

**GUARANTEE**

by

**ENX GROUP LIMITED**

(as guarantor)

in favour of

**THE NOTEHOLDERS UNDER THE R8 000 000 000 DOMESTIC MEDIUM TERM NOTE PROGRAMME OF  
EQSTRA CORPORATION LIMITED**

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**THIS GUARANTEE** (this "**Guarantee**") is granted by:

- (1) **enX GROUP LIMITED** (Registration No. 2001/029771/06), a limited liability company duly registered and incorporated in accordance with the laws of South Africa (the "**Guarantor**"),
- in favour of
- (2) **THE NOTEHOLDERS UNDER THE R8 000 000 000 DOMESTIC MEDIUM TERM NOTE PROGRAMME OF EQSTRA CORPORATION LIMITED.**

**WHEREAS**

- (A) In terms of the Eqstra Corporation Limited R8 000 000 000 domestic medium term note programme (the "**Programme**"), established by Eqstra Corporation Limited (Registration No. 1984/007045/06) (the "**Issuer**") pursuant to a programme memorandum dated 16 March 2012 (the "**Programme Memorandum**"), the Issuer may from time to time issue notes (the "**Notes**" and each a "**Note**", as the context may require), on the terms and conditions contained in the section headed "*Terms and Conditions of the Notes*" of the Programme Memorandum, as read with the Applicable Pricing Supplement(s) (the "**Terms and Conditions**").
- (B) The Guarantor has agreed to grant a guarantee in favour of the Noteholders, on the terms and conditions contained herein.

**IT IS AGREED** as follows:

**1. INTERPRETATION**

- 1.1. In this Guarantee (including the recitals), unless the context requires otherwise, words and expressions defined in the Terms and Conditions (whether directly or by way of incorporation by reference) shall have the same meanings where used herein.
- 1.2. Any reference in this Guarantee to the Programme Memorandum, a document or an agreement is a reference to the Programme Memorandum, such document and such agreement as amended, varied, supplemented, novated or restated from time to time.

**2. STIPULATION**

- 2.1. This Guarantee constitutes a stipulation in favour of each of the Noteholders and shall be deemed to have been accepted by each of them and to constitute a binding agreement with each of them (notwithstanding that the Noteholders shall not have executed this document) by virtue of the issuance or transfer of the Notes to such Noteholders, as the case may be.
- 2.2. On the date of signature of this Guarantee, the Guarantor shall deliver the original signed Guarantee to Nedbank Limited, a Co-Lead Arranger, which has, in accordance with the undertaking annexed to this Guarantee as Schedule 1, undertaken to hold such original

Guarantee on behalf of the Noteholders and to make certified copies of this Guarantee available to the Noteholders upon written request by the Noteholders, in accordance with such undertaking.

### 3. **GUARANTEE**

3.1. As a principal obligor and not merely as a surety and on the basis of discrete obligations enforceable against it, the Guarantor, irrevocably and unconditionally:

3.1.1. guarantees to each Noteholder the punctual performance by the Issuer of all its obligations under the Notes in accordance with the Terms and Conditions;

3.1.2. undertakes with each Noteholder that whenever the Issuer does not pay any amount when due under or in connection with any Note, the Guarantor shall immediately on demand by the relevant Noteholder pay that amount as if it were the principal obligor in respect of that amount; and

3.1.3. agrees with each Noteholder that if any obligation guaranteed by it is or becomes unenforceable, invalid or illegal, it will, as an independent and primary obligation, indemnify that Noteholder immediately on demand against any cost, loss or liability it incurs as a result of the Issuer not paying any amount which would, but for such unenforceability, invalidity or illegality, have been payable by it in terms of the Terms and Conditions on the date when it would have been due. The amount payable by a Guarantor under this indemnity will not exceed the amount it would have had to pay under this clause 3 if the amount claimed had been recoverable on the basis of a guarantee.

3.2. The Guarantor acknowledges having received a copy of the Programme Memorandum and the Applicable Pricing Supplement(s) and confirms that it is aware of the terms thereof.

