



## ESKOM HOLDINGS LIMITED

(Incorporated in the Republic of South Africa with limited liability under  
Registration number 2002/015527/06)

unconditionally and irrevocably guaranteed by

**THE GOVERNMENT OF THE REPUBLIC OF SOUTH AFRICA**

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# ZAR65,000,000,000

## Domestic Multi-Term Note Programme

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On 6 March 2006 (the "**Programme Date**"), Eskom Holdings Limited (the "**Issuer**") established a ZAR65,000,000,000 domestic multi-term note programme (the "**Programme**") pursuant to a programme memorandum dated 6 March 2006 (the "**Previous Programme Memorandum**"). This Programme Memorandum dated 4 February 2010 (the "**Programme Memorandum**") will apply to all Notes issued under the Programme as of the Programme Date and will in respect of such Notes, supersede and replace the Previous Programme Memorandum in its entirety.

Capitalised terms used in this Programme Memorandum are defined in the section of this Programme Memorandum headed "*Terms and Conditions of the Notes*" (the "**Terms and Conditions**"), unless separately defined in this Programme Memorandum and/or, in relation to a Tranche of Notes, the Applicable Pricing Supplement.

As at the Programme Date, the initial programme amount is ZAR65,000,000,000 (the "**Programme Amount**"). This Programme Memorandum will apply to the Notes issued under the Programme (including Notes issued under the Programme pursuant to the Previous Programme Memorandum) in an aggregate outstanding Nominal Amount which will not exceed ZAR65,000,000,000 unless such amount is increased by the Issuer as set out in the section of this Programme Memorandum headed "*General Description of the Programme*".

The Government of the Republic of South Africa, represented by the Minister of Public Enterprises in terms of section 66(2) of the PFMA acting with the concurrence of the Minister of Finance in terms of section 70 of the PFMA has irrevocably and unconditionally guaranteed to the Noteholders the due and punctual payment by the Issuer of all sums owing by the Issuer in respect of the Notes arising under the Programme.

This Programme Memorandum has been approved by the JSE. A Tranche of Notes may be listed on the Bond Market of the JSE or on such other or additional Financial Exchange(s) as may be determined by the Issuer, subject to all applicable laws. Unlisted Notes may also be issued under the Programme. The Applicable Pricing Supplement relating to a Tranche of Notes which is to be listed on Bond Market of the JSE will be delivered to the JSE and the CSD, on or before the Issue Date, and the Notes in that Tranche may be traded by or through members of the Bond Market of the JSE from the date specified in the Applicable Pricing Supplement, in accordance with the Applicable Rules. The settlement of trades on the JSE will take place in accordance with the electronic settlement procedures of the JSE and the CSD for all trades done through the JSE. The placement of a Tranche of unlisted Notes may (at the sole discretion of the Issuer) be reported through the JSE reporting system, in which event the settlement of trades in such Notes will take place in accordance with the electronic settlement procedures of the JSE and the CSD for all trades done through the JSE. The settlement and redemption procedures for a Tranche of Notes listed on any Financial Exchange (other than or in addition to the JSE) will be specified in the Applicable Pricing Supplement.

The Notes may be issued on a continuing basis and be placed by one or more of the Dealers specified under the section entitled "*Summary of Programme*" and any additional Dealer appointed under the Programme from time to time by the Issuer, which appointment may be for a specific issue or on an ongoing basis. References in this Programme Memorandum to the "**Relevant Dealer**" shall, in the case of Notes being (or intended to be) placed by more than one Dealer, be to all Dealers agreeing to place such Notes.

As at the date of this Programme Memorandum, the Notes to be issued under this Programme are not rated by any rating agency, however, the Issuer may at any time obtain a rating from a rating agency for any issue of Notes issued pursuant to the terms of this Programme, in which case such rating will be indicated in the Applicable Pricing Supplement. The Issuer may agree with any Dealer that Notes may be issued in a form not contemplated by the Terms and Conditions of the Notes herein, in which event a supplementary Programme Memorandum, if appropriate, will be made available, which will describe the effect of the agreement reached in relation to such Notes.

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*Arranger and Dealer*

**ESKOM HOLDINGS LIMITED**

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## GENERAL

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*Words used in this section entitled "General" shall bear the same meanings as used in the Terms and Conditions, except to the extent that they are separately defined in this section or clearly inappropriate from the context.*

The Issuer accepts full responsibility for the information contained in this Programme Memorandum. To the best of the knowledge and belief of the Issuer (who has taken all reasonable care to ensure that such is the case) the information contained in this Programme Memorandum is in accordance with the facts and does not omit anything likely to affect the import of such information.

The Issuer, having made all reasonable enquiries, confirms that this Programme Memorandum contains or incorporates all information which is material in the context of the issue and the offering of Notes, that the information contained or incorporated in this Programme Memorandum is true and accurate in all material respects and is not misleading, that the opinions and the intentions expressed in this Programme Memorandum are honestly held and that there are no other facts, the omission of which would make this Programme Memorandum or any of such information or expression of any such opinions or intentions misleading in any material respect.

This document is to be read and construed with any amendment or supplement thereto (this document, as amended or supplemented, the "**Programme Memorandum**") and in conjunction with any other documents which are deemed to be incorporated herein by reference (see the section entitled "*Documents Incorporated by Reference*") and, in relation to any Tranche (as defined herein) of Notes, should be read and construed together with the Applicable Pricing Supplement. This Programme Memorandum shall be read and construed on the basis that such documents are incorporated into and form part of this Programme Memorandum.

The Arranger, the Dealers, the JSE or any of their respective affiliates and other professional advisers named herein have not separately verified the information contained herein. Accordingly, no representation, warranty or undertaking, express or implied, is made and no responsibility is accepted by the Arranger, the Dealers or other professional advisers as to the accuracy or completeness of the information contained in this Programme Memorandum or any other information provided by the Issuer. The Arranger, the Dealers, the JSE and other professional advisers do not accept any liability in relation to the information contained in this Programme Memorandum or any other information provided by the Issuer in connection with the Programme.

No person has been authorised by the Issuer to give any information or to make any representation not contained in or not consistent with this Programme Memorandum or any other document entered into in relation to the Programme or any other information supplied by the Issuer in connection with the Programme and, if given or made, such information or representation must not be relied upon as having been authorised by the Issuer, the Arranger, the Dealers or other professional advisers.

Neither this Programme Memorandum nor any other information supplied in connection with the Programme is intended to provide a basis for any credit or other evaluation, or should be considered as a recommendation by the Issuer, the Arranger or any of the Dealers that any recipient of this Programme Memorandum or any other information supplied in connection with the Programme should purchase any Notes.

Each person contemplating the purchase of any Notes should determine for itself the relevance of the information contained in this Programme Memorandum and should make its own independent investigation of the financial Condition and affairs, and its own appraisal of the creditworthiness, of the Issuer and its purchase of Notes should be based upon any such investigation as it deems necessary. Neither this Programme Memorandum nor any Applicable Pricing Supplement nor any other information supplied in connection with the Programme constitutes an offer or invitation by or on behalf of the Issuer, the Arranger, any of the Dealers or to any person to subscribe for or to purchase any Notes.

Neither the delivery of this Programme Memorandum nor any Applicable Pricing Supplement nor the offering, sale or delivery of any Note shall at any time imply that the information contained herein is correct at any time subsequent to the date hereof or that any other financial statements or other information supplied in connection with the Programme is correct at any time subsequent to the date indicated in the document containing the same.

The Arranger and the Dealers expressly do not undertake to review the financial Condition or affairs of the Issuer during the life of the Programme. Investors should review, *inter alia*, the most recent financial statements, if any, of the Issuer when deciding whether or not to purchase any Notes. Neither this Programme Memorandum nor any Applicable Pricing Supplement constitutes an offer to sell or the solicitation of an offer to buy or an invitation to subscribe for or purchase any Notes. The distribution of this Programme Memorandum and any Applicable Pricing Supplement and the issue, sale or offer of Notes may be restricted by law in certain jurisdictions. Persons into whose possession this Programme Memorandum or any Applicable Pricing Supplement or any Notes come are required by the Issuer, the Arranger and the Dealers to inform themselves about, and observe any such restrictions. For a description of certain restrictions on offers, sales and deliveries of Notes and on the distribution of this Programme Memorandum or any Applicable Pricing Supplement and other offering material relating to the Notes, see the section entitled "*Subscription and Sale*".

Neither the Issuer, the Dealers nor other professional advisers represents that this Programme Memorandum may be lawfully distributed, or that any Notes may be lawfully offered, in compliance with any applicable registration or other requirements in any such jurisdiction, or pursuant to an exemption available thereunder, or assumes any responsibility for facilitating any such distribution or offering. In particular, no action has been taken by the Issuer, the Arranger, the Dealers or other professional advisers which would permit a public offering of any Notes or distribution of this document in any jurisdiction where action for that purpose is required. Accordingly, no Notes may be offered or sold, directly or indirectly, and neither this Programme Memorandum nor any advertisement nor other offering material may be distributed or published in any jurisdiction, except under circumstances that will result in compliance with any applicable laws and regulations, and the Dealers have represented that all offers and sales by them will be made on the same terms.

**The Notes are not required to be registered under the United States Securities Act of 1993, as amended. Accordingly, no registration statement has been filed with the United States Securities and Exchange Commission (the "Commission"). The Notes have not been approved or disapproved by the Commission or any State Securities Commission, nor has the Commission or any State Securities Commission passed upon the accuracy of this Programme Memorandum. Any representation to the contrary is a criminal offence in the United States.**

**In connection with the issue and distribution of any Tranche of Notes under the Programme, the Dealer, if any, that is specified in the Applicable Pricing Supplement as the Stabilising Manager (or any person acting for the Stabilising Manager) may, if specified in that Applicable Pricing Supplement and only if such stabilising is permitted by the rules of the JSE, over-allot or effect transactions with a view to supporting the market price of the Notes at a level higher than that which might otherwise prevail for a limited period. However, there may be no obligation on the Stabilising Manager (or any agent of the Stabilising Manager) to do this. Such stabilising, if commenced, may be discontinued at any time and must be brought to an end after a limited period. Such stabilising shall be in compliance with all applicable laws, regulations and rules.**

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## DOCUMENTS INCORPORATED BY REFERENCE

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*Words used in this section entitled "Documents Incorporated by Reference" shall bear the same meanings as used in the Terms and Conditions, except to the extent that they are separately defined in this section or clearly inappropriate from the context.*

The following documents shall be deemed to be incorporated in, and to form part of, this Programme Memorandum:

- (a) all amendments and supplements to this Programme Memorandum prepared by the Issuer from time to time;
- (b) in respect of any issue of Notes under the Programme, the audited annual financial statements, together with such statements, reports and the notes attached to or intended to be read with such financial statements of the Issuer for its three financial years prior to the date of such issue
- (c) each Applicable Pricing Supplement relating to any Tranche of Notes issued under the Programme;
- (d) the Guarantee executed by the Guarantor in favour of the Noteholders;
- (e) all information pertaining to the Issuer which is relevant to the Programme and/or this Programme Memorandum which, if required, is (i) electronically submitted by the Securities Exchange News Service ("SENS") established by the JSE, to SENS subscribers, if required,

save that any statement contained in this Programme Memorandum or in any of the documents incorporated by reference in and forming part of this Programme Memorandum shall be deemed to be modified or superseded for the purpose of this Programme Memorandum to the extent that a statement contained in any document subsequently incorporated by reference modifies or supersedes such earlier statement (whether expressly, by implication or otherwise).

The Issuer will provide at the registered office of the Issuer as set out at the end of this Programme Memorandum, without charge, to each person to whom a copy of the Programme Memorandum has been delivered, upon request of such person, a copy of any or all of the documents which are incorporated herein by reference, unless such documents have been modified or superseded. Requests for such documents should be directed to the Issuer at its registered office as set out at the end of this Programme Memorandum. The audited annual financial statements of the Issuer are also available on the Issuer's website under Treasury Services, [www.eskom.co.za](http://www.eskom.co.za).

The Issuer will, for so long as any Note remains outstanding, publish a new Programme Memorandum or a supplement to this Programme Memorandum, as the case may be, if:

- (a) a change in the Condition (financial or otherwise) of the Issuer has occurred which is material in the context of the Notes; or
- (b) an event has occurred which affects any matter contained in this Programme Memorandum, the disclosure of which would reasonably be required by Noteholders and/or potential investors in the Notes; or
- (c) any of the information contained in this Programme Memorandum becomes outdated in a material respect; or
- (d) this Programme Memorandum no longer contains all the material correct information required by the Applicable Procedures;

provided that, in the circumstances set out in paragraphs (c) and (d) above, no new Programme Memorandum or supplement to this Programme Memorandum, as the case may be, is required in respect of the Issuer's annual financial statements if such annual financial statements are incorporated by reference into this Programme Memorandum and such annual financial statements are published, as required by the Companies Act, and submitted to the JSE within six months after the financial year end of the Issuer.

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## GENERAL DESCRIPTION OF THE PROGRAMME

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*Words used in this section entitled "General Description of the Programme" shall bear the same meanings as used in the Terms and Conditions, except to the extent that they are separately defined in this section or clearly inappropriate from the context.*

The Issuer may from time to time issue one or more Tranches of Notes (denominated in South African Rand) under the Programme, pursuant to this Programme Memorandum, provided that the aggregate outstanding Nominal Amount of all of the Notes issued under the Programme (including Notes issued under the Programme pursuant to the Previous Programme Memorandum) from time to time does not exceed the Programme Amount.

A Tranche of Notes may be listed on the Bond Market of the JSE or on such other or additional Financial Exchange(s) as may be determined by the Issuer, subject to applicable laws. Unlisted Notes may also be issued under the Programme. The Applicable Pricing Supplement will specify whether or not a Tranche of Notes will be listed and, if so, on which Financial Exchange. If the Issuer issues a Tranche of unlisted Notes or a Tranche of Notes is listed on any Financial Exchange other than (or in addition to) the JSE, the Issuer will, by no later than 30 days after the date of issue of that Tranche of Notes, inform the JSE in writing of the aggregate Nominal Amount and the Maturity Date (if any) of that Tranche of Notes.

From time to time the Issuer may wish to increase the Programme Amount. Subject to the Applicable Procedures and all applicable laws, the Issuer may, without the consent of Noteholders, increase the Programme Amount by delivering a notice thereof to the Noteholders in accordance with Condition 17 (*Notices*) of the Terms and Conditions, and to the Arranger and the Dealer(s). Upon such notice being given to the Noteholders, all references in this Programme Memorandum (and each agreement, deed or document relating to the Programme and/or this Programme Memorandum) to the Programme Amount will be, and will be deemed to be, references to the increased Programme Amount set out in such notice.

The Programme is not rated. A Tranche of Notes may, on or before the Issue Date, be rated by a rating agency on a national scale or international scale basis. Unrated Tranches of Notes may also be issued. A rating of a Tranche of Notes is not a recommendation to subscribe for, buy, sell or hold any Notes, and may be subject to revision, suspension or withdrawal at any time by the rating agency.

This Programme Memorandum will only apply to Notes issued under the Programme.

A summary of the Programme and the Terms and Conditions appears below.

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## SUMMARY OF THE PROGRAMME

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*The following summary does not purport to be complete and is taken from, and is qualified in its entirety by, the remainder of this Programme Memorandum and, in relation to the Terms and Conditions of any particular Tranche of Notes, the Applicable Pricing Supplement. Words and expressions defined in the section entitled "Terms and Conditions of the Notes" below shall have the same meanings in this summary.*

<b>Issuer</b>	Eskom Holdings Limited (Registration number 2002/015527/06).
<b>Guarantor</b>	The Government of the Republic of South Africa.
<b>Arranger</b>	Eskom Holdings Limited.
<b>Dealer(s)</b>	The Issuer, or unless the Issuer elects to appoint another entity as Dealer, which appointment may be for a specific issue or on an ongoing basis, subject to the Issuer's right to terminate the appointment of such Dealer, as indicated in the Applicable Pricing Supplement.
<b>Transfer Agent</b>	The Issuer, or unless the Issuer elects to appoint another entity as Transfer Agent, in which event that other entity will act as Transfer Agent, as indicated in the Applicable Pricing Supplement.
<b>Paying Agent</b>	The Issuer, or unless the Issuer elects to appoint another entity as Paying Agent, in which event that other entity will act as Paying Agent, as indicated in the Applicable Pricing Supplement.
<b>Calculation Agent</b>	The Issuer, or unless the Issuer elects to appoint another entity as Calculation Agent, in which event that other entity will act as Calculation Agent, as indicated in the Applicable Pricing Supplement.
<b>Description of Programme</b>	Eskom Limited ZAR65,000,000,000 Domestic Multi-Term Note Programme.
<b>Blocked Rand</b>	Blocked Rand may be used for the purchase of, or subscription for, Notes, subject to the Exchange Control Regulations.
<b>Clearing and Settlement</b>	Notes will be cleared and settled in accordance with the rules of the JSE and the CSD. The Notes have been accepted for clearance through the CSD, which forms part of the JSE clearing system that is managed by the CSD, and may be accepted for clearance through any additional clearing system as may be agreed between the JSE and the Issuer. As at the date of this Programme Memorandum, the Settlement Agents are Absa Bank Limited, FirstRand Bank Limited, Nedbank Limited, The Standard Bank of South Africa Limited and the South African Reserve Bank. Euroclear Bank S.A./N.V. as operator of the Euroclear System ("Euroclear") and Clearstream Banking, <i>societe anonyme</i> (Clearstream Luxembourg) ("Clearstream"), may hold Notes through their Settlement Agent.
<b>Currency</b>	South African Rand ("ZAR").
<b>Cross-Default</b>	The terms of the Notes will contain a cross-default provision relating to indebtedness for money borrowed having an aggregate outstanding amount of at least ZAR500,000,000 or any guarantee of or indemnity in respect of any such indebtedness as further described in Condition 15.1.3.
<b>CSD</b>	Strate Limited (Registration number 1998/022242/06), registered as a central securities depository in terms of the

	Securities Services Act or such additional, alternative or successor central securities depository as may be agreed between the Issuer and the Relevant Dealer(s).		
<b>Denomination</b>	Notes will be issued in such denominations as may be agreed by the Issuer and the Relevant Dealer(s) and as indicated in the Applicable Pricing Supplement, save that the minimum denomination of each Note will be such as may be allowed or required from time to time by the central bank or regulator or any laws or regulations applicable to the Notes.		
<b>Distribution</b>	Notes may be distributed by way of private placement or any other means permitted under South African law, and in each case on a syndicated or non-syndicated basis as may be determined by the Issuer and the Relevant Dealer(s) and reflected in the Applicable Pricing Supplement.		
<b>Form of Notes</b>	Notes will be issued electronically in uncertificated form as described in the section entitled " <i>Form of the Notes</i> ".		
<b>Governing Law</b>	The Notes will be governed by and construed in accordance with the laws of the Republic of South Africa in force from time to time.		
<b>Guarantee</b>	The Guarantor has unconditionally and irrevocably guaranteed to the Noteholders the due and punctual payment by the Issuer of all sums owing by the Issuer in respect of the Notes issued under the Programme. The obligations of the Guarantor under the Guarantee constitute the unconditional and unsecured obligations of the Guarantor and will rank (subject to any obligations preferred by law) <i>pari passu</i> with all other present and future unsecured and unsubordinated obligations of the Guarantor. (See the section entitled " <i>Terms and Conditions of the Guarantee</i> " on page 48).		
<b>Interest Period(s)/Interest Payment Date(s)</b>	Such period(s) or date(s) as specified in the Applicable Pricing Supplement.		
<b>Issue and Transfer Taxes</b>	As at the Programme Date, no stamp duty, uncertificated securities tax or any similar tax is payable in respect of the issue or transfer of marketable securities or securities qualifying as instruments as contemplated in section 24 J of the Income Tax Act under the current South African Law.		
<b>Issue Price</b>	Notes may be issued on a fully paid or a partly paid basis and at their Nominal Amount or at a discount or premium to their Nominal Amount as specified in the Applicable Pricing Supplement.		
<b>Listing</b>	This Programme has been approved by the JSE. Notes issued under the Programme may be listed on the Bond Market of the JSE or on such other or additional Financial Exchange(s) as may be determined by the Issuer and the Dealer(s), subject to all applicable laws. Unlisted Notes may also be issued under the Programme. The Applicable Pricing Supplement will specify whether or not a Tranche of Notes will be listed and, if so, on which Financial Exchange(s)..		
<b>Maturities of Notes</b>	Such maturity(ies) that is/are acceptable to the JSE and as specified in the Applicable Pricing Supplement. The Notes are not subject to any minimum or maximum maturity.		
<b>Notes</b>	Notes may comprise: <table border="0" style="margin-left: 20px;"> <tr> <td><b>Fixed Rate Notes</b></td> <td>Fixed Rate interest will be payable in arrear on such date or dates as may be agreed between the Issuer and the Relevant</td> </tr> </table>	<b>Fixed Rate Notes</b>	Fixed Rate interest will be payable in arrear on such date or dates as may be agreed between the Issuer and the Relevant
<b>Fixed Rate Notes</b>	Fixed Rate interest will be payable in arrear on such date or dates as may be agreed between the Issuer and the Relevant		



Dealer(s), as indicated in the Applicable Pricing Supplement and on redemption, and will be calculated on the basis of such Day Count Fraction as may be agreed between the Issuer and the Relevant Dealer(s).

**Floating Rate Notes**

Floating Rate Notes will bear interest calculated at a rate determined: (i) on the same basis as the floating rate under a notional interest rate swap transaction in the relevant Specified Currency governed by an agreement incorporating the ISDA Definitions; or (ii) on the basis of a reference rate appearing on the agreed screen page of a commercial quoting service; or (iii) on such other basis as may be agreed between the Issuer and the Relevant Dealer(s).

The Margin (if any) relating to such floating rate will be agreed between the Issuer and the Relevant Dealer(s) for each issue of Floating Rate Notes as indicated in the Applicable Pricing Supplement.

Floating Rate Notes may also have a maximum interest rate, a minimum interest rate or both.

The Interest Period for Floating Rate Notes may be one, two, three, six or twelve months or such other period as the Issuer and the Relevant Dealer(s) may agree, as indicated in the Applicable Pricing Supplement.

**Zero Coupon Notes**

Zero Coupon Notes will be offered or sold at a discount to their Nominal Amount or at par and will not bear interest (except in the case of late payment as specified).

**Index-Linked Notes**

Payments (whether in respect of interest on Indexed Interest Notes or in respect of principal on Indexed Redemption Amount Notes and whether at maturity or otherwise) will be calculated by reference to such index and/or formula as the Issuer and the Relevant Dealer(s) may agree, as indicated in the Applicable Pricing Supplement.

**Mixed Rate Notes**

Mixed Rate Notes will bear interest over respective periods at the rates applicable for any combination of Fixed Rate Notes, Floating Rate Notes, Zero Coupon Notes or Index-Linked Notes, each as specified in the Applicable Pricing Supplement.

**Instalment Notes**

The Applicable Pricing Supplement will set out the dates on which, and the amounts in which, Instalment Notes may be redeemed.

**Partly Paid**

The Issue Price will be payable in two or

<b>Notes</b>	more instalments as set out in the Applicable Pricing Supplement.
<b>Exchangeable Notes</b>	Exchangeable Notes may be redeemed by the Issuer in cash or by the delivery of securities as specified in the Applicable Pricing Supplement.
<b>Other Notes</b>	Terms applicable to any other type of Notes that are approved by the JSE, or its successor, or such other or further exchange or exchanges as may be selected by the Issuer in relation to an issue of listed Notes, or as agreed between the Issuer and the Relevant Dealer(s) in respect of unlisted Notes, will be set out in the Applicable Pricing Supplement.
<b>Noteholders</b>	The holders of the listed or unlisted registered Notes (as recorded in the Register).
<b>Rating</b>	As at the Programme Date, the Notes to be issued under this Programme are not rated by any rating agency.
<b>Redemption</b>	<p>The Applicable Pricing Supplement relating to a Tranche of Notes will indicate either that the Notes cannot be redeemed prior to their stated maturity (other than in specified instalments (see below), if applicable, or for taxation reasons or following an Event of Default) or that such Notes will be redeemable at the option of the Issuer and, upon giving not less than 30 nor more than 60 days' irrevocable notice (or such other notice period (if any) as is indicated in the Applicable Pricing Supplement) to the Noteholders or the Issuer, as the case may be, on a date or dates specified prior to such stated maturity and at a price or prices and on such terms as are indicated in the Applicable Pricing Supplement.</p> <p>The Applicable Pricing Supplement may provide that Notes may be repayable in two or more instalments of such amounts and on such dates as indicated in the Applicable Pricing Supplement.</p>
<b>Selling Restrictions</b>	There are restrictions on the sale of Notes and the distribution of offering materials in various jurisdictions (see the section entitled " <i>Subscription and Sale</i> ") and such restrictions as may be imposed in the Applicable Pricing Supplement.
<b>Size of the Programme</b>	As at the Programme Date, the Programme Amount is ZAR65,000,000,000. This Programme Memorandum will only apply to Notes issued under the Programme (including Notes issued under the Programme pursuant to the Previous Programme Memorandum) in an aggregate outstanding Nominal Amount which does not exceed the Programme Amount. The Issuer may increase the Programme Amount as described in the section of this Programme Memorandum entitled " <i>General Description of the Programme</i> ".
<b>Status of Notes</b>	The Notes constitute direct, unconditional, unsubordinated and unsecured obligations of the Issuer ranking <i>pari passu</i> amongst themselves and (save for certain obligations required to be preferred by law) at least <i>pari passu</i> with all other unsecured and unsubordinated obligations of the Issuer.
<b>Stabilisation</b>	In connection with the issue and distribution of any Tranche of Notes under the Programme, the Dealer, if any, that is specified

in the Applicable Pricing Supplement as the Stabilising Manager (or any person acting for the Stabilising Manager) may, if specified in that Applicable Pricing Supplement and only if such stabilising is permitted by the rules of the JSE, over-allot or effect transactions with a view to supporting the market price of the Notes at a level higher than that which might otherwise prevail for a limited period. However, there may be no obligation on the Stabilising Manager (or any agent of the Stabilising Manager) to do this. Such stabilising, if commenced, may be discontinued at any time and must be brought to an end after a limited period. Such stabilising shall be in compliance with all applicable laws, regulations and rules.

