



EXECUTION

AMENDED AND RESTATED GUARANTEE FRAMEWORK AGREEMENT

between

**THE GOVERNMENT OF THE REPUBLIC OF SOUTH AFRICA (HEREIN REPRESENTED
BY THE MINISTER OF PUBLIC ENTERPRISES (ACTING WITH THE CONCURRENCE
OF THE MINISTER OF FINANCE)**

and

**ESKOM HOLDINGS SOC LIMITED
Registration Number: 2002/015527/06**

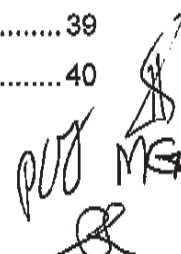
In respect of the financial guarantees given or to be given by the Government of the Republic of South Africa, in compliance with the Public Finance Management Act, 1999 for certain of the financial obligations of Eskom Holdings SOC Limited up to an amount of R350,000,000,000 (Three Hundred and Fifty Billion Rand) over a period of 8 years in order to support the raising of finance by Eskom Holdings SOC Limited in connection with the Capital Expenditure Programme defined herein

**BOWMAN GILFILLAN INC.
165 West Street
Sandton
Johannesburg, 2146
Telephone: (011) 869-9000
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A handwritten signature in black ink, appearing to be 'BG', is written over the contact information for Bowman Gilfillan Inc.

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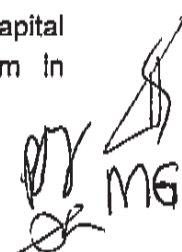
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AMENDED AND RESTATED GUARANTEE FRAMEWORK AGREEMENT

1. Introduction

- 1.1 Eskom has embarked on an extensive capital expenditure programme aimed at increasing its electricity generation capacity.
- 1.2 During 2009 the Board of Directors of Eskom approved the Initial Capital Expenditure Programme which anticipated capital expenditure by Eskom in connection with the financing of committed projects in the sum of R385,000,000,000 (Three Hundred and Eighty-five Billion Rand) over the 5-year period ending on 31 March 2013.
- 1.3 In order to enhance the credit rating of Eskom and to facilitate the raising of financing necessary to implement the Initial Capital Expenditure Programme, Eskom requested Government to provide guarantees in support of the Initial Capital Expenditure Programme.
- 1.4 Consequently, during 2009, Government approved the granting of guarantees by Government for the benefit of Eskom with a Principal Amount as at the Original Date of Signature of R175,972,464,350 (One Hundred and Seventy-five Billion and Nine Hundred and Seventy-two Million Four Hundred and Sixty-four Thousand Three Hundred and Fifty Rand) over a period of 5 (five) years (including guarantees in respect of the then existing issuances under Eskom's Domestic Multi-Term Note Programme) and in order to implement such approval Government and Eskom entered into the Original Guarantee Framework Agreement pursuant to which Government and Eskom established a framework regulating *inter alia*:
 - 1.4.1 the manner in which Guarantees will be granted by Government in connection with the Initial Capital Expenditure Programme of Eskom;
 - 1.4.2 the annual limits, overall limits and the conditions attached to Guarantees;
 - 1.4.3 the annual review of the annual limits, overall limits and the conditions attached to Guarantees;
 - 1.4.4 the guarantee fees payable by Eskom in connection with Guarantees;
 - 1.4.5 the obligations of Eskom to reimburse to Government any sums paid by Government under Guarantees, the interest payable by Eskom to Government in respect of such sums and the subordination of the claims of Government in respect of such sums to the claims of Senior Creditors; and
 - 1.4.6 the reporting requirements and other obligations of Eskom; and
 - 1.4.7 other matters relating to the granting of Guarantees by Government for the benefit of Eskom.
- 1.5 The Board of Directors of Eskom has now approved an Updated Capital Expenditure Programme which anticipates capital expenditure by Eskom in

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connection with the financing of additional committed projects which increases the amount of the capital expenditure referred to in clause 1.2 above to approximately R453,263,000,000 (Four Hundred and Fifty-three Billion Two Hundred and Sixty-three Million Rand) for the period ending on 31 March 2017.

- 1.6 Whereas the Minister of Public Enterprises and the Minister of Finance consider it to be in the national and public interest to support Eskom's Updated Capital Expenditure Programme, Government (represented by the Minister of Public Enterprises acting with the concurrence of the Minister of Finance) has approved the increase of the previous Maximum Guarantee Limit by R174,027,535,650 (One Hundred and Seventy-four Billion and Twenty-seven Million Five Hundred and Thirty-five Thousand Six Hundred and Fifty Rand) (including an increase of the DMTN Limit from R65,000,000,000 (Sixty-five Billion Rand) to R100,000,000,000 (One Hundred Billion Rand)) to a new Maximum Guarantee Limit with a Principal Amount as at the Date of Signature of R350,000,000,000 (Three Hundred and Fifty Billion Rand) over a period of 8 (eight) years for the purpose of the granting of guarantees by Government for the benefit of Eskom (including guarantees in respect of the existing issuances under Eskom's Domestic Multi-Term Note Programme).
- 1.7 Accordingly to give effect to the increase of the Maximum Guarantee Limit referred to in clause 1.6 above, Government and Eskom wish to enter into this Agreement which amends and restates the Original Guarantee Framework Agreement and which will provide for the increase of the Maximum Guarantee Limit (including an increase of the DMTN Limit from R65,000,000,000 (Sixty-five Billion Rand) to R100,000,000,000 (One Hundred Billion Rand)) and which will regulate *inter alia*:
- 1.7.1 the manner in which Guarantees will be granted by Government in connection with the Capital Expenditure Programmes of Eskom;
 - 1.7.2 the annual limits, overall limits and the conditions attached to Guarantees;
 - 1.7.3 the annual review of the annual limits, overall limits and the conditions attached to Guarantees;
 - 1.7.4 the guarantee fees payable by Eskom in connection with Guarantees;
 - 1.7.5 the obligations of Eskom to reimburse to Government any sums paid by Government under Guarantees, the interest payable by Eskom to Government in respect of such sums and the subordination of the claims of Government in respect of such sums to the claims of Senior Creditors;
 - 1.7.6 the reporting requirements and other obligations of Eskom; and
 - 1.7.7 other matters relating to the granting of Guarantees by Government for the benefit of Eskom,

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and which, for the avoidance of doubt, will apply to Guarantees granted under the Original Guarantee Framework Agreement and this Agreement with effect from the Restatement Date.

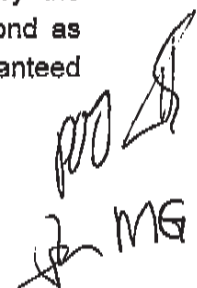
- 1.8 The Original Guarantee Framework Agreement remains of force and effect as amended by this Agreement.

2. Definitions and Interpretation

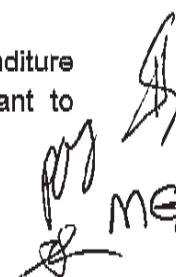
- 2.1 The headings to the clauses and schedules of this Agreement are inserted for reference purposes only and shall in no way govern or affect the interpretation hereof nor modify nor amplify the terms of this Agreement nor any clause or schedule hereof.
- 2.2 The following expressions used in this Agreement (including in clause 1 (*Introduction*)) shall, unless inconsistent with the context in which they appear, bear the following meanings and cognate expressions shall bear corresponding meanings:
- 2.2.1 **Accounting Principles** means generally accepted accounting principles in South Africa including IFRS;
- 2.2.2 **Advance Date** means each Guaranteed Liability Payment Date;
- 2.2.3 **Aggregate Guaranteed Amount** means the aggregate Principal Amount in Rand of all Guaranteed Liabilities from time to time and for this all Guaranteed Liabilities not denominated in Rand shall be converted to Rand at the spot rate of exchange for the relevant currency as at close of business on the Business Day preceding relevant day of determination;
- 2.2.4 **Agreement** means this Amended and Restated Guarantee Framework Agreement and its Schedules;
- 2.2.5 **Amendment Date** means, in relation to the DMTN Programme, the date on which the written agreement effecting the DMTN Programme Amendments is signed by the parties thereto in accordance with Condition 17.1 of the Terms and Conditions;
- 2.2.6 **Annual Commitment** means the First Year Commitment, the Second Year Commitment, the Third Year Commitment, the Fourth Year Commitment, the Fifth Year Commitment, the Sixth Year Commitment, the Seventh Year Commitment and the Eighth Year Commitment, as applicable and, in any given Year, the Annual Commitment as Government may approve from time to time in accordance with clause 10.3;
- 2.2.7 **Annual Financial Statements** means the financial statements of Eskom for a Financial Year delivered pursuant to clause 20.2.1;
- 2.2.8 **Applicable Margin** means, in relation to each Subordinated Loan:



- 2.2.8.1 prior to the Call Date, 0.38% (zero point three eight percent) per annum; and
- 2.2.8.2 with effect from the Call Date, the margin envisaged in clause 2.2.8.1 above plus 0.25% (zero point two five percent) per annum;
- 2.2.9 **Approved Guarantee** means a guarantee in favour of a Beneficiary(ies), guaranteeing an Eligible Liability, and approved or deemed to be approved in accordance with clause 9 (*Decision to Grant Guarantees*) and executed on behalf of the Guarantor, substantially in the form set out in Schedule 2 (*Form of Approved Guarantee*) or in such other form as may be agreed between Government and that Beneficiary or those Beneficiaries;
- 2.2.10 **Arrear Interest Rate** means the Interest Rate plus 2% (two percent) per annum;
- 2.2.11 **Assets** means the total amount of the non-consolidated gross assets of Eskom as shown in the latest published audited non-consolidated balance sheet of Eskom, but adjusted for contingencies and subsequent events in such manner as the directors of Eskom, the auditors of Eskom or a liquidator or administrator of Eskom (if applicable) may determine;
- 2.2.12 **Authorised Signatory** means a person or persons duly authorised to bind Eskom in terms of this Agreement and in respect of whom Eskom shall have delivered to Government certified specimens of such person's or persons' signature(s) together with evidence satisfactory to Government that such person is duly authorised to bind Eskom;
- 2.2.13 **Availability Period** means the period commencing on the Effective Date and ending on 31 March 2017;
- 2.2.14 **Available Guarantee Amount** means:
- 2.2.14.1 in respect of the First Year, the First Year Commitment;
- 2.2.14.2 in respect of the Second Year, the Second Year Commitment;
- 2.2.14.3 in respect of the Third Year, the Third Year Commitment;
- 2.2.14.4 in respect of the Fourth Year, the Fourth Year Commitment;
- 2.2.14.5 in respect of the Fifth Year, the Fifth Year Commitment;
- 2.2.14.6 in respect of the Sixth Year, the Sixth Year Commitment;
- 2.2.14.7 in respect of the Seventh Year, the Seventh Year Commitment; and
- 2.2.14.8 in respect of the Eighth Year, the Eighth Year Commitment;
- 2.2.15 **Base Rate** means, with respect to a Guaranteed Liability Payment by the Guarantor, the closing yield of the R209 South African Government Bond as quoted by the JSE on the Guaranteed Liability Payment Date of that Guaranteed Liability Payment;

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- 2.2.16 **Beneficiary** means a person to whom a Guaranteed Liability from time to time is owed (including any Noteholder);
- 2.2.17 **Budget** means, in relation to any period, the budget delivered by Eskom to Government in respect of that period pursuant to clause 20.10;
- 2.2.18 **Business Day** means any day other than a Saturday, Sunday or an official public holiday in South Africa;
- 2.2.19 **Calculation Period** means, in relation to the calculation of any Fee Amount in respect of a Guarantee or any Interest Amount in respect of a Subordinated Loan, as the case may be, each of the periods commencing on a Measurement Date and ending on the day immediately prior to the next Measurement Date (both days inclusive); provided that:
- 2.2.19.1 the first Calculation Period for that Fee Amount shall commence on the Guarantee Date and end on the day immediately prior to the first Measurement Date thereafter (both days inclusive);
- 2.2.19.2 the first Calculation Period for that Interest Amount shall commence on the Advance Date and end on the day immediately prior to the first Measurement Date thereafter (both days inclusive);
- 2.2.19.3 the final Calculation Period for that Fee Amount shall commence on the Measurement Date immediately preceding the Guarantee Discharge Date and shall end on the day immediately prior to the Advance Date (both days inclusive);
- 2.2.19.4 the final Calculation Period for that Interest Amount shall commence on the Measurement Date immediately prior to the Maturity Date and shall end on the day immediately prior to the Maturity Date (both days inclusive); and
- 2.2.19.5 if Eskom elects to prepay any Subordinated Loan in terms of clause 18, the Calculation Period in which such Prepayment Date falls shall, in respect of the relevant Voluntary Prepayment Amount, end on the day immediately prior to such Prepayment Date (both days inclusive);
- 2.2.20 **Call Date** means, in relation to a Subordinated Loan, the 10th (tenth) anniversary of the Advance Date of that Subordinated Loan; provided that if such date is not a Business Day then the Call Date shall be the next succeeding Business Day;
- 2.2.21 **Capital Expenditure Programmes** means:
- 2.2.21.1 the Initial Capital Expenditure Programme; and
- 2.2.21.2 the Updated Capital Expenditure Programme; or
- 2.2.21.3 at any time after the Date of Signature, any further Capital Expenditure Programme of Eskom delivered by Eskom to the Guarantor pursuant to

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clause 20.13;

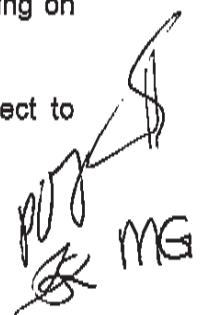
- 2.2.22 **Capital Outstanding** means, in relation to a Subordinated Loan, the principal amount outstanding for the time being of that Subordinated Loan;
- 2.2.23 **Compliance Certificate** means a certificate substantially in the form set out in Schedule 6 (*Form of Compliance Certificate*);
- 2.2.24 **Date of Signature** means the date of signature of this Agreement on behalf of the Party which signs it last in time;
- 2.2.25 **Default** means any Event of Default or any event or circumstance specified in clause 22 (*Events of Default*) which would (with the expiry of a grace period, the giving of notice, the making of any determination under this Agreement or any combination of the foregoing) be an Event of Default;
- 2.2.26 **DMTN Limit** means the sum of R100,000,000,000 (One Hundred Billion Rand) or such other DMTN Programme limit as Government may approve from time to time in accordance with clause 10.3;
- 2.2.27 **DMTN Programme** means Eskom's Domestic Multi-Term Note Programme in respect of which a Programme Memorandum was issued by Eskom dated 6 March 2006;
- 2.2.28 **DMTN Programme Amendments** means the amended terms and conditions of the Notes in the form set out in Schedule 5 (*DMTN Programme Amendments*);
- 2.2.29 **EBITDA** means, in respect of any Measurement Period, the net operating income for such period before taking into account:
- 2.2.29.1 gains and losses from exceptional or extraordinary items or any mark to market valuations of investments;
- 2.2.29.2 provisions for Income Taxes;
- 2.2.29.3 Finance Charges; and
- 2.2.29.4 any amount of depreciation and amortisation charged to the profit and loss account of Eskom;
- 2.2.30 **Effective Date** means, notwithstanding the Date of Signature, 13 February 2009;
- 2.2.31 **Eighth Year** means the period commencing on 1 April 2016 and ending on 31 March 2017;
- 2.2.32 **Eighth Year Commitment** means, in respect of the Eighth Year and subject to clause 10.3, the Principal Amount of R40,000,000,000 (Forty Billion Rand) plus the Principal Amount of the Seventh Year Commitment, to the extent not cancelled or reduced in accordance with the terms of this Agreement;
- 2.2.33 **Eligible Liability** means any liability of Eskom incurred or to be incurred by

