

Tender”, “Copy No. 1” and “Copy No. 2.” In the Event of any discrepancy between them, the original shall govern.

The original and all copies of the Tender, each consisting of the documents listed above shall be typed or written in indelible ink and shall be signed by the Tenderer or person or persons duly authorised to bind the Tenderer to the Contract. The latter authorisation shall be indicated by written power of the attorney accompanying the Tender and submitted as Attachment 2 to the Tender. All pages of the Tender except for un-amended printed literature shall be initialled by the person or persons signing the Tender.

The Tender shall contain no alterations, omissions or additions, unless such corrections are initialled by the person or persons signing the Tender.

9.4. Submission of Tenders

9.4.1. Sealing and Marking

The Tenderer shall Seal the Original and each Copy of the Tender in separate envelopes, duly marking the envelopes as “Original Tender”, “Copy No.1” and “Copy No.2.” The envelopes shall then be sealed in an outer envelope. This should be done for the technical proposal and financial proposal, i.e. the technical and financial should be in separate envelopes.

The inner and outer envelopes shall:

Be addressed to the Employer at the address given, and

Bear the Tender Number and the statement “DO NOT OPEN BEFORE” and the closing date for Tendering, excluding any notice allowing identification of the Tenderer.

If the outer envelope is not sealed and marked as requested, then the Employer will assume no responsibility for the Tender’s misplacement or premature opening. If the outer envelope discloses the identity of the Tenderer, the Employer will not guarantee the anonymity of the Tender submission, but this disclosure will not constitute grounds for Tender rejection.

9.4.2. Deadline for Submission of Tenders

Tenders must be received by the Employer at the address no later than the time and date stated in the Invitation for Tender.

The Employer may, at its discretion, extend this deadline for submission of Tenders by amending the Tender Documents in which case all rights and obligations of the Employer and Tenderers will thereafter be subject to the deadline as extended.

9.4.3. Late Tenders

Any Tender received by the Employer after the Tender submission deadline prescribed by the Employer will be rejected and returned unopened to the Tenderer.

9.4.4. Modification and Withdrawal from Tenders

The Tenderer may modify or withdraw its Tender after submission, provided that written notice of the modification or withdrawal is received by the Employer prior to the deadline prescribed for Tender submission.

The Tenderer's modifications shall be prepared, sealed, marked and dispatched as follows:

The Tender shall provide an original and the number of copies specified of any modifications to its Tender, clearly identified as such, in two inner envelopes duly marked "Tender Modification – Original" and "Tender Modification – Copies." The inner envelopes shall be sealed in an outer envelope, which shall be duly marked "Tender Modifications."

A Tenderer wishing to withdraw its Tender shall notify the Employer in writing prior to the deadline prescribed for Tender submission.

The notice of withdrawal shall:

Be addressed to the Employer at the address specified, and

Bear the Tender Number and the words "Tender Withdrawal Notice." Tender withdrawal notices received after the Tender submission deadline will be ignored, and the submitted Tender will be deemed to be a validly submitted Tender.

No Tender may be withdrawn in the interval between the Tender submission deadline and the expiry of the Tender validity period specified.

9.5. Tender Opening and Evaluation

9.5.1. Opening of Tender by Employer

The Employer will open the Tenders, including withdrawals and the modifications made.

Envelopes marked "Withdrawal" shall be opened first and the name of the Tenderer shall be read out. Tenders for which an acceptable notice of withdrawal has been submitted pursuant shall not be opened.

The Tenderer's names, the Tender Prices including any alternative Tender Price or deviation any discounts, Tender modifications and withdrawals, and any such other details as the Employer may consider appropriate, will be recorded by the Employer at the opening.

Subsequently, all envelopes marked "Modification" shall be opened.

No Tender shall be rejected at Tender opening except for late Tenders

Tenders not opened at the Tender opening shall not be considered further for evaluation, irrespective of the circumstances.

9.5.2. Clarification of Tenders

During the Tender evaluation, the Employer may, at its discretion, ask the Tenderer for clarification of its Tender.

The request for clarification and the response shall be in writing and no change in the price or substance of the Tender shall be sought, offered or permitted.

