

**EXECUTION VERSION**

**TRUST DEED**

**DATED 12 FEBRUARY 2010**

**ELECTRICITY SUPPLY BOARD**

**and**

**ESB FINANCE LIMITED**

**and**

**CITICORP TRUSTEE COMPANY LIMITED**

**relating to a**

**EUR3,000,000,000**

**EURO MEDIUM TERM NOTE PROGRAMME**

**ALLEN & OVERY**

**Allen & Overy LLP**

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**THIS TRUST DEED** is made on 12 February 2010

**BETWEEN:**

- (1) **ELECTRICITY SUPPLY BOARD**, a body corporate established in Ireland under the Electricity (Supply) Acts 1927 to 2004 of Ireland, whose headquarters is at 27 Lower Fitzwilliam Street, Dublin 2, Ireland (**ESB** as an issuer of Notes under the Programme and as **Guarantor** of Notes issued under the Programme by ESB Finance); and
- (2) **ESB FINANCE LIMITED**, a private company incorporated with limited liability in Ireland with registration number 480184, whose registered office is at 27 Lower Fitzwilliam Street, Dublin 2, Ireland (**ESB Finance** and together with ESB in its capacity as an issuer, the **Issuers** and each, an **Issuer**); and
- (3) **CITICORP TRUSTEE COMPANY LIMITED**, a company incorporated under the laws of England and Wales, whose registered office is at Citigroup Centre, Canada Square, Canary Wharf, London E14 5LB (the **Trustee**, which expression shall, wherever the context so admits, include such company and all other persons or companies for the time being the trustee or trustees of these presents) as trustee for the Noteholders, the Receiptholders and the Couponholders (each as defined below).

**WHEREAS:**

- (A) By a resolution of the Board of ESB passed on 20 January 2010 and the Board of Directors of ESB Finance passed on 11 February 2010, ESB and ESB Finance have resolved to establish a Euro Medium Term Note Programme pursuant to which the Issuers may from time to time issue Notes as set out herein up to a maximum nominal amount (calculated in accordance with Clause 3.5 of the Programme Agreement (as defined below)) from time to time outstanding of EUR3,000,000,000 (subject to increase as provided in the Programme Agreement) (the **Programme Limit**) may be issued pursuant to the said Programme.
- (B) By such resolution of the Board of ESB (in its capacity as the Guarantor) passed on 20 January 2010, the Guarantor has resolved to guarantee all Notes issued by ESB Finance under the said Programme.
- (C) The Trustee has agreed to act as trustee of these presents for the benefit of the Noteholders, the Receiptholders and the Couponholders upon and subject to the terms and conditions of these presents.

**NOW THIS TRUST DEED WITNESSES AND IT IS AGREED AND DECLARED** as follows:

**1. DEFINITIONS**

- 1.1** In these presents unless there is anything in the subject or context inconsistent therewith the following expressions shall have the following meanings:

**Agency Agreement** means the agreement dated 12 February 2010, as amended and/or supplemented and/or restated from time to time, pursuant to which the relevant Issuer and the Guarantor have appointed the Principal Paying Agent and the other Paying Agents in relation to all or any Series of the Notes and any other agreement for the time being in force appointing further or other Paying Agents or another Agent in relation to all or any Series of the Notes, or in connection with their duties, the terms of which have previously been approved in writing by the Trustee, together with any agreement for the time being in force amending or modifying with the prior written approval of the Trustee any of the aforesaid agreements;

**Appointee** means any attorney, manager, agent, delegate, nominee, custodian, receiver or other person appointed by the Trustee under these presents;

**Auditors** means the independent auditors for the time being of the relevant Issuer or, as the case may be, the Guarantor or, in the event of their being unable or unwilling promptly to carry out any action requested of them pursuant to the provisions of these presents, such other firm of accountants or such financial advisers as may be nominated or approved by the Trustee for the purposes of these presents;

**Calculation Agent** means, in relation to all or any Series of the Notes, the person initially appointed as calculation agent in relation to such Notes by the relevant Issuer and the Guarantor pursuant to the Agency Agreement or, if applicable, any Successor calculation agent in relation to all or any Series of the Notes;

**CGN** means a Temporary Global Note or a Permanent Global Note and in either case in respect of which the applicable Final Terms indicates is not a New Global Note;

**Clearstream, Luxembourg** means Clearstream Banking, société anonyme;

**Conditions** means, in relation to the Notes of any Series, the terms and conditions endorsed on or incorporated by reference into the Note or Notes constituting such Series, such terms and conditions being in or substantially in the form set out in Schedule 1 or in such other form, having regard to the terms of the Notes of the relevant Series, as may be agreed between the relevant Issuer, the Trustee and the relevant Dealer(s) as modified and supplemented by the Final Terms applicable to the Notes of the relevant Series, in each case as from time to time modified in accordance with the provisions of these presents;

**Coupon** means an interest coupon appertaining to a definitive Note (other than a Zero Coupon Note), such coupon being:

- (a) if appertaining to a Fixed Rate Note, in the form or substantially in the form set out in Part 5A of Schedule 2 or in such other form, having regard to the terms of issue of the Notes of the relevant Series, as may be agreed between the relevant Issuer, the Principal Paying Agent, the Trustee and the relevant Dealer(s); or
- (b) if appertaining to a Floating Rate Note or an Index Linked Interest Note, in the form or substantially in the form set out in Part 5B of Schedule 2 or in such other form, having regard to the terms of issue of the Notes of the relevant Series, as may be agreed between the relevant Issuer, the Principal Paying Agent, the Trustee and the relevant Dealer(s); or
- (c) if appertaining to a definitive Note which is neither a Fixed Rate Note nor a Floating Rate Note nor an Index Linked Interest Note, in such form as may be agreed between the relevant Issuer, the Principal Paying Agent, the Trustee and the relevant Dealer(s),

and includes, where applicable, the Talon(s) appertaining thereto and any replacements for Coupons and Talons issued pursuant to Condition 11 (*Replacement of Notes, Receipts, Coupons and Talons*);

**Couponholders** means the several persons who are for the time being holders of the Coupons and includes, where applicable, the Talonholders;

**Dealers** means Barclays Bank PLC, BNP Paribas, Crédit Agricole Corporate and Investment Bank, Citigroup Global Markets Limited, Danske Bank A/S, J&E Davy, Merrill Lynch International, Mitsubishi UFJ Securities International plc, Royal Bank of Canada Europe Limited and The Royal Bank of Scotland plc and any other entity which the relevant Issuer and the Guarantor may appoint

as a Dealer and notice of whose appointment has been given to the Principal Paying Agent and the Trustee by the relevant Issuer in accordance with the provisions of the Programme Agreement but excluding any entity whose appointment has been terminated in accordance with the provisions of the Programme Agreement and notice of such termination has been given to the Principal Paying Agent and the Trustee by the relevant Issuer in accordance with the provisions of the Programme Agreement and references to a **relevant Dealer** or the **relevant Dealer(s)** mean, in relation to any Tranche or Series of Notes, the Dealer or Dealers with whom the relevant Issuer has agreed the issue of the Notes of such Tranche or Series and **Dealer** means any one of them;

**Definitive Note** means a Note in definitive form issued or, as the case may require, to be issued by the relevant Issuer in accordance with the provisions of the Programme Agreement or any other agreement between the relevant Issuer and the relevant Dealer(s), the Agency Agreement and these presents in exchange for either a Temporary Global Note or part thereof or a Permanent Global Note (all as indicated in the applicable Final Terms), such Note in definitive form being in the form or substantially in the form set out in Part 3 of Schedule 2 with such modifications (if any) as may be agreed between the relevant Issuer, the Principal Paying Agent, the Trustee and the relevant Dealer(s) and having the Conditions endorsed thereon or, if permitted by the relevant Stock Exchange, incorporating the Conditions by reference as indicated in the applicable Final Terms and having the relevant information supplementing, replacing or modifying the Conditions appearing in the applicable Final Terms endorsed thereon or attached thereto and (except in the case of a Zero Coupon Note) having Coupons and, where appropriate, Receipts and/or Talons attached thereto on issue;

**Dual Currency Interest Note** means a Note in respect of which payments of interest are made or to be made in such different currencies, and at rates of exchange calculated upon such basis, as the relevant Issuer and the relevant Dealer(s) may agree (as indicated in the applicable Final Terms);

**Dual Currency Note** means a Dual Currency Interest Note and/or a Dual Currency Redemption Note, as applicable;

**Dual Currency Redemption Note** means a Note in respect of which payments of principal are made or to be made in such different currencies, and at rates of exchange calculated upon such basis, as the relevant Issuer and the relevant Dealer(s) may agree (as indicated in the applicable Final Terms);

**Early Redemption Amount** has the meaning set out in Condition 7.7 (*Redemption and Purchase-Early Redemption Amounts*);

**Euroclear** means Euroclear Bank SA/NV;

**Eurosystem-eligible NGN** means a NGN which is intended to be held in a manner which would allow Eurosystem eligibility, as stated in the applicable Final Terms;

**Event of Default** means any of the conditions, events or acts provided in Condition 10 (*Events of Default and Enforcement*) to be events upon the happening of which the Notes of any Series would, subject only to notice by the Trustee as therein provided, become immediately due and repayable;

**Extraordinary Resolution** has the meaning set out in paragraph 1 of Schedule 3;

**Final Terms** has the meaning set out in the Programme Agreement;

**Fixed Rate Note** means a Note on which interest is calculated at a fixed rate payable in arrear on a fixed date or fixed dates in each year and on redemption or on such other dates as may be agreed between the relevant Issuer and the relevant Dealer(s) (as indicated in the applicable Final Terms);

**Floating Rate Note** means a Note on which interest is calculated at a floating rate payable in arrear in respect of such period or on such date(s) as may be agreed between the relevant Issuer and the relevant Dealer(s) (as indicated in the applicable Final Terms);

**FSMA** means the Financial Services and Markets Act 2000;

**Global Note** means a Temporary Global Note and/or a Permanent Global Note as the context may require;

**Index Linked Interest Note** means a Note in respect of which the amount payable in respect of interest is calculated by reference to an index and/or a formula as the relevant Issuer and the relevant Dealer(s) may agree (as indicated in the applicable Final Terms);

**Index Linked Note** means an Index Linked Interest Note and/or an Index Linked Redemption Note, as applicable;

**Index Linked Redemption Note** means a Note in respect of which the amount payable in respect of principal is calculated by reference to an index and/or a formula as the relevant Issuer and the relevant Dealer(s) may agree (as indicated in the applicable Final Terms);

**Interest Commencement Date** means, in the case of interest-bearing Notes, the date specified in the applicable Final Terms from (and including) which such Notes bear interest, which may or may not be the Issue Date;

**Interest Payment Date** means, in relation to any Floating Rate Note or Index Linked Interest Note, either:

- (a) the date which falls the number of months or other period specified as the **Specified Period** in the applicable Final Terms after the preceding Interest Payment Date or the Interest Commencement Date (in the case of the first Interest Payment Date); or
- (b) such date or dates as are indicated in the applicable Final Terms;

**Irish Stock Exchange** means the Irish Stock Exchange Limited or such other body to which its functions have been transferred;

**Issue Date** means, in respect of any Note, the date of issue and purchase of such Note pursuant to and in accordance with the Programme Agreement or any other agreement between the relevant Issuer and the relevant Dealer(s) being, in the case of any Definitive Note represented initially by a Global Note, the same date as the date of issue of the Global Note which initially represented such Note;

**Issue Price** means the price, generally expressed as a percentage of the nominal amount of the Notes, at which the Notes will be issued;

**Issuer** or **relevant Issuer** means the entity specified as such in the relevant Final Terms;

**Liability** means any loss, damage, cost, charge, claim, demand, expense, judgment, action, proceeding or other liability whatsoever (including, without limitation in respect of taxes, duties, levies, imposts and other charges) and including any value added tax or similar tax charged or chargeable in respect thereof and legal fees and expenses on a full indemnity basis;

**London Business Day** has the meaning set out in Condition 5.2(e) (*Interest-Interest on Floating Rate Notes and Index Linked Interest Notes-Notification of Rate of Interest and Interest Amounts*);

**Maturity Date** means the date on which a Note is expressed to be redeemable;

**month** means calendar month;

**NGN** means a Temporary Global Note or a Permanent Global Note and in either case in respect of which the applicable Final Terms indicates is a New Global Note;

**Non-eligible NGN** means a NGN which is not intended to be held in a manner which would allow Eurosystem eligibility, as stated in the applicable Final Terms;

**Note** means a note issued pursuant to the Programme and denominated in such currency or currencies as may be agreed between the relevant Issuer and the relevant Dealer(s) which has such maturity and denomination as may be agreed between the relevant Issuer and the relevant Dealer(s) and issued or to be issued by the relevant Issuer pursuant to the Programme Agreement or any other agreement between the relevant Issuer and the relevant Dealer(s) relating to the Programme, the Agency Agreement and these presents and which shall initially be represented by, and comprised in, either (a) a Temporary Global Note which may (in accordance with the terms of such Temporary Global Note) be exchanged for Definitive Notes or a Permanent Global Note which Permanent Global Note may (in accordance with the terms of such Permanent Global Note) in turn be exchanged for Definitive Notes or (b) a Permanent Global Note which may (in accordance with the terms of such Permanent Global Note) be exchanged for Definitive Notes (all as indicated in the applicable Final Terms) and includes any replacements for a Note issued pursuant to Condition 11 (*Replacement of Notes, Receipts, Coupons and Talons*);