Eskom in connection with the financing of the Capital Expenditure Programmes;

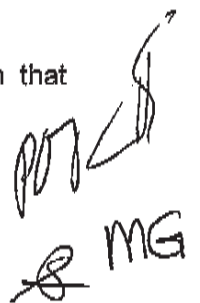
- 2.2.34 **Eskom** means Eskom Holdings SOC Limited (Registration No. 2002/015527/06), a state-owned company duly registered and incorporated under the laws of South Africa;
- 2.2.35 **Event of Default** means any one or more of the events or circumstances described as an event of default in clause 22 (*Events of Default*);
- 2.2.36 **Extraordinary Resolution** shall bear the meaning defined in the Terms and Conditions;
- 2.2.37 **Fee Amount** means, in respect of a Calculation Period, the amount of the Guarantee Fee payable by Eskom in respect of the Guaranteed Liabilities as determined in accordance with clause 13.1;
- 2.2.38 **Fee Rate** means a rate of 0.30% (zero point three percent) per annum or such other rate as Government may notify Eskom in writing in accordance with, and following the annual review contemplated by, clause 13.5;
- 2.2.39 **Fifth Year** means the period commencing on 1 April 2013 and ending on 31 March 2014;
- 2.2.40 **Fifth Year Commitment** means, in respect of the Fifth Year and subject to clause 10.3, the Principal Amount of R40,000,000,000 (Forty Billion Rand) plus the Principal Amount of the Fourth Year Commitment, to the extent not cancelled or reduced in accordance with the terms of this Agreement;
- 2.2.41 **Final Discharge Date** means the date which is the later of:
- 2.2.41.1 the first date on which all Guaranteed Liabilities have been fully and finally discharged to the satisfaction of Government, whether or not as the result of an enforcement; or
- 2.2.41.2 the first date on which all Subordinated Loan Liabilities have been fully and finally discharged to the satisfaction of Government, whether or not as the result of an enforcement,
- and, in each case, Government is under no further obligation to provide any Guarantee to any person under this Agreement;
- 2.2.42 **Finance Charges** means, in respect of any Measurement Period, the aggregate amount of the interest paid or payable (including the interest element of financial leasing, hire purchase payments and capitalised interest), commission, fees, discounts, premia and other finance payments payable by Eskom after deducting any interest or similar sums receivable by Eskom, in each case in respect of such Measurement Period;
- 2.2.43 **Financial Covenants** means the Interest Multiple and the Leverage Ratio;

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- 2.2.44 Financial Indebtedness** means any indebtedness for or in respect of:
- 2.2.44.1 moneys borrowed and debit balances at banks or other financial institutions;
 - 2.2.44.2 any amount raised by acceptance under any acceptance credit facility or dematerialised equivalent;
 - 2.2.44.3 any amount raised pursuant to any note purchase facility or the issue of bonds, notes, debentures, loan stock or any similar instrument;
 - 2.2.44.4 the amount of any liability in respect of any lease or hire purchase contract which would, in accordance with the Accounting Principles, be treated as a finance or capital lease;
 - 2.2.44.5 receivables sold or discounted (other than receivables to the extent they are sold on a non-recourse basis and meet any requirements for de-recognition under the Accounting Principles);
 - 2.2.44.6 any amount raised under any other transaction (including any forward sale or purchase agreement) having the commercial effect of a borrowing;
 - 2.2.44.7 any derivative transaction entered into in connection with protection against or benefit from fluctuation in any rate or price (and, when calculating the value of any derivative transaction, only the marked to market value shall be taken into account);
 - 2.2.44.8 any amount raised by the issue of shares which are redeemable (other than at the option of Eskom) before the date of termination of this Agreement in terms of clause 4 (*Duration*) or are otherwise classified as borrowings under the Accounting Principles;
 - 2.2.44.9 any counter-indemnity obligation in respect of a guarantee, indemnity, bond, standby or documentary letter of credit or any other instrument issued by a bank or financial institution;
 - 2.2.44.10 any amount raised under any other transaction (including any forward sale or purchase agreement, sale and sale back or sale and lease back agreement) having the commercial effect of a borrowing or otherwise classified as borrowings under the Accounting Principles; and
 - 2.2.44.11 the amount of any liability in respect of any guarantee or indemnity for any of the items referred to in clauses 2.2.44.1 to 2.2.44.10;
- 2.2.45 Financial Year** means the annual accounting period of Eskom ending on 31 March in each year;
- 2.2.46 First Year** means the period commencing on the Effective Date and ending on 31 March 2010;
- 2.2.47 First Year Commitment** means, in respect of the First Year and subject to

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- clause 10.3, the Principal Amount of R60,000,000,000 (Sixty Billion Rand), to the extent not cancelled or reduced in accordance with the terms of this Agreement;
- 2.2.48 **Fourth Year** means the period commencing on 1 April 2012 and ending on 31 March 2013;
- 2.2.49 **Fourth Year Commitment** means, in respect of the Fourth Year and subject to clause 10.3, the Principal Amount of R40,000,000,000 (Forty Billion Rand) plus the Principal Amount of the Third Year Commitment, to the extent not cancelled or reduced in accordance with the terms of this Agreement;
- 2.2.50 **Funds from Operations** means, in respect of any Measurement Period, EBITDA for such period after adding:
- 2.2.50.1 Tax rebates received;
- 2.2.50.2 interest payments received;
- 2.2.50.3 non-cash items (such as pension provisions) expensed at arriving at EBITDA; and
- 2.2.50.4 cash dividends received on minority interests,
- and after deducting:
- 2.2.50.5 Taxes paid;
- 2.2.50.6 interest paid;
- 2.2.50.7 non-cash items (such as pension provisions) credited at arriving at EBITDA,
- in each case during such period (and without double counting);
- 2.2.51 **Government** means the Government of the Republic of South Africa (herein represented by the Minister of Public Enterprises acting with the concurrence of the Minister of Finance);
- 2.2.52 **Guarantee** means:
- 2.2.52.1 the Note Guarantee; or
- 2.2.52.2 any Approved Guarantee,
- as applicable;
- 2.2.53 **Guarantee Application** means an application made by Eskom in accordance with clause 8 (*Application for Guarantees*) for the issuance of an Approved Guarantee in the form set out in Schedule 1 (*Form of Guarantee Application*) hereto;
- 2.2.54 **Guarantee Date** means, in relation to a Guarantee, the date on which that Guarantee is executed by the Guarantor;

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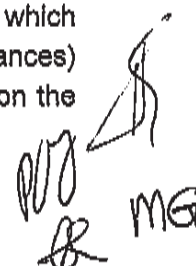
- 2.2.55 **Guarantee Discharge Date** means, in relation to a Guarantee, the earlier of the date on which:
- 2.2.55.1 all of the Guaranteed Liabilities under that Guarantee have been fully and finally discharged;
 - 2.2.55.2 the Guarantor has no further obligation or liability to pay any further sums under that Guarantee; and
 - 2.2.55.3 that Guarantee is terminated either in accordance with its terms or by agreement between the Guarantor and the Beneficiary(ies) under that Guarantee;
- 2.2.56 **Guarantee Fee** means the annual guarantee fee in respect of the Aggregate Guaranteed Amount to be paid by Eskom to the Guarantor in accordance with clause 13.1;
- 2.2.57 **Guarantee Issuance Conditions** shall bear the meaning defined on clause 11 (*Conditions to Issue or Grant of Guarantees*);
- 2.2.58 **Guaranteed Instrument** means, in relation to a Guaranteed Liability, the agreement, contract, instrument or terms and conditions, as the case may, under which that Guaranteed Liability is incurred by Eskom;
- 2.2.59 **Guaranteed Liability** means a liability of Eskom that is guaranteed under a Guarantee being:
- 2.2.59.1 any liability under the Notes; and
 - 2.2.59.2 such Eligible Liability as Government may approve after the Date of Signature in accordance with clause 9 (*Decision to Grant Guarantees*) after evaluating a Guarantee Application,
- including the Principal Amount of the relevant Eligible Liability and any interest, deemed interest, costs, expenses, penalties, breakage costs and other sums payable by Eskom under the Guaranteed Instrument pursuant to which the relevant Eligible Liability is incurred by Eskom;
- 2.2.60 **Guaranteed Liability Payment** means the payment to a Beneficiary of any Guaranteed Liability owed to that Beneficiary whether pursuant to a demand made by that Beneficiary under a Guarantee or pursuant to a payment made by the Guarantor to that Beneficiary following the payment by the Guarantor of that Guaranteed Liability on behalf of Eskom as contemplated by, and in accordance with, a provision inserted into the terms of a Guaranteed Instrument in terms of clause 11.1.4;
- 2.2.61 **Guaranteed Liability Payment Date** means the date on which the Guarantor makes a Guaranteed Liability Payment to a Beneficiary;
- 2.2.62 **Guarantor** means Government, in its capacity as guarantor under a Guarantee

duly granted and executed in accordance with the terms of this Agreement;

- 2.2.63 IFRS** means the international financial reporting standards within the meaning of the IAS Regulation 1606/2002 to the extent applicable to the relevant financial statements or any other equivalent standard which amends or replaces such international financial reporting standards from time to time;
- 2.2.64 Indebtedness** shall be widely construed so as to include any obligation (whether incurred as principal or surety) for the payment or repayment of money, whether present or future, actual or contingent;
- 2.2.65 Initial Capital Expenditure Programme** means, as at the Original Date of Signature, Eskom's approved capital expenditure programme running for its five Financial Years ending on 31 March 2013 and which comprises projected investments which amounted to R385,000,000,000.00 (Three Hundred and Eighty-five Billion Rand) at the time of approval by Eskom's board of directors and which is annexed hereto as Schedule 4 (*Initial Capital Expenditure Programme*);
- 2.2.66 Insolvency Event** means, in relation to any person, any of the following events or circumstances:
- 2.2.66.1** an order or declaration is made or a meeting is convened to consider the passing of a resolution, or a resolution is passed, for the administration, custodianship, bankruptcy, liquidation, winding-up, judicial management or dissolution (and, in each case, whether provisional or final) of it or its estate or an order or declaration is made or a meeting is convened to consider the passing of a resolution, or a resolution is passed, to authorise the implementation of any business rescue procedure in respect of it or its estate;
 - 2.2.66.2** it is unable (or admits inability) to pay its debts generally as they fall due or is (or admits to being) otherwise insolvent (save for a Technical Insolvency) or stops, suspends or threatens to stop or suspend payment of all or a material part of its debts or proposes or seeks to make or makes a general assignment or any arrangement or composition with or for the benefit of its creditors or a moratorium is agreed or declared in respect of or affecting all or a material part of its Indebtedness;
 - 2.2.66.3** it takes any proceeding or other step with a view to the general readjustment, rescheduling or deferral of its Indebtedness (or any part thereof which it would otherwise be unable to pay when due) or proposes to take any such step;
 - 2.2.66.4** any receiver, administrative receiver, judicial receiver, judicial manager, business rescue practitioner, administrator, compulsory manager, judicial custodian, trustee in bankruptcy, liquidator or the like is appointed in respect of it or any material part of its assets or it requests any such appointment; or
 - 2.2.66.5** any act which, if such act was committed by an individual, would be an act of insolvency within the meaning of section 8 of the Insolvency Act, 1936 or any

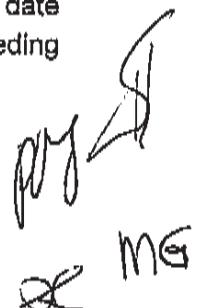
equivalent legislation in any jurisdiction to which such person is subject;

- 2.2.67 **Interest Amount** means, in respect of a Calculation Period, the amount of interest payable in respect of each Subordinated Loan as determined in accordance with clause 15 (*Interest on Subordinated Loans*);
- 2.2.68 **Interest Multiple** means, in respect of any Measurement Period:
- 2.2.68.1 Funds from Operations;
- 2.2.68.2 divided by Interest accrued and/or paid in relation to Eskom's Financial Indebtedness,
- In each case during such Measurement Period;
- 2.2.69 **Interest Rate** means, in relation to each Subordinated Loan, the rate which is the aggregate of the Base Rate and the Applicable Margin;
- 2.2.70 **JSE** JSE Limited Registration No. 2005/022939/06), a public company duly registered and incorporated under the laws of South Africa, a licensed financial exchange in terms of the Securities Services Act, 2004 or any exchange which operates as a successor exchange to the JSE;
- 2.2.71 **Leverage Ratio** means, in relation to any Measurement Period:
- 2.2.71.1 Funds from Operations over the applicable Measurement Period;
- 2.2.71.2 divided by the Financial Indebtedness of Eskom as at the applicable Measurement Date;
- 2.2.72 **Liabilities** means the total amount of the non-consolidated gross liabilities of Eskom as shown in the latest published audited non-consolidated balance sheet of Eskom, but adjusted for contingencies and subsequent events in such manner as the directors of Eskom, the auditors of Eskom or a liquidator or administrator of Eskom (if applicable) may determine;
- 2.2.73 **Mandatory Deferral Event** means, in relation to the payment of any Fee Amount or Interest Amount, as the case may be, on a Payment Date, any of the following events:
- 2.2.73.1 the Interest Multiple is equal to or less than 2,5 (two comma five) calculated on any Measurement Date in respect of the immediately preceding Measurement Period;
- 2.2.73.2 the Leverage Ratio is equal to or less than 12,5 (twelve comma five) calculated on any Measurement Date in respect of the immediately preceding Measurement Period;
- 2.2.74 **Material Adverse Change** means any event or change in circumstances which (when taken alone or together with any other previous event or circumstances) has, or could reasonably be expected to have, a material adverse effect on the

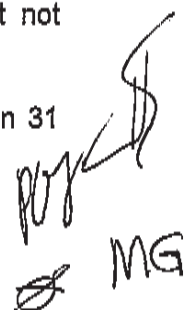
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assets, business, financial condition or trading prospects of Eskom, including events which may result in any demand for payment being made under any Guarantee or which may negatively Impact on the them existing credit rating of Eskom;

- 2.2.75 **Maturity Date** means, in respect of a Subordinated Loan, the 30th anniversary of the Advance Date of that Subordinated Loan;
- 2.2.76 **Maximum Guarantee Limit** means, as at the Date of Signature, the Principal Amount of R350,000,000,000 (Three Hundred and Fifty Billion Rand) or such other Principal Amount as Government may approve from time to time in accordance with clause 10.3;
- 2.2.77 **Measurement Date** means 1 April of each calendar year;
- 2.2.78 **Measurement Period** means each period of 12 months prior to a Measurement Date;
- 2.2.79 **Minister of Finance** means the Minister of Finance of South Africa;
- 2.2.80 **Minister of Public Enterprises** means the Minister of Public Enterprises of South Africa;
- 2.2.81 **National Treasury** means the National Treasury of the Republic of South Africa, established in terms of section 5 of the PFMA;
- 2.2.82 **Nominal Amount** shall bear the meaning defined in the Terms and Conditions;
- 2.2.83 **Non-Guaranteed Creditors** means Senior Creditors who are not Beneficiaries;
- 2.2.84 **Non-Guaranteed Liability** means any liability of Eskom that is not a Guaranteed Liability;
- 2.2.85 **Note Guarantee** means a guarantee in favour of the Noteholders executed on behalf of the Guarantor in the form set out in Schedule 3 (*Form of Note Guarantee*);
- 2.2.86 **Noteholders** means the holders for the time being and from time to time of the Notes;
- 2.2.87 **Notes** means Notes Issued by Eskom from time to time under the DMTN Programme which are listed on the JSE;
- 2.2.88 **Outstanding** shall bear the meaning defined in the Terms and Conditions;
- 2.2.89 **Parties** means the parties to this Agreement;
- 2.2.90 **Payment Date** means 30 June of each Financial Year; provided that if such date is not a Business Day, the Payment Date shall be the immediately preceding Business Day;