9.5.3. Preliminary Examination of Tenders

The Employer will examine the Tenders to determine whether they are complete, whether any computational errors have been made, whether required sureties have been furnished, whether the documents have been properly signed, and whether the Tenders are generally in order.

Arithmetic errors will be rectified on the following basis. If there is a discrepancy between the unit price and the total price, which is obtained by multiplying the unit price and quantity, or between subtotals and the total price, the unit or subtotal price shall prevail, and the total price shall be corrected. If there is a discrepancy between words and figures the amount in words will prevail. If the Tenderer does not accept the correction of errors its Tender will be rejected.

Prior to the detailed evaluation, the Employer will determine whether each Tender is of acceptable quality, is complete and substantially responsive to the Tender Documents. For purposes of this determination, a substantially responsive Tender is one that conforms to all terms, conditions and specifications of the bidding documents without material deviations and objections, conditionalities or reservations. A material deviation, objection, conditionality or reservation is one (i) that affects in any substantial way the scope, quality or performance of the contract; (ii) that limits in any substantial way, inconsistent with the Tender Documents, the Employer's rights or successful Tenderer's obligations under the contract; or (iii) whose rectification would unfairly affect the competitive position of other Tenderers who are presenting substantially responsive.

If a Tender is not substantially responsive, it will be rejected by the Employer, and may not subsequently be made responsive by the Tenderer by correction of the non-conformity. The Employer's determination of a Tender's responsiveness is based on the contents of the Tender itself without recourse to extrinsic evidence.

9.5.4. Contacting the Employer

From the time of the tender opening to the time of Contract award, if any Tenderer wishes to contact the employer on any matter related to its Tender, it should do so in writing.

Any effort by a Tenderer to influence the Employer in the Employer's Tender evaluation, Tender comparison or Contract award decisions may result in rejection of the Tenderer's Tender.

9.6. Award of Contract

9.6.1. Award Criteria

The Employer may award the contract to the Tenderer whose Tender has been determined to be substantially responsive and provided that the Tenderer is determined to be qualified to perform the Contract satisfactorily. The Employer is not bound to accept the lowest tender or any at all and no reasons will be given for non-acceptance of Tender.

9.6.2. Employer's Right to Accept Any Tender and to Reject Any or All Tenders

The Employer reserves the right to accept or reject any Tender, and to annul the Tendering process and reject all Tenders at any time prior to award of Contract, without thereby incurring any liability to the affected Tenderer or Tenderers or any obligation to inform the affected Tenderer or Tenderers of the grounds for the Employer's action.

9.6.3. Employer's Right to Vary Quantities at Time of Award

The Employer reserves the right at the time of award of Contract to increase or decrease the quantities of goods and services up to 25% of the Total Tender Price without any change in unit prices, Preliminary and General cost, or other terms and conditions.

9.6.4. Pre-Award Negotiations

Prior to the expiry of the period of Tender Validity, the Employer will invite the successful Tenderer to his office for Contract negotiations.

The successful conclusion of the Contract Negotiations will constitute the formation of the Contract.

The Employer shall prepare the Minutes of Contract Negotiations which shall form part of the Contract.

9.6.5. Signing the Contract Agreement

The Employer will send the Tenderer the Contract Agreement provided in the Tender Documents, incorporating all agreements between parties.

Within 28 (twenty-eight) days of receipt of the Contract Agreement, the successful Tenderer shall sign and date the Contract Agreement and return it to the Employer.



9.6.6. Corrupt or Fraudulent Practices

Any Tenderer that is found to be, or who attempts to be involved in any corrupt or fraudulent activity or practice involving any party concerned in the Tender process, shall be disqualified.





10. Tender Form

Date

Tender No. _____

To:

**Eswatini Electricity Company
Eluvatsini House
Mhlambanyatsi Road
Mbabane
Kingdom of ESwatini**

Having examined the tendering documents the receipt of which is hereby duly acknowledged, we, the undersigned, offer to undertake the construction of the depot offices, staff houses, transformer shelter, bin yard and pole yard together with all associated services, site works and ancillary buildings for EEC in conformity with the said tendering documents. **The total tender price and the completed bill of quantities are contained in the Financial Proposal document.**

We undertake, if our Tender is accepted, to deliver the services in accordance with the requirements of the specifications forming part of this contract.

