

**CO-OPERATIVE AGREEMENT
PERTAINING TO THE RESTRUCTURING OF THE
ELECTRICITY DISTRIBUTION INDUSTRY
IN SOUTH AFRICA**

DME FINAL DRAFT

28 JANUARY 2002

CONTENTS PAGE

- 1. Parties**
 - 2. Preamble**
 - 3. Interpretation**
 - 4. Accession of Parties**
 - 5. Principles of EDI Reform**
 - 6. Establishment of the Company**
 - 7. Business of the Company**
 - 8. Conduct of the Parties**
 - 9. Ring-Fencing of the Existing Service Providers**
 - 10. Establishment of Independent and Viable Reds**
 - 11. Exercise of Rights and Powers**
 - 12. Duration of Agreement**
 - 13. Assignment**
 - 14. Dispute Resolution and Arbitration**
 - 15. Co-operation after Passage of Legislation**
 - 16. Variation, Cancellation and Waiver**
 - 17. Applicable Law**
 - 18. Costs**
 - 19. Domicilium**
- Annexure A – Memorandum of Association**
- Annexure B – Articles of Association**
- Annexure C – Timetable**
- Annexure D – Ring-Fencing Framework**
- Annexure E – Accession Agreement**
- Annexure F – Map of REDs**

**CO-OPERATIVE AGREEMENT PERTAINING TO THE
RESTRUCTURING OF THE ELECTRICITY DISTRIBUTION INDUSTRY
IN SOUTH AFRICA**

FINAL DRAFT - 18 JANUARY 2002

1. PARTIES

- 1.1 **National Government**, in the capacity of the national sphere of government and sole shareholder of the Company, herein represented by the Minister of the Department of Minerals and Energy (hereinafter the “Government”);
- 1.2 **The South African Local Government Association**, established in terms of the Organised Local Government, 1997 (Act No 52 of 1997) (hereinafter “SALGA”);
- 1.3 **Eskom**, the juristic person referred to in section 2 of the Eskom Act, and upon conversion **Eskom Holdings Limited**, (hereinafter “Eskom”);
- 1.4 **Electricity Distribution Industry Holdings (Proprietary) Limited**, a company duly registered and incorporated with limited liability in terms of the company laws of the Republic of South Africa (hereinafter the “Company”); and
- 1.5 **National Electricity Regulator**, the juristic person referred to in section 2 of the Electricity Act (hereinafter “NER”).

2. PREAMBLE

- 2.1 The purpose of this Agreement is to establish a framework for co-operation amongst the Parties to work together, in accordance with the Agreement, to further the restructuring of the electricity distribution industry in South Africa in accordance with the Cabinet’s decision referred to in clause 2.3 below, both before and after the enactment of the Enabling Legislation.
- 2.2 The Government, subject to:
 - (i) the principles of co-operative government as contained in sections 40 and 41 of the Constitution;
 - (ii) a municipality’s right to govern, on its own initiative, the local government affairs of its community as contained in section 151(3) of the Constitution;

and

- (iii) its obligation not to compromise or impede a municipality's ability to exercise its powers or to perform its functions as contained in section 151(4) of the Constitution,

has legislative and executive authority to see to the effective performance by the Industry Parties of their respective functions in respect of the provision of electricity.

2.3 The Government has initiated various studies on the possible restructuring of the EDI, which culminated in the Cabinet approving the way forward on the restructuring of the EDI in a decision on 2 May 2001 (the "Cabinet Decision"). The issues covered in the Cabinet Decision included:

- (i) acceptance of the RED model as both the Government's policy direction and the end-state model for the restructuring of the EDI;
- (ii) endorsement of the thrust of the revised EDI restructuring report;
- (iii) approval of the EDI implementation plan, especially the establishment of the Company and the time frames;
- (iv) notation of work in progress regarding the EDI restructuring and the advanced stage that the EDI restructuring process is at compared with the work for reforming the generation and transmission sectors; and
- (v) approval of the ongoing consultations with stakeholders, such as new municipalities, NER, Eskom, organised labour, customers, and provincial and local governments.

2.4 Further to the Cabinet Decision, the Company was established to direct the restructuring process with a view to ensuring the successful implementation of the Government's policy objectives. The Company will establish six (6) wholly-owned subsidiary REDs, into which the business of all existing electricity distributors will be transferred over time. The Company will manage the process of establishing the REDs during the transitional period and once the reform process is complete, the REDs will function as independent distribution businesses and the Company will be wound up.