**Noteholders** means the several persons who are for the time being bearers of Notes save that, in respect of the Notes of any Series, for so long as such Notes or any part thereof are represented by a Global Note deposited with a common depositary (in the case of a CGN) or common safekeeper (in the case of a NGN) for Euroclear and Clearstream, Luxembourg or, in respect of Notes in definitive form held in an account with Euroclear and/or Clearstream, Luxembourg, each person who is for the time being shown in the records of Euroclear or Clearstream, Luxembourg (other than Clearstream, Luxembourg, if Clearstream, Luxembourg shall be an accountholder of Euroclear and Euroclear, if Euroclear shall be an accountholder of Clearstream, Luxembourg) as the holder of a particular nominal amount of the Notes of such Series shall be deemed to be the holder of such nominal amount of such Notes (and the holder of the relevant Note shall be deemed not to be the holder) for all purposes of these presents other than with respect to the payment of principal or interest on such nominal amount of such Notes, the rights to which shall be vested, as against the relevant Issuer, the Guarantor and the Trustee, solely in such common depositary or common safekeeper and for which purpose such common depositary or common safekeeper shall be deemed to be the holder of such nominal amount of such Notes in accordance with and subject to its terms and the provisions of these presents and the expressions **holder** and **holder of Notes** and related expressions shall (where appropriate) be construed accordingly;

**notice** means, in respect of a notice to be given to Noteholders, a notice validly given pursuant to Condition 14 (*Notices*);

**Ordinary Resolution** has the meaning given to it in paragraph 1, Schedule 3;

**outstanding** means, in relation to the Notes of all or any Series, all the Notes of such Series issued other than:

- (a) those Notes which have been redeemed pursuant to these presents;
- (b) those Notes in respect of which the date (including, where applicable, any deferred date) for redemption in accordance with the Conditions has occurred and the redemption moneys



(including all interest payable thereon) have been duly paid to the Trustee or to the Principal Paying Agent in the manner provided in the Agency Agreement (and where appropriate notice to that effect has been given to the relative Noteholders in accordance with Condition 14 (*Notices*)) and remain available for payment in accordance with the Conditions ;

- (c) those Notes which have been purchased and cancelled in accordance with Conditions 7.10 (*Redemption and Purchase-Purchases*) and 7.11 (*Redemption and Purchase-Cancellation*);
- (d) those Notes which have become void or in respect of which claims have become prescribed, in each case under Condition 9 (*Prescription*);
- (e) those mutilated or defaced Notes which have been surrendered and cancelled and in respect of which replacements have been issued pursuant to Condition 11 (*Replacement of Notes, Receipts, Coupons and Talons*);
- (f) (for the purpose only of ascertaining the nominal amount of the Notes outstanding and without prejudice to the status for any other purpose of the relevant Notes) those Notes which are alleged to have been lost, stolen or destroyed and in respect of which replacements have been issued pursuant to Condition 11 (*Replacement of Notes, Receipts, Coupons and Talons*); and
- (g) any Global Note to the extent that it shall have been exchanged for Definitive Notes or another Global Note pursuant to its provisions, the provisions of these presents and the Agency Agreement,

PROVIDED THAT for each of the following purposes, namely:

- (i) the right to attend and vote at any meeting of the holders of the Notes of any Series, an Extraordinary Resolution in writing or an Ordinary Resolution in writing or an Extraordinary Resolution by way of electronic consents through the relevant Clearing System(s) as envisaged by paragraph 1 of Schedule 3 and any direction or request by the holders of the Notes of any Series;
- (ii) the determination of how many and which Notes of any Series are for the time being outstanding for the purposes of Clause 9.1, Conditions 10 (*Events of Default and Enforcement*) and 15 (*Meetings of Noteholders, Modification, Waiver and Substitution*) and paragraphs 2, 5, 6 and 9 of Schedule 3;
- (iii) any discretion, power or authority (whether contained in these presents or vested by operation of law) which the Trustee is required, expressly or impliedly, to exercise in or by reference to the interests of the holders of the Notes of any Series; and
- (iv) the determination by the Trustee whether any event, circumstance, matter or thing is, in its opinion, materially prejudicial to the interests of the holders of the Notes of any Series,

those Notes of the relevant Series (if any) which are for the time being held by or on behalf of or for the benefit of the relevant Issuer, the Guarantor, any Subsidiary of the relevant Issuer or the Guarantor, any holding company of the relevant Issuer or the Guarantor or any Subsidiary of any such holding company, in each case as beneficial owner, shall (unless and until ceasing to be so held) be deemed not to remain outstanding;

**Paying Agents** means, in relation to all or any Series of the Notes, the several institutions (including, where the context permits, the Principal Paying Agent) at their respective specified offices initially appointed as paying agents in relation to such Notes by the relevant Issuer and the Guarantor

pursuant to the Agency Agreement and/or, if applicable, any Successor paying agents at their respective specified offices;

**Permanent Global Note** means a global note in the form or substantially in the form set out in Part 2 of Schedule 2 with such modifications (if any) as may be agreed between the relevant Issuer, the Principal Paying Agent, the Trustee and the relevant Dealer(s), together with the copy of the applicable Final Terms annexed thereto, comprising some or all of the Notes of the same Series, issued by the relevant Issuer pursuant to the Programme Agreement or any other agreement between the relevant Issuer and the relevant Dealer(s) relating to the Programme, the Agency Agreement and these presents either on issue or in exchange for the whole or part of any Temporary Global Note issued in respect of such Notes;

**Potential Event of Default** means any condition, event or act which, with the lapse of time and/or the issue, making or giving of any notice, certification, declaration, demand, determination and/or request and/or the taking of any similar action and/or the fulfilment of any similar condition, would constitute an Event of Default;

**Principal Paying Agent** means, in relation to all or any Series of the Notes, Citibank, N.A., London Branch, at its office at Citigroup Centre, Canada Square, Canary Wharf, London E14 5LB or, if applicable, any Successor agent in relation to all or any Series of the Notes;

**Principal Subsidiary** means at any time a Subsidiary (other than a Special Purpose Subsidiary:

- (a) whose net profits (consolidated in the case of a Subsidiary which itself has Subsidiaries) or whose net assets (consolidated in the case of a Subsidiary which itself has Subsidiaries) represent in each case (or, in the case of a Subsidiary acquired after the end of the financial period to which the then latest audited consolidated accounts of ESB and its Subsidiaries relate, are equal to) not less than 10 per cent. of the consolidated net profits of ESB, or, as the case may be, consolidated net assets, of ESB and its Subsidiaries taken as a whole, all as calculated respectively by reference to the then latest audited accounts (consolidated or, as the case may be, unconsolidated) of such Subsidiary and the then latest audited consolidated accounts of ESB and its Subsidiaries, provided that:
  - (i) if the then latest audited consolidated accounts of ESB and its Subsidiaries show (x) a net loss for the relevant financial period then there shall be substituted for the words “net profits” the words “gross revenues” for the purposes of this definition and/or (y) negative assets at the end of the relevant financial period then there shall be substituted for the words “net assets” the words “total assets” for the purposes of this definition;
  - (ii) in the case of a Subsidiary of ESB acquired after the end of the financial period to which the then latest audited consolidated accounts of ESB and its Subsidiaries relate, the reference to the then latest audited consolidated accounts of ESB and its Subsidiaries for the purposes of the calculation above shall, until consolidated accounts for the financial period in which the acquisition is made have been prepared and audited as aforesaid, be deemed to be a reference to such first-mentioned accounts as if such Subsidiary had been shown in such accounts by reference to its then latest relevant audited accounts, adjusted as deemed appropriate by ESB;
- (b) to which is transferred the whole or substantially the whole of the undertaking and assets of a Subsidiary of ESB which immediately prior to such transfer is a Principal Subsidiary, provided that the transferor Subsidiary shall upon such transfer forthwith cease to be a Principal Subsidiary and the transferee Subsidiary shall cease to be a Principal Subsidiary

pursuant to this subparagraph (b) on the date on which the consolidated accounts of ESB and its Subsidiaries for the financial period current at the date of such transfer have been prepared and audited as aforesaid but so that such transferor Subsidiary or such transferee Subsidiary may be a Principal Subsidiary on or at any time after the date on which such consolidated accounts have been prepared and audited as aforesaid by virtue of the provisions of subparagraph (a) above or, prior to or after such date, by virtue of any other applicable provision of this definition; or

- (c) to which is transferred an undertaking or assets which, taken together with the undertaking or assets of the transferee Subsidiary, generated (or, in the case of the transferee Subsidiary being acquired after the end of the financial period to which the then latest audited consolidated accounts of ESB and its Subsidiaries relate, generate net profits equal to) not less than 10 per cent. of the consolidated net profits of ESB, or represent (or, in the case aforesaid, are equal to) not less than 10 per cent. of the consolidated net assets of ESB and its Subsidiaries taken as a whole, all as calculated as referred to in subparagraph (a) above, provided that the transferor Subsidiary (if a Principal Subsidiary) shall upon such transfer forthwith cease to be a Principal Subsidiary unless immediately following such transfer its undertaking and assets generate (or, in the case aforesaid, generate net profits equal to) not less than 10 per cent. of the consolidated net profits of ESB, or its assets represent (or, in the case aforesaid, are equal to) not less than 10 per cent. of the consolidated net assets of ESB and its Subsidiaries taken as a whole, all as calculated as referred to in subparagraph (a) above, and the transferee Subsidiary shall cease to be a Principal Subsidiary pursuant to this subparagraph (c) on the date on which the consolidated accounts of ESB and its Subsidiaries for the financial period current at the date of such transfer have been prepared and audited but so that such transferor Subsidiary or such transferee Subsidiary may be a Principal Subsidiary on or at any time after the date on which such consolidated accounts have been prepared and audited as aforesaid by virtue of the provisions of subparagraph (a) above or, prior to or after such date, by virtue of any other applicable provision of this definition.

For the purposes of this definition:

- (i) if there shall not at any time be any relevant audited consolidated accounts of ESB and its Subsidiaries, references thereto herein shall be deemed to be references to a consolidation (which need not be audited) by ESB or such other person as the Trustee may in its absolute discretion approve of the relevant audited accounts of ESB and its Subsidiaries;
- (ii) if, in the case of a Subsidiary which itself has Subsidiaries, no consolidated accounts are prepared and audited, its consolidated net profits and consolidated net assets shall be determined on the basis of *pro forma* consolidated accounts (which need not be audited) of the relevant Subsidiary and its Subsidiaries prepared for this purpose by ESB or such other person as the Trustee may in its absolute discretion approve;
- (iii) if (A) any Subsidiary shall not in respect of any relevant financial period for whatever reason produce audited accounts or (B) any Subsidiary shall not have produced at the relevant time for the calculations required pursuant to this definition audited accounts for the same period as (or a period which the Trustee in its absolute discretion shall consider to be substantially comparable to) the period to which the latest audited accounts of ESB and its Subsidiaries relate, then there shall be substituted for the purposes of this definition the management accounts of such Subsidiary for such period, such accounts to be accompanied by a certificate addressed to the Trustee signed by a Senior Officer of ESB confirming that such accounts are the appropriate accounts to be used in making the calculations required by this definition;

- (iv) where any Subsidiary is not wholly owned by ESB there shall be excluded from all calculations all amounts attributable to minority interests;
- (v) in calculating any amount all amounts owing by or to ESB and any Subsidiary to or by ESB and any Subsidiary shall be excluded; and
- (vi) in the event that accounts of any companies being compared are prepared on the basis of different generally accepted accounting principles, there shall be made such adjustments to any relevant financial items as a Senior Officer of ESB shall certify in writing to the Trustee as being necessary to achieve a true and fair comparison of such financial items.