**Taxation**

As the date of this Programme Memorandum, all payments in respect of the Notes will be made without withholding or deduction for or on account of taxes levied in South Africa, subject to certain exceptions as provided in Condition 10 (*Taxation*). In the event that withholding tax or such other deduction is required by law, then the Issuer will pay such additional amounts as shall be necessary in order that the net amounts received by the holders of the Notes after such withholding or deduction shall equal the respective amounts of principal and interest which would otherwise have been receivable in respect of the Notes, as the case may be, in the absence of such withholding or deduction.

**Use of Proceeds**

The Issuer will use the issue proceeds of the Notes for its general corporate purposes, including but not limited to the development upgrade of the Issuer's electricity generation, transmission and distribution capabilities, or as may otherwise be described in the Applicable Pricing Supplement.

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## FORMS OF NOTES

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A Tranche of Notes may be issued in the form of listed or unlisted registered Notes as specified in the Applicable Pricing Supplement.

### **Registered Notes**

Registered Notes will be issued in certificated form or in uncertificated form as specified in the Applicable Pricing Supplement. Notes which are listed on Bond Market of the JSE will be held in the CSD. Unlisted Notes may also be held in the CSD.

### ***Notes issued in uncertificated form and certificated form***

A Tranche of Notes which is listed on the Bond Market of the JSE may, subject to applicable laws, be issued in uncertificated form in terms of section 37 of the Securities Services Act.

Notes issued in uncertificated form will not be represented by any certificate or written instrument. A Tranche of Notes issued in uncertificated form will be held by the CSD, and the CSD's Nominee will be named in the Register as the registered Noteholder of that Tranche of Notes.

All Notes which are not issued in uncertificated form will be represented by single Individual Certificates in registered form. Notes represented by Individual Certificates will be registered in the Register in the name of the Individual Noteholders of such Notes. Certificates will not be issued in bearer form.

Title to Notes represented by Certificates will pass upon registration of transfer in accordance with Condition 13 (*Transfer of Notes*) of the Terms and Conditions.

The Issuer shall regard the Register as the conclusive record of title to the Notes represented by Certificates.

Payments of all amounts due and payable in respect of Notes represented by Certificates will be made in accordance with Condition 8 (*Payments*) of the Terms and Conditions to the person reflected as the registered Noteholder of such Notes in the Register at 17h00 (South African time) on the Last Day to Register, and the Issuer will be discharged by proper payment to or to the order of such registered holder in respect of each amount so paid.

### ***Beneficial Interests in Notes held in the CSD***

A Tranche of Notes which is listed on the Bond Market of the JSE will be issued in uncertificated form and held in the CSD. A Tranche of unlisted Notes may also be held in the CSD. While a Tranche of Notes is held in its entirety in the CSD, the CSD's Nominee will be named in the Register as the sole Noteholder of the Notes in that Tranche.

The CSD will hold each Tranche of Notes subject to the Securities Services Act and the Applicable Procedures. All amounts to be paid and all rights to be exercised in respect of Notes held in the CSD will be paid to and may be exercised only by the CSD's Nominee for the holders of Beneficial Interests in such Notes.

The CSD maintains central securities accounts only for Participants. As at the Programme Date, the Participants are Absa Bank Limited, FirstRand Bank Limited, Nedbank Limited, The Standard Bank of South Africa Limited and the South African Reserve Bank. Beneficial Interests which are held by Participants will be held directly through the CSD, and the CSD will hold such Beneficial Interests, on behalf of such Participants, through the central securities accounts maintained by the CSD for such Participants.

The Participants are in turn required to maintain securities accounts for their clients. Beneficial Interests which are held by clients of Participants will be held indirectly through such Participants, and such Participants will hold such Beneficial Interests, on behalf of such clients, through the securities accounts maintained by such Participants for such clients. The clients of Participants may include the holders of Beneficial Interests in the Notes or their custodians. The clients of Participants, as the holders of Beneficial Interests or as custodians for such holders, may exercise their rights in respect of the Notes held by them in the CSD only through their Participants. Euroclear Bank S.A./N.V. as operator of the Euroclear System ("**Euroclear**") and Clearstream Banking, société anonyme, (Clearstream Luxembourg) ("**Clearstream**") may hold Notes through their Participant.

In relation to each person shown in the records of the CSD or the relevant Participant, as the case may be, as the holder of a Beneficial Interest in a particular outstanding Nominal Amount of Notes, a certificate or other document issued by the CSD or the relevant Participant, as the case may be, as to the outstanding Nominal Amount of such Notes standing to the account of any person shall be *prima facie* proof of such Beneficial Interest. The CSD's Nominee (as the registered Noteholder of such Notes named in the Register) will be treated

by the Issuer, the Paying Agent, the Transfer Agent and the relevant Participant as the holder of that outstanding Nominal Amount of such Notes for all purposes.

Title to Beneficial Interests held by Participants directly through the CSD will pass on transfer thereof by electronic book entry in the central securities accounts maintained by the CSD for such Participants. Title to Beneficial Interests held by clients of Participants indirectly through such Participants will pass on transfer thereof by electronic book entry in the security accounts maintained by such Participants for such clients. Beneficial Interests may be transferred only in accordance with the Applicable Procedures. Holders of Beneficial Interests vote in accordance with the Applicable Procedures.

The holder of a Beneficial Interest will only be entitled to exchange such Beneficial Interest for Notes represented by an Individual Certificate in accordance with Condition 11 (*Exchange of Beneficial Interest and Replacement of Certificates*) of the Terms and Conditions.

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**PRO FORMA APPLICABLE PRICING SUPPLEMENT**

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Set out below is the form of Applicable Pricing Supplement that will be completed for each Tranche of Notes issued under the Programme:



**ESKOM HOLDINGS LIMITED**

*(Incorporated in the Republic of South Africa with limited liability under  
Registration Number 2002/015527/06)*

**unconditionally and irrevocably guaranteed by**

**THE GOVERNMENT OF THE REPUBLIC OF SOUTH AFRICA**

**Issue of [Aggregate Nominal Amount of Tranche] [Title of Notes]  
Under its ZAR65,000,000,000 Domestic Multi-Term Note Programme**

This document constitutes the Applicable Pricing Supplement relating to the issue of Notes described herein. Terms used herein shall be deemed to be defined as such for the purposes of the Terms and Conditions set forth in the Programme Memorandum dated 4 February 2010. The Notes described in this Applicable Pricing Supplement are subject to the Terms and Conditions in the Programme Memorandum. This Applicable Pricing Supplement contains the final terms of the Notes and this Applicable Pricing Supplement must be read in conjunction with such Programme Memorandum. To the extent that there is any conflict or inconsistency between the contents of this Applicable Pricing Supplement and the Programme Memorandum, the provisions of this Applicable Pricing Supplement shall prevail.

**DESCRIPTION OF THE NOTES**

1. Issuer	Eskom Holdings Limited
2. Guarantor	The Government of the Republic of South Africa
3. Status of Notes	[Secured/Unsecured]
4. Form of Notes	[Listed/Unlisted] Registered Notes
5. Series Number	[ ]
6. Tranche Number	[ ]
7. Aggregate Nominal Amount:	
(a) Series	[ ]
(b) Tranche	[ ]
8. Interest	[Interest-bearing/Non-interest-bearing]
9. Interest Payment Basis	[Fixed Rate/Floating Rate/Zero Coupon/Index-Linked/Partly Paid Notes/Instalment Notes/other]
10. Automatic/Optional Conversion from one Interest/Redemption/Payment Basis to another	[insert details including date for conversion]
11. Form of Notes	Registered Notes
12. Issue Date	[ ]
13. Nominal Amount per Note	[ ]
14. Specified Denomination	[ ]
15. Issue Price	[ ]
16. Interest Commencement Date	[ ]

17. Maturity Date [ ]
18. Applicable Business Day Convention Floating Rate Business Day / Following Business Day / Modified Following Business Day / Preceding Business Day / other convention – insert details
19. Final Redemption Amount [ ]
20. Last Date to Register [ ]
21. Books Closed Period(s) The Register will be closed from [...] to [...] and from [...] to [...] (all dates inclusive) in each year until the Maturity Date
22. Default Rate [ ]

#### PROGRAMME AMOUNT

23. Programme Amount as at the Issue Date [ ]
24. Aggregate outstanding Nominal Amount of all of the Notes issued under the Programme (including Notes issued under the Programme pursuant to the Previous Programme Memorandum) as at the Issue Date [ ]

#### FIXED RATE NOTES

25. (a) Fixed Rate of Interest [ ] per cent. per annum [payable [annually/semi-annually/quarterly] in arrear]
- (b) Fixed Interest Payment Date(s) [ ] in each year up to and including the Maturity Date/other
- (c) Fixed Coupon Amount(s) [ ] per [ ] in Nominal Amount
- (d) Initial Broken Amount [ ]
- (e) Final Broken Amount [ ]
- (f) Determination Date(s) [ ] in each year
- (g) Day Count Fraction [ ]
- (h) Any other terms relating to the particular method of calculating interest [ ]

#### FLOATING RATE NOTES

26. (a) Floating Interest Payment Date(s) [ ]
- (b) Interest Period(s) [ ]
- (c) Definition of Business Day (if different from that set out in Condition 1 (*Interpretation*)) [ ]
- (d) Minimum Rate of Interest [ ] per cent per annum
- (e) Maximum Rate of Interest [ ] per cent per annum
- (f) Other terms relating to the method of calculating interest [ ]
27. Manner in which the Rate of Interest is to be determined [ISDA Determination / Screen Rate Determination/other – insert details]
28. Margin [(...) basis points to be added to/subtracted from the relevant ISDA Rate / Reference Rate]
29. If ISDA Determination:

- (a) Floating Rate [ ]
- (b) Floating Rate Option [ ]
- (c) Designated Maturity [ ]
- (d) Reset Date(s) [ ]
- (e) ISDA Definitions to apply [ ]

30. If Screen Determination:

- (a) Reference Rate (including relevant period by reference to which the Rate of Interest is to be calculated) [ ]
- (b) Interest Rate Determination Date(s) [ ]
- (c) Relevant Screen Page and Reference Code [ ]

31. If Rate of Interest to be calculated otherwise than by ISDA Determination or Screen Determination, insert basis for determining Rate of Interest/Margin/Fallback provisions [ ]

32. Calculation Agent responsible for calculating amount of principal and interest [ ]

**ZERO COUPON NOTES**

- 33. (a) Implied Yield [ ]
- (b) Reference Price Percent [NACA] [NACS] [NACM] [NACQ] [other method of compounding]
- (c) Any other formula or basis for determining amount(s) payable [ ]

**PARTLY PAID NOTES**

- 34. (a) Amount of each payment comprising the Issue Price [ ]
- (b) Dates upon which each payment is to be made by Noteholder [ ]
- (c) Consequences (if any) of failure to make any such payment by Noteholder [ ]
- (d) Interest Rate to accrue on the first and subsequent instalments after the due date for payment of such instalments [ ] per cent per annum.

**INSTALMENT NOTES**

- 35. Instalment Dates [ ]
- 36. Instalment Amounts (expressed as a percentage of the aggregate Nominal Amount of the Notes) [ ]

**MIXED RATE NOTES**

37. Period(s) during which the interest rate for the Mixed Rate Notes will be (as



applicable) that for:

- (a) Fixed Rate Notes [ ]
- (b) Floating Rate Notes [ ]
- (c) Indexed Notes [ ]
- (e) Other Notes [ ]

38. The interest rate and other pertinent details are set out under the headings relating to the applicable forms of Notes

#### INDEX-LINKED NOTES

39. (a) Type of Index-Linked Notes [Indexed Interest Notes / Indexed Redemption Amount Notes]
- (b) Index/Formula by reference to which Interest Rate / Interest Amount is to be determined [ ]
  - (c) Manner in which the Interest Rate / Interest Amount is to be determined [ ]
  - (d) Interest Period(s) [ ]
  - (e) Interest Payment Date(s) [ ]
  - (f) Calculation Agent [ ]
  - (g) Provisions where calculation by reference to Index and/or Formula is impossible or impracticable [ ]
  - (h) Definition of Business Day (if different from that set out in Condition 1 (*Interpretation*)) [ ]
  - (i) Minimum Rate of Interest [ ] per cent per annum
  - (j) Maximum Rate of Interest [ ] per cent per annum
  - (k) Other terms relating to the method of calculating interest (e.g.: Day Count Fraction, rounding up provision) [ ]

#### EXCHANGEABLE NOTES

40. (a) Mandatory Exchange applicable? [Yes/No]
- (b) Noteholders' Exchange Right applicable? [Yes/No]
  - (c) Exchange Securities [ ]
  - (d) Manner of determining Exchange Price [ ]
  - (e) Exchange Period [ ]
  - (f) Other [ ]

#### OTHER NOTES

41. If the Notes are not Partly Paid Notes, Instalment Notes, Fixed Rate Notes, Floating Rate Notes, Mixed Rate Notes, Zero Coupon Notes, Index-linked Notes, [ ]

or Exchangeable Notes or if the Notes are a combination of any of the foregoing, set out the relevant description and any additional Terms and Conditions relating to such Notes.

**PROVISIONS REGARDING REDEMPTION/MATURITY**

42. Issuer and Guarantor's Optional Redemption: [Yes/No]
- If yes:
- (a) Optional Redemption Date(s) [ ]
  - (b) Optional Redemption Amount(s) and method, if any, of calculation of such amount(s) [ ]
  - (c) Minimum period of notice (if different from Condition 9.3 (*Redemption at the Option of the Issuer or Guarantor*)) [ ]
  - (d) If redeemable in part: [ ]
    - Minimum Redemption Amount(s) [ ]
    - Higher Redemption Amount(s) [ ]
  - (e) Other terms applicable on Redemption
43. Early Redemption for taxation reasons or on Event of Default (if required). [Yes/No]
- If no:
- (a) Amount payable; or [ ]
  - (b) Method of calculation of amount payable [ ]

**GENERAL**

- 44. Financial Exchange [ ]
- 45. Calculation Agent [ ]
- 46. Paying Agent [ ]
- 47. Specified office of the Paying Agent [ ]
- 48. Transfer Agent [ ]
- 49. Provisions relating to stabilisation [ ]
- 50. Stabilising manager [ ]
- 51. Additional selling restrictions [ ]
- 52. ISIN [ ]
- 53. Stock Code [ ]
- 54. The notice period required for exchanging Uncertificated Notes for Individual Certificates [ ]
- 55. Method of distribution [ ]

56. If syndicated, names of Managers [ ]
57. If non-syndicated, name of Dealer [ ]
58. Governing law (if the laws of South Africa are not applicable) [ ]
59. Surrendering of Notes [ ] days after the date on which the Certificate in respect of the Note to be redeemed has been surrendered to the Issuer
60. Use of proceeds [ ]
61. Pricing Methodology [Standard JSE pricing methodology / other – insert details]
62. Other provisions [ ]

#### DISCLOSURE REQUIREMENTS IN TERMS OF PARAGRAPH 3(5) OF THE COMMERCIAL PAPER REGULATIONS

63. Paragraph 3(5)(a)  
The ultimate borrower is the **[Issuer]**.
64. Paragraph 3(5)(b)  
The Issuer is a going concern and can in all circumstances be reasonably expected to meet its commitments under the Notes.
65. Paragraph 3(5)(c)  
The auditor of the Issuer is **[Insert]**.
66. Paragraph 3(5)(d)  
As at the date of this issue:
- (i) the Issuer has **[not issued any]/[issued ZAR●,000,000]** commercial paper; and
  - (ii) to the best of the Issuer's knowledge and belief, the Issuer estimates to issue ZAR●,000,000 of commercial paper during the current financial year, ending **[date]**.
67. Paragraph 3(5)(e)  
All information that may reasonably be necessary to enable the investor to ascertain the nature of the financial and commercial risk of its investment in the Notes is contained in the Programme Memorandum and the Applicable Pricing Supplement.
68. Paragraph 3(5)(f)  
There has been no material adverse change in the Issuer's financial position since the date of its last audited financial statements.
69. Paragraph 3(5)(g)  
The Notes issued will be **[listed/unlisted]**.
70. Paragraph 3(5)(h)  
The funds to be raised through the issue of the Notes are to be used by the Issuer for its **[general corporate purposes/funding of its business operations/other]**.
71. Paragraph 3(5)(i)  
The obligations of the Issuer in respect of the Notes are unsecured but guaranteed by the Guarantor.
72. Paragraph 3(5)(j)  
**[Insert]**, the statutory auditors of the Issuer, have confirmed that **[their review did not reveal anything which indicates / nothing has come to their attention to indicate]** that this issue of Notes issued under the Programme will not comply in all respects with the relevant provisions of the Commercial Paper Regulations.

**Responsibility:**

The Issuer accepts responsibility for the information contained in this Applicable Pricing Supplement. Application [is hereby]/[will not be] made to list this issue of Notes [on ● ●●●●].

SIGNED at \_\_\_\_\_ on this \_\_\_\_\_ day of \_\_\_\_\_ 200●

for and on behalf of

**ESKOM HOLDINGS LIMITED**

\_\_\_\_\_  
Name:

Capacity: Director

Who warrants his/her authority hereto

\_\_\_\_\_  
Name:

Capacity: Director

Who warrants his/her authority hereto

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## TERMS AND CONDITIONS OF THE NOTES

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*The following are the Terms and Conditions of the Notes to be issued by the Issuer which will be incorporated by reference into each Note. The Applicable Pricing Supplement in relation to any Tranche of Notes may specify other terms and conditions, which shall, to the extent so specified or to the extent inconsistent with the following Terms and Conditions, replace or modify the following Terms and Conditions for the purpose of such Tranche of Notes. The Applicable Pricing Supplement will be attached to each Note.*

Before the Issuer issues any Tranche of listed Notes, the Issuer shall complete, sign and deliver to the JSE or such other or further exchange or exchanges and the CSD a pricing supplement based on the *pro forma* Applicable Pricing Supplement included in the Programme Memorandum setting out details of such Notes.

If there is any conflict or inconsistency between provisions set out in the Applicable Pricing Supplement and the provisions set out in these Terms and Conditions of the Notes, then the provisions in the Applicable Pricing Supplement will prevail.

Words and expressions used in the Applicable Pricing Supplement shall have the same meanings where used in these Terms and Conditions unless the context otherwise requires or unless otherwise stated.

### 1. INTERPRETATION

In these Terms and Conditions, unless inconsistent with the context or separately defined in the Applicable Pricing Supplement, the following expressions shall have the following meanings:

“Applicable Pricing Supplement”	the Pricing Supplement relating to each Tranche of Notes;
“Applicable Procedures”	the rules and operating procedures for the time being of the CSD and the JSE, as the case may be;
“Banks Act”	the Banks Act, 1990;
“Beneficial Interest”	in relation to a Tranche of Notes which is held in the CSD, the beneficial interest as co-owner of an undivided share of all of the Notes in that Tranche, as contemplated in section 41(1) of the Securities Services Act, the nominal value of which beneficial interest, in relation to any number of Notes in that Tranche, is determined by reference to the proportion that the aggregate outstanding Nominal Amount of such number of Notes bears to the aggregate outstanding Nominal Amount of all of the Notes in that Tranche, as provided in section 41(3) of the Securities Services Act;
“BESA Guarantee Fund”	the Guarantee Fund established and operated by the Bond Exchange of South Africa Limited, prior to its merger with the JSE on 1 July 2009 and, as at the date of this Programme Memorandum, operated by the JSE as a separate guarantee fund, in terms of the of the rules of the JSE, as required by sections 9(1)(e) and 18(2)(x) of the Securities Services Act or any successor fund;
“Bond Market of the JSE”	the separate platform or sub-market of the JSE designated as the “ <i>Bond Market</i> ” and on which notes (and other debt securities) may be listed;
“Books Closed Period”	the period, as specified in the Applicable Pricing Supplement, commencing after the Last Day to Register, during which transfer of the Notes will not be registered, or such shorter period as the Issuer may decide in order to determine those Noteholders entitled to receive interest;
“Business Day”	a day (other than a Saturday or Sunday or public holiday within the meaning of the Public Holidays Act, 1994) on which commercial banks settle ZAR payments in Johannesburg, save further that if the Applicable Pricing Supplement so provides, “ <i>Business Day</i> ” shall include a Saturday;

<b>“Calculation Agent”</b>	the Issuer, unless the Issuer elects to appoint, in relation to a particular Tranche or Series of Notes, another entity as Calculation Agent in respect of that Tranche or Series of Notes;
<b>“Certificate”</b>	an Individual Certificate;
<b>“Class of Noteholders”</b>	the holders of a Series of Notes or, where appropriate, the holders of different Series of Notes;
<b>“Commercial Paper Regulations”</b>	the commercial paper regulations of 14 December 1994 issued pursuant to paragraph (cc) of the definition of “ <i>the business of a bank</i> ” in the Banks Act, set out in Government Notice 2172 and published in Government Gazette 16167 of 14 December 1994;
<b>“Companies Act”</b>	the Companies Act, 1973;
<b>“CSD’s Nominee”</b>	a wholly owned subsidiary of the CSD approved by the Registrar of Securities Services in terms of the Securities Services Act, and any reference to “ <i>CSD’s Nominee</i> ” shall, whenever the context permits, be deemed to include any successor nominee operating in terms of the Securities Services Act;
<b>“CSD”</b>	Strate Limited (Registration number 1998/022242/06), or its nominee, operating in terms of the Securities Services Act (or any successor legislation thereto), or any additional or alternate depository approved by the Issuer;
<b>“Dealer”</b>	the Issuer, unless the Issuer elects to appoint another entity as Dealer, which appointment may be for a specific issue or on an ongoing basis, subject to the Issuer’s right to terminate the appointment of any such Dealer, as indicated in the Applicable Pricing Supplement;
<b>“Determination Period”</b>	the period from (and including) a Determination Date to (but excluding) the next Determination Date (including, where either the Interest Commencement Date or the final Interest Payment Date is not a Determination Date, the period commencing on the first Determination Date prior to, and ending on the first Determination Date falling after, such date);
<b>“Early Redemption Amount”</b>	the amount, as set out in Condition 9.4 ( <i>Early Redemption Amounts</i> ), at which the Notes will be redeemed by the Issuer, pursuant to the provisions of Condition 9.2 ( <i>Redemption for Tax Reasons</i> ) and/or Condition 15 ( <i>Events of Default</i> );
<b>“Eskom Group”</b>	the Issuer and any other company or entity whose financial results are consolidated with the financial results of the Issuer in accordance with IFRS;
<b>“Event of Default”</b>	any events described in Condition 15.1 ( <i>Events of Default</i> );
<b>“Exchange Control Regulations”</b>	the Exchange Control Regulations, 1961, promulgated pursuant to the Currency and Exchanges Act, 1933;
<b>“Exchange Period”</b>	in respect of Exchangeable Notes to which the Noteholders’ Exchange Right applies (as indicated in the Applicable Pricing Supplement), the period indicated in the Applicable Pricing Supplement during which such right may be exercised;
<b>“Exchange Price”</b>	the amount determined in accordance with the manner described in the Applicable Pricing Supplement, according to which the number of Exchange Securities which may be delivered in redemption of an Exchangeable Note will be determined;
<b>“Exchange Securities”</b>	the securities indicated in the Applicable Pricing Supplement which may be delivered by the Issuer in redemption of

	Exchangeable Notes to the value of the Exchange Price;
“Exchangeable Notes”	Notes which may be redeemed by the Issuer in the manner indicated in the Applicable Pricing Supplement by the delivery to the Noteholders of cash or of so many of the Exchange Securities as is determined in accordance with the Applicable Pricing Supplement;
“Extraordinary Resolution”	a resolution passed at a meeting (duly convened) of the Noteholders or, as the case may be, by a majority consisting of not less than 75% (seventy-five per cent) of the persons voting at such meeting upon a show of hands or if a poll be duly demanded then by a majority consisting of not less than 75% (seventy-five per cent) of the votes given on such poll;
“Final Redemption Amount”	the amount of principal specified in the Applicable Pricing Supplement payable in respect of each Note upon the Maturity Date;
“Fixed Interest Period”	the period from (and including) a Fixed Interest Payment Date (or the Interest Commencement Date) to (but excluding) the next (or first) Interest Payment Date;
“Fixed Rate Notes”	Notes which will bear interest at the Fixed Rate of Interest, as indicated in the Applicable Pricing Supplement;
“Floating Rate Notes”	Notes which will bear interest at a floating rate as indicated in the Applicable Pricing Supplement and more fully described in Condition 7.2 ( <i>Interest on Floating Rate Notes and Index Interest Notes</i> );
“Guarantee”	the Guarantee dated 5 November 2009 under which the Guarantor has irrevocably and unconditionally given its guarantee to the Noteholders for the due and punctual payment of all sums from time to time payable by the Issuer in respect of the relevant Notes, as described in Condition 6 ( <i>Guarantee</i> );
“Guarantor”	the Government of the Republic of South Africa, represented by the Minister of Public Enterprises in terms of section 66 of the PFMA acting with the concurrence of the Minister of Finance in terms of section 70 of the PFMA;
“IFRS”	the International Financial Reporting Standards (formerly International Accounting Standards) issued by the International Accounting Standards Board (“IASB”) and interpretations issued by the International Financial Reporting Interpretations Committee of IASB (as amended, supplemented or re-issued from time to time);
“Implied Yield”	the yield accruing on the Issue Price of Zero Coupon Notes, as specified in the Applicable Pricing Supplement;
“Income Tax Act”	Income Tax Act, 1962;
“Indebtedness”	in respect of the Eskom Group, any indebtedness in respect of monies borrowed and (without double counting) guarantees (other than those given in the ordinary course of business) given, whether present or future, actual or contingent;
“Indexed Interest Notes”	Notes in respect of which the Interest Amount is calculated by reference to an index and/or a formula as indicated in the Applicable Pricing Supplement;
“Indexed Redemption Amount Notes”	Notes in respect of which the Final Redemption Amount is calculated by reference to an index and/or a formula as may be indicated in the Applicable Pricing Supplement;