We agree to abide by this Tender for a period of **120 days** from the date fixed for Tender 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 Tender, 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 tender you may receive.

[signature] [in the capacity of]

Duly authorized to sign Tender for and on behalf of _____

(Name of contractor)





11. Declaration of Eligibility

All Tenderers must meet the following criteria, to be eligible to participate in public procurement ***Tenderers must provide a signed declaration on their company letterhead in the following format. If the tender is being presented by a joint venture or consortium all members must sign the declaration***

Dear Sirs,

Re Tender Reference

In accordance with the eligibility requirements of the Procurement Regulations and the tender documents we hereby declare that:-

- (a) We, including any joint venture partners or consortium partners are a legal entity and have the legal capacity to enter into the contract;
- (b) We further declare that 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 declare that we have fulfilled our obligations to pay taxes;
- (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) We do not have a conflict of interest in relation to the procurement requirement.

Signed

Date.....



12. Submission of bids

- The technical and financial proposals should be **SEPARATED** and with the envelopes clearly marked “**TECHNICAL**” and “**FINANCIAL**”.
- The separate, sealed envelopes of both the financial and technical proposals should then be sent to EEC in a sealed envelope clearly marked “**Tender No.1 of 2021/22 – Lobamba and Maloma 11 kV switchboard Installation, Testing and Commissioning.**” and addressed to the “**Secretary to the Tender Committee**”, Eswatini Electricity Company, **Eluvatsini House, Mhlambanyatsi Road, Mbabane**, Eswatini no later than 1200 hours on June 30th, 2021.
- Document should be submitted with proof of payment of **E500.00** for tender documentation.

13. Data Sheet

1	Eligibility criteria	<p>All required documentation and information highlighted below has been submitted.</p> <ol style="list-style-type: none"> Company Profile, Form J and Form C or equivalent for foreign registered companies, and Proof of registration with the relevant professional or regulatory body. Certified copy of Valid Trading License. Original and Valid Tax Compliance Certificate Certified copy of VAT Registration Certificate Police Clearance for Directors Certified copy of Labour Compliance Certificate Latest audited financial statements. Original Receipt for Purchase of Tender Document Copy of registration with the CIC Tender Bond in the form of a bank guaranteed cheque amounting to E50 000-00 <p>NB: A tender bid which does not contain the documents listed above shall be deemed to be non-responsive and may be eliminated from further evaluation.</p>
2	Qualification criteria	<p>Qualifications will be evaluated as follows:</p> <ul style="list-style-type: none"> - Demonstrated contractor experience in similar projects

		<ul style="list-style-type: none"> - Experience of Site Manager in similar projects - Resources (employees, plant and equipment)
3	Compulsory site visit	<p>A compulsory pre-tender site meeting will be held: Date and time : June 8th 2021 at 0930hrs Venue : EEC Matsapha CSO (near Allied Plastics Opposite Matsapha Railway station). Proceed to Lobamba and Maloma substations Proof of attendance will be a signed attendance register that will be kept by EEC.</p>
4	Validity	The tender shall be valid for 120 days from the submission/closing date.
5	Prices	<p>Quoted prices must be in the local currency (Emalangeneni) and should include all relevant levies and taxes. A filled in bill incorporating the entire tender scope in similar format to the provided template should be provided. The prices should be fixed and firm for the duration of the contract, and where there is foreign currencies involved, forward cover should be catered for.</p> <p>Include 10% of total bid price for Risks budget</p>
6	Documents comprising the tender	<p>The documentation required for this tender are:</p> <p>File 1 (Technical Proposal):</p> <ol style="list-style-type: none"> 1. Signed Tender Form, and Declaration of Eligibility 2. Company profile, statutory documents, qualifications criteria related documents, a list of similar projects, the CV of the site Forman (listing projects he / she has done, etc, as highlighted in the document 3. Proof of tender payment 4. Power of attorney 5. Methodology as per the requirements of the tender 6. Equipment / Construction Plant to be used 7. Subcontractors proposed and relevant contracts/consortiums 8. Preliminary working programme 9. Exclusions of the tender <p>File 2 (Financial Proposal)</p> <ol style="list-style-type: none"> 1. Price schedule, Tender security and tender validity

