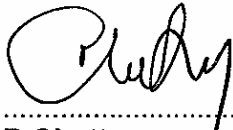
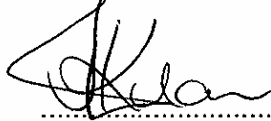


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Acting Finance DirectorDate: 14/10/09**Content**

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## 1 Introduction

Eskom Holdings Ltd and its subsidiaries (hereinafter referred to as “Eskom”) utilises contractors for procurement of labour and services (hereinafter referred to as “Contractors”). This procedure document stipulates the tax treatment of payments made to these Contractors as of 1st March 2009.

## 2 Policy Statement: Tax Treatment of Payments to Contractors

### 2.1.1 Companies / Close Corporation/ Trusts

PAYE must be withheld from all payments to a Company, CC or Trust that is a Personal Service Provider as defined in the Fourth Schedule to the Income Tax Act.

The evaluation questionnaire in **Annex A** should be used to determine if the Company, CC or Trust is a Personal Service Provider as defined in the Income Tax Act.

The tax rate to be used to determine the amount of PAYE to be withheld will be communicated by the Corporate Tax Department.

### 2.1.2 Labour Brokers (Natural Persons)

PAYE must be withheld from all payments to a natural person who is a Labour Broker as defined in the Fourth Schedule to the Income Tax Act, other than a Labour Broker who has provided Eskom with a valid IRP30 certificate.

The evaluation questionnaire in **Annex B** should be used to determine whether a natural person is a Labour Broker as defined in the Income Tax Act.

The tax rate to be used to determine the amount of PAYE to be withheld will be communicated by the Corporate Tax Department.

### 2.1.3 Dependent Contractors (Natural Persons)

PAYE should be withheld from all payments to a natural person who is not carrying on an independent trade in terms of the definition of Remuneration in the Fourth Schedule to the Income Tax Act.

The evaluation questionnaire in **Annex C** should be used to determine whether a natural person is carrying on an independent trade in terms of the definition of Remuneration in the Income Tax Act.

The EMP10 tables should be used to determine the amount of PAYE to be withheld.

### 2.1.4 Contractor Classification Decision Tree

The Contractor classification decision tree on page 10 can be used as a guide to assist with the determination of whether PAYE should be withheld from payments to a Contractor.

### 2.1.5 The Common Law Dominant Impression Test

The common law dominant impression test grid on page 11 can be used as a guide to assist with the determination of whether a Contractor could be regarded as an Independent Contractor (i.e. carries on an independent trade) or person who renders services to Eskom on behalf of a Company, CC or Trust could be regarded as an Employee in relation to Eskom.

## 2.3 Tax Certificates

### 2.3.1 IRP 5 Tax Certificate

IRP 5 tax certificates should be issued to the Contractors in respect of each tax year where PAYE has been withheld. A tax year for the purposes of PAYE commences on 1<sup>st</sup> March and ends on 28th/29th February.

Copies, hard or electronic, of the IRP 5 tax certificates should be submitted to SARS and retained by Eskom for a period of 5 years.

### 2.3.2 IT 3(a) Tax Certificate

IT 3(a) tax certificates should be issued to the Contractors in respect of each tax year where PAYE has not been withheld. A tax year for the purposes of PAYE commences on 1<sup>st</sup> March and ends on 28th/29th February.

Copies, hard or electronic, of the IT 3(a) certificates should be submitted to SARS and retained by Eskom for a period of 5 years.

## 2.4. Calculation of PAYE

PAYE is calculated based on the gross amount payable to the contractor. Where a contractor is registered for VAT, PAYE is calculated on the amount excluding VAT as is illustrated by means of the following example:

### Example

Eskom receives a tax invoice from a contractor for a consideration (i.e. VAT inclusive amount) of R114 000. The VAT on the tax invoice is therefore R14 000. PAYE will be calculated on the VAT exclusive amount, i.e. R100 000. Thus, assuming that the applicable PAYE tax rate is 33%, the PAYE amount to be withheld will be R33 000.

The amount to be paid to the contractor will be calculated as follows:

VAT exclusive amount less PAYE	(R100 000 – R33 000)	R67 000
VAT		<u>R14 000</u>
<b>Total Payable</b>		<b><u>R81 000</u></b>

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## 3 Supporting Clauses

### Index of Supporting Clauses

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#### 3.1 Scope

In terms of the Fourth Schedule to the Income Tax Act, an **Employer** is required to withhold PAYE from an **Employee** to whom **Remuneration is paid or payable**.

Contractors that supply Eskom with labour and services could, for tax purposes fall within the definition of an Employee to whom Remuneration is paid or payable. This procedure outlines the process to be followed to identify Contractors that fall within this definition, for the purpose of determining whether Eskom should withhold PAYE from their payments.

##### 3.1.1 Purpose

The purpose of this document is to ensure that the principles of the Income Tax are applied correctly to determine the liability for PAYE in respect of Contractors.

##### 3.1.2 Applicability

This procedure document applies to Eskom Holdings Limited, its divisions, subsidiaries and all entities wherein Eskom has a controlling interest (hereinafter referred to as "Eskom").

#### 3.2 Normative / Informative References

Parties using this policy shall apply the most recent edition of the documents listed below:

##### 3.2.1 Normative

ISO 9001:2000 Quality Management Systems

Income Tax Act No. 58 of 1962

SARS Guide for Employers in respect of Employees' Tax

SARS Interpretation Note No. 17 - Employees' Tax: Independent Contractors

SARS Interpretation Note No. 35 - Employees' Tax: Personal Service Companies, Personal Service Trusts and Labour Brokers

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### 3.2.2 Informative

See paragraph 3.2.1 above.

