

# **SUBCONTRACTOR AGREEMENT**

BETWEEN

**SJV DRILLING SOLUTIONS PROPRIETARY LIMITED**

AND

**LIRAFLASH PROPRIETARY LIMITED**

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### **Schedule 1      Scope of Services and Schedule Rates**

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## SUBCONTRACTOR AGREEMENT

### 1. Parties

1.1 The Parties to this Agreement are:

1.1.1 **SJV Drilling Solutions Proprietary Limited;** and

1.1.2 **Liraflash Pty Ltd**

1.2 The Parties agree as set out herein.

### 2. Interpretation

2.1 The headnotes to the paragraphs in this Agreement are for reference purposes only and shall not affect the interpretation of any part hereof.

2.2 Unless inconsistent with the context, the words and expressions set forth below shall bear the following meanings:

2.2.1 **"Agreement"** means this subcontractor agreement together with the schedules hereto;

2.2.2 **"Contractor"** means SJV Drilling Solutions Proprietary Limited, registration number 2022/614103/07, a company incorporated in accordance with the laws of South Africa;

2.2.3 **"Duration"** means the Effective Date, or such other period as agreed to in writing and signed by the Parties, and subject to the Termination clause in this Agreement;

2.2.4 **"Dispute"** means any dispute between the Parties arising from or in connection with this Agreement, or the validity, existence, or termination thereof, including a dispute;

2.2.5 **"Effective Date"** means 01 August 2025, irrespective of the Signature Date;

2.2.6 **"Mine"** means Mbuyelo coal opencast operations located near Delmas within the Mpumalanga Province;

2.2.7 **"Parties"** means the Contractor and the Subcontractor and **"Party"** shall mean each or any one of them as the context requires;

2.2.8 **"Project"** means the Services to be rendered by the Subcontractor to the Contractor for a specific period in accordance with Schedule 1, as well as in accordance with any further Schedules hereto. For the avoidance of any doubt, it is agreed that the details of each Project will be recorded in separate schedules to this Agreement, commencing with Schedule 1;

2.2.9 **"Services"** means, in respect of the Project, the Scope of Services set out in Schedule 1 to this Agreement;

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- 2.2.10 "Service Fees" means the charge to be invoiced for Services rendered at the Mine by the Subcontractor to the Contractor;
- 2.2.11 "Signature Date" means the date of signature of this Agreement by the Party last in time to sign the Agreement;
- 2.2.12 "South Africa" means the Republic of South Africa;
- 2.2.13 "Subcontractor" means Liraflash Proprietary Limited, registration number 2016/315425/07, a company incorporated in accordance with the laws of South Africa.
- 2.2.14 "VAT" means value added tax levied in terms of the VAT Act;
- 2.2.15 "VAT Act" means the Value Added Tax Act, No. 89 of 1991.
- 2.3 In this Agreement –
- 2.3.1 clause headings and the heading of the Agreement are for convenience only and are not to be used in its interpretation;
- 2.3.2 an expression which denotes: (i) any gender includes the other gender; (ii) a natural person includes a juristic person and *vice versa*; and (iii) the singular includes the plural and *vice versa*;
- 2.3.3 a Party includes a reference to that Party's successors in title and assigns allowed at law; and
- 2.3.4 a reference to a consecutive series of two or more clauses is deemed to be inclusive of both the first and last-mentioned clauses.
- 2.4 Any reference in this Agreement to –
- 2.4.1 "days" shall be construed as calendar days unless qualified by the word "business", in which instance a "business day" will be any day (other than a Saturday, Sunday or a public holiday) when commercial banks are open for ordinary banking business in South Africa;
- 2.4.2 a "Group" means, in relation to an incorporated Party, such Party and its subsidiaries, any ultimate holding company of that Party and all other subsidiaries of any such ultimate holding company, as the case may be, from time to time;
- 2.4.3 "laws" means all constitutions; statutes; regulations; by-laws; codes; ordinances; decrees; rules; judicial, arbitral, administrative, ministerial, departmental or regulatory judgements, orders, decisions, rulings, or awards; policies; voluntary restraints; guidelines; directives; compliance notices; abatement notices; agreements with, requirements of, or instructions by any governmental body; and the common law, and "law" shall have a similar meaning; and

