*) _____ Signature: _____

In his capacity as _____

Witnesses

1 Name (*Please print*) _____ Signature: _____

2 Name (*Please print*) _____ Signature: _____

Signed at _____ on behalf of _____

(the *Subcontractor*)

on this _____ day of _____ 2020

in the presence of the undersigned witnesses, by:

Name (*Please print name*) _____ Signature: _____

In his capacity as _____

Witnesses

1 Name (*Please print*) _____ Signature: _____

2 Name (*Please print*) _____ Signature: _____

CONTRACT DATA - PART 1
DATA PROVIDED *BY CONTRACTOR*

CONTRACT DATA - PART 1

Data provided by the *Contractor*

1. **General**
- The *conditions of contract* are the core clauses of the NEC3 Engineering and Construction Subcontract 2005 and the clauses for:
 - main option **B**
 - and
 - dispute resolution option **Option W1**
 - and
 - secondary options **X18 and Z clauses**
 - The *works* in the main contract are **The Supply, Erection and dismantling of insulation material and scaffolding**
 - The *subcontract works* are **The Erection and dismantling of Scaffolding**
 - The *Contractor* is **SOUTHEY CONTRACTING (PTY) LTD**
 - Address **8 Gemini St. Linbro Park, Sandton**
 - The *Employer* in the main contract is **Eskom Holding Limited (reg no : 2002/015527/06)**
 - The *Project Manager* in the main contract is **Asanda Mzileni**
 - The *Supervisor* in the main contract is **Adel Breedt**
 - The *Adjudicator* in this subcontract is **In the event that the dispute notified is the same as or similar to a dispute under the Main Contract, the *Adjudicator* under this Contract and the Main Contract are the same person. Otherwise, the Adjudicator is agreed to between the Parties.**
 - The Subcontract Works Information is in **The document attached entitled "Scope"**
 - The Site Information is **Contained in the Main agreement**
 - The *boundaries of the site* are **The areas within the jurisdiction of the Duvha Power Station**
 - The *language of this subcontract* is **English**
 - The *law of this subcontract* is the law of **The Republic of South Africa.**

	<ul style="list-style-type: none"> The <i>period for reply</i> to a communication is For a reply by the Contractor For a reply by the Subcontractor 	24 Hours 12 Hours
	<ul style="list-style-type: none"> The <i>Adjudicator nominating body</i> is 	The Chairman of the SA NEC Users Group Association
	<ul style="list-style-type: none"> The main contract <i>Adjudicator</i> is 	As appointed by the Chairman of the SA NEC Users Group Association
	<ul style="list-style-type: none"> <i>The tribunal</i> is 	Arbitration
	<ul style="list-style-type: none"> The following matters will be included in the Risk Register 	Nil
3. Time	<ul style="list-style-type: none"> The <i>starting date</i> is 	1 October 2020
	<ul style="list-style-type: none"> The <i>subcontract access dates</i> are 	
	Part of the site	Date
	Entire Site	1 October 2020
	<ul style="list-style-type: none"> The <i>Subcontractor</i> submits revised programmes 	Not applicable
4. Testing and Defects	<ul style="list-style-type: none"> The <i>defects date</i> is 	26 weeks after Completion of the whole of the <i>subcontract works</i>
	<ul style="list-style-type: none"> The defect correction period is 	4 hours
5. Payment	<ul style="list-style-type: none"> The <i>currency of this subcontract</i> is 	the South African Rand
	<ul style="list-style-type: none"> The <i>assessment interval</i> is 	Monthly
	<ul style="list-style-type: none"> The <i>interest rate</i> is 	Prime lending rate of Standard Bank South Africa
	<ul style="list-style-type: none"> The period within which payments are made is 	30 days
6. Compensation events	<ul style="list-style-type: none"> The <i>weather measurements</i> to be recorded for each calendar month are: The cumulative rainfall (mm) The number of days with rainfall more than 15mm 	

- The place where weather is to be recorded (on the Site) is on the site of an identified project in close proximity to the major portion of the building works
- The *weather data* are the records of past *weather measurements* for each calendar month which were recorded at a site nearest to that of the *site* and which are available from the South African Weather Service

7. Risks and Insurances

The Contractor provides the following insurances:

Insurance against: A coupon policy for Special Risks Insurance issued by the South African Special Risks Insurance Association