2.5 During the restructuring process, NER will be developing, subject to the applicable legislation,

- (i) the essential elements of the transitional and final regulatory environments; and
- (ii) the practical arrangements for the introduction of customer choice for a category of large industrial customers.

- 2.6 The Parties recognise that there are certain actions which a municipality or municipal entity is required to initiate prior to providing municipal services through an external mechanism such as a RED, and SALGA and the Municipality Parties undertake to use their best endeavours to procure the initiation of whatever action they are each required to do in terms of the Systems Act as soon as they are required to do so by the Company.
- 2.7 This Agreement sets out the arrangements between EDI participants to allow for progression of the restructuring process of the EDI during the transitional period until the Enabling Legislation comes into operation, and provides a basis for continued co-operation amongst the Parties after such legislation is operational.

3. INTERPRETATION

- 3.1 Clause headings have been provided for convenience only and shall be ignored in the interpretation of this Agreement.
- 3.2 Unless the context clearly indicates a contrary intention, expressions in this Agreement which denote or refer to:
- 3.2.1.1 a gender, shall include the other gender;
 - 3.2.1.2 a natural person shall include a juristic person, and vice versa; and
 - 3.2.1.3 the singular shall include the plural, and vice versa; and
 - 3.2.1.4 a law, regulation, act or statute of any government, governmental body or other regulatory body shall be construed as a reference to that as amended or re-enacted from time to time or as a reference to any successor to that.
- 3.3 The following words shall bear the meanings set out opposite them below:
- “Blueprint Report”** means the Electricity Distribution Industry Blueprint Report dated February 2001 compiled by the Department of Minerals and Energy;
- “Business”** had the meaning set out in clause 6;
- “Commencement Date”** means 1 April 2002, irrespective of the date of signature of this Agreement;
- “Constitution”** means the Constitution of the Republic of South Africa Act, 1996 (Act No 108 of 1996);
- “Designated RED Area”** means the RED boundaries as set out in the Blueprint Report;
- “EDI”** means the Electricity Distribution Industry in South Africa consisting of various bodies, including the Government, the Municipality Parties, Eskom and NER;
- “Electricity Act”** means the Electricity Act, 1987 (Act No 41 of 1987);

“Eskom Act” means the Eskom Act, 1987 (Act No 40 of 1987);

“Enabling Legislation” means the legislation enacted by the Parliament of the Republic of South Africa to allow for the restructuring of the EDI in South Africa, the establishment of the REDs and the transfer of the necessary officers, employees, assets, liabilities, rights and obligations to such REDs;

“Industry Parties” means the Municipality Parties and Eskom;

“municipal entity” means –

- (a) a company, co-operative, trust, fund or any other corporate entity established in terms of any applicable national or provincial legislation and which operates under the ownership control of one or more municipalities, and includes, in the case of a company under such ownership control, any subsidiary of that company; or
- (b) a service utility;

“municipality” when referred to as –

- (a) an entity, means a municipality as described in section 2 of the Systems Act; and
- (b) a geographic area, means a municipal area, as demarcated in terms of the provisions of the Local Government: Municipal Demarcation Act, 1998 (Act No 27 of 1998);

“Municipality Party” has the meaning ascribed thereto in clause 4.1 hereto;

“Parties” means the parties to this Agreement and **“Party”** shall be construed accordingly;

“provision of electricity” means the furnishing of electricity to consumers in a licensed area and the terms **“to provide or supply electricity”** shall bear the same meaning;

“RED” means a Regional Electricity Distribution business, established by the Company in a structured and phased approach in accordance with the provisions of this Agreement and the Enabling Legislation, to provide electricity in its region;

“service authority” means the power of a municipality to regulate the provisions of a municipal service by a service provider;

“service delivery agreement” means an agreement between a municipality or a multi-jurisdictional municipal service district and a RED in terms of which electricity distribution and retail services are provided by that RED for its own account;

“service provider” means a RED;

“Structures Act” means the Local Government: Municipal Structures Act, 1998 (Act No 117 of 1998); and

“Systems Act” means the Local Government: Municipal Systems Act, 2000 (Act No 32 of

2000).