### 4. **LIABILITY OF GUARANTOR**

#### 4.1. **Continuing Liability**

This Guarantee is a continuing guarantee and will extend to the ultimate balance of sums payable by the Issuer under the Notes, regardless of any intermediate payment or discharge in whole or in part.

#### 4.2. **Reinstatement**

4.2.1. If any payment by the Issuer (whether in respect of the obligations of the Issuer or any security for those obligations or otherwise) is avoided or reduced for any reason (including, without limitation, as a result of insolvency, business rescue proceedings, liquidation, winding-up or otherwise), the liability of the Guarantor

under this Guarantee shall continue as if the payment, discharge, avoidance or reduction had not occurred.

- 4.2.2. The Noteholders shall be entitled to recover the value or amount of that payment, discharge, avoidance or reduction from the Issuer as if that payment, discharge, avoidance or reduction had not occurred.

## 5. WAIVER OF DEFENCES

The obligations of the Guarantor under this Guarantee will not be affected by an act, omission, matter or thing which, but for this clause, would reduce, release or prejudice any of its obligations under this Guarantee (whether or not known to it or any Noteholder) including, without limitation:

- 5.1. any time, waiver or consent granted to, or composition with, the Issuer or other person;
- 5.2. the release of any person under the terms of any composition or arrangement with any creditor of the Issuer or the Guarantor;
- 5.3. the taking, variation, compromise, exchange, renewal or release of, or refusal or neglect to perfect, take up or enforce, any rights against, or security over assets of, any person;
- 5.4. any non-presentation or non-observance of any formality or other requirement in respect of any instrument or any failure to realise the full value of any security;
- 5.5. any incapacity or lack of power, authority or legal personality of or dissolution or change in the members or status of the Issuer or any other person;
- 5.6. any amendment, novation, supplement, extension, restatement (however fundamental and whether or not more onerous) or replacement of the Terms and Conditions or any other document or security;
- 5.7. any unenforceability, illegality, invalidity, suspension or cancellation of any obligation of any person under this Guarantee, the Notes or any other document or security;
- 5.8. any insolvency, liquidation, winding-up, business rescue or similar proceedings (including, but not limited to, receipt of any distribution made under or in connection with those proceedings);
- 5.9. any Noteholder granting any indulgences to the Issuer or not exercising any one or more of its rights under the Notes, either timeously or at all; and/or
- 5.10. any other fact or circumstance arising on which the Issuer might otherwise be able to rely on a defence based on prejudice, waiver or estoppel.

## 6. IMMEDIATE RECOURSE

The Guarantor waives any right it may have of first requiring any Noteholder (or any trustee or agent on its behalf) to proceed against or enforce any other right or security or claim payment from any person before claiming from the Guarantor under this Guarantee. This waiver applies irrespective of any law or any provision of the Terms and Conditions to the contrary.

## 7. APPROPRIATIONS

Until all amounts which may be or become payable by the Issuer under or in connection with the Notes have been irrevocably paid in full, each Noteholder (or any trustee or agent on its behalf) may without affecting the liability of the Guarantor under this Guarantee:

- 7.1. refrain from applying or enforcing any other moneys, security or rights held or received by that Noteholder (or any trustee or agent on its behalf) in respect of those amounts; or
- 7.2. apply and enforce any of those moneys, security or rights in such manner and order as it sees fit (whether against amounts payable under the Notes or otherwise); and
- 7.3. hold in an interest-bearing suspense account any moneys received from the Guarantor or on account of the Guarantor's liability under this Guarantee.

## 8. DEFERRAL OF GUARANTORS' RIGHTS

8.1. Until all amounts which may be or become payable by the Issuer under or in connection with the Notes have been irrevocably paid in full and unless the relevant Noteholder otherwise directs, the Guarantor will not exercise any rights which it may have by reason of performance by it of its obligations under the Notes or by reason of any amount being payable, or liability arising, under this Guarantee:

- 8.1.1. to be indemnified by the Issuer;
- 8.1.2. to be subrogated to any rights, security or money held, received or receivable by any Noteholder (or any trustee or agent on its behalf);
- 8.1.3. to take the benefit (in whole or in part and whether by way of subrogation, cession of action or otherwise) of any rights of the Noteholders;
- 8.1.4. to be entitled to any right of contribution in respect of any payment made or moneys received on account of the Guarantor's liability under this Guarantee;
- 8.1.5. to claim, rank, prove or vote as a creditor or shareholder of the Issuer or its estate in competition with any Noteholder (or any trustee or agent on its behalf); or
- 8.1.6. to receive, claim or have the benefit of any payment, distribution or security from or on account of the Issuer, or exercise any rights of set-off as against the Issuer.