Cover / indemnity: **R 5 000 000.00**

The deductibles are: **R 100 000.00**

Insurance against: Liability for loss of/or damage to property (except the Works, Plant and Materials and Equipment) and liability for bodily injury to or death of a person (not an employee of the Subcontractor) arising from or in connection with the Subcontractor Providing the Works

Cover / indemnity: **R 5 000 000.00**

The deductibles are: **R 100 000.00**

- The minimum limit of indemnity for insurance in respect of loss or damage to property (except the *subcontract works*, Plant and Materials and Equipment) and liability for bodily injury due to death of a person (not an employee of the *Subcontractor*) caused by activity in connection this subcontract for any one event is: **R 5 000 000.00**
- The minimum limit of indemnity for insurance in respect of death or bodily injury to employees of the *Subcontractor* arising out of and in the course of their employment in connection with this subcontract for any one event is: **R 5 000 000.00**

8. Data for selected Option Clauses

- | | | | |
|---------------------|---|--|------------------|
| Option X18.1 | • | The <i>Subcontractor's</i> liability to the <i>Contractor</i> for indirect or consequential loss is | Unlimited |
| Option X18.2 | • | For any one event, the Subcontractor's liability to the Contractor for loss of or damage to the Employer's or Contractor's Property is | Unlimited |

Option X18.4	•	The <i>Subcontractor's</i> total liability to the <i>Contractor</i> for all matters arising under or in connection with this subcontract, other than the excluded matters, is limited to	Unlimited
Option X18.5	•	The <i>end of liability date</i> is	10 years after the Completion of the whole of the subcontract works
Option Z	•	The modified and additional conditions of contract are:	as stated under item 9, Additional and Modified Conditions, within this section.

9. Additional and Modified Conditions

The following additional clauses and/or amendments to the core or secondary option clauses are added to the conditions of contract:

AMENDMENTS

Amendment to core clause 13.1	Z.1	Communication by cellular phone/SMS/WhatsApp is not acceptable.
Amendment to core clause 27.4	Z.2	Add to core clause 27.4 "The Subcontractor submits a health and safety plan to the Contractor within one week of the Contract Date. The Subcontractor does not start work on the site until the approval of the health and safety plan by the Contractor.
Amendment to core clause 61.3	Z.3	Amend by replacing "seven weeks" with "three weeks". Delete the words "the Contractor has not notified the event to the Subcontractor" and delete the words "unless the Contractor should have notified the event to the Subcontractor but did not".
Amendment to core clause 62.6	Z.4	Amend by replacing the word "acceptance" with "rejection".
Amendment to core clause 64.4	Z.5	Amend by replacing the word "acceptance" with "rejection".
Amendments to X18.1 to X18.4	Z.6	Amend by replacing the word "limited" with "unlimited".

ADDITIONAL

Invoicing

Z.7	Z.7	
Z.7.1	Z.7.1	The <i>Contractor</i> submits his valid tax invoice and valid Tax Clearance Certificate one week after receiving a certificate from the Contractor in terms of core clause 51.1; failing which, the period in which payment is required to be made shall be extended by the length of time from the date when the Subcontractor should have submitted his valid tax invoice and valid Tax Clearance Certificate to the date when he does submit it.

Limitation Of Liability

Z.8 The following are additional limitation on liabilities:

	Z.8.1	Notwithstanding anything contained elsewhere in the Contract, the <i>Contractor</i> will not be liable to the <i>Subcontractor</i> for indirect or consequential loss.
Knowledge of the Main Contract	Z.9	The <i>Subcontractor</i> is deemed to have read, understood and have knowledge of the Main Contract, particularly the Works Information and shall not perform an act that will compromise the <i>Contractor's</i> position under the Main Contract.
Cession and Delegation of Rights and Liabilities	Z.10.1	Neither party hereto may cede and delegate any of its rights and obligations (including liabilities) under this Agreement to any person without the written consent of the other.
	Z.10.2	Notwithstanding the above, the <i>Contractor</i> may on written notice to the other party cede and delegate its rights and obligations under this agreement to any of its subsidiaries or any of its present divisions or operation which may be converted into a separate legal entity as a result of the restructuring of the <i>Contractor</i> .
Reallocation of works	Z.11	The <i>Contractor</i> may reallocate a part of the <i>Works</i> to others or may allocate additional work to the <i>Subcontractor</i> or may elect to undertake the <i>Works</i> by itself.