<b>“Index-Linked Notes”</b>	an Indexed Interest Note and/or an Indexed Redemption Amount Note, as applicable;
<b>“Individual Certificate”</b>	a Note in the definitive registered form of a single Certificate and being a Certificate exchanged for uncertificated Notes in accordance with Condition 11 ( <i>Exchange of Beneficial Interests and Replacement of Certificates</i> ) and any further Certificate issued in consequence of a transfer thereof;
<b>“Instalment Amount”</b>	the amount expressed as a percentage of the Nominal Amount of an Instalment Note, being an instalment of principal (other than the final instalment) on an Instalment Note;
<b>“Instalment Notes”</b>	Notes issued on the same date but redeemed in Instalment Amounts by the Issuer on an amortised basis on different Instalment Dates, as indicated in the Applicable Pricing Supplement;
<b>“Interest Amount”</b>	the amount of interest payable in respect of each Nominal Amount of Fixed Rate Notes, Floating Rate Notes and Indexed Notes, as determined in accordance with Condition 8 ( <i>Payments</i> );
<b>“Interest Commencement Date”</b>	the first date from which interest on the Notes, other than Zero Coupon Notes, will accrue, as specified in the Applicable Pricing Supplement;
<b>“Interest Payment Date”</b>	the Interest Payment Date(s) specified in the Applicable Pricing Supplement or, if no express Interest Payment Date(s) is/are specified in the Applicable Pricing Supplement, the last day of the Interest Period commencing on the preceding Interest Payment Date, or, in the case of the first Interest Payment Date, commencing on the Interest Commencement Date;
<b>“Interest Rate” or “Rate of Interest”</b>	the rate or rates of interest applicable to Notes other than Zero Coupon Notes as indicated in the Applicable Pricing Supplement;
<b>“ISDA Definitions”</b>	the ISDA Definitions published by ISDA (as amended, supplemented, revised or republished from time to time) as specified in the Applicable Pricing Supplement;
<b>“ISDA”</b>	the International Swaps and Derivatives Association Inc.;
<b>“Issuer”</b>	Eskom Holdings Limited (Registration Number 2002/015527/06), a public company with limited liability registered and incorporated in accordance with the laws of South Africa;
<b>“JSE”</b>	the JSE Limited (Registration Number 2005/022939/06), a licensed financial exchange in terms of the Securities Services Act or any exchange which operates as a successor exchange to the JSE;
<b>“Last Day to Register”</b>	with respect to a particular Series of Notes (as reflected in the Applicable Pricing Supplement), the last date or dates preceding a Payment Day on which the Transfer Agent will accept Transfer Forms and record the transfer of Notes in the Register for that particular Series of Notes and whereafter the Register is closed for further transfers or entries until the Payment Day;
<b>“Material Group Company”</b>	any company which is a member of the Eskom Group and which: <ul style="list-style-type: none"> <li>(i) represents more than 10% (ten per cent) of the aggregate total assets or turnover of the Issuer on a consolidated</li> </ul>



	basis;
	(ii) is incorporated in South Africa in accordance with the Companies Act; and
	(iii) is a Wholly Owned Subsidiary of the Issuer;
<b>“Material Indebtedness”</b>	any Indebtedness amounting in aggregate to not less than ZAR500,000,000;
<b>“Mixed Rate Notes”</b>	Notes which will bear interest over respective periods at differing Interest Rates applicable to any combination of Fixed Rate Notes, Floating Rate Notes, Zero Coupon Notes or Indexed Notes, each as indicated in the Applicable Pricing Supplement and as more fully described in Condition 7.3 ( <i>Mixed Rate Notes</i> );
<b>“NACA”</b>	nominal annual compounded annually;
<b>“NACM”</b>	nominal annual compounded monthly;
<b>“NACQ”</b>	nominal annual compounded quarterly;
<b>“NACS”</b>	nominal annual compounded semi-annually;
<b>“Nominal Amount”</b>	in relation to any Note, the total amount, excluding interest and any adjustments on account of any formula, owing by the Issuer under the Note;
<b>“Noteholders’ Exchange Right”</b>	if indicated as applicable in the Applicable Pricing Supplement, the right of Noteholders of Exchangeable Notes to elect to receive delivery of the Exchange Securities in lieu of cash from the Issuer upon redemption of such Notes;
<b>“Noteholders”</b>	the holders of the listed and/or unlisted registered Notes (as recorded in the Register);
<b>“Notes”</b>	secured or unsecured notes issued or to be issued by the Issuer under the Programme, pursuant to this Programme Memorandum;
<b>“Outstanding”</b>	in relation to the Notes, all the Notes issued other than: <ul style="list-style-type: none"> <li>(a) those which have been redeemed in full;</li> <li>(b) those in respect of which the date for redemption in accordance with the Terms and Conditions has occurred and the redemption moneys wherefor (including all interest (if any) accrued thereon to the date for such redemption and any interest (if any) payable under the Terms and Conditions after such date) remain available for payment against presentation of Individual Certificates;</li> <li>(c) those which have been purchased and cancelled as provided in Condition 9 (<i>Redemption and Purchase</i>);</li> <li>(d) those which have become prescribed under Condition 14 (<i>Prescription</i>);</li> <li>(e) those represented by those mutilated or defaced Individual Certificates which have been surrendered in exchange for replacement Individual Certificates pursuant to Condition 11 (<i>Exchange of Beneficial Interests and replacement of Certificates</i>);</li> <li>(f) (for the purpose only of determining how many Notes are Outstanding and without prejudice to their status for any other purpose) those Notes represented by Individual</li> </ul>

Certificates alleged to have been lost, stolen or destroyed and in respect of which replacement Individual Certificates have been issued pursuant to Condition 11 (*Exchange of Beneficial Interests and replacement of Certificates*),

provided that for each of the following purposes:

- (i) the right to attend and vote at any meeting of the Noteholders; and
- (ii) the determination of how many and which Notes are for the time being Outstanding for the purposes of Conditions 18 (*Amendment of these Conditions*) and 19 (*Meetings of Noteholders*),

all Notes (if any) which are for the time being held by the Issuer (subject to any applicable law) or by any person for the benefit of the Issuer and not cancelled shall (unless and until ceasing to be so held) shall be deemed not to be Outstanding);

<b>“Participant”</b>	a person accepted by the CSD as a participant in terms of section 34 of the Securities Services Act;
<b>“Partly Paid Notes”</b>	Notes which are issued with the Issue Price partly paid and which Issue Price is paid up fully by the Noteholder in instalments (as indicated in the Applicable Pricing Supplement);
<b>“Paying Agent”</b>	the Issuer, unless the Issuer elects to appoint, in relation to a particular Tranche or Series of Notes, another entity as Paying Agent, in which event that other entity shall act as Paying Agent in respect of that Tranche or Series of Notes;
<b>“Payment Day”</b>	any day which is a Business Day and upon which a payment is due by the Issuer in respect of the Notes;
<b>“PFMA”</b>	the Public Finance Management Act, 1999;
<b>“Previous Programme Memorandum”</b>	the programme memorandum dated 6 March 2006 prepared by the Issuer in respect of the Programme, as amended and/or supplemented from time to time;
<b>“Programme Amount”</b>	the maximum aggregate outstanding Nominal Amount of all of the Notes that may be issued under the Programme at any one point in time (including the Notes issued under the Programme pursuant to the Previous Programme Memorandum), being ZAR65,000,000,000 or such increased amount as is determined by the Issuer from time to time, subject to the Applicable Procedures and applicable laws, as set out in the section of this Programme Memorandum headed “ <i>General Description of the Programme</i> ”;
<b>“Programme”</b>	the Eskom Limited ZAR65,000,000,000 Domestic Multi-Term Note Programme under which the Issuer may from time to time issue Notes;
<b>“Redemption Date”</b>	the date upon which the Notes are redeemed by the Issuer, whether by way of redemption or maturity in terms of Condition 9.1 ( <i>At Maturity</i> ) or redemption for tax reasons in terms of Condition 9.2 ( <i>Redemption for Tax Reasons</i> ), as the case may be;
<b>“Reference Banks”</b>	four leading banks in the South African inter-bank market selected by the Calculation Agent;

<b>“Register”</b>	the register maintained by the Issuer in terms of Condition 12 ( <i>Register</i> ), including any Sub-register, as the case may be;
<b>“Relevant Date”</b>	<p>in respect of any payment relating to the Notes, the date on which such payment first becomes due, except that, in relation to monies payable to the CSD in accordance with these Terms and Conditions, the Relevant Date is the first date on which:</p> <ul style="list-style-type: none"> <li>(i) the full amount of such monies have been received by the CSD;</li> <li>(ii) such monies are available for payment to the holders of uncertificated Notes; and</li> <li>(iii) notice to that effect has been duly given to such holders in accordance with the Applicable Procedures;</li> </ul>
<b>“Representative”</b>	a person duly authorised to act on behalf of a Noteholder, the Transfer Agent and the Paying Agent who may be regarded by the Issuer (acting in good faith) as being duly authorised based upon the tacit or express representation thereof by such Representative, in the absence of express notice to the contrary from such Noteholder;
<b>“Securities Services Act”</b>	the Securities Services Act, 2004;
<b>“Series”</b>	<p>a Tranche of Notes together with any further Tranche or Tranches of Notes which are:</p> <ul style="list-style-type: none"> <li>(i) expressed to be consolidated and form a single series; and</li> <li>(ii) identical in all respects (including as to listing) except for their respective Issue Dates, Interest Commencement Dates and/or Issue Prices;</li> </ul>
<b>“Settlement Agent”</b>	a Participant, approved by the JSE in terms of the rules of the JSE to perform electronic settlement of both funds and scrip on behalf of market participants;
<b>“South Africa”</b>	the Republic of South Africa;
<b>“Sub-register”</b>	a Sub-register as contemplated in Section 91A of the Companies Act;
<b>“Subsidiary”</b>	a subsidiary company as defined in Section 1(3) of the Companies Act;
<b>“Sub-unit”</b>	with respect to any currency, the lowest amount of such currency that is available as legal tender in the country of such currency;
<b>“Terms and Conditions”</b>	the terms and conditions incorporated in this section entitled “ <i>Terms and Conditions of the Notes</i> ” and in accordance with which the Notes will be issued;
<b>“Tranche”</b>	in relation to any particular Series, all Notes which are identical in all respects (including as to listing);
<b>“Transfer Agent”</b>	the Issuer, unless the Issuer elects to appoint another entity as a Transfer Agent in which event that other entity shall act as an Transfer Agent in respect of that Tranche or Series of Notes;
<b>“Transfer Form”</b>	the written form for the transfer of a Note, in the form approved by the Transfer Agent, and signed by the transferor and transferee;
<b>“Wholly Owned Subsidiary”</b>	a wholly owned subsidiary as defined in Section 1(5) of the Companies Act;

“ZAR”	the lawful currency of South Africa, being South African Rand, or any successor currency;
“ZAR-JIBAR-SAFEX”	the mid-market rate for deposits in ZAR for a period of the Designated Maturity (as indicated in the Applicable Pricing Supplement) that appears on the Reuters Screen SAFEX Page as at 11h00, Johannesburg time on the relevant date; and
“Zero Coupon Notes”	Notes which will be offered and sold at a discount to their Nominal Amount or at par and will not bear interest other than in the case of late payment.

## 2. ISSUE

- 2.1 The Issuer may, at any time and from time to time (without the consent of any Noteholder), issue one or more Tranche(s) of Notes pursuant to the Programme, provided that the aggregate outstanding Nominal Amount of all of the Notes issued under the Programme from time to time (including all Notes issued under the Programme pursuant to the Previous Programme Memorandum) does not exceed the Programme Amount.
- 2.2 Notes are issued by the Issuer in Series and each Series may comprise one or more Tranches. Each Tranche will be the subject of an Applicable Pricing Supplement.
- 2.3 The Noteholders are deemed to have knowledge of, and are entitled to the benefit of, and are subject to, all the provisions of the Applicable Pricing Supplement.
- 2.4 The Applicable Pricing Supplement for each Tranche of Notes is (to the extent relevant) incorporated herein for the purposes of those Notes and supplements these Terms and Conditions. The Applicable Pricing Supplement may specify other terms and conditions, which shall, to the extent so specified or to the extent inconsistent with these Terms and Conditions, replace or modify these Terms and Conditions for the purposes of those Notes.
- 2.5 Copies of the Applicable Pricing Supplement are available for inspection at the registered office of the Issuer.

## 3. FORM AND DENOMINATION

### 3.1 General

- 3.1.1 A Tranche of Notes may be issued in the form of listed or unlisted registered Notes, as specified in the Applicable Pricing Supplement.
- 3.1.2 Each Note, may be a Fixed Rate Note, a Floating Rate Note, a Zero Coupon Note, an Indexed Note, a Mixed Rate Note or such combination of any of the foregoing or such other type of Note as may be determined by the Issuer and specified in the Applicable Pricing Supplement.
- 3.1.3 All payments in relation to the Notes will be made in South African Rands. Each Note will be issued in the Specified Denomination.
- 3.1.4 A Tranche of Notes may be listed on the Bond Market of the JSE or on such other or further Financial Exchange(s) as may be determined by the Issuer and the Dealer(s), subject to any applicable laws. Unlisted Notes may also be issued under the Programme.

### 3.2 Registered Notes

A Tranche of registered Notes will be issued in certificated form or in uncertificated form, as contemplated in Condition 3.2.1, as specified in the Applicable Pricing Supplement. Each Tranche of Notes which is listed on the Bond Market of the JSE in uncertificated form, will be held in the CSD, as contemplated in Condition 3.2.1. A Tranche of unlisted Notes may also be held in the CSD, as contemplated in Condition 3.2.2.

#### 3.2.1 *Notes issued in uncertificated form and certificated form*

- 3.2.1.1 A Tranche of Notes which is listed on Bond Market of the JSE may, subject to applicable laws, be issued in uncertificated form in terms of section 37 of the Securities Services Act. Notes issued in uncertificated

form will be held in the CSD. Notes issued in uncertificated form will not be represented by any certificate or written instrument. A Note which is represented by an Individual Certificate may be replaced by uncertificated securities in terms of section 37 of the Securities Services Act.

3.2.1.2 All Notes which are not issued in uncertificated form will be represented by Individual Certificates.

3.2.2 *Beneficial Interests in Notes held in the CSD*

3.2.2.1 A Tranche of Notes which is listed on the Bond Market of the JSE will be issued in uncertificated form and held in the CSD. A Tranche of unlisted Notes may also be held in the CSD.

3.2.2.2 The CSD will hold Notes subject to the Securities Services Act and the Applicable Procedures.

3.2.2.3 All amounts to be paid and all rights to be exercised in respect of Notes held in the CSD will be paid to and may be exercised only by the CSD's Nominee for the holders of Beneficial Interests in such Notes.

3.2.2.4 A holder of a Beneficial Interest shall only be entitled to exchange such Beneficial Interest for Notes represented by an Individual Certificate in accordance with Condition 11 (*Exchange of Beneficial Interests and Replacement of Certificates*).

3.2.3 *Recourse to the BESA Guarantee Fund*

The holders of Notes that are not listed on the Bond Market of the JSE will have no recourse against the BESA Guarantee Fund. Claims against the BESA Guarantee Fund may only be made in respect of the trading of Notes listed on the Bond Market of the JSE and in accordance with the rules of the BESA Guarantee Fund.

4. **TITLE**

4.1 **Notes issued in uncertificated form**

The CSD's Nominee will be named in the Register as the registered holder of each Tranche of Notes which is issued in uncertificated form.

4.2 **Beneficial Interests in Notes held in the CSD**

4.2.1 While a Tranche of Notes is held in its entirety in the CSD, the CSD's Nominee will be named in the Register as the sole Noteholder of the Notes in that Tranche.

4.2.2 Beneficial Interests which are held by Participants will be held directly through the CSD, and the CSD will hold such Beneficial Interests, on behalf of such Participants, through the central securities accounts maintained by the CSD for such Participants.

4.2.3 Beneficial Interests which are held by clients of Participants will be held indirectly through such Participants, and such Participants will hold such Beneficial Interests, on behalf of such clients, through the securities accounts maintained by such Participants for such clients. The clients of Participants may include the holders of Beneficial Interests or their custodians. The clients of Participants, as the holders of Beneficial Interests or as custodians for such holders, may exercise their rights in respect of the Notes held by them in the CSD only through their Participants.

4.2.4 In relation to each person shown in the records of the CSD or the relevant Participant, as the case may be, as the holder of a Beneficial Interest in a particular Nominal Amount of Notes, a certificate or other document issued by the CSD or the relevant Participant, as the case may be, as to the aggregate Nominal Amount of such Notes standing to the account of such person shall be *prima facie* proof of such Beneficial Interest. The CSD's Nominee (as the registered holder of such Notes named in the Register) will be treated by the Issuer, the Paying Agent, the Transfer Agent and the relevant Participant as the holder of that aggregate Nominal Amount of such Notes for all purposes.

4.2.5 Beneficial Interests in Notes may be transferred only in accordance with the Applicable Procedures. Such transfers will not be recorded in the Register and the CSD's Nominee will continue to be reflected in the Register as the registered holder of such Notes, notwithstanding such transfers.

4.2.6 Any reference in the Terms and Conditions to the relevant Participant shall, in respect of a Beneficial Interest, be a reference to the Participant appointed to act as such by the holder of such Beneficial Interest.

## 5. STATUS OF NOTES

5.1 The Notes are direct, unconditional, unsubordinated and unsecured obligations of the Issuer and rank *pari passu* and rateably without any preference among themselves and (save for certain debts required to be preferred by law) equally with all other unsecured and unsubordinated obligations of the Issuer from time to time outstanding.

5.2 In terms of the Eskom Conversion Act, 2001 (the "EC Act"), the Notes issued or to be issued under this Programme Memorandum, from time to time, do not qualify as a "*first charge against all revenues and assets*" of the Issuer as contemplated in section 7 of the EC Act.

## 6. GUARANTEE

6.1 In accordance with the provisions of the Guarantee and subject to Condition 15.3 (*Recourse and Non-petition*), the Guarantor irrevocably and unconditionally guarantees (as a principal obligation and not merely as suretyship) to each Noteholder the due and punctual payment by the Issuer of all sums from time to time payable by the Issuer in respect of the Notes issued under the Programme as and when the same become due and payable.

6.2 Under the Guarantee, the Guarantor is required to pay, within 5 Business Days after receipt of a written demand in accordance with the provisions of the Guarantee, any and every sum or sums which the Issuer is at any time liable to pay in respect of any Note and which the Issuer has failed to pay in the manner and currency prescribed by such Note for payments by the Issuer in respect of such Note.

6.3 If a Noteholder delivers a written demand in accordance with the provisions of the Guarantee, the Guarantor will pay the relevant sum (the "**Guaranteed Sum**") as demanded therein to that Noteholder *mutatis mutandis* in accordance with Condition 8 (*Payments*) below. Payment to a Noteholder under the Guarantee of a Guaranteed Sum will:

6.3.1 discharge the Guarantor's obligations to that Noteholder under the Guarantee in respect of the Guaranteed Sum; and

6.3.2 *pro tanto* discharge the Issuer of its corresponding obligations to that Noteholder under the relevant Notes.

6.4 The Guarantee will be deposited with, and held by, the CSD for so long as the Programme remains in effect and until the date on which all of the obligations of the Issuer under or in respect of these Notes and the Terms and Conditions have been discharged in full.

6.5 Each Noteholder shall be entitled to require the CSD to produce the original of the Guarantee on written request and further shall be entitled to require the CSD, which shall be obliged, to provide a copy of the Guarantee to that Noteholder on written request. The Issuer will instruct the CSD to comply with such requests within 3 (three) Business Days of receipt of such written request. In holding the Guarantee, the CSD does not act in any fiduciary or similar capacity for the Noteholders and it has not accepted any liability, duty or responsibility to Noteholders in this regard.

## 7. INTEREST

### 7.1 Interest on Fixed Rate Notes

Each Fixed Rate Note bears interest on its outstanding Nominal Amount (or, if it is a Partly Paid Note, the amount paid up) from (and including) the Interest Commencement Date specified in the Applicable Pricing Supplement at the rate(s) per annum equal to the Fixed Rate of Interest so specified, payable in arrear on the Fixed Interest Payment Dates in each year up to and including the Maturity Date.

The first payment of interest will be made on the Fixed Interest Payment Date next following the Interest Commencement Date.

Except as provided in the Applicable Pricing Supplement, the amount of interest payable per Note on each Fixed Interest Payment Date in respect of the Fixed Interest Period ending on (but excluding) such date will amount to the Fixed Coupon Amount, provided that:

- 7.1.1 if an Initial Broken Amount is specified in the Applicable Pricing Supplement, then the first Interest Amount shall equal the Initial Broken Amount specified in the Applicable Pricing Supplement; and
- 7.1.2 if a Final Broken Amount is specified in the Applicable Pricing Supplement, then the final Interest Amount shall equal the Final Broken Amount.

If interest is required to be calculated for a period other than a Fixed Interest Period, such interest shall be calculated by applying the Fixed Rate of Interest to each Specified Denomination, multiplying such sum by the applicable Day Count Fraction, as specified in the Applicable Pricing Supplement, and rounding the resultant figure to the nearest Sub-unit of ZAR, half such Sub-unit being rounded upwards or otherwise in accordance with applicable market convention.

“**Day Count Fraction**” means, in respect of the calculation of an amount of interest for any Fixed Interest Period:

- (a) if “**Actual/Actual (ISMA)**” is specified in the Applicable Pricing Supplement:
  - (A) in the case of Notes where the number of days in the relevant period from (and including) the most recent Interest Payment Date (or, if none, the Interest Commencement Date) to (but excluding) the relevant payment date (the “**Accrual Period**”) is equal to or shorter than the Determination Period during which the Accrual Period ends, the number of days in such Accrual Period divided by the product of (1) the number of days in such Determination Period; and (2) the number of Determination Dates (as specified in the Applicable Pricing Supplement) that would occur in one calendar year; or
  - (B) in the case of Notes where the Accrual Period is longer than the Determination Period during which the Accrual Period ends, the sum of:
    - (1) the number of days in such Accrual Period falling in the Determination Period in which the Accrual Period begins divided by the product of (x) the number of days in such Determination Period; and (y) the number of Determination Dates (as specified in the Applicable Pricing Supplement) that would occur in one calendar year; and
    - (2) the number of days in such Accrual Period falling in the next Determination Period divided by the product of (x) the number of days in such Determination Period; and (y) the number of Determination Dates that would occur in one calendar year; and
- (b) if “**30/360**” is specified in the Applicable Pricing Supplement, the number of days in the period from (and including) the most recent Interest Payment Date (or, if none, the Interest Commencement Date) to (but excluding) the relevant payment date (such number of days being calculated on the basis of a year of 360 days with 12 30-day months) divided by 360.

## 7.2 Interest on Floating Rate Notes and Indexed Interest Notes

### *Interest Payment Dates*

Each Floating Rate Note and Indexed Interest Note bears interest on its outstanding Nominal Amount (or, if it is a Partly Paid Note, the amount paid up) from (and including) the Interest Commencement Date specified in the Applicable Pricing Supplement, and such interest will be payable in arrear on the Interest Payment Date(s) in each year specified in the Applicable Pricing Supplement. Such interest will be payable in respect of each Interest Period (which expression shall, in these Terms and Conditions, mean the period from (and including) an

Interest Payment Date (or the Interest Commencement Date) to (but excluding) the next (or first) Interest Payment Date).

*Rate of Interest*

The Rate of Interest payable from time to time in respect of the Floating Rate Notes and Indexed Interest Notes will be determined in the manner specified in the Applicable Pricing Supplement.

*Minimum and/or Maximum Rate of Interest*

If the Applicable Pricing Supplement specifies a Minimum Rate of Interest for any Interest Period, then, in the event that the Rate of Interest in respect of any such Interest Period determined in accordance with the above provisions is less than such Minimum Rate of Interest, the Rate of Interest for such Interest Period shall be such Minimum Rate of Interest. If the Applicable Pricing Supplement specifies a Maximum Rate of Interest for any Interest Period, then, in the event that the Rate of Interest in respect of any such Interest Period determined in accordance with the above provisions is greater than such Maximum Rate of Interest, the Rate of Interest for such Interest Period shall be such Maximum Rate of Interest.

*Determination of Rate of Interest and Calculation of Interest Amount*

The Calculation Agent, in the case of Floating Rate Notes and Indexed Interest Notes will at, or as soon as is practicable after, each time at which the Rate of Interest is to be determined, determine the Rate of Interest and calculate the Interest Amount payable in respect of each Floating Rate Note and Indexed Interest Note in respect of each Specified Denomination for the relevant Interest Period, and the Calculation Agent shall notify the Issuer of the Rate of Interest for the relevant Interest Period as soon as is practicable after calculating the same. Each Interest Amount shall be calculated by applying the Rate of Interest to the Specified Denomination, multiplying such sum by the applicable Day Count Fraction and rounding the resultant figure to the nearest Sub-unit of the relevant Specified Currency, half a Sub-unit being rounded upwards or otherwise in accordance with applicable market convention.

“**Day Count Fraction**” means, in respect of the calculation of an amount of interest for any Interest Period:

- (a) if “**Actual/365**”, “**Act/365**”, “**Actual/Actual**” or “**Act/Act**” is specified in the Applicable Pricing Supplement, the actual number of days in the Interest Period in respect of which payment is being made divided by 365 (or, if any portion of that Interest Period falls in a leap year, the sum of (i) the actual number of days in that portion of the Interest Period falling in a leap year divided by 366; and (ii) the actual number of days in that portion of the Interest Period falling in a non-leap year divided by 365); or
- (b) if “**Actual/365 (Fixed)**”, “**Act/365 (Fixed)**”, “**A/365 (Fixed)**” or “**A/365F**” is specified in the Applicable Pricing Supplement, the actual number of days in the Interest Period in respect of which payment is being made divided by 365; or
- (c) such other calculation method as is specified in the Applicable Pricing Supplement.

