

TENDER NO. 7 OF 2021/2022

**TERMS OF REFERENCE FOR THE EEC 5 YEAR
STRATEGY FORMULATION**

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1. PREAMBLE

The Eswatini Electricity Company (EEC) invites sealed bids from registered, competent and reputable service providers for the **EEC 5 YEAR STRATEGY FORMULATION**. The objective of this Invitation to Bid is to select a service provider(s) that will provide EEC with the above-mentioned consulting service by entering into a contract. Bidders are required to complete their proposals following the outline indicated in this document.

A non-refundable tender fee of E500 should be paid to any of the **EEC BANK ACCOUNTS** listed in the table below or any of the **EEC REVENUE OFFICES**. Tenderers are to submit their proof of payment as part of the tender bid documents. The **REFERENCE** to be used when making payment is: **T7 of 2021/2022**

Name	Bank Name	Account number	Branch code	Branch
Swaziland Electricity Company	Standard bank	9110003236261	663164	Swazi Plaza
Swaziland Electricity Company	Nedbank	020000286843	360164	Mbabane
Swaziland Electricity Company	First National Bank	62154679735	280164	Mbabane

NB: All banks are in the Kingdom of Eswatini

The Eswatini Electricity Company (EEC) is a power utility, which was formed in 1963 to provide Electricity to the Swazi nation by sourcing or generating power using the least cost sources of energy. The company currently operates in a liberalised market through the Electricity Act of 2007 and the Energy Regulatory Act of 2007. EEC imports 80% of the Electricity demand from Southern African countries through Bilateral Agreements and also from the Day Ahead Market (DAM) through the Southern African Power Pool (SAPP). Locally the company buys 5% from one local Independent Power Producer (Ubombo Sugar Limited) and generates the other 15% from its internal power stations. The power produced by EEC is mainly hydro generated with a total capacity of 60MW and Solar PV with a capacity of 10MW. The company has 246,108 customers as at the end of the 2020/21 financial year of which 92% are domestic customers. The domestic customer base increases by an average of 6% annually as a result of the extensive Rural Electrification programme supported by Government.

The Eswatini Electricity Company (EEC) has an extended 3 year strategy that will be ending in March 2022. It is for this reason that the company is planning to undertake a 5 year strategy formulation exercise, which will include a 5 year action plan starting in April 2022, to execute the newly identified initiatives.

The company is in the process of engaging suitably qualified consultants who would assist in coordinating the formulation of the new 5 year strategy.



2. INSTRUCTIONS AND GENERAL CONDITIONS TO BIDDERS

These instructions should be read carefully by the Bidder before preparing the Bid, to ensure compliance with the key requirements. Failure to fulfil these requirements will result in disqualification of the offer. Special attention should be paid to the following:

- 2.1. **Bid Preparation:** The Bid, as well as all correspondence and documents relating to the Bid exchanged by the Bidder and EEC shall be written in the English language.
- 2.2. **Price Schedule:** Bidders shall indicate pricing and/or breakdown as required on the scope of work. Prices must include all costs for the requirement including any incidental services and shall be inclusive of all applicable taxes.

In the event of an error in the extension of prices, the unit prices shall prevail. Prices shall be fixed for the duration of the contract and shall not be subject to variation. Prices must be denoted in Emalangeneni or Rands.

- 2.3. **Bid Form:** The Bid Submission Form is the Bidder's offer and shall therefore be Completed and signed by the Bidder's authorized representative and stamped with the Bidder's official stamp.