CONTRACT DATA - PART 2
DATA PROVIDED BY *SUBCONTRACTOR*

CONTRACT DATA - PART 2

Data provided by the Subcontractor

- 1. **Statements given in all subcontracts**
 - The Subcontractor is
 - Name: _____
 - Registration No. _____
 - Address: _____
 - The *direct fee percentage* is _____%
 - The *subcontracted fee percentage* is _____%
 - The *subcontract working areas are the Site and* _____%
 - The key people are
 - Name: _____
 - Job: _____
 - Responsibilities: Qualifications: _____
 - _____
 - _____
 - _____
 - _____
 - Experience: _____
 - Name: _____
 - Job: _____
 - Responsibilities: _____
 - _____
 - _____
 - Qualifications: _____
 - Experience: _____
 - _____
 - _____
 - The following matters will be included in the Risk Register Nil
 - The *activity schedule* is Not Applicable
 - The tendered total of the Prices is Not Applicable
 - The *Completion date* for the whole of the *works* is 31 December 2020
- 2. **Data for the Shorter Schedule of Cost Components**
 - The percentage for people overheads is _____%
 - The published list of Equipment is the latest edition of the list published by the Contractor Plant Hire Association
 - The percentage for adjustment for Equipment in the published list is plus 5%

-
- The hourly rates for Defined Cost of design outside the Working Area are

N/A

- The percentage for design overheads is **N/A**
- The categories of design employees whose travelling expenses to and from the Working Areas are included in Defined Cost are **N/A**

PRICE LIST

DEFINITIONS AND CLARIFICATIONS

PROJECTS AND OUTAGES

The rates contained in the tables shall be applied in the following instances :

- a) Where the Contractor has been instructed by the Employer to do so.
- b) During an outage conducted where dedicated crews are requested.
- c) The rate shall be an all inclusive rate and shall therefore include the following :
 - Labour
 - Transport
 - Protective equipment and clothing
 - Site establishment and dis-establishment
 - Subsistence charges
 - Training costs
 - All leave types costs
 - Any bonuses and incentives
 - Accommodation if required

PRICE SECTION 1 : LABOUR			Normal Time	Overtime Rates			Standby
				Monday - Friday	Saturday	Sunday/PPH	Per period per person
Item	Description	Unit	Hourly Rate	Hourly Rate	Hourly Rate	Hourly Rate	2 hours
1.1	Site Staff						
1.1.1	Site Manager	Per manhr					
1.1.2	Clerk	Per manhr					
1.1.3	Driver	Per manhr					
1.1.4	Storeman	Per manhr					
1.1.5	Safety Officer	Per manhr					
1.1.6	Hoist Operator	Per manhr					
1.1.7	Safety Representative (*)	Per manhr					
1.2	Scaffolding Labour						
1.2.1	Supervisor	Per manhr					
1.2.2	Charge Hand	Per manhr					
1.2.3	Scaffolder	Per manhr					
1.2.4	Labourer	Per manhr					
1.2.5	Scaffold Inspector (*)	Per manhr					
1.3	Insulation Labour						
1.3.1	Supervisor (*)	Per manhr					
1.3.2	Charge Hand (*)	Per manhr					
1.3.3	Sheet Metal Manufacturer (*)	Per manhr					
1.3.4	Sheetmetal Applicator (*)	Per manhr					
1.3.5	Lagger (*)	Per manhr					
1.3.6	Labourer (*)	Per manhr					

PRICE SECTION 2 : MATERIAL

2.1 INSULATION MATERIALS			
Galvanised wire mesh mattress limiting temp 675°C	Unit	Price Per Roll	Price Per m ²
Density X Thickness			
80 Kg/m X 40mm Thick	Roll		
80 Kg/m X 50mm Thick	Roll		
80 Kg/m X 75mm Thick	Roll		
80 Kg/m X 100mm Thick	Roll		
80 Kg/m X 110mm Thick	Roll		
100 Kg/m X 40mm Thick	Roll		
100 Kg/m X 50mm Thick	Roll		
100 Kg/m X 75mm Thick	Roll		
100 Kg/m X 100mm Thick	Roll		
100 Kg/m X 110mm Thick	Roll		
120 Kg/m X 40mm Thick	Roll		
120 Kg/m X 50mm Thick	Roll		
120 Kg/m X 75mm Thick	Roll		
120 Kg/m X 100mm Thick	Roll		
160 Kg/m X 40mm Thick	Roll		
160 Kg/m X 50mm Thick	Roll		
160 Kg/m X 75mm Thick	Roll		