*Interest Determination, Screen Rate Determination including Fallback Provisions*

Where ISDA Determination is specified in the Applicable Pricing Supplement as the manner in which the Rate of Interest is to be determined, the Rate of Interest for each Interest Period will be the relevant ISDA Rate plus or minus (as indicated in the Applicable Pricing Supplement) the Margin (if any). For the purposes of this sub-paragraph, “**ISDA Rate**” for an Interest Period means a rate equal to the Floating Rate that would be determined by such agent as is specified in the Applicable Pricing Supplement under an interest rate swap transaction if that agent were acting as Calculation Agent for that swap transaction under the terms of an agreement incorporating the most recent ISDA Definitions and under which:

- (a) the Floating Rate Option is as specified in the Applicable Pricing Supplement;
  - (b) the Designated Maturity is the period specified in the Applicable Pricing Supplement;
- and



- (c) the relevant Reset Date is either (i) if the applicable Floating Rate Option is based on ZAR-JIBAR-SAFEX, the first day of that Interest Period; or (ii) in any other case, as specified in the Applicable Pricing Supplement.

For the purposes of the above sub-paragraph “Floating Rate”, “Floating Rate Option”, “Designated Maturity” and “Reset Date” have the meanings given to those terms in the ISDA Definitions specified in the Applicable Pricing Supplement.

Where Screen Rate Determination is specified in the Applicable Pricing Supplement as the manner in which the Rate of Interest is to be determined, the Rate of Interest for each Interest Period will, subject to the provisions below, be either:

- (a) if the Relevant Screen Page is available,
- (i) the offered quotation (if only one quotation appears on the screen page); or
  - (ii) the arithmetic mean (rounded if necessary to the fifth decimal place, with 0.000005 being rounded upwards) of the offered quotations,

(expressed as a percentage per annum) for the Reference Rate which appears on the Relevant Screen Page as at 11h00 (or as otherwise specified in the Applicable Pricing Supplement) (Johannesburg time) on the Interest Determination Date in question plus or minus (as indicated in the Applicable Pricing Supplement) the Margin (if any), all as determined by the Calculation Agent. If five or more such offered quotations are available on the Relevant Screen Page, the highest (or, if there is more than one such highest quotation, one only of such quotations) and the lowest (or, if there is more than one such lowest quotation, one only of such quotations) shall be disregarded by the Calculation Agent for the purpose of determining the arithmetic mean (rounded as provided above) of such offered quotations; or

- (b) if the Relevant Screen Page is not available or if, in the case of (i) above, no such offered quotation appears or, in the case of (ii) above, fewer than three such offered quotations appear, in each case as at the time specified in the preceding paragraph, the Calculation Agent shall request the principal Johannesburg office of each of the Reference Banks to provide the Calculation Agent with its offered quotation (expressed as a percentage rate per annum) for the Reference Rate at approximately 11h00 (Johannesburg time) on the Interest Determination Date in question. If two or more of the Reference Banks provide the Calculation Agent with such offered quotations, the Rate of Interest for such Interest Period shall be the arithmetic mean (rounded if necessary to the fifth decimal place with 0.000005 being rounded upwards) of such offered quotations plus or minus (as appropriate) the Margin (if any), all as determined by the Calculation Agent; or

- (c) if the Rate of Interest cannot be determined by applying the provisions of (a) and (b) above, the Rate of Interest for the relevant Interest Period shall be the rate per annum which the Calculation Agent determines as being the arithmetic mean (rounded if necessary to the fifth decimal place, with 0.000005 being rounded upwards) of the rates, as communicated to (and at the request of) the Calculation Agent by the Reference Banks or any two or more of them, at which such banks offered, at approximately 11h00 (Johannesburg time) on the relevant Interest Determination Date, deposits in an amount approximately equal to the nominal amount of the Notes of the relevant Series, for a period equal to that which would have been used for the Reference Rate to prime banks in the Johannesburg inter-bank market plus or minus (as appropriate) the Margin (if any). If fewer than two of the Reference Banks provide the Calculation Agent with such offered rates, the Rate of Interest for the relevant Interest Period will be determined by the Calculation Agent as the arithmetic mean (rounded as provided above) of the rates for deposits in an amount approximately equal to the nominal amount of the Notes of the relevant Series, for a period equal to that which would have been used for the Reference Rate, quoted at approximately 11h00 (Johannesburg time) on the relevant Interest Determination Date, by the Reference Banks plus or minus (as appropriate) the Margin (if any). If the Rate of Interest cannot be determined in accordance with the foregoing provisions of this paragraph, the Rate of Interest shall be determined as at the last preceding Interest Determination Date (though substituting, where a different Margin is to be

applied to the relevant Interest Period from that which applied to the last preceding Interest Period, the Margin relating to the relevant Interest Period, in place of the Margin relating to that last preceding Interest Period).

If the Reference Rate from time to time in respect of Floating Rate Notes is specified in the Applicable Pricing Supplement as being other than ZAR-JIBAR-SAFEX, the Rate of Interest in respect of such Notes will be determined as provided in the Applicable Pricing Supplement.

#### *Notification of Rate of Interest and Interest Amount*

The Issuer will cause the Rate of Interest and each Interest Amount for each Interest Period and the relevant Interest Payment Date to be notified to the JSE and the CSD and/or every other relevant exchange or authority as soon as possible after their determination but in any event no later than the fourth Business Day thereafter. Each Interest Amount and Interest Payment Date so notified may subsequently be amended (or appropriate alternative arrangements made by way of adjustment) in the event of an extension or shortening of the Interest Period. Any such amendment will be promptly notified to the JSE, the CSD and/or every other relevant exchange or authority and to the Noteholders in accordance with Condition 17 (*Notices*).

#### *Certificates to be Final*

All certificates, communications, opinions, determinations, calculations, quotations and decisions given, expressed, made or obtained for the purposes of the provisions of this subparagraph 7.2, by the Calculation Agent shall (in the absence of wilful deceit, bad faith or manifest error or proven error) be binding on the Issuer and all Noteholders and in the absence as aforesaid no liability to the Issuer or the Noteholders shall attach to the Calculation Agent in connection with the exercise or non-exercise by it of its powers, duties and discretions pursuant to such provisions.

### 7.3 **Mixed Rate Notes**

The Interest Rate payable from time to time on Mixed Rate Notes shall be the Interest Rate payable on the form of interest-bearing Note (be it a Fixed Rate Note, Floating Rate Note Indexed Note or other Note) specified for each respective period, each as specified in the Applicable Pricing Supplement. During each such applicable period, the Interest Rate on the Mixed Rate Notes shall be determined and fall due for payment on the basis that such Mixed Rate Notes are Fixed Rate Notes, Floating Rate Notes, Indexed Notes or other Note, as the case may be.

### 7.4 **Accrual of Interest**

Each Note (or in the case of the redemption of part only of a Note, that part only of such Note) will cease to bear interest (if any) from the date of its redemption unless, upon due presentation thereof, payment of principal is improperly withheld or refused. In such event, interest will continue to accrue at the Default Rate specified in the Applicable Pricing Supplement until the date on which all amounts due in respect of such Note have been paid, or, in respect of uncertificated Notes, the date on which the full amount of the money payable has been received by the CSD and/or the Participants and notice to that effect has been given to Noteholders in accordance with Condition 17 (*Notices*).

### 7.5 **Business Day Convention**

If any Interest Payment Date (or other date), which is specified in the Applicable Pricing Supplement to be subject to adjustment in accordance with a Business Day Convention, would otherwise fall on a day that is not a Business Day, then, if the Business Day Convention specified is:

- (a) the “**Floating Rate Business Day Convention**”, such Interest Payment Date (or other date) shall be postponed to the next day which is a Business Day unless it would thereby fall into the next calendar month, in which event: (i) such Interest Payment Date (or other date) shall be brought forward to the first preceding Business Day and (ii) each subsequent Interest Payment Date (or other date) shall be the last Business Day in the month which falls the number of months, or other period specified as the Interest Period in the Applicable Pricing Supplement, after the preceding applicable Interest Payment Date (or other date) has occurred; or

- (b) the “**Following Business Day Convention**”, such Interest Payment Date (or other date) shall be postponed to the next day which is a Business Day; or
- (c) the “**Modified Following Business Day Convention**”, such Interest Payment Date (or other date) shall be postponed to the next day which is a Business Day unless it would thereby fall into the next calendar month, in which event such Interest Payment Date (or other such date) shall be brought forward to the first preceding Business Day; or
- (d) the “**Preceding Business Day Convention**”, such Interest Payment Date (or other date) shall be brought forward to the first preceding Business Day.

## 8. PAYMENTS

### 8.1 General

Payments of principal and/or interest on an Individual Certificate shall be made to the registered holder of such Note, as set forth in the Register on the close of business on the Last Day to Register (as specified in the Applicable Pricing Supplement). In addition to the above, in the case of a final redemption payment, the holder of the Individual Certificate shall be required, on or before the Last Day to Register prior to the Maturity Date, to surrender such Individual Certificate at the offices of the Transfer Agent.

Payments of principal and/or interest in respect of uncertificated Notes will be made to the CSD and/or the Participants, as shown in the Register on the Last Day to Register, and the Issuer will be discharged by proper payment to the CSD and/or the Participants, in respect of each amount so paid. Each of the persons shown in the records of the CSD and the Participants, as the case may be, shall look solely to the CSD or the Participant, as the case may be, for his share of each payment so made by the Issuer to the registered holder of such uncertificated Notes.

### 8.2 Method of Payment

Payments will be made in South African Rand by credit or transfer, by means of electronic settlement, to the Noteholder.

Payments will be subject in all cases to any fiscal or other laws, directives and regulations applicable thereto in the place of payment, but without prejudice to the provisions of Condition 10 (*Taxation*).

If the Issuer is prevented or restricted directly or indirectly from making any payment by electronic funds transfer in accordance with the preceding paragraph (whether by reason of strike, lockout, fire, explosion, floods, riot, war, accident, act of God, embargo, legislation, shortage of or breakdown in facilities, civil commotion, unrest or disturbances, cessation of labour, Government interference or control or any other cause or contingency beyond the control of the Issuer), the Issuer shall make such payment by cheque marked “*not transferable*” (or by such number of cheques as may be required in accordance with applicable banking law and practice to make payment of any such amounts). Such payments by cheque shall be sent by post to the address of the Noteholder as set forth in the Register or, in the case of joint Noteholders, the address set forth in the Register of that one of them who is first named in the Register in respect of that Note.

Each such cheque shall be made payable to the relevant Noteholder or, in the case of joint Noteholders, the first one of them named in the Register. Cheques may be posted by ordinary post, provided that neither the Issuer, nor the Guarantor, nor the Paying Agent shall be responsible for any loss in transmission and the postal authorities shall be deemed to be the agent of the Noteholders for the purposes of all cheques posted in terms of this Condition 8.2 (*Method of Payment*).

In the case of joint Noteholders, payment by electronic funds transfer will be made to the account of the Noteholder first named in the Register. Payment by electronic transfer to the Noteholder first named in the Register shall discharge the Issuer of its relevant payment obligations under the Notes.

Payments will be subject in all cases to any fiscal or other laws, directives and regulations applicable thereto in the place of payment, but without prejudice to the provisions of Condition 10 (*Taxation*).

### 8.3 **Payment Day**

If the date for payment of any amount in respect of any Note is not a Business Day, the holder thereof shall not be entitled to payment until the next following Business Day in the relevant place and shall not be entitled to further interest or other payment in respect of such delay.

### 8.4 **Interpretation of Principal and Interest**

Any reference in these Terms and Conditions to principal in respect of the Notes shall be deemed to include, as applicable:

- 8.4.1 any additional amounts which may be payable with respect to principal under Condition 10 (*Taxation*);
- 8.4.2 the Final Redemption Amount of the Notes or the Early Redemption Amount of the Notes, as the case may be;
- 8.4.3 the Optional Redemption Amount(s) (if any) of the Notes;
- 8.4.4 in relation to Instalment Notes, the Instalment Amounts;
- 8.4.5 in relation to Zero Coupon Notes, the Amortised Face Amount (as defined in Condition 9.4.3); and
- 8.4.6 any premium and any other amounts which may be payable by the Issuer under or in respect of the Notes, but excluding for the avoidance of doubt, interest.

Any reference in these Terms and Conditions to interest in respect of the Notes shall be deemed to include, as applicable, any additional amounts which may be payable with respect to interest under Condition 10 (*Taxation*).

## 9. **REDEMPTION AND PURCHASE**

### 9.1 **At Maturity**

Unless previously redeemed or purchased and cancelled as specified below, each Note will be redeemed by the Issuer in South African Rand at its Final Redemption Amount specified in, or determined in the manner specified in, the Applicable Pricing Supplement on the Maturity Date.

### 9.2 **Redemption for Tax Reasons**

Notes may be redeemed at the option of the Issuer at any time (in the case of Notes other than Floating Rate Notes, Indexed Interest Notes or Mixed Rate Notes having an Interest Rate then determined on a floating or indexed basis) or on any Interest Payment Date (in the case of Floating Rate Notes, Indexed Interest Notes or Mixed Rate Notes), on giving not less than 30 nor more than 60 days' notice to the Noteholders prior to such redemption, in accordance with Condition 17 (*Notices*) (which notice shall be irrevocable), if the Issuer, immediately prior to the giving of such notice, is of the reasonable opinion that:

- 9.2.1 as a result of any change in, or amendment to, the laws or regulations of the South Africa or any political sub-division of, or any authority in, or of, the South Africa having power to tax, or any change or amendment which becomes effective after the relevant Issue Date, the Issuer is or would be required to pay additional amounts as provided or referred to in Condition 10 (*Taxation*); and
- 9.2.2 the requirement cannot be avoided by the Issuer taking reasonable measures available to it,

provided that no such notice of redemption shall be given earlier than 90 days prior to the earliest date on which the Issuer would be obliged to pay such additional amounts were a payment in respect of the Notes then due. Notes may be redeemed by the Issuer in accordance with this Condition 9.2 (*Redemption for Tax Reasons*) in whole or in part. A redemption in part may be effected by the Issuer:

- 9.2.3 notwithstanding that such partial redemption may not entirely avoid such obligation to pay additional amounts as provided for or referred to in Condition 10 (*Taxation*); and
- 9.2.4 *mutatis mutandis* in the manner described in Condition 9.3 (*Redemption at the Option of the Issuer or Guarantor*), provided that the references to the giving of notice therein

and to the Minimum Redemption Amount and the Higher Redemption Amount therein shall be disregarded for such purposes.

Notes redeemed for tax reasons pursuant to this Condition 9.2 (*Redemption for Tax Reasons*) will be redeemed at their Early Redemption Amount referred to in Condition 9.4 (*Early Redemption Amounts*), together (if appropriate) with interest accrued from (and including) the immediately preceding Interest Payment Date to (but excluding) the date of redemption or as specified in the Applicable Pricing Supplement.

### 9.3 **Redemption at the Option of the Issuer or Guarantor**

If the Issuer is specified in the Applicable Pricing Supplement as having an option to redeem, the Issuer or the Guarantor on behalf of the Issuer may, having given not less than 30 nor more than 60 days' irrevocable notice to the Noteholders in accordance with Condition 17 (*Notices*), redeem all or some of the Notes (to which such Applicable Pricing Supplement relates) then Outstanding on the Optional Redemption Date(s) and at the Optional Redemption Amount(s) specified in, or determined in the manner specified in, the Applicable Pricing Supplement, together, if appropriate, with interest accrued to (but excluding) the Optional Redemption Date(s).

Any such redemption must be of a Nominal Amount equal to the Minimum Redemption Amount or a Higher Redemption Amount, both as indicated in the Applicable Pricing Supplement.

In the case of a partial redemption of Notes, the Notes to be redeemed ("**Redeemed Notes**") will be selected individually by lot, in the case of Redeemed Notes represented by Individual Certificates, and in accordance with the Applicable Procedures in the case of Redeemed Notes which are uncertificated, and in each case not more than 60 days prior to the date fixed for redemption (such date of selection being hereinafter called the "**Selection Date**").

In the case of Redeemed Notes represented by Individual Certificates, a list of the serial numbers of such Redeemed Notes will be published in accordance with Condition 17 (*Notices*) not less than 30 days prior to the date fixed for redemption. The aggregate Nominal Amount of Redeemed Notes represented by Individual Certificates shall bear the same proportion to the aggregate Nominal Amount of all Redeemed Notes as the aggregate Nominal Amount of Individual Certificates outstanding bears to the aggregate Nominal Amount of the Notes outstanding, in each case on the Selection Date, provided that such first mentioned Nominal Amount shall, if necessary, be rounded downwards to the nearest integral multiple of the Specified Denomination and the aggregate Nominal Amount of Redeemed Notes which are uncertificated shall be equal to the balance of the Redeemed Notes. No exchange of the relevant uncertificated Notes will be permitted during the period from and including the Selection Date to and including the date fixed for redemption pursuant to this sub-paragraph, and notice to that effect shall be given by the Issuer to the Noteholders in accordance with Condition 17 (*Notices*) at least 10 days prior to the Selection Date.

Holders of Redeemable Notes shall surrender the Individual Certificates, if any, representing the Notes in accordance with the provisions of the notice given to them by the Issuer as contemplated above. Where only a portion of the Notes represented by such Individual Certificates are redeemed, the Transfer Agent shall deliver new Individual Certificates to such Noteholders in respect of the balance of the Notes.

### 9.4 **Early Redemption Amounts**

For the purpose of Condition 9.2 (*Redemption for Tax Reasons*) and Condition 15 (*Events of Default*), the Notes will be redeemed at the Early Redemption Amount calculated as follows:

- 9.4.1 in the case of Notes with a Final Redemption Amount equal to the Issue Price, at the Final Redemption Amount thereof; or
- 9.4.2 in the case of Notes (other than Zero Coupon Notes) with a Final Redemption Amount which is or may be less or greater than the Issue Price, at the amount specified in, or determined in the manner specified in, the Applicable Pricing Supplement or, if no such amount or manner is so specified in the Pricing Supplement, at their Nominal Amount; or

9.4.3 in the case of Zero Coupon Notes, at an amount (the “**Amortised Face Amount**”) equal to the sum of: (i) the Reference Price; and (ii) the product of the Implied Yield (compounded annually) being applied to the Reference Price from (and including) the Issue Date to (but excluding) the date fixed for redemption or (as the case may be) the date upon which such Note becomes due and repayable, or such other amount as is provided in the Applicable Pricing Supplement.

Where such calculation is to be made for a period which is not a whole number of years, it shall be calculated on the basis of actual days elapsed divided by 365, or such other calculation basis as may be specified in the Applicable Pricing Supplement.

9.5 **Instalment Notes**

Instalment Notes will be redeemed at the Instalment Amounts and on the Instalment Dates. In the case of early redemption in accordance with Conditions 9.2 (*Redemption for Tax Reasons*) or 15 (*Events of Default*), the Early Redemption Amount will be determined pursuant to Condition 9.4 (*Early Redemption Amounts*).

9.6 **Partly Paid Notes**

If the Notes are Partly Paid Notes, they will be redeemed, whether at maturity, early redemption or otherwise, in accordance with the provisions of this Condition 9 (*Redemption and Purchase*) and the Applicable Pricing Supplement. In the case of early redemption in accordance with Conditions 9.2 (*Redemption for Tax Reasons*) or 15 (*Events of Default*), the Early Redemption Amount will be determined pursuant to Condition 9.4 (*Early Redemption Amounts*).

9.7 **Exchangeable Notes**

If the Notes are Exchangeable Notes, they will be redeemed, whether at maturity, early redemption or otherwise, in the manner indicated in the Applicable Pricing Supplement. Exchangeable Notes in respect of which Mandatory Exchange is indicated in the Applicable Pricing Supplement as applying, or upon the exercise by the Noteholder of the Noteholder’s Exchange Right (if applicable), will be redeemed by the Issuer delivering to each Noteholder as many of the Exchange Securities as are required in accordance with the Exchange Price. The delivery by the Issuer of the Exchange Securities in the manner set out in the Applicable Pricing Supplement shall constitute the *in specie* redemption in full of such Notes.

9.8 **Purchases**

The Issuer or any of its Subsidiaries may at any time purchase Notes at any price in the open market or otherwise. Such Notes may, subject to applicable law, be held, resold, or, at the option of the Issuer, surrendered to the Transfer Agent for cancellation.

9.9 **Cancellation**

All Notes which have been redeemed will forthwith be cancelled. All Notes so cancelled shall be forwarded to the Issuer and cannot be re-issued or resold. Where only a portion of Notes represented by a Certificate are cancelled, the Transfer Agent shall deliver a Certificate to such Noteholder in respect of the balance of the Notes.

9.10 **Late Payment on Zero Coupon Notes**

If the amount payable in respect of any Zero Coupon Note upon redemption of such Zero Coupon Note pursuant to this Condition 9 (*Redemption and Purchase*) or upon its becoming due and repayable as provided in Condition 15 (*Events of Default*) is improperly withheld or refused, the amount due and repayable in respect of such Zero Coupon Note shall be the amount calculated as provided in Condition 9.4.3 as though the references therein to the date fixed for the redemption or the date upon which such Zero Coupon Note becomes due and payable were replaced by references to the date which is the earlier of: (i) the date on which all amounts due in respect of such Zero Coupon Note have been paid; and (ii) 5 days after the date on which the full amount of the moneys payable has been received by the CSD, and notice to that effect has been given to the Noteholder in accordance with Condition 17 (*Notices*).

## 10. TAXATION

All payments of principal and interest in respect of the Notes by the Issuer will be made without withholding or deduction for or on account of any present or future taxes or duties, assessments or governmental charges of whatever nature imposed or levied by or on behalf of South Africa or any political subdivision or any authority thereof or therein having power to tax, unless such withholding or deduction is required by law.

In such event, the Issuer will pay such additional amounts as shall be necessary in order that the net amounts received by the holders of the Notes after such withholding or deduction shall equal the respective amounts of principal and interest which would otherwise have been receivable in respect of the Notes, as the case may be, in the absence of such withholding or deduction, except that no such additional amounts shall be payable with respect to any Note:

- 10.1 held by or on behalf of a Noteholder who is liable for such taxes or duties in respect of such Note by reason of his having some connection with South Africa other than the mere holding of such Note or the receipt of principal or interest in respect thereof; or
- 10.2 held by or on behalf of a Noteholder who would not be liable or subject to the withholding or deduction by making a declaration of non-residency or other similar claim for exemption to the relevant tax authority (the effect of which is not to require the disclosure of the identity of the relevant Noteholder); or
- 10.3 where such withholding or deduction is in respect of taxes levied or imposed on interest or principal payments only by virtue of the inclusion of such payments in the taxable income (as defined in section 1 of the Income Tax Act) or taxable capital gain (as defined in paragraph 1 of Schedule 8 to the Income Tax Act) of any Noteholder; or
- 10.4 more than 30 days after the Relevant Date except to the extent that the Noteholder thereof would have been entitled to an additional amount on presenting the same for payment on such thirtieth day; or
- 10.5 if such withholding or deduction arises through the exercise by revenue authorities of special powers in respect of tax defaulters; or
- 10.6 where the Noteholder is entitled to claim a tax reduction, credit or similar benefit in respect of such withholding or deduction in terms of the Noteholder's domestic tax laws or applicable double tax treaty, and such tax reduction, credit or similar benefit is actually granted to the Noteholder.

Any reference in these Terms and Conditions to any amounts in respect of the Notes shall be deemed also to refer to any additional amounts which may be payable under these Terms and Conditions or under any undertakings given in addition to, or in substitution for, these Terms and Conditions.

## 11. EXCHANGE OF BENEFICIAL INTERESTS AND REPLACEMENT OF CERTIFICATES

### 11.1 Exchange of Beneficial Interests

- 11.1.1 The holder of a Beneficial Interest in Notes may, in terms of the Applicable Procedures and subject to section 44 of the Securities Services Act, by written notice to the holder's nominated Participant (or, if such holder is a Participant, the CSD), request that such Beneficial Interest be exchanged for Notes in definitive form represented by an Individual Certificate (the "Exchange Notice"). The Exchange Notice shall specify (i) the name, address and bank account details of the holder of the Beneficial Interest and (ii) the day on which such Beneficial Interest is to be exchanged for an Individual Certificate; provided that such day shall be a Business Day and shall fall not less than 30 days after the day on which such Exchange Notice is given.
- 11.1.2 The holder's nominated Participant will, following receipt of the Exchange Notice, through the CSD, notify the Transfer Agent that it is required to exchange such Beneficial Interest for Notes represented by an Individual Certificate. The Transfer Agent will, as soon as is practicable but within 14 days after receiving such notice, in accordance with the Applicable Procedures, procure that an Individual Certificate is prepared, authenticated and made available for delivery, on a Business Day falling within the aforementioned 14 day period, to the holder of the Beneficial Interest at the

specified office of the Transfer Agent; provided that joint holders of a Beneficial Interest shall be entitled to receive only one Individual Certificate in respect of that joint holding, and the delivery to one of those joint holders shall be delivery to all of them.

11.1.3 In the case of the exchange of a Beneficial Interest in Notes issued in uncertificated form:

11.1.3.1 the CSD's Nominee will surrender (through the CSD system) such uncertificated Notes to the Transfer Agent at its Specified Office;

11.1.3.2 the Transfer Agent will obtain the release of such uncertificated Notes from the CSD in accordance with the Applicable Procedures.

11.1.4 An Individual Certificate shall, in relation to a Beneficial Interest:

11.1.4.1 in a Tranche of Notes which is held in the CSD, represent that number of Notes as have, in the aggregate, the same aggregate Nominal Amount of Notes standing to the account of the holder of such Beneficial Interest; or

11.1.4.2 in any number of Notes issued in uncertificated form of a particular aggregate Nominal Amount standing to the account of the holder thereof, represent that number of Notes of that aggregate Nominal Amount,

as the case may be, and shall otherwise be in such form as may be agreed between the Issuer and the Transfer Agent; provided that if such aggregate Nominal Amount is equivalent to a fraction of the Specified Denomination or a fraction of any multiple thereof, such Individual Certificate shall be issued in accordance with, and be governed by, the Applicable Procedures.

## 11.2 **Replacement**

If any Certificate is worn out, mutilated, defaced, stolen, destroyed or lost it may be replaced at the specified office of the Transfer Agent, on payment by the claimant of such costs and expenses as may be incurred in connection therewith and the provision of such indemnity as the Issuer and the Transfer Agent may reasonably require. Mutilated or defaced Certificates must be surrendered at the Specified Office of the Transfer Agent before replacements will be issued.