- 2.4. **Bid Documents:** Documents comprising the Bidder's offer are as follows:

- Duly completed and signed Financial Proposal Form with Price Schedule(s) attached as provided in this document.
- Duly completed and signed Bid Submission Form. In the case of a Joint Venture submitting a bid, all the joint venture partners should sign the Bid Submission Form.
- A signed Commitment Form in the format provided in this document.
- A signed Declaration of Eligibility in the format provided in this document.
- A Certified copy of an official statement of the Directors, alternative directors, managers and auditors of the company (for ESWATINI firms: Form 'J').
- A Certified copy of an official statement of the annual summary of shares capital and shares (for ESWATINI firms: Form 'C').
- Police Clearance Certificate for **ALL** Directors.
- A Certified copy of the current Labor Compliance Certificate.
- A Certified Copy of the Current Trading License.
- An original and valid Tax compliance Certificate.
- Audited Financial Statements for the previous year.
- Company Profile.
- Names & Contacts of at least five (5) Reference Customers.
- Proof of payment for tender document

Failure to furnish all information as required by the Invitation to Bid will be at the Bidder's risk, resulting in the rejection of the bid.

- 2.5. **Bidder's Request for Clarification:** A Bidder requiring any clarification on the "Terms of Reference" documents may request such clarification via electronic mail at the following address:

busisiwe.masangane@eec.co.sz



2.6. Modifications and Withdrawal of Bids: A Bidder may modify or withdraw its Bid after submission, provided that written notice of same, is received by EEC prior to the bid submission deadline.

2.7. Bid Submission & Opening: The date, time and place for the opening of Bids shall be as specified below:

Submission	<p>All proposals (Technical and Financial) must be submitted in three (3) hard copies (one original and two copies) Ensure that technical and financial proposals are submitted in <u>separately</u> sealed envelopes and clearly marked differentiating Technical and Financial.</p> <p>The Tenderer shall Seal the Original and each Copy of the Tender in separate envelopes, duly marking the envelopes as “Original Tender (indicating Technical/Financial)”, “Copy No.1 (indicating Technical/Financial)” and “Copy No.2 (indicating Technical/Financial).” The envelopes shall then be sealed in an outer envelope with tenderer’s name and address on reverse side and marked thus:</p> <p>CONFIDENTIAL: TENDER # 7 OF 2021/2022: EEC 5 YEAR STRATEGY FORMULATION The Tender Committee Eswatini Electricity Company P. O. Box 258 Mbabane</p> <p>The location for submission of bids is: Eswatini Electricity Company, Head Office, Eluvatsini House, Mhlambanyatsi Road, Mbabane, Eswatini</p> <p>Bids must be submitted at the above quoted address and be deposited in the bid box provided.</p>
Submission Deadline	<p>The Bid must be delivered at the location specified above, on or before:</p> <p><u>Date:</u> Wednesday 30 June 2021 <u>Time:</u> 12:00 NOON (GMT +2Hours)</p> <ul style="list-style-type: none"> • Delivery means depositing the bid in the bid box or As otherwise instructed. Any bid received by EEC after the specified deadline for submission will not be accepted. • Faxed, emailed or telegraphic tenders will not be accepted.
Opening	<p>Bids will be opened at:</p> <p><u>Place:</u> EEC Head Office, Eluvatsini House, Mhlambanyatsi Road, Mbabane, ESWATINI <u>Date:</u> Wednesday 30 June 2021 <u>Time:</u> Immediately after 12:00 NOON</p>



2.8. Bid Validity:

Bids shall be valid for a period of one hundred and twenty (120) days from the date of submission. Bids with a shorter validity than specified, will be rejected.

2.9. Bid Evaluation:

Bids will be evaluated based on the following criteria:

- Responsiveness of bid based on submission of all required documents.
- Resources and capability based on track record, references and financial assessment.
- Financial responsiveness based on unit pricing, discounts offered, etc.

The methodology for the evaluation of the tenders shall consist of:

2.9.1. **Preliminary Examination:** to determine whether tenders are complete and are responsive to the basic instructions and requirements of the tender document. If a Bid is not substantially responsive, EEC shall reject it.

2.9.2. **Technical Evaluation:** to compare each tender to the technical requirements of the statement of requirements on a pass or fail basis, to determine whether the tenders are substantially responsive. The weighting of the Technical evaluation will be 70% of the overall evaluation and the following will be considered:

- Compliance with proposal requirements (20 marks)
- Methodology / Approach (40 marks)
- Qualifications and relevant experience of key team members with emphasis on similar studies (project team) (30 marks)
- Previous work experiences (references) (10 marks)

2.9.3. **Financial Evaluation:** comparison of prices to determine the tender with the lowest evaluated price. Award may also be according to the cheapest price per item. The weighting of the Financial evaluation will be 30% of the overall evaluation if Technical Evaluation is successful.