### 3.3 Definitions

Terms mentioned below are defined in the Income Tax Act. The added emphasis in the definitions is purely for ease of reference and to highlight important issues. In certain instances, definitions have been simplified for purposes of this procedure.

#### 3.3.1 Connected Person

(a) In relation to a natural person:

- Any relative of such person. A relative means the spouse of such person or any person related to him or his spouse to the third degree of consanguinity or any spouse of any person so related.
- Any trust of which such natural person or such relative is a beneficiary.

(b) In relation to a member of a partnership:

- any other member; and
- any connected person in relation to any member of such partnership.

(c) In relation to a company:

- Its holding company, subsidiary and any fellow subsidiary;
- Any other company which holds at least 20 % in the equity share capital of the company and no shareholder holds a majority voting rights;
- Any person other than a company holding at least 20 % of the equity shares or voting rights of the company;
- Any other company if such company is managed or controlled by:
  - any person who or which is a connected person in relation to such company, or
  - any person who or which is a connected person in relation to a person contemplated in above.

(d) In relation to a close corporation:

- Any member of the close corporation;
- Any relative of the member or any trust which is a connected person in relation to the member.

(e) In relation to a trust:

- Any beneficiary of such trust; and
- Any connected person in relation to such beneficiary.

#### 3.3.2 Company

The definition of a "Company" includes:

(a) any association, corporation or company (other than a close corporation) incorporated or deemed to be incorporated by, or under any law in force or previously in force in the Republic or in any part thereof, or any body corporate formed or established or deemed to be formed or established by, or under any such law; or

(b) a close corporation.

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### 3.3.3 Independent Contractor

The term “Independent Contractor” is not defined in the Income Tax Act. The meaning of this term can however be deduced from the definition of Remuneration. Please refer to the definition of Remuneration for the meaning of this term.

### 3.3.4 Employee

“Employee” means:

- (a) Any natural person who receives or is entitled to receive any Remuneration;
- (b) Any person (including a Company or a Close Corporation) who receives, or is entitled to receive any Remuneration for any services rendered to, or on behalf of a Labour Broker;
- (c) Any Labour Broker;
- (d) Any person, or class, or category of person whom the Minister of Finance by notice in the Gazette, declares to be an employee for the purposes of this definition and;
- (e) Any Personal Service Provider; and
- (f) Any director of a private company.

### 3.3.5 Employer

“Employer” means any person who pays, or is liable to pay any **person** any amount by way of **Remuneration**.

**3.3.6 He:** the term he refers to the masculine and feminine gender.

### 3.3.7 Labour Broker

“Labour Broker” means any **natural person** who conducts or carries on any business whereby such person for reward provides a client of such business with other persons to render a service or perform work for such client, or procures such other persons for the client, for which services or work such other persons are remunerated by such person.

### 3.3.8 Personal Service Provider

“Personal Service Provider” means **any Company, CC or Trust**, where any service is rendered on behalf of such Company, CC or Trust to a client of such Company, CC or Trust is **rendered personally by any person who is a Connected Person** in relation to such Company, CC or Trust, **and**

- a) such person would be regarded as an employee of such client if such service was rendered by such person directly to such client, other than on behalf of such company or trust; **or**
- b) where those duties must be performed mainly at the premises of the client, such person or such person or trust is subject to the control or supervision of such client as to the manner in which the duties are performed or are to be performed in rendering such service; **or**
- c) where more than eighty per cent (80%) of the income of such company or trust during the year of assessment from services rendered consists of or is likely to consist of amounts received directly or indirectly from any one client of such company or trust, or any associated institution as defined in the Seventh Schedule to the Income Tax Act, in relation to such client,

**Except**

Where such Company, CC or Trust **throughout the year of assessment** employs **three or more full-time employees** who are on a full-time basis **engaged in the business of such**

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**company or trust** of rendering any such service, **other than any employee who is a shareholder or member of the company or trust** or is a **Connected Person** to such person;

### 3.3.9 Person

A person includes a natural person, a Company, CC, the estate of a deceased person, any Trust and an insolvent estate.

### 3.3.10 Remuneration

“Remuneration” means any amount of income which is paid or is payable to any **person** by way of any salary, leave pay, wage, overtime pay, bonus, gratuity, commission, fee, emolument, pension, superannuation allowance, retiring allowance or stipend, whether in cash or otherwise and whether or not in respect of services rendered, but **excluding** any amount paid or payable in respect of services rendered or to be rendered by an Independent Contractor.

An amount that does not fall in within the definition of Remuneration is not subject to PAYE. Amounts paid for services rendered by an “Independent Contractor” are excluded from the definition of remuneration.

An Independent Contractor is a person that carries on an independent trade. The definition of Remuneration provides that a person is **deemed not to carry on independent trade**, and therefore a not an **Independent contractor** where:

- (a) He is required to be perform his services mainly at the premises of his client, and
- (b) He is **subject to the control or supervision** of the client as to the manner in which his duties are performed or the hours of work,

**The definition of Remuneration also provides that a person is deemed to carry on an independent trade if** throughout the year of assessment he employs three or more employees who are on a full time basis engaged in his business of rendering the service in question, other than any employee who is a Connected Person in relation to him.

### 3.3.11 Trust

“Trust” means any trust fund consisting of cash or other assets which are administered and controlled by a person acting in a fiduciary capacity, where such person is appointed under a deed of trust or by agreement or under a will of a deceased person.