## 11.3 **Death and sequestration or liquidation of Noteholder**

Any person becoming entitled to Registered Notes in consequence of the death, sequestration or liquidation of the holder of such Notes may, upon producing evidence to the satisfaction of the Issuer that he holds the position in respect of which he proposes to act under this Condition 11.3 (*Death and sequestration or liquidation of Noteholder*) or of his title as the Issuer and the Transfer Agent shall require, be registered himself as the holder of such Notes or, subject to the Applicable Procedures, this Condition 11.3 (*Death and sequestration or liquidation of Noteholder*) and Condition 13.2 (*Transfer of Notes represented by Certificates*), may transfer such Notes. The Issuer and (if applicable) the CSD and the relevant Participant shall be entitled to retain any amount payable upon the Notes to which any person is so entitled until such person shall be registered as aforesaid or shall duly transfer the Notes.

## 11.4 **Costs**

The costs and expenses of the printing, issue and delivery of each Individual Certificate and all taxes and governmental charges that may be imposed in relation to such Individual Certificate and/or the printing, issue and delivery of such Individual Certificate shall be borne by the holder of the Notes represented by that Individual Certificate. Separate costs and expenses relating to the provision of Individual Certificates and/or the transfer of Notes may be levied by other persons, such as a Participant, under the Applicable Procedures, and such costs and expenses shall not be borne by the Issuer. The costs and expenses of the delivery of Individual Certificates and all taxes or governmental charges or insurance charges that may be imposed in relation to such mode of delivery shall be borne by the Noteholder.



## 12. REGISTER

### 12.1 The Register of Noteholders:

- 12.1.1 shall be kept at the office of the Transfer Agent or such other person as may be appointed for the time being by the Issuer to maintain the Register;
- 12.1.2 shall contain the names, addresses and bank account numbers of the registered Noteholders;
- 12.1.3 shall show the total Nominal Amount of the Notes held by Noteholders;
- 12.1.4 shall show the dates upon which each of the Noteholders was registered as such;
- 12.1.5 shall show the serial numbers of the Certificates and the dates of issue thereof;
- 12.1.6 shall be open for inspection at all reasonable times during business hours on Business Days by any Noteholder or any person authorised in writing by a Noteholder; and
- 12.1.7 shall be closed during the Books Closed Period.

12.2 The Transfer Agent shall alter the Register in respect of any change of name, address or account number of any of the Noteholders of which it is notified.

12.3 Except as provided for in these Conditions or as required by law, in respect of Notes, the Issuer will only recognise a Noteholder as the owner of the Notes registered in that Noteholder's name as per the Register.

12.4 Except as provided for in these Conditions or as required by law, the Issuer shall not be bound to enter any trust in the Register or to take notice of or to accede to the execution of any trust (express, implied or constructive) to which any Certificate may be subject.

## 13. TRANSFER OF NOTES

### 13.1 Transfer of Beneficial Interests in Notes held in the CSD

- 13.1.1 Beneficial Interests may be transferred only in accordance with the Applicable Procedures through the CSD.
- 13.1.2 Transfers of Beneficial Interests to and from clients of Participants occur by way of electronic book entry in the securities accounts maintained by the Participants for their clients, in accordance with the Applicable Procedures.
- 13.1.3 Transfers of Beneficial Interests among Participants occur through electronic book entry in the central securities accounts maintained by the CSD for the Participants, in accordance with the Applicable Procedures.
- 13.1.4 Transfers of Beneficial Interests in Notes will not be recorded in the Register and the CSD's Nominee will continue to be reflected in the Register as the Noteholder of such Notes notwithstanding such transfers.

### 13.2 Transfer of Notes represented by Certificates

- 13.2.1 In order for any transfer of Notes represented by a Certificate to be recorded in the Register, and for such transfer to be recognised by the Issuer:
  - 13.2.1.1 the transfer of such Notes must be embodied in a Transfer Form;
  - 13.2.1.2 the Transfer Form must be signed by the registered Noteholder of such Notes and the transferee, or any authorised representatives of that registered Noteholder or transferee;
  - 13.2.1.3 the Transfer Form must be delivered to the Transfer Agent at its Specified Office together with the Certificate representing such Notes for cancellation.
- 13.2.2 Notes represented by a Certificate may only be transferred, in whole or in part, in amounts of not less than the Specified Denomination (or any multiple thereof).

- 13.2.3 Subject to this Condition 13.2 (*Transfer of Notes represented by Certificates*), the Transfer Agent will, within 3 Business Days of receipt by it of a valid Transfer Form (or such longer period as may be required to comply with any applicable laws and/or Applicable Procedures), record the transfer of Notes represented by a Certificate (or the relevant portion of such Notes) in the Register, and authenticate and deliver to the transferee at the Transfer Agent's Specified Office or, at the risk of the transferee, send by mail to such address as the transferee may request, a new Certificate in respect of the Notes transferred reflecting the outstanding Nominal Amount of the Notes transferred.
- 13.2.4 Where a Noteholder has transferred a portion only of Notes represented by a Certificate, the Transfer Agent will authenticate and deliver to such Noteholder at the Transfer Agent's Specified Office or, at the risk of such Noteholder, send by mail to such address as such Noteholder may request, at the risk of such Noteholder, a new Certificate representing the balance of the Notes held by such Noteholder.
- 13.2.5 The transferor of any Notes represented by a Certificate will be deemed to remain the owner thereof until the transferee is registered in the Register as the holder thereof.
- 13.2.6 Before any transfer of Notes represented by a Certificate is registered in the Register, all relevant transfer taxes (if any) must have been paid by the transferor and/or the transferee and such evidence must be furnished as the Issuer and the Transfer Agent may reasonably require as to the identity and title of the transferor and the transferee.
- 13.2.7 No transfer of any Notes represented by a Certificate will be registered whilst the Register is closed as contemplated in Condition 12 (*Register*).

If a transfer is registered then the transfer form and cancelled Certificate will be retained by the Transfer Agent.

In the event of a partial redemption of Notes under Condition 9.3 (*Redemption at the Option of the Issuer*), the Transfer Agent shall not be required in terms of Condition 9.3 (*Redemption at the Option of the Issuer*), to register the transfer of any Notes during the period beginning on the tenth day before the date of the partial redemption and ending on the date of the partial redemption (both inclusive).

#### 14. **PRESCRIPTION**

The Notes will become void unless presented for payment of principal within a period of three years after their redemption date.

#### 15. **EVENTS OF DEFAULT**

##### 15.1 **Events of Default**

An Event of Default shall occur if:

- 15.1.1 the Issuer fails to pay any Nominal Amount due under the Notes on its due date for payment thereof or the Issuer fails to pay any interest due under the Notes on its due date for payment thereof and any such failure continues for a period of 10 (ten) Business Days, after receiving written notice from any Noteholder demanding such payment; or
- 15.1.2 the Issuer fails to perform or observe any of its other obligations or undertakings under or in respect of any of the Notes and such failure continues for a period of 30 (thirty) calendar days after receipt by the Issuer of a notice in respect of such failure (and for these purposes, a failure to perform or observe an obligation shall be deemed to be remediable notwithstanding that the failure results from not doing an act or thing by a particular time); or
- 15.1.3 the Issuer or any Material Group Company defaults in the payment of the principal or interest, or any obligations in respect of Material Indebtedness of, or assumed or guaranteed by the Issuer or any Material Group Company, when and as the same shall become due and payable and where notice has been given to the Issuer or any Material Group Company, as the case may be, of the default and if such default shall have

continued for more than the notice period (if any) applicable thereto and the time for payment of such interest or principal or other obligation has not been effectively extended or if any such obligations of, or assumed or guaranteed by, the Issuer or any Material Group Company shall have become repayable before the due date thereof as a result of acceleration of maturity by reason of the occurrence of any event of default thereunder; or

- 15.1.4 any governmental consent, licence; approval or authorisation now or in future necessary to enable the Issuer to comply with its respective obligations under the Notes shall be revoked, modified, withdrawn or withheld or shall cease to be in full force and effect, resulting in the Issuer being unable to perform any of its respective payments or other obligations in terms of the Notes, and the Issuer fails to remedy such circumstances (if capable of remedy) within 30 (thirty) Business Days of receiving written notice from the Noteholders demanding such remedy; or
- 15.1.5 an order by any competent court or authority for the liquidation, winding-up, dissolution or judicial management of the Issuer or any Material Group Company is made, whether provisionally (and not dismissed or withdrawn within 30 (thirty) days thereof) or finally, or the Issuer or any Material Group Company is placed under voluntary liquidation or curatorship, provided that no liquidation, curatorship, winding-up, dissolution or judicial management shall constitute an Event of Default if (i) the liquidation, winding-up, dissolution or judicial management is for the purposes of effecting an amalgamation, merger, demerger, consolidation, reorganisation or other similar arrangement within the Eskom Group or with any third party (including, but not limited to, a restructuring of the South African electricity supply industry and/or electricity distribution industry); or (ii) the liquidation, winding-up, dissolution or judicial management is for the purposes of effecting an amalgamation, merger, demerger, consolidation, reorganisation or other similar arrangement, the terms of which were approved by Extraordinary Resolution of Noteholders before the date of the liquidation, winding-up, dissolution or judicial management; or
- 15.1.6 the Issuer or any Material Group Company initiates or consents to judicial proceedings relating to itself under any applicable compromise with creditors, liquidation, winding-up or insolvency or other similar laws or compromises or attempts to compromise, with its creditors generally (or any significant class of creditors) or any meeting of creditors is convened by the Issuer or any Material Group Company to consider a proposal for an arrangement of compromise with its creditors generally (or any significant class of its creditors), save for any such initiation, consent, attempt or convening of a meeting which relates to a Material Group Company and is for the purposes of an internal reconstruction or reorganisation within the Eskom Group (including, but not limited to, a restructuring of the South African electricity supply industry and/or electricity distribution industry); or
- 15.1.7 if proceedings are initiated against the Issuer or any Material Group Company, such that a person takes possession of the whole or a material part of the undertaking or assets of any of them, or an execution or attachment or other process is levied, enforced upon, sued out or put in force against the whole or a material part of the undertaking or assets of any of them and such is not discharged within 30 days; or
- 15.1.8 any mortgage, pledge, lien or other encumbrance amount, present or future, created or assumed by the Issuer in respect of Material Indebtedness becomes enforceable and the holder thereof takes any steps to enforce it.

Subject to Condition 15.3 (*Recourse and Non-petition*), if any one or more of the Events of Default shall have occurred and be continuing, then any Noteholder may by written notice to the Issuer at the registered office of the Issuer and the Guarantor at its address specified in the Guarantee, effective upon the date of receipt thereof by the Issuer, declare the Note held by the holder to be forthwith due and payable, whereupon the same shall become forthwith due and payable at the Early Redemption Amount (as described in Condition 9.4 (*Early Redemption Amounts*)), together with accrued interest (if any) to the date of repayment, or as specified in the Applicable Pricing Supplement, provided that no such action may be taken by a Noteholder if the Issuer withholds or refuses to make any such payment in order to comply with any law or regulation of South Africa or to comply with any order of a court of competent jurisdiction.

For the purposes of Condition 15.1.3, any Indebtedness which is in a currency other than South African Rand may be translated into South African Rand at the spot rate for the sale of South African Rand against the purchase of the relevant currency quoted by any leading bank selected on the date of such Event of Default.

## 15.2 Notification of Event of Default

If the Issuer becomes aware of the occurrence of any Event of Default, the Issuer shall forthwith notify the Guarantor, all Noteholders and the JSE in writing.

If the Noteholder becomes aware of the occurrence of any Event of Default, the Noteholder shall forthwith notify the Guarantor in writing, and following the delivery of such notice to the Guarantor, the Noteholder shall forthwith notify the Guarantor in writing should such Event of Default and its effect have been remedied to the reasonable satisfaction of such Noteholder.

## 15.3 Recourse and Non-petition

15.3.1 While the Guarantee is in force, the rights of the Noteholder against the Issuer will be limited to the extent that, the Noteholder:

- (a) shall not take any action or proceedings against the Issuer to recover any amounts due and payable under the Notes (including, without limitation, not levying or enforcing any attachment or execution upon the assets of the Issuer), and all rights of enforcement of the Noteholder in respect of any such amounts shall be exercised by the Noteholder making a claim against the Guarantor in accordance with the provisions of the Guarantee;
- (b) shall not institute, or join with any person in instituting or vote in favour of, any steps or legal proceedings for, the winding-up, liquidation, de-registration, judicial management of, or any compromise or scheme of arrangement with creditors of, or any related relief in respect of, the Issuer or for the appointment of a liquidator, judicial manager or similar office of the Issuer; and
- (c) shall not set off or claim to set off any amounts owing by it under any agreement to which it is a party against any liability owed to it by the Issuer, unless such right of set-off is expressly provided for in terms of such agreement.

15.3.2 The Guarantor shall be entitled at any time (and whether or not in anticipation of an Event of Default occurring or while an Event of Default is continuing) to effect payments of any amounts due and payable under any Note on behalf of the Issuer as and when they fall due under such Note and the Noteholder will accept each such payment as if it were a payment made by the Issuer under such Note without the exercise of any such entitlement by the Guarantor causing any default, Event of Default or termination event (howsoever described) or entitling the Noteholder to declare such Note to be forthwith due and payable in accordance with Condition 15.1 (*Events of Default*) as a consequence of the failure by the Issuer to make such payment.

15.3.3 While the Guarantee is in force, if the Issuer fails to pay any sum (each, an “**Unpaid Sum**”) under any Note, the Noteholder shall not declare such Note to be forthwith due and payable in accordance with Condition 15.1 (*Events of Default*) as a consequence of the failure by the Issuer to pay the Unpaid Sum unless the Noteholder of such Note shall have first demanded payment of the Unpaid Sum from the Guarantor in accordance with the provisions of the Guarantee and the Guarantor shall have failed to pay the Unpaid Sum to the Noteholder within 5 Business Days of receiving a written demand for the Unpaid Sum in accordance with the provisions of the Guarantee and accordingly no Event of Default shall occur as a consequence of the failure by the Issuer to pay the Unpaid Sum unless payment of the Unpaid Sum has been demanded from the Guarantor under the Guarantee and the Guarantor has failed to pay the Unpaid Sum to the Noteholder within 5 Business Days of demand by the Noteholder in accordance with the provisions of the Guarantee.

- 15.3.4 At any time while an Event of Default is continuing and whether or not a Noteholder shall have declared the Notes held by that Noteholder to be forthwith due and payable in accordance with Condition 15.1 (*Events of Default*), the Guarantor shall be entitled, having given not less than 14 days' irrevocable notice to that Noteholder and the Issuer in accordance with Condition 17 (*Notices*), to redeem such Notes on behalf of the Issuer at the Early Redemption Amount (as described in Condition 9.4 (*Early Redemption Amounts*)), together with accrued interest (if any) to the date of repayment, or as specified in the Applicable Pricing Supplement, and that Noteholder shall accept such payment as if it were a payment made by the Issuer under the Notes.
- 15.3.5 Payment to a Noteholder by the Guarantor of any sum (each, a "Relevant Sum") pursuant to Condition 9 (*Redemption at the Option of the Issuer or Guarantor*), Condition 15.3.2 or Condition 15.3.4 will:
- (a) discharge the Guarantor's obligations to the Noteholder under the Guarantee in respect of the Relevant Sum; and
  - (b) *pro tanto* discharge the Issuer of its corresponding obligations to that Noteholder under the relevant Notes.

## 16. CALCULATION AGENT AND OTHER AGENTS

Any third party appointed by the Issuer as Calculation Agent, Transfer Agent or otherwise shall act solely as the agents of the Issuer and does not assume any obligation towards or relationship of agency or trust for or with any Noteholders. The Issuer is entitled to vary or terminate the appointment of such agents and/or appoint additional or other agents and/or approve any change in the specified office through which any agent acts.

## 17. NOTICES

Notices to holders of Notes shall be valid if mailed to their registered addresses appearing in the Register. Any such notice shall be deemed to have been given on the seventh day after the day on which it is mailed.

In the event of there being any Individual Certificates in issue, such notices shall be published, not earlier than four days after the date of posting of such notice in terms of this clause (i) in an English language daily newspaper of general circulation in South Africa and (ii) and for so long as the Notes are listed on the Bond Market of the JSE, a daily newspaper of general circulation in the city in which the JSE is situated, and any such notices shall be deemed to have been given on the date of first publication.

If any notice is given to holders of uncertificated Notes, a copy thereof shall be delivered to the JSE, the CSD and the Participants.

Any notice to the Issuer shall be deemed to have been received by the Issuer, if delivered to the registered office of the Issuer, on the date of delivery, and if sent by registered mail, on the seventh day after the day on which it is sent. The Issuer may change its registered office upon prior written notice to Noteholders specifying such new registered office.

For so long as any of the Notes are uncertificated, notice may be given by any holder of an uncertificated Note to the Issuer via the relevant Settlement Agent in accordance with the Applicable Procedures, in such manner as the Issuer and the relevant Participants may approve for this purpose.

## 18. AMENDMENT OF THESE CONDITIONS

18.1 These Conditions set out all the rights and obligations relating to the Notes and, subject to the further provisions of this Condition 18 (*Amendments of these Conditions*), no addition, variation or consensual cancellation of these Conditions shall be of any force or effect unless reduced to writing and signed by or on behalf of the Issuer and the Noteholders.

18.2 No modification of these Terms and Conditions may be effected without the written agreement of the Issuer and the Guarantor. The Issuer may effect, without the consent of the relevant Class of Noteholders, any modification of the Terms and Conditions which is of a formal, minor or technical nature or is made to correct a manifest error or to comply with mandatory provisions of the law of the jurisdiction in which the Issuer is incorporated, provided that the consent of the JSE shall be required. Any such modification shall be binding on the relevant Class of Noteholders and any such modification shall be communicated to the relevant Class of Noteholders in accordance with Condition 17 (*Notices*) as soon as is practicable thereafter.

18.3 The Issuer may, subject to the written consent of the Guarantor, with the prior sanction of an Extraordinary Resolution of Noteholders or with the prior written consent of Noteholders holding not less than 75% (seventy-five per cent.) in Nominal Amount of the Notes Outstanding from time to time, amend these Conditions, provided that no such amendment shall be of any force or effect unless notice of the intention to make such amendment shall have been given to all Noteholders in terms of Condition 17 (*Notices*).

## 19. MEETINGS OF NOTEHOLDERS

19.1 The Issuer may at any time convene a meeting of all Noteholders or holders of any Series of Notes upon at least 21 days' prior written notice to such Noteholders. This notice is required to be given in terms of Condition 17 (*Notices*). Such notice shall specify the date, place and time of the meeting to be held, which place shall be in South Africa.

19.2 Every director or duly appointed representative of the Issuer may attend and speak at a meeting of Noteholders, but shall not be entitled to vote, other than as a proxy or representative of a Noteholder.

19.3 Noteholders holding not less than 25% (twenty-five per cent) in Nominal Amount of the outstanding Notes shall be able to request the Issuer to convene a meeting of Noteholders. Should the Issuer fail to requisition such a meeting within 10 days of such a request being received by the Issuer, the Noteholders requesting such a meeting may convene such meeting.

19.4 A Noteholder may by an instrument in writing (a "**form of proxy**") signed by the holder or, in the case of a corporation, executed under its common seal or signed on its behalf by an attorney or a duly authorised officer of the corporation, appoint any person (a "**proxy**") to act on his or its behalf in connection with any meeting or proposed meeting of the Noteholders.

19.5 Any Noteholder which is a corporation may by resolution of its directors or other governing body authorise any person to act as its representative (a "**representative**") in connection with any meeting or proposed meeting of the Noteholders.

19.6 Any proxy or representative appointed shall, so long as the appointment remains in force, be deemed for all purposes in connection with any meeting or proposed meeting of the Noteholder specified in the appointment, to be the holder of the Notes to which the appointment relates and the holder of the notes shall be deemed for such purposes not to be the holder.

19.7 The chairman of the meeting shall be appointed by the Issuer. The procedures to be followed at the meeting shall be as determined by the chairman subject to the remaining provisions of this Condition 19 (*Meetings of Noteholders*). Should the Noteholder requisition a meeting, and the Issuer fail to call such a meeting within 10 days of the requisition, then the chairman of the meeting held at the instance of the Noteholders shall be selected by a majority of Noteholders present in person, by representative or by proxy.

19.8 At any such meeting one or more Noteholders present in person, by representative or by proxy, holding in aggregate not less than one third of the Nominal Amount of Notes for the time being outstanding shall form a quorum for the transaction of business. On a poll, each Noteholder present in person or by proxy at the meeting shall have the number of votes equal to the number of Notes, by denomination, held by the Noteholder.

## 20. STIPULATIO ALTERI

It is acknowledged that these Terms and Conditions, insofar as they relate to the Guarantor apply to and are given as a *stipulatio alteri*, for the benefit of the Guarantor.

## 21. FURTHER ISSUES

The Issuer shall be at liberty from time to time without the consent of the Noteholders to create and issue further Notes having terms and conditions the same as any of the other Notes issued under the Programme or the same in all respects save for the amount and date of the first payment of interest thereon, the Issue Price and the Issue Date, so that the further Notes shall be consolidated to form a single Series with the Outstanding Notes.

## 22. GOVERNING LAW

The Notes, the Guarantee and all rights and obligations to the Notes are governed by, and shall be construed in accordance with, the laws of South Africa in force from time to time.

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## USE OF PROCEEDS

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Words used in this section entitled "Use of Proceeds" shall bear the same meanings as used in the Terms and Conditions, except to the extent that they are separately defined in this section or clearly inappropriate from the context.

For purposes of the Commercial Paper Regulations published in Government Notice 2172 in Government Gazette 16167 of 14 December 1994 under section 90 of the Banks Act, 1990 (the "Commercial Paper Regulations") it is recorded that the "Ultimate Borrower", as defined in the Commercial Paper Regulations, of the net proceeds from each Tranche of Notes will be the Issuer.

The proceeds from each issue of Notes will be applied by the Issuer for its general corporate purposes, including the upgrade of the Issuer's electricity generating capabilities and the building of new power stations, or as may otherwise be described in the Applicable Pricing Supplement.

SIGNED at Johannesburg on this 4<sup>th</sup> day of February 2010

For and on behalf of  
**ESKOM HOLDINGS LIMITED**



Name: PAUL SEAN O'FLAHERTY  
Capacity: Director  
Who warrants his/her authority hereto



Name: P. MPHO MAKWANA  
Capacity: Director  
Who warrants his/her authority hereto

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## TERMS AND CONDITIONS OF GUARANTEE

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### GUARANTEE

THIS GUARANTEE is made

**BY**

- (1) **THE GOVERNMENT OF THE REPUBLIC OF SOUTH AFRICA**, herein represented by the Minister of Public Enterprises in terms of section 66(2) of the Public Finance Management Act, 1999 (the “**PFMA**”) acting with the concurrence of the Minister of Finance in terms of section 70 of the PFMA (the “**Guarantor**”);

**IN FAVOUR OF**

- (2) **THE HOLDERS** for the time being and from time to time of the Notes referred to below (each a “**Noteholder**” or the “**holder**” of a Note).

**WHEREAS**

- (A) **ESKOM HOLDINGS LIMITED** (the “**Issuer**”) has established a Domestic Multi-Term Note Programme (the “**Programme**”) for the issuance of notes (the “**Notes**”) which is listed on the Bond Market of the JSE Limited (“**JSE**”).
- (B) The Minister of Public Enterprises and the Minister of Finance, both representing the Guarantor, consider the furnishing of this Guarantee in respect of the Notes to be in the public interest.
- (C) The Guarantor has agreed to guarantee the payment of all sums expressed to be payable from time to time by the Issuer to Noteholders in respect of the Notes Outstanding under the Programme from time to time (including, without limitation, all Notes issued by the Issuer prior to the date of this Guarantee and Outstanding as at the date of this Guarantee) on the terms and conditions set out in this Guarantee.

**NOW THEREFORE THE GUARANTOR AGREES AS FOLLOWS:**

**1. INTERPRETATION**

**1.1 Definitions**

All terms and expressions which have defined meanings in the Terms and Conditions of the Notes (the “**Terms and Conditions**”) contained in the Programme Memorandum relating to the Notes dated 6 March 2006, as amended or supplemented from time to time, (the “**Programme Memorandum**”) shall have the same meanings in this Guarantee except where the context requires otherwise or unless otherwise stated.

**1.2 Clauses**

Any reference in this Guarantee to a clause is, unless otherwise stated, to a clause hereof.

**1.3 Other Agreements and Documents**

All references in this Guarantee to an agreement, instrument or other document (including the Programme Memorandum and the Terms and Conditions) shall be construed as a reference to that agreement, instrument or other document as the same may be amended, supplemented, replaced or novated from time to time.

**1.4 Legislation**

Any reference in this Agreement to any legislation (whether primary legislation or regulations or other subsidiary legislation made pursuant to primary legislation) shall be construed as a reference to such legislation as the same may have been, or may from time to time be, amended or re-enacted.

**1.5 Headings**

Headings and sub-headings are for ease of reference only and shall not affect the construction of this Guarantee.



### 1.6 **Benefit of Guarantee**

Any Notes issued under the Programme prior to, on or after the date of this Guarantee that are Outstanding from time to time shall have the benefit of this Guarantee but shall not have the benefit of any subsequent guarantee relating to the Programme (unless expressly so provided in any such subsequent guarantee).

## 2. **GUARANTEE**

Subject to clause 5 (*Recourse against the Issuer*), the Guarantor hereby irrevocably and unconditionally guarantees (as a principal obligation and not merely as suretyship) to each Noteholder the due and punctual payment by the Issuer of all sums from time to time payable by the Issuer in respect of the Notes issued under the Programme as and when same become due and payable and accordingly undertakes to pay to such Noteholder within 5 (five) Business Days of written demand delivered to the Guarantor, in accordance with the provisions of clause 3 (*Demands*), any and every sum or sums which the Issuer is at any time liable to pay in respect of such Note and which the Issuer has failed to pay in the manner and currency prescribed by such Note for payments by the Issuer in respect of such Note.