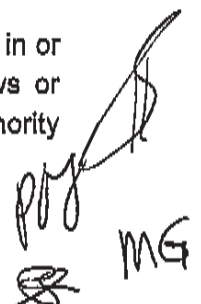
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- 2.2.91 **PFMA** means the Public Finance Management Act, 1999;
- 2.2.92 **Principal Amount** means, in relation to a Guaranteed Instrument, the amount borrowed or to be borrowed (as applicable) by Eskom or, in the case of a Note, the Nominal Amount under that Guaranteed Instrument or, as the case may be, the part of the amount borrowed by Eskom or, in the case of a Note, the part of the Nominal Amount under that Guaranteed Instrument which remains unpaid (but in each case excluding any interest, deemed interest, costs, penalties, breakage costs or any other sums which may accrue and/or become payable by Eskom under that Guaranteed Instrument);
- 2.2.93 **Tranche** shall bear the meaning defined in the Terms and Conditions;
- 2.2.94 **Quarter** means, In respect of each year, the quarterly period ending on:
- 2.2.94.1 30 June;
- 2.2.94.2 30 September;
- 2.2.94.3 31 December; and
- 2.2.94.4 31 March,
- provided that if any such day is not a Business Day the relevant period shall end on the preceding Business Day;
- 2.2.95 **Quarterly Management Accounts** means the financial statements delivered pursuant to clause 20.2.2;
- 2.2.96 **R or Rand** means the lawful currency of South Africa;
- 2.2.97 **Restatement Date** means the date of the fulfillment of the suspensive condition referred to in clause 3.2;
- 2.2.98 **Second Year** means the period commencing on 1 April 2010 and ending on 31 March 2011;
- 2.2.99 **Second Year Commitment** means, in respect of the Second Year and subject to clause 10.3, the Principal Amount of R50,000,000,000 (Fifty Billion Rand) plus the Principal Amount of the First Year Commitment, to the extent not cancelled or reduced in accordance with the terms of this Agreement;
- 2.2.100 **Seventh Year** means the period commencing on 1 April 2015 and ending on 31 March 2016;
- 2.2.101 **Seventh Year Commitment** means, in respect of the Seventh Year and subject to clause 10.3, the Principal Amount of R40,000,000,000 (Forty Billion Rand) plus the Principal Amount of the Sixth Year Commitment, to the extent not cancelled or reduced in accordance with the terms of this Agreement;
- 2.2.102 **Sixth Year** means the period commencing on 1 April 2014 and ending on 31

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March 2015;

- 2.2.103 **Sixth Year Commitment** means, in respect of the Sixth Year and subject to clause 10.3, the Principal Amount of R40,000,000,000 (Forty Billion Rand) plus the Principal Amount of the Fifth Year Commitment, to the extent not cancelled or reduced in accordance with the terms of this Agreement;
- 2.2.104 **Senior Creditors** means:
- 2.2.104.1 creditors of Eskom who are unsubordinated creditors of Eskom; or
- 2.2.104.2 creditors of Eskom whose claims are, or are expressed to be, subordinated to the claims of other creditors, whether subordinated or unsubordinated, of Eskom other than those whose claims rank, or are expressed to rank, *pari passu* with, or junior to, the claims of the Guarantor under this Agreement;
- 2.2.105 **Solvency Claim** shall bear the meaning defined in clause 16.3;
- 2.2.106 **Solvency Condition** shall bear the meaning defined in clause 16.2;
- 2.2.107 **South Africa** means the Republic of South Africa as constituted from time to time;
- 2.2.108 **Subordinated Loan** means the amount of each Guaranteed Liability Payment made by the Guarantor which Eskom is obliged, subject to clause 16 (*Subordination*), to reimburse to the Guarantor and which is treated as a loan made by the Guarantor to Eskom in accordance with clause 14 (*Reimbursement of Guaranteed Liability Payments and Subordinated Loans*) or the principal amount outstanding for the time being of that loan;
- 2.2.109 **Subordinated Loan Liabilities** means the liabilities owed by Eskom to Government under the Subordinated Loans;
- 2.2.110 **Tax** includes, without limitation, any present or future tax, levy, impost, duty, charge, fee, deduction or withholding of any nature and whatever called (including stamp, documentary, registration or other like duty), together with any penalties, fines or interest imposed thereon, imposed, levied, collected, withheld or assessed by any person on any person in any jurisdiction and with respect to anything and the terms **Taxes** and **Taxation** and other cognate terms shall bear corresponding meanings;
- 2.2.111 **Tax Event** means an event where, as a result of a Tax Law Change, in respect of Eskom's obligation to make any payment of interest on a Subordinated Loan on the next following Payment Date or any subsequent Payment Date, Eskom will not be entitled to claim a deduction in respect of computing its taxation liabilities, or such entitlement is materially reduced;
- 2.2.112 **Tax Law Change** means, at any time after the Date of Signature, a change in or proposed change in, or amendment or proposed amendment to, the laws or regulations of the South Africa, or any political subdivision or any authority

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thereof or therein having power to tax, or any change in the application or official interpretation of such laws and regulations (including a holding by a court of competent jurisdiction) or any change in the application or interpretation of any advanced tax ruling obtained by Eskom (including the withdrawal thereof) in respect of the Subordinated Loans, whether or not having retrospective effect;

2.2.113 **Technical Insolvency** means, with respect to a person, a circumstance where the liabilities of that person exceed its assets, notwithstanding which that person is able to pay that person's debts as they become due in the ordinary course of business;

2.2.114 **Term** means, in relation to a Subordinated Loan, the period from the Advance Date to the earlier of:

2.2.114.1 the Maturity Date; or

2.2.114.2 any other date on which that Subordinated Loan is repaid in full by Eskom;

2.2.115 **Terms and Conditions** means the terms and conditions of the Notes as set out in the DMTN Programme, which shall after the Amendment Date be the terms and conditions set out in the DMTN Programme Amendments, as such terms and conditions may be amended or supplemented by each applicable pricing supplement issued under the Programme;

2.2.116 **Third Year** means the period commencing on 1 April 2011 and ending on 31 March 2012;

2.2.117 **Third Year Commitment** means, in respect of the Third Year and subject to clause 10.3, the Principal Amount of R40,000,000,000 (Forty Billion Rand) plus the Principal Amount of the Second Year Commitment, to the extent not cancelled or reduced in accordance with the terms of this Agreement;

2.2.118 **Unpaid Sum** means any sum due and payable but unpaid by Eskom under this Agreement;

2.2.119 **Updated Capital Expenditure Programme** means at any time after the Date of Signature, any updated or changed Capital Expenditure Programme delivered Eskom to the Guarantor pursuant to clause 20.13;

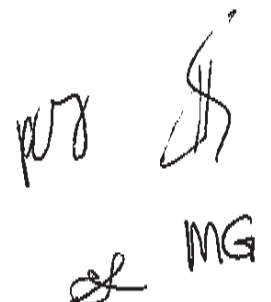
2.2.120 **Year** means the First Year, the Second Year, the Third Year, the Fourth Year, the Fifth Year, the Sixth Year, the Seventh Year or the Eighth Year, as applicable.

2.3 In this Agreement, unless inconsistent with the context, words referring to:

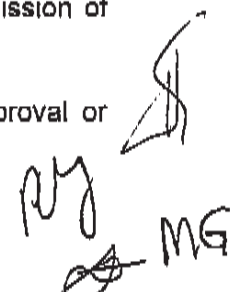
2.3.1 one gender include a reference to the other genders;

2.3.2 the singular includes the plural and vice versa;

2.3.3 natural persons include juristic persons and vice versa.

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- 2.4 When a number of days is prescribed in this Agreement, such number shall be calculated excluding the first and including the last day, unless the last day falls on a day that is not a Business Day, in which case the last day shall be the next succeeding day which is a Business Day.
- 2.5 Any annexes to this Agreement shall be deemed to form part of this Agreement.
- 2.6 Any reference to legislation or a statute in this Agreement shall be a reference to such legislation or statute as amended, varied or re-enacted from time to time.
- 2.7 Words and expressions defined in any sub-clause shall, for the purpose of the clause of which that sub-clause forms part, bear the meaning assigned to such words and expressions in that sub-clause.
- 2.8 If any provision in a definition is a substantive provision conferring rights or imposing obligations on any Party, effect shall be given to it as if it were a substantive clause in the body of this Agreement, notwithstanding that it is only contained in the interpretation clause.
- 2.9 The rule of construction that an agreement is to be interpreted against the party responsible for the drafting or preparation thereof shall not be used in the interpretation of this Agreement.
- 2.10 The use of the word **including** followed by specific examples shall not be construed as limiting the meaning of the general wording preceding it and the *ejusdem generis* rule shall not be applied in the interpretation of such general wording or such specific examples.
- 2.11 Unless expressly otherwise stated, no provision of this Agreement shall constitute a stipulation for the benefit of any person (*stipulatio alteri*) who is not a party to this Agreement.
- 2.12 References to any agreement, document or contract (including this Agreement) shall be to such agreement, document or contract as amended, supplemented, varied, novated or replaced from time to time. References to any statute, regulation, directive, by-law or ordinance shall be to such statute, regulation, directive, by-law or ordinance as amended, supplemented, varied or repealed and replaced from time to time.
- 2.13 The expiry or termination of this Agreement shall not affect those of its provisions which expressly provide that they will continue in force or which of necessity must continue to apply after such expiry or termination.
- 2.14 A reference in this Agreement to any person shall be a reference to such person's permitted successor, transferee, cessionary and/or delegatee.
- 2.15 Where this Agreement requires that a waiver, consent, approval or permission of the Guarantor is to be obtained:
- 2.15.1 In the case of a consent, approval or permission, such consent, approval or

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permission shall at all times be required to be obtained by Eskom prior to undertaking or failing to undertake the course of action to which such consent, approval or permission pertains; and

- 2.15.2 the granting or withholding of such waiver, consent, approval or permission shall not be valid unless it is issued in writing by the Guarantor.

3. **Suspensive Conditions**

- 3.1 The Parties record that the suspensive condition set out in clause 3.1 of the Original Guarantee Framework Agreement was timeously fulfilled and accordingly that the Original Guarantee Framework became of full force and effect.

- 3.2 This entire Agreement, save for the provisions of this clause 3.2, which shall be of immediate force and effect, is subject to the fulfillment of the suspensive condition on or before 30 November 2011, or such other date as the Parties may agree in writing on or before that date, that Eskom delivers to Government a copy of a resolution of the board of directors of Eskom:

- 3.2.1 authorising the engagement with National Treasury, in conjunction with the Department of Public Enterprises, to develop a framework for access to guarantees to the extent required in support of Eskom's capital expansion programme;

- 3.2.2 authorising a specified person or persons to take all steps necessary to give effect to clause 3.2.1 above, including the signing of any agreements, consents or other documentation necessary or related thereto; and

- 3.2.3 Eskom's company secretary confirming the resolution passed by the board of directors of Eskom in the meeting held on 16-17 September 2008 is still valid, in effect and has not been repealed by the board of directors of Eskom.

- 3.3 The suspensive condition referred to in clause 3.2 may not be waived.

- 3.4 Eskom shall use its reasonable endeavours to procure the fulfillment of the suspensive condition referred to in clause 3.1 as soon as reasonably possible after the Date of Signature.

- 3.5 In the event that the suspensive condition referred to in clause 3.2 is not fulfilled on or before 30 November 2011, or such other date as the Parties may agree in writing on or before that date, then this Agreement shall not become of any force and effect and:

- 3.5.1 the Original Guarantee Framework Agreement shall continue to be of force and effect in accordance with its terms; and

- 3.5.2 no Party shall have any claim against any other Party for anything done hereunder or arising herefrom, save as a result of a breach of the provisions of this clause 3.

- 3.6 The suspensive condition is stipulated for the benefit of Government. Government shall accordingly be entitled to waive fulfilment of the suspensive condition on or before 30 November 2011, or such other date as the Parties may agree in writing on or before that date, by giving written notice to that effect to Eskom.
- 3.7 If the suspensive condition is not fulfilled or waived on or before 30 November 2011, or such other date as the Parties may agree in writing on or before that date, then the provisions of this Agreement will not come into force.

4. Duration and Restatement

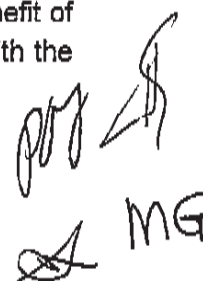
- 4.1 This Agreement shall, notwithstanding the Date of Signature, commence on the Effective Date and shall remain in full force and effect until the Final Discharge Date whereupon this Agreement shall terminate.
- 4.2 The amendments to the Original Framework Guarantee Agreement (and in particular the Increase in the Maximum Guarantee Limit) effected pursuant to this Agreement shall take effect from (and including) the Restatement Date.
- 4.3 Any Principal Amount which has not been utilised by Eskom at the end of the Availability Period shall be cancelled; provided that such cancellation shall not affect the validity of any Guarantees granted by the Guarantor prior to the end of the Availability Period to the extent that the relevant Guaranteed Liability has not then been discharged and all such Guarantees shall remain of full force and effect and be binding on the Guarantor.
- 4.4 No Principal Amount cancelled pursuant to clause 4.3 above may be subsequently reinstated.
- 4.5 Notwithstanding anything contained in clauses 4.3 and 4.4 above, Eskom may apply for an extension of the Availability Period provided that delays in completing any Capital Expenditure Programme is due to delays not attributable to Eskom or due to events of force majeure.

5. Security

The Indebtedness incurred by Eskom under, and any Interest, Guarantee Fees or other costs due or to become due in respect of, this Agreement shall not, for the purposes of section 7(1) of the Eskom Conversion Act, 2001, be a first charge against the revenues and assets of Eskom or on all moneys recovered or to be recovered by Eskom.

6. Granting of Guarantees by Government and Limits

- 6.1 Government agrees to make Guarantees available to Eskom during the Availability Period for the purpose of enabling Eskom to raise financing for the Capital Expenditure Programme which Guarantees will be made available for the benefit of Eskom in accordance with the terms of this Agreement and in accordance with the following limits:



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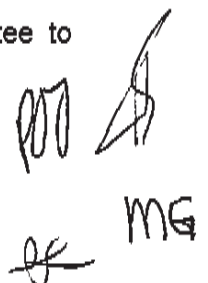
- 6.1.1 the maximum Principal Amount of Guaranteed Liabilities which Government may become liable to pay to Beneficiaries in respect of the First Year shall not exceed the First Year Commitment;
- 6.1.2 the maximum Principal Amount of Guaranteed Liabilities which Government may become liable to pay to Beneficiaries in respect of the Second Year shall not exceed the Second Year Commitment;
- 6.1.3 the maximum Principal Amount of Guaranteed Liabilities which Government may become liable to pay to Beneficiaries in respect of the Third Year shall not exceed the Third Year Commitment;
- 6.1.4 the maximum Principal Amount of Guaranteed Liabilities which Government may become liable to pay to Beneficiaries in respect of the Fourth Year shall not exceed the Fourth Year Commitment;
- 6.1.5 the maximum Principal Amount of Guaranteed Liabilities which Government may become liable to pay to Beneficiaries in respect of the Fifth Year and thereafter shall not exceed the Fifth Year Commitment;
- 6.1.6 the maximum Principal Amount of Guaranteed Liabilities which Government may become liable to pay to Beneficiaries in respect of the Sixth Year shall not exceed the Sixth Year Commitment;
- 6.1.7 the maximum Principal Amount of Guaranteed Liabilities which Government may become liable to pay to Beneficiaries in respect of the Seventh Year shall not exceed the Seventh Year Commitment;
- 6.1.8 the maximum Principal Amount of Guaranteed Liabilities which Government may become liable to pay to Beneficiaries in respect of the Eighth Year shall not exceed the Eighth Year Commitment,

provided that the maximum Principal Amount of the Guaranteed Liabilities which Government may become liable to pay to Beneficiaries shall not exceed the Maximum Guarantee Limit.