- 8.2. If the Guarantor receives any benefit, payment or distribution in relation to such rights, it shall hold that benefit, payment or distribution to the extent necessary to enable all amounts which may be or become payable to the Noteholders to be repaid in full on trust for, or otherwise for the benefit of, the Noteholders.

## 9. **ADDITIONAL RIGHTS**

This Guarantee is in addition to and is not in any way prejudiced by:

- 9.1. any other rights a Noteholder has, or may at any time in the future have, against the Guarantor or any other person;
- 9.2. any other guarantee or security now or subsequently held by any Noteholder (which that Noteholder may release as it sees fit, without prejudice to its rights hereunder).

## 10. **REPRESENTATIONS AND WARRANTIES**

10.1. The Guarantor represents and warrants to the Noteholders as follows:

### 10.1.1. **Status**

- 10.1.1.1. It is a limited liability company duly established and validly existing in accordance with the laws of South Africa.
- 10.1.1.2. It has the power to own its assets and carry on its business as it is being conducted.

### 10.1.2. **Capacity, power and authority**

- 10.1.2.1. It has the legal capacity and power to enter into, perform and deliver, and has taken all necessary action to authorise the entry into, performance and delivery of, this Guarantee and the transactions contemplated by this Guarantee.
- 10.1.2.2. No limit on its powers will be exceeded as a result of the entry into of this Guarantee.
- 10.1.2.3. The execution by it of this Guarantee and the performance by it of its obligations hereunder, are in its commercial interest and for its benefit.

### 10.1.3. **Binding obligations**

The obligations expressed to be assumed by it under this Guarantee are legal, valid, binding and enforceable obligations save to the extent that such

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enforcement is limited by laws of insolvency or other generally applicable limitations on the rights of creditors.

**10.1.4. Non-conflict with other obligations**

The entry into and performance by it of, and the transactions contemplated by, this Guarantee do not and will not conflict with:

10.1.4.1. any law or regulation applicable to it;

10.1.4.2. its constitutional documents; and

10.1.4.3. any agreement or instrument binding upon it or any of its assets or constitute a default or termination event (however described) under any such agreement or instrument.

**10.1.5. Ranking**

10.1.5.1. Its obligations in respect of the Senior Notes constitute direct, unconditional, unsecured and unsubordinated obligations and will rank *pari passu* among themselves and (save for certain debts required to be preferred by law) at least equally with all other unsecured, unsubordinated obligations of the Guarantor, if any, from time to time outstanding.

10.1.5.2. Its obligations in respect of the Subordinated Notes constitute direct, unconditional, unsecured and subordinated obligations and will rank *pari passu* among themselves and (save for certain debts required to be preferred by law) at least equally with all other unsecured, subordinated obligations of the Guarantor, if any, from time to time outstanding.

**10.1.6. No misleading information**

All written information provided by it (including its advisers) to the Noteholders was true, complete and accurate in all material respects as at the date it was provided and is not misleading in any material respect. There have been no changes in circumstances or events which would render such information incorrect or misleading in any material respect and which has not been notified to the Noteholders.

**10.2. Times for making representations and warranties**

10.2.1. Each of the representations in this clause 10 are made by it on the date of signature of this Guarantee.

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- 10.2.2. Each representation or warranty in this clause 10 shall be deemed to be made by reference to the facts and circumstances existing at the date the representation or warranty is deemed to be made.