## 3.4 Abbreviations

**3.4.1 APS:** Accounts Payable Section

**3.4.2 CC:** Close Corporation

**3.4.3 Co:** Company

**3.4.4 EDC:** Eskom Documentation Centre

**3.4.5 EMP 10 Tables:** Income Tax Tables.

**3.4.6 EMP 201:** Employees’ Tax Return for Remittance

**3.4.7 Income Tax Act:** The Income Tax Act No. 58 of 1962

**3.4.8 IRP 30:** Exemption Certificate

**3.4.9 IT 3(a):** Employees’ Tax Certificate where no tax was withheld

**3.4.10 IRP 5:** Employees’ Tax Certificate where tax was withheld

**3.4.11 PAYE:** Employees’ Tax

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**3.4.12 SARS:** South African Revenue Service

**3.4.13 VAT:** Value-Added Tax

### **3.5 Roles and Responsibilities**

#### **3.5.1 Procurement Department**

The Procurement Department is responsible for:

- Ensuring that all successful Contractors (i.e. suppliers that provide labour or services) complete the applicable Evaluation Questionnaires.
- Evaluating the completed Evaluation Questionnaire, with assistance from Corporate Tax where necessary, to determine whether PAYE should be withheld from payments to the Contractors.
- Providing APS with a written notification to withhold or not to withhold PAYE.
- Ensuring that Labour Brokers provide new IRP 30 certificates timeously.
- Providing written notification to APS to withhold PAYE where a Labour Broker fails to provide a new IRP 30 Certificate on time.
- Ensuring that the completed Evaluation Questionnaires, valid original IRP 30 Certificates, written notifications to APS to withhold PAYE and any other related documents are filed systematically and readily available.
- Notifying Corporate Tax of employees who require training on this procedure.

Where the Procurement Department is not involved, the department which concludes the contract will assume the above responsibilities.

#### **3.5.2 Account Payable Section**

The Accounts Payable Section (APS) is responsible for:

- Ensuring that in respect of all Contractors (i.e. suppliers that provide labour or services), it receives a written notification from the Procurement Department on whether PAYE is to be withheld or not.
- Ensuring that the correct amount of PAYE is withheld.
- Ensuring that the written confirmations from APS to withhold or not to withhold PAYE and any other related documents are filed systematically and readily available.
- Notifying Corporate Tax of employees who require training on this procedure.

#### **3.5.3 Payroll Department**

The Payroll Department is responsible for:

- Issuing and reconciling IRP 5 and IT 3(a) tax certificates.
- Ensuring that copies of the IRP 5 and IT 3(a) certificates are submitted to SARS timeously.
- Ensuring that copies of IRP 5 and IT 3(a) certificates are filed systematically and readily available.

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- Ensuring that copies of the IRP 5 and IT 3(a) certificates are retained for a period of 5 years and are readily available for inspection by SARS.
- Notifying Corporate Tax of employees who require training on this procedure.

### **3.5.4 Corporate Tax**

Corporate Tax is responsible for:

- Providing the relevant parties with training on this procedure, proactively and on request.
- Providing the relevant parties with written notification of changes in applicable PAYE rates.
- Providing advice on evaluation of the Questionnaires.
- Conducting reviews to determine compliance with this procedure or delegate this to another functionary (e.g. Internal Audit Department).

### **3.6 Retention of Records**

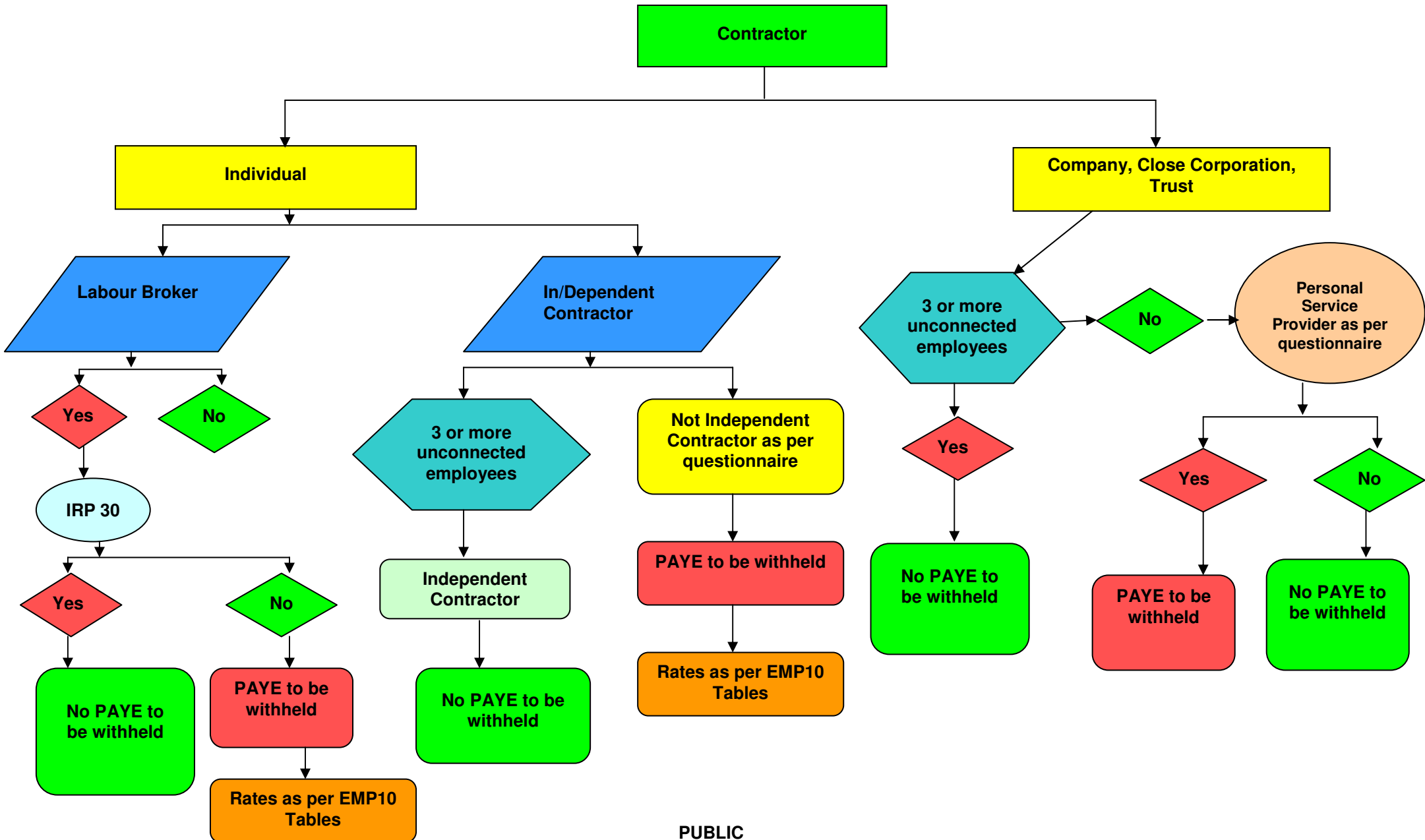
All records, hard or electronic, must be retained by Procurement, APS and Payroll departments for a minimum period of five years.