A report by a Senior Officer of ESB addressed to the Trustee that in their opinion a Subsidiary of ESB is or is not or was or was not at any particular time or throughout any specified period a Principal Subsidiary may be relied upon by the Trustee without further enquiry or evidence and, if relied upon by the Trustee, shall (in the absence of manifest error), be conclusive and binding on all parties;

**Programme** means the Euro Medium Term Note Programme established by, or otherwise contemplated in, the Programme Agreement;

**Programme Agreement** means the agreement of even date herewith between ESB, ESB Finance and the Dealers named therein (or deemed named therein) concerning the purchase of Notes to be issued pursuant to the Programme together with any agreement for the time being in force amending, replacing, novating or modifying such agreement and any accession letters and/or agreements supplemental thereto;

**Receipt** means a receipt attached on issue to a Definitive Note redeemable in instalments for the payment of an instalment of principal, such receipt being in the form or substantially in the form set out in Part 4 of Schedule 2 or in such other form as may be agreed between the relevant Issuer, the Principal Paying Agent, the Trustee and the relevant Dealer(s) and includes any replacements for Receipts issued pursuant to Condition 11 (*Replacement of Notes, Receipts, Coupons and Talons*);

**Receiptholders** means the several persons who are for the time being holders of the Receipts;

**Relevant Date** has the meaning set out in Condition 8 (*Taxation*);

**repay, redeem and pay** shall each include both of the others and cognate expressions shall be construed accordingly;

**Senior Financial Officer** has the meaning set out in Condition 3.3 (*Sales of Assets*);

**Senior Officers** means, in the case of ESB, each member of the Board for the time being of ESB and the Chief Executive, the Finance and Commercial Director, the Secretary and the Treasurer for the time being of ESB and, in the case of ESB Finance, the Board of Directors for the time being of ESB Finance and the Secretary for the time being of ESB Finance, and **Senior Officer** means any one of them;

**Series** means a Tranche of Notes together with any further Tranche or Tranches of Notes which are (a) expressed to be consolidated and form a single series and (b) identical in all respects (including as to listing) except for their respective Issue Dates, Interest Commencement Dates and/or Issue Prices and the expressions **Notes of the relevant Series, holders of Notes of the relevant Series** and related expressions shall (where appropriate) be construed accordingly;

**Special Purpose Subsidiary** has the meaning set out in Condition 3.2 (*Covenants - Negative Pledge applicable to the Guarantor*);

**Stock Exchange** means the Irish Stock Exchange or any other or further stock exchange(s) on which any Notes may from time to time be listed, and references in these presents to the **relevant Stock Exchange** shall, in relation to any Notes, be references to the Stock Exchange on which such Notes are, from time to time, or are intended to be, listed;

**Subsidiary** has the meaning set out in Condition 3.2 (*Covenants - Negative Pledge applicable to the Guarantor*);

**Successor** means, in relation to the Principal Paying Agent, the other Paying Agents and the Calculation Agent, any successor to any one or more of them in relation to the Notes which shall become such pursuant to the provisions of these presents and/or the Agency Agreement (as the case may be) and/or such other or further agent, paying agents and calculation agent (as the case may be) in relation to the Notes as may (with the prior approval of, and on terms previously approved by, the Trustee in writing) from time to time be appointed as such, and/or, if applicable, such other or further specified offices (in the case of the Principal Paying Agent being within the same city as those for which it is substituted) as may from time to time be nominated, in each case by the Issuer and the Guarantor, and (except in the case of the initial appointments and specified offices made under and specified in the Conditions and/or the Agency Agreement, as the case may be) notice of whose appointment or, as the case may be, nomination has been given to the Noteholders pursuant to Clause 14(l) in accordance with Condition 14 (*Notices*);

**Talontholders** means the several persons who are for the time being holders of the Talons;

**Talons** means the talons (if any) appertaining to, and exchangeable in accordance with the provisions therein contained for further Coupons appertaining to, the Definitive Notes (other than Zero Coupon Notes), such talons being in the form or substantially in the form set out in Part 6 of Schedule 2 or in such other form as may be agreed between the relevant Issuer, the Principal Paying Agent, the Trustee and the relevant Dealer(s) and includes any replacements for Talons issued pursuant to Condition 11 (*Replacement of Notes, Receipts, Coupons and Talons*);

**Temporary Global Note** means a temporary global note in the form or substantially in the form set out in Part 1 of Schedule 2 together with the copy of the applicable Final Terms annexed thereto with such modifications (if any) as may be agreed between the relevant Issuer, the Principal Paying Agent, the Trustee and the relevant Dealer(s), comprising some or all of the Notes of the same Series, issued by the relevant Issuer pursuant to the Programme Agreement or any other agreement between the relevant Issuer and the relevant Dealer(s) relating to the Programme, the Agency Agreement and these presents;

**these presents** means this Trust Deed and the Schedules and any trust deed supplemental hereto and the Schedules (if any) thereto and the Notes, the Receipts, the Coupons, the Talons, the Conditions and, unless the context otherwise requires, the Final Terms, all as from time to time modified in accordance with the provisions herein or therein contained;

**Tranche** means all Notes which are identical in all respects (including as to listing);

**Trust Corporation** means a corporation entitled by rules made under the Public Trustee Act 1906 of Great Britain or entitled pursuant to any other comparable legislation applicable to a trustee in any other jurisdiction to carry out the functions of a custodian trustee;

**Trustee Acts** means the Trustee Act 1925 and the Trustee Act 2000;

**Zero Coupon Note** means a Note on which no interest is payable;

words denoting the singular shall include the plural and *vice versa*;

words denoting one gender only shall include the other genders; and

words denoting persons only shall include firms and corporations and *vice versa*.

- 1.2**
- (a) All references in these presents to principal and/or principal amount and/or interest in respect of the Notes or to any moneys payable by the Issuer or the Guarantor under these presents shall, unless the context otherwise requires, be construed in accordance with Condition 6.6 (*Payments-Interpretation of principal and interest*).
  - (b) All references in these presents to any statute or any provision of any statute shall be deemed also to refer to any statutory modification or re-enactment thereof or any statutory instrument, order or regulation made thereunder or under any such modification or re-enactment.
  - (b) All references in these presents to guarantees or to an obligation being guaranteed shall be deemed to include respectively references to indemnities or to an indemnity being given in respect thereof.
  - (c) All references in these presents to any action, remedy or method of proceeding for the enforcement of the rights of creditors shall be deemed to include, in respect of any jurisdiction other than England, references to such action, remedy or method of proceeding for the enforcement of the rights of creditors available or appropriate in such jurisdiction as shall most nearly approximate to such action, remedy or method of proceeding described or referred to in these presents.
  - (d) All references in these presents to Euroclear and/or Clearstream, Luxembourg shall, whenever the context so permits, (but not in the case of any NGN) be deemed to include references to any additional or alternative clearing system as is approved by the relevant Issuer, the Principal Paying Agent and the Trustee or as may otherwise be specified in the applicable Final Terms.
  - (e) Unless the context otherwise requires words or expressions used in these presents shall bear the same meanings as in the Companies Act 1985 and 2006 (as amended or re-enacted from time to time).
  - (f) In this Trust Deed references to Schedules, Clauses, subclauses, paragraphs and subparagraphs shall be construed as references to the Schedules to this Trust Deed and to the Clauses, subclauses, paragraphs and subparagraphs of this Trust Deed respectively.
  - (g) In these presents tables of contents and Clause headings are included for ease of reference and shall not affect the construction of these presents.
  - (h) All references in these presents to taking proceedings against the Issuer and/or the Guarantor shall be deemed to include references to proving in the winding up of the Issuer and/or the Guarantor (as the case may be).
  - (i) All references in these presents to the **records** of Euroclear and Clearstream, Luxembourg shall be to the records that each of Euroclear and Clearstream, Luxembourg holds for its customers which reflect the amount of such customers' interest in the Notes.

(j) References herein to the Guarantor shall only be applicable to Notes issued by ESB Finance.

**1.3** Words and expressions defined in these presents (including the Conditions) or the Agency Agreement or used in the applicable Final Terms shall have the same meanings where used herein unless the context otherwise requires or unless otherwise stated provided that, in the event of inconsistency between the Agency Agreement and these presents, these presents shall prevail and, in the event of inconsistency between the Agency Agreement or these presents and the applicable Final Terms, the applicable Final Terms shall prevail.

**1.4** Subject to the provisions of Condition 4 (*Redenomination*), all references in these presents to the **relevant currency** shall be construed as references to the currency in which payments in respect of the Notes and/or Receipts and/or Coupons of the relevant Series are to be made as indicated in the applicable Final Terms.

**1.5** Any reference to a written notice or approval being given by the Trustee shall, for the avoidance of doubt, be deemed to include such notice being given by e-mail.

## **2. AMOUNT AND ISSUE OF THE NOTES**

### **2.1 Amount of the Notes, Final Terms and Legal Opinions**

The Notes will be issued in Series in an aggregate nominal amount from time to time outstanding not exceeding the Programme Limit from time to time and for the purpose of determining such aggregate nominal amount Clause 3.5 of the Programme Agreement shall apply.

By not later than 3.00 p.m. (London time) on the third London Business Day preceding each proposed Issue Date, the relevant Issuer shall deliver or cause to be delivered to the Trustee a copy of the applicable Final Terms and drafts of all legal opinions to be given in relation to the relevant issue and shall notify the Trustee in writing without delay of the relevant Issue Date and the nominal amount of the Notes to be issued. Upon the issue of the relevant Notes, such Notes shall become constituted by these presents without further formality.

Before the first issue of Notes occurring after each anniversary of this Trust Deed and on such other occasions as the Trustee so requests (on the basis that the Trustee considers it necessary in view of a change (or proposed change) in the law of Ireland or in English law affecting the relevant Issuer or, as the case may be, the Guarantor, these presents, the Programme Agreement or the Agency Agreement or the Trustee has other grounds), the Issuer or, as the case may be, the Guarantor will procure that (a) further legal opinion(s) (relating, if applicable, to any such change or proposed change) in such form and with such content as the Trustee may reasonably require from the legal advisers specified in the Programme Agreement or such other legal advisers as the Trustee may require is/are delivered to the Trustee. Whenever such a request is made with respect to any Notes to be issued, the receipt of such opinion in a form reasonably satisfactory to the Trustee shall be a further condition precedent to the issue of those Notes.

### **2.2 Covenant to repay principal and to pay interest**

The relevant Issuer covenants with the Trustee that it will, as and when the Notes of any Series or any of them or any instalment of principal in respect thereof becomes due to be redeemed, or on such earlier date as the same or any part thereof may become due and repayable thereunder, in accordance with the Conditions, unconditionally pay or procure to be paid to or to the order of the Trustee in the relevant currency in immediately available funds the principal amount in respect of the Notes of such Series or the amount of such instalment becoming due for redemption on that date and (except in the case of Zero Coupon Notes) shall in the meantime and until redemption in full of the Notes of such Series (both before and after any judgment or other order of a court of competent jurisdiction)

unconditionally pay or procure to be paid to or to the order of the Trustee as aforesaid interest (which shall accrue from day to day) on the nominal amount of the Notes outstanding of such Series at rates and/or in amounts calculated from time to time in accordance with, or specified in, and on the dates provided for in, the Conditions (subject to Clause 2.4) PROVIDED THAT:

- (a) every payment of principal or interest or other sum due in respect of the Notes made to or to the order of the Principal Paying Agent in the manner provided in the Agency Agreement shall be in satisfaction *pro tanto* of the relative covenant by the relevant Issuer in this Clause contained in relation to the Notes of such Series except to the extent that there is a default in the subsequent payment thereof in accordance with the Conditions to the relevant Noteholders, Receiptholders or Couponholders (as the case may be);
- (b) in the case of any payment of principal which is not made to the Trustee or the Principal Paying Agent on or before the due date, interest shall continue to accrue on the nominal amount of the relevant Notes (except in the case of Zero Coupon Notes to which the provisions of Condition 7.12 (*Redemption and Purchase-Late payment on Zero Coupon Notes*) shall apply) (both before and after any judgment or other order of a court of competent jurisdiction) at the rates aforesaid (or, if higher, the rate of interest on judgment debts for the time being provided by English law) up to and including the date which the Trustee determines to be the date on and after which payment is to be made in respect thereof as stated in a notice given to the holders of such Notes (such date to be not later than 30 days after the day on which the whole of such principal amount, together with an amount equal to the interest which has accrued and is to accrue pursuant to this proviso up to and including that date, has been received by the Trustee or the Principal Paying Agent); and
- (c) in any case where payment of the whole or any part of the principal amount of any Note is improperly withheld or refused upon due presentation thereof (other than in circumstances contemplated by (b) above) interest shall accrue on the nominal amount of such Note (except in the case of Zero Coupon Notes to which the provisions of Condition 7.12 (*Redemption and Purchase-Late payment on Zero Coupon Notes*) shall apply) payment of which has been so withheld or refused (both before and after any judgment or other order of a court of competent jurisdiction) at the rates aforesaid (or, if higher, the rate of interest on judgment debts for the time being provided by English law) from and including the date of such withholding or refusal up to and including the date on which, upon further presentation of the relevant Note, payment of the full amount (including interest as aforesaid) in the relevant currency payable in respect of such Note is made or (if earlier) the seventh day after notice is given to the relevant Noteholder(s) (whether individually or in accordance with Condition 14 (*Notices*)) that the full amount (including interest as aforesaid) in the relevant currency in respect of such Note is available for payment, PROVIDED THAT, upon further presentation thereof being duly made, such payment is made.

The Trustee will hold the benefit of this covenant and the other covenants in this Trust Deed on trust for the Noteholders, the Receiptholders and the Couponholders and itself in accordance with these presents.

### **2.3 Trustee's requirements regarding Paying Agents etc**

At any time after an Event of Default or a Potential Event of Default shall have occurred or the Notes of all or any Series shall otherwise have become due and repayable or the Trustee shall have received any money which it proposes to pay under Clause 10 to the relevant Noteholders, Receiptholders and/or Couponholders, the Trustee may:



- (a) by notice in writing to the relevant Issuer, the Guarantor, the Principal Paying Agent and the other Paying Agents require the Principal Paying Agent and the other Paying Agents pursuant to the Agency Agreement:
- (i) to act thereafter as Principal Paying Agent and other Paying Agents respectively of the Trustee in relation to payments to be made by or on behalf of the Trustee under the terms of these presents *mutatis mutandis* on the terms provided in the Agency Agreement (save that the Trustee's liability under any provisions thereof for the indemnification, remuneration and payment of out-of-pocket expenses of the Principal Paying Agent and the other Paying Agents shall be limited to the amounts for the time being held by the Trustee on the trusts of these presents relating to the Notes of the relevant Series and available for such purpose) and thereafter to hold all Notes, Receipts and Coupons and all sums, documents and records held by them in respect of Notes, Receipts and Coupons on behalf of the Trustee; or
  - (ii) to deliver up all Notes, Receipts and Coupons and all sums, documents and records held by them in respect of Notes, Receipts and Coupons to the Trustee or as the Trustee shall direct in such notice PROVIDED THAT such notice shall be deemed not to apply to any documents or records which the Principal Paying Agent or other Paying Agent is obliged not to release by any law or regulation; and
- (b) by notice in writing to the relevant Issuer and the Guarantor require each of them to make all subsequent payments in respect of the Notes, Receipts and Coupons to or to the order of the Trustee and not to the Principal Paying Agent and with effect from the issue of any such notice to the relevant Issuer and the Guarantor and until such notice is withdrawn proviso (a) to Clause 2.2 relating to the Notes shall cease to have effect.