- 6.2 Subject to clause 9 (*Decision to Grant Guarantees*), Government shall not be obliged to issue or grant any Guarantee in accordance with the terms of this Agreement unless Eskom has complied strictly with the conditions to the issue or grant of any such Guarantee set out in this Agreement.

7. The Note Guarantee

- 7.1 Subject to the provisions of clause 11.1, Government undertakes to execute the Note Guarantee and deliver same to Eskom within 30 (thirty) days after the Amendment Date.
- 7.2 Government shall not be obliged to execute or deliver the Note Guarantee to Eskom until Government has received proof reasonably satisfactory to it that:



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- 7.2.1 the DMTN Programme Amendments have been approved by an Extraordinary Resolution of the Noteholders or with the prior written consent of Noteholders holding not less than 75% (seventy-five percent) in Nominal Amount of the Notes Outstanding at the relevant time; and
- 7.2.2 the Terms and Conditions are amended to reflect the DMTN Programme Amendments by written agreement in accordance with Condition 17.1 of the Terms and Conditions.
- 7.3 Eskom shall not:
 - 7.3.1 have Outstanding under the DMTN Programme, Notes having a Nominal Amount in excess of the DMTN Limit; or
 - 7.3.2 amend any of the material terms of the Terms and Conditions in effect pursuant to the DMTN Amendments,

In each case, without the prior written consent of Government.

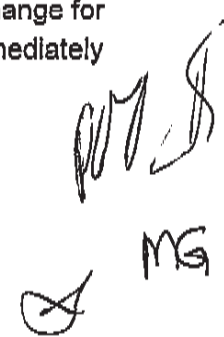
- 7.4 Eskom shall, in respect of each Tranche of Notes issued under the DMTN Programme, within 3 (three) Business Days prior to the date of settlement of such issue, notify Government in writing of the following details in respect of that Tranche of Notes:
 - 7.4.1 the ISIN (if applicable) of that Tranche of Notes;
 - 7.4.2 the Nominal Amount;
 - 7.4.3 the scheduled maturity date of that Tranche of Notes;
 - 7.4.4 the date of issue of that Tranche of Notes;
 - 7.4.5 In the case of fixed rate Notes, the interest rate in respect of that Tranche of Notes;
 - 7.4.6 in the case of floating rate Notes, the margin and the base reference rate in respect of that Tranche of Notes;
 - 7.4.7 in the case of a zero coupon Note or an inflation-linked Note, the actual gross proceeds of issuance of that Tranche of Notes; and
 - 7.4.8 the interest payment dates (if any) of that Tranche of Notes.

8. Applications for Guarantees

- 8.1 Save in respect of the Note Guarantee which shall be deemed to be an Approved Guarantee for the purposes of this Agreement, Eskom shall be entitled to apply to Government for the issue of a Guarantee in respect of an Eligible Liability.
- 8.2 A Guarantee Application must be made to the Guarantor in the form of Schedule 1 (*Form of Guarantee Application*), be duly completed, be signed by an Authorised

Signatory and be delivered by hand to Government in accordance with clause 27 (*Notices and Domicilla*).

- 8.3 Unless otherwise agreed by Government, a Guarantee Application will not be considered to be duly completed unless it:
- 8.3.1 requests the grant of a Guarantee in respect of an Eligible Liability;
 - 8.3.2 describes the Eligible Liability to be guaranteed;
 - 8.3.3 identifies the proposed Beneficiary of the Guarantee that is proposed to be granted in respect of such Eligible Liability;
 - 8.3.4 specifies the maturity, term or duration of the Eligible Liability to be guaranteed;
 - 8.3.5 specifies the pricing of the Eligible Liability (including the interest rate and fees payable by Eskom in connection with the Eligible Liability to be guaranteed);
 - 8.3.6 sets out a description of any penalties or breakage costs which Eskom may become liable to pay in connection with such Eligible Liability (including the manner of calculation of any such penalties or breakage costs);
 - 8.3.7 specifies the currency of the Eligible Liability to be guaranteed;
 - 8.3.8 specifies any interest rate, currency or other hedging transaction which Eskom proposes to conclude in respect of or in relation to such Eligible Liability;
 - 8.3.9 specifies the intended date or dates on which the Eligible Liability to be guaranteed will be incurred by Eskom (including the proposed drawdown profile of such Eligible Liability);
 - 8.3.10 sets out the repayment profile of the Eligible Liability to be guaranteed;
 - 8.3.11 describes the project or projects under the Capital Expenditure Programme[s] to be financed pursuant to the incurral of the Eligible Liability to be guaranteed or, to the extent that such Eligible Liability is not to be incurred for a specific project or projects, the intended application of the proceeds of such Eligible Liability and the manner in which such application relates to the Capital Expenditure Programme;
 - 8.3.12 specifies the proposed date on which the Guarantee in respect of such Eligible Liability is to be issued if the grant of such Guarantee is approved; and
 - 8.3.13 sets out the aggregate Principal Amount of all Guaranteed Liabilities as at the date of such Guarantee Application and for this purpose shall also specify the currencies of all Guaranteed Liabilities and all Guaranteed Liabilities not denominated in Rand shall be converted to Rand at the spot rate of exchange for the relevant currency as at close of business on the Business Day immediately preceding the date of such Guarantee Application.

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- 8.4 A separate Guarantee Application must be submitted by Eskom in respect of each Eligible Liability which is proposed to be guaranteed.
- 8.5 A Guarantee Application which is incomplete or incorrect will be treated as not having been made and no approval for the issue of a Guarantee in respect of an Eligible Liability will be granted pursuant to an incomplete or incorrect Guarantee Application.
- 8.6 After receipt of any Guarantee Application, Government may request Eskom to provide such additional information, as Government may require, in order to enable Government to fully consider and evaluate that Guarantee Application.

9. Decision to Grant Guarantees

- 9.1 Government shall evaluate each Guarantee Application made to it by Eskom in respect of an Eligible Liability but the decision by Government to issue or grant a Guarantee in respect of that Eligible Liability shall be at the discretion of Government.
- 9.2 No Guarantee (other than the Note Guarantee which shall be deemed to be an Approved Guarantee) shall be issued or granted in respect of an Eligible Liability unless, prior to the issue or granting of that Guarantee, Eskom has delivered a Guarantee Application to Government in accordance with clause 8 (*Application for Guarantees*).
- 9.3 No Guarantee (other than the Note Guarantee) shall be issued or granted in respect of an Eligible Liability unless, prior to the issue or granting of that Guarantee, the Guarantee Issuance Conditions have been fulfilled to the satisfaction of Government.
- 9.4 Each Approved Guarantee shall be issued or granted substantially in the form set out in Schedule 2 (*Form of Approved Guarantee*) or in such other form as may be agreed between Government and the Beneficiary of that Approved Guarantee.
- 9.5 Eskom shall not incur an Eligible Liability, in respect of which Government has approved the issue or grant of, or has granted or issued, a Guarantee (whether pursuant to a Guarantee Application or the terms of this Agreement), which differs in any material respect from the particulars of that Eligible Liability specified in the relevant Guarantee Application and any deviation from the particulars referred to in clauses 8.3.1 to 8.3.13 shall be considered to be a material deviation for the purposes of this clause 9.5.
- 9.6 Each Guarantee granted by Government pursuant to this Agreement shall guarantee the payment by Eskom of the Principal Amount of the relevant Eligible Liability and all Interest, deemed interest, costs, expenses, penalties, breakage costs and other sums payable by Eskom under the Guaranteed Instrument pursuant to which the relevant Eligible Liability is incurred by Eskom.

- 9.7 Eskom shall promptly upon execution thereof deliver to Government a copy of each Guaranteed Instrument.

10. Increase of Limits

- 10.1 Eskom shall be entitled, by written notice to the National Treasury and the Department of Public Enterprises, from time to time to request Government to increase:
- 10.1.1 any Annual Commitment for any Year;
 - 10.1.2 the DMTN Limit; and/or
 - 10.1.3 the Maximum Guarantee Limit.
- 10.2 Government shall be under no obligation to approve any increase in the Annual Commitment, the DMTN Limit and/or the Maximum Guarantee Limit requested by Eskom pursuant to clause 10.1 but shall evaluate such request in accordance with all applicable laws.
- 10.3 In the event that Government approves any increase in the Annual Commitment, the DMTN Limit and/or the Maximum Guarantee Limit requested by Eskom pursuant to clause 10.1, the National Treasury shall deliver a written notice to Eskom specifying the increased Annual Commitment, DMTN Commitment and/or Maximum Guarantee Limit, as the case may be, which increases will take effect from the date specified in such notice (or if no such date is specified, the date of such notice).

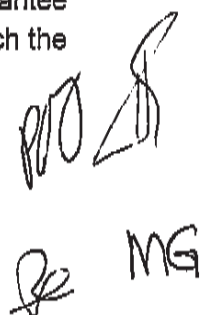
11. Conditions to Issue or Grant of Guarantees

- 11.1 Subject to clause 9 (*Decision to Grant Guarantees*), Government shall not be obliged to execute any Approved Guarantee (including the Note Guarantee) unless it is satisfied that the terms of a Guaranteed Instrument pursuant to which the relevant Eligible Liability is Incurred or to be incurred by Eskom contains or is amended to contain the following provisions to the satisfaction of Government (the **Guarantee Issuance Conditions**):
- 11.1.1 a condition to the effect that no party to that Guaranteed Instrument shall vary, amend, waive, release, novate, supplement, extend or restrict the material terms and conditions of that Guaranteed Instrument, or such terms and conditions of that Guaranteed Instrument which Government considers material, without obtaining the prior written consent of the Guarantor, which consent shall not be unreasonably withheld or delayed;
 - 11.1.2 a condition to the effect that a Beneficiary shall give the Guarantor written notice of Eskom's default under that Guaranteed Instrument, and, following the delivery of such notice to the Guarantor, written notice of such default and its effect having been remedied to the reasonable satisfaction of the Beneficiary(ies);
 - 11.1.3 a condition to the effect that, on the occurrence of a default by Eskom in respect

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of the due and punctual payment of any sum due and payable by Eskom under that Guaranteed Instrument, the relevant Beneficiary(ies):

- 11.1.3.1 shall not take any action or proceedings against Eskom to recover any Guaranteed Liability under that Guaranteed Instrument (including not levying or enforcing any attachment or execution upon the assets of Eskom), and that all rights of enforcement of the Beneficiary(ies) shall be exercised by lodging a claim under the relevant Guarantee;
- 11.1.3.2 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, Eskom or for the appointment of a liquidator, judicial manager or similar officer of Eskom; and
- 11.1.3.3 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 Eskom, unless such right of set-off is expressly provided for in terms of such agreement.
- 11.1.4 a condition to the effect that the Guarantor shall be entitled at any time (and whether or not in anticipation of a default by Eskom or while a default is continuing) to effect payments of Guaranteed Liabilities on behalf of Eskom as and when they fall due under that Guaranteed Instrument or to pay in full and discharge all amounts outstanding under that Guaranteed Instrument (whether or not as a result of enforcement), regardless of whether or not such amounts are then otherwise due and payable, and that the Beneficiary(ies) will accept such payments as if they were payments made by Eskom without the exercise of any such entitlement by the Guarantor causing any default, event of default or termination event (howsoever described) or entitling the Beneficiary(ies) to accelerate or otherwise declare prematurely due and payable the Guaranteed Liabilities under such Guaranteed Instrument;
- 11.1.5 a condition to the effect that, while any Guarantee is in force for the Guaranteed Liabilities under that Guaranteed Instrument, the Beneficiary(ies) shall not accelerate or otherwise declare prematurely due and payable any such Guaranteed Liabilities as a consequence of any non-payment of any Guaranteed Liability by Eskom but that the sole recourse of the Beneficiary(ies) under that Guaranteed Instrument shall be to demand payment from the Guarantor under the relevant Guarantee unless the Guarantor fails to pay such Guaranteed Liability after receiving such written demand in accordance with the terms of the relevant Guarantee.
- 11.2 Government shall be entitled in its sole discretion to waive any of the Guarantee Issuance Conditions in relation to any Guaranteed Instrument pursuant to which the relevant Eligible Liability is incurred or to be incurred by Eskom.

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12. Priority of Payments by Eskom

In order to ensure that:

- 12.1 Non-Guaranteed Creditors benefit from the support provided to Eskom by Government pursuant to the grant of the Guarantees; and
- 12.2 the Guarantees cumulatively provide the maximum support to Eskom's credit rating,

in the event that payments are due and payable by Eskom on or about the same date to Beneficiaries in respect of Guaranteed Liabilities and to Non-Guaranteed Creditors in respect of Non-Guaranteed Liabilities, Eskom undertakes to Government that Eskom shall always apply its available cash resources first towards payment to the relevant Non-Guaranteed Creditors of the Non-Guaranteed Liabilities then due and payable, and thereafter, towards payment to the relevant Beneficiaries of the Guaranteed Liability Payments then due and payable, with the effect that Eskom cannot make payments in respect of Guaranteed Liabilities in circumstances where, if such payments were to be made by Eskom, Non-Guaranteed Creditors, who do not benefit directly from the Guarantees, would be prejudiced by Eskom being unable to make payments then due and payable to such Non-Guaranteed Creditors as a consequence of Eskom making payments in respect of Guaranteed Liabilities ahead of Non-Guaranteed Liabilities.

13. Guarantee Fees

- 13.1 Eskom shall pay to the Guarantor an annual fee on the Aggregate Guaranteed Amount in respect of each Calculation Period during the term of this Agreement and subject to clauses 13.3 and, 13.4 calculated at the Fee Rate.
- 13.2 Subject to clauses 13.3 and, 13.4 the Guarantee Fee referred to in clause 13.1 shall:
 - 13.2.1 accrue at the Fee Rate on a day-to-day basis;
 - 13.2.2 be calculated on the actual number of days elapsed and, for the purposes of calculation, based on a year of 365 days, irrespective of whether the year in question is a leap year.
- 13.3 The Guarantee Fee referred to in clause 13.1 will not be cumulative. Eskom shall be obliged to pay the Guarantee Fee accrued in respect of each Calculation Period on each Payment Date unless:
 - 13.3.1 a Mandatory Deferral Event has occurred as at the Measurement Date immediately preceding such Payment Date; or
 - 13.3.2 it is in breach of the Solvency Condition on the Business Day prior to such Payment Date or would be in breach of the Solvency Condition if the relevant Fee Amount were paid on such Payment Date.
- 13.4 If Eskom is not obliged to pay the relevant Fee Amount in respect of a Calculation Period in accordance with clause 13.3, then Eskom shall not pay such Fee Amount

for the relevant Calculation Period and any such failure to pay such Fee Amount shall not constitute a breach by Eskom of its obligations under this Agreement or for any other purpose and the Guarantor shall have no claim in respect of any such non-payment.

- 13.5 The Guarantor shall be entitled to review the Fee Rate from time to time, in consultation with Eskom, and shall be entitled to increase the Fee Rate to such rate as it considers justified taking into account *inter alia* the risks assumed by the Guarantor, the nature of the Guaranteed Liabilities and the public interest in ensuring that Eskom is incentivised to refinance the Guaranteed Liabilities in a manner that does not require Government to support Eskom's financing obligations in connection with the Capital Expenditure Programme.