## 3. **DEMANDS**

If:

- 3.1 the Issuer fails to pay any Nominal Amount due under the Notes held by a Noteholder on its due date for payment thereof or the Issuer fails to pay any interest due under the Notes on its due date for payment thereof; or
- 3.2 subject to clause 5 (*Recourse Against the Issuer*) a Noteholder has, pursuant to the occurrence of an Event of Default which is continuing, declared the Notes held by that Noteholder to be forthwith due and payable in accordance with Condition 15.1 (*Events of Default*) of the Terms and Conditions,

that Noteholder shall be entitled to demand payment from the Guarantor of the relevant sum (the “**Guaranteed Sum**”) which the Issuer has failed to pay by delivering a written demand in the form attached hereto as Annex 1 (*Form of Demand*) (each, a “**Demand Notice**”) to the Guarantor in accordance with clause 10 (*Notices and Domicilia*).

## 4. **PAYMENTS**

- 4.1 If a Noteholder delivers a Demand Notice in accordance with clause 3 (*Demands*), the Guarantor shall pay the Guaranteed Sum to that Noteholder *mutatis mutandis* in accordance with Condition 8 (*Payments*) of the Terms and Conditions.
- 4.2 The Guaranteed Sum payable by the Guarantor pursuant to a written Demand Notice in accordance with clause 3 (*Demands*) shall not exceed the sum due and payable by the Issuer on the relevant due date.
- 4.3 Payment to a Noteholder under this Guarantee of a Guaranteed Sum shall:
  - 4.3.1 discharge the Guarantor’s obligations to that Noteholder under this Guarantee in respect of that Guaranteed Sum; and
  - 4.3.2 *pro tanto* discharge the Issuer of its corresponding obligations to that Noteholder under the relevant Notes.

## 5. **RECOURSE AGAINST THE ISSUER**

A Noteholder wishing to benefit from, and make any demand under, this Guarantee acknowledges and agrees that:

- 5.1 while this Guarantee is in force, the rights of the Noteholder against the Issuer will be limited to the extent that, the Noteholder:
  - 5.1.1 shall not take any action or proceedings against the Issuer to recover any amounts due and payable under the Notes (including, without limitation, not levying or enforcing any attachment or execution upon the assets of the Issuer), and all rights of enforcement of the Noteholder in respect of any such amounts shall be exercised by the Noteholder making a claim against the Guarantor in accordance with the provisions of this Guarantee;

- 5.1.2 shall not institute, or join with any person in instituting or vote in favour of, any steps or legal proceedings for, the winding-up, liquidation, de-registration, judicial management of, or any compromise or scheme of arrangement with creditors of, or any related relief in respect of, the Issuer or for the appointment of a liquidator, judicial manager or similar office of the Issuer; and
- 5.1.3 shall not set off or claim to set off any amounts owing by it under any agreement to which it is a party against any liability owed to it by the Issuer, unless such right of set-off is expressly provided for in terms of such agreement;
- 5.2 the Guarantor shall be entitled at any time (and whether or not in anticipation of an Event of Default occurring or while an Event of Default is continuing) to effect payments of any amounts due and payable under any Note on behalf of the Issuer as and when they fall due under such Note and the Noteholder will accept each such payment as if it were a payment made by the Issuer under such Note without the exercise of any such entitlement by the Guarantor causing any default, Event of Default or termination event (howsoever described) or entitling the Noteholder to declare such Note to be forthwith due and payable in accordance with Condition 15.1 (*Events of Default*) of the Terms and Conditions as a consequence of the failure by the Issuer to make such payment;
- 5.3 while this Guarantee is in force, if the Issuer fails to pay any sum (each, an “**Unpaid Sum**”) under any Note, the Noteholder shall not declare such Note to be forthwith due and payable in accordance with Condition 15.1 (*Events of Default*) of the Terms and Conditions as a consequence of the failure by the Issuer to pay the Unpaid Sum unless the Noteholder of such Note shall have first demanded payment of the Unpaid Sum from the Guarantor in accordance with the provisions of this Guarantee and the Guarantor shall have failed to pay the Unpaid Sum to the Noteholder within 5 (five) Business Days of receiving a Demand Notice for the Unpaid Sum in accordance with the provisions of this Guarantee and accordingly no Event of Default shall occur as a consequence of the failure by the Issuer to pay the Unpaid Sum unless payment of the Unpaid Sum has been demanded from the Guarantor under this Guarantee and the Guarantor has failed to pay to the Unpaid Sum to the Noteholder within 5 (five) Business Days of demand by the Noteholder in accordance with the provisions of this Guarantee; and
- 5.4 at any time while an Event of Default is continuing and whether or not a Noteholder shall have declared the Notes held by that Noteholder to be forthwith due and payable in accordance with Condition 15.1 (*Events of Default*) of the Terms and Conditions, the Guarantor shall be entitled, having given not less than 14 (fourteen) days’ irrevocable notice to that Noteholder and the Issuer in accordance with Condition 17 (*Notices*) of the Terms and Conditions, to redeem such Notes on behalf of the Issuer at the Early Redemption Amount (as described in Condition 9.4 (*Early Redemption Amounts*) of the Terms and Conditions), together with accrued interest (if any) to the date of repayment, or as specified in the Applicable Pricing Supplement, and that Noteholder shall accept such payment as if it were a payment made by the Issuer under the Note; and
- 5.5 payment to a Noteholder by the Guarantor of any sum (each, a “**Relevant Sum**”) pursuant to Condition 8 (*Payments*), Condition 15.3.2 or Condition 15.3.4 of the Terms and Conditions will:
  - 5.5.1 discharge the Guarantor’s obligations to the Noteholder under the Guarantee in respect of the Relevant Sum; and
  - 5.5.2 *pro tanto* discharge the Issuer of its corresponding obligations to that Noteholder under the relevant Notes.

## 6. PRESERVATION OF RIGHTS

### 6.1 Principal Obligor

The obligations of the Guarantor hereunder shall be deemed to be undertaken as principal obligor and not merely as surety.

### 6.2 Continuing Obligations

The obligations of the Guarantor contained in this Guarantee shall:

- 6.2.1 commence on the date of this Guarantee;
- 6.2.2 constitute and be continuing obligations notwithstanding any settlement of account or other matter or thing whatsoever and shall not be considered satisfied by any intermediate

payment or satisfaction of all or any of the Issuer's obligations under or in respect of any Note;

- 6.2.3 continue in full force and effect for so long as the Programme remains in effect and thereafter until all sums due from the Issuer in respect of the Notes have been paid, and all other actual or contingent payment obligations of the Issuer thereunder or in respect thereof have been satisfied, in full; and
- 6.2.4 not be in addition to and not in substitution for any other rights which the Noteholders may have in relation to the Issuer or the Guarantor under or by virtue of the Notes.

### 6.3 Guarantor's Obligations Not Discharged

Neither the obligations of the Guarantor herein contained nor the rights, powers and remedies conferred upon the Noteholders by this Guarantee or by law shall be discharged, impaired or otherwise affected by:

- 6.3.1 **Winding-up:** the winding-up, dissolution, administration, re-organisation or moratorium of the Issuer or any change in its status, function, control or ownership;
- 6.3.2 **Illegality:** subject to Condition 14 (*Prescription*) of the Terms and Conditions, any of the obligations of the Issuer under or in respect of any Note being or becoming illegal, invalid, unenforceable or ineffective in any respect;
- 6.3.3 **Indulgence:** time or other indulgence (including for the avoidance of doubt, any composition) being granted or agreed to be granted to the Issuer in respect of any of its obligations under or in respect of any Note or the Terms and Conditions;
- 6.3.4 **Amendment:** any amendment to, or any variation, waiver or release of, any obligation of the Issuer under or in respect of any Note or the Terms and Conditions or any security or other guarantee or indemnity in respect thereof, however fundamental; or
- 6.3.5 **Analogous Events:** any other act, event or omission which, but for this sub-clause, might operate to discharge, impair or otherwise affect the obligations expressed to be assumed by the Guarantor herein or any of the rights, powers or remedies conferred upon the Noteholders or any of them by this Guarantee or by law.

### 6.4 Reinstatement

Where any discharge in respect of any amounts hereby guaranteed under this Guarantee is made in whole or in part or any arrangement is made on the faith of any payment, security or other disposition, which discharge or arrangement is avoided, reduced or must be repaid on winding-up or repaid otherwise without limitation, the liability of the Guarantor under this Guarantee shall continue as if there had been no such discharge.

### 6.5 Renunciation of Benefits

The Guarantor hereby renounces all benefits arising from the legal exceptions of "*non numeratae pecuniae*" (no money was paid over), "*non causa debiti*" (lack of actionable debt), "*errore calculi*" (mistake in calculation of amount due) and "*beneficia excussionis et divisionis*" (the benefits of excussion and division), with the meaning and effect of which renunciation the Guarantor hereby declares itself to be fully acquainted.

### 6.6 Exercise of Rights

No Noteholder shall be obliged before exercising any of the rights, powers or remedies conferred upon it by this Guarantee or by law:

- 6.6.1 **Demand:** to make any demand of the Issuer, save for (to the extent required under Condition 8 (*Payments*) of the Terms and Conditions) the presentation of the relevant Note or the surrender of the relevant Individual Certificate;
- 6.6.2 **Take Action:** to take any action or obtain judgment in any court against the Issuer;
- 6.6.3 **Claim or Proof:** to make or file any claim or proof in a winding up or dissolution of the Issuer; or

6.6.4 **Enforcement of Security:** to enforce or seek to enforce any other collateral or security given by the Issuer, or any other person, in respect of any of the obligations of the Issuer under the Notes or the Terms and Conditions,

and (save as aforesaid) the Guarantor hereby expressly waives presentment, demand, protest and notice of dishonour in respect of any Note.

#### 6.7 **Deferral of Guarantor's Rights**

The Guarantor agrees that, so long as any sums are or may be owed by the Issuer in respect of any Note or the Terms and Conditions or the Issuer is under any other actual or contingent obligation thereunder or in respect thereof, the Guarantor hereby waives, and will not exercise, any rights which the Guarantor may at any time have by reason of the performance by the Guarantor of its obligations hereunder:

6.7.1 **Indemnity:** to be indemnified by the Issuer;

6.7.2 **Contribution:** to claim any contribution from any other guarantor of the Issuer's obligations under or in respect of any Note or the Terms and Conditions;

6.7.3 **Subrogation:** to take the benefit (in whole or in part and whether by way of subrogation or otherwise) of any rights of any Noteholder against the Issuer in respect of amounts paid by the Guarantor under this Guarantee or any security enjoyed in connection with any Note or the Terms and Conditions by any Noteholder;

6.7.4 **No Proceedings:** to bring legal or other proceedings for an order requiring the Issuer to make any payment, or perform any obligation, in respect of which the Guarantor has given a guarantee or indemnity under clause 2 (*Guarantee*);

6.7.5 **Set-off or Counterclaim:** to exercise any right of set-off against the Issuer or any obligor under the Notes;

6.7.6 **Proof in Insolvency:** to claim or prove as a creditor of the Issuer in competition with the Noteholders in the event of the bankruptcy, insolvency or liquidation of the Issuer.

#### 6.8 **Security**

The Guarantor hereby undertakes to the Noteholders that, so long as any sums are or may be owed by the Issuer in respect of any Note or the Terms and Conditions or the Issuer is under any other actual or contingent obligation thereunder or in respect thereof, the Guarantor will not take or receive, any security or lien from the Issuer in respect of the granting of this Guarantee.

#### 6.9 **Pari Passu**

The Guarantor undertakes that its obligations hereunder will at all times rank at least *pari passu* with all other present and future unsecured obligations of the Guarantor, save for such obligations as may be preferred by provisions of law that are both mandatory and of general application.

#### 6.10 **Additional Security**

This Guarantee is in addition to, and the existence or enforceability of this Guarantee shall not affect or be affected or prejudiced by, any other guarantee or security held by any Noteholder in respect of the Issuer's obligations under the Notes.

#### 6.11 **Waiver of Immunity**

Subject to the provisions of the State Liability Act, 1957, which shall apply, to the extent that the Guarantor may in any jurisdiction claim for itself or its assets or revenues immunity from suit, execution, attachment (whether in aid of execution, before judgment or otherwise) or other legal process and to the extent that such immunity (whether or not claimed) may be attributed in any such jurisdiction to the Guarantor or its assets or revenues, the Guarantor agrees not to claim and irrevocably waives such immunity to the full extent permitted by the laws of such jurisdiction.

### 7. **DEPOSIT OF GUARANTEE**

This Guarantee shall be deposited with, and held by, the CSD for so long as the Programme remains in effect and thereafter until the date on which all of the obligations of the Issuer under or in respect of the Notes and the Terms and Conditions have been discharged in full. The Guarantor acknowledges and agrees that each Noteholder shall be entitled to require the CSD, which shall be obliged, to produce the

original of this Guarantee on written request and further shall be entitled to require the CSD to provide a copy of this Guarantee to that Noteholder on written request. The Issuer is obliged under the Terms and Conditions to ensure that the CSD complies with such requests within 3 (three) Business Days of receipt of the same.

**8. BENEFIT OF GUARANTEE**

This Guarantee shall enure to the benefit of each Noteholder and its (and any subsequent) successors and assigns, each of which shall be entitled severally to enforce this Guarantee against the Guarantor.

**9. TAXES AND WITHHOLDINGS**

All payments in respect of the Notes under this Guarantee shall be made without set-off, counterclaim, fees, liabilities or similar deductions and free and clear of, and without deduction or withholding for, taxes, levies, duties or charges of any nature ("**Taxes**") now or hereafter imposed, levied, collected, withheld or assessed by or on behalf of the Republic of South Africa or any political subdivision or taxing authority thereof or therein having power to tax, unless such withholding or deduction is required by law or regulation. If the Guarantor or any agent thereof is required by law or regulation to make any deduction or withholding for or on account of Taxes, the Guarantor shall, to the extent permitted by applicable law or regulation, pay such additional amounts as shall be necessary in order that the net amounts received by any Noteholder after such deduction or withholding shall equal the respective amounts of principal and interest which would have been receivable in respect of the Notes in the absence of such deduction or withholding, except that no such additional amounts shall be payable with respect to any Note:

- 9.1.1 held by or on behalf of a Noteholder who is liable to such Taxes in respect of such Note by reason of his having some connection with the Republic of South Africa other than the mere holding of such Note or the receipt of principal or interest in respect thereof; or
- 9.1.2 held by or on behalf of a Noteholder who would not be liable or subject to the withholding or deduction by making a declaration of non-residency or other similar claim for exemption to the relevant tax authority (the effect of which is not to require the disclosure of the identity of the relevant Noteholder); or
- 9.1.3 where such withholding or deduction is in respect of Taxes levied or imposed on interest or principal payments only by virtue of the inclusion of such payments in the taxable income (as defined in section 1 of the Income Tax Act) or taxable capital gain (as defined in paragraph 1 of the Eighth Schedule to the Income Tax Act) of any Noteholder; or
- 9.1.4 more than 30 (thirty) days after the date on which such requirement to withhold or deduct arises, except to the extent that the Noteholder thereof would have been entitled to an additional amount on presenting the same for payment on such thirtieth day; or
- 9.1.5 if such withholding or deduction arises through the exercise by revenue authorities of special powers in respect of tax defaulters; or
- 9.1.6 where the Noteholder is entitled to claim a Tax deduction, credit or similar benefit in respect of such withholding or deduction in terms of the Noteholder's domestic Tax laws or applicable double Tax treaty and such Tax reduction, credit or similar benefit is actually granted to the Noteholder.

**10. NOTICES AND DOMICILIA**

**10.1 Notices**

- 10.1.1 The Guarantor chooses the addresses set out opposite its name below as its addresses to which any written notice in connection with this Guarantee may be addressed.

**Government:**

Physical address:                   The Department of Public Enterprises of the Republic  
of South Africa  
Suite 401, Infotech Building  
1090 Arcadia Street  
Hatfield  
Pretoria

0028  
Republic of South Africa

Attention: The Director-General: Department of Public Enterprises

and:

Physical address: The National Treasury of the Republic of South Africa  
240 Vermeulen Street  
Pretoria  
0002  
Republic of South Africa

Attention: The Deputy Director-General: Asset and Liability Management

10.1.2 Any notice, service of legal process, demand or communication required or permitted to be given in terms of this Guarantee shall be valid and effective only if in writing; provided that it shall not be competent to give notice by telefax.

10.1.3 The Guarantor may by written notice to the Noteholders change its chosen addresses for the purposes of clause 10.1.1 to any other address(es), provided that the change shall become effective on the fourteenth day after the receipt of the notice by the Noteholders.

10.1.4 Any notice given in terms of this Guarantee shall:

10.1.4.1 if sent by a courier service be deemed to have been received by the addressee on the 7th (seventh) Business Day following the date of such sending;

10.1.4.2 if delivered by hand be deemed to have been received by the addressee on the date of delivery;

unless the contrary is proved.

10.1.5 Notwithstanding anything to the contrary herein contained, a written notice or communication actually received by a party shall be an adequate written notice or communication to it, notwithstanding that it was not sent to or delivered at its chosen address.

## 10.2 *Domicilia*

10.2.1 The Guarantor chooses its address referred to in clause 10.1.1 as its *domicilium citandi et executandi* at which documents in legal proceedings in connection with this Guarantee may be served.

10.2.2 The Guarantor may by written notice to the Noteholders change its *domicilium* from time to time to another address, not being a post office box or a poste restante, in South Africa; provided that any such change shall only be effective on the fourteenth day after receipt of the notice by the Noteholders in accordance with clause 10.3 (*Notices to the Noteholders*).

## 10.3 **Notices to the Noteholders**

Notices to holders of Notes under this Guarantee shall be given *mutatis mutandis* in accordance with Condition 17 (*Notices*) of the Terms and Conditions.

## 11. **AMENDMENTS TO THIS GUARANTEE**

11.1 Subject to clause 11.2, the Guarantor may amend or vary the terms of this Guarantee with:

11.1.1 the prior sanction of an Extraordinary Resolution of Noteholders; or

11.1.2 the prior written consent of Noteholders holding not less than 75% (seventy-five per cent) in Nominal Amount of the Notes Outstanding from time to time,

provided that no such amendment or variation shall be of any force or effect unless notice of the intention to make such amendment or variation shall have been given to all Noteholders in accordance with clause 10.3 (*Notices to the Noteholders*).

11.2 Notwithstanding clause 11.1, the Guarantor may make, without the consent of the Noteholders, any amendment to or variation of the terms of this Guarantee which is:

- 11.2.1 of a formal, minor or technical nature;
  - 11.2.2 made to correct a manifest error;
  - 11.2.3 made to comply with mandatory provisions of the law of the jurisdiction in which the Issuer is incorporated; or
  - 11.2.4 not prejudicial to the rights and interests of the Noteholders,
- provided that no such amendment or variation shall be of any force or effect until communicated to the Noteholders in accordance with clause 10.3 (*Notices to the Noteholders*).

**12. CANCELLATION OF THIS GUARANTEE**

The Guarantor may cancel or terminate this Guarantee by written notice to the Noteholders with:

- 12.1 the prior sanction of an Extraordinary Resolution of Noteholders; or
- 12.2 the prior written consent of Noteholders holding not less than 75% (seventy-five per cent) in Nominal Amount of the Notes Outstanding from time to time.

**13. CESSION AND ASSIGNMENT**

The Guarantor shall not cede or assign any of its rights, or delegate any of its obligations, under this Guarantee save with:

- 13.1 the prior sanction of an Extraordinary Resolution of Noteholders; or
- 13.2 the prior written consent of Noteholders holding not less than 75% (seventy-five percent) in Nominal Amount of the Notes Outstanding from time to time.

**14. INDULGENCES**

No indulgence granted by a Noteholder to the Guarantor shall constitute a waiver of any of that Noteholder's rights under this Guarantee. Accordingly, that Noteholder shall not be precluded, as a consequence of having granted such indulgence, from exercising any rights against the Guarantor which may have arisen in the past or which may arise in the future.

**15. VARIATION, CANCELLATION AND WAIVER**

No contract varying, adding to, deleting from or cancelling this Guarantee, and no waiver of any right of the Guarantor under this Guarantee, will be effective unless reduced to writing and signed by the Minister of Public Enterprises of the Guarantor in terms of section 66(2) of the PFMA acting with the concurrence of the Minister of Finance of the Guarantor in terms of section 70 of the PFMA.

**16. ENTIRE CONTRACT**

This Guarantee contains all the express provisions agreed on by the Guarantor with regard to the subject matter of this Guarantee and the Guarantor shall not be bound by any express or implied term, representation, warranty, promise or the like not recorded herein.

**17. APPLICABLE LAW**

This Guarantee shall be interpreted and implemented in accordance with the laws of the Republic of South Africa.

**18. JURISDICTION**

The High Court of South Africa (North Gauteng High Court, Pretoria), shall have non-exclusive jurisdiction to hear and determine any suit, action or proceedings, and to settle any disputes which may arise out of or in connection with this Guarantee and, for such purposes, the parties irrevocably submit to the jurisdiction of such court.

**19. COUNTERPARTS**

This Guarantee may be executed in any number of counterparts by the parties and once each party to this Guarantee has signed a counterpart, each such counterpart shall be considered an original and all such counterparts shall constitute one and the same instrument. Any such counterpart may be a facsimile transmission copy thereof or a scanned copy thereof transmitted by e-mail.

20. **SEVERABILITY**

If any of the provisions of this Guarantee becomes invalid, illegal or unenforceable for any reason, the validity, legality and enforceability of the remaining provisions of this Guarantee shall not be impaired or affected in any way by such invalidity, illegality, or unenforceability.

21. **ACCEPTANCE OF BENEFITS**

The Guarantor hereby accepts the benefits conferred upon it in the Terms and Conditions.

**Thus signed and executed by the Minister of Public Enterprises of the Republic of South Africa in terms of section 66(2) of the Public Finance Management Act, 1999 acting with the concurrence of the Minister of Finance of the Republic of South Africa in terms of section 70 of the Public Finance Management Act, 1999.**

Signed at \_\_\_\_\_ on \_\_\_\_\_ 2010

**Witnesses:**

**for THE GOVERNMENT OF THE REPUBLIC  
OF SOUTH AFRICA**

1. \_\_\_\_\_

\_\_\_\_\_  
Name:  
Capacity: Minister of Public Enterprises

2. \_\_\_\_\_

**Concurred**

Signed at \_\_\_\_\_ on \_\_\_\_\_ 2010

**Witnesses:**

**for THE GOVERNMENT OF THE REPUBLIC  
OF SOUTH AFRICA**

1. \_\_\_\_\_

\_\_\_\_\_  
Name:  
Capacity: Minister of Finance

2. \_\_\_\_\_



FORM OF DEMAND

To: The National Treasury  
240 Vermeulen Street  
Pretoria, 0002  
Republic of South Africa

Attention: C/O Minister of Finance  
Deputy Director-General: Asset and Liability Management

cc: Department of Public Enterprises  
Suite 401  
Infotech Building  
1090 Arcadia Street  
Hatfield  
Pretoria, 0028  
Republic of South Africa

Attention: The Director-General: Department of Public Enterprises

From: [insert name of Noteholder]

Address: [insert address]

Dated: [●]

Dear Sirs

**Letter of Demand in terms of a Guarantee dated 5 November 2009 by the Government of the Republic of South Africa in favour of Noteholders for the obligations of Eskom Holdings Limited in respect of the Notes issued under the Eskom Holdings Limited R65,000,000,000 Domestic Multi-Term Note Programme (the "Guarantee"): [insert Title [and ISIN] of Notes] (the "Notes")**

1. We, [●], are the holder of a Nominal Amount of [insert amount] of the above-mentioned Notes.
2. We refer to the above Guarantee. This is a Demand Notice. Terms defined, or incorporated by reference, in the Guarantee shall have the same meaning when used in this Demand Notice.
3. The Issuer has failed to pay the sum of R[●] due on [●] in respect of the Notes.
4. We demand payment to us, in accordance with the provisions of the Guarantee, of the sum of [●] being due and payable, but unpaid, to us under or in respect of the Notes.
5. Payment must be made in accordance with Condition 8 (*Payments*) of the Terms and Conditions.

Yours faithfully,

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for

[insert name of Noteholder]

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## DESCRIPTION OF ESKOM HOLDINGS LIMITED

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### 1. ESKOM HOLDINGS LIMITED

#### 1.1 Group Overview

Eskom Holdings Limited (“**Eskom**” or the “**Company**”) is South Africa’s national, vertically integrated electricity utility and is wholly owned by the South African government. Eskom is responsible for the generation, transmission, distribution and retailing of electricity within South Africa. It also buys and sells electricity to the countries of the Southern African Development Community (“**SADC**”). The Government, through the Department of Public Enterprises, is the Company’s sole shareholder.

Eskom is regulated under licenses granted by the National Energy Regulator of South Africa (“**NERSA**”), originally under the Electricity Act, 1987 which licenses were replaced by licenses under the Electricity Regulation Act, 2006 and by the National Nuclear Regulator in terms of the National Nuclear Regulatory Act, 1999.

Eskom owns and operates a number of coal-fired, gas-fired, hydro and pumped storage power stations, as well as one nuclear power station. Eskom’s major fuel source in its plants is coal (which is abundant in South Africa) and gives it a significant cost competitive advantage. Eskom has 28,099 kilometres of transmission lines that connect to most SADC countries, with the majority of sales in South Africa (96%).

The Company is responsible for the generation of 95% of South Africa’s electricity supply which is sold to industrial, mining, commercial, agricultural and residential customers as well as to redistributors. The Company produces approximately 45% of the electricity on the African continent and is both an importer and exporter of electricity to neighbouring countries. Eskom has a nominal capacity of installed generation of 44,193MW as at March 2009. Additional power stations and major power lines are being built to meet rising electricity demand in South Africa. The approved capacity expansion budget is R385 billion (in nominal terms as at the date of Board approval) up to 2013.

Eskom is ranked as one of the top 13 utilities in the world by generation capacity and is among the top 9 in terms of electricity sales. (Source: Datamonitor plc, April 2007).

Eskom’s head office is in Johannesburg and its operations are focused on South Africa. The Eskom Enterprises (Proprietary) Limited group (“**Eskom Enterprises**”) operates electricity generation concessions in Mali, Zambia and Uganda. Other than South Africa, Eskom Enterprises has subsidiaries in various African countries, with offices in Uganda, Mali, Zambia and, up until the disposal of Maintain Kingdom Communications (Proprietary) Limited (“**MKC**”), in Lesotho.