### **3.7 Process for monitoring**

This procedure document will be monitored and maintained by the Corporate Tax Department.

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# Contractor Classification Decision Tree



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**COMMON LAW DOMINANT IMPRESSION TEST GRID**

	<b>INDICATOR</b>	<b>SUGGESTS EMPLOYEE STATUS</b>	<b>SUGGESTS INDEPENDENT CONTRACTOR STATUS</b>
<b>NEAR CONCLUSIVE</b> Control manner/Exclusive Acquisition.	Control of manner of working	Employer instructs (has right to) which tools/equipment, or staff, or raw materials, or routines, patents, technology	Person chooses which tools/equipment, or staff, or raw materials, or routines, patents, technology
	Payment regime	Payment by a rate x time-period, <b>but regardless of output or result.</b>	Payment by a rate x time-period but <b>with reference to results</b> , or payment by output or "results in a time period".
	Person who must render the service	Person obliged to render service personally, hires & fires only with approval	Person, as employer, can delegate to, hire & fire own employees, or can subcontract
	Nature of obligation to work	Person obliged to be present, even if there is no work to be done	Person only present and performing work if actually required, and chooses to
	Employer (client) base	Person bound to an exclusive relationship with one employer (particularly for independent business test)	Person free to build a multiple concurrent client base (esp. if tries to build client base - advertises etc)
	Risk/Profit & loss	Employer bears risk (pays despite poor performance/slow markets) (particularly for independent business test)	Person bears risk (bad workmanship, price hikes, time over-runs)
<b>PERSUASIVE</b> Extent of Control	Instructions/Supervision	Employer instructs on location, what work, sequence of work etc or has the right to do so	Person determines own work, sequence of work etc. Bound by contract terms, not orders as to what work, where etc
	Reports	<b>Control through oral/written reports</b>	Person not obliged to make reports
	Training	<b>Employer controls by training the person in the employer's methods</b>	Worker uses/trains in own methods
	Productive time (work hours, work week)	Controlled or set by employer/person works full time or substantially so	At person's discretion
<b>RELEVANT</b> Labels, clauses, compliance, economic circumstances, "resonant" of	Tools, materials, stationery etc	Provided by employer, no contractual requirement that person provides	Contractually/necessarily provided by person
	Office/ workshop, admin/ secretarial etc	Provided by employer, no contractual requirement that Person provides	Contractually/necessarily provided by person
	Integration/Usual premises	Employer's usual business premises	Person's own/leased premises
	Integration/Usual business operations	Person's service critical/integral part of employer's operations	Person's services are incidental to the employer's operations or success
	Integration/Hierarchy & organogram	Person has a job designation, a position in the employer's hierarchy	Person designated by profession or trade, no position in the hierarchy
	Duration of relationship	Open ended/fixed term & renewable, ends on death of worker	Limited with regard to result, binds business despite worker's death
	Threat of termination/ Breach of contract	Employer may dismiss on notice (LRA equity aside), worker may resign at will (BCEA aside)	Employer in breach if it terminates prematurely. Person in breach if fails to deliver product/service
	Significant investment	Employer finances premises, tools, raw materials, training etc	Person finances premises, tools, raw materials, training etc
	Employee benefits	Especially if designed to reward loyalty	Person not eligible for benefits
	<i>Bona fide</i> expenses or statutory compliance	No business expenses, travel expenses and/or reimbursed by employer. Registered with trade/professional association	Over-heads built into contract prices. Registered under tax/labour statutes & with trade/professional association
	Viability on termination	Obligated to approach an employment agency of labour broker to obtain new work (particularly for independent business test).	Has other clients, continues trading. Was a labour broker or independent contractor prior to this contract
	Industry norms, customs	Militate against independent viability Make it likely person is an employee	Will promote independent viability Make it likely person is an independent contractor or labour broker

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## 4 Authorisation

This document has been seen and accepted by:

<b>Name</b>	<b>Designation</b>
PJ Maroga	Chief Executive
E Johnson	Chief Officer (Networks & Customer Service)
BA Dames	Chief Officer (Generation Division)
I du Plessis	Acting Finance Director
E M Pule	Acting Managing Director (Human Resources Division)
T Govender	Managing Director (Generation Division)
V Nemukula	Acting Managing Director (Generation Primary Energy)
K Lakmeharan	Managing Director (Systems Operations & Planning)
MM Ntsokolo	Managing Director (Transmission Division)
Dr SJ Lennon	Managing Director (Corporate Services Division)
B Conradie	Acting Managing Director (Enterprises Division)
A Noah	Managing Director (Distribution Division)
S Musendo	Acting General Manager: Procurement and Supply Chain Management
C Kalima	Supply Chain Operations and Compliance Manager