2.2 SCAFFOLDING MATERIALS		
Delivery of scaffolding materials (Kwikstage)	Per ton	
Hire of scaffolding materials	Per ton per week	
Removal of scaffolding materials	Per ton	

WORKS INFORMATION

1 Description of the Works

1.1 Overview

- 1.1.1 The works is the erection, maintenance and dismantling of scaffolding at the Duvha Power Station during Outages and for Projects as determined, from time to time by the *Employer*.
- 1.1.2 The *Subcontractor* provides all necessary information and assistance to accommodate the requirements of the *Contractor* for all assessments, technical, financial and administrative control and accounting systems with regard to the works.
- 1.1.3 The *Subcontractor* is advised that the requirements for scaffolding services during the contract period may vary and will be determined by the *Contractor* and/or the *Employer*.

1.2 Work to be performed by the *Subcontractor* to provide the works

- 1.2.1 The *Subcontractor* makes available staff to carry out the work on a 24 hour, 7 day a week basis, inclusive of public holidays, to achieve completion by the agreed dates as directed by the *Employer/Contractor*.
- 1.2.2 All work provided by the *Subcontractor* shall be in accordance with the requirements of the *Contractor/Employer* as well as a minimum, SABS 085-1998 (latest version or as amended).
- 1.2.3 The scope of work includes amongst others the management, supervision, labour, consumables and administration relating to the works.
- 1.2.4 The work will apply to the following areas of the plant (but will not be limited to these areas);
 - Boiler walls, drums, headers, heaters and associated equipment
 - Coal and Ash handling plants
 - Turbines and auxiliary plant
 - Pipe work, valves and fittings
 - Heaters, tanks, vessels and feedpumps
 - Ducting, air heaters, fabric filters and fans
 - Boiler and Turbine houses
 - Generators and transformers
- 1.2.5 The *Subcontractor* erects, maintains and dismantles scaffolding in accordance with the instructions of the *Contractor*.
- 1.2.6 The erection and dismantling of scaffolding in a Power Station is very dangerous. The *Subcontractor* is to strictly adhere to the *Employers* safety regulations and precautions as well as the *Contractors* practices and procedures.
- 1.2.7 The *Contractor* will be responsible of the design of the scaffolding and the *Subcontractor* is to ensure that the scaffold structures are erected in accordance with the designs.
- 1.2.8 The *Subcontractor* will be responsible to inspect scaffolding structures that have been erected and note such inspections on that scaffolding register and inspection boards.
- 1.2.9 During outages, the *Subcontractor* assigns experienced members to the works.
- 1.2.10 The *Subcontractor* will be required to liaise with other contractors and the *Employer* during the execution of the works.
- 1.2.11 The *Contractor's* representative at the Power Station will advise the *Subcontractor* of the areas of work to be allocated to the *Subcontractor*, the number and skill levels required and the approximate duration of the works.
- 1.2.12 The *Subcontractor's* personnel will be required to make use of the Time and Attendance to verify hours worked by all of the *Subcontractor's* personnel. Should the *Subcontractor's* personnel not make use of the Time and Attendance system, the *Subcontractor* will not be paid for such hours.
- 1.2.13 The *Contractor* make the following available to the *Subcontractor* :
 - 1.2.13.1 Site and Laydown areas for offices and storage
 - 1.2.13.2 Electricity
 - 1.2.13.3 Tie in points for toilet facilities
 - 1.2.13.4 Potable water points
 - 1.2.13.5 Plant Permits

-
- 1.2.13.6 Medical Services in cases of emergency, however any expenses incurred will be for the account of the *Subcontractor*
 - 1.2.13.7 Dumping area for waste
 - 1.2.13.8 Cranage and hoist facilities if available