14. Reimbursement of Guaranteed Liability Payments and Subordinated Loans

In consideration for the Guarantor agreeing at Eskom's request to grant or issue any Guarantee, Eskom hereby:

- 14.1 subject to clause 16 (*Subordination*), indemnifies the Guarantor against all actions, proceedings, liabilities, claims, damages, costs and expenses in relation to or arising out of any Guarantee and agrees to reimburse to the Guarantor the amount equal to all Guaranteed Liability Payments made by the Guarantor under any Guarantee and each such Guaranteed Liability Payment shall constitute a "Subordinated Loan" for the purposes of this Agreement and be payable to the Guarantor in accordance with the terms of this Agreement; and
- 14.2 irrevocably authorises and directs the Guarantor to make any payments demanded under any Guarantee forthwith in accordance with the terms of any Guarantee without reference to or any further authority, confirmation or verification from Eskom, and agrees that any payment which the Guarantor shall make in accordance with any Guarantee shall be binding on Eskom and shall be accepted by Eskom as conclusive evidence that the Guarantor was liable to make such payment notwithstanding any dispute that may exist between Eskom and the relevant Beneficiary as to the validity of such payment. The Guarantor shall notify Eskom of any demands or other notices received in accordance with the terms of any Guarantee and such notice shall include a copy of any demand or notice received from (or on behalf of) a Beneficiary.

15. Interest on Subordinated Loans

- 15.1 The Capital Outstanding shall bear interest, in respect of each Calculation Period during the Term and subject to clauses 15.3 and 15.4, at the Interest Rate.
- 15.2 Subject to clauses 15.3 and 15.4, interest on the Capital Outstanding shall:
- 15.2.1 accrue at the Interest Rate on a day-to-day basis;
- 15.2.2 be calculated on the actual number of days elapsed and, for the purposes of calculation, based on a year of 365 (three hundred and sixty-five) days,

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irrespective of whether the year in question is a leap year.

- 15.3 Interest payments on the Subordinated Loans will not be cumulative. Eskom shall be obliged to pay interest accrued in respect of each Calculation Period on each Payment Date unless:
- 15.3.1 a Mandatory Deferral Event has occurred as at the Measurement Date immediately preceding such Payment Date; or
- 15.3.2 It is in breach of the Solvency Condition on the Business Day prior to such Payment Date or would be in breach of the Solvency Condition if the relevant Interest Amount were paid on such Payment Date.
- 15.4 If Eskom is not obliged to pay the relevant Interest Amount in respect of a Calculation Period in accordance with clause 15.3 then Eskom shall not make any interest payment for the relevant Calculation Period and any such failure to pay such Interest Amount shall not constitute a Default by Eskom or any other breach of obligations under this Agreement or for any other purpose and Government will have no claim in respect of any such non-payment.

16. Subordination

- 16.1 The claims of Government under this Agreement are subordinated to the claims of the Senior Creditors and, accordingly in the event of the dissolution of Eskom or if Eskom is placed into liquidation, administration or wound-up:
- 16.1.1 Government shall not be entitled to prove or tender to prove a claim in respect of the Subordinated Loans;
- 16.1.2 no amount due under the Subordinated Loans shall be eligible for set-off, counterclaim, abatement or other similar remedy which Government might otherwise have under the laws of any jurisdiction in respect of the Subordinated Loans nor shall any amount due under the Subordinated Loans be payable to Government; and
- 16.1.3 subject to applicable law, Government may not exercise or claim any right of set-off in respect of any amount in respect of the principal of and/or interest in relation to the Subordinated Loans owed to it by Eskom and Government shall be deemed to have waived all such rights of set-off and, to the extent that any set-off takes place, whether by operation of law or otherwise, between:
- 16.1.3.1 any amount in respect of guarantee fees and/or the principal and/or interest in relation to the Subordinated Loans owed by Eskom to Government; and
- 16.1.3.2 any amount owed to Eskom by Government,

Government will immediately transfer such amount which is set-off to Eskom or, in the event of its winding-up or administration (as the case may be), the liquidator, administrator or other relevant insolvency official of Eskom, to hold in trust for the Senior Creditors,

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In each case, until the claims of the Senior Creditors which are admissible in any such dissolution, insolvency, administration or winding-up have been paid or discharged in full.

16.2 Payments in respect of guarantee fees and/or the principal of and interest on the Subordinated Loans are conditional upon Eskom being solvent at the time payment is due by Eskom, and, no Guarantee Fees and/or no principal of or interest on the Subordinated Loans shall be due and payable in respect of the Subordinated Loans except to the extent that Eskom could make such payment and still be solvent immediately thereafter. For the purposes of this clause 16.2, Eskom shall be solvent if (1) it is able to pay its debts owed to the Senior Creditors as they fall due and (2) its Assets exceed its Liabilities to the Senior Creditors (the **Solvency Condition**). A report as to the solvency of Eskom made by two directors of Eskom or, if Eskom is in winding-up, its liquidator or, if in administration, its administrator shall, in the absence of manifest error, be treated and accepted by Eskom and Government as correct and sufficient evidence of such solvency.

16.3 Amounts representing any payments of principal on the Subordinated Loans in respect of which the Solvency Condition is not satisfied on the date upon which the same would otherwise be due and payable (**Solvency Claims**), will be payable by Eskom:

16.3.1 in a winding-up or administration of Eskom; and

16.3.2 subject to satisfying the Solvency Condition, on any repayment of the Subordinated Loans pursuant to clause 18 (*Prepayment*),

provided that in the event that, prior to any winding-up or administration of Eskom, Eskom shall again be solvent and would be solvent immediately after the making of such payment of Solvency Claims, then Eskom shall promptly notify Government of such fact and the Solvency Claims shall, subject to satisfying the Solvency Condition, be due and payable on the 30th (thirtieth) day after Eskom shall have given such notice. A Solvency Claim shall not bear interest unless and only so long as Eskom shall be solvent once again, in which case interest shall accrue on any such Solvency Claim from (and including) the date on which Eskom is solvent again to (but excluding) the date on which such Solvency Claim is paid. Any such interest shall accrue at a rate equal to the then applicable Interest Rate. For the avoidance of doubt, if Eskom would otherwise not be solvent for the purposes of the above, any sums which would otherwise be payable in respect of the Subordinated Loans will be available to be put towards the losses of Eskom.

16.4 The provisions of this clause 16 which constitute a stipulation for the benefit of the Senior Creditors may be accepted by the Senior Creditors in any manner whatsoever and at any time whatsoever.

17. Repayment

17.1 Each Subordinated Loan shall be repaid by Eskom to the Guarantor on its Maturity

Date (without penalty).

- 17.2 Eskom shall not be entitled to reborrow any part of the Subordinated Loan which is repaid or prepaid.

18. Prepayment

- 18.1 Eskom may, by giving to the Guarantor not less than 30 (thirty) days prior written notice to that effect, prepay the whole or part of any Subordinated Loan on the Call Date or on the last day of any Quarter after the Call Date.
- 18.2 Eskom may in addition, by giving not less than 30 (thirty) days prior written notice to that effect at any time, prepay the whole or part of any Subordinated Loan without penalty, if a Tax Event may occur or has occurred and is continuing.
- 18.3 Any notice of prepayment pursuant to clauses 18.1 and 18.2 shall:
- 18.3.1 be irrevocable;
- 18.3.2 specify the date (the **Prepayment Date**) upon which such prepayment is to be made;
- 18.3.3 specify the amount (the **Voluntary Prepayment Amount**) that Eskom intends to prepay (which shall be no less than R50 000 000 (Fifty Million Rand) or if less, the total Capital Outstanding);
- 18.3.4 oblige Eskom to make such prepayment of the Voluntary Prepayment Amount on the Prepayment Date; and
- 18.3.5 if the prepayment is made pursuant to clause 18.2, have attached to it a legal opinion from a reputable firm of lawyers in South Africa to the effect that a Tax Event is likely to occur or has occurred and is continuing.
- 18.4 Subject to the provisions of clauses 15.3 and 15.4, any interest payable in respect of any prepayment pursuant to this clause 18 shall be paid on the Payment Date immediately following the Prepayment Date, unless the Prepayment Date coincides with a Payment Date in which case interest shall be paid on the Prepayment Date but shall be without penalty.

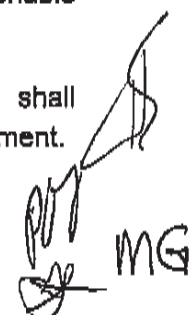
19. Payments

- 19.1 All payments to be made by Eskom to Government in terms of this Agreement shall be:
- 19.1.1 made for the account of the National Revenue Fund of South Africa;
- 19.1.2 made in Rand at or before 12h00 on the due date for payment in immediately available funds free of set off, taxes, exchange, costs, charges, expenses or any other deductions to the following bank account or such other bank account as notified by Government to Eskom in writing from time to time:

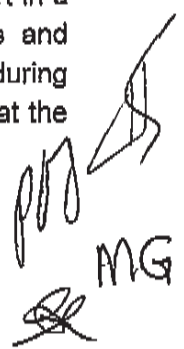
- 19.1.2.1 Bank: Absa Bank Limited;
- 19.1.2.2 Branch: Van der Walt Street;
- 19.1.2.3 Branch Code: 632005;
- 19.1.2.4 Account Name: National Treasury;
- 19.1.2.5 Account Number: 4052 368 632;
- 19.1.3 in the event of any payment not being made in full on its due date, appropriated in the first instance to the payment of any costs, charges or expenses, thereafter to interest then due and payable, and thereafter in reduction of the Capital Outstanding.
- 19.2 Subject to the provisions of clauses 15.3, 15.4 and 16 (*Subordination*), Eskom shall not have the right to defer, adjust or withhold any payment due to the Guarantor in terms of or arising out of this Agreement or to obtain deferment of judgement for such amount or any execution of such judgement by reason of any set-off or counterclaim due to any other contractual or delictual claims or causes of whatsoever nature or howsoever arising.

20. Information Undertakings and Reporting

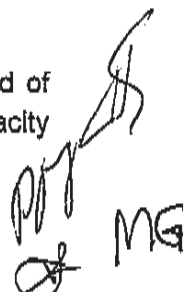
- 20.1 The undertakings in this clause 20 remain in force from the date of this Agreement for so long as any Subordinated Loan or Guarantee is outstanding under this Agreement or any Commitment is in force.
- 20.2 Eskom shall deliver to Government:
- 20.2.1 as soon as they are available, but in any event within 120 (one hundred and twenty) days after the end of each of its Financial Years, its audited consolidated financial statements for that Financial Year;
- 20.2.2 as soon as they are available, but in any event within 45 (forty-five) days after the end of each quarter, its financial statements on an unconsolidated basis for that Quarter (to include cumulative management accounts for the Financial Year to date); and
- 20.2.3 within 45 (forty-five) days after the end of each Quarter, a report on the status of the implementation of the Capital Expenditure Programmes including details of any and all contractual cost price adjustments on a project by project basis.
- 20.3 Eskom shall deliver a Compliance Certificate to Government with each set of its audited consolidated Annual Financial Statements.
- 20.4 The Compliance Certificate shall, amongst other things, set out (in reasonable detail) computations of the Financial Covenants.
- 20.5 Each Compliance Certificate shall be signed by two directors of Eskom and shall be reported on by Eskom's auditors in the form agreed by Eskom and Government.

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- 20.6 Eskom shall procure that each set of Annual Financial Statements and Quarterly Management Accounts includes a balance sheet, profit and loss account and cashflow statement. In addition Eskom shall procure that:
- 20.6.1 each set of Annual Financial Statements shall be audited by the Auditors;
 - 20.6.2 each set of Quarterly Management Accounts includes a cashflow forecast in respect of Eskom relating to the 12 (twelve) month period commencing at the end of the relevant month; and
 - 20.6.3 each set of Quarterly Management Accounts is accompanied by a statement by the Financial Director of Eskom commenting on the performance of Eskom for the quarter to which such Quarterly Management Accounts relate and the Financial Year to date and any material developments or proposals affecting Eskom or its business and such other information as Government may require by written notice to Eskom.
- 20.7 Each set of financial statements delivered pursuant to clause 20.2:
- 20.7.1 shall be certified by the Finance Director of Eskom as giving a true and fair view of (in the case of Annual Financial Statements for any Financial Year), or fairly representing (in other cases), its financial condition and operations as at the date as at which those financial statements were drawn up and, in the case of the Annual Financial Statements, shall be accompanied by any letter addressed to the management of the relevant company by the Auditors and accompanying those Annual Financial Statements;
 - 20.7.2 in the case of the Annual Financial Statements, shall be accompanied by a statement by the Finance Director of Eskom comparing actual performance for the period to which the financial statements relate to:
 - 20.7.2.1 the projected performance for that period set out in the Budget; and
 - 20.7.2.2 the actual performance for the corresponding period in the preceding Financial Year of Eskom.
- 20.8 Eskom shall deliver to Government:
- 20.8.1 within 15 (fifteen) days after the last Business Day of each calendar month, a written report in a form reasonably acceptable to Government setting out all draw downs and capital and interest payments made in respect of Guaranteed Liabilities during that calendar month and the outstanding balances of all Guaranteed Liabilities as at the end of that calendar month; and
 - 20.8.2 within 45 (forty five) days after the last day of each Quarter, a written report in a form reasonably acceptable to Government setting out all draw downs and capital and interest payments made in respect of Guaranteed Liabilities during that Quarter and the outstanding balances of all Guaranteed Liabilities as at the end of that Quarter.



- 20.9 If Government wishes to discuss the financial position of Eskom with Eskom's auditors, Government may notify Eskom, stating the questions or issues which Government wishes to discuss with such auditors. In this event, Eskom must ensure that such auditors are authorised (at the expense of Eskom):
- 20.9.1 to discuss the financial position of Eskom with Government on request from Government; and
- 20.9.2 to disclose to Government any information which Government may reasonably request.
- 20.10 Eskom shall deliver to Government, as soon as the same become available but in any event within 30 (thirty) days after the start of each of its Financial Years, a Budget for the three Financial Years commencing at the start of such Financial Year.
- 20.11 Eskom shall ensure that a progress report setting out the progress of the Capital Expenditure Programme is included in each set of its Quarterly Management Accounts delivered pursuant to clause 20.2.2.
- 20.12 Eskom shall ensure that each Budget:
- 20.12.1 is in a form reasonably acceptable to Government and includes a projected consolidated profit and loss, balance sheet and cashflow statement for Eskom, projected Financial Covenant calculations and details of the progress of the Capital Expenditure Programme;
- 20.12.2 is prepared in accordance with the Accounting Principles and the accounting practices and financial reference periods applied to financial statements delivered pursuant to clause 20.2; and
- 20.12.3 has been approved by the board of directors of Eskom.
- 20.13 If Eskom updates or changes the Budget or a Capital Expenditure Programme, it shall within not more than 30 (thirty) days of the update or change being made and approved by Eskom's Board of Directors deliver to Government such updated or changed Budget or Capital Expenditure Programme, as the case may be, together with a written explanation of the main changes in the Budget or that Capital Expenditure Programme, as the case may be; provided that:
- 20.13.1 Eskom must obtain the prior written approval of its board of directors for any update or change to the Capital Expenditure Programmes; and
- 20.13.2 Eskom must obtain the prior written approval of Government for changes of 10% (ten percent) or more (excluding all contractual cost price adjustments) of the total amount previously approved under the Capital Expenditure Programmes referred to in Schedule 7 (*Updated Capital Expenditure Programme*).
- 20.14 Eskom shall submit Quarterly reports, within 45 (forty five) days after the end of each Quarter, to Government outlining plans for maintaining or restoring its capacity

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to finance the Capital Expenditure Programmes without the benefit of the Guarantees. Such reports shall also identify any matters or circumstances which may result in Eskom defaulting in respect of any indebtedness incurred by it and the steps (if any) being taken or proposed to be taken to mitigate such risk.