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- 2.4.4 "person" means any person, company, close corporation, trust, partnership, universal association or other entity whether or not having separate legal personality and includes the state.
- 2.5 The expressions "holding company", "subsidiary", "related person" and "inter-related person" shall have the meaning given in the Companies Act.
- 2.6 The words "include" and "including" mean "include without limitation" and "including without limitation". The use of the words "include" and "including" followed by a specific example or examples shall not be construed as limiting the meaning of the general wording preceding it.
- 2.7 Any substantive provision, conferring rights or imposing obligations on a Party and appearing in any of the definitions in this clause 2 or elsewhere in this Agreement, shall be given effect to as if it were a substantive provision in the body of the Agreement.
- 2.8 Words and expressions defined in any clause shall, unless the application of any such word or expression is specifically limited to that clause, bear the meaning assigned to such word or expression throughout this Agreement.
- 2.9 Unless otherwise provided, defined terms appearing in this Agreement in title case shall be given their meaning as defined, while the same terms appearing in lower case shall be interpreted in accordance with their plain English meaning.
- 2.10 A reference to any statutory enactment shall be construed as a reference to that enactment as at the Signature Date and as amended or substituted from time to time.
- 2.11 Unless specifically 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 business day, the next succeeding business day.
- 2.12 If the due date for performance of any obligation in terms of this Agreement is a day which is not a business day then (unless otherwise stipulated) the due date for performance of the relevant obligation shall be the next succeeding business day.
- 2.13 Where figures are referred to in numerals and in words, and there is any conflict between the two, the words shall prevail, unless the context indicates a contrary intention.
- 2.14 The rule of construction that this Agreement shall be interpreted against the Party responsible for the drafting of this Agreement, shall not apply.
- 2.15 No provision of this Agreement shall constitute a stipulation for the benefit of any person who is not a Party to this Agreement except as expressly otherwise stipulated herein.
- 2.16 The schedules to this Agreement form an integral part hereof and words and expressions defined in this Agreement shall bear, unless the context otherwise requires, the same meaning in such schedules.

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**3. Introduction**

- 3.1 The Contractor has concluded an operations drilling contract with Tsedza Mining Resources Proprietary Limited, a subsidiary of Mbuyelo Coal Proprietary Limited, to provide Drilling Services at Manungu Colliery.
- 3.2 Pursuant to the main contract, the Contractor wishes to subcontract the Services to the Subcontractor, and the Subcontractor wishes to undertake such Services, on the terms recorded in this Agreement.
- 3.3 The Parties wish to record in writing herein the terms and conditions on which the Subcontractor will undertake the Services, and to regulate matters ancillary or incidental thereto.

**4. Appointment and Duration**

- 4.1 With effect from the Effective Date, the Contractor hereby appoints the Subcontractor (which appointment the Subcontractor hereby accepts) to undertake and perform the Services set out in Schedule 1, on the terms and conditions set out in this Agreement.
- 4.2 The appointment of the Subcontractor in terms of this Agreement shall commence and take effect on the Effective Date and shall continue in full force and effect for a period of twelve (12) months from the Effective date.
- 4.3 Either party may at any time terminate this agreement on a date specified by the party in a written notice given to the party at least 60(sixty) days before the date so specified

**5. Services**

The Subcontractor shall perform the Services set out in Schedule 1 at the Mine, on the terms and conditions set out in this Agreement.

**6. Subcontractor's Obligations**

- 6.1 In undertaking to perform the Services, the Subcontractor shall:
- 6.1.1 devote such of its time and attention as is required to perform all its obligations under this Agreement; and
- 6.1.2 do all and every matter which may be requisite, necessary and desirable to complete the Services in a proper and professional manner, and as prescribed by this Agreement.
- 6.2 The Subcontractor shall, for the duration of this Agreement:
- 6.2.1 comply with all reasonable instructions and directions of the Contractor and/or Mbuyelo from time to time;

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- 6.2.2 If applicable, use any asset of the Contractor entrusted to the Subcontractor with the utmost care;
- 6.2.3 exercise the standard of care and due diligence expected of a subcontractor providing similar services;
- 6.2.4 carry out its duties in a timely and professional manner;
- 6.2.5 comply with all applicable laws; and
- 6.2.6 perform its functions in conformity with sound business practice.
- 6.3 Should the Contractor and/or Mbuyelo require any variation of the Services, the Contractor shall timeously inform the Subcontractor of such variation, and if accepted by the Subcontractor, such a variation will be reduced to writing by the Contractor and signed by the Parties. The signed variation will be included as an annexure to this Agreement.