2.10. Contract Formation & Award:

EEC reserves the right to accept or reject any Bid, and to annul the bidding process at any time prior to the award of a contract, without thereby incurring any liability to the affected Bidder(s) or any obligation to provide information on the grounds for its action.

- EEC will award the contract to the Bidder, that has submitted the lowest evaluated, substantially responsive Bid, and who is recognized to have the capability to undertake and complete a contract.
- Following the contract award decision, EEC shall prepare a notice of intention to award, which notice shall be sent directly to all tenderers who submitted a tender. The notice will also be published on ESPPRA's website, www.sppra.co.sz. All bidders are required to provide contact email addresses, through which they will be notified of the intention to award on the day that the Intention is sent to the Eswatini Public Procurement Regulatory Agency (ESPPRA).
- Prior to the expiration of the Bid's validity, EEC will notify the successful



Bidder in writing that its Bid has been accepted. The successful Bidder will thereafter, be expected to sign a contract.

2.11. Contract Performance: Contract performance of awarded Bids will be measured against:

- Delivery against agreed methodology indicating milestones;
- Delivery of Bid items against agreed plan with timelines; and
- Delivery of Bid items against Agreed Price.

Contract performance will be considered in future Bids.

Contract Form: Bidders should examine the Contract Form attached to the Bid Document, as it contains information about the contract, which will be signed by the successful Bidder following Contract Award.



BID SUBMISSION FORM

The Tender Committee
Eswatini Electricity Company
P.O. Box 258
Mbabane

Dear Sir / Madam

**Re: TENDER NO: 7 of 2021/2022 –TERMS OF REFERENCE FOR THE
EEC 5 YEAR STRATEGY FORMULATION**

Having examined the Invitation to Bid documents, the receipt of which is hereby duly acknowledged, we, the undersigned, offer to supply “**TERMS OF REFERENCE FOR THE EEC 5 YEAR STRATEGY FORMULATION**”, in conformity with the said “Invitation to Bid” documents as follows:

- i. In accordance with the Schedule of Prices attached herewith and made part of this Bid and which are inclusive of all taxes.
- ii. We undertake, if our Bid is accepted, to deliver the service in accordance with the delivery schedule in the Schedule of Requirements.
- iii. We agree to abide by this Bid for a period of one hundred and twenty days (120) days from the date fixed for Bid opening and it shall remain binding upon us and may be accepted at any time before the expiration of that period.

Until a formal Contract is prepared and executed, this Bid, together with your written acceptance thereof and your notification of award, shall constitute a binding Contract between us.

We understand that you are not bound to accept the lowest or any bid you may receive.

Name: _____ Signature: _____

In the capacity of: _____ Date: _____
(Designation)

Duly authorized to sign bid for and on behalf of: _____
(Name of Bidding Company)

Company Stamp/Seal:



SCOPE OF WORK

The consultant will provide a comprehensive 5 year strategy document, with an implementable action plan. The strategy to be formulated should take into account the dynamic environment in which the Eswatini Electricity Company operates. This should also take into account the company's stakeholders i.e. look at Internal and External environmental factors.

The Scope of work to be covered is as follows:

- a. Diagnose the company with the view of getting enough information to formulate the strategy.
- b. Coordinate the formulation of the strategy by engaging the company's key stakeholders in formulating the strategy. The engagement with the above people will include a workshop that will be held in a place and venue to be identified by EEC.
- c. Financial stress testing of identified strategy initiatives.
- d. Develop strategy execution framework and monitoring tools
- e. Document the strategy for EEC for further presentation to the company's Board of Directors. The document should cover but not limited to the following:
 - Clear Strategic Objectives
 - Identified resources to achieve the objectives
 - Internal and external analysis
 - Risk analysis
 - Implementation plan, with budget for the strategy.