## 5 Revisions

<b>Date</b>	<b>Rev.</b>	<b>Remarks</b>
December 2005	3	PVFFK9 was revised
October 2007	0	PVFFK9 Rev. 4 was modified and revised
October 2007	0	EDC ISO formatted and checked

## 6 Development team

- Albertus Cicero
- Bulelwa Mabuya
- Ansie Smit

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**Annex A**  
(informative/normative)**Evaluation Questionnaire to Determine whether a Company, Close Corporation (CC) or Trust is a Personal Service Provider**

Vendor's Name		Vendor's No.	
CO/CC/Trust Registration No.	VAT Registration No.	PAYE Registration No.	
Vendor's Physical Business Address			

Please answer the following questions by marking the appropriate column with an "X".

NUMBER OF EMPLOYEES EXCLUSION	Yes	No
<p>1. Does the Company / CC / Trust employ 3 (three) or more persons<sup>1</sup>, on a full-time basis, throughout the year of assessment, other than any employee who is a <b>Connected Person/s</b><sup>2</sup> as defined in the Income Tax Act, 1962 in relation to the Company, CC or Trust?</p> <p>If the answer is YES, <b>sign Appendix 1 Affidavit. If the Affidavit is not signed, PAYE will be withheld from your payments.</b></p> <p>If the answer is NO, answer all the questions below</p>		
SERVICES RENDERED BY A CONNECTED PERSON	Yes	No
<p>2. Will any person who is a <b>Connected Person/s</b> in relation to the Company, CC or Trust as defined in the Income Tax Act, 1962 render services personally to Eskom on behalf of the Company / CC / Trust?</p> <p>If the answer is NO, <b>sign Appendix 2 Affidavit. If the Affidavit is not signed, PAYE will be withheld from your payments.</b></p>		
80 % OF INCOME TEST (Para (c) of definition)	Yes	No
<p>3. Does more than 80 % of the income of the Company / CC / Trust during the tax year from services rendered consists of or likely to consist of amounts received directly or indirectly, from any <b>one client</b>, or an Associated Institution as defined in the Seventh Schedule to the Income Tax Act, 1962 ,in relation to that client?</p> <p>If the answer is NO, <b>sign Appendix 3 Affidavit. If the Affidavit is not signed,</b></p>		

<sup>1</sup> Exclusion in the definition of a Personal Service Provider in terms of the Fourth Schedule to the Income Tax Act, 1962.

<sup>2</sup> Please refer to the definition of a Connected Person in Section 1 of the Income Tax Act, 1962.

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<b>PAYE will be withheld from your payments.</b>			
<b>PLACE AND CONTROL TEST (Para (b) of definition)</b>		<b>Yes</b>	<b>No</b>
4. Will any person who will render services to Eskom on behalf of the Company, CC or Trust perform his/her duties <u>mainly</u> (i.e. more than 50 %) at Eskom' premises?  If the answer is NO, <b>sign Appendix 4 Affidavit. If the Affidavit is not signed, PAYE will be withheld from your payments.</b>			
5. Will the Company, CC or Trust or any person who will render services to Eskom on behalf of the Company, CC or Trust be subject to the control or supervision of Eskom as to the <u>manner</u> in which the duties are to be performed?  If the answer is NO, <b>sign Appendix 4 Affidavit and complete Annex D. If the Affidavit is not signed, PAYE will be withheld from your payments.</b>			
<b>DEEMED EMPLOYEE TEST (Para (a) of definition)</b>		<b>Yes</b>	<b>No</b>
6. With regard to any person who will render services to Eskom on behalf of the Company, CC or Trust, <b>complete and sign Annex D. If Annex D is not completed and signed, PAYE will be withheld from your payments.</b>			
<b>PARTICULARS OF PERSON ACTING AS REPRESENTATIVE OF THE COMPANY/CLOSE CORPORATION/TRUST</b>			
I, the undersigned, confirm that the information provided above is accurate, and that the Company, CC or Trust will, while contracted to Eskom, inform Eskom of any changes that take place pertaining to the information provided above. Eskom shall be entitled to withhold from any payments to be made to the Company/ CC/ Trust, any taxes, interest and penalties that it may be required to pay to SARS as a result of the above information being inaccurate.			
<b>Representative's Full Names</b>	<b>Capacity</b>	<b>Contact No.</b>	
<b>Signature</b>	<b>Date</b>		

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**Annex B**

(informative/normative)

**Evaluation Questionnaire to determine if a natural person is a Labour Broker**

<b>Vendor's Name</b>	<b>Vendor's No.</b>
<b>VAT Registration No.</b>	<b>PAYE Registration No.</b>
<b>Vendor's Physical Business Address</b>	

Please answer the questions by marking the appropriate column with an "X".

	Yes	No
1. Will you provide Eskom with a person or persons as opposed to a service and will these persons be paid by you?  If the Answer is Yes, <b>provide Eskom with a valid IRP30 certificate. If this certificate is not provided PAYE will be withheld from your payments.</b>  If the Answer is No, <b>sign Appendix 6 Affidavit. If the Affidavit is not signed, PAYE will be withheld from your payments.</b>		
<b>PARTICULARS OF INDIVIDUAL</b>  I, the undersigned, confirm that the information provided above is accurate, and that I will, while contracted to Eskom, inform Eskom of any changes that take place pertaining to the information provided above. Eskom shall be entitled to withhold from any payments to be made to me any taxes, interest and penalties that it may be required to pay to SARS as a result of the above information being inaccurate.		
<b>Individual's Full Names</b>	<b>Capacity</b>	<b>Contact No.</b>
<b>Signature</b>	<b>Date</b>	

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**Annex C**

(informative/normative)

**Evaluation Questionnaire to determine if a natural person is an Independent Contractor**

<b>Vendor's Name</b>	<b>Vendor's No.</b>
<b>VAT Registration No.</b>	<b>PAYE Registration No.</b>
<b>Vendor's Physical Business Address</b>	

Please answer the questions by marking the appropriate column with an "X".