- 20.15 Eskom shall notify Government in writing of the occurrence of any Material Adverse Change as soon as reasonably possible, but in any event within 10 (ten) Business Days, after the occurrence of that Material Adverse Change. Such written notice shall specify the circumstances, facts or matters giving rise to that Material Adverse Change and the steps (if any) being taken or proposed to be taken to mitigate that Material Adverse Change.
- 20.16 Eskom shall consult Quarterly with Government in relation to, *inter alia*, its proposals to incur any Eligible Liability and ensure that such Eligible Liabilities are incurred to fund the Capital Expenditure Programme.
- 20.17 Eskom shall obtain the prior written consent of Government before entering into transactions which may (a) materially affect the availability of funding for the Capital Expenditure Programme, (b) result in the default under or acceleration of any Guaranteed Liability, or (c) which may impact on the then existing credit rating of Eskom.
- 20.18 In order to ensure that the provisions of clause 12 (*Priority of Payments by Eskom*) are applied and/or in order to enable Government to exercise any right contemplated by clause 11.1.4, should Eskom anticipate that it will be unable to make due and punctual payment of any principal amount, interest or any other sum scheduled to be paid in respect of any of its Guaranteed Liabilities or Non-Guaranteed Liabilities or that the right of acceleration of a lender, lenders or creditor or creditors in respect of any Guaranteed Liabilities or Non-Guaranteed Liabilities, as the case may be, will be triggered in terms of any of its Guaranteed Liabilities or Non-Guaranteed Liabilities and Eskom will be unable to make due and punctual payment of the amounts of principal, interest or other sums so accelerated Eskom shall immediately notify Government of such anticipation.

21. Determination of Financial Covenants

- 21.1 For the purpose of determining the Financial Covenants the Parties agree that all Financial Covenants shall be calculated with reference to Eskom's most recent audited Annual Financial Statements and in accordance with the Accounting Principles.
- 21.2 Eskom shall by no later than the Business Day immediately preceding the Interest Payment Date immediately succeeding a Measurement Date:
 - 21.2.1 measure each of the Financial Covenants in respect of the Measurement Period ending on that Measurement Date; and
 - 21.2.2 deliver to Government a Compliance Certificate signed by Eskom's Finance Director setting out the Financial Covenants and the manner in which they have

been calculated.

21.3 In the event of any dispute in respect of any calculation relating to the Financial Covenants or any other calculations required in respect of any Financial Covenant, such dispute shall be determined by Eskom's auditors, acting as experts and not as arbitrators (taking into account the terms and conditions of this Agreement), whose determination will, in the absence of manifest error, be final and binding on all Parties.

21.4 The cost of such auditors in resolving such dispute shall be paid by Eskom.

22. Events of Default

22.1 Notwithstanding any of the provisions in this clause 22, the right to institute winding up proceedings against Eskom is limited to circumstances where payment has become due and payable. No principal, interest or any other amount in respect of a Subordinated Loan will be due and payable unless the Solvency Condition is satisfied. Also, in the case of any Interest Amount, payment thereof will not be due if Eskom is prohibited from paying Interest pursuant to clauses 15.3 and 15.4.

22.2 An Event of Default shall occur if:

22.2.1 Eskom defaults in the payment of any principal or any interest (or any other amount in respect of the Subordinated Loans) due on the Subordinated Loans for a period of 30 (thirty) days or more after any date on which such payment became due and payable; or

22.2.2 any Insolvency Event occurs in relation to Eskom.

22.3 Upon the occurrence of an Event of Default or at any time thereafter whilst it is continuing, Government may, without prejudice to any other rights it may have in terms of this Agreement or applicable law, by written notice to Eskom:

22.3.1 declare all the Subordinated Loans to be immediately due and repayable whereupon same shall, subject to clause 16, become immediately due and payable by Eskom; and/or

22.3.2 at its discretion, institute proceedings for the winding-up or liquidation of Eskom and/or, subject to clause 16, prove its claims in respect of the Subordinated Loans in any winding-up or liquidation of Eskom; and/or

22.3.3 cancel any unutilised portion of the Annual Commitment,

but may take no other action in respect of that Event of Default.

22.4 Without prejudice to clause 22.3, if Eskom breaches any of its obligations under this Agreement (other than any obligation in respect of the payment of principal or interest on the Subordinated Loans) and fails to remedy such breach within 10 (ten) Business Days of receipt of written notice from Government requiring remedy of such breach then Government may, subject as provided below, at its discretion and

without further notice, bring such proceedings as it may think fit to enforce the obligation in question provided that Eskom shall not, as a result of the bringing of any such proceedings, be obliged to pay any sum representing or measured by reference to principal or interest on the Subordinated Loans sooner than the same would otherwise have been payable by it.

23. Renunciation of Benefits

Eskom renounces all benefits of the exceptions of "*no value received*", "*no money received*", "*no cause of debt*", and "*error in calculation*", the meaning and effect of which it declares and understands. The aforesaid waiver and renunciation shall not operate so as to exclude Eskom's right to contend in any action by Government against it based on this Agreement that any amount sued for by Government in such action is not in fact owing to Government.

24. Certificate of Indebtedness

A certificate signed by the Director-General or Deputy Director-General: Asset and Liability Management of the National Treasury of Government and the Director-General or the Deputy Director-General: Energy and Broadband Enterprises of the Department of Public Enterprises of Government (in each case, whose appointment need not be proved) as to the existence of and the amount of Indebtedness by Eskom to Government under this Agreement, that such amount is due and payable, the amount of interest accrued thereon and as to any other fact, matter or thing related to Eskom's Indebtedness to Government in terms of this Agreement, shall be *prima facie* proof of the contents and correctness thereof for the purposes of provisional sentence, summary judgment or any other proceedings, shall be valid as a liquid document for such purpose and shall, in addition, be *prima facie* proof for purposes of pleading or trial in any action instituted by Government arising herefrom.

25. Interest on Arrear Amounts

Interest calculated at the Arrear Interest Rate shall accrue on any Unpaid Sum from time to time in terms of this Agreement. Such interest shall be calculated on a daily basis from the due date of each such overdue amount to (but excluding) date of payment thereof and shall be compounded monthly in arrears and shall be paid by Eskom on demand.

26. Informal Dispute Resolution

- 26.1 The provisions of this clause 26 shall, save where expressly provided otherwise, apply to any dispute arising in relation to or in connection with any aspect of this Agreement between the Parties.
- 26.2 If a dispute arises in relation to any aspect of this Agreement, the Parties shall, in compliance with section 41 of the Constitution of the Republic of South Africa, 1996, attempt in good faith to come to an agreement in relation to the disputed matter, in accordance with the following informal process:

- 26.2.1 all disputes shall first be referred to a meeting of the Finance Director of Eskom, the Deputy Director-General: Chief Investment Portfolio Management of the Department of Public Enterprises of Government and the Deputy Director-General: Asset and Liability Management of the National Treasury of Government, or such person or persons designated by them and having sufficient authority to be able (if necessary with consultation back to their respective seniors) to resolve it; and
- 26.2.2 if the Parties have been unable to resolve the dispute within 10 (ten) Business Days of referral to the persons specified in clause 26.2.1, either Party may refer the dispute for a decision by the Chief Executive Officer of Eskom, the Director-General of the Department of Public Enterprises of Government and the Director-General of the National Treasury of Government.
- 26.3 In attempting to resolve the dispute in accordance with the provisions of this clause 26, the Parties shall (and shall procure that their employees and representatives shall) use reasonable endeavours to resolve such dispute without delay by negotiations or any other informal procedure which the relevant representatives may adopt. Those attempts shall be conducted in good faith in an effort to resolve the dispute without necessity for formal proceedings.
- 26.4 Any dispute which has not been resolved by the representatives contemplated in clause 26.2.2 within 10 (ten) Business Days of the dispute being referred to them (or any longer period agreed in writing between the Parties) shall be treated as a dispute in respect of which informal resolution has failed and may then be resolved by way of formal proceedings before a court or in any other manner agreed in writing between the Parties.
- 26.5 No reference of any dispute to any informal resolution process in terms of this clause 26 shall relieve either Party from any liability for the due and punctual performance of its obligations under this Agreement.

27. Notices and Domicilia

27.1 Notices

- 27.1.1 Each Party chooses the addresses set out opposite its name below as its addresses to which any written notice in connection with this Agreement may be addressed.

27.1.1.1 Government:

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

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Attention: The Director-General: Department of Public Enterprises

and:

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

27.1.1.2 **Eskom:**

Megawatt Park
Maxwell Drive
Sunninghill
Johannesburg
2157

Attention: Senior General Manager (Treasury)

- 27.1.2 Any notice, service of legal process, demand or communication required or permitted to be given in terms of this Agreement shall be valid and effective only if in writing; provided that it shall not be competent to give notice by telefax.
- 27.1.3 Either Party may by written notice to the other Party change its chosen addresses for the purposes of clause 27.1.1 to any other address(es), provided that the change shall become effective on the fourteenth day after the receipt of the notice by the addressee.
- 27.1.4 Any notice given in terms of this Agreement shall:
- 27.1.4.1 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;
- 27.1.4.2 if delivered by hand be deemed to have been received by the addressee on the date of delivery;
- unless the contrary is proved.
- 27.1.5 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.

27.2 Domicilia

27.2.1 Each of the Parties chooses its address referred to in clause 27.1.1 as its *domicilium citandi et executandi* at which documents in legal proceedings in connection with this Agreement may be served.

27.2.2 Either Party may by written notice to the other Party 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 deemed receipt of the notice by the other Party pursuant to clause 27.1.4.

28. Assignment

No Party may cede its rights or interest in or to, or transfer or delegate its obligations under, or assign this Agreement to any third party without the prior written consent of the other Parties, which consent shall not be unreasonably withheld or delayed.

29. Indulgences

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

30. Variation, Cancellation and Waiver

No contract varying, adding to, deleting from or cancelling this Agreement, and no waiver of any right under this Agreement, will be effective unless reduced to writing and signed on behalf of Eskom and on behalf of Government 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.

31. Entire Contract

This Agreement contains all the express provisions agreed on by the Parties with regard to the subject matter of this Agreement and the Parties waive the right to rely on any alleged express provision not contained in this Agreement.

32. No Representation

A Party may not rely on any representation which allegedly induced that Party to enter into this Agreement, unless the representation is recorded in this Agreement.

33. Applicable Law

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

34. Jurisdiction

Subject to clause 26 (*Informal Dispute Resolution*), 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 Agreement and, for such purposes, the Parties irrevocably submit to the jurisdiction of such court.

35. Counterparts

This Agreement may be executed in any number of counterparts by the Parties and once each Party to this Agreement 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.

36. Severability

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

37. Amendment and Restatement

This Agreement amends and restates the Guarantee Framework Agreement dated 5 November 2009 without novation and on the basis that all rights and obligations of the parties arising out of the said Guarantee Framework Agreement shall continue unaffected as if unamended.

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.

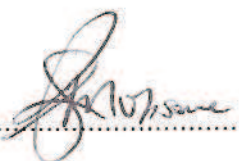
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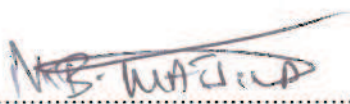
Signed at **PRETORIA**

on **08/12/**

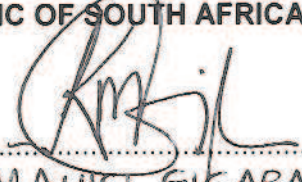
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Witnesses:

1. 

2. 

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


Name: **MAWUSI GIGABA**
Capacity: Minister of Public Enterprises

Concurred

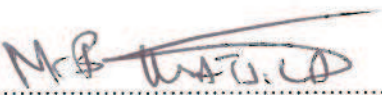
Signed at **PRETORIA**

on **08/12/**

2011

Witnesses:

1. 

2. 

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


Name:
Capacity: Minister of Finance

Signed at **SUNNINGHILL**

on **1 NOVEMBER**

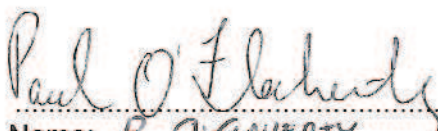
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Witnesses:

1. 

2. 

for **ESKOM HOLDINGS SOC LIMITED**


Name: **P. O'FLAHERTY**
Capacity: **FINANCE DIRECTOR**
Who warrants his/her authority hereto

Form of Guarantee Application

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

Attention: The Deputy Director-General : Asset and Liability Management
The Department of Public Enterprises of the Republic of South Africa
Suite 401, Infotech Building
1090 Arcadia Street
Hatfield
Pretoria
0028

Attention: The Director-General : Department of Public Enterprises

Date: [•]

Dear Sirs

Amended and Restated Guarantee Framework Agreement: Guarantee Application

1. We refer to the Amended and Restated Guarantee Framework Agreement dated [•] October 2011 between the Government of the Republic of South Africa and Eskom Holdings Limited (the **Agreement**).
2. This is a Guarantee Application made pursuant to clause 8 of the Agreement.
3. Terms defined in the Agreement have the same meaning in this Guarantee Application unless given a different meaning in this Guarantee Application.
4. Eskom hereby applies to Government for the issuance of an Approved Guarantee in respect of the Eligible Liability described in the Schedule to this Guarantee Application.
5. The Schedule attached to this Guarantee Application sets out the information required to be provided by Eskom pursuant to clause 8.3 of the Agreement.

Yours faithfully

For: Eskom Holdings SOC Limited

By:
Name:
Title:

By:
Name:
Title:

Schedule

This is the Schedule to the Guarantee Application by Eskom dated [•] 20XX. In accordance with clause 8.3 of the Agreement we set out the following information required in connection with such Guarantee Application:

1. **Description of Eligibility Liability**
[insert].
2. **Beneficiary(ies) of proposed Guarantee**
[insert].
3. **Maturity, term or duration of the Eligible Liability**
[insert].
4. **Pricing of the Eligible Liability (including interest rate and fees payable by Eskom)**
[insert].
5. **Description of any penalties or breakage costs which Eskom may become liable to pay in connection with the Eligible Liability (including the manner of calculation of any such penalties or breakage costs)**
[insert].
6. **Currency of Eligible Liability**
[insert].
7. **Description of any interest rate, currency or other hedging transaction which Eskom proposes to conclude in respect of or in relation to such Eligible Liability**
[insert].
8. **Intended date or dates on which the Eligible Liability will be incurred (including proposed draw downs profile of the Eligible Liability)**
[insert].
9. **Repayment profile of the Eligible Liability**
[insert].
10. **Description of the project or projects under the Capital Expenditure Programme to be financed pursuant to the incurral of the Eligible Liability to be guaranteed or, to the extent that such Eligible Liability is not to be incurred for a specific project or projects, the intended application of the proceeds of such Eligible**

Liability and the manner in which such application relates to the Capital Expenditure Programme

[insert].

- 11. Proposed date on which Guarantee is required to be issued**

[insert].

- 12. Aggregate Principal Amount of all Guaranteed Liabilities as at date of Guarantee Application**

ZAR: [insert]

US\$: [insert]

[other currency]: [insert]

Total Aggregate Principal Amount in ZAR: [insert].

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Form of Approved Guarantee

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PRO FORMA GUARANTEE

GUARANTEE

by

THE GOVERNMENT OF THE REPUBLIC OF SOUTH AFRICA

in favour of

[NAME OF BENEFICIARY]

for the obligations of

ESKOM HOLDINGS LIMITED

in respect of

Eskom's payment obligations under [insert description of Guaranteed Instrument]

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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) **[NAME OF BENEFICIARY/IES]** [(each, a "**Beneficiary**" and collectively, the "**Beneficiaries**") / [(the "**Beneficiary**")].