The expected outputs from the Strategy session will be initiatives that ensure sustainability, an improved financial position, optimal resource allocation and service excellence.

Specific works to be undertaken

The consultant will undertake the following minimum items of work:

- Company diagnostics
- Strategy formulation
- Financial stress tests of identified strategy initiatives
- Documentation of EEC 5 year strategy
- Develop strategy execution framework and monitoring tools.

EEC anticipates that the whole exercise will be completed within 12 weeks and thus requires the bidder to include a tentative project plan with clear timelines in their submissions.

Report presentation

Reports are to be written in English and shall be submitted in a digital format on a USB and three (3) hard copies. EEC places great importance on timely submission of reports and expect that the reports will be presented by the due dates. The Final Report shall be accompanied by a computer Digital copy on a USB bearing the report in PDF format. Any spreadsheet or model tables included with the report should also be in PDF format on the USB.

- a. Final draft report



A final Draft report shall be submitted on the time agreed upon during contract negotiations.

b. Final report

On completion of the project the Consultant shall prepare and submit the Final Report.



PRICE SCHEDULE

Item	Quantity/Unit of Measure	Unit Price/Rate	Total (E)
Diagnosis of the Company (Risk Analysis)			
Engagement with Key Stakeholders (External and Internal) and provision of proposed workshops			
Financial Stress Testing			
Strategy Execution Framework and Monitoring Tools			
Strategy Documentation and Presentation to Board of Directors and Management (allow for 2 presentations)			
Any other costs (to be priced separately) i.e travel, subsistence, administration costs etc.			

NOTE:

Please indicate if your price is inclusive or exclusive of V.A.T



FINANCIAL PROPOSAL FORM

The Tender Committee
Eswatini Electricity Company
P.O. Box 258
Mbabane

Dear Sir / Madam

**Re: TENDER NO: 7 of 2021/2022 –TERMS OF REFERENCE FOR THE
EEC 5 YEAR STRATEGY FORMULATION**

We the undersigned, offer to provide the consulting services for the “**EEC 5 YEAR STRATEGY FORMULATION**”, in accordance with your terms of reference and our Technical proposal.

Our attached pricing schedule is for the amount of**{Insert amount(s) in words and figures including currency and inclusive of local taxes which shall be confirmed or adjusted, if needed, during negotiations}.**

Our Financial Proposal shall be valid and remain binding upon us, subject to the modifications resulting from Contract negotiations, for the period of time specified in this document.

We understand that you are not bound to accept the lowest or any bid you may receive.

Name: _____ Signature: _____

In the capacity of: _____ Date: _____

(Designation)

Duly authorized to sign bid for and on behalf of:

(Name of Bidding Company)

Company Stamp/Seal:



COMMITMENT FORM

I(name of tenderer in full),.....
hereby agree to deliver all services without altering the tendered price I quoted during tender
submission date.

Name: _____ Signature: _____

Capacity of: _____ Date: _____
(Designation)

Duly authorized to sign bid for and on behalf of:

(Name of Bidding Company)

Company Stamp/Seal:



DECLARATION OF ELIGIBILITY

The Tender Committee
Eswatini Electricity Company
P.O. Box 258
Mbabane

Dear Sir/ Madam

**Re: TENDER NO: 7 of 2021/2022 – TERMS OF REFERENCE FOR THE EEC 5
YEAR STRATEGY FORMULATION**

In accordance with the eligibility requirements of the Bid documents we hereby declare that:

- (a) We..... (Name of Bidder) including any joint venture partners or consortium partners, are a legal entity and have the legal capacity to enter into the contract;
- (b) We are not insolvent, in receivership, bankrupt or being wound up, our affairs are not being administered by a court or a judicial officer, our business activities have not been suspended, and we are not the subject of legal proceedings for any of the foregoing;
- (c) We have fulfilled our obligations to pay taxes and social security contributions;
- (d) We have not, and our directors or officers have not, been convicted of any criminal offence related to our/their professional conduct or the making of false statements or misrepresentations as to their qualifications to enter into a contract within a period of five years preceding the commencement of the procurement proceedings; and
- (e) That we do not have a conflict of interest in relation to the procurement requirement.