**2.4** If the Floating Rate Notes or Index Linked Interest Notes of any Series become immediately due and repayable under Condition 10 (*Events of Default and Enforcement*) the rate and/or amount of interest payable in respect of them will be calculated by the Calculation Agent at the same intervals as if such Notes had not become due and repayable, the first of which will commence on the expiry of the Interest Period during which the Notes of the relevant Series become so due and repayable *mutatis mutandis* in accordance with the provisions of Condition 5 (*Interest*) except that the rates of interest need not be published.

## **2.5 Currency of payments**

All payments in respect of, under and in connection with these presents and the Notes of any Series to the relevant Noteholders, Receiptholders and Couponholders shall be made in the relevant currency.

## **2.6 Further Notes**

The relevant Issuer shall be at liberty from time to time (but subject always to the provisions of these presents) without the consent of the Noteholders, Receiptholders or Couponholders to create and issue further Notes having terms and conditions the same as the Notes of any Series (or the same in all respects save for the amount and date of the first payment of interest thereon) and so that the same shall be consolidated and form a single series with the outstanding Notes of a particular Series.

## **2.7 Separate Series**

The Notes of each Series shall form a separate Series of Notes and accordingly, unless for any purpose the Trustee in its absolute discretion shall otherwise determine, the provisions of this Clause and of Clauses 3 to 24 (both inclusive) and 25.2 and Schedule 3 shall apply *mutatis mutandis*

separately and independently to the Notes of each Series and in such Clauses and Schedule the expressions **Notes, Noteholders, Receipts, Receiptholders, Coupons, Couponholders, Talons and Talonholders** shall (where appropriate) be construed accordingly.

### **3. FORMS OF THE NOTES**

#### **3.1 Global Notes**

- (a) The Notes of each Tranche will initially be represented by a single Temporary Global Note or a single Permanent Global Note, as indicated in the applicable Final Terms. Each Temporary Global Note shall be exchangeable, upon a request as described therein, for either Definitive Notes together with, where applicable, Receipts and (except in the case of Zero Coupon Notes) Coupons and, where applicable, Talons attached, or a Permanent Global Note in each case in accordance with the provisions of such Temporary Global Note. Each Permanent Global Note shall be exchangeable for Definitive Notes together with, where applicable, Receipts and (except in the case of Zero Coupon Notes) Coupons and, where applicable, Talons attached, in accordance with the provisions of such Permanent Global Note. All Global Notes shall be prepared, completed and delivered to a common depositary (in the case of a CGN) or common safekeeper (in the case of a NGN) for Euroclear and Clearstream, Luxembourg in accordance with the provisions of the Programme Agreement or to another appropriate depositary in accordance with any other agreement between the relevant Issuer and the relevant Dealer(s) and, in each case, the Agency Agreement.
- (b) Each Temporary Global Note shall be printed or typed in the form or substantially in the form set out in Part 1 of Schedule 2 and may be a facsimile. Each Temporary Global Note shall have annexed thereto a copy of the applicable Final Terms and shall be signed manually or in facsimile by a person duly authorised by the relevant Issuer on behalf of the relevant Issuer, shall be authenticated by or on behalf of the Principal Paying Agent and shall, in the case of a Eurosystem-eligible NGN or in the case of a Non-eligible NGN in respect of which effectuation is to be applicable, be effectuated by the common safekeeper acting on the instructions of the Principal Paying Agent. Each Temporary Global Note so executed and authenticated shall be a binding and valid obligation of the relevant Issuer and title thereto shall pass by delivery.
- (c) Each Permanent Global Note shall be printed or typed in the form or substantially in the form set out in Part 2 of Schedule 2 and may be a facsimile. Each Permanent Global Note shall have annexed thereto a copy of the applicable Final Terms and shall be signed manually or in facsimile by a person duly authorised by the relevant Issuer on behalf of the relevant Issuer, shall be authenticated by or on behalf of the Principal Paying Agent and shall, in the case of a Eurosystem-eligible NGN or in the case of a Non-eligible NGN in respect of which effectuation is to be applicable, be effectuated by the common safekeeper acting on the instructions of the Principal Paying Agent. Each Permanent Global Note so executed and authenticated shall be a binding and valid obligation of the relevant Issuer and title thereto shall pass by delivery.

#### **3.2 Definitive Notes**

- (a) The Definitive Notes, the Receipts, the Coupons and the Talons shall be to bearer in the respective forms or substantially in the respective forms set out in Part 3, Part 4, Part 5 and Part 6, respectively, of Schedule 2. The Definitive Notes, the Receipts, the Coupons and the Talons shall be serially numbered and, if listed or quoted, shall be security printed in accordance with the requirements (if any) from time to time of the relevant Stock Exchange and the relevant Conditions may be incorporated by reference into such Definitive Notes unless not so permitted by the relevant Stock Exchange (if any), or the Definitive Notes shall be endorsed with or have attached thereto the relevant Conditions, and, in either such case, the Definitive Notes shall have endorsed thereon or attached thereto a copy of the applicable Final Terms (or the relevant provisions thereof). Title to the Definitive Notes, the Receipts, the Coupons and the Talons shall pass by delivery.

- (b) The Definitive Notes shall be signed manually or in facsimile by a person duly authorised by the relevant Issuer on behalf of the relevant Issuer and shall be authenticated by or on behalf of the Principal Paying Agent. The Definitive Notes so executed and authenticated, and the Receipts, the Coupons and Talons, upon execution and authentication of the relevant Definitive Notes, shall be binding and valid obligations of the relevant Issuer. The Receipts, the Coupons and the Talons shall not be signed. No Definitive Note and none of the Receipts, Coupons or Talons appertaining to such Definitive Note shall be binding or valid until such Definitive Note shall have been executed and authenticated as aforesaid.

### **3.3 Facsimile signatures**

The relevant Issuer may use the facsimile signature of any person who at the date such signature is affixed to a Note is duly authorised by the relevant Issuer notwithstanding that at the time of issue of any of the Notes he may have ceased for any reason to be so authorised.

### **3.4 Persons to be treated as Noteholders**

Except as ordered by a court of competent jurisdiction or as required by law, the relevant Issuer, the Guarantor, the Trustee, the Principal Paying Agent and the other Paying Agents (notwithstanding any notice to the contrary and whether or not it is overdue and notwithstanding any notation of ownership or writing thereon or notice of any previous loss or theft thereof) may (a) for the purpose of making payment thereon or on account thereof deem and treat the bearer of any Global Note, Definitive Note, Receipt, Coupon or Talon as the absolute owner thereof and of all rights thereunder free from all encumbrances, and shall not be required to obtain proof of such ownership or as to the identity of the bearer and (b) for all other purposes deem and treat:

- (i) the bearer of any Definitive Note, Receipt, Coupon or Talon; and
- (ii) each person for the time being shown in the records of Euroclear or Clearstream, Luxembourg or such other additional or alternative clearing system approved by the relevant Issuer, the Trustee and the Principal Paying Agent, as having a particular nominal amount of Notes credited to his securities account,

as the absolute owner thereof free from all encumbrances and shall not be required to obtain proof of such ownership (other than, in the case of any person for the time being so shown in such records, a certificate or letter of confirmation signed on behalf of Euroclear or Clearstream, Luxembourg or any other form of record made by any of them) or as to the identity of the bearer of any Global Note, Definitive Note, Receipt, Coupon or Talon.

### **3.5 Reliance on Certification of a Clearing System**

Without prejudice to the provisions of Clause 16(ee), the Trustee may call for any certificate or other document to be issued by Euroclear or Clearstream, Luxembourg as to the nominal amount of Notes represented by a Global Note standing to the account of any person. Any such certificate or other document shall, in the absence of manifest error, be conclusive and binding for all purposes. Any such certificate or other document may comprise any form of statement or print out of electronic records provided by the relevant clearing system (including Euroclear's EUCLID or Clearstream, Luxembourg's Creation Online system) in accordance with its usual procedures and in which the holder of a particular principal amount of Notes is clearly identified together with the amount of such holding. The Trustee shall not be liable to any person by reason of having accepted as valid or not having rejected any certificate or other document to such effect purporting to be issued by Euroclear or Clearstream, Luxembourg and subsequently found to be forged or not authentic.

#### **4. FEES, DUTIES AND TAXES**

The relevant Issuer will pay any stamp, issue, registration, documentary and other fees, duties and taxes, including interest and penalties, payable on or in connection with (a) the execution and delivery of these presents, (b) the constitution and original issue of the Notes, the Receipts and the Coupons and (c) any action taken by or on behalf of the Trustee or (where permitted under these presents so to do) any Noteholder, Receiptholder or Couponholder to enforce, or to resolve any doubt concerning, or for any other purpose in relation to, these presents.

#### **5. COVENANT OF COMPLIANCE**

Each of the relevant Issuer and the Guarantor severally covenants with the Trustee that it will comply with and perform and observe all the provisions of these presents which are expressed to be binding on it. The Conditions shall be binding on the relevant Issuer, the Guarantor, the Noteholders, the Receiptholders and the Couponholders. The Trustee shall be entitled to enforce the obligations of the relevant Issuer and the Guarantor under the Notes, the Receipts and the Coupons as if the same were set out and contained in this Trust Deed, which shall be read and construed as one document with the Notes, the Receipts and the Coupons. The Trustee shall hold the benefit of this covenant upon trust for itself and the Noteholders, the Receiptholders and the Couponholders according to its and their respective interests.

#### **6. CANCELLATION OF NOTES AND RECORDS**

**6.1** The relevant Issuer shall procure that all Notes issued by it which are (a) redeemed or (b) purchased by or on behalf of the relevant Issuer, the Guarantor or any Subsidiary of the relevant Issuer or the Guarantor and surrendered for cancellation or (c) which, being mutilated or defaced, have been surrendered and replaced pursuant to Condition 11 (*Replacement of Notes, Receipts, Coupons and Talons*) (together in each case, in the case of Definitive Notes, with all unmatured Receipts and Coupons attached thereto or delivered therewith), and all Receipts and Coupons paid in accordance with the relevant Conditions or which, being mutilated or defaced, have been surrendered and replaced pursuant to Condition 11 (*Replacement of Notes, Receipts, Coupons and Talons*), shall forthwith be cancelled by or on behalf of the relevant Issuer and a certificate stating:

- (i) the aggregate nominal amount of Notes which have been redeemed and the aggregate amounts in respect of Receipts and Coupons which have been paid;
- (ii) the serial numbers of such Notes in definitive form and Receipts;
- (iii) the total numbers (where applicable, of each denomination) by maturity date of such Receipts and Coupons;
- (iv) the aggregate amount of interest paid (and the due dates of such payments) on Global Notes;
- (v) the aggregate nominal amount of Notes (if any) which have been purchased by or on behalf of the relevant Issuer, the Guarantor or any Subsidiary of the relevant Issuer or the Guarantor and cancelled and the serial numbers of such Notes in definitive form and, in the case of Definitive Notes, the total number (where applicable, of each denomination) by maturity date of the Receipts, Coupons and Talons attached thereto or surrendered therewith;
- (vi) the aggregate nominal amounts of Notes and Receipts and the aggregate amounts in respect of Coupons which have been so surrendered and replaced and the serial numbers of such Notes in definitive form and the total number (where applicable, of each denomination) by maturity date of such Coupons and Talons;

- (vii) the total number (where applicable, of each denomination) by maturity date of the unmatured Coupons missing from Definitive Notes bearing interest at a fixed rate which have been redeemed or surrendered and replaced and the serial numbers of the Definitive Notes to which such missing unmatured Coupons appertained; and
- (viii) the total number (where applicable, of each denomination) by maturity date of Talons which have been exchanged for further Coupons,

shall be given to the Trustee by or on behalf of the relevant Issuer as soon as possible and in any event within one month after the end of each calendar quarter during which any such redemption, purchase, payment, exchange or replacement (as the case may be) takes place. The Trustee may accept such certificate as conclusive evidence of redemption, purchase, payment, exchange or replacement *pro tanto* of the Notes or payment of interest thereon or exchange of the relative Talons respectively and of cancellation of the relative Notes and Coupons.

**6.2** The relevant Issuer shall procure (a) that the Principal Paying Agent shall keep a full and complete record of all Notes, Receipts, Coupons and Talons issued by it (other than serial numbers of Receipts and Coupons) and of their redemption, any cancellation or any payment (as the case may be) and of all replacement notes, receipts, coupons or talons issued in substitution for lost, stolen, mutilated, defaced or destroyed Notes, Receipts, Coupons or Talons, (b) that the Principal Paying Agent shall in respect of the Coupons of each maturity retain (in the case of Coupons other than Talons) until the expiry of ten years from the Relevant Date in respect of such Coupons and (in the case of Talons indefinitely) either all paid or exchanged Coupons of that maturity or a list of the serial numbers of Coupons of that maturity still remaining unpaid or unexchanged and (c) that such records and Coupons (if any) shall be made available to the Trustee at all reasonable times.