1.3 Health, Safety and Environment

- 1.3.1 The *Subcontractor* complies with the Occupational Health and Safety procedure as issued by the *Employer*. The *Subcontractor* must furthermore comply with the *Employer's* Safety, Health and Environment Procedure for Contractors, which are site specific as stipulated in the Construction Regulations.
- 1.3.2 In carrying out its obligations in terms of this Contract, in providing the works, using plant, materials and equipment, and whilst on the site for any reason, the *Subcontractor* complies and procures and ensures the compliance by its employees and agents with :
 - 1.3.2.1 The provisions of the Occupational Health and Safety Act 85 of 1993 (as amended) and all regulations in force from time to time in terms of that Act and
 - 1.3.2.2 The *Employer's* "Safety, Health and Environmental Requirements for Contractors" document (as amended) and other such relevant and *Employer* and *Contractor* Safety Regulations as are applicable for the works. Whilst every effort will be made to issue these to the *Subcontractor*, the *Subcontractor* is to be pro-active in determining if any changes have been made.
 - 1.3.2.3 The *Subcontractor*, at all times, considers itself to be the employer of the purposes of the Health and Safety Act, Act 85 of 1993 and shall not consider itself under the supervision or management of the *Contractor* with regard to compliance with the SHEQ requirements, and furthermore, the *Subcontractor* shall not consider itself to be subordinate or under the supervision of the *Contractor* in respect of these matters. The *Subcontractor* is at all times responsible for the supervision of its employees, agents and takes full responsibility and accountability for ensuring that they are competent, aware of the SHEQ requirements and execute the work in accordance with the SHEQ requirements.
- 1.3.3 The *Contractor* may, at any stage during this period of this contract :
 - 1.3.3.1 Conduct health and safety audits regarding all aspects of compliance with the SHEQ requirements at any site establishment of the *Subcontractor*
 - 1.3.3.2 Refuse any employee or agent of the *Subcontractor* access to the premises if such person has been found to commit an unsafe act or any unsafe working practice or is found not to be qualified, competent or authorised in terms of the SHEQ requirements
 - 1.3.3.3 Issue a stop order to the *Subcontractor* should the *Contractor* or any of its employees become aware of unsafe working procedure or condition or any non-compliance with any provision of the SHEQ requirements.
- 1.3.4 The *Subcontractor* is to immediately report any disabling injury as well as any threat to the health or safety of which it becomes aware of whilst undertaking the works or on the site to the *Contractor's* representative.
- 1.3.5 The *Subcontractor* confirms that it has been provided with sufficient written information regarding the health and safety arrangement and procedures applicable to the works to ensure compliance by it and all its employees and agents. The *Subcontractor* confirms that this contract constitutes written arrangements and procedures between the parties regarding health and safety for the purposes of section 37(2) of the Occupational Health and Safety Act 85 of 1993 as well as the Construction Regulations.
- 1.3.6 The *Subcontractor* agrees that the *Contractor* and the *Employer* are relieved of any and all of their responsibilities and liabilities in terms of Section 37(1) of the Occupational Health and Safety Act 85 of 1993 in respect of any acts or omissions of the *Subcontractor*, the *Subcontractors* employees or agents to the extent permitted by the Occupational Health and Safety Act 85 of 1993 as well as the Construction Regulations.
- 1.3.7 The *Subcontractor* hereby indemnifies the *Contractor* and *Employer* and holds the *Contractor* and *Employer* harmless in respect of any and all loss, costs, claims, demands, liabilities, damages, penalties or expenses that may be made against the *Contractor* or *Employer* and/or suffered by the *Contractor* and/or the *Employer* as a result of any failure by the *Subcontractor* or its employee or agents to comply with their obligations in terms of the clause and/or the failure of the *Contractor* and/or *Employer* to procure the compliance by the *Subcontractor*, its employees or agents with their responsibilities and obligations in terms of the or arising from the Occupational Health and Safety Act 85 of 1993 as well as the Construction Regulations.
- 1.3.8 No work shall be carried out without a "PERMIT TO WORK" as applicable to the site.

-
- 1.3.9 The employees of the *Subcontractor* shall attend the safety induction training as provided by both the *Employer* and the *Contractor* before being allowed to work on the Site. It is the responsibility of the *Subcontractor* to ensure that all employees have attended the safety inductions.
 - 1.3.10 In case of fire the *Subcontractor* is to contact the control room immediately.
 - 1.3.11 The *Subcontractor* is to ensure that all goods, services or work done complies with the terms of the Environmental legislation and ISO14001.
 - 1.3.12 The *Subcontractor* is required to comply with the Employer's 5 (Five) Cardinal rules at all time. Failure to comply with these rules will be considered to be a serious offence and will be dealt with in the harshest way.

1.4 PRODUCTIVITY

- 1.4.1 The *Contractor* reserves the right to negotiate Key Performance Indicators with the *Subcontractor* to ensure that productivity norms are achieved and maintained.
- 1.4.2 The *Subcontractor* shall make use of the *Contractor's* time and attendance system (currently the PRP system is in use) and shall be given access to the records of the *Subcontractors* employees.