## **7 Contractor's Obligations**

- 7.1 In order to assist the Subcontractor to perform and complete the Services, the Contractor shall:
  - 7.1.1 Liaise with the Subcontractor regarding the details of each Project and the rates to be paid to the Subcontractor, which rates are already set out in Schedule 1 to this Agreement;
  - 7.1.2 give all reasonable assistance as may be reasonably necessary to enable the Subcontractor to comply with its obligations in terms of this Agreement;
  - 7.1.3 ensure the Subcontractor has access to the Mines and any other location as may be agreed to from time to time, to enable the Subcontractor to perform the Services;
  - 7.1.4 Ensure the Subcontractor has access to diesel fuel and water at all times;
  - 7.1.4 comply with all applicable laws and shall obtain and maintain all permits and licences necessary to fulfil its obligations in terms of this Agreement;
  - 7.1.5 adhere to its obligations in terms of this Agreement;
  - 7.1.6 act in conformity with sound business practice.

## **8. Subcontractor's Fees**

- 8.1 The Subcontractor shall keep accurate record in respect of the fees related to the Services rendered monthly for the duration of this Agreement.

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- 8.2 The Subcontractor shall submit its monthly tax invoice together with a summary of the Services rendered to the Contractor before 3<sup>rd</sup> of each month.
- 8.3 It is specifically recorded that the Subcontractor will not, without Contractor's prior written consent, incur Large Disbursements. It is further recorded that accounts in respect of Large Disbursements may be forwarded directly to the Contractor for direct payment to the supplier.
- 8.4 For the avoidance of doubt, each fee payable to the Subcontractor in terms of this Agreement shall be inclusive of VAT, and payable by the Contractor on presentation of a tax invoice by the Subcontractor.
- 8.5 It is specifically recorded that any invoice issued by the Subcontractor to the Contractor for payment shall be payable within thirty (30) days from the date of presentation (unless otherwise agreed), without set-off, deduction or withholding of any kind, into the bank account as the Subcontractor may nominate in writing to the Contractor from time to time.

**9. Nature of this Agreement**

- 9.1 The Contractor is a client of the Subcontractor and neither this Agreement nor anything contained herein shall be construed as creating a partnership, principal / agent relationship or joint venture.
- 9.2 The Subcontractor shall at all times be a subcontractor in relation to the Contractor and shall not be regarded as an employee of the Contractor and/or Mbuyelo, as defined in the Labour Relations Act, 1995 (Act No. 66 of 1995) (as amended) and the Basic Conditions of Employment Act, 1997 (Act No. 75 of 1997) (as amended), the Income Tax Act, 1962 (Act No. 58 of 1962) (as amended), or in any other applicable laws that regulate an employer / employee relationship, taxation thereof and related matters.

**10. Warranties and representations**

- 10.1 As at the Commencement Date, the Subcontractor warrants to the Contractor that it has, and shall for the duration of this Agreement, maintain sufficiently qualified personnel and resources in order to perform the Services required by the Contractor from time to time with due care, skill and diligence.
- 10.2 Notwithstanding any provisions of this Agreement to the contrary, in the event that the Contractor (acting reasonably) is of the opinion that the Subcontractor does not have the necessary capacity, skills or resources to perform or complete any portion of the Services, then the Contractor shall be entitled to source an alternative service provider to perform that portion of such work or services.

**11. Indemnity**

- 11.1 The Contractor shall indemnify and hold harmless the Subcontractor and/or any of its shareholders, directors, officers or employees against any and all actions, claims, demands, proceedings or judgments (collectively the "Claims") of whatever nature, howsoever arising and in whichever jurisdiction which may be instituted against, or incurred by, the Subcontractor and/or any of its shareholders, directors, officers or

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employees and which relate to or arise from this Agreement and the services rendered thereunder, provided that the Contractor shall not be required to indemnify such persons in the event that any of the Claims are finally judicially determined to have resulted from the wilful default or gross negligence of the Subcontractor and/or its shareholders, directors, officers or employees.