WHEREAS

- (A) **ESKOM HOLDINGS LIMITED** ("**Eskom**") has entered into a **[insert principal amount, description and date of Guaranteed Instrument]** (the "**Guaranteed Instrument**") in connection with the financing of its Capital Expenditure Programme.
- (B) The Minister of Public Enterprises and the Minister of Finance, both representing the Guarantor, consider that the furnishing of this Guarantee in respect of the Guaranteed Instrument is 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 Eskom to the **[Beneficiary] / [Beneficiaries]** in respect of the Guaranteed Instrument from time to time on the terms and conditions set out in this Guarantee.

NOW THEREFORE THE GUARANTOR AGREES AS FOLLOWS:


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1. INTERPRETATION

1.1 Definitions

All terms and expressions which have defined meanings in the Guaranteed Instrument 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 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 Guarantee 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.

2. GUARANTEE

Subject to clause 5 (*Recourse Against Eskom*), the Guarantor hereby irrevocably and unconditionally guarantees (as a principal obligation and not merely as suretyship) to the **[Beneficiary]** / **[Beneficiaries]** the due and punctual payment

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by Eskom of all sums from time to time payable by Eskom in respect of the Guaranteed Instrument as and when the same become due and payable and accordingly undertakes to pay to the **[Beneficiary]** / **[Beneficiaries]** within 5 (five) Business Days of written demand delivered to the Guarantor in accordance with the provisions of clause 3 (*Demands*), in the manner and currency prescribed by such Guaranteed Instrument for payments by Eskom in respect of such Guaranteed Instrument, any and every sum or sums which Eskom is at any time liable to pay in respect of such Guaranteed Instrument and which Eskom has failed to pay in the manner and currency prescribed by such Guaranteed Instrument for payments by Eskom in respect of such Guaranteed Instrument.

3. DEMANDS

If:

- 3.1 Eskom fails to pay any amount due under the Guaranteed Instrument on its due date for payment thereof; or
- 3.2 subject to clause 5 (*Recourse Against Eskom*) the Beneficiary has, pursuant to the occurrence of an event of default under the Guaranteed Instrument which is continuing, declared all sums outstanding under the Guaranteed Instrument to be forthwith due and payable,

the Beneficiary shall be entitled to demand payment from the Guarantor of the relevant sum (the "**Guaranteed Sum**") which Eskom 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 9 (*Notices and Domicilia*).

4. PAYMENTS

- 4.1 If **[the]** / **[a]** Beneficiary delivers a Demand Notice in accordance with clause 3 (*Demands*) the Guarantor shall pay the Guaranteed Sum to **[the]** / **[that]** Beneficiary *mutatis mutandis* in accordance with the relevant payment provisions of the Guaranteed Instrument.

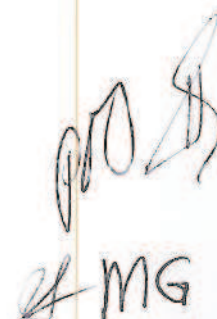
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- 4.2 The Guaranteed Sum payable by the Guarantor pursuant to a written Demand Notice in accordance with clause 3 (*Demands*) shall not exceed the sum due and payable by Eskom on the relevant due date.
- 4.3 Payment to **[the] / [a]** Beneficiary under this Guarantee of a Guaranteed Sum shall:
- 4.3.1 discharge the Guarantor's obligations to **[the] / [that]** Beneficiary under this Guarantee in respect of that Guaranteed Sum; and
- 4.3.2 *pro tanto* discharge Eskom of its corresponding obligations to **[the] / [that]** Beneficiary under the Guaranteed Instrument.

5. RECOURSE AGAINST THE ESKOM

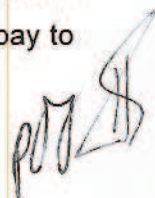
A Beneficiary wishing to benefit from, and make any demand under, this Guarantee acknowledges and agrees that:

- 5.1 while this Guarantee is in force, the rights of **[the] / [a]** Beneficiary against Eskom will be limited to the extent that, **[the] / [a]** Beneficiary:
- 5.1.1 shall not take any action or proceedings against Eskom to recover any amounts due and payable under the Guaranteed Instrument (including, without limitation, not levying or enforcing any attachment or execution upon the assets of Eskom), and all rights of enforcement of **[the] / [a]** Beneficiary in respect of any such amounts shall be exercised by **[the] / [a]** Beneficiary 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, Eskom or for the appointment of a liquidator, judicial manager or similar office of Eskom; and



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- 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 a breach or default under the Guaranteed Instrument occurring or while such breach or default is continuing) to effect payments of any amounts due and payable under the Guaranteed Instrument on behalf of Eskom as and when they fall due under such Guaranteed Instrument **[or to pay in full and discharge all amounts outstanding under the Guaranteed Instrument (whether or not as a result of enforcement), regardless of whether or not such amounts are then otherwise due and payable,]** and **[the] / [a]** Beneficiary will accept each such payment as if it were a payment made by Eskom under such Guaranteed Instrument without the exercise of any such entitlement by the Guarantor causing any breach, default, or termination event (howsoever described) or entitling **[the] / [a]** Beneficiary to declare such Guaranteed Instrument to be forthwith due and payable as a consequence of the failure by Eskom to make such payment; and
- 5.3 while this Guarantee is in force, if Eskom fails to pay any sum (each, an **"Unpaid Sum"**) under any Guaranteed Instrument, **[the] / [a]** Beneficiary shall not declare such Guaranteed Instrument to be forthwith due and payable as a consequence of the failure by Eskom to pay the Unpaid Sum unless **[the] / [a]** Beneficiary 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] / [a]** Beneficiary 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 breach or default under such Guaranteed Instrument shall occur as a consequence of the failure by Eskom 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] / [a] Beneficiary within 5 (five) Business Days of demand by Eskom in accordance with the provisions of this Guarantee.

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 Eskom's obligations under or in respect of the Guaranteed Instrument;
- 6.2.3 continue in full force and effect until all sums due from Eskom in respect of the Guaranteed Instrument have been paid, and all other actual or contingent payment obligations of Eskom 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 [Beneficiary] / [Beneficiaries] may have in relation to Eskom or the Guarantor under or by virtue of the Guaranteed Instrument.

6.3 Guarantor's Obligations Not Discharged

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

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- 6.3.1 **Winding-up:** the winding-up, dissolution, administration, re-organisation or moratorium of Eskom or any change in its status, function, control or ownership;
- 6.3.2 **Illegality:** any of the obligations of Eskom under or in respect of the Guaranteed Instrument 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 Eskom in respect of any of its obligations under or in respect the Guaranteed Instrument;
- 6.3.4 **Amendment:** any amendment to, or any variation, waiver or release of, any obligation of Eskom under or in respect of the Guaranteed Instrument 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 [Beneficiary] / [Beneficiaries] 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.

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6.5 Exercise of Rights

[The Beneficiary shall not] / [No Beneficiary shall] be obliged before exercising any of the rights, powers or remedies conferred upon it by this Guarantee or by law:

- 6.5.1 **Demand:** to make any demand of Eskom;
- 6.5.2 **Take Action:** to take any action or obtain judgment in any court against Eskom;
- 6.5.3 **Claim or Proof:** to make or file any claim or proof in a winding up or dissolution of Eskom; or
- 6.5.4 **Enforcement of Security:** to enforce or seek to enforce any other collateral or security given by Eskom, or any other person, in respect of any of the obligations of Eskom under the Guaranteed Instrument.

6.6 Deferral of Guarantor's Rights

The Guarantor agrees that, so long as any sums are or may be owed by Eskom in respect of the Guaranteed Instrument or Eskom 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:

- 6.6.1 **Indemnity:** to be indemnified by Eskom;
- 6.6.2 **Contribution:** to claim any contribution from any other guarantor of Eskom's obligations under or in respect of the Guaranteed Instrument;
- 6.6.3 **Subrogation:** to take the benefit (in whole or in part and whether by way of subrogation or otherwise) of any rights of the **[Beneficiary] / [Beneficiaries]** against Eskom in respect of amounts paid by the Guarantor under this Guarantee or any security enjoyed in connection

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with the Guaranteed Instrument by the **[Beneficiary] / [Beneficiaries]**;

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

6.6.5 **Set-off or Counterclaim:** to exercise any right of set-off against any obligor; or

6.6.6 **Proof in Insolvency:** to claim or prove as a creditor of Eskom in competition with the **[Beneficiary] / [Beneficiaries]** in the event of the bankruptcy, insolvency or liquidation of Eskom.

6.7 **Security**

The Guarantor hereby undertakes to the **[Beneficiary] / [Beneficiaries]** that, so long as any sums are or may be owed by Eskom in respect of the Guaranteed Instrument or Eskom 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 Eskom in respect of the granting of this Guarantee.

6.8 **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 the **[Beneficiary] / [Beneficiaries]** in respect of Eskom's obligations under the Guaranteed Instrument.

6.9 **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. **BENEFIT OF GUARANTEE**

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

8. **TAXES AND WITHHOLDINGS**

All payments in respect of the Guaranteed Instrument 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 the **[Beneficiary] / [Beneficiaries]** after such deduction or withholding shall equal the respective amounts of principal and interest which would have been receivable in respect of the Guaranteed Instrument in the absence of such deduction or withholding, except that no such additional amounts shall be payable with respect to the Guaranteed Instrument:

- 8.1.1 by or on behalf of **[the] / [a]** Beneficiary who is liable to such Taxes in respect of the Guaranteed Instrument by reason of his having some connection with the Republic of South Africa other than the receipt of principal or interest in respect thereof; or




- 8.1.2 by or on behalf of **[the] / [a]** Beneficiary 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] / [that]** Beneficiary); or
- 8.1.3 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, 1962) or taxable capital gain (as defined in paragraph 1 of the Eighth Schedule to the Income Tax Act, 1962) of **[the] / [a]** Beneficiary; or
- 8.1.4 more than 30 (thirty) days after the date on which such requirement to withhold or deduct arises, except to the extent that **[the] / [a]** Beneficiary would have been entitled to an additional amount on presenting the same for payment on such thirtieth day; or
- 8.1.5 if such withholding or deduction arises through the exercise by revenue authorities of special powers in respect of tax defaulters; or
- 8.1.6 where **[the] / [a]** Beneficiary is entitled to claim a Tax deduction, credit or similar benefit in respect of such withholding or deduction in terms of **[the] / [that]** Beneficiary's domestic Tax laws or applicable double Tax treaty and such Tax reduction, credit or similar benefit is actually granted to **[the] / [that]** Beneficiary.

9. NOTICES AND *DOMICILIA*

9.1 Notices

- 9.1.1 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.

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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

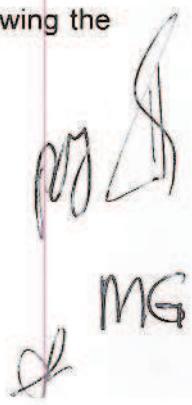
Attention: The Director-General: Department of
Public Enterprises

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

- 9.1.2 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.
- 9.1.3 The Guarantor may by written notice to the **[Beneficiary]** / **[Beneficiaries]** change its chosen addresses for the purposes of clause 9.1.1 to any other address(es), provided that the change shall become effective on the fourteenth day after the receipt of the notice by the addressee.
- 9.1.4 Any notice given in terms of this Guarantee shall:
- 9.1.4.1 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;



Handwritten signature and initials, including 'MG'.

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

unless the contrary is proved.

- 9.1.5 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.

9.2 ***Domicilia***

- 9.2.1 The Guarantor chooses its address referred to in clause 9.1.1 as its *domicilium citandi et executandi* at which documents in legal proceedings in connection with this Guarantee may be served.

- 9.2.2 The Guarantor may by written notice to the [Beneficiary] / [Beneficiaries] 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 [Beneficiary] / [Beneficiaries] in accordance with clause 9.3 (*Notices to the [Beneficiary] / [Beneficiaries]*).

9.3 **Notices to the [Beneficiary] / [Beneficiaries]**

Notices to the [Beneficiary] / [Beneficiaries] under this Guarantee shall be given *mutatis mutandis* in accordance with the relevant notice provisions of the Guaranteed Instrument.

10. **AMENDMENTS TO THIS GUARANTEE**

- 10.1 Subject to clause 10.2, the Guarantor may amend or vary the terms of this Guarantee with the prior written consent of the [Beneficiary] / [Beneficiaries].

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10.2 Notwithstanding clause 10.1 the Guarantor may make, without the consent of the **[Beneficiary] / [Beneficiaries]**, any amendment to or variation of the terms of this Guarantee which is:

10.2.1 of a formal, minor or technical nature;

10.2.2 made to correct a manifest error;

10.2.3 made to comply with mandatory provisions of the law of the jurisdiction in which Eskom is incorporated; or

10.2.4 not prejudicial to the rights and interests of the **[Beneficiary] / [Beneficiaries]**,

provided that no such amendment or variation shall be of any force or effect until communicated to the **[Beneficiary] / [Beneficiaries]** in accordance with clause 9.3 (*Notices to the [Beneficiary] / [Beneficiaries]*).

11. CANCELLATION OF THIS GUARANTEE

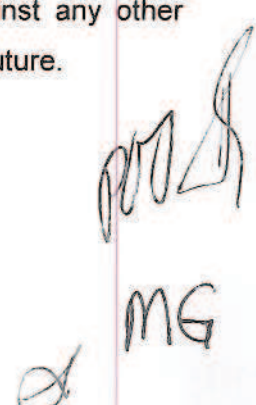
The Guarantor may cancel or terminate this Guarantee with the prior written consent of the **[Beneficiary] / [Beneficiaries]**.

12. CESSION AND ASSIGNMENT

The Guarantor shall not cede or assign any of its rights, or delegate any of its obligations, under this Guarantee without the prior written consent of the **[Beneficiary] / [Beneficiaries]**.

13. INDULGENCES

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

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14. 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 of the Guarantor in terms of section 70 of the PFMA.

15. 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.

16. APPLICABLE LAW

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

17. 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.

18. 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.

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19. 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.

20. ACCEPTANCE OF BENEFITS

The Guarantor hereby accepts the benefits conferred upon it in the Guaranteed Instrument.

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 _____ 200__

Witnesses:

for THE GOVERNMENT OF THE
REPUBLIC OF SOUTH AFRICA

1. N. P. Maseko

.....
Name:

Capacity: Minister of Public Enterprises

2.

Handwritten signatures and initials:
A large stylized signature at the top.
Below it, the letters "POT".
Further down, the letters "MG".
At the bottom, a small signature.

Concurred

Signed at

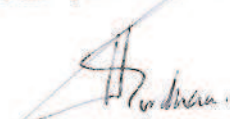
on

200__

Witnesses:

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

1.



Name:

Capacity: Minister of Finance

2.


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Annex 1

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 Beneficiary] (the “Beneficiary”)

Address: [insert address]

Dated: [•]

Dear Sirs

Letter of Demand in terms of a guarantee dated [•] by the Government of the Republic of South Africa in favour of [•] for the obligations of Eskom Holdings Limited in respect of the [•] (the “Guaranteed Instrument”)

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1. We refer to the above Guarantee. Terms defined, or incorporated by reference, in the Guarantee shall have the same meaning when used in this letter of demand.
2. Eskom has failed to pay the sum of R[•] due on [•] in respect of the Guaranteed Instrument.
3. 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 Guaranteed Instrument.
4. Payment must be made in accordance with the relevant payment provisions of the Guaranteed Instrument.

Yours faithfully,

.....

for

[insert name of Beneficiary]

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Form of Note Guarantee

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EXECUTION

GUARANTEE

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


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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.
- (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:


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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.