## **7. GUARANTEE**

**7.1** The Guarantor hereby irrevocably and unconditionally, and notwithstanding the release of any other guarantor or any other person under the terms of any composition or arrangement with any creditors of ESB Finance or any other Subsidiary of the Guarantor, guarantees to the Trustee:

- (a) the due and punctual payment in accordance with the provisions of these presents of the principal of and interest on all Notes issued by ESB Finance and of any other amounts payable by ESB Finance under these presents; and
- (b) the due and punctual performance and observance by ESB Finance of each of the other provisions of these presents to be performed or observed by ESB Finance.

**7.2** If ESB Finance fails for any reason whatsoever punctually to pay any such principal, interest or other amount, the Guarantor shall cause each and every such payment to be made as if the Guarantor instead of ESB Finance were expressed to be the primary obligor under these presents and not merely as surety (but without affecting the nature of ESB Finance's obligations) to the intent that the holder of the relevant Note, Receipt or Coupon or the Trustee (as the case may be) shall receive the same amounts in respect of principal, interest or such other amount as would have been receivable had such payments been made by ESB Finance.

**7.3** If any payment received by the Trustee or any Noteholder, Receiptholder or Couponholder pursuant to the provisions of these presents shall (whether on the subsequent bankruptcy, insolvency or corporate reorganisation of ESB Finance or, without limitation, on any other event) be avoided or set aside for any reason, such payment shall not be considered as discharging or diminishing the liability of the Guarantor and this guarantee shall continue to apply as if such payment had at all times remained owing by ESB Finance and the Guarantor shall indemnify the Trustee and the relative Noteholders and/or Receiptholders and/or Couponholders (as the case may be) in respect thereof

PROVIDED THAT the obligations of ESB Finance and/or the Guarantor under this subclause shall, as regards each payment made to the Trustee or any Noteholder, Receiptholder or Couponholder which is avoided or set aside, be contingent upon such payment being reimbursed to ESB Finance or other persons entitled through ESB Finance.

**7.4** The Guarantor hereby agrees that its obligations hereunder shall be unconditional and that the Guarantor shall be fully liable irrespective of the validity, regularity, legality or enforceability against ESB Finance of, or of any defence or counter-claim whatsoever available to ESB Finance in relation to, its obligations under these presents, whether or not any action has been taken to enforce the same or any judgment obtained against ESB Finance, whether or not any of the other provisions of these presents have been modified, whether or not any time, indulgence, waiver, authorisation or consent has been granted to ESB Finance by or on behalf of the relative Noteholders or the relative Receiptholders or Couponholders or the Trustee, whether or not any determination has been made by the Trustee pursuant to Clause 19, whether or not there have been any dealings or transactions between ESB Finance, any of the relative Noteholders, Receiptholders or Couponholders or the Trustee, whether or not ESB Finance has been dissolved, liquidated, merged, consolidated, bankrupted or has changed its status, functions, control or ownership, whether or not ESB Finance has been prevented from making payment by foreign exchange provisions applicable at its place of registration or incorporation and whether or not any other circumstances have occurred which might otherwise constitute a legal or equitable discharge of or defence to a guarantor. Accordingly, the validity of this guarantee shall not be affected by reason of any invalidity, irregularity, illegality or unenforceability of all or any of the obligations of ESB Finance under these presents and this guarantee shall not be discharged nor shall the liability of the Guarantor under these presents be affected by any act, thing or omission or means whatever whereby its liability would not have been discharged if it had been the principal debtor.

**7.5** Without prejudice to the provisions of Clause 9.1, the Trustee may determine from time to time whether or not it will enforce this guarantee which it may do without making any demand of or taking any proceedings against ESB Finance and may from time to time make any arrangement or compromise with the Guarantor in relation to this guarantee which the Trustee may consider expedient in the interests of the relative Noteholders, Receiptholders or Couponholders.

**7.6** The Guarantor hereby waives diligence, presentment, demand of payment, filing of claims with a court in the event of dissolution, liquidation, merger or bankruptcy of ESB Finance, any right to require a proceeding first against ESB Finance, protest or notice with respect to these presents or the indebtedness evidenced thereby and all demands whatsoever and hereby covenants that this guarantee shall be a continuing guarantee, shall extend to the ultimate balance of all sums payable and obligations owed by ESB Finance under these presents, shall not be discharged except by complete performance of the obligations contained in these presents and is additional to, and not instead of, any security or other guarantee or indemnity at any time existing in favour of any person, whether from the Guarantor or otherwise.

**7.7** If any moneys shall become payable by the Guarantor under this guarantee, the Guarantor shall not, so long as the same remain unpaid, without the prior written consent of the Trustee:

- (a) in respect of any amounts paid by it under this guarantee, exercise any rights of subrogation or contribution or, without limitation, any other right or remedy which may accrue to it in respect of or as a result of any such payment; or
- (b) in respect of any other moneys for the time being due to the Guarantor by ESB Finance, claim payment thereof or exercise any other right or remedy;

(including in either case claiming the benefit of any security or right of set-off or, on the liquidation of ESB Finance, proving in competition with the Trustee). If, notwithstanding the foregoing, upon

the bankruptcy, insolvency or liquidation of ESB Finance any payment or distribution of assets of ESB Finance of any kind or character, whether in cash, property or securities, shall be received by the Guarantor before payment in full of all amounts payable under these presents shall have been made to the relative Noteholders, Receiptholders, Couponholders and the Trustee, such payment or distribution shall be received by the Guarantor on trust to pay the same over immediately to the Trustee for application in or towards the payment of all sums due and unpaid under these presents in accordance with Clause 10 on the basis that Clause 10 does not apply separately and independently to each Series of the Notes, save that nothing in this subclause 7.7 shall operate so as to create any charge by the Guarantor over any such payment or distribution.

**7.8** Until all amounts which may be or become payable by ESB Finance under these presents have been irrevocably paid in full, the Trustee may:

(a) refrain from applying or enforcing any other moneys, security or rights held or received by the Trustee in respect of those amounts, or apply and enforce the same in such manner and order as it sees fit (whether against those amounts or otherwise), and the Guarantor shall not be entitled to the benefit of the same; and

(b) hold in a suspense account any moneys received from the Guarantor or on account of the Guarantor's liability under this guarantee, without liability to pay interest on those moneys.

**7.9** The obligations of the Guarantor under these presents constitute direct, unconditional and (subject to the provisions of Condition 3 (*Covenants*)) unsecured obligations of the Guarantor and (subject as aforesaid) rank and will rank *pari passu* with all other outstanding unsecured and unsubordinated obligations of the Guarantor, present and future, but, in the event of insolvency, only to the extent permitted by applicable laws relating to creditors' rights.

## **8. NON-PAYMENT**

Proof that as regards any specified Note, Receipt or Coupon the relevant Issuer or, as the case may be, the Guarantor has made default in paying any amount due in respect of such Note, Receipt or Coupon shall (unless the contrary be proved) be sufficient evidence that the same default has been made as regards all other Notes, Receipts or Coupons (as the case may be) in respect of which the relevant amount is due and payable.

## **9. PROCEEDINGS, ACTION AND INDEMNIFICATION**

**9.1** The Trustee shall not be bound to take any action or proceedings mentioned in Condition 10 (*Events of Default and Enforcement*) or any other action in relation to these presents unless respectively directed or requested to do so (a) by an Extraordinary Resolution or (b) in writing by the holders of at least one-fifth in aggregate nominal amount of the Notes then outstanding and in either case then only if it shall be indemnified and/or secured and/or prefunded to its satisfaction against all Liabilities to which it may thereby render itself liable or which it may incur by so doing.

**9.2** Only the Trustee may enforce the provisions of these presents. No Noteholder, Receiptholder or Couponholder shall be entitled to proceed directly against the relevant Issuer or the Guarantor to enforce the performance of any of the provisions of these presents unless the Trustee having become bound as aforesaid to take proceedings fails to do so within a reasonable period and such failure is continuing.

## **10. APPLICATION OF MONEYS**

All moneys received by the Trustee under these presents from the relevant Issuer or, as the case may be, the Guarantor shall, unless and to the extent attributable, in the opinion of the Trustee, to a

particular Series of the Notes, be apportioned *pari passu* and rateably between each Series of the Notes, and all moneys received by the Trustee under these presents from the relevant Issuer or, as the case may be, the Guarantor to the extent attributable in the opinion of the Trustee to a particular Series of the Notes or which are apportioned to such Series as aforesaid, be held by the Trustee upon trust to apply them (subject to Clause 12):

**First** in payment or satisfaction of all amounts then due and unpaid under Clauses 15 and/or 16(j) to the Trustee and/or any Appointee;

**Secondly** in or towards payment *pari passu* and rateably of all principal and interest then due and unpaid in respect of the Notes of that Series;

**Thirdly** in or towards payment *pari passu* and rateably of all principal and interest then due and unpaid in respect of the Notes of each other Series; and

**Fourthly** in payment of the balance (if any) to the relevant Issuer (without prejudice to, or liability in respect of, any question as to how such payment to the relevant Issuer shall be dealt with as between the relevant Issuer, the Guarantor and any other person).

Without prejudice to this Clause 10, if the Trustee holds any moneys which represent principal or interest in respect of Notes which have become void or in respect of which claims have been prescribed under Condition 9 (*Prescription*), the Trustee will hold such moneys on the above trusts.

## **11. NOTICE OF PAYMENTS**

The Trustee shall give notice to the relevant Noteholders in accordance with Condition 14 (*Notices*) of the day fixed for any payment to them under Clause 10. Such payment may be made in accordance with Condition 6 (*Payments*) and any payment so made shall be a good discharge to the Trustee.

## **12. INVESTMENT BY TRUSTEE**

**12.1** The Trustee may at its discretion and pending payment invest moneys at any time available for the payment of principal and interest on the Notes of any Series in some or one of the investments hereinafter authorised for such periods as it may consider expedient with power from time to time at the like discretion to vary such investments and to accumulate such investments and the resulting interest and other income derived therefrom. The accumulated investments shall be applied under Clause 10. All interest and other income deriving from such investments shall be applied first in payment or satisfaction of all amounts then due and unpaid under Clauses 15 and/or 16(j) to the Trustee and/or any Appointee and otherwise held for the benefit of and paid to the Noteholders of such Series or the holders of the related Receipts and/or Coupons, as the case may be.

**12.2** Any moneys which under the trusts of these presents ought to or may be invested by the Trustee may be invested in the name or under the control of the Trustee in any investments or other assets in any part of the world whether or not they produce income or by placing the same on deposit in the name or under the control of the Trustee at such bank or other financial institution and in such currency as the Trustee may think fit. If that bank or institution is the Trustee or a Subsidiary, holding or associated company of the Trustee, it need only account for an amount of interest equal to the amount of interest which would, at then current rates, be payable by it on such a deposit to an independent customer. The Trustee may at any time vary any such investments for or into other investments or convert any moneys so deposited into any other currency and shall not be responsible for any loss resulting from any such investments or deposits, whether due to depreciation in value, fluctuations in exchange rates or otherwise.



### 13. PARTIAL PAYMENTS

Upon any payment under Clause 10 (other than payment in full against surrender of a Note, Receipt or Coupon) the Note, Receipt or Coupon in respect of which such payment is made shall be produced to the Trustee or the Paying Agent by or through whom such payment is made and (except in the case of a NGN) the Trustee shall or shall cause such Paying Agent to enface thereon a memorandum of the amount and the date of payment but the Trustee may in any particular case dispense with such production and enfacement upon such indemnity being given as it shall think sufficient.

### 14. COVENANTS BY THE ISSUER AND THE GUARANTOR

Each of the relevant Issuer and the Guarantor severally covenants with the Trustee that, so long as any of the Notes remains outstanding (or, in the case of paragraphs (g), (h), (l), (m), (o) and (q) so long as any of such Notes or the relative Receipts or Coupons remains liable to prescription or, in the case of paragraph (n), until the expiry of a period of 30 days after the Relevant Date in respect of the payment of principal in respect of all such Notes remaining outstanding at such time) it shall:

- (a) give or procure to be given to the Trustee such opinions, certificates, information and evidence as it shall require and in such form as it shall require (including without limitation the procurement by the relevant Issuer or the Guarantor (as the case may be) of all such certificates called for by the Trustee pursuant to Clause 16(c)) for the purpose of the discharge or exercise of the duties, trusts, powers, authorities and discretions vested in it under these presents or by operation of law;
- (b) cause to be prepared and certified by its Auditors in respect of each financial accounting period accounts in such form as will comply with all relevant legal and accounting requirements and all requirements for the time being of the relevant Stock Exchange;
- (c) at all times keep and procure its Principal Subsidiaries to keep proper books of account and allow and procure its Principal Subsidiaries to allow the Trustee and any person appointed by the Trustee to whom the relevant Issuer, the Guarantor or the relevant Principal Subsidiary (as the case may be) shall have no reasonable objection free access to such books of account at all reasonable times during normal business hours;
- (d) send to the Trustee (in addition to any copies to which it may be entitled as a holder of any securities of the relevant Issuer or the Guarantor) two copies in English of every balance sheet, profit and loss account, report, circular and notice of general meeting and every other publicly available document issued or sent to its shareholders together with any of the foregoing, and every publicly available document issued or sent to holders of securities other than its shareholders (including the Noteholders) as soon as practicable after the issue or publication thereof;
- (e) forthwith give notice in writing to the Trustee of the coming into existence of any security interest which would require any security to be given to the Notes pursuant to Condition 3 (*Covenants*) or of the occurrence of any Event of Default, Potential Event of Default, Event Risk Put Event or Change of Control Event;
- (f) give to the Trustee (i) within seven days after demand by the Trustee therefor and (ii) (without the necessity for any such demand) promptly after the publication of its audited accounts in respect of each financial period commencing with the financial period ending 31 December 2009 and in any event not later than 180 days after the end of each such financial period a certificate in or substantially in the form set out in Schedule 4 signed by a Senior Officer of the relevant Issuer and a Senior Officer of the Guarantor to the effect that as at a

date not more than seven days before delivering such certificate (the **relevant certification date**) there did not exist and had not existed since the relevant certification date of the previous certificate (or, in the case of the first such certificate, the date hereof) any Event of Default, Potential Event of Default, Event Risk Put Event or Change of Control Event (or if such exists or existed specifying the same) and that during the period from and including the relevant certification date of the last such certificate (or, in the case of the first such certificate, the date hereof) to and including the relevant certification date of such certificate that each of the relevant Issuer and the Guarantor has complied with all its obligations contained in these presents or (if such is not the case) specifying the respects in which it has not complied;