“Termination Date” means the date on which this Agreement terminates as provided in clause 11;

4. ACCESSION OF PARTIES

4.1 It is intended that all municipalities and municipal entities should become a party to this Agreement by way of accession. Therefore each municipality and/or municipal entity (the “Party Applicant”) may be admitted as a new party to this Agreement subject to and in accordance with the provisions of this Agreement by execution and delivery of an Accession Agreement in the form attached as Annexure D signed by such Party Applicant and the Government. Each Party hereby irrevocably and unconditionally authorises the Government to execute and deliver on behalf of such Party an Accession Agreement duly executed by a Party Applicant, and to thereby admit the Party Applicant as a Party.

4.2 Upon execution and delivery of an Accession Agreement by both the Government and the Party Applicant in accordance with clause 4.1, the Party Applicant shall become a Party and shall be specifically referred to in this Agreement as a “Municipality Party”.

4.3 Upon a Party Applicant becoming a Party, the Government shall notify all other Parties that it has so become a Party.

5. PRINCIPLES OF EDI REFORM

5.1 The Parties agree that:

5.1.1 the EDI is an important element in the South African economy and has a key role to play in the critical economic and social development objectives of the country, including:

- (a) to provide electricity to all consumers on a cost effective basis with equitable tariffs;
- (b) to provide reliable and high quality supply and services to all consumers;
- (c) to meet the country’s electrification targets in the most cost-effective manner;
- (d) to meet the legitimate, economic and social interests of all role-players in the EDI; and
- (e) to operate in a financially sound and efficient manner in order to provide a reliable and sustainable future for the EDI;

5.1.2 there is an urgent need significantly to reform the EDI if it is to meet the above-mentioned critical objectives in the future, due to the following deficiencies that have been experienced:

- (a) the EDI is highly fragmented with approximately 250 distribution businesses, which businesses are extremely small by international standards. As a result, many of the basic economies of scale in the industry are being lost and administration and technical functions are duplicated across adjacent distributors in rural, urban and industrial areas resulting in high costs and prices;
- (b) the arrangements in the EDI are the result of the historic development of the industry and form no coherent pattern. As a result, consumers face significantly different levels of tariffs and standards of supply resulting in widespread inequity among consumers; and
- (c) the financial viability of the EDI has been under serious threat because a number of distributors have in recent years suffered financial collapse, facing severe debt problems including a backlog of non-payment, a lack of funds to maintain and extend the electricity networks and to meet the demands of the electrification programme.

5.1.3 to give effect to the Cabinet Decision, particularly in the period before the Enabling Legislation, a form of co-operative agreement, as set out in this Agreement, is required to enable the establishment of the Company with the authority to restructure the EDI.

5.2 The Parties agree that this Agreement will:

- (a) bind the Parties to the process of EDI restructuring;
- (b) enable the Company to interact with each of the other Parties as an independent and autonomous participant in the electricity distribution industry; and
- (c) facilitate the provision of resources to the Company by each of the other Parties in order to achieve the objectives referred to in this Agreement.

6. ESTABLISHMENT OF THE COMPANY

- 6.1 Each of the Industry Parties and SALGA acknowledge and accept the establishment, composition and functioning of the Company, being a private company, with the Memorandum of Association and Articles of Association attached hereto as Annexures A and B, respectively.
- 6.2 The Company is to be structured so as to draw expertise from the EDI in order to be involved in and further the restructuring process, and for this reason the composition of the board of the Company will be based on competency to fulfil that function, as further provided in the Articles of Association of the Company.
- 6.3 The Company shall be responsible for determining the overall implementation plan under which the EDI restructuring will take place in accordance with the Cabinet Decision, and for

monitoring the process throughout the transition period until each RED is regarded as viable.

7. BUSINESS OF THE COMPANY

7.1 The business of the Company, as provided in the Memorandum of Association, (the "Business") shall be:

- (a) to plan, control and manage the process of the establishment and implementation of six (6) independent and financially viable REDs in the Republic of South Africa in a structured and phased approach, in accordance with the provisions of the applicable legislation and the provisions contained in this Agreement, including the timetable set out in Annexure C;
- (b) to plan and co-ordinate the National Electrification Programme as determined by National Government, through the Department of Minerals and Energy, until this function is taken over by a body designated by the Government;
- (c) to manage the provision of short-term support by strong and capable electricity providers, prior to the establishment and implementation of the REDs, to identified electricity providers that are in urgent need of assistance;
- (d) to develop and procure the implementation of arrangements for support pertaining to electricity provision to low-income households, which function shall be assumed by the REDs on their establishment;
- (e) to prepare and implement an EDI-wide social plan; and
- (f) to acquire and hold shares in the REDs with special rights in regard to certain decisions.