<b>NUMBER OF EMPLOYEES EXCLUSION</b>	<b>Yes</b>	<b>No</b>
<p>1. Do you employ 3 (three) or more employees<sup>3</sup>, on a full-time basis, throughout the year of assessment, other than any employee who is a <b>Connected Person/s</b><sup>4</sup> as defined in the Act in relation to you ?</p> <p>If the answer is YES, <b>sign Appendix 5 Affidavit. If the Affidavit is not signed, PAYE will be withheld.</b></p> <p>If the answer is NO, answer all questions below.</p>		
<b>Place and control test</b>	<b>Yes</b>	<b>No</b>
<p>2. Will you render the services <u>mainly</u><sup>5</sup> (i.e. more than 50 %) at Eskom's premises?</p> <p>If the answer is NO, <b>sign Appendix 4 Affidavit. If the Affidavit is not signed, PAYE will be withheld from your payments.</b></p>		
<p>3. Will you be subject to the <u>control or supervision</u><sup>6</sup> of Eskom as to the <u>manner</u> in which your duties are to be performed or as to the hours of work?</p> <p>If the answer is NO, <b>complete and sign Annex D. If Annex D is not completed and signed, PAYE will be withheld from your payments.</b></p>		

<sup>3</sup> Please refer to the exclusionary subparagraph (ii) of the Remuneration definition in terms of the Fourth Schedule to the Income Tax Act, 1962.

<sup>4</sup> Please refer to the definition of a Connected Person in Section 1 of the Income Tax Act, 1962.

<sup>5</sup> Please refer to the exclusionary subparagraph (ii) of the Remuneration definition in terms of the Fourth Schedule to the Income Tax Act, 1962.

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**PARTICULARS OF INDIVIDUAL**

I, the undersigned, confirm that the information provided above is accurate, and that I will, while contracted to Eskom, inform Eskom of any changes that take place pertaining to the information provided above. Eskom shall be entitled to withhold from any payments to be made to me any taxes, interest and penalties that it may be required to pay to SARS as a result of the above information being inaccurate.

Individual's Full Names	Capacity	Contact No.
Signature	Date	

<sup>6</sup> Please refer to the exclusionary subparagraph (ii) of the Remuneration definition in terms of the Fourth Schedule to the Income Tax Act, 1962.

**Annex D**  
(informative/normative)

**Dominant Impression Test Grid to evaluate if a natural person is an Independent Contractor or whether an person who will render services to Eskom on behalf of a Company, CC or Trust will be regarded as an Employee in relation to Eskom**

Vendor Name		Vendor No.	
CO/CC/Trust Registration No.	VAT Registration No.	PAYE Registration No.	
Vendor's Physical Business Address			

Please answer the questions by marking the appropriate column with an "X".

<b>DOMINANT IMPRESSION TEST <sup>7</sup></b>			
<b>"Near Conclusive" Indicators</b>		<b>Yes</b>	<b>No</b>
<b>Control of manner of working</b> 1. Will Eskom have the contractual right to control the tools or equipment, staff, raw materials, routines, patents or technology used in the provision of the services?			
<b>Payment Regime</b> 2. Will the payments by Eskom for services payable with reference to output or certain agreed results e.g. payment (be it a fixed fee or an hourly rate) be only due if and when a specific deliverable has been completed?			
<b>Person who must render the service</b> 3. Will you have the right to sub-contract work?			
<b>Nature of obligation to work</b> 4. Will you or the person rendering the service be obliged to be present and perform the work at Eskom regardless of whether work is available or not?			
<b>Employer (client) base</b> 5. Will you be contractually prohibited from rendering services to any other clients? 6. Do you have any other clients apart from Eskom?			
<b>Risk of profit and loss</b> 7. Will you bear the risk of profit and loss unrelated to Eskom's profitability? 8. Will you bear the risk of cost or time overruns on a project?			

<sup>7</sup> The Dominant Impression Test is used to determine whether a worker is an independent contractor or an employee (SARS Interpretation Note No. 35)

**PUBLIC**

<b>“Persuasive” Indicators</b>	<b>Yes</b>	<b>No</b>
<b>Instructions or supervision</b> 9. Will Eskom control your work and the environment in which the work is done by giving you instructions as to the location, when to begin or stop, pace, order or sequence of work etc.?		
<b>Reports</b> 10. Will you be obliged to provide Eskom with reports regarding the status of your work?		
<b>Training</b> 11. Will Eskom be training you in its methods?		
<b>Productive time (work hours, work week)</b> 12. Will Eskom control or set your work periods” (hours of work, working days, sick or annual leave?		
<b>“Relevant” Indicators</b>	<b>Yes</b>	<b>No</b>
<b>Tools, materials, stationery, etc</b> 13. Will Eskom provide you with tools or equipment, production or office materials, business stationery, etc and other necessary raw materials?		
<b>Office or workshop</b> 14. Will Eskom provide you with an office/workshop or will the work be continually and invariably occurring at Eskom’s place of business?		
<b>Integration/employer’s usual work premises</b> 15. Will Eskom’s premises be your usual place of business?		
<b>Integration/usual business operations</b> 16. Will Eskom’s business be critical to your survival?		
<b>Integration/hierarchy &amp; organogram</b> 17. Will your position be integrated / reflected on any of Eskom’s organogram?		
<b>Duration of relationship</b> 18. Will your contract with Eskom be open ended or indefinite?		
<b>Termination and breach of contract</b> 19. Will Eskom have a right to dismiss and/or will you have the right to resign prior to completion of any task or before any result are achieved, without being in breach of your contract?		
<b>Significant investment</b> 20. Will Eskom be financing your premises, tools, raw materials, training etc?		
<b>Employee benefits</b> 21. Will you be eligible for any benefits normally received by Eskom employees?		
<b>Bona fide business expenses, bona fide statutory compliance</b> 22. Will you be eligible for re-imbursment or be granted allowances for expenses incurred on behalf of Eskom?		
<b>Viability of termination</b> 23. Are you obliged to approach an employment agency to obtain new work?		