Signed: _____

Date: _____

Company Stamp/Seal:



SUBMISSION CHECKLIST

REQUIREMENT		AVAILABLE / NOT AVAILABLE (PLEASE TICK <input type="checkbox"/> OR CROSS <input type="checkbox"/> AS APPROPRIATE)
A.	Completed Financial Proposal Form with Attached Price Schedule based on scope of work detail provided, Bid Submission Form, Commitment Form, Declaration of Eligibility.	
B.	A Certified Copy of Current Trading Licence.	
C.	An original and valid Tax compliance Certificate	
D.	A Certified Copy of Current Labor Compliance Certificate.	
E.	A Certified Copy of Form J and Form C.	
F.	Police Clearance Certificate for <u>ALL</u> Directors.	
G.	Financial Statements for the previous year.	
H.	Company Profile.	
I.	Names and Contacts of at least five (5) Reference Customers.	
J.	Proof of payment for tender	



MEMORANDUM OF AGREEMENT/CONTRACT FORM

THE AGREEMENT:

WITNESSETH

WHEREAS _____ is in the business of providing
and supplying _____;

WHEREAS _____ subject, to the terms and conditions stated herein is prepared to sell and deliver to the purchases, on an ongoing basis and its exclusive supplier and the purchaser is prepared to buy on this basis from the supplier all of the purchasers product requirements.

NOW THEREFORE, in consideration of the mutual covenants and agreements herein contained and for good and valuable consideration, duly received the parties hereto agree as follows;

1. DEFINITIONS AND INTERPRETATIONS

1.1 In this Agreement:

The clause headings of this Agreement are inserted for reference purposes and shall in no way govern or affect the interpretation thereof.

Unless the context indicates a contrary intention an expression which denotes any gender includes the other genders, a natural person, a juristic person and vice versa, the singular includes the plural and vice versa.

Unless inconsistent with the context, the expressions set forth below shall bear the meanings assigned to them.

“Agreement” refers to this agreement as amended from time to time any indenture agreement or instrument supplemented or ancillary hereto or in implementation hereto.`

“Business day” refers to any day excluding Saturday, Sunday and all public holidays.

“Force Majeure Event” means an event, or a series of related events, that is outside the reasonable control of the party affected.



“Person” means any individual, Company , Corporation, Partnership, Firm, Trust, Sole Proprietor, Government, Entity however designated or constituted;

“Purchaser” means the Eswatini Electricity Company, acting through the office of the Bursar;

“Supplier” means a natural person or incorporated body that is party to a contract with EEC for the provision of goods, works, or services and includes a contractor, consultant or service provider.

“Term” means the duration of this Agreement;

2. COMMENCEMENT AND DURATION

2.1 The Agreement shall be deemed to have come into force and effect on the _____ 201____ notwithstanding the date of signature thereof.

2.2 The agreement shall continue to the _____ unless terminated in accordance with the termination Clause.

2.3 The agreement may be terminated by any party on giving at least thirty (30) calendar days’ notice to the other party.

3. APPOINTMENT

3.1 Subject to the provisions of clause 3.2 below, EEC hereby appoints _____ who hereby accepts the appointment as the Supplier _____ in accordance with the provisions of this Agreement for the set period.

3.2 The Supplier similarly accepts the appointment to perform the supply for EEC subject to the terms and conditions set out below.

4. ORDERS AND DELIVERY OF PRODUCTS

4.1 Each order for products purchased pursuant to this agreement shall be in writing and shall be sent to the address of the party selling the products by mail, email, fax or in such other manner as expressly agreed between the parties.

4.2 Unless otherwise expressly averred upon between the parties or as provided in section 4, the party selling the products shall be responsible and shall pay for the delivery to the other party, at its address herein under mentioned, of such products sold hereunder.