		NB: three (3) sets of copies for both the technical and financial file should be submitted or else bid will be deemed non-responsive.
7	Tenderer's request for clarification	<p>The deadline for clarifications shall be one week before the closing date. Clarification can be submitted until the June 25th 2021.</p> <p>All requests for clarification should be emailed to this address: busisiwe.masangane@eec.co.sz</p>
8	Tender submission	<p>The location for submission of tenders is:</p> <p>The Secretary to the Tender Committee Eswatini Electricity Company Eluvatsini House Mhlambanyatsi Road Mbabane, Eswatini</p> <p>If Posted, this address should be used:</p> <p>The Secretary to the Tender Committee Eswatini Electricity Company P O Box 258 Mbabane, Eswatini</p> <p>The following information should be considered:</p> <ul style="list-style-type: none"> • The technical and financial proposals should be separated and clearly marked “TECHNICAL” and “FINANCIAL”. • The separate, sealed envelopes of both the financial and technical proposals should then be sent to EEC in a sealed envelope clearly marked “Tender No. 01 of 2021/22 – Lobamba and Maloma 11 kV switchboard Installation, Testing and Commissioning.” and addressed to the “Secretary to the Tender Committee”, Eswatini Electricity Company, Eluvatsini House, Head Office, Mhlambanyatsi Road, Mbabane, Eswatini no later than 1200 hours on June 30th 2021. • Document should be submitted with proof of payment of E500.00 for tender documentation.

9	Tender opening	Tenders will be opened at 1230hrs June 30th 2021, at EEC Headquarters, Eluvatsini House, Mhlambanyatsi road, Mbabane.
10	Evaluation of tenders	The evaluation criteria is detailed in the Evaluation Methodology section of the tender document.
11	Intention to award	Tenderers will be notified of an intention to award on the same day that the intention is sent to the Eswatini Public Procurement Regulatory Agency (ESPPRA).

=====end=====

14. APPENDIX TO TENDER

The Appendix to refers to the Conditions of Contract for Building and Engineering Works Designed by the Employer, First Edition 1999 as published by FIDIC.

Item	Sub Clause	Data
Employer's Name and Address	1.1.2.2 & 1.3	Eswatini Electricity Company P.O. Box 258, Mbabane, H100 Eswatini.
Contractor's Name and Address	1.1.2.3 & 1.3	
Engineer's Name and Address	1.1.2.4 & 1.3	Same as the Employer
Time for Completion of Works	1.1.3.3 & 8.2	Within 4 months
Defects Notification Period	1.1.3.7	365days
Electronic transmission systems	1.3	Add facsimile and electronic documents in PDF format
Governing Law	1.4	Law of the Kingdom of Eswatini.
Ruling Language	1.4	English
Language for communication	1.4	English
Time for access to site	2.1	14 days after Commencement Date
Amount of Performance Security	4.2	10% of the Accepted Contract Amount in the Emalangenzi (SZL) or South African Rand (ZAR)
Period for notifying unforeseeable errors faults and defects in the Employer's Requirements	5.1	14 days
Normal Working hours	6.5	7:00 till 18:00

Item	Sub Clause	Data
Delay damages for the Works	8.7 & 14.15(b)	0.1% of the final Contract Price per day, in the currency and proportions in which the Contract Price is payable
Maximum amount of delay damages	8.7	10% of final Contract Price
Percentage for adjustment of Provision Sums	13.5(b)	Not applicable
Adjustment for Changes	13.8	Not applicable – no adjustment
Total advance payment	14.2	10% of the Accepted Contract Amount
Number and timing of installations	14.2	One single payment within 42 days of the letter of receipt of advance payment invoice and advance payment guarantee.
Currencies and proportions	14.2	100% in tendered currency
Start repayment of advance payment	14.2(a)	10% on all certificates less provisional sums irrespective of value
Repayment amortisation of advance payment	14.2(b)	10%
Percentage of Retention	14.3	5% of the Acceptable Contract Amount
Limit of Retention Money	14.3	5% of the Acceptable Contract Amount
Plant and Materials for payment when shipped en route the Site	14.5(b)	Nil
Plant and Materials for payment when delivered to the Site	14.5(c)	All equipment