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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 the 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 14.1 (*Events of Default*) of the Terms and Conditions,

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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

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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

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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.

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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:

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- 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.


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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.

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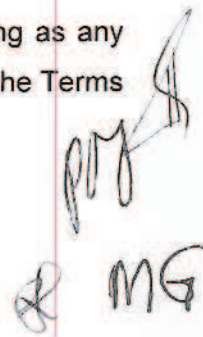
6.7 Deferral of Guarantor's Rights

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

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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

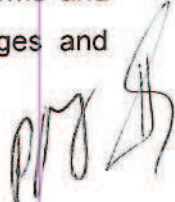
This Guarantee is in addition to, and the existence or enforceability of this Guarantee shall not affect or be affected or prejudiced by, any other guarantee or security held by any Noteholder in respect of the Issuer's obligations under the Notes.

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


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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

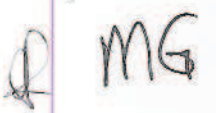

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- 9.1.2 held by or on behalf of a Noteholder who would not be liable or subject to the withholding or deduction by making a declaration of non-residency or other similar claim for exemption to the relevant tax authority (the effect of which is not 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, 1962) or taxable capital gain (as defined in paragraph 1 of the Eighth Schedule to the Income Tax Act, 1962) 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 addressee.
- 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;

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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 16 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

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- 11.1.2 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,

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 percent) in Nominal Amount of the Notes Outstanding from time to time.

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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

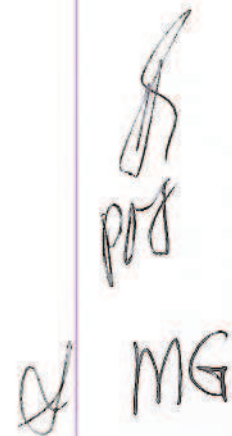
No indulgence granted by a Noteholder to the Guarantor shall constitute a waiver of any of that Noteholder's rights under this Guarantee. Accordingly, that Noteholder shall not be precluded, as a consequence of having granted such indulgence, from exercising any rights against the Guarantor which may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

Handwritten signature and initials. The signature appears to be 'MG' with a stylized flourish above it. Below the signature, the letters 'MG' are written in a larger, bold font.

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.


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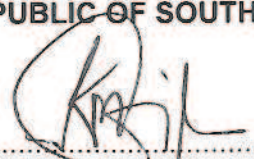
Thus signed and executed by the Minister of Public Enterprises of the Republic of South Africa in terms of section 66(2) of the Public Finance Management Act, 1999 acting with the concurrence of the Minister of Finance of the Republic of South Africa in terms of section 70 of the Public Finance Management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

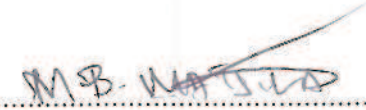
Signed at PRETORIA on 08/12/ 2011

Witnesses:

for THE GOVERNMENT OF THE
REPUBLIC OF SOUTH AFRICA

1. 


Name: N. GIGABA
Capacity: Minister of Public Enterprises

2. 

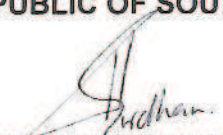
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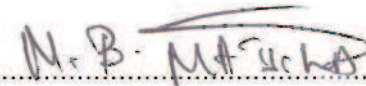
Signed at PRETORIA on 08/12 2011

Witnesses:

for THE GOVERNMENT OF THE
REPUBLIC OF SOUTH AFRICA

1. 


Name:
Capacity: Minister of Finance

2. 


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Annex 1

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 [•] 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.

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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 of the Terms and Conditions.

Yours faithfully,

.....

for

[insert name of Noteholder]

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Schedule 4

Initial Capital Expenditure Programme

Yearly Expenditure		2008/9	2009/10	2010/11	2011/12
Nominal Rm					
Generation					
TechPlan	31286	4,421	7,848	9,254	5,826
Major Overhauls	7011	1,424	1,556	1,299	1,258
Other	3141	595	1,055	870	424
Future Fuel	25281	1,469	4,464	6,620	5,850
RTS	12111	5,786	3,967	1,676	465
New Build	199033	19,668	47,846	55,082	44,954
Transmission					
Expansion	43672	4,769	8,951	13,284	8,143
Refurbishment	3142	528	792	751	660
Rights	3184	659	780	786	454
Capital spares	2036	82	293	592	584
Production equipment	316	53	113	49	51
Distribution					
Direct Customers	9134	1,939	1,850	1,755	1,770
Strengthening	14858	2,272	2,761	3,190	3,020
Government Funded Assets	9958	812	1,346	2,247	2,768
Refurbishment	9918	1,031	1,407	1,946	2,679
Split Metering Project	1464	57	339	404	291
Computer Software	1254	332	209	200	244
Asset Purchases	4237	747	758	822	906
Total including Government funded	50823	7,190	8,670	10,564	11,680
Less: Government Funded	9958	812	1,346	2,247	2,768
Corporate					
Office of the Chief Executive	9	1	2	2	2
Finance division	1092	100	505	313	112
Human Resource	175	19	61	35	29
Corporate Services Division	12614	520	1,569	4,574	5,864
ED and Large	110	28	26	21	22
Total	385,079	54,647	96,351	113,638	94,797

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DMTN Programme Amendments

[Handwritten signature]

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TERMS AND CONDITIONS OF THE NOTES

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;

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"Calculation Agent"	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;
"Certificate"	an Individual Certificate;
"Class of Noteholders"	the holders of a Series of Notes or, where appropriate, the holders of different Series of Notes;
"Commercial Paper Regulations"	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;
"Companies Act"	the Companies Act, 1973;
"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 " <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;
"CSD"	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;
"Dealer"	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;
"Determination Period"	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);
"Early Redemption Amount"	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>);
"Eskom Group"	the Issuer and any other company or entity whose financial results are consolidated with the financial results of the Issuer in accordance with IFRS;
"Event of Default"	any events described in Condition 15.1 (<i>Events of Default</i>);
"Exchange Control Regulations"	the Exchange Control Regulations, 1961, promulgated pursuant to the Currency and Exchanges Act, 1933;
"Exchange Period"	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;
"Exchange Price"	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;
"Exchange Securities"	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;

"Index-Linked Notes"	an Indexed Interest Note and/or an Indexed Redemption Amount Note, as applicable;
"Individual Certificate"	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;
"Instalment Amount"	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;
"Instalment Notes"	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;
"Interest Amount"	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>);
"Interest Commencement Date"	the first date from which interest on the Notes, other than Zero Coupon Notes, will accrue, as specified in the Applicable Pricing Supplement;
"Interest Payment Date"	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;
"Interest Rate" or "Rate of Interest"	the rate or rates of interest applicable to Notes other than Zero Coupon Notes as indicated in the Applicable Pricing Supplement;
"ISDA Definitions"	the ISDA Definitions published by ISDA (as amended, supplemented, revised or republished from time to time) as specified in the Applicable Pricing Supplement;
"ISDA"	the International Swaps and Derivatives Association Inc.;
"Issuer"	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;
"JSE"	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;
"Last Day to Register"	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;
"Material Group Company"	any company which is a member of the Eskom Group and which: (i) represents more than 10% (ten per cent) of the aggregate total assets or turnover of the Issuer on a consolidated

	basis;
	(ii) is incorporated in South Africa in accordance with the Companies Act; and
	(iii) is a Wholly Owned Subsidiary of the Issuer;
"Material Indebtedness"	any Indebtedness amounting in aggregate to not less than ZAR500,000,000;
"Mixed Rate Notes"	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>);
"NACA"	nominal annual compounded annually;
"NACM"	nominal annual compounded monthly;
"NACQ"	nominal annual compounded quarterly;
"NACS"	nominal annual compounded semi-annually;
"Nominal Amount"	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;
"Noteholders' Exchange Right"	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;
"Noteholders"	the holders of the listed and/or unlisted registered Notes (as recorded in the Register);
"Notes"	secured or unsecured notes issued or to be issued by the Issuer under the Programme, pursuant to this Programme Memorandum;
"Outstanding"	in relation to the Notes, all the Notes issued other than: (a) those which have been redeemed in full; (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; (c) those which have been purchased and cancelled as provided in Condition 9 (<i>Redemption and Purchase</i>); (d) those which have become prescribed under Condition 14 (<i>Prescription</i>); (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>); (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

	Certificates alleged to have been lost, stolen or destroyed and in respect of which replacement Individual Certificates have been issued pursuant to Condition 11 (<i>Exchange of Beneficial Interests and replacement of Certificates</i>), 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 (<i>Amendment of these Conditions</i>) and 19 (<i>Meetings of Noteholders</i>), 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);
"Participant"	a person accepted by the CSD as a participant in terms of section 34 of the Securities Services Act;
"Partly Paid Notes"	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);
"Paying Agent"	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;
"Payment Day"	any day which is a Business Day and upon which a payment is due by the Issuer in respect of the Notes;
"PFMA"	the Public Finance Management Act, 1999;
"Previous Programme Memorandum"	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;
"Programme Amount"	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> ";
"Programme"	the Eskom Limited ZAR65,000,000,000 Domestic Multi-Term Note Programme under which the Issuer may from time to time issue Notes;
"Redemption Date"	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;
"Reference Banks"	four leading banks in the South African inter-bank market selected by the Calculation Agent;

“Register”	the register maintained by the Issuer in terms of Condition 12 (<i>Register</i>), including any Sub-register, as the case may be;
“Relevant Date”	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: (i) the full amount of such monies have been received by the CSD; (ii) such monies are available for payment to the holders of uncertificated Notes; and (iii) notice to that effect has been duly given to such holders in accordance with the Applicable Procedures;
“Representative”	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;
“Securities Services Act”	the Securities Services Act, 2004;
“Series”	a Tranche of Notes together with any further Tranche or Tranches of Notes which are: (i) expressed to be consolidated and form a single series; and (ii) identical in all respects (including as to listing) except for their respective Issue Dates, Interest Commencement Dates and/or Issue Prices;
“Settlement Agent”	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;
“South Africa”	the Republic of South Africa;
“Sub-register”	a Sub-register as contemplated in Section 91A of the Companies Act;
“Subsidiary”	a subsidiary company as defined in Section 1(3) of the Companies Act;
“Sub-unit”	with respect to any currency, the lowest amount of such currency that is available as legal tender in the country of such currency;
“Terms and Conditions”	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;
“Tranche”	in relation to any particular Series, all Notes which are identical in all respects (including as to listing);
“Transfer Agent”	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;
“Transfer Form”	the written form for the transfer of a Note, in the form approved by the Transfer Agent, and signed by the transferor and transferee;
“Wholly Owned Subsidiary”	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.

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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.

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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

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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

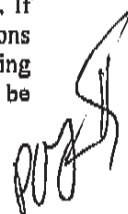



- (c) the relevant Reset Date is either (i) if the applicable Floating Rate Option is based on ZAR-JIBAR-SAFEX, the first day of that Interest Period; or (ii) in any other case, as specified in the Applicable Pricing Supplement.

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


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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*).

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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

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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*).

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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.

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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

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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.

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.

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- 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.

Schedule 6**Form of Compliance Certificate**

From : Eskom Holdings SOC Limited

To : The National Treasury of the Republic of South Africa

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

To : The Department of Public Enterprises of the Republic of South Africa

Attention : The Deputy Director-General: Chief Investment Portfolio Management

Date : [•]

Dear Sir

Amended and Restated Guarantee Framework Agreement (the Agreement) dated [•] October 2011 between the Government of the Republic of South Africa and Eskom Holdings Limited, as amended from time to time : Compliance Certificate

1. We refer to the Agreement.
2. This is a Compliance Certificate. Terms defined in the Agreement have the same meaning in this Compliance Certificate unless given a different meaning in this Compliance Certificate.
3. We hereby confirm that for the Measurement Period ending on [insert] (the **Measurement Date**):
 - 3.1 the Interest Multiple is [insert]; and
 - 3.2 the Leverage Ratio is [insert],

and accordingly interest and Guarantee Fees [are / are not] payable on the Payment Date immediately following such Measurement Date.

Yours faithfully

For: **Eskom Holdings SOC Limited**

By:

Name:

Title:

By:

Name:

Title:


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Schedule 7

Updated Capital Expenditure Programme

CAPEX AS PER SIX YEAR FINAL BUDGET						
All Amounts in R/m						
	FY11/12	FY12/13	FY13/14	FY14/15	FY15/16	FY16/17
Total Capex *	77 788	78 141	78 151	78 768	73 504	70 911
Research and development	714	1 250	2 617	3 270	200	80
Underground coal gasification	614	750	617	270		
CSP 1	100	500	2 000	5 000	200	60
ED	427	140	58	54	68	60
Corporate	1 511	1 088	832	844	807	1 770
Transmission breakdown	12 480	12 625	14 402	17 181	25 100	21 147
Refurbishment	894	1 148	1 288	1 828	2 048	1 778
Expansion & Strengthening	9 743	11 765	11 321	13 207	20 809	17 451
Strengthening	8 848	8 741	4 083	1 145	1 080	872
Gx Customer	895	8 054	6 658	12 083	19 749	16 779
Load Customer	-	-	-	-	-	-
Reliability	-	-	-	-	-	-
Other	-	-	-	-	-	-
Other & Strategic	384	385	395	518	997	620
EIA & Servitudes	801	664	750	828	756	801
Capital Spares	788	803	800	830	428	437
Production Equipment	80	71	67	52	63	50
SO&P	41	19	80	38	34	29
Other and strategic	38	15	44	34	30	24
Production Equipment	3	3	7	4	4	4
Distribution	8 445	8 828	10 745	12 200	13 160	13 788
Committed capex	3 744	1 355	610	-	-	-
Direct Customer	834	133	82	-	-	-
Strengthening	1 653	883	291	-	-	-
Refurbishment	858	464	207	-	-	-
Split Meter	230	-	-	-	-	-
Continuous Business Improvement	170	135	50	-	-	-
Asset Purchases	-	-	-	-	-	-
Integration of MTPPP wind farm and REFIT	-	-	-	-	-	-
Generation	61 382	40 686	43 332	39 028	30 745	31 530
Technical plan	7 554	8 981	9 931	11 825	13 150	13 453
Future Fuel	3 845	6 287	4 894	4 881	5 883	7 032
New Build	38 525	29 914	26 128	19 831	11 649	10 652
Medupi	15 888	12 822	7 848	6 302	2 872	-
Kusile	16 870	12 344	16 803	11 528	7 011	6 842
Ingula	3 378	3 161	2 143	2 881	-	-
Sere	810	1 187	497	313	-	-
Medupi FGD & units REFIT	-	-	-	8	1 088	3 708
Mpumalanga Projects (Refurb and Majuba Rail)	1 894	1 886	2 128	1 512	735	182
Return to Service	1 420	643	-	-	-	-
Komati	1 358	543	-	-	-	-
Grootvlei	62	-	-	-	-	-
Camden	-	-	-	-	-	-
Other RTS Generation	-	-	-	-	-	-
Air Quality	-	-	-	-	-	-
Other	214	407	350	219	229	241
Nuclear Land purchases	-	-	-	-	-	-
Future station land purchases	80	248	77	20	30	20
Primary Energy buildings & Facilities	154	158	173	190	308	221
Nuclear Division	2 847	2 914	4 315	7 357	3 411	2 525
Technical Plan - Projects	1 570	2 257	3 283	5 720	2 354	1 742
Technical Plan - QO's	328	50	99	88	70	0
Technplan	1 888	2 307	3 352	5 788	2 424	1 750
Future Fuel	889	607	963	1 558	987	778
Other	282	-	-	-	-	-

* Excludes interest during construction and government funded assets (distribution).



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