4.3 Unless otherwise expressly agreed upon or between the parties, delivery of the products purchased hereunder shall be completed within seven business days of the receipt, by the party selling the products, of the written order for such products.

4.4 In the event that a party fails to deliver any products requested in an order within the period provided in subsection 4.3 hereinabove, the purchasing party shall be entitled to purchase, from any person, a quantity of products equal to the quantity of products specified in such order. In such a case, the purchasing party shall be entitled to cancel the order for the products specified in the order. The purchasing party shall, at the same time an order is made to an order person pursuant to this subsection, send to the other party, a copy of such order indicating the quantity and price of the products so purchased.

4.5 The title to the products sold hereunder shall pass from the selling party to the purchasing party upon complete payment of the purchase price of the products mentioned hereinafter. The risks of loss or damage to such products sold hereunder shall pass from the selling party to the purchasing party at the date of delivery of the products.

4.6 Each party shall insure the products purchased by it hereunder for the period starting on the date of receipt of the products and terminating when complete payment of such products is made and upon request, shall provide the other party with the documents evidencing that the products are so insured.

5. PRICE OF PRODUCTS

5.1 For the initial term of this agreement stipulated hereunder, the price of the product supplied to the purchaser hereunder shall be_____.

5.2 Prices are inclusive of all costs for the requirement including any incidental services, including all applicable taxes.

5.3 Prices shall be fixed for the duration of the contract and shall not be subject to variation.

6. TERMS OF PAYMENT

6.1 Each party shall pay to the other party at its address hereinabove mentioned, within ____calendar days from the date of receipt of the products purchased, the price for such products as determined pursuant to section 4 hereinabove.

6.2 The price of the products purchased hereunder will be discounted by ____% if complete payment of the products is made within ____calendar days of receipt by the purchasing party.

6.3 The purchaser agrees to pay a monthly charge on overdue amounts for products purchased hereunder calculated on the basis on an annual rate equal to _____.

7. TERMS OF AGREEMENT

7.1 Notwithstanding the provisions of section 2 and in addition, either party may be entitled to terminate this agreement prior to the expiry date upon the occurrence of any default or omissions of the other party to fulfil its obligations under this agreement or any terms and conditions of this agreement following the sending of a written notice remedy.

7.2 Notwithstanding the provisions of subsection 6.1 each party may be entitled to terminate the agreement upon simple notice;

7.2.1 Bankruptcy

7.2.2 Liquidation

7.2.3 Sells substantial shares to third party



7.2.4 Amalgamates

7.3 Each party shall within ____ following the expiration or termination of this agreement, as the case may be, pay to the other party any unpaid portion, including any accrued interest of the purchase price of all products purchased by it and delivered by the other party on or before the date of expiration or termination.

7.4 Any party may at its sole discretion refuse to execute any order of any party remaining unexecuted at the date of expiration or termination of this agreement or in case of default of any party to fulfil its obligations under this agreement.

7.5 All obligations or liabilities of the parties accrued on the date of expiration or termination of this agreement shall survive such expiration or termination.

8. QUALITY

8.1 Each party warrants that the products sold by such party shall be of merchantable quality and in accordance with any specifications which may be provided by the other party in the written order for the products as provided under sub section 3.1 above.

8.2 A party's failure to give the other notice of any claims in respect of the quality of the products delivered shall constitute unqualified acceptance thereof and a waiver by such party of all claims in respect thereof. Notice of such claim shall be made in writing within ____ days of the receipt of the products.

8.3 A party having received notice pursuant to subsection 7.2 above shall have ____ days to examine the product in respect of which the notice has been issued. In respect of the supplier finding out that the products are not, as provided in subsection 7.1 above, of the quality warranted or do not meet the specifications requested by the purchasing party, the selling party shall either at its option, replace without charge the products in respect of which the notice was given or refund within ____ days of such inspection, the price paid by the purchasing party for such products. If the selling party decides to replace the defective products such new products shall be delivered at the selling party's expense within ____ days of inspection.