Item	Sub Clause	Data
Minimum Amount of Interim Payment Certificates	14.6	1% of the Acceptable Contract Amount
Currency/currencies of payment	14.15	Emalangeni or South African Rand
Periods of submission of Insurance:		
(a). Evidence of Insurance	18.1	28 days
(b). Relevant Policies	18.1	28 days
Minimum amount of third party insurance	18.3	E2, 000, 000.00 (Two Million Emalangeni)

16. GENERAL CONDITIONS OF CONTRACT

The Conditions of Contract applicable to this contract shall be:

FIDIC (International Federation of Consulting Engineers)

Condition of Contract for Construction for Building and Engineering Works, Designed by the Employer. First Edition. 1999. (Red Book).

The Conditions consists of three parts, namely

1. General Conditions of Contract.
2. Appendix to Tender.
3. Particular Conditions of Contract.

The Tenderer must obtain a copy of this document from the Federation, at their own cost. The document will not be made available by the Employer or the Engineer.

The Tenderers must familiarise themselves with the conditions and stipulations contained therein. No arguments, disagreement or complaint, based on ignorance of the contents of the mentioned document, will be considered as a base for a claim against the Employer.

Copies of the FIDIC Conditions of Contract may also be obtained from:

The South African Association of Consulting Engineers,
St James House
Hampton Park North
20 Georgian Crescent



Bryanston

P.O. Box 68482

Bryanston

2021

Telephone Number: +27 11 463 2022

17. PARTICULAR CONDITIONS OF CONTRACT

This Particular Conditions of Contract is in reference to the General Conditions of Contract as contained in the FIDIC's Conditions of Contract for Construction for Building and Engineering Works, Designed by the Employer. First Edition. 1999. (Red Book)

Clause 1 General Provisions

Sub-Clause 1.1 Definitions

1.1.1.1 Add "Minutes of Negotiation" after "Contract Agreement."

1.1.1.5 The Employer's specifications are detailed in Part II of the Tender Document

1.1.4.6 The Foreign Currency is **South African Rand**

1.1.6.2 "**Country**" shall mean Eswatini.

Sub-Clause 1.5 Priority of Documents

Replace the list of documents with the following list

- (a) Contract Agreement
- (b) Minutes of Contract Negotiations
- (c) Letter of Acceptance
- (d) Letter of Tender
- (e) Particular Conditions of Contract
- (f) General Conditions of Contract
- (g) Employer's Requirements
- (h) Schedules, and
- (i) Contractor's Proposal and any other documents forming part of the Contract.

Sub-Clause 1.14 Joint Several Liability

Insert after Sub-Clause 1.14(c):



(d) Each member shall produce parent member guarantee.

Sub Clause 1.15 Details to be Confidential

The Contractor shall treat the details of the Contract as private and confidential, except to the extent necessary to carry out obligations under it or to comply with applicable Laws. The Contractor shall not publish, permit to be published, or disclose any particulars of the Works in any trade or technical paper elsewhere without the previous agreement of the Employer.

The obligations of confidentiality herein shall be imposed mutatis mutandis upon such sub-consultants, sub-contractors or suppliers in their respective contracts.

Clause 2 The Employer

Sub-Clause 2.4 Employer's Financial Arrangements

Delete this Sub-Clause.

Clause 3 The Engineer

Sub-Clause 3.6 Management Meetings

The Engineer or the Contractor's Representative may require the other to attend a management meeting in order to review the arrangements for future work. The Engineer shall record the business of management meetings and supply copies of the record to those attending the meeting and to the Employer. In the record, responsibilities for any actions to be taken shall be in accordance with the Contract.