7.2 The Business of the Company is to be undertaken in accordance with the timetable for restructuring as set out in Annexure C, and as amended by the Government, after consultation with the Parties, from time to time.

7.3 The Company shall within such period as may be specified by the Government, establish a set of principles and guidelines by which adherence to the timetable set out in Annexure C may be measured. Any failure to meet the timetable requirements shall be deemed to be a dispute to be resolved pursuant to clause 14.

8. CONDUCT OF THE PARTIES

8.1 Each of the Parties, except the Company undertakes that for the duration of this Agreement:

- (a) it shall provide the necessary assistance to the Company in accordance with this Agreement to enable it to meet the timetable set out in Annexure C, including the undertaking of specific tasks as agreed between any one or more Parties as relevant;

- (b) it shall promote restructuring of the EDI in accordance with the overall interests of the reform process and the management policies of the Company, as implemented from time to time and it shall co-operate with each of the other Parties to achieve that purpose.

8.2 Each of the Industry Parties undertakes that:

8.2.1 it shall ring-fence in a manner agreed with the Company their electricity businesses (in the case of the Municipality Parties) and their distribution business (in the case of Eskom) in preparation for the establishment of the REDs;

8.2.2 it shall keep NER and the Company promptly and fully informed of:

8.2.2.1 any activities that would materially affect the Business of the Company or the furtherance of the objectives referred to in this Agreement, including the establishment of the REDs and/or their operation; and

8.2.2.2 any proposed investment which due to its size and/or nature, could reasonably have an impact on the EDI;

8.2.3 prior to the REDs being operational, it shall put into place plans and do all that is necessary to facilitate the transfer of staff to the REDs;

8.2.4 without the prior approval of the Company, it shall not enter into service level agreements with municipalities or municipal entities falling outside its respective Designated RED Area (attached hereto as Annexure E is a map showing the boundaries of each RED);

8.2.5 it shall, at the request of the Company, provide skills and human resources generally, and negotiate in good faith with the Company the contracts and/or other agreements referred to in Clause 8.6.2 below.

8.3 Eskom shall, in a timely manner and in any event in accordance with the timetable in Annexure C, restructure its business units to form six (6) units in line with the RED boundaries.

8.4

8.4.1 The Company, in consultation with the REDs (as and when formed), shall consider any capital investments or developments brought to its notice pursuant to clause 8.2 in the context of the restructuring of the EDI reform process as outlined in the Blueprint Report.

8.4.2 The Company has the right to challenge, at its discretion, such investment and/or development as being contrary to the principles of the restructuring of the EDI.

8.4.3 The Company shall inform the Industry Party in writing that the proposed investment and/or development is contrary to the principles of the restructuring of the EDI and, should the Industry Party proceed with the investment and/or

development, the Company reserves the right to exclude the investment and/or development as an asset of the Industry Party to be transferred to the REDs or take such other action in relation to it as it considers appropriate.

- 8.4.4 Any disagreement under this clause 8.4 shall be treated as a dispute under clause 14.4.
- 8.5 The Government intends to finance the establishment of the Company, and to provide for the implementation of a mechanism for on-going funding of the Company.
- 8.6 The Company shall:
 - 8.6.1 prepare and submit to the Government for approval, management policies of the Company;
 - 8.6.2 establish project teams focused on the work required to achieve the main objects of the Company, including the establishment and implementation of the REDs, comprising full time staff, including employees from the Company and employees from the other Parties at the cost of the Company pursuant to a contract for services or other such agreement as entered into between each Party and the Company;
 - 8.6.3 establish mechanisms to facilitate consultation with the other Parties;
 - 8.6.4 establish the REDs as wholly-owned subsidiaries of the Company and, in this respect, to establish a Board of Directors for each RED on an interim basis and prior to the effective commencement of activities by each RED;
 - 8.6.5 establish a team within the Company to take direct responsibility for determining the arrangements to be introduced to meet the objectives regarding the electricity basic services support tariff pertaining to electricity provision to low-income households;
 - 8.6.6 establish a team within the Company to take direct responsibility for preparing and implementing an EDI-wide social plan;
 - 8.6.7 establish a team within the Company to take direct responsibility for preparing and implementing the National Electrification Programme;
 - 8.6.8 identify the electricity providers that are in urgent need of assistance and manage the provision of short-term support to such providers by strong and capable electricity providers; and
 - 8.6.9 submit quarterly reports to the other Parties reporting on its status in establishing the REDs and in adhering to the timetable set out in Annexure C.
- 8.7 The Company shall be a project-based organisation with project teams focused on the work required to achieve the main object of the Company, namely the establishment and implementation of the REDs in accordance with the timetable set out in Annexure C.