- (g) at all times execute and do all such further documents, acts and things as may be necessary at any time or times in the opinion of the Trustee to give effect to these presents;
- (h) at all times maintain a Principal Paying Agent and other Paying Agents in accordance with the Conditions;
- (i) procure the Principal Paying Agent to notify the Trustee forthwith in the event that it does not, on or before the due date for any payment in respect of the Notes or any of the relative Receipts or Coupons, receive unconditionally pursuant to the Agency Agreement payment of the full amount in the requisite currency of the moneys payable on such due date on all such Notes, Receipts or Coupons as the case may be;
- (j) in the event of the unconditional payment to the Principal Paying Agent or the Trustee of any sum due in respect of the Notes or any of them or any of the relative Receipts or Coupons being made after the due date for payment thereof forthwith give or procure to be given notice to the relevant Noteholders in accordance with Condition 14 (*Notices*) that such payment has been made;
- (k) use its best endeavours to maintain the listing on the relevant Stock Exchange of those of the Notes which are listed on the relevant Stock Exchange or, if it is unable to do so having used its best endeavours or if the Trustee considers that the maintenance of such listings is unduly onerous and the Trustee is of the opinion that to do so would not be materially prejudicial to the interests of the Noteholders, use its best endeavours to obtain and maintain a quotation or listing of such Notes on such other stock exchange or exchanges or securities market or markets as the relevant Issuer may (with the prior written approval of the Trustee) decide and also upon obtaining a quotation or listing of such Notes issued by it on such other stock exchange or exchanges or securities market or markets enter into a trust deed supplemental to this Trust Deed to effect such consequential amendments to these presents as the Trustee may require or as shall be requisite to comply with the requirements of any such stock exchange or securities market;
- (l) give notice to the Noteholders in accordance with Condition 14 (*Notices*) of any appointment, resignation or removal of any Principal Paying Agent, Calculation Agent or other Paying Agent (other than the appointment of the initial Principal Paying Agent, Calculation Agent and other Paying Agents) after having obtained the prior written approval of the Trustee thereto or any change of any Paying Agent's specified office and (except as provided by the Agency Agreement or the Conditions) at least 30 days prior to such event taking effect; PROVIDED ALWAYS THAT so long as any of the Notes remains outstanding in the case of the termination of the appointment of the Calculation Agent or so long as any of the Notes, Receipts or Coupons remains liable to prescription in the case of the termination of the appointment of the Principal Paying Agent no such termination shall take effect until a new Principal Paying Agent or Calculation Agent (as the case may be) has been appointed on terms previously approved in writing by the Trustee;

- (m) where practicable, send to the Trustee, not less than 14 days prior to which any such notice is to be given, the form of every notice to be given to Noteholders in accordance with Condition 14 (*Notices*) and obtain the prior written approval of the Trustee to, and promptly give to the Trustee two copies of, the final form of every notice to be given to the Noteholders in accordance with Condition 14 (*Notices*) (such approval, unless so expressed, not to constitute approval for the purposes of Section 21 of the FSMA of a communication within the meaning of Section 21 of the FSMA);
- (n) if payments by the relevant Issuer or the Guarantor of principal or interest in respect of the Notes or relative Receipts or Coupons shall become subject generally to the taxing jurisdiction of any territory or any political sub-division or any authority therein or thereof having power to tax other than or in addition to Ireland or any such political sub-division or any such authority therein or thereof, immediately upon becoming aware thereof notify the Trustee of such event and (unless the Trustee otherwise agrees) enter forthwith into a trust deed supplemental to this Trust Deed, giving to the Trustee an undertaking or covenant in form and manner satisfactory to the Trustee in terms corresponding to the terms of Condition 8 (*Taxation*) with the substitution for (or, as the case may be, the addition to) the references therein to Tax Jurisdiction of references to that other or additional territory or any political sub-division or any authority therein or thereof having power to tax to whose taxing jurisdiction such payments shall have become subject as aforesaid; such supplemental trust deed also (where applicable) to modify Condition 7.2 (*Redemption and Purchase-Redemption for tax reasons*) so that such Condition shall make reference to the other or additional territory, any political sub-division and any authority therein or thereof having power to tax;
- (o) comply with and perform all its obligations under the Agency Agreement and use its reasonable endeavours to procure that the Principal Paying Agent and the other Paying Agents comply with and perform all their respective obligations thereunder and any notice given by the Trustee pursuant to Clause 2.3(a) and not make any amendment or modification to such Agreement without the prior written approval of the Trustee (such approval not to be unreasonably withheld or delayed) and use all reasonable endeavours to make such amendments to such Agreement as the Trustee may require;
- (p) in order to enable the Trustee to ascertain the nominal amount of the Notes of each Series for the time being outstanding for any of the purposes referred to in the proviso to the definition of **outstanding** in Clause 1, deliver to the Trustee as soon as practicable upon being so requested in writing by the Trustee a certificate in writing signed by a Senior Officer of the relevant Issuer or a Senior Officer of the Guarantor (as appropriate) setting out the total number and aggregate nominal amount of the Notes of each Series issued which:
  - (i) up to and including the date of such certificate have been purchased by the relevant Issuer, the Guarantor, any Subsidiary of the relevant Issuer or the Guarantor, any holding company of the relevant Issuer or the Guarantor or any other Subsidiary of such holding company and cancelled; and
  - (ii) are at the date of such certificate held by, for the benefit of, or on behalf of, the relevant Issuer, the Guarantor, any Subsidiary of the relevant Issuer or the Guarantor, any holding company of the relevant Issuer or the Guarantor or any other Subsidiary of such holding company;
- (q) procure its Subsidiaries to comply with all applicable provisions of Condition 7.10 (*Redemption-Purchases*);

- (r) procure that each Paying Agent makes available for inspection during normal business hours by Noteholders, Receiptholders and Couponholders at its specified office copies of these presents, the Agency Agreement and the then latest audited balance sheet and profit and loss account (consolidated if applicable) of the relevant Issuer and the Guarantor;
- (s) if, in accordance with the provisions of the Conditions, interest in respect of the Notes becomes payable at the specified office of any Paying Agent in the United States of America promptly give notice thereof to the relative Noteholders in accordance with Condition 14 (*Notices*);
- (t) give prior notice to the Trustee of any proposed redemption pursuant to Condition 7.2 (*Redemption and Purchase-Redemption for tax reasons*) or 7.3 (*Redemption and Purchases-Redemption at the option of the Issuer (Issuer call)*) or 7.5 (*Redemption as a result of a Change of Control of the Issuer*) or 7.6 (*Redemption for Indexation Reasons*) and, if it shall have given notice to the Noteholders of its intention to redeem any Notes pursuant to Condition 7.3 (*Redemption and Purchase-Redemption at the option of the Issuer (Issuer call)*), duly proceed to make drawings (if appropriate) and to redeem Notes accordingly;
- (u) promptly provide the Trustee with copies of all supplements and/or amendments and/or restatements of the Programme Agreement;
- (v) give to the Trustee (i) on the date hereof and (ii) at the same time as sending to it the certificates referred to in paragraph (f) above, a certificate by a Senior Officer of ESB addressed to the Trustee (with a form and content satisfactory to the Trustee) listing those Subsidiaries of ESB which as at the date hereof, as at the relevant certification date (as defined in paragraph (vii) above) of the relevant certificate given under paragraph (f) above or, as the case may be, as at the first day on which the then latest audited consolidated accounts of ESB became available were Principal Subsidiaries;
- (w) give to the Trustee, as soon as reasonably practicable after the acquisition or disposal of any company which thereby becomes or ceases to be a Principal Subsidiary or after any transfer is made to any Subsidiary of ESB which thereby becomes a Principal Subsidiary, a certificate by a Senior Officer of ESB addressed to the Trustee (with a form and content satisfactory to the Trustee) to such effect;
- (x) upon due surrender in accordance with the Conditions, pay the face value of all Coupons (including Coupons issued in exchange for Talons) appertaining to all Notes purchased by the relevant Issuer, the Guarantor or any other Subsidiary of ESB;
- (y) prior to making any modification or amendment or supplement to these presents, procure the delivery of such legal opinion(s) as to English and any other relevant law, addressed to the Trustee, dated the date of such modification or amendment or supplement, as the case may be, and in a form acceptable to the Trustee from legal advisers acceptable to the Trustee;
- (z) at all times use all reasonable endeavours to minimise taxes and any other costs arising in connection with its payment obligations in respect of the Notes; and
- (aa) use its best endeavours to procure that Euroclear and/or Clearstream, Luxembourg (as the case may be) issue(s) any record, certificate or other document requested by the Trustee under Clause 16(ee) or otherwise as soon as practicable after such request.

## **15. REMUNERATION AND INDEMNIFICATION OF TRUSTEE**

- 15.1** The relevant Issuer shall pay to the Trustee, by way of remuneration for its services as trustee of these presents, such amount as shall be agreed from time to time by exchange of letters between the relevant Issuer and the Trustee. Such remuneration shall accrue from day to day and be payable (in priority to payments to Noteholders, Receiptholders and Couponholders) up to and including the date when, all the Notes having become due for redemption, the redemption moneys and interest thereon to the date of redemption have been paid to the Principal Paying Agent or the Trustee PROVIDED THAT if upon due presentation of any Note, Receipt or Coupon or any cheque payment of the moneys due in respect thereof is improperly withheld or refused, remuneration will be deemed not to have ceased to accrue and will continue to accrue until payment to such Noteholder, Receiptholder or Couponholder is duly made.
- 15.2** In the event of the occurrence of an Event of Default, Potential Event of Default, Event Risk Put Event or Change of Control Event, the Issuer hereby agrees that the Trustee shall be entitled to be paid additional remuneration, which may be calculated at its normal hourly rates in force from time to time. In any other case, if the Trustee considers it expedient or necessary or is requested by the relevant Issuer or the Guarantor to undertake duties which the Trustee and the relevant Issuer agree to be of an exceptional nature or otherwise outside the scope of the normal duties of the Trustee under these presents the relevant Issuer shall pay to the Trustee such additional remuneration at the Trustee's usual hourly rates as shall be in force from time to time and as shall be agreed between them (and which may be calculated by reference to the Trustee's normal hourly rates in force from time to time).
- 15.3** The relevant Issuer shall in addition pay to the Trustee an amount equal to the amount of any value added tax or similar tax chargeable in respect of its remuneration under these presents.
- 15.4** In the event of the Trustee and the relevant Issuer failing to agree:
- (a) (in a case to which subclause 15.1 above applies) upon the amount of the remuneration; or
  - (b) (in a case to which subclause 15.2 above applies) upon whether such duties shall be of an exceptional nature or otherwise outside the scope of the normal duties of the Trustee under these presents, or upon such additional remuneration,

such matters shall be determined by a person (acting as an expert and not as an arbitrator) selected by the Trustee and approved by the relevant Issuer or, failing such approval, nominated (on the application of the Trustee) by the President for the time being of The Law Society of England and Wales (the expenses involved in such nomination and the fees of such person being payable by the relevant Issuer) and the determination of any such person shall be final and binding upon the Trustee and the relevant Issuer.

- 15.5** The relevant Issuer shall also pay or discharge all Liabilities properly incurred by the Trustee and every Appointee in relation to the preparation and execution of the exercise of its powers and the performance of its duties under, and in any other manner in relation to, these presents, including but not limited to travelling expenses and any stamp, issue, registration, documentary and other taxes or duties paid or payable by the Trustee in connection with any action taken or contemplated by or on behalf of the Trustee for enforcing, or resolving any doubt concerning, or for any other purpose in relation to, these presents.
- 15.6** All amounts payable pursuant to subclause 15.5 above and/or Clause 16(j) shall be payable by the relevant Issuer on the date specified in a demand by the Trustee and in the case of payments actually made by the Trustee prior to such demand shall carry interest at a rate equivalent to the Trustee's cost of borrowing (on the date on which payment was made by the Trustee) from the date such

demand is made and in all other cases shall (if not paid within 30 days after the date of such demand or, if such demand specifies that payment is to be made on an earlier date, on such earlier date) carry interest at such rate from such thirtieth day of such other date specified in such demand. All remuneration payable to the Trustee shall carry interest at such rate from the due date therefor. A certificate from the Trustee as to the Trustee's cost of borrowing on any particular date or during any particular period shall be conclusive and binding on the Issuer.