- 11.2 The Subcontractor's liability to the Contractor shall be limited to direct damages only (and expressly excludes consequential and indirect losses of whatsoever nature) and shall be capped at the amount of the fees actually paid by the Contractor to the Subcontractor in respect of the work performed and/or services rendered in terms of this Agreement.

12. **Confidentiality**

- 12.1 Neither Party shall disclose or announce the fact, existence or content of this Agreement (or any agreement entered into pursuant to this Agreement) and/or any confidential information of the other Party, to any other person without the express prior written consent of such other Party, except to the extent that such disclosure or announcement is required as specified in clause 12.2.
- 12.2 To the extent that a disclosure or announcement by a Party of the type referred to in this clause 12.2 is required by law, regulation, by a governmental authority or other applicable authority with relevant powers, or in order to enforce any of its right arising under this Agreement, the disclosure or announcement shall be made after due consultation with the other Party and after taking into account the other Party's reasonable requirements as to its timing, content and manner of making or despatch.
- 12.3 The confidential information of each Party shall include, without limitation, all information relating to the other Party, its business, property or affairs received or obtained by the first-mentioned Party in the course of negotiating this Agreement and/or as a result of entering into or performing its obligations under this Agreement.

13. **Breach**

Should a Party ("**Defaulting Party**") breach any other provision of, or any warranties given under, this Agreement, then the other Party ("**Aggrieved Party**") may give the Defaulting Party ten (10) 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 either claim specific performance or cancel this Agreement with immediate effect, in either case 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.

14. **Dispute resolution**

It is recorded that this clause 14, without limitation of clause 16.4, is severable from the rest of this Agreement, shall remain in full force and effect notwithstanding any termination of this Agreement and shall apply to all Disputes.

- 14.1 A Party may, at any time prior to the issue by the other Party of any Court application or action proceedings in respect of a Dispute, by written notice ("**Dispute Notice**") demand that the Dispute be referred to confidential arbitration, and in such case, unless

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otherwise agreed by the Parties in writing, the Dispute shall be determined in accordance with the further provisions of this clause 14.

- 14.2 If there is any Dispute in respect of which a Dispute Notice is given in accordance with clause 14.1, then that Dispute shall be resolved in accordance with the rules for expedited commercial arbitration of the Arbitration Foundation of Southern Africa (or its successor in title) ("**AFSA**") by an arbitrator agreed to in writing by the Parties or, failing such agreement within ten (10) days after it is requested by any Party, appointed by AFSA.
- 14.3 Each Party to this Agreement –
- 14.3.1 expressly consents to any arbitration in terms of the aforesaid rules being conducted as a matter of urgency;
- 14.3.2 irrevocably authorises the other Party to apply, on behalf of the Parties to the Dispute, in writing, to the secretariat of AFSA in terms of article 23(1) of the aforesaid rules for any such arbitration to be conducted on an urgent basis; and
- 14.3.3 agrees that any judgment or award made pursuant to such arbitration shall be final and binding on them, shall be carried into effect, and may be made an order of Court at the instance of any Party thereto.
- 14.4 If AFSA no longer exists then the arbitrator shall be a legal practitioner of not less than 18 years' standing in commercial practice appointed by the chairperson for the time being of the Gauteng Provincial Council (or its successor body) established in terms of the Legal Practice Act, 2014 and the arbitration shall be conducted in accordance with the Arbitration Act No. 42 of 1965 and the Uniform Rules of Court.
- 14.5 If any arbitrator's charges or other costs have to be paid before the arbitrator has made a determination of liability therefor, the Parties shall pay such charges and costs in equal shares, pending any such determination. If a Party has paid any amount towards such costs and charges, but the other Party is obliged to pay such amount, the first-mentioned Party shall be entitled to recover that amount from such other Party, plus interest thereon at the prescribed rate.
- 14.6 Notwithstanding anything to the contrary contained in this clause 14, any Party shall be entitled to apply for an interdict from any competent court having jurisdiction in appropriate circumstances.
- 14.7 The Parties agree that the written demand by a Party in terms of clause 14.1 that the Dispute be submitted to arbitration is deemed to be a legal process for the purpose of interruption of extinctive prescription in terms of the Prescription Act, No 68 of 1969.