- 8.8 The Company shall be responsible for determining the overall implementation plan under which the EDI restructuring shall take place, and for monitoring the process throughout the transition period until each RED is regarded as viable.
- 8.9 The Government undertakes that it shall:
- (a) further develop and refine EDI restructuring policy issues as and when such issues arise;
 - (b) prepare essential legislation to give effect to the creation of the REDs, which legislation shall be the Enabling Legislation;
 - (c) in consultation with the applicable Municipality Party and the applicable RED, agree to a mechanism for compensating the municipalities and/or municipal entities for any stranded costs associated with the overheads that are currently shared with the municipal electricity businesses within municipalities and/or municipal entities where considered appropriate by Government; and
 - (d) redistribute the current surpluses generated from electricity, to municipalities.
- 8.10 The Government, using its position as sole shareholder in the Company, undertakes to wind-up the Company once the Business of the Company has been completed. If the Business of the Company is not complete before five years from the date of establishment of the Company, the Company, in consultation with the other Parties, shall undertake a review of its activities. The review will be placed on criteria compiled and approved by the Parties, and shall include the consideration of the capacity of each RED in at least the following areas:
- (a) financial viability;
 - (b) human resources requirements;
 - (c) operational service standards;
 - (d) extent of completion of transition;
 - (e) appropriateness of boundaries;
 - (f) effectiveness of electrification programme; and
 - (g) functioning of social plan.

9. RING-FENCING OF THE EXISTING SERVICE PROVIDERS

- 9.1 To ensure that the restructuring process is executed in a well-structured and orderly manner, the Parties agree that the process of RED establishment should be preceded by an eighteen (18) month preparation period (or such lesser period as such preparation shall take) as from 1 April 2002, during which period the Company shall, in accordance with the timetable set out in Annexure C, be responsible for matters including:

- (a) identifying the municipalities and municipal entities that are in urgent need of assistance and facilitating the conclusion of service delivery agreements, for the purpose of support with the aim to achieve viability in service delivery;
 - (b) facilitating, monitoring and assessing the ring-fencing process so as to ensure that the electricity businesses of the municipalities and municipal entities concerned are separated and ring-fenced from their current parent organisations in accordance with the timetable referred to above;
 - (c) identifying the assets, liabilities, systems and staff in the various municipalities and municipal entities and their current service providers, if the municipalities and municipal entities do not provide electricity themselves;
 - (d) preparing for the establishment of REDs and for transfer of the assets and liabilities, etc.;
 - (e) preparing service delivery agreements to be concluded between the REDs after their establishment;
 - (f) assisting the municipalities and municipal entities in establishing a mechanism and program for community consultation and information dissemination regarding the proposed service delivery agreements; and
 - (g) preparing a tariff policy, in consultation with NER, on the levying of fees for electricity provision by the REDs.
- 9.2 The Industry Parties shall ring-fence in accordance with the ring-fencing framework outlined in Annexure D.
- 9.3 If, at the end of this period, the Industry Parties shall not have completed their internal ring-fencing processes, the Government shall nonetheless proceed with the creation of the REDs.

10. ESTABLISHMENT OF INDEPENDENT AND VIABLE REDS

- 10.1 The establishment of REDs as operating entities shall take place, as indicated in the timetable set out in Annexure C, in a phased manner over a maximum period of two (2) years commencing after completion of Stage 1 of the restructuring timetable.
- 10.2 During the period of this Agreement the Company shall as part of a Stage 1 be responsible for:
- (a) establishing the REDs as wholly-owned subsidiary companies of the Company into which the assets and liabilities of the electricity businesses shall be transferred over the 2 (two) year period after Stage 1;
 - (b) determining the order in which the electricity distributors shall be transferred into the REDs, with the view to stabilise the overall financial state of the EDI, and to ensure that the REDs are financially balanced from the outset;