- 15.7** The relevant Issuer hereby further undertakes to the Trustee that all monies payable by the relevant Issuer to the Trustee under this Clause shall be made without set-off, counterclaim, deduction or withholding unless compelled by law in which event the relevant Issuer will pay such additional amounts as will result in the receipt by the Trustee of the amounts which would otherwise have been payable by the relevant Issuer to the Trustee under this Clause in the absence of any such set-off, counterclaim, deduction or withholding, provided however, that no additional amount shall be payable in respect of any amount withheld pursuant to the Issuer's statutory obligation to make deductions from certain payments in respect of professional services pursuant to Part 18 of the Taxes Consolidation Act 1997 of Ireland.
- 15.8** Unless otherwise specifically stated in any discharge of these presents the provisions of this Clause and Clause 16(j) shall continue in full force and effect notwithstanding such discharge.
- 15.9** The Trustee shall be entitled in its absolute discretion to determine in respect of which Series of Notes any Liabilities incurred under these presents have been incurred or to allocate any such Liabilities between the Notes of any Series.

**16. SUPPLEMENT TO TRUSTEE ACTS**

Section 1 of the Trustee Act 2000 shall not apply to the duties of the Trustee in relation to the trusts constituted by these presents. Where there are any inconsistencies between the Trustee Acts and the provisions of these presents, the provisions of these presents shall, to the extent allowed by law, prevail and, in the case of any such inconsistency with the Trustee Act 2000, the provisions of these presents shall constitute a restriction or exclusion for the purposes of that Act. The Trustee shall have all the powers conferred upon trustees by the Trustee Acts and by way of supplement thereto it is expressly declared as follows:

- (a) The Trustee may in relation to these presents act on the advice or opinion of or any information (whether addressed to the Trustee or not) obtained from any lawyer, valuer, accountant, surveyor, banker, broker, auctioneer or other expert whether obtained by the relevant Issuer, the Guarantor, the Trustee or otherwise and shall not be responsible for any Liability occasioned by so acting.
- (b) Any such advice, opinion or information may be sent or obtained by letter, telex, telegram, facsimile transmission, electronic mail or cable and the Trustee shall not be liable for acting on any advice, opinion or information purporting to be conveyed by any such letter, telex, telegram, facsimile transmission, electronic mail or cable although the same shall contain some error or shall not be authentic.
- (c) The Trustee may call for and shall be at liberty to accept as sufficient evidence of any fact or matter or the expediency of any transaction or thing a certificate signed by a Senior Officer, or in the case of a certificate pursuant to Condition 3.3, a Senior Financial Officer of the relevant Issuer and/or by a Senior Officer of the Guarantor and the Trustee shall not be bound in any such case to call for further evidence or be responsible for any Liability that may be occasioned by it or any other person acting on such certificate.

- (d) The Trustee shall be at liberty to hold these presents and any other documents relating thereto or to deposit them in any part of the world with any banker or banking company or company whose business includes undertaking the safe custody of documents or lawyer or firm of lawyers considered by the Trustee to be of good repute and the Trustee shall not be responsible for or required to insure against any Liability incurred in connection with any such holding or deposit and may pay all sums required to be paid on account of or in respect of any such deposit.
- (e) The Trustee shall not be responsible for the receipt or application of the proceeds of the issue of any of the Notes by the relevant Issuer, the exchange of any Global Note for another Global Note or Definitive Notes or the delivery of any Global Note or Definitive Notes to the person(s) entitled to it or them.
- (f) The Trustee shall not be bound to give notice to any person of the execution of any documents comprised or referred to in these presents or to take any steps to ascertain whether any Event of Default, Potential Event of Default, Event Risk Put Event or Change of Control Event has occurred and, until it shall have actual knowledge or express notice pursuant to these presents to the contrary, the Trustee shall be entitled to assume that no Event of Default, Potential Event of Default, Event Risk Put Event or Change of Control Event has occurred or (in the case of Index Linked Redemption Notes) that the Index has not ceased to be published and that each of the relevant Issuer and the Guarantor is observing and performing all its obligations under these presents.
- (g) Save as expressly otherwise provided in these presents, the Trustee shall have absolute and uncontrolled discretion as to the exercise or non-exercise of its trusts, powers, authorities and discretions under these presents (the exercise or non-exercise of which as between the Trustee and the Noteholders, the Receiptholders and Couponholders shall be conclusive and binding on the Noteholders, the Receiptholders and Couponholders) and shall not be responsible for any Liability which may result from their exercise or non-exercise and in particular the Trustee shall not be bound to act at the request or direction of the Noteholders or otherwise under any provision of these presents or to take at such request or direction or otherwise any other action under any provision of these presents, without prejudice to the generality of Clause 9.1, unless it shall first be indemnified and/or secured and/or prefunded to its satisfaction against all Liabilities to which it may render itself liable or which it may incur by so doing.
- (h) The Trustee shall not be liable to any person by reason of having acted upon any Extraordinary Resolution in writing or any Extraordinary Resolution or Ordinary Resolution or other resolution purporting to have been passed at any meeting of the holders of Notes of all or any Series in respect whereof minutes have been made and signed or any Extraordinary Resolution passed by way of electronic consents received through the relevant Clearing System(s) in accordance with these presents or any direction or request of the holders of the Notes of all or any Series even though subsequent to its acting it may be found that there was some defect in the constitution of the meeting or the passing of the resolution, or in the case of an Extraordinary Resolution in writing, a direction, or a request it was not signed by the requisite number of holders) or (in the case of an Extraordinary Resolution passed by electronic consents received through the relevant Clearing System(s)) it was not approved by the requisite number of Noteholders or that for any reason the resolution, direction or request was not valid or binding upon such holders and the relative Receiptholders and Couponholders.
- (i) The Trustee shall not be liable to any person by reason of having accepted as valid or not having rejected any Note, Receipt or Coupon purporting to be such and subsequently found to be forged or not authentic.

- (j) Without prejudice to the right of indemnity by law given to trustees, each of the relevant Issuer and the Guarantor shall severally indemnify the Trustee and every Appointee and keep it or him indemnified against all Liabilities to which it or he may be or become subject or which may be incurred by it or him in the preparation and execution or purported execution of any of its or his trusts, powers, authorities and discretions under these presents or its or his functions under any such appointment or in respect of any other matter or thing done or omitted in any way relating to these presents or any such appointment (including all Liabilities incurred in disputing or defending any of the foregoing).
- (k) Any consent or approval given by the Trustee for the purposes of these presents may be given on such terms and subject to such conditions (if any) as the Trustee thinks fit and notwithstanding anything to the contrary in these presents may be given retrospectively. The Trustee may give any consent or approval, exercise any power, authority or discretion or take any similar action (whether or not such consent, approval, power, authority, discretion or action is specifically referred to in these presents) if it is satisfied that the interests of the Noteholders will not be materially prejudiced thereby. For any avoidance of doubt, the Trustee shall not have any duty to the Noteholders in relation to such matters other than that which is contained in the preceding sentence.
- (l) The Trustee shall not (unless and to the extent ordered so to do by a court of competent jurisdiction) be required to disclose to any Noteholder, Receiptholder or Couponholder any information (including, without limitation, information of a confidential, financial or price sensitive nature) made available to the Trustee by the relevant Issuer, the Guarantor or any other person in connection with these presents and no Noteholder, Receiptholder or Couponholder shall be entitled to take any action to obtain from the Trustee any such information.
- (m) Where it is necessary or desirable for any purpose in connection with these presents to convert any sum from one currency to another it shall (unless otherwise provided by these presents or required by law) be converted at such rate or rates, in accordance with such method and as at such date for the determination of such rate of exchange, as may be agreed by the Trustee in consultation with the relevant Issuer or the Guarantor as relevant and any rate, method and date so agreed shall be binding on the relevant Issuer, the Guarantor, the Noteholders, the Receiptholders and the Couponholders.
- (n) The Trustee may certify that any of the conditions, events and acts set out in paragraphs (b) to (d) (other than the winding up or dissolution of the relevant Issuer or the Guarantor, if applicable), (e) to (g) and (i) (both inclusive) of Condition 10.1 (*Events of Default and Enforcement*) (each of which conditions, events and acts shall, unless in any case the Trustee in its absolute discretion shall otherwise determine, for all the purposes of these presents be deemed to include the circumstances resulting therein and the consequences resulting therefrom) is in its opinion materially prejudicial to the interests of the Noteholders and any such certificate shall be conclusive and binding upon the relevant Issuer, the Guarantor, the Noteholders and the Couponholders.
- (o) The Trustee as between itself and the Noteholders, the Receiptholders and the Couponholders may determine all questions and doubts arising in relation to any of the provisions of these presents. Every such determination, whether or not relating in whole or in part to the acts or proceedings of the Trustee, shall be conclusive and shall bind the Trustee and the Noteholders, the Receiptholders and the Couponholders.
- (p) In connection with the exercise by it of any of its trusts, powers, authorities and discretions under these presents (including, without limitation, any modification, waiver, authorisation, determination or substitution), the Trustee shall have regard to the general interests of the



Noteholders as a class and shall not have regard to any interests arising from circumstances particular to individual Noteholders, Receiptholders or Couponholders (whatever their number) and, in particular but without limitation, shall not have regard to the consequences of any such exercise for individual Noteholders, Receiptholders or Couponholders (whatever their number) resulting from their being for any purpose domiciled or resident in, or otherwise connected with, or subject to the jurisdiction of, any particular territory or any political sub-division thereof and the Trustee shall not be entitled to require, nor shall any Noteholder, Receiptholder or Couponholder be entitled to claim, from the relevant Issuer, the Guarantor, the Trustee or any other person any indemnification or payment in respect of any tax consequence of any such exercise upon individual Noteholders, Receiptholders or Couponholders except to the extent already provided for in Condition 8 (*Taxation*) and/or any undertaking given in addition thereto or in substitution therefor under these presents.

- (q) Any trustee of these presents being a lawyer, accountant, broker or other person engaged in any profession or business shall be entitled to charge and be paid all usual professional and other charges for business transacted and acts done by him or his firm in connection with the trusts of these presents and also his proper charges in addition to disbursements for all other work and business done and all time spent by him or his firm in connection with matters arising in connection with these presents.
- (r) The Trustee may whenever it thinks fit delegate by power of attorney or otherwise to any person or persons or fluctuating body of persons (whether being a joint trustee of these presents or not) all or any of its trusts, powers, authorities and discretions under these presents. Such delegation may be made upon such terms (including power to sub-delegate) and subject to such conditions and regulations as the Trustee may in the interests of the Noteholders think fit. The Trustee shall not be under any obligation to supervise the proceedings or acts of any such delegate or sub-delegate or be in any way responsible for any Liability incurred by reason of any misconduct or default on the part of any such delegate or sub-delegate. The Trustee shall within a reasonable time after any such delegation or any renewal, extension or termination thereof give notice thereof to the relevant Issuer.
- (s) The Trustee may in the conduct of the trusts of these presents instead of acting personally employ and pay an agent (whether being a lawyer or other professional person) to transact or conduct, or concur in transacting or conducting, any business and to do, or concur in doing, all acts required to be done in connection with these presents (including the receipt and payment of money). The Trustee shall not be in any way responsible for any Liability incurred by reason of any misconduct or default on the part of any such agent or be bound to supervise the proceedings or acts of any such agent.
- (t) The Trustee may appoint and pay any person to act as a custodian or nominee on any terms in relation to such assets of the trusts constituted by these presents as the Trustee may determine, including for the purpose of depositing with a custodian these presents or any document relating to the trusts constituted by these presents and the Trustee shall not be responsible for any Liability incurred by reason of the misconduct, omission or default on the part of any person appointed by it hereunder or be bound to supervise the proceedings or acts of such person; the Trustee is not obliged to appoint a custodian if the Trustee invests in securities payable to bearer.
- (u) The Trustee shall not be responsible for the execution, delivery, legality, effectiveness, adequacy, genuineness, validity, performance, enforceability or admissibility in evidence of these presents or any other document relating or expressed to be supplemental thereto and shall not be liable for any failure to obtain any licence, consent or other authority for the execution, delivery, legality, effectiveness, adequacy, genuineness, validity, performance,

enforceability or admissibility in evidence of these presents or any other document relating or expressed to be supplemental thereto.

- (v) The Trustee shall not be responsible to any person for failing to request, require or receive any legal opinion relating to the Notes or for checking or commenting upon the content of any such legal opinion and shall not be responsible for any Liability incurred thereby.
- (w) Subject to the requirements, if any, of the relevant Stock Exchange, any corporation into which the Trustee shall be merged or with which it shall be consolidated or any company resulting from any such merger or consolidation shall be a party hereto and shall be the Trustee under these presents without executing or filing any paper or document or any further act on the part of the parties thereto.
- (x) The Trustee shall not be bound to take any action in connection with these presents or any obligations arising pursuant thereto, including, without prejudice to the generality of the foregoing, forming any opinion or employing any financial adviser, where it is not satisfied that it will be indemnified and/or secured and/or prefunded against all Liabilities which may be incurred in connection with such action and may demand prior to taking any such action that there be paid to it in advance such sums as it reasonably considers (without prejudice to any further demand) shall be sufficient so to indemnify and/or secure and/or prefund it.
- (y) No provision of these presents shall require the Trustee to do anything which may (i) be illegal or contrary to applicable law or regulation; or (ii) cause it to expend or risk its own funds or otherwise incur any Liability in the performance of any of its duties or in the exercise of any of its rights, powers or discretions, if it shall have reasonable grounds for believing that repayment of such funds or adequate indemnity and/or prefunding against such risk or Liability is not assured to it.
- (z) Unless notified to the contrary, the Trustee shall be entitled to assume without enquiry (other than requesting a certificate pursuant to Clause 14(p)) that no Notes are held by, for the benefit of, or on behalf of, the relevant Issuer, the Guarantor, any other Subsidiary of the Guarantor, any holding company of the relevant Issuer or any other Subsidiary of such holding company.
- (aa) The Trustee shall have no responsibility whatsoever to the relevant Issuer, the Guarantor, any Noteholder, Receiptholder or Couponholder or any other person for the maintenance of or failure to maintain any rating of any of the Notes by any rating agency.
- (bb) Any certificate or report of the Auditors or any other person called for by or provided to the Trustee (whether or not addressed to the Trustee) in accordance with or for the purposes of these presents may be relied upon by the Trustee as sufficient evidence of the facts stated therein notwithstanding that such certificate or report and/or any engagement letter or other document entered into by the Trustee in connection therewith contains a monetary or other limit on the liability of the Auditors or such other person in respect thereof and notwithstanding that the scope and/or basis of such certificate or report may be limited by any engagement or similar letter or by the terms of the certificate or report itself.
- (cc) The Trustee shall not be responsible for, or for investigating any matter which is the subject of, any recital, statement, representation, warranty or covenant of any person contained in these presents, or any other agreement or document relating to the transactions contemplated in these presents or under such other agreement or document.