## 11. PAYMENTS

- 11.1. Where the due date for any payment in terms of the provisions of this Guarantee is not a Business Day, the date for such payment shall be the immediately succeeding day which is a Business Day in the same calendar month (if there is one) or the preceding Business Day (if there is not).
- 11.2. The Guarantor's payment obligations under this Guarantee are, absolute and unconditional and accordingly, but without limitation, the Guarantor shall not have the right to defer, withhold or adjust any payment which is due and payable to the Noteholders arising out of this Guarantee, nor to obtain the deferment of any judgment for any such payment or part thereof nor to obtain deferment of execution of any judgment.
- 11.3. All payments to be made by the Guarantor under this Guarantee, whether in respect of principal, interest, fees or any other item, shall be made in full without any deduction or withholding whatsoever. If at any time:
- 11.3.1. the Guarantor is required by law to make any deduction or withholding from any sum payable by it to any person under this Guarantee; or
- 11.3.2. the Noteholders or any person on their behalf, is required by law to make any deduction or payment on account of any present or future Tax or otherwise on or in relation to any amount received or receivable by such person hereunder,
- then the sum payable by the Guarantor in respect of which such deduction, withholding or payment is required to be made shall be increased by the Guarantor as may be necessary to ensure that after the making of such deduction, withholding or payment the Noteholders receive and retain (free from any liability in respect of any such deduction, withholding or payment) a net sum (in the relative currency of denomination stipulated under this Guarantee) equal to the sum which the Noteholders would have received and so retained had no such deduction, withholding or payment been made.

## 12. NOTICES

- 12.1. For the purposes of this Guarantee all notices to Noteholders shall be given in the manner contemplated in Condition 16 of the Terms and Conditions and the provisions of Condition 16 shall apply *mutatis mutandis* to the giving of such notice.



- 12.2. The Guarantor chooses the address to which notices may be given and at which documents in legal proceedings may be served (its *domicilium citandi et executandi*) in connection with this Guarantee, that is identified with its name in the execution pages to this Guarantee.
- 12.3. The Guarantor may by notice to the Noteholders change the physical address chosen as its address for notices to another physical address, provided that the change shall become effective *vis-à-vis* all the other parties on the 14<sup>th</sup> (fourteenth) day from the deemed receipt of the notice by all the other parties.
- 12.4. Any notice to a party:
- 12.4.1. delivered by hand to a responsible person during ordinary business hours at the physical address chosen as its address for notices shall be deemed to have been received on the day of delivery; and
  - 12.4.2. mailed by registered post to the address appearing in the Register will be deemed to have been given on the 14<sup>th</sup> (fourteenth) day after the day on which it is mailed, as the case may be.
- 12.5. 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 for notices.

### 13. **GOVERNING LAW**

This Guarantee and any non-contractual obligations arising out of or in connection with it are governed by South African law.

### 14. **SUBMISSION TO JURISDICTION**

- 14.1. The parties hereby irrevocably and unconditionally consent to the non-exclusive jurisdiction of the High Court of South Africa (Gauteng Local Division, Johannesburg) (or any successor to that division) in regard to all matters arising from this Guarantee (including a dispute relating to the existence, validity or termination of this Guarantee or any non-contractual obligation arising out of or in connection with a Note) (a "**dispute**").
- 14.2. The parties agree that the courts of South Africa are the most appropriate and convenient courts to settle disputes. The parties agree not to argue to the contrary and waive objection to this court on the grounds of inconvenient forum or otherwise in relation to proceedings in connection with this Guarantee.
- 14.3. This clause 14 is for the benefit of the Noteholders only. As a result, no Noteholder shall be prevented from taking proceedings relating to a dispute in any other court with jurisdiction. To

the extent allowed by law, a Noteholder may take concurrent proceedings in any number of jurisdictions.

15. **SOLE AGREEMENT**

This Guarantee constitutes the sole record of the agreement between the parties in regard to the subject matter thereof.

16. **NO IMPLIED TERMS**

No party shall be bound by any express or implied term, representation, warranty, promise or the like, not recorded in this Guarantee.

17. **RIGHTS AND REMEDIES**

No failure to exercise, nor any delay in exercising, on the part of any Noteholder, any right or remedy under this Guarantee shall operate as a waiver, nor shall any single or partial exercise of any right or remedy prevent any further or other exercise or the exercise of any other right or remedy. The rights and remedies of each Noteholder under this Guarantee:

17.1. are cumulative and not exclusive of its rights under the general law;

17.2. may be exercised as often as the Noteholder requires; and

17.3. may be waived only in writing and specifically.

