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

<table>
<thead>
<tr>
<th>Documents prepared by:</th>
<th>Employer's address</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Duvha Power Station</td>
</tr>
<tr>
<td></td>
<td>Witbank</td>
</tr>
</tbody>
</table>
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
     - dispute resolution option
     - secondary options
     - The *works* in the main contract are
     - The *subcontract works are*
     - The *Contractor is*
   - Address
   - The *Employer in the main contract is*
   - The *Project Manager in the main contract is*
   - The *Supervisor in the main contract is*
   - The *Adjudicator in this subcontract is*
   - The *Subcontract Works Information is*
   - The *Site Information is*
   - The *boundaries of the site are*
   - The *language of this subcontract is*
   - The *law of this subcontract is the law of*

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The document attached entitled “Scope”

**The Republic of South Africa.**
• The period for reply to a communication is 24 Hours
  For a reply by the Contractor 12 Hours
  For a reply by the Subcontractor

• The Adjudicator nominating body is The Chairman of the SA NEC Users Group Association

• The main contract Adjudicator is As appointed by the Chairman of the SA NEC Users Group Association

• The tribunal is Arbitration

• The following matters will be included in the Risk Register Nil

3. Time

• The starting date is 1 October 2020

• The subcontract access dates are

  Part of the site Date
  Entire Site 1 October 2020

• The Subcontractor submits revised programmes Not applicable

4. Testing and Defects

• The defects date is 26 weeks after Completion of the whole subcontract works

• The defect correction period is 4 hours

5. Payment

• The currency of this subcontract is the South African Rand

• The assessment interval is Monthly

• The interest rate is Prime lending rate of Standard Bank South Africa

• The period within which payments are made is 30 days

6. Compensation events

• The weather measurements 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 **Subcontractor's liability to the Contractor 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 *Subcontractor’s* total liability to the *Contractor* for all matters arising under or in connection with this subcontract, other than the excluded matters, is limited to **Unlimited**

**Option X18.5**  • The *end of liability date 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.**

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**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.7.1** The *Contractor* 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 Contractor will not be liable to the Subcontractor for indirect or consequential loss.

Knowledge of the Main Contract Z.9 The Subcontractor 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 Contractor’s 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 Contractor 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 Contractor.

Reallocation of works Z.11 The Contractor may reallocate a part of the Works to others or may allocate additional work to the Subcontractor or may elect to undertake the Works 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
<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Unit</th>
<th>Normal Time Hourly Rate</th>
<th>Overtime Rates</th>
<th>Standby Per period per person</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.1</td>
<td>Site Staff</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>1.1.1</td>
<td>Site Manager</td>
<td>Per manhr</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>1.1.2</td>
<td>Clerk</td>
<td>Per manhr</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>1.1.3</td>
<td>Driver</td>
<td>Per manhr</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>1.1.4</td>
<td>Storeman</td>
<td>Per manhr</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>1.1.5</td>
<td>Safety Officer</td>
<td>Per manhr</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>1.1.6</td>
<td>Hoist Operator</td>
<td>Per manhr</td>
<td></td>
<td></td>
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<tr>
<td>1.1.7</td>
<td>Safety Representative (*)</td>
<td>Per manhr</td>
<td></td>
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<tr>
<td>1.2</td>
<td>Scaffolding Labour</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>1.2.1</td>
<td>Supervisor</td>
<td>Per manhr</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>1.2.2</td>
<td>Charge Hand</td>
<td>Per manhr</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>1.2.3</td>
<td>Scaffolder</td>
<td>Per manhr</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>1.2.4</td>
<td>Labourer</td>
<td>Per manhr</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>1.2.5</td>
<td>Scaffold Inspector (*)</td>
<td>Per manhr</td>
<td></td>
<td></td>
<td></td>
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<tr>
<td>1.3</td>
<td>Insulation Labour</td>
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<td></td>
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<td>1.3.1</td>
<td>Supervisor (*)</td>
<td>Per manhr</td>
<td></td>
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<td></td>
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<tr>
<td>1.3.2</td>
<td>Charge Hand (*)</td>
<td>Per manhr</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>1.3.3</td>
<td>Sheet Metal Manufacturer (*)</td>
<td>Per manhr</td>
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<td>1.3.4</td>
<td>Sheetmetal Applicator (*)</td>
<td>Per manhr</td>
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<td>1.3.5</td>
<td>Lagger (*)</td>
<td>Per manhr</td>
<td></td>
<td></td>
<td></td>
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<tr>
<td>1.3.6</td>
<td>Labourer (*)</td>
<td>Per manhr</td>
<td></td>
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## PRICE SECTION 2: MATERIAL

### 2.1 INSULATION MATERIALS

<table>
<thead>
<tr>
<th>Density X Thickness</th>
<th>Unit</th>
<th>Price Per Roll</th>
<th>Price Per m²</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Galvanised wire mesh mattress limiting temp 675°C</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>80 Kg/m X 40mm Thick</td>
<td>Roll</td>
<td></td>
<td></td>
</tr>
<tr>
<td>80 Kg/m X 50mm Thick</td>
<td>Roll</td>
<td></td>
<td></td>
</tr>
<tr>
<td>80 Kg/m X 75mm Thick</td>
<td>Roll</td>
<td></td>
<td></td>
</tr>
<tr>
<td>80 Kg/m X 100mm Thick</td>
<td>Roll</td>
<td></td>
<td></td>
</tr>
<tr>
<td>80 Kg/m X 110mm Thick</td>
<td>Roll</td>
<td></td>
<td></td>
</tr>
<tr>
<td>100 Kg/m X 40mm Thick</td>
<td>Roll</td>
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<tr>
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<td></td>
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<tr>
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<td>100 Kg/m X 100mm Thick</td>
<td>Roll</td>
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<td>100 Kg/m X 110mm Thick</td>
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<td>120 Kg/m X 40mm Thick</td>
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<td>160 Kg/m X 50mm Thick</td>
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<tr>
<td>160 Kg/m X 75mm Thick</td>
<td>Roll</td>
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</tbody>
</table>

### 2.2 SCAFFOLDING MATERIALS

<table>
<thead>
<tr>
<th>Service</th>
<th>Description</th>
<th>Rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>Delivery of scaffolding materials (Kwikstage)</td>
<td>Per ton</td>
<td></td>
</tr>
<tr>
<td>Hire of scaffolding materials</td>
<td>Per ton per week</td>
<td></td>
</tr>
<tr>
<td>Removal of scaffolding materials</td>
<td>Per ton</td>
<td></td>
</tr>
</tbody>
</table>
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
1.3.8 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 arrangements 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.