Clause 4 The Contractor

Sub-Clause 4.4 Sub-Contractors

Delete Sub-Clause 4.4(b) and insert:

(b) Prior consent shall not be required where the accumulative total value of the subcontracts of a particular subcontractor is less than 0.01% of the Accepted Contract Amount.

Sub-Clause 4.16 Transport of Goods

Insert at the end of Sub-Clause 4.16:

(d) The Contractor shall notify the Engineer 14 (fourteen) days in advance of its requirement for permission to deliver any equipment to the site. The failure of the Contractor to give such notice to the Engineer within the required time shall not relieve the Contractor of its obligations under this Contract.

Sub-Clause 4.19	Electricity, Water and Gas
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The Contractor shall be responsible for providing on the Site such supplies of electricity and water as are necessary for the proper execution and security of Works.

In the case of water supplies the Contractor shall make all necessary arrangements for metering, temporary storage and distribution of water on the Site and shall alter, adapt, and maintain the temporary work as necessary.

In the case of electricity supplies the Contractor shall make all necessary arrangements in accordance with the regulations and good practice for the distribution of lighting and power including all meters, temporary wiring and fittings on Site and shall adapt temporary work as necessary all the time maintaining strict safety rules.

The electrical supply shall be of such adequate capacity for all testing on Site prior to final energising.

The Contractor shall at its own cost pay all charges in connection with or arising out of the provision of electricity and water including, without limitation, the provision of any apparatus necessary for such use and the removal and making good on completion of the Works.

Clause 13	Variations and Adjustments
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Sub-Clause 13.1	Right to Vary
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Insert after the first paragraph of Sub-Clause 13.1:

During the Time for Completion the Works may be increased or reduced by up to 25% of the Accepted Contract Amount without adjustment to the rates tendered, preliminary and general cost, or other terms and conditions.

Clause 14	Contract Price and Payment
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Sub-Clause 14.4	Schedule of Payment
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Insert at the end of Sub-Clause 14.4

The contractor will be paid after 30 days from receipt of the invoice, and payments at Eswatini Electricity Company are made on the 15th and 30th of each month. The payments will be according to the contractor's payment schedule.

Clause 17	Risks and Responsibility
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Sub-Clause 17.7	Use of Employer's Facilities
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The Contractor shall take full responsibility for the care of items detailed below, from the respective dates of use or occupation by the Contractor, up to the respective dates of hand-over or cessation of the occupation (where hand-over or cessation of occupation may take place after the date stated in the Taking-Over Certificate for the Works):



The Employer's existing Works and Plant

If any loss or damage happens to any of the above items while the Contractor is responsible for their care, arising from any cause whatsoever other than those for which the Employer is liable, the Contractor shall, at his own cost, rectify the loss or damage to the satisfaction of the Engineer.

Clause 20 Claims, Disputes and Arbitration

Sub-Clause 20.2 Appointment of the Dispute Adjudication Board

Delete this Sub-Clause.

Sub-Clause 20.3 Failure to Agree Dispute Adjudication Board

Delete this Sub-Clause.

Sub-Clause 20.4 Obtaining Dispute Adjudication Board's Decision

Delete this Sub-Clause.

Sub-Clause 20.5 Amicable Settlement

Delete this Sub-Clause.

Sub-Clause 20.6 Arbitration

Delete this Sub-Clause and replace it with:

If the Parties are unable to resolve any dispute resulting from this Agreement by means of joint co-operation or discussion between them, within 4 weeks after a dispute arises, then it shall be resolved by way of court litigation and in Courts in the Kingdom of Eswatini. Adjudication is hereby specifically excluded by the parties as a mechanism of dispute resolution.

If the Parties are unable to resolve any dispute resulting from this Agreement by means of joint co-operation or discussion between them, within 4 weeks after a dispute arises, then it shall be resolved by way of court litigation and in Courts in the Kingdom of Eswatini. Arbitration is hereby specifically excluded by the parties as a mechanism of dispute resolution.

Sub-Clause 20.7 Failure to Comply with Dispute Adjudication Board's Decision

Delete this Sub-Clause

Sub-Clause 20.8 Expiry of Dispute Adjudication Board's Appointment

Delete this Sub-Clause