Delay in the exercise or non-exercise of any right under this Guarantee is not a waiver of that right.

18. **EXTENSIONS AND WAIVERS**

No latitude, extension of time or other indulgence which may be given or allowed by any party to any other party in respect of the performance of any obligation or enforcement of any right under this Guarantee, and no single or partial exercise of any right by any party, shall be construed to be an implied consent by such party or operate as a waiver or a novation of, or otherwise affect any of that party's rights under or in connection with this Guarantee or estop such party from enforcing, at any time and without notice, strict and punctual compliance with each and every provision or term of this Guarantee.

19. **PARTIAL INVALIDITY**

If, at any time, any provision of a Note is or becomes illegal, invalid, unenforceable or inoperable in any respect under any law of any jurisdiction, neither the legality, validity, enforceability or operation of the remaining provisions nor the legality, validity, enforceability or operation of such provision under the law of any other jurisdiction will in any way be affected or impaired. The term inoperable in this clause 19 shall include, without limitation, inoperable by way of suspension or cancellation.

**20. AMENDMENTS**

No amendment to this Guarantee shall be of any force or effect unless in writing and signed by or on behalf of the Guarantor and approved by a Special Resolution of the Noteholders.

**21. INDEPENDENT ADVICE**

Each party acknowledges that it has been free to secure independent legal and other advice as to the nature and effect of all of the provisions of this Guarantee and that it has either taken such independent legal and other advice or dispensed with the necessity of doing so. Further, each party acknowledges that all of the provisions of this Guarantee and the restrictions therein contained are part of the overall intention of the parties in connection with this Guarantee.

**SIGNATURE PAGE**

For and on behalf of

**ENX GROUP LIMITED**

Name: Paul Mansour

Capacity: CEO

Date: 21 October 2016

Address: 202D, 11 Crescent Drive, Melrose Arch, Johannesburg

Fax number: +2786 293 2714

Attention: Financial Director

**SCHEDULE 1**

**The Noteholders under the R8 000 000 000 Domestic Medium Term Note Programme of Eqstra Corporation Limited**

Dear Sirs

**Guarantee issued by enX Group Limited (the "Guarantee") in favour of the Noteholders under the R8 000 000 000 Domestic Medium Term Note Programme of Eqstra Corporation Limited (the "Programme")**

We refer to the Guarantee. In this undertaking, unless the context requires otherwise, words and expressions defined in the Guarantee (whether directly or by way of incorporation by reference) shall have the same meanings where used herein.

We hereby undertake in favour of each of the Noteholders to receive and hold in custody the original signed Guarantee to be delivered to us by the Guarantor on the date of signature of the Guarantee. This undertaking shall not imply any relationship of trust, duty of care or fiduciary obligation on our part to take any action in relation to the Guarantee.

We undertake, upon the written request by any Noteholder and at the cost of such Noteholder, to make available to the Noteholder, a certified copy of the Guarantee within 2 (two) Business Days of receipt of such written request.

Upon the termination of the Guarantee in accordance with its terms and conditions, we shall deliver the original Guarantee to enX Group Limited.

This undertaking constitutes an irrevocable stipulation in favour of the Noteholders and shall be deemed to have been accepted by them, *mutatis mutandis*, in the manner envisaged in clause 2 of the Guarantee.

Yours faithfully

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For Nedbank Limited

**in its capacity as a Co-lead Arranger in terms of the Programme**



**The Noteholders under the R8 000 000 000 Domestic Medium Term Note Programme of Eqstra Corporation Limited**

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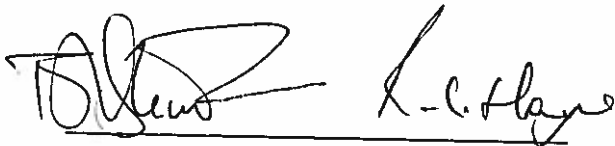
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Yours faithfully



For Nedbank Limited

**in its capacity as a Co-lead Arranger in terms of the Programme**

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