8.4 A party having sent a notice in accordance with section 8,1 above shall be entitled to purchase from any person any products required to exploit its business from the date the notice was sent to the defaulting party.

9. CURRENCY, PLACE OF PAYMENT

It is hereby recorded and agreed that:

9.1 All payments due to the Supplier from the EEC under this Agreement shall be paid by way of electronic funds transfer to the Supplier, into the following bank account:

Account Name: _____

Account Number: _____

Bank: _____

9.2 Such payments shall be made in the local currency.

9.3 Where payments are made by cheque, the cheque should be to the order of the Supplier.



10. WARRANTIES

The parties acknowledge that: No party shall do anything which would prevent the other party to perform the services in terms of this Agreement with due care, diligence and professional skill and in accordance with established international practice and standards pertaining to the type of service.

10.1 All personnel of either party engaged in or assigned to perform functions under this Agreement shall perform such functions as per agreed processes in an efficient and effective manner.

10.2 Either party shall advise the other party of any conflict of interest which may exist or arise during the implementation of this Agreement or any agreement entered into by the parties in pursuance hereof.

11. INDEMNITY

11.1 Each party indemnifies each other its agents, employees or servants from and against any claim, liability, loss, action, damage or expense incurred or sustained, injury to persons suffered on the property of EEC by the Supplier, its agents, employees, servants or assigns as a result of any act or omission due to any act or omission by EEC.

11.2 The Parties shall take appropriate insurance policies to cover claims arising out of standard risks involving third parties and shall produce same for inspection whenever required by the other.

12. GOVERNING LAW

The entire provisions of this Agreement shall be governed by and construed in accordance with the laws of the Kingdom of ESWATINI.

13. BREACH AND TERMINATION

13.1 Notwithstanding any relaxation or indulgence granted or shown by either party, should a party commit a breach of any terms or conditions of this Agreement and fail to remedy such breach within seven (7) calendar days after the delivery of written notice by the other party calling on them to remedy the breach, the notifying party shall be entitled, but not obliged, and without prejudice to any other rights and remedies it may have in terms of this Agreement or in law, including any right to damages, to terminate this Agreement.

13.2 Should any party be guilty of serious misconduct or any serious breach or non-observation of any condition of this Agreement, or neglect, fail or refuse to carry out the duties assigned to it hereunder, the other party shall be entitled to summarily terminate this Agreement, without prejudice to any of the rights or claims they may have against the defaulting party arising out of such default.

13.3 Upon termination of this Agreement, the Supplier shall timeously deliver to the EEC all work in progress, as well as make available all details and information in its possession to allow the EEC to engage the s of another Supplier.

14. FORCE MAJEURE

14.1 No party shall be liable for any failure to fulfil its obligations under this Agreement if, and to the extent that, such failure is caused by any circumstances beyond the party's reasonable control, including, but not limited to, flood, fire, earthquake, war, tempest, hurricane, industrial action or government.

14.2 In the event that either party is unable to fulfil its obligations under this agreement as a result of any of the circumstances contemplated in clause 15.1 above, the parties shall agree on the



reasonable steps to be taken to put a solution in place to mitigate the impact of such inability on the parties. Such interim solution shall only be implemented to the extent that the parties have agreed in writing on each party's responsibilities, and liability for costs, if any, relating to such interim solution.

14.3 Subject to the provisions of 14.2 above, should any party be unable to fulfil a material part of its obligations under this Agreement for a period in excess of sixty (60) calendar days, the other party may, at their sole discretion, cancel this Agreement forthwith by written notice.

15. DOMICILIA AND NOTICE

15.1 Each party chooses the address set out opposite its name below as its address at which all notices, legal processes and other communications must be delivered for the purposes of this Agreement.

EEC: Marked for the attention of

**The Commercial Services Manager
Eswatini Electricity Company, Head Office,
Eluvatsini House, Mhlambanyatsi Road,
Mbabane**
busisiwe.masangane@eec.co.sz

The Supplier: Marked for the attention of,

15.2 Any notice or communication required or permitted to be given in terms of this Agreement shall be valid and effective only if in writing but it shall be competent to give notice by e-mail and must be hand delivered also.