The Eskom (Proprietary) Limited group focuses mainly on activities that support its holding company and is also responsible for all non-core businesses. It supports Eskom by providing plant life-cycle support and plant maintenance, including return-to service work, and supports the build programme for all the line divisions. It is also in the process of disposing of a number of non-core businesses, including its investment in arivia.com, Eskom’s IT joint venture, of which Eskom Enterprises owns 58.5%. At the end of the past financial year, Eskom Enterprises disposed of MKC, the telecommunications provider in Lesotho. Eskom Enterprises subsidiary in Zambia is currently being disposed of (awaiting approval in terms of the Public Finance Management Act, 1999 (“**PMFA**”) for completion of the disposal).

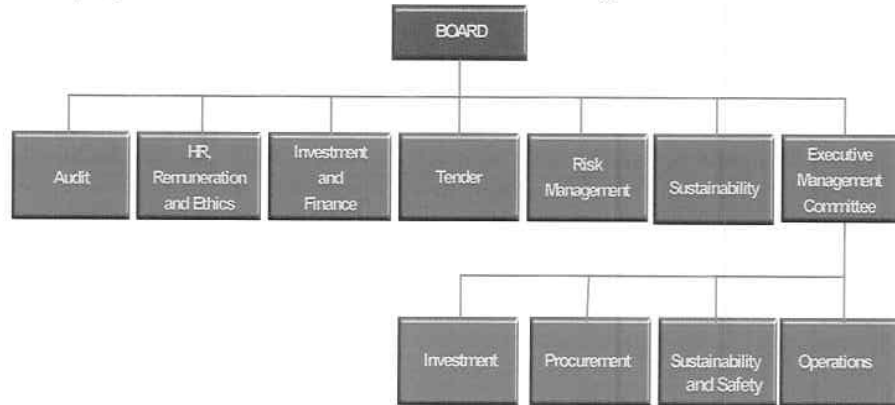
The core businesses of the other subsidiaries, Eskom Finance Company (Proprietary) Limited (“**Eskom Finance Company**”), Escap Limited and Gallium Insurance Company Limited include the granting of employee home loans and the management and insurance of business risk. Eskom’s corporate social investment is channeled principally through the Eskom Development Foundation, a section 21 company.

## 1.2 Corporate Governance and Management

### 1.2.1 Corporate Governance

Eskom is managed by its Board of Directors (the “**Board**”) as per the structure below. The Board is vested with the power and authority to lead, control, manage and conduct the business of the Company.

The Board has the power and authority to delegate and the responsibility to ensure that the Company remains a sustainable and viable business of global stature.



The Board is lead by RM (Bobby) Godsell as Chairman. The Board consists of 13 members that includes 10 Non-executive Directors in addition to the Chairman, Chief Executive Officer and Finance Director. The current composition is shown below:

Name	Category
RM (Bobby) Godsell	Chairman, Appointed July 2008
LCZ (Zee) Cele	Non-executive Director, appointed August 2005
SD Dube	Non-executive Director, appointed July 2008
LG (Lars) Josefsson	Non-executive Director, appointed July 2002
WE (Wendy) Lucas-Bull	Non-executive Director, Appointed July 2002
PM (Mpho) Makwana	Non-executive Director, appointed July 2002
PJ (Jacob) Maroga	Chief Executive Officer, appointed May 2007
J Mirenge	Non-executive Director, appointed July 2008
JRD (Jacob) Modise	Non-executive Director, appointed July 2002
AJ (Allen) Morgan	Non-executive Director, appointed July 2002
HB Lee	Non-executive Director, appointed July 2008
U (Uhuru) Nene	Non-executive Director, appointed August 2005
Vacant	Finance Director (to be appointed)

The Board consists of individuals with wide ranging experience from the Utilities sector to Social Welfare & Development providing Eskom with depth of skills and expertise. Once the new Finance Director is appointed, the person will also form part of the Board.

### 1.2.2 Management

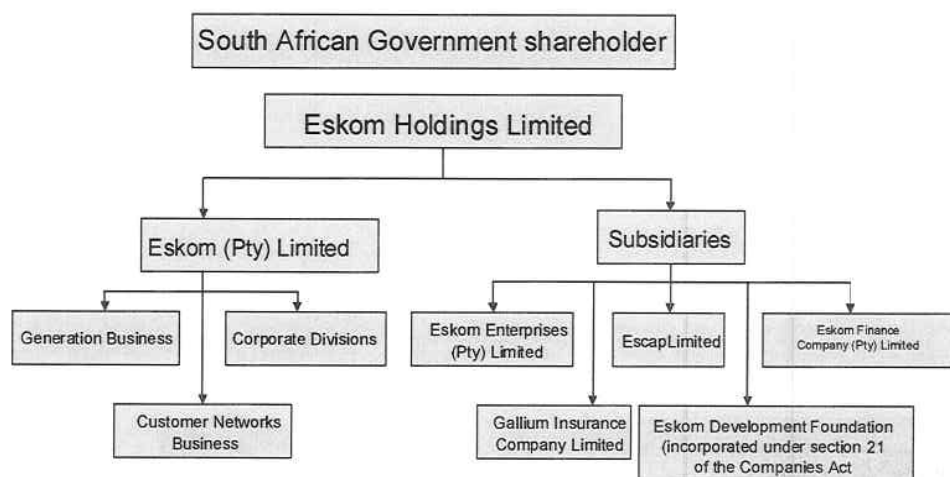
The Executive Management Committee (“**EXCO**”) comprises the Chief Executive, the Finance Director, the Managing Director (Human Resources) and the Managing Director (Corporate Services). EXCO is chaired by the Chief Executive.

EXCO assists the Chief Executive in guiding the business and controlling the overall direction of the business, and is responsible for ensuring the effective management of the day-to-day operations of the business.

### 1.3 Business Divisions

#### 1.3.1 Organisational Structure

Eskom operates its business through a number of divisions and subsidiary companies (the “Eskom Group”). The following chart shows the current structure of the Eskom Group, including major subsidiaries:



#### 1.3.2 Generation Business

##### 1.3.2.1 Generation Division

Eskom has 26 power stations in commission, comprised of 13 coal-fired power stations, 4 gas turbine stations, 4 gas turbine stations, 6 hydroelectric stations, 2 pumped storage hydroelectric stations and 1 nuclear power station. The share of electricity production from each type of power station varies annually, depending upon such factors as the availability of the station’s primary energy supply and maintenance outages. In the financial year ended 31 March 2009, coal-fired power stations produced approximately 85 percent of Eskom’s electricity. The table below shows the composition of the power generation base.

As at 31 March, 2009:

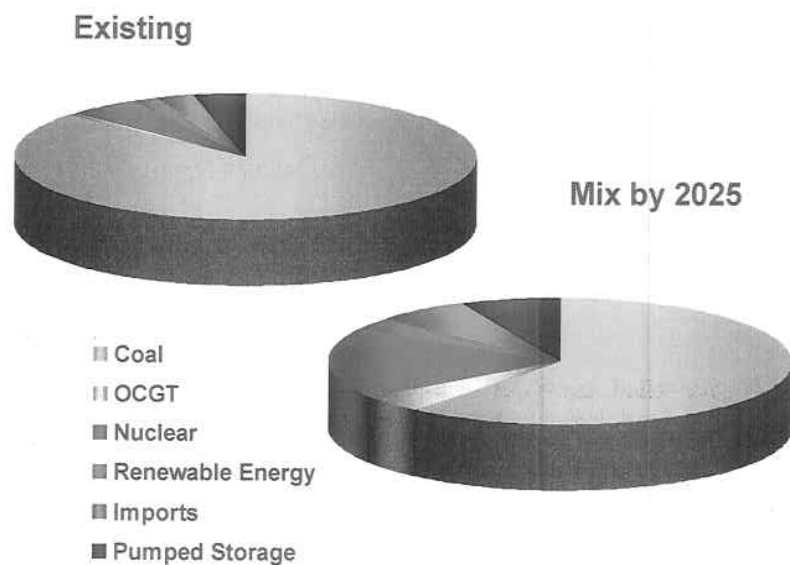
Type	Number	Net Max Capacity	Percentage
Coal-fired	13 stations	34,294 MW	85%
Gas/ Liquid fuel turbine	4 stations	2409MW	6%
Hydroelectric	6 stations	600 MW	1%
Pumped storage	2 stations	1,400 MW	3%
Nuclear	1 station	1,800 MW	4%
Total	26 stations	40,503 MW	100%

##### 1.3.2.2 Future Energy Mix

The current approved generation energy mix is based on the current strategic drivers, the integrated strategic electricity plan (the “ISEP”) and the results

of portfolio modelling. The key assumptions and sensitivities under which these portfolios will change relate to the demand forecast and the fuel cost of the different base load technologies. Changes in any key assumptions will lead to a change in the portfolio targets. Strategic drivers such as climate change impact mitigation, diversification and shareholder aspirations must be balanced and traded off against purely financial considerations. Eskom also faces environmental challenges and primary energy constraints in the face of global competitive markets and a shortage of skills.

Based on committed projects, new options and investment strategy drivers, Eskom has recommended a portfolio that over time moves away from the least-cost option to incorporate a more “clean” and diversified portfolio that still reflects a reasonable “value at risk” and includes replacing existing coal-fired generation with clean coal technologies. Eskom is ensuring that not only is the Company complying with South African environmental, social and legal requirements, but also taking into account the Equator Principles, International Finance Corporation Limited (“IFC”) performance standards and the IFC Environmental Health and Safety (“EHS”) guidelines.



Eskom plans to reduce the proportion of electricity generated from coal to approximately 70 percent by 2025. In order to replace coal with a cleaner fuel source, Eskom is exploring options to increase nuclear capacity and expects that nuclear power’s contribution to the energy mix may rise.

#### 1.3.2.3 Primary Energy Division

The Primary Energy Division is responsible for procurement and management of the raw material requirements i.e. Coal, Liquid fuels, Water and Nuclear fuel for existing and proposed new power plants.

#### 1.3.2.4 Enterprises Division

The Enterprises Division has been created to design, build and refurbish Eskom’s electricity assets, to act as a catalyst for project development for the Eskom Group (identification and selection of investment opportunities in electricity assets) and to be the custodian of Eskom’s non-regulated businesses. The Enterprises Division plays an important role in the new build programme, and also offers strategic and commercial life-cycle services to Eskom’s line divisions.

### 1.3.3 Customer Networks Business

The Customer Networks Business consists of the Transmission Division, the Distribution Business, the System Operations and Planning Division, and Special Project 2010 World Cup.

#### 1.3.3.1 Transmission Division

Electricity is transferred from Eskom's power stations to consumers through a network of high-voltage transmission and distribution lines. Transmission distances in South Africa are relatively long as the majority of Eskom's power stations are located in the remote area of the Mpumalanga Province near the coal supplies rather than the principal consumption centres. As at 31 March 2009, Eskom's transmission network consisted of approximately 28,517km of transmission lines of voltages ranging between 132 to 765 kiloVolt ("kV"), a network of 160 substations, transformers and related equipment located throughout South Africa and one national control centre.

Eskom has made efforts to improve the reliability of electricity flow to customers and to reduce the number of interruptions. Eskom is also examining factors other than outright supply losses that affect its ability to supply electricity to customers, such as voltage dips caused by faults related to climate, pollution, bush and sugar cane fires.

Eskom has developed and introduced techniques to optimise the design of its transmission line structures, providing low cost solutions to bulk energy transmission. Eskom was the first utility in the world to design, build and operate a 765 kV network at high altitude.

In the short to medium term, Eskom will continue to own and operate the national transmission system, investing in new capacity to relieve transmission constraints and ensure delivery to South Africa as a whole.

#### 1.3.3.2 Key Sales and Customer Service and International Trading

Eskom embarked on a market segmentation strategy in 2003 to provide a focused and dedicated service to the large power users. Certain customers require large amounts of electricity that is purchased directly from Eskom's transmission network. Eskom has developed a key sales and customer service department ("KSACS") to be Eskom's interface with key industrial customers, wholesale qualifying customers and, formerly, to manage the Demand Supply Management ("DSM") on behalf of NERSA. Eskom has incorporated the KSACS Division into the Transmission Division however, the DSM function has been moved to the Distribution Division. Both Transmission and Distribution fall under the Customer Networks Business.

#### 1.3.3.3 International Trader (not part of KSACS)

For the financial year ended 31 March 2009, 6 percent of Eskom's electricity sales revenues were generated by sales to international customers outside South Africa. At present Eskom has long-term bilateral contracts to sell power to utilities and companies in Swaziland, Botswana, Lesotho, Mozambique and Namibia. It also has bilateral contracts to purchase power from Zambia, the Democratic Republic of Congo and Mozambique. In the period to 31 March 2009, total external purchases amounted to 9, 525 GWh and total energy sold amounted to 12,648 GWh.

#### 1.3.3.4 South African Power Pool

The first SADC Energy and Investment Conference, organised by the South Africa Power Pool ("SAPP"), was held in September 2001. The SAPP integrated electricity plan known as the "*Pool Plan*" was completed in the middle of the year. The plan gives various options available to meet future energy requirements in the region.

One of the major achievements of the SAPP is the conceptualisation, design, development and rollout of the Short Term Energy Market (“STEM”), which is a process to liberalise energy trading in the region. STEM became fully functional in April 2001, allowing members in SAPP to participate. The current market participants include Eskom, Botswana Power Corporation (Botswana), Nampower (Namibia), Zimbabwe Electricity Supply Authority (Zimbabwe) and Electricidade de Mozambique (Mozambique). Eskom trades on both sides of the market as buyer and seller. It was initially anticipated that STEM would trade significant volumes, but actual volumes of trade reflect the diminishing surplus capacity in the SADC region.

#### 1.3.3.5 Distribution Division

Eskom’s distribution network operates in six regional areas and provides electricity supply, network connection, service and information to Eskom’s customers through walk-in centres and contact centres throughout South Africa. As of 31 March 2009, Eskom owned 381,700km of distribution and reticulation power lines in South Africa, representing the largest power line system on the continent of Africa and had approximately 4.4 million single accounts.

Historically, Eskom has been a wholesaler of electricity to large commercial consumers and municipalities, which were responsible for reticulation and, in the case of municipalities, further distribution to domestic consumers. Direct distribution by Eskom to domestic customers has generally been limited to rural areas. Eskom’s direct distribution has over time increased as the result of the Integrated National Electrification Programme (the “**Electrification Programme**”) and the growing practice of distributing directly to end users in many areas previously supplied by municipalities. Eskom also supplies directly to municipalities who in turn supply residential customers. In 1994, Eskom became a direct supplier to some of the customers that previously belonged to the municipalities due to non-payment and service delivery issues. During the financial year ended 31 March 2009, Eskom connected 112,965 new users as part of the government initiative Electrification Programme.

Eskom views municipalities as bulk customers, supplying them with electricity, which they in turn redistribute in their service areas. Municipalities are responsible for billing and collecting tariffs within their service areas. Most new residential customers pay for their electricity in advance through a prepayment meter mounted in their homes.

#### 1.3.3.6 Restructuring of the Distribution Division

The system of distributing electricity in South Africa is highly fragmented, with individual municipalities each responsible for distribution within their local area and there has been much debate in recent years about restructuring and rationalising the system. The Government’s current proposed plan for the restructuring of the electricity distribution industry provides for the creation of six Regional Electricity Distributors (“**REDS**”), to be implemented under the guidance of Electricity Distribution Industry Holdings (Proprietary) Limited (“**EDI Holdings**”), the project company responsible for implementing the Government’s restructuring policy.

The REDs will be used as business vehicles to merge Eskom’s electricity distribution business with that of the municipalities. Once the REDs are in place, it is envisioned that each RED would take control of the distribution function in its region, using the existing assets and infrastructure of the municipalities and Eskom, as the case may be, ultimately rationalising the system of electricity distribution. Once a restructuring takes place, Eskom would no longer engage in distribution to customers, with the possible exception of its largest customers.

A change in the structure of the system of electricity distribution in South Africa requires major reorganisation by Eskom of its distribution function. In order for Eskom to transfer its assets to the appropriate RED, Eskom must first ring-fence its distribution assets from its transmission and generation assets, and also ensure that the various distribution assets can each be assigned to a distinct RED in the appropriate region. Much of this internal reorganisation has already been achieved. The first major step was for Eskom to align its distribution regions with the geographical areas that correspond to the six REDs. Historically, Eskom divided its distribution function into seven distinct areas. The six RED boundaries were finalised in 2004, and Eskom redrew its boundaries to align with the six new regions in 2005. This process resulted in changes to network control, business processes, organisation structure, information systems and operational data. In order to enable Eskom regions to operate within REDs, major functions of the Distribution Division were transferred from the head office to the regions, supported by extensive training and development of regional staff.

In October 2006, Cabinet approved the proposal to create the six REDs to consolidate the electricity distribution businesses of the municipalities and Eskom. These REDs are to be established as public entities, accountable to the Department of Minerals and Energy. EDI Holdings is responsible for implementing Government's restructuring policy. The critical next steps include the finalisation of outstanding policy issues and the drafting of enabling legislation.

#### **1.3.3.7 The System Operations and Planning Division**

The System Operations and Planning Division was formed in 2007 in order to respond to the current supply and capacity constraints. The System Operations and Planning Division's role is to ensure an integrative function for the reliable development, operation and risk management of the interconnected power system within Eskom's socio-technical system, as well as long and medium-term energy planning. The System Operations and Planning Division has four main units:

- the System Operator is responsible for the real time operations and control of the interconnected power system;
- the Grid Planning unit is responsible for the development of the main transmission system in South Africa;
- the Energy Planning department is responsible for the long and medium energy planning for Eskom, providing triggers for generation investment projects and setting requirements for ancillary services to maintain system security; and
- the Business Strategy and Support unit is responsible for the technical and business functions that go across the System Operations and Planning Division and Eskom, such as grid code compliance, system review and business support.

#### **1.3.3.8 Special Project 2010 World Cup**

An Eskom project team is working with the metro and municipal electricity departments to ensure the reliability of electricity supply to the stadiums, broadcasting centres, base camps and venues for the 2010 FIFA World Cup South Africa™. The Eskom process is comprehensive including checking equipment and facilities and simulation exercises to test readiness across all operations to prepare the teams for possible emergencies. Municipalities, through the The Association of Municipal Electricity Undertakings (Southern Africa)– their representative body – are co-operating with this planning and discussions are underway to form joint 2010 energy task teams with Eskom.



Eskom is also investigating the creation of dedicated 2010 electricity command centres to oversee regional delivery of power. Eskom is working closely with the other members of team South Africa – Government at national, regional and local levels, as well as representatives from the municipal and metro electricity departments, host cities, FIFA, the local organising committee, tourism authorities and the information and communication industries – to meet the demands of the main event and related events during the build-up.

The event has received the support of the SAPP, who will contribute to powering 2010. The details of the SAPP contributions for the event are currently under discussion. Eskom is concentrating its efforts on a combination of existing and new 2010-specific initiatives to improve the national power supply capacity. Eskom is also continually reviewing the status of vital transmission and distribution networks across the country.

#### 1.3.4 Subsidiaries

##### 1.3.4.1 Eskom Enterprises

Eskom formed Eskom Enterprises in 1999 to carry out the non-regulated electricity related activities of Eskom in South Africa and all its other energy and related activities outside South Africa. On 1 April 2005, all employees of Eskom Enterprises (excluding Rotek Industries (Proprietary) Limited (“**Rotek**”) and Roshcon (Proprietary) Limited (“**Roshcon**”)) were transferred back to Eskom. Eskom Enterprises will continue to operate as an investment-holding company, housing the investments in Rotek, Roshcon, Eskom Uganda Limited and Eskom Energie Manantali (based in Mali) and a company for contracting non-regulated work such as telecommunication, network protection and measurement. It will also house the non-core businesses identified that Eskom proposes to divest.

Rotek:

- engineering, construction and equipment provision company with sub-sections focused on particular lines of business;
- power Generation Services, which repairs and maintains turbo machinery;
- power Distribution Services, which repairs and maintains transformers and switchgear equipment;
- bulk Water Services, which operates, repairs and maintains water schemes; and
- the Rosherville Properties Division manages the 240 hectare Rotek site at Rosherville, close to the centre of Johannesburg.

Roshcon;

- electrical Infrastructure, which manage electrification contracts and electricity revenue management services;
- civil Infrastructure, which is active in general civil construction;
- waste, Environmental and Bulk Materials, which manages domestic, industrial and mining waste, and bulk material stockpiling and reclamation; and
- Rotran, which manages a fleet of heavy transport vehicles.

##### 1.3.4.2 Eskom Finance Company

Eskom Finance Company was established as a vehicle to achieve Eskom’s commitment to enabling its employees to have access to accommodation while optimising costs to Eskom and its employees. Eskom Finance

Company makes home loans available at favourable interest rates to employees of the Eskom Group. Following a decision to focus on the core business, the decision was taken to pursue the disposal of Eskom Finance Company, subject to the continuation of its current services to Eskom and its employees.

#### 1.3.4.3 **Escap Limited (“Escap”) and Gallium Insurance Company Limited (“Gallium”) (Self insurance programme)**

Eskom’s captive insurance subsidiary companies, Escap and Gallium, continue to provide a full range of customised short-term insurance products to the Eskom group.

Gallium continues to be used on a limited basis, with Escap fulfilling substantially the full insurance mandate for Eskom. The ongoing role of Gallium is considered on a year-by-year basis.

Escap a 100% subsidiary of Eskom, acts as the primary insurer for the Eskom Group. It insures the accident and health, engineering, liability, motor, property, transportation and miscellaneous classes of the short-term insurance business. It also insures motor vehicles in terms of Eskom’s employee vehicle allowance scheme.

Escap was established in 1993 to reduce Eskom’s overall cost of insurance. It forms part of Eskom’s insurance and risk financing strategy to formalise the insurance function and acts as a vehicle for building reserves and additional insurance capacity.

Escap insures the Eskom Group up to agreed limits per risks thereafter the risks are covered by the reinsurance market.

#### 1.3.4.4 **Reinsurers**

The creditworthiness of reinsurers is regularly assessed by the Escap risk management committee, especially prior to finalisation of any contract. Minimum credit ratings and credit limits per counterparty are set. The major reinsurers used during the financial year had market security ratings of A- or higher (based on Standard & Poor’s ratings). There has not been any write-off of debt from reinsurers in the last three years.

### 1.4 **Primary Energy & Raw Materials**

Eskom continues to review its primary energy supply options and plant operating methodology to reduce costs and improve efficiency and flexibility. The responsibility for the Primary Energy & Raw Material supply is managed by the Primary Energy division.

#### 1.4.1 **Coal**

Eskom has several long-term coal contracts with various multinational mining houses to produce and supply coal solely for the Company. These contracts contain an environmental component, including a financial provision for mine closures. The mining houses conduct mine rehabilitation proactively to ensure the optimisation of costs and to protect the environment.

The different pricing structures are as follows:

##### 1.4.1.1 **Cost-Plus Contracts**

The pricing structure of six collieries, supplying and dedicated to six different power stations is based upon the “*cost-plus*” pricing mechanism. With cost-plus contracts, the Company pays for the total working cost of the mine together with a monthly return on the mine shareholder’s original investment. The total working cost consists of labour, operating costs and capital expenditure. The terms of Eskom’s cost-plus contracts are aligned with the term of the relevant power station’s generation license in order to ensure supply for the life of the plant.

#### 1.4.1.2 Fixed-Price Contracts

The pricing structure of three collieries is based on a fixed-price structure, where the base price paid for coal is fixed depending on the tonnage off-take. As with cost-plus contracts, the term of fixed-price contracts are aligned with the term of the relevant power station's generation license.

#### 1.4.1.3 Short and Medium-term Contracts

In addition to the long-term contracts, any additional coal is supplied pursuant to medium-term (up to five years) contracts. These contracts are generally with new entrants to the market and serve to increase the Company's Black Economic Empowerment participation.

The volumes supplied under each contract vary from year to year according to the needs of specific power stations, but cost-plus contracts generally account for approximately 60 percent of the coal that Eskom consumes, fixed-price contracts account for approximately 20 percent and spot/medium-term contracts account for approximately 20 percent. When entering into a new contract, the Company's preference among cost-plus, fixed-price or spot/medium-term contracts depends on the circumstances, such as market prices.

The supply contracts provide that coal quantity may be varied at the Company's discretion, depending on power station requirements. All of the Company's operating coal-fired power stations (with the exception of Majuba) are located adjacent to coal mines to reduce transportation costs and minimise supply risks. Each power station maintains stockpiles and other coal storage facilities and a supply of coal equivalent to a minimum 20 day requirement is usually stored. Eskom burnt 121.2 million tons in the financial year ended 31 March 2009 compared to 125.3 million tons of coal at 31 March 2008.

Coal procurement and coal stockpile management have been extremely difficult during 2008, with both coal production and quality issues negatively impacting the supplies to the power stations. Increased international demand for coal, by India and China, creates export opportunities for local suppliers at international market prices. This resulted in increased pressure on both price and quality of contractual and marginal coal requirement. Below specification coal in turn leads to inefficient combustion and increased maintenance requirements.

Coal production and delivery were severely affected during January 2008 as the above factors, combined with wet conditions, led to capacity constraints. Recovery plans have been agreed with suppliers to normalise the situation, despite the significant increase in production requirements due to growth in demand. The increased dependency on road transport significantly impacted road infrastructure. Eskom is assisting with the repair of roads where necessary in order to facilitate coal transport and road safety. Eskom spent R535 million in repair of roads used to transport coal to the power stations.

The increase in demand for electricity, combined with the constrained supply of coal, resulted in coal stockpile levels being significantly lower than targeted levels. Added to this, the abnormally high rainfall, and the resulting wet coal, caused coal handling issues both at the collieries and at the power stations. Coal with a high ash content and a high degree of fines turns to sludge when wet, causing blockages on conveyor belts and in the grinding mills, which restricts the flow of coal to the boilers.

#### 1.4.2 Looking ahead – impact on Eskom's future coal supply

A detailed study is being conducted to ensure that Eskom's primary energy supply agreements are appropriately positioned to ensure a sustainable coal supply at reasonable prices and of acceptable quality. At the same time, optimised and flexible transport solutions are being investigated.