## PUBLIC

**PARTICULARS OF INDIVIDUAL, COMPANY, CC OR TRUST**

I, the undersigned, confirm that the information provided above is accurate, and that I, the Company, CC or Trust will, while contracted to Eskom, inform Eskom of any changes that take place pertaining to the information provided above. Eskom shall be entitled to withhold from any payments to be made to me, the Company, CC or Trust any taxes, interest and penalties that it may be required to pay to SARS as a result of the above information being inaccurate.

<b>Individual's Full Names</b>	<b>Capacity</b>	<b>Contact No.</b>
<b>Signature</b>	<b>Date</b>	

**PUBLIC**

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**AFFIDAVIT CONFIRMING CONTRACTOR EMPLOYS THREE OR MORE FULL - TIME EMPLOYEES**

---

I, the undersigned,

---

do hereby make oath and state as follows:

1. The facts deposed to in this affidavit are within my personal knowledge and are both true and correct.
2. I am the duly authorised representative of \_\_\_\_\_ (“the Contractor”).
3. I confirm that the Contractor employs three (3) or more full-time employees engaged in the business of the Contractor throughout the year of assessment, which excludes any employee who is a Connected Person as defined in the Income Tax Act No. 58 of 1962 in relation to the Contractor.
4. The Contractor undertakes to notify Eskom Holdings Ltd or its subsidiary (hereinafter referred to as “Eskom”) forthwith in writing should the statement in 3 above no longer be the case.
5. If the Contractor fails to notify Eskom in respect of 3 above, the Contractor shall be liable in full for any taxes, penalties and interest that SARS may impose on Eskom.

---

**DEPONENT**

I CERTIFY THAT THE DEPONENT ACKNOWLEDGES THAT HE / SHE:

- KNOWS AND UNDERSTANDS THE CONTENT OF THIS DECLARATION,
- THAT HE / SHE HAS NO OBJECTION TO TAKING THIS PRESCRIBED OATH,
- AND CONSIDERS IT TO BE BINDING ON HIS / HER CONSCIENCE.

THUS SIGNED AND SWORN TO BEFORE ME AT \_\_\_\_\_ ON THIS \_\_\_\_\_  
DAY OF 200\_.

---

**COMMISSIONER OF OATHS**

**PUBLIC**

**AFFIDAVIT CONFIRMING NO CONNECTED PERSON/S IN RELATION TO THE  
COMPANY / CC / TRUST WILL PERSONALLY RENDER ANY SERVICE TO ESKOM**

---

I, the undersigned,

\_\_\_\_\_

do hereby make oath and state as follows:

1. The facts deposed to in this affidavit are within my personal knowledge and are both true and correct.
2. I am the duly authorised representative of \_\_\_\_\_ (“the Contractor”).
3. I confirm that no Connected Person/s as defined in the Income Tax Act No. 58 of 1962 in relation to the Contractor will personally render any service to Eskom Holdings Ltd or its subsidiary (hereinafter referred to as “Eskom”).
4. The Contractor undertakes to notify Eskom forthwith in writing should the statement in 3 above no longer be the case.
5. If the Contractor fails to notify Eskom in respect of 3 above, the Contractor shall be liable in full for any taxes, penalties and interest that SARS may impose on Eskom.

\_\_\_\_\_  
**DEPONENT**

I CERTIFY THAT THE DEPONENT ACKNOWLEDGES THAT HE / SHE:

- KNOWS AND UNDERSTANDS THE CONTENT OF THIS DECLARATION,
- THAT HE / SHE HAS NO OBJECTION TO TAKING THIS PRESCRIBED OATH,
- AND CONSIDERS IT TO BE BINDING ON HIS / HER CONSCIENCE.

THUS SIGNED AND SWORN TO BEFORE ME AT \_\_\_\_\_ ON THIS \_\_\_\_\_  
DAY OF 200\_\_.

\_\_\_\_\_  
**COMMISSIONER OF OATHS**

**PUBLIC**

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**AFFIDAVIT CONFIRMING THAT NOT MORE THAN EIGHTY PERCENT (80 %) OF  
INCOME IS OR IS LIKELY TO BE RECEIVED FROM ANY ONE CLIENT**

---

I, the undersigned,

\_\_\_\_\_

do hereby make oath and state as follows:

1. The facts deposed to in this affidavit are within my personal knowledge and are both true and correct.
2. I am the duly authorised representative of \_\_\_\_\_ (“the Contractor”).
3. I confirm that the Contractor does not receive and is unlikely to receive more than eighty percent (80 %) of its income, either directly or indirectly, from any one client or any associated institution as defined in the Income Tax Act No. 58 of 1962 in relation to such client during the year of assessment.
4. The Contractor undertakes to notify Eskom Holdings Ltd or its subsidiary (hereinafter referred to as “Eskom”) forthwith in writing should the statement in 3 above no longer be the case.
5. If the Contractor fails to notify Eskom in respect of 3 above, the Contractor shall be liable in full for any, taxes, penalties and interest that SARS may impose on Eskom.