15.3 Any party may by written notice to another party change its chosen address to another physical address which address must be within the Territory, provided that the change shall become effective on the fourteenth day after the receipt of the notice by the addressee:

15.3.1 Notice to a party contained in a correctly addressed envelope;

15.3.2 And delivered by hand to a responsible person during ordinary business hours at its chosen address, and

15.3.3 Any notice by e-mail to a party at its e-mail address shall be Deemed, unless the contrary is proved, to have been received within 8 hours of transmission where it is transmitted during normal business hours or within (two) hours of the first Business Day after it is transmitted where it is transmitted outside those business hours.



16. NON-WAIVER OF RIGHTS

No failure or delay on the part of any party hereto in exercising any right or privilege hereunder, will operate as a waiver of, or impair any such right or privilege, nor will it preclude any further exercising of such right or privilege, nor the right to exercise any other right or privilege under this Agreement. No waiver of any right or privilege will have effect unless contained in a signed written document.

17. ASSIGNMENT/CESSION

Neither party shall assign or otherwise transfer the benefit or obligations or duties of this agreement to any person without the prior written consent of the other party, which consent shall not be unreasonably withheld.

18. SEVERABILITY

In the event that any term or condition of this Agreement shall be held to be invalid, unlawful or unenforceable, the remaining terms and conditions shall remain in full force and effect. If any term or condition held to be invalid is capable of amendment in order to render it valid, the parties agree to negotiate an amendment to achieve validity.

19. AMENDMENT TO THE CONDITIONS OF THE AGREEMENT

This Agreement represents and constitutes the entire understanding between the parties and supersedes all prior understandings and agreements, whether oral or written, between the parties with respect to s. Neither party may amend any provision or condition of this Agreement unless such amendment is reduced to writing and executed by the parties.

20. NEGOTIATIONS

Matters not specifically provided for, which may arise in the operation of the contract shall be negotiated between the parties as and when they arise.

21. NO VARIATION

No latitudes to alterations, variations or consensual cancellations of this agreement and no additions to this agreement shall be of any force or effect unless reduced to writing and signed by the parties or their duly authorised representatives.

22. SURVIVAL

Notwithstanding termination of this agreement, any clause, which, from the context, contemplates on-going rights and obligations of the parties, shall survive such termination and continue to be of full force and effect.

23. GENERAL

23.1 This document constitutes the sole record of the agreement between the parties in regard to the subject matter thereof.

23.2 No party shall be bound by any express or implied term, representation, warranty, promise or the like, not recorded herein. 23.3 No indulgence, which any of the parties ("the grantor") may grant to any other or others of them ("the grantee(s)"), shall constitute a waiver of



any of the rights of the grantor, who shall not thereby be precluded from exercising any rights against the grantee(s) which might have arisen in the past or which might arise in the future.

23.4 The parties undertake at all times to do all such things, to perform all such acts and to take all such steps and to procure the doing of all such things, the performance of all such actions and the taking of all such steps as may be open to them and necessary for or incidental to the putting into effect or maintenance of the terms, conditions and import of this Agreement.

23.5 Save as is specifically provided in this Agreement, the Supplier shall not be entitled to cede or assign any of its rights or obligations under this Agreement without the prior written consent of the EEC.

23.6 Save as expressly agreed to by the parties, nothing contained in this Agreement shall allow any party to set off any amount due by it to another part.

Signed For and on behalf of the Purchaser:

BY: _____
NAME SIGNATURE

DESIGNATION: COMMERCIAL SERVICES MANAGER

PLACE: _____ DATE: _____ 20__

As witnesses:

1. _____
NAME SIGNATURE

2. _____
NAME SIGNATURE

Signed For and on behalf of the Supplier:

BY: _____
NAME SIGNATURE



DESIGNATION: _____

PLACE: _____

DATE: _____ **20**____

As witnesses:

1. _____
NAME

SIGNATURE

2. _____
NAME

SIGNATURE