- (c) initiating negotiations between the municipalities or the multi-jurisdictional municipal service districts as bodies exercising service authority and the REDs to ensure that service delivery agreements be concluded between the municipalities or the multi-jurisdictional municipal service districts and the REDs in accordance with this Agreement;
- (d) overseeing the creation and filing of Memoranda and Articles of Association for each RED prior to the transfer of assets and liabilities enumerated in (a) above, which shall, amongst other things, include provisions regarding the appointment of executives to each RED;
- (e) overseeing the appointment of such executives prior to the transfer of assets and liabilities enumerated in 10.3 (a) below and ensuring the involvement of such executives in the issues relating to the relevant RED and to the transfer of such assets and liabilities to such RED; and
- (f) making proposals to NER regarding the planning assumptions to be used when setting tariffs, the target rate of return and other variables which may influence the tariff path.

10.3 The Company shall as part of a Stage 2 be responsible for:

- (a) through its project team, facilitating the gradual transferral of the assets and liabilities of the electricity distributors to the REDs (such process to include the activities outlined in clause 9.1 above);
- (b) until the REDs are fully established, operational and viable, retaining special voting rights in the REDs to ensure that the implementation program is adhered to, and that the rights of roleplayers are not adversely affected;
- (c) monitoring the financial viability of the REDs with a view to facilitating additional financial and other support, if necessary; and
- (d) retaining the option, in extreme circumstances, of re-allocating staff, assets or financial resources among REDs.

10.4 During this period NER, in accordance with the applicable legislation, shall issue a licence to each RED after its establishment and introduce the transitional regulatory arrangements.

11. EXERCISE OF RIGHTS AND POWERS

Each Party undertakes that (so far as it is legally able) it shall exercise all powers to ensure the complete and mutual fulfilment, observance and performance of the provisions of this Agreement.

12. DURATION OF AGREEMENT

This Agreement shall commence on the Commencement Date and shall terminate on the date when each of the REDs is determined by the Minister of the Department of Minerals and Energy to be viable or on such later date as the Minister of the Department of Minerals and Energy may provide for by written notice to each of the Parties.

13. ASSIGNMENT

The provisions of this Agreement shall automatically inure to any legal successors of the Parties but may not be assigned by a Party to any other person without the written consent of the other Parties.

14. DISPUTE RESOLUTION AND ARBITRATION

14.1 The Parties accept that disputes may arise between them (including a breach of this Agreement) during the existence of this Agreement.

14.2 Any dispute not otherwise specifically provided for under this Agreement shall be referred to a joint committee comprising two (2) representatives of each Party in dispute (or the Party in breach and the Government in the case of a breach, except where the Government is said to be in breach in which case the matter will immediately be determined in accordance with clause 14.3) who shall use their best endeavours to resolve the dispute within fourteen (14) days of it having been referred to them.

14.3 Any dispute not resolved in accordance with the foregoing, shall be referred to NER for decision, with NER acting as an expert and not as an arbitrator. Subject to clause 14.4 below, the Parties agree to abide by the decision of NER. If NER is a party to any dispute arising under this Agreement, such dispute shall immediately be referred to the committee indicated in clause 14.4 below, whose decision shall be final and binding. Insofar as the two Director Generals do not agree on a decision involving NER, the view of the Director General of the Department of Minerals and Energy shall prevail.

14.4 Where a Party to the dispute is unhappy with a decision of NER under clause 14.3, it may refer the matter to a committee made up of the Director General of the Department of Minerals and Energy and the Department of Provincial and Local Government, whose decision shall be final and binding. Insofar as the two Director Generals do not agree on a decision, the decision of NER shall prevail.

15. CO-OPERATION AFTER PASSAGE OF LESIGLATION

As and when the Enabling Legislation comes into operation, the Parties may agree to meet to discuss a co-operative way forward.

16. VARIATION, CANCELLATION AND WAIVER

No varying from, adding to, deleting from, or cancelling of this Agreement, and no waiver of any right under this Agreement, shall be effective unless reduced to writing and signed by, or on behalf of, the Parties.

17. APPLICABLE LAW

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

18. COSTS

Each Party shall bear its own legal and other costs incidental to the drafting, negotiation, and execution of this Agreement.