\_\_\_\_\_  
**DEPONENT**

I CERTIFY THAT THE DEPONENT ACKNOWLEDGED THAT HE / SHE:

- KNOWS AND UNDERSTANDS THE CONTENT OF THIS DECLARATION,
- THAT HE / SHE HAS NO OBJECTION TO TAKING THIS PRESCRIBED OATH,
- AND CONSIDERS IT TO BE BINDING ON HIS / HER CONSCIENCE.

THUS SIGNED AND SWORN TO BEFORE ME AT \_\_\_\_\_ ON THIS \_\_\_\_\_  
DAY OF 200\_.

\_\_\_\_\_  
**COMMISSIONER OF OATHS**

**PUBLIC**

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**AFFIDAVIT CONFIRMING SERVICES WILL NOT BE PERFORMED MAINLY AT  
ESKOM AND SHALL NOT BE CONTROLLED OR SUPERVISED BY ESKOM**

---

I, the undersigned,

\_\_\_\_\_

do hereby make oath and state as follows:

1. The facts deposed to in this affidavit are within my personal knowledge and are both true and correct.
2. I am the duly authorised representative of \_\_\_\_\_ (“the Contractor”).<sup>8</sup>
3. I / the Contractor confirm that:
  - a) I / any person who will be render services to Eskom Holdings Ltd or its subsidiary (hereinafter referred to as “Eskom”) on behalf of the Contractor will not be required to perform the services mainly (i.e. more than 50 %) at Eskom’s premises during the year of assessment;
  - b) I / the Contractor and any person who will render the services to Eskom on behalf of the Contractor will not be subject to the control or supervision of Eskom as to the manner in which the duties are to be performed or as to the hours of work.
4. I / the Contractor undertake/s to notify Eskom forthwith in writing should, the statement in 3 above no longer be the case.
5. If I / the Contractor fail/s to notify Eskom in respect of 3 above, I / the Contractor shall be liable in full for any taxes, penalties and interest that SARS may impose on Eskom.

\_\_\_\_\_  
**DEPONENT**

I CERTIFY THAT THE DEPONENT ACKNOWLEDGES THAT HE / SHE:

- KNOWS AND UNDERSTANDS THE CONTENT OF THIS DECLARATION,
- THAT HE / SHE HAS NO OBJECTION TO TAKING THIS PRESCRIBED OATH,
- AND CONSIDERS IT TO BE BINDING ON HIS / HER CONSCIENCE.

<sup>8</sup> Applicable to Company / CC / Trust only, delete if Individual



THUS SIGNED AND SWORN TO BEFORE ME AT \_\_\_\_\_ ON THIS \_\_\_\_  
DAY OF 200\_.

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**COMMISSIONER OF OATHS**

**PUBLIC**

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**AFFIDAVIT CONFIRMING INDIVIDUAL EMPLOYS THREE OR MORE FULL - TIME  
EMPLOYEES**

---

I, the undersigned,

---

do hereby make oath and state as follows:

1. The facts deposed to in this affidavit are within my personal knowledge and are both true and correct.
  
2. I confirm that I employ three (3) or more full-time employees engaged in my business throughout the year of assessment, excluding employees who are Connected Persons as defined in the Income Tax Act No. 58 of 1962 in relation to me.
  
3. I undertake to notify Eskom Holdings Ltd or its subsidiary (hereinafter referred to as “Eskom”) forthwith in writing should the statement in 2 above no longer be the case.
  
4. If I fail to notify Eskom in respect of 2 above, I shall be liable in full for any taxes, penalties and interest that SARS may impose on Eskom.

---

**DEPONENT**

I CERTIFY THAT THE DEPONENT ACKNOWLEDGES THAT HE / SHE:

- KNOWS AND UNDERSTANDS THE CONTENT OF THIS DECLARATION,
- THAT HE / SHE HAS NO OBJECTION TO TAKING THIS PRESCRIBED OATH,
- AND CONSIDERS IT TO BE BINDING ON HIS / HER CONSCIENCE.

THUS SIGNED AND SWORN TO BEFORE ME AT \_\_\_\_\_ ON THIS \_\_\_\_  
DAY OF 200\_.

---

**COMMISSIONER OF OATHS**

**PUBLIC**

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**AFFIDAVIT CONFIRMING INDIVIDUAL PROVIDES ESKOM WITH A SERVICE AS  
OPPOSED TO PERSON/S**

---

I, the undersigned,

---

do hereby make oath and state as follows:

1. The facts deposed to in this affidavit are within my personal knowledge and are both true and correct.
  
2. I confirm that I provide Eskom Holdings Ltd or its subsidiary (hereinafter referred to as "Eskom") with a service as opposed to a person/s that is/are remunerated by me.
  
3. I undertake to notify Eskom forthwith in writing should the statement in 2 above no longer be the case.
  
4. If I fail to notify Eskom in respect of 2 above, I shall be liable in full for any taxes, penalties and interest that SARS may impose on Eskom.

---

**DEPONENT**

I CERTIFY THAT THE DEPONENT ACKNOWLEDGES THAT HE / SHE:

- KNOWS AND UNDERSTANDS THE CONTENT OF THIS DECLARATION,
- THAT HE / SHE HAS NO OBJECTION TO TAKING THIS PRESCRIBED OATH,
- AND CONSIDERS IT TO BE BINDING ON HIS / HER CONSCIENCE.

THUS SIGNED AND SWORN TO BEFORE ME AT \_\_\_\_\_ ON THIS \_\_\_\_  
DAY OF 200\_.

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**COMMISSIONER OF OATHS**

**PUBLIC**