Eskom is totally dependent on the South African coal mining industry to supply it with coal. The changes in the global market are placing Eskom under increasing risk in terms of securing future supplies from the local market, in which the production capacity has not kept pace with increases in both local and international demand. It is

critical that local production be facilitated to ensure long term security of supply for electricity production.

#### 1.4.3 Water

Water is a critical resource in Eskom, but is also a scarce resource in South Africa. Eskom consumes approximately 2% of the country's freshwater resources, therefore there is a need for continual improvement in performance. In addition, climate change is expected to impact the distribution and availability of freshwater resources in the country. The amount of energy produced by Eskom's coal-fired power stations over the period 1993 to 2004 has increased by 43%, while the corresponding increase in water consumption was only 27%.

The following measures have been implemented to ensure continual improvement in water performance:

- the focus of water demand management on the recovery of mine water to power stations;
- the development of best-practice guidelines to assist in continual improvement in practices;
- engaging power stations on a quarterly basis to analyse their water use performance and developing plans to improve poor performance;
- conducting training of power station staff on water use efficiency improvements and water management; and
- sharing and incorporation of recommendations from the water conservation/water demand management study done by the Department of Water Affairs and Forestry ("DWAF").

Eskom has been using dry cooling technology to reduce the amount of water usage. The use of this technology at the Matimba Power Station and Kendal Power Station has led to the saving of over 200 million litres of water per day that would normally have been lost through evaporation. Water consumption is about 0.1 litres per kWh of electricity sent out, compared with about 1.9 litres on average for the wet-cooled stations.

At Eskom's wet-cooled stations, improved water management has resulted in extensive reuse of water. The so-called zero liquid effluent discharge ("ZLED") policy means in essence that water is cascaded from good to poor-quality uses until all pollutants are finally captured in the ash dams. The aim is to get rid of most of the salts with the smallest possible volume of water without compromising the ability of the ash system to encapsulate these salts. Open re-circulating cooling water systems are operated at high cycles of concentration to ensure that water use is minimised (typically 15-20 cycles of concentration, on average).

The following is the current water usage:

Water Usage	Unit	2008	2009
Water used at Eskom Power stations (including Koeberg)	ML	322,666	323,190
Electricity produced (including hydro & nuclear)	GWh	239,108	228,942
Specific water consumption (excluding Camden and Grootvlei power stations) – target 1.29	L/kWh	1.32	1.35

In 2008, approximately 8,000ML of mine water was used at Tutuka and Lethabo power stations. Eskom is implementing a mine water recovery project to use approximately 6ML/day of mine water at Duvha power station.

The increase in water usage in 2008 was partially influenced by the quality of raw water received, the deteriorating thermal efficiency at some power stations and the

considerable load generated at power stations that are not as water efficient as the modern dry cooled power stations.

Increased demand for electricity is expected to result in higher water consumption over the next five years. Although the next generation of coal-fired power stations will be supercritical dry cooled power stations, overall water consumption is expected to increase by about 14 million cubic metres per annum. This includes the use of water in the flue gas desulphurisation process.

Eskom continues to work with the DWAF to ensure the effective and efficient management of raw water supply infrastructure. This includes transfer schemes serving existing power stations, planning raw water supply infrastructure projects for new power stations and the timely and efficient processing and authorisation of water-use licence applications. Eskom has secured its water supplies through long-term water supply and payment contracts with the DWAF.

#### 1.4.4 **Nuclear**

Eskom has one nuclear power station, located in Koeberg, near Cape Town, which accounts for approximately 4.5 percent of the Company's total nominal capacity. Koeberg has two reactors, each of which has a total nominal capacity of 965MW. Both reactors are pressurised water reactors constructed by Framatome, S.A. of France based on a Westinghouse design. The reactors were commissioned in 1984 and 1985, respectively.

All of Eskom's nuclear fuel is imported, and while its obligations under such supply contracts are payable in foreign currencies, the Company hedges such exposure against unfavourable movements in exchange rates. The Company has entered into long-term nuclear fuel supply agreements with various institutions located in Europe, the United Kingdom, the United States of America and Russia for the period through to 2013, with a total value of ZAR447 million. Eskom requires approximately 30 tonnes of enriched uranium product per year, which corresponds to approximately 300 tonnes of natural uranium. The Company has approved a nuclear procurement strategy to include longer-term contracts, a partnering approach and strategic stockpiles. Eskom is planning to extend the operation of Koeberg to 50 years, with decommissioning in 2035. A financial provision is made in the Company's balance sheet for the decommissioning of Koeberg and for the management of the spent fuel generated there. Currently all spent fuel is stored at the Koeberg facility.

#### 1.4.5 **Gas turbine stations**

Eskom also operates four open-cycle gas turbine power stations that are used for peaking or emergency supplies, two of which were commissioned in the financial year ended 31 March 2007. The two newly commissioned power stations, Ankerlig power station at Atlantis and Gourikwa power station at Mossel Bay, have a combined nominal capacity of 2,053MW. These turbine stations came into full operation in June of 2007.

The two new open-cycle gas turbines are fuelled by diesel purchased from local commercial suppliers. For the Gourikwa power station, a ten-year contract is in place under which the Company purchases diesel at a margin below the wholesale list price. Apart from Gourikwa, the Company obtains its diesel requirements by means of short-term supply contracts, although an additional long-term contract is currently under negotiation. Open-cycle gas turbine stations account for approximately 2.5 percent of the Company's total net maximum capacity.

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## SETTLEMENT, CLEARING AND TRANSFER OF UNCERTIFICATED NOTES

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*Words used in this section entitled "Settlement, Clearing and Transfers of Uncertificated Notes" shall bear the same meanings as used in the Terms and Conditions, except to the extent that they are separately defined in this section or this is clearly inappropriate from the context.*

### **Notes listed on the Bond Market of the JSE and/or held in the CSD**

Each Tranche of Notes which is listed on the Bond Market of the JSE in uncertificated form will be held in the CSD. A Tranche of unlisted Notes may also be held in the CSD.

### ***Clearing systems***

Each Tranche of Notes listed on the Bond Market of the JSE and/or held in the CSD will be issued, cleared and settled in accordance with the rules and operating procedures for the time being of the JSE and the CSD through the electronic settlement system of the CSD. Such Notes will be cleared by Participants who will follow the electronic settlement procedures prescribed by the JSE and the CSD.

The CSD has, as the operator of an electronic clearing system, been appointed by the JSE to match, clear and facilitate the settlement of transactions concluded on the JSE. Subject as aforesaid each Tranche of Notes which is listed on the Bond Market of the JSE will be issued, cleared and transferred in accordance with the Applicable Procedures and the Terms and Conditions, and will be settled through Participants who will comply with the electronic settlement procedures prescribed by the JSE and the CSD. The Notes may be accepted for clearance through any additional clearing system as may be agreed between the JSE, the Issuer and the Dealer(s).

### ***Participants***

The CSD maintains accounts only for Participants. As at the Programme Date the Participants which are approved by the JSE, in terms of the rules of the JSE, as settlement agents to perform electronic settlement of funds and scrip are Absa Bank Limited, FirstRand Bank Limited, Nedbank Limited, The Standard Bank of South Africa Limited and the South African Reserve Bank. Euroclear, as operator of the Euroclear System, and Clearstream will settle off-shore transfers in the Notes through their Participants.

### ***Settlement and clearing***

Participants will be responsible for the settlement of scrip and payment transfers through the CSD, the JSE and the South African Reserve Bank.

While a Tranche of Notes is held in its entirety in the CSD, the CSD's Nominee, a wholly owned subsidiary of the CSD approved by the Registrar of Securities Services in terms of the Securities Services Act, and any reference to "CSD's Nominee" shall, whenever the context permits, be deemed to include any successor nominee operating in terms of the Securities Services Act, will be named in the Register as the sole Noteholder of the Notes in that Tranche. All amounts to be paid and all rights to be exercised in respect of Notes held in the CSD will be paid to and may be exercised only by the CSD's Nominee for the holders of Beneficial Interests in such Notes.

In relation to each person shown in the records of the CSD or the relevant Participant, as the case may be, as the holder of a Beneficial Interest in a particular Nominal Amount of Notes, a certificate or other document issued by the CSD or the relevant Participant, as the case may be, as to the Nominal Amount of such Notes standing to the account of such person shall be *prima facie* proof of such Beneficial Interest. The CSD's Nominee (as the registered Noteholder of such Notes named in the Register) will be treated by the Issuer, the Paying Agent, the Transfer Agent and the relevant Participant as the holder of that aggregate Nominal Amount of such Notes for all purposes.

Payments of all amounts in respect of a Tranche of Notes which is listed on the Bond Market of the JSE and/or held in the CSD will be made to the CSD's Nominee, as the registered Noteholder of such Notes, which in turn will transfer such funds, via the Participants, to the holders of Beneficial Interests. Each of the persons reflected in the records of the CSD or the relevant Participant, as the case may be, as the holders of Beneficial Interests in Notes shall look solely to the CSD or the relevant Participant, as the case may be, for such person's share of each payment so made by (or on behalf of) the Issuer to, or for the order of, the CSD's Nominee, as the registered Noteholder of such Notes.

Payments of all amounts in respect of a Tranche of Notes which is listed on the Bond Market of the JSE and/or held in the CSD will be recorded by the CSD's Nominee, as the registered Noteholder of such Notes, distinguishing between interest and principal, and such record of payments by the CSD's Nominee, as the registered Noteholder of such Notes, shall be *prima facie* proof of such payments.

### ***Transfers and exchanges***

Title to Beneficial Interest held by clients of Participants indirectly through such Participants will pass on transfer thereof by electronic book entry in the securities accounts maintained by such Participants for such clients. Title to Beneficial Interests held by Participants directly through the CSD will pass on transfer thereof by electronic book entry in the central securities accounts maintained by the CSD for such Participants. Beneficial Interests may be transferred only in accordance with the Applicable Procedures.

### ***Records of payments, trust and voting***

Neither the Issuer nor the Paying Agent will have any responsibility or liability for any aspect of the records relating to, or payments made on account of, Beneficial Interests, or for maintaining, supervising or reviewing any records relating to Beneficial Interests. Neither the Issuer nor the Paying Agent nor the Transfer Agent will be bound to record any trust in the Register or to take notice of or to accede to the execution of any trust (express, implied or constructive) to which any Note may be subject. Holders of Beneficial Interests vote in accordance with the Applicable Procedures.

### ***BESA Guarantee Fund***

The holders of Notes that are not listed on the Bond Market of the JSE will have no recourse against the BESA Guarantee Fund. Claims against the BESA Guarantee Fund may only be made in respect of the trading of the Notes listed on the Bond Market of the JSE and in accordance with the rules of the BESA Guarantee Fund.

### **Notes listed on any Financial Exchange other than (or in addition to) the JSE**

Each Tranche of Notes which is listed on any Financial Exchange other than (or in addition to) the JSE will be issued, cleared and settled in accordance with the rules and settlement procedures for the time being of that Financial Exchange. The settlement and redemption procedures for a Tranche of Notes which is listed on any Financial Exchange (other than or in addition to the JSE) will be specified in the Applicable Pricing Supplement.

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## SUBSCRIPTION AND SALE

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*Words used in this section entitled "Subscription and Sale" shall bear the same meanings as used in the Terms and Conditions, except to the extent that they are separately defined in this section or clearly inappropriate from the context.*

The Dealers have agreed with the Issuer a basis upon which they may from time to time agree to subscribe for Notes or procure the subscription of Notes.

### **Selling restrictions**

#### *South Africa*

Prior to the issue of any Tranche of Notes under the Programme, each Dealer who has (or will have) agreed to place that Tranche of Notes will be required to represent and agree that it will not solicit any offers for subscription for or sale of the Notes in that Tranche, and will itself not sell the Notes in that Tranche of Notes, in South Africa, in contravention of the Companies Act, the Banks Act, the Exchange Control Regulations and/or any other applicable laws and regulations of South Africa in force from time to time.

#### *United States*

The Notes have not been and will not be registered under the United States Securities Act of 1933, as amended (the "**Securities Act**") and may not be offered or sold within the United States or to, or for the account of or benefit of, U.S. persons except in certain transactions exempt from the registration requirements of the Securities Act. Terms used in this paragraph have the meanings given to them by Regulation S under the Securities Act.

Prior to the issue of any Tranche of Notes under the Programme, each Dealer who has (or will have) agreed to place that Tranche of Notes will be required to represent and agree that:

- (a) the Notes in that Tranche have not been and will not be registered under the Securities Act and may not be offered or sold within the United States or to, or for the account of or benefit of, U.S. persons except in certain transactions exempt from the registration requirements of the Securities Act;
- (b) it has not offered, sold or delivered any Notes in that Tranche and will not offer, sell or deliver any Notes in that Tranche (i) as part of their distribution at any time or (ii) otherwise until 40 days after completion of the distribution, as determined and certified by the Dealer or, in the case of an issue of such Notes on a syndicated basis, the relevant Lead Manager, of all Notes of the Series of which that Tranche of Notes is a part, within the United States or to, or for the account or benefit of, U.S. persons;
- (c) it will send to each dealer to which it sells any Notes in that Tranche during the distribution compliance period a confirmation or other notice setting forth the restrictions on offers and sales of such Notes within the United States or to, or for the account or benefit of, U.S. persons;
- (d) it, its affiliates and any persons acting on its or any of its affiliates behalf have not engaged and will not engage in any directed selling efforts in the United States (as defined in Regulation S under the Securities Act) with respect to the Notes in that Tranche and it, its affiliates and any persons acting on its or any of its affiliates' behalf have complied and will comply with the offering restrictions requirements of Regulation S.

Until 40 days after the commencement of the offering of a Series of Notes, an offer or sale of such Notes within the United States by any dealer (whether or not participating in the offering) may violate the registration requirements of the Securities Act if such offer or sale is made otherwise than in accordance with an exemption from registration under the Securities Act.

#### *European Economic Area*

Prior to the issue of any Tranche of Notes under the Programme, each Dealer who has (or will have) agreed to place that Tranche of Notes will be required to represent and agree that, in relation to each Member State of the European Economic Area which has implemented the Prospectus Directive (each a "**Relevant Member State**"), with effect from and including the date on which the Prospectus Directive is implemented in that Relevant Member State (the "**Relevant Implementation Date**") it has not made and will not make an offer of any of such Notes to the public in that Relevant Member State except that it may, with effect from and including the Relevant Implementation Date, make an offer of any of such Notes to the public in that Relevant Member State:

- (a) in the period beginning on the date of publication of a prospectus in relation to those Notes which have been approved by the competent authority in that Relevant Member State in accordance with the



Prospectus Directive and/or, where appropriate, published in another Relevant Member State and notified to the competent authority in that Relevant Member State in accordance with Article 18 of the Prospectus Directive and ending on the date which is 12 months after the date of such publication;

- (b) at any time to legal entities which are authorised or regulated to operate in the financial markets or, if not so authorised or regulated, whose corporate purpose is solely to invest in securities;
- (c) at any time to any legal entity which has two or more of (1) an average of at least 250 employees during the last financial year; (2) a total balance sheet of more than €43 000 000.00 and (3) an annual turnover of more than €50 000 000.00 as shown in its last annual or consolidated accounts; or
- (d) at any time in any other circumstances which do not require the publication by the Issuer of a prospectus pursuant to Article 3 of the Prospectus Directive.

For the purposes of this provision, the expression an “*offer of Notes to the public*” in relation to any Notes in any Relevant Member State means the communication in any form and by any means of sufficient information on the terms of the offer and the Notes to be offered so as to enable an investor to decide to purchase or subscribe for the Notes, as the same may be varied in that Member State by any measure implementing the Prospectus Directive in that Member State and the expression “*Prospectus Directive*” means Directive 2003/71/EC and includes any relevant implementing measure in each Relevant Member State.

#### ***United Kingdom***

Prior to the issue of any Tranche of Notes under the Programme, each Dealer who has (or will have) agreed to place that Tranche of Notes will be required to represent and agree that:

- (a) in relation to any of the Notes in that Tranche which have a maturity of less than one year, (i) it is a person whose ordinary activities involve it in acquiring, holding, managing or disposing of investments (as principal or agent) for the purposes of its business and (ii) it has not offered or sold and will not offer or sell any of such Notes other than to persons whose ordinary activities involve them in acquiring, holding, managing or disposing of investments (as principal or agent) for the purposes of their businesses or who it is reasonable to expect will acquire, hold, manage or dispose of investments (as principal or agent) for the purposes of their businesses where the issue of such Notes would otherwise constitute a contravention of Section 19 of the Financial Services and Markets Act, 2000 (the “*FSMA*”) by the Issuer;
- (b) it has only communicated or caused to be communicated and will only communicate or cause to be communicated an invitation or inducement to engage in investment activity (within the meaning of Section 21 of the FSMA) received by it in connection with the issue or sale of any of the Notes in that Tranche in circumstances in which Section 21(1) of the FSMA does not apply to the Issuer;
- (c) it has complied and will comply with all applicable provisions of the FSMA with respect to anything done by it in relation to any of the Notes in that Tranche in, from or otherwise involving the United Kingdom.

#### ***General***

Prior to the issue of any Tranche of Notes under the Programme, each Dealer who has (or will have) agreed to place that Tranche of Notes will be required to agree that:

- (a) it will (to the best of its knowledge and belief) comply with all applicable securities laws and regulations in force in each jurisdiction in which it purchases, subscribes or procures the subscription for, offers or sells Notes in that Tranche or has in its possession or distributes the Programme Memorandum and will obtain any consent, approval or permission required by it for the purchase, subscription, offer or sale by it of Notes in that Tranche under the laws and regulations in force in any jurisdiction to which it is subject or in which it makes such purchases, subscription, offers or sales;
- (b) it will comply with such other or additional restrictions as the Issuer and such Dealer agree and as are set out in the Applicable Pricing Supplement.

Neither the Issuer nor any of the Dealers represent that Notes may at any time lawfully be subscribed for or sold in compliance with any applicable registration or other requirements in any jurisdiction or pursuant to any exemption available thereunder or assumes any responsibility for facilitating such subscription or sale.

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## **SOUTH AFRICAN TAXATION**

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*Words used in this section entitled "South African Taxation" shall bear the same meanings as used in the Terms and Conditions, except to the extent that they are separately defined in this section or clearly inappropriate from the context.*

*The comments below are intended as a general guide to the relevant tax laws of South Africa as at the Programme Date. The contents of this section headed "South African Taxation" do not constitute tax advice and do not purport to describe all of the considerations that may be relevant to a prospective subscriber for or purchaser of any Notes. Prospective subscribers for or purchasers of any Notes should consult their professional advisers in this regard.*

### **Securities Transfer Tax**

The issue, transfer and redemption of the Notes will not attract securities transfer tax under the Securities Transfer Tax Act, 2007. Any future transfer duties and/or taxes that may be introduced in respect of (or be applicable to) the transfer of Notes will be for the account of Noteholders.

### **Income Tax**

#### ***Nature of any original issue discount or premium***

Any original issue at a discount to the Nominal Amount of the Notes will, in terms of section 24J of the Income Tax Act, be treated as interest for tax purposes, and the discount amount will be deemed to accrue to the Noteholder on a yield to maturity as if such Noteholder were to hold the Notes until maturity. Any original issue premium over the Nominal Amount of the Notes will also be treated as interest for tax purposes, and will be deemed to have been incurred by the Noteholder on a yield to maturity basis as if such Noteholder were to hold the Notes until maturity.

#### ***Position as at the Programme Date***

A "resident" (as defined in section 1 of the Income Tax Act) ("**Resident**") will, subject to any available exemptions, be taxed on its worldwide income. Accordingly, a Noteholder who is a Resident will be liable to pay income tax, subject to available exemptions, on any income received or accrued in respect of in respect of the Notes held by that Noteholder in any relevant year of assessment of that Noteholder.

A non-Resident is taxed in South Africa under the Income Tax Act only on income from a source within or deemed to be within South Africa. A non-Resident is a person who or which is not a Resident. Interest which is received or accrued in respect of the Notes during any year of assessment to any Non-Resident Noteholder of such Notes will be exempt from income tax under the Income Tax Act, unless that person:

- (a) is a natural person who was physically present in South Africa for a period exceeding 183 days in aggregate during that year of assessment; or
- (b) at any time during that year of assessment carried on business through a permanent establishment in South Africa.

### **Capital Gains Tax**

Capital gains tax applies to any capital gain earned on the disposal or deemed disposal of an asset by a Resident.

Capital gains tax will not be levied in relation to the disposal of any Notes by a Non-Resident unless such Notes comprise assets which are attributable to a permanent establishment of that Non-Resident in South Africa during the relevant year of assessment.

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## **SOUTH AFRICAN EXCHANGE CONTROL**

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*Words used in this section entitled "South African Exchange Control" shall bear the same meanings as used in the Terms and Conditions, except to the extent that they are separately defined in this section or clearly inappropriate from the context.*

*The comments below are intended as a general guide to the position under the Exchange Control Regulations as at the Programme Date. The contents of this section headed "South African Exchange Control" do not constitute exchange control advice and do not purport to describe all of the considerations that may be relevant to a prospective subscriber for or purchaser of any Notes. Prospective subscribers for or purchasers of any Notes should consult their professional advisers in this regard.*

### **Non-South African resident Noteholders and emigrants from the Common Monetary Area**

Dealings in the Notes and the performance by the Issuer of its obligations under the Notes and the Applicable Terms and Conditions may be subject to the Exchange Control Regulations.

#### **Blocked Rand**

Blocked Rand may be used for the subscription for or purchase of Notes. Any amounts payable by the Issuer in respect of the Notes subscribed for or purchased with Blocked Rand may not, in terms of the Exchange Control Regulations, be remitted out of South Africa or paid into any non-South African bank account.

#### **Emigrants from the Common Monetary Area**

Any Individual Certificates issued to Noteholders who are emigrants from the Common Monetary Area will be endorsed "*emigrant*". Such restrictively endorsed Certificates shall be deposited with an authorised foreign exchange dealer controlling such emigrant's blocked assets.

In the event that a Beneficial Interest in Notes is held by an emigrant from the Common Monetary Area through the CSD, the securities account maintained for such emigrant by the relevant Participant will be designated as an "*emigrant*" account.

Any payments of interest and/or principal due to a Noteholder who is an emigrant from the Common Monetary Area will be deposited into such emigrant Noteholder's Blocked Rand account, as maintained by an authorised foreign exchange dealer. The amounts are not freely transferable from the Common Monetary Area and may only be dealt with in terms of the Exchange Control Regulations.

#### **Non-residents of the Common Monetary Area**

Any Individual Certificates issued to Noteholders who are not resident in the Common Monetary Area will be endorsed "*non-resident*". In the event that a Beneficial Interest in Notes is held by a non-resident of the Common Monetary Area through the CSD, the securities account for such Noteholder by the relevant Participant will be designated as a "*non-resident*" account.

It will be incumbent on any such non-resident Noteholder to instruct the non-resident's nominated or authorised dealer in foreign exchange as to how any funds due to such non-resident in respect of Notes are to be dealt with. Such funds may, in terms of the Exchange Control Regulations, be remitted abroad only if the relevant Notes are acquired with foreign currency introduced into South Africa and provided that the relevant Certificate has been endorsed "*non-resident*" or the relevant securities account has been designated as a "*non-resident*" account, as the case may be.

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## GENERAL INFORMATION

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*Words used in this section entitled "General Information" shall bear the same meanings as used in the Terms and Conditions, except to the extent that they are separately defined in this section or clearly inappropriate from the context.*

### **Authorisation**

All consents, approvals, authorisations or other orders of all regulatory authorities required by the Issuer under the laws of South Africa as at the Programme Date have been given for the establishment of the Programme and the issue of Notes and for the Issuer to undertake and perform its obligations under the Programme Memorandum and the Notes. As required by section 66(7) of the PFMA, the establishment of the Programme and each issue of the Notes are authorised in terms of the relevant borrowing programme of the Issuer submitted to the Minister of Finance as at the time of each issue of Notes.

### **Listing**

The Programme Memorandum was approved by the JSE on 3 October 2009. Notes to be issued under the Programme will be listed on the Bond Market of the JSE or any other Financial Exchange.

### **Documents Available**

So long as Notes are capable of being issued under the Programme, copies of the following documents will, when published, be available from the registered office of the Issuer as set out at the end of this Programme Memorandum:

- (a) all amendments and supplements to this Programme Memorandum prepared by the Issuer from time to time;
- (b) in respect of any issue of Notes under the Programme, the audited annual financial statements, together with such statements, reports and the notes attached to or intended to be read with such financial statements thereto, of the Issuer for its three financial years prior to the date of such issue; and
- (c) the Applicable Pricing Supplement relating to any Tranche of Notes issued under the Programme;
- (d) the Guarantee executed by the Guarantor in favour of the Noteholders;
- (e) all information pertaining to the Issuer which is relevant to the Programme and/or this Programme Memorandum which, if required, is (i) electronically submitted by the Securities Exchange News Service ("SENS") established by the JSE, to SENS subscribers, if required.

### **Material Change**

Save as disclosed in this Programme Memorandum, there has been no material adverse change in the financial or trading position of the Issuer since the date of the Issuer's latest audited financial statements.

### **Litigation**

Save as disclosed herein, neither the Issuer nor any of its respective consolidated Subsidiaries is or has been involved in any legal or arbitration proceedings (including any such proceedings which are pending or threatened of which the Issuer is aware) which may have or have had a significant effect on the financial position of the Issuer or its consolidated subsidiaries.

### **Auditors**

KPMG Inc. and Sizwe Ntsaluba VSP Inc. have acted as the auditors of the financial statements of the Issuer for the financial year ended 31 March 2009, 2008 and 2007 and, in respect of those years, have issued a unqualified audit reports.

## ISSUER

**Eskom Holdings Limited**  
(Registration Number 2002/015527/06)  
Maxwell Drive  
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South Africa  
Contact: Ms C Henry

### ARRANGER, DEALERS AND SPONSORING MEMBER

**Eskom Holdings Limited**  
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Contact: Ms C Henry

### PAYING AGENT, CALCULATION AGENT AND TRANSFER AGENT

**Eskom Holdings Limited**  
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### LEGAL ADVISERS TO THE ISSUER, ARRANGER AND DEALER

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Mr L Shawe

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