19. DOMICILIUM

19.1 The Parties choose as their domicilia citandi et executandi the following addresses:

the Government at :

SALGA at :

Eskom at :

The Company at :

NER at :

19.2 Each Party shall be entitled to change its aforesaid address to another address after having given the other Parties seven (7) days written notice of such change of address;

19.3 For general correspondence purposes the following addresses may be used subject to the provisions of 19.2 above :

the Government at :

SALGA at :

Eskom at :

the Company at :

NER at :

Thus done and signed at.....on this.....day of.....20.....

As witnesses:

1.....

GOVERNMENT

2.....

Particulars of signatory who warrants
that he has been authorized thereto

Thus done and signed at.....on this.....day of.....20.....

As witnesses:

1.....

SALGA

2.....

Particulars of signatory who warrants
that he has been authorized thereto

Thus done and signed at.....on this.....day of.....20.....

As witnesses:

1.....

ESKOM

2.....

Particulars of signatory who warrants
that he has been authorized thereto

Thus done and signed at.....on this.....day of.....20.....

As witnesses:

1.....

COMPANY

2.....

Particulars of signatory who warrants
that he has been authorized thereto

Thus done and signed at.....on this.....day of.....20.....

As witnesses:

1.....

NER

2.....

Particulars of signatory who warrants
that he has been authorized thereto

Annexure A
Memorandum of Association

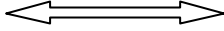
Annexure B
Articles of Association

Annexure C

TIMETABLE OF THE RESTRUCTURING OF EDI

PHASE 1

BLUE PRINT



PHASE 2

ESTABLISHMENT OF EDI HOLDINGS



Key Executives in place and operational
1 April 2002

PHASE 3

RING FENCING OF DISTRIBUTION BUSINESS



Start 1 April 2002

PHASE 4

RED ESTABLISHMENT



Start 1 October 2003 – 30 September 2005

PHASE 5

Consolidation of REDs

Start 1 October 2005 ? end 31 September 2007

PHASE 6

Exit of EDI Holdings 1 October 2007

Annexure D
Ring-Fencing Framework

[To be completed]

Annexure E
Accession Agreement

This Accession Agreement is made on [] between:

- (1) National Government, in the capacity of the national sphere of government and sole shareholder of the Company, herein represented by the Minister of the Department of Minerals and Energy (hereinafter the "Government");
- (2) *[Insert name of person wishing to be admitted to become a party to the Co-operative Agreement]* (the "Party Applicant")

WHEREAS:

- (A) By the Co-operative Agreement dated [• 2002] made between the Parties named therein and as now in force between such Parties and, by virtue of any Accession Agreement entered into before the date of this Accession Agreement, any other entities that have subsequently become a Party thereto, the Parties agreed to give effect to and be bound by the Co-operative Agreement.
- (B) The Party Applicant wishes to be admitted as a Party to the Co-operative Agreement.
- (C) By the provisions of the Accession Agreement, all Parties authorise the Government to sign this Accession Agreement on their behalf.

IT IS HEREBY AGREED as follows:

1. In this Accession Agreement, words and expression defined in or for the purposes of the Co-operative Agreement and not otherwise defined herein shall have the meanings ascribed thereto under the Co-operative Agreement.
2. The Government (acting on its own behalf and on behalf of each of the other Parties) hereby admits the Party Applicant as an additional Party under the Co-operative Agreement with effect from the date of this Accession Agreement on the terms and conditions hereof.
3. The Party Applicant hereby accepts its admission as a Party and undertakes with the Government (acting on its own behalf and on behalf of each of the other Parties) to perform and to be bound by the Co-operative Agreement as a Party as from the date hereof.

4. For all purposes in connection with the Co-operative Agreement the Party Applicant shall as from the date hereof be treated as if it has been a signatory of the Co-operative Agreement from the date hereof, and as if this Accession Agreement were part of the Co-operative Agreement from the date hereof, and the rights and obligations of the Parties shall be construed accordingly.
5. This Accession Agreement and the Co-operative Agreement shall be read and construed as one document and references (in or pursuant to the Co-operative Agreement) to the Co-operative Agreement (howsoever expressed) should be read and construed as reference to the Co-operative Agreement and this Accession Agreement.
6. This Accession Agreement may be executed in counterparts.
7. This Accession Agreement shall be governed by and interpreted in accordance with the laws of the Republic of South Africa.

Annexure F
Map of REDs
[To be Inserted]