**15. Domicilium and notices**

- 15.1 The Parties select as their respective *domicilia citandi et executandi* the following physical addresses, and for the purposes of giving or sending any notice provided for or required under this Agreement, the said physical addresses as well as the following telefax numbers and email addresses –

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15.1.1 Contractor:  
Physical: 109 The Cruve, 29 Baker Road, Edenvale, Gauteng, 1609  
Tel: 079 353 4713 / 071 4564908   
Fax: 086 439 8571  
Email: vtmlaba@gmail.com  
Attention: Mr. Vuyo Mlaba

15.1.2 Subcontractor:  
Physical: 11 Graceland Estate  
Tel: 066 222 4511  
Fax:  
Email: luqman@lfmining.co.za  
Attention: Mr. Luqman Acquah

15.2 A Party may change its *domicilium* to any other physical address in South Africa on written notice to the other Party. Such change of address will be effective 5 (five) business days after receipt of the notice of the change.

15.3 All notices to be given in terms of this Agreement will be given in writing and will be delivered by hand or email and, unless the contrary is proved:

15.3.1 if delivered by hand during business hours, be presumed to have been received on the date of delivery. Any notice delivered after business hours or on a day which is not a business day will be presumed to have been received on the immediately following business day; and

15.3.2 if sent by email during business hours, be presumed to have been received on the date of successful transmission of the email. Any email sent after business hours or on a day which is not a business day will be presumed to have been received on the next following business day.

15.4 Notwithstanding anything to the contrary in this clause 15, any notice or other communications provided for or necessary in terms of this Agreement that is actually received by the person named in clause 15.1 shall be an adequate written notice or communication notwithstanding that it was not sent to or delivered at the chosen *domicilia citandi et executandi*.

## 16. General and miscellaneous provisions

### 16.1 Whole agreement, no variation

16.1.1 This Agreement contains the whole agreement between the Parties in regard to the subject matter thereof.

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16.1.2 No Party is bound by or has any claim or right of action arising from, any express and/or tacit and/or implied term, undertaking, representation, warranty, promise or the like that is not included or recorded in this Agreement.

16.1.3 No addition to, variation or consensual cancellation of this Agreement, including this clause, has effect unless in writing and signed by the Parties.

16.2 Non-Waiver

No settlement of any Dispute arising under this Agreement, and no latitude, extension of time, waiver (express or implied) or other indulgence of any of the provisions or terms of this Agreement, is binding and it has no force and effect unless reduced to writing and signed by each Party. Any such latitude, extension of time, waiver or other indulgence which is given is construed as relating strictly to the matter in respect whereof it was made or given and does not operate as an estoppel against a Party in respect of its rights under this Agreement, nor shall any such latitude granted, waiver or other indulgence prejudice any remedy of the Party giving same in respect of any continuing or other breach of the terms and conditions hereof.

16.3 Remedies Non-Exclusive

Remedies specified in this Agreement are not the exclusive remedies available to the Parties and are specified in addition to any other rights and remedies available to a Party in law.

16.4 Indivisibility

This Agreement is indivisible, save that if it transpires that any part is invalid or unenforceable, such invalid or unenforceable part shall be severed so that the remaining parts which are valid and enforceable will remain valid and will not also be tainted by such invalidity or unenforceability.

16.5 Agreement to remain binding

The provisions of this Agreement shall be and shall remain binding on the heirs, successors and assigns (to the extent permitted) of the Parties hereto, and the respective administrators and trustees of their deceased estates.

16.6 Assignment

Save as expressly provided for in terms of this Agreement, no Party may cede, assign, delegate or otherwise transfer all or any of its rights, interests or obligations under and in terms of this Agreement without the express prior written consent of the other Party.

16.7 Accrued Rights on Termination

The expiry or termination of this Agreement does not prejudice the rights of a Party accrued in respect of any breach or non-performance by the other Party of any of the terms or conditions of this Agreement prior to the expiry or termination thereof and does

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not affect the rights of a Party which specifically or by their nature survive the termination of the Agreement.

**17. Force Majeure**

Neither party shall be liable to the other party failing to fulfil its obligations under this agreement if the reason for such failure is force majeure. Force majeure shall mean, but not limited to, any act, event or cause which is beyond the reasonable control of any of the parties to this agreement including but not limited to fire, explosion, flood, strikes or lock-outs, war, sabotage civil commotion, pandemic, national emergency, or any other act of God.

**18. Costs and expenses**

18.1.1 Except as otherwise stated in any provision of this Agreement or as otherwise agreed in writing between the Parties, each Party shall bear its own costs in relation to the negotiation, preparation and carrying into effect, of this Agreement and all documents referred to in it.

18.1.2 Any costs, including all legal costs on an attorney and own client basis and VAT, incurred by a Party arising out of or in connection with a breach by the other Party shall be borne by the Party in breach.

**19. Default Interest**

Any amount owing and payable by a Party to the other Party under this Agreement which is overdue shall bear interest at the Prime Rate plus 2% from the due date for payment thereof up to and including the date of payment, which interest shall be payable on demand.

**20. Governing Law**

20.1 This Agreement is governed by South African law.

20.2 For the purposes of enforcing this Agreement (including for any purpose contemplated in clause 14.3), each of the Parties unconditionally consent and submit to the non-exclusive jurisdiction of the High Court of South Africa, Mpumalanga Division, Middelburg (Local Seat), in regard to all matters arising from this Agreement.

**21. Signature**

21.1 This Agreement is signed by the Parties on the dates and at the places indicated below.

21.2 This Agreement may be executed in counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same Agreement as at the date of signature of the Party last signing one of the counterparts.

21.3 The persons signing this Agreement in a representative capacity warrant their authority to do so.

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Signed at IRENE on the 1<sup>ST</sup> day of SEPTEMBER 2025.

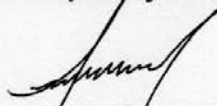
For and on behalf of  
**SJV Drilling Solutions PROPRIETARY LIMITED**



Name: Vuyo Mlaba  
Capacity: Managing Director

Signed at IRENE on the 01 day of SEPTEMBER 2025.

For and on behalf of  
**Liraflash Proprietary Limited**



Name: Luqman Acquah  
Capacity: Director

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## Scope of Work and Schedule of Rates

### 1. Scope of subcontract work

The subcontract work consists of the drilling operations required to be carried out at Mbuyelo Coal opencast operations. The works can be summarised as follows:

Mbuyelo coal open cast:

- Drilling of overburden and Coal minimum 20 000 meters per month

**These quantities are provisional and may vary due to operational requirements.**

### 2. Schedule of rates

- Monthly P&G per drill @ R 120,000
- Drilling Rate Sandstone @ R68,70 per linear meter
- Drilling Rate Shale @ R62,20 per linear meter
- Drilling Rate Coal @ R62,20 per linear meter
- Drilling Rate Dolerite @ R 72,50 per linear meter
- Minimum of 10 000 meters to be billed per drill monthly @ R 66,40 per meter.

All rates and amounts exclude Value Added Tax.

All rates are dry rates

**Caveat:** Should the subcontractor drill less than the minimum of 10 000 meters per drill per month due to any delays by the subcontractor, the contractor will not pay the subcontractor for the difference between actual drilled meters that month and minimum meters.

### 3. Commercial terms and conditions

The following commercial terms and conditions are applicable:

3.1 Rates are fixed for a period of twelve (12) months from the Effective Date of this Agreement, thereafter the rates will be escalated in line with the agreed rate between the parties.

3.2 Payment terms are as set out in this Agreement.

3.3 The fuel cap is 2.5 L/m.

3.4 The Contractor shall be responsible and liable for medical and induction costs for all the Subcontractor's employees.

### 4. Subcontract resources

The Subcontractor shall provide the following resources:

4.1 Drill rigs equipped to meet the Contractor's fatal risk standards.

4.2 Light delivery vehicles equipped to meet the Contractor's fatal risk standards.

4.3 Site manager.

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4.4 Site supervisor/s.

4.5 Mechanic/s.

4.6 Safety officer (x1)

4.7 Site clerk (x1)

4.8 Cleaners (x3)

4.9 Drill rig operators; and

4.10 Drilling assistants.

**5. Payment calculation method**

Invoice calculation for payment will be done by means of daily drill sheets as agreed to by the parties.

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