- (dd) The Trustee shall not be liable or responsible for any Liabilities or inconvenience which may result from anything done or omitted to be done by it in accordance with the provisions of these presents.
- (ee) The Trustee may call for and shall rely on any records, certificate or other document of or to be issued by Euroclear or Clearstream, Luxembourg in relation to any determination of the nominal amount of Notes represented by a NGN. Any such records, certificate or other document shall be conclusive and binding for all purposes. The Trustee shall not be liable to any person by reason of having accepted as valid or not having rejected any such records, certificate or other document to such effect purporting to be issued by Euroclear or Clearstream, Luxembourg and subsequently found to be forged or not authentic.
- (ff) When determining whether an indemnity or any security is satisfactory to it, the Trustee shall be entitled to evaluate its risk in any given circumstance by considering the worst-case scenario and, for this purpose, it may take into account, without limitation, the potential costs of defending or commencing proceedings in England or elsewhere and the risk, however remote, of any award of damages against it in England or elsewhere.
- (gg) The Trustee shall be entitled to require that any indemnity or security given to it by the Noteholders or any of them be given on a joint and several basis and be supported by evidence satisfactory to it as to the financial standing and creditworthiness of each counterparty and/or as to the value of the security and an opinion as to the capacity, power and authority of each counterparty and/or the validity and effectiveness of the security.

## **17. TRUSTEE'S LIABILITY**

Nothing in these presents shall in any case in which the Trustee has failed to show the degree of care and diligence required of it as trustee having regard to the provisions of these presents conferring on it any trusts, powers, authorities or discretions exempt the Trustee from or indemnify it against any liability for breach of trust in relation to its duties (whether owing to the Noteholders or an Issuer or the Guarantor) under these presents.

## **18. TRUSTEE CONTRACTING WITH THE RELEVANT ISSUER AND THE GUARANTOR**

Neither the Trustee nor any director or officer or holding company, Subsidiary or associated company of a corporation acting as a trustee under these presents shall by reason of its or his fiduciary position be in any way precluded from:

- (a) entering into or being interested in any contract or financial or other transaction or arrangement with the relevant Issuer or the Guarantor or any person or body corporate associated with the relevant Issuer or the Guarantor (including without limitation any contract, transaction or arrangement of a banking or insurance nature or any contract, transaction or arrangement in relation to the making of loans or the provision of financial facilities or financial advice to, or the purchase, placing or underwriting of or the subscribing or procuring subscriptions for or otherwise acquiring, holding or dealing with, or acting as paying agent in respect of, the Notes or any other notes, bonds, stocks, shares, debenture stock, debentures or other securities of, the relevant Issuer, the Guarantor or any person or body corporate associated as aforesaid); or
- (b) accepting or holding the trusteeship of any other trust deed constituting or securing any other securities issued by or relating to the relevant Issuer or the Guarantor or any such person or body corporate so associated or any other office of profit under the relevant Issuer or the Guarantor or any such person or body corporate so associated,

and shall be entitled to exercise and enforce its rights, comply with its obligations and perform its duties under or in relation to any such contract, transaction or arrangement as is referred to in (a) above or, as the case may be, any such trusteeship or office of profit as is referred to in (b) above without regard to the interests of the Noteholders and notwithstanding that the same may be contrary or prejudicial to the interests of the Noteholders and shall not be responsible for any Liability occasioned to the Noteholders thereby and shall be entitled to retain and shall not be in any way liable to account for any profit made or share of brokerage or commission or remuneration or other amount or benefit received thereby or in connection therewith.

Where any holding company, Subsidiary or associated company of the Trustee or any director or officer of the Trustee acting other than in his capacity as such a director or officer has any information, the Trustee shall not thereby be deemed also to have knowledge of such information and, unless it shall have actual knowledge of such information, shall not be responsible for any loss suffered by Noteholders resulting from the Trustee's failing to take such information into account in acting or refraining from acting under or in relation to these presents.

## **19. WAIVER, AUTHORISATION AND DETERMINATION**

The Trustee may without the consent or sanction of the Noteholders, the Receiptholders or the Couponholders and without prejudice to its rights in respect of any subsequent breach, Event of Default or Potential Event of Default from time to time and at any time but only if and in so far as in its opinion the interests of the Noteholders shall not be materially prejudiced thereby waive or authorise any breach or proposed breach by the relevant Issuer or the Guarantor of any of the covenants or provisions contained in these presents or determine that any Event of Default or Potential Event of Default shall not be treated as such for the purposes of these presents PROVIDED ALWAYS THAT the Trustee shall not exercise any powers conferred on it by this Clause in contravention of any express direction given by Extraordinary Resolution or by a request under Condition 10 (*Events of Default and Enforcement*) but so that no such direction or request shall affect any waiver, authorisation or determination previously given or made. Any such waiver, authorisation or determination may be given or made on such terms and subject to such conditions (if any) as the Trustee may determine, shall be binding on the Noteholders, the Receiptholders and the Couponholders and, if, but only if, the Trustee shall so require, shall be notified by the relevant Issuer to the Noteholders in accordance with Condition 14 (*Notices*) as soon as practicable thereafter.

## **20. MODIFICATION**

The Trustee may without the consent or sanction of the Noteholders, the Receiptholders or the Couponholders at any time and from time to time concur with the relevant Issuer and the Guarantor in making any modification (a) to these presents or the Agency Agreement which in the opinion of the Trustee it may be proper to make PROVIDED THAT the Trustee is of the opinion that such modification will not be materially prejudicial to the interests of the Noteholders or (b) to these presents or the Agency Agreement if in the opinion of the Trustee such modification is of a formal, minor or technical nature or to correct a manifest error. Any such modification may be made on such terms and subject to such conditions (if any) as the Trustee may determine, shall be binding upon the Noteholders, the Receiptholders and the Couponholders and, unless the Trustee agrees otherwise, shall be notified by the relevant Issuer to the Noteholders in accordance with Condition 14 (*Notices*) as soon as practicable thereafter.

## **21. BREACH**

Any breach of or failure to comply by the relevant Issuer or the Guarantor with any such terms and conditions as are referred to in Clauses 19 and 20 shall constitute a default by the relevant Issuer or the Guarantor (as the case may be) in the performance or observance of a covenant or provision binding on it under or pursuant to these presents.

## 22. **HOLDER OF DEFINITIVE NOTE ASSUMED TO BE RECEIPTHOLDER AND COUPONHOLDER**

22.1 Wherever in these presents the Trustee is required or entitled to exercise a power, trust, authority or discretion under these presents, except as ordered by a court of competent jurisdiction or as required by applicable law, the Trustee shall, notwithstanding that it may have express notice to the contrary, assume that each Noteholder is the holder of all Receipts and Coupons appertaining to each Definitive Note of which he is the holder.

### **NO NOTICE TO RECEIPTHOLDERS OR COUPONHOLDERS**

22.2 Neither the Trustee nor the relevant Issuer nor the Guarantor shall be required to give any notice to the Receiptholders or Couponholders for any purpose under these presents and the Receiptholders or Couponholders shall be deemed for all purposes to have notice of the contents of any notice given to Noteholders in accordance with Condition 14 (*Notices*).

## 23. **SUBSTITUTION**

### 23.1 **Substitution at relevant Issuer's request**

(a) (i) The Trustee may without the consent of the Noteholders, Receiptholders or Couponholders at any time agree (a) with the Issuer (where the Issuer is ESB Finance) and the Guarantor for the purposes of this Clause 23.1 to the substitution in place of the relevant Issuer (or of the previous substitute of the Issuer under this Clause) as the principal debtor under these presents of ESB or any other Subsidiary of ESB or (b) with ESB (in its capacity as either Issuer or Guarantor) (or of any previous substitute of ESB in either capacity pursuant to this clause 23.1) as the principal debtor under these presents or under the Guarantee (as the case may be) of another company (such substituted company being called the **New Company** for the purposes of this clause 23.1) provided that a trust deed is executed or some other form of undertaking is given by the New Company in form and manner satisfactory to the Trustee, agreeing to be bound by the provisions of these presents with any consequential amendments which the Trustee may deem appropriate as fully as if the New Company had been named in these presents as the principal debtor in place of the relevant Issuer or as guarantor in place of the Guarantor (or of the previous substitute under this Clause) and provided further that (where a Subsidiary of ESB is the New Company) ESB unconditionally and irrevocably guarantees all amounts payable by the New Company under these presents to the satisfaction of the Trustee.

(b) The following further conditions shall apply to (i) above:

(i) the relevant Issuer, the Guarantor and the New Company shall comply with such other requirements as the Trustee may direct in the interests of the Noteholders;

(ii) where the New Company is incorporated, domiciled or resident in, or subject generally to the taxing jurisdiction of, a territory other than or in addition to the Tax Jurisdiction, undertakings or covenants shall be given by the New Company in terms corresponding to the provisions of Condition 8 (*Taxation*) with the substitution for (or, as the case may be, the addition to) the references to Ireland in the definition of Tax Jurisdiction of references to that other or additional territory in which the New Company is incorporated, domiciled or resident or to whose taxing jurisdiction it is subject and (where applicable) Condition 7.2 (*Redemption and Purchase - Redemption for Taxation Reasons*) shall be modified accordingly;

- (iii) without prejudice to the rights of reliance of the Trustee under the immediately following paragraph (iv), the Trustee is satisfied that the relevant transaction is not materially prejudicial to the interests of the Noteholders; and
- (iv) if two directors of the New Company (or other officers acceptable to the Trustee) shall certify that the New Company is solvent both at the time at which the relevant transaction is proposed to be effected and immediately thereafter (which certificate the Trustee may rely upon absolutely) the Trustee shall not be under any duty to have regard to the financial condition, profits or prospects of the New Company or to compare the same with those of the relevant Issuer or the previous substitute under this Clause as applicable.

**23.2** Any such trust deed or undertaking under this Clause 23 shall, if so expressed, operate to release the relevant Issuer or, if applicable, the Guarantor or the previous substitute as aforesaid from all of its obligations as principal debtor under these presents. Not later than 14 days after the execution of such documents and compliance with such requirements, the New Company or any substituted principal debtor or guarantor shall give notice thereof in a form previously approved by the Trustee to the Noteholders in the manner provided in Condition 14 (*Notices*). Upon the execution of such documents and compliance with such requirements, the New Company or any substituted principal debtor or guarantor shall be deemed to be named in these presents as the principal debtor in place of the relevant Issuer or, if applicable, the Guarantor (or in place of the previous substitute under this Clause) under these presents and these presents shall be deemed to be modified in such manner as shall be necessary to give effect to the above provisions and, without limitation, references in these presents to the relevant Issuer or, as the case may be, the Guarantor shall, unless the context otherwise requires, be deemed to be or include references to the New Company or, as the case may be, the new guarantor(s).

## **24. CURRENCY INDEMNITY**

Each of the relevant Issuer and the Guarantor shall severally indemnify the Trustee, every Appointee, the Noteholders, the Receiptholders and the Couponholders and keep them indemnified against:

- (a) any Liability incurred by any of them arising from the non-payment by the relevant Issuer or the Guarantor of any amount due to the Trustee or the holders of the Notes and the relative Receiptholders or Couponholders under these presents by reason of any variation in the rates of exchange between those used for the purposes of calculating the amount due under a judgment or order in respect thereof and those prevailing at the date of actual payment by the relevant Issuer or the Guarantor; and
- (b) any deficiency arising or resulting from any variation in rates of exchange between (i) the date as of which the local currency equivalent of the amounts due or contingently due under these presents (other than this Clause) is calculated for the purposes of any bankruptcy, insolvency or liquidation of the relevant Issuer or, as the case may be, the Guarantor and (ii) the final date for ascertaining the amount of claims in such bankruptcy, insolvency or liquidation. The amount of such deficiency shall be deemed not to be reduced by any variation in rates of exchange occurring between the said final date and the date of any distribution of assets in connection with any such bankruptcy, insolvency or liquidation.

The above indemnities shall constitute obligations of the relevant Issuer and the Guarantor separate and independent from their other obligations under the other provisions of these presents and shall apply irrespective of any indulgence granted by the Trustee or the Noteholders, the Receiptholders or the Couponholders from time to time and shall continue in full force and effect notwithstanding the judgment or filing of any proof or proofs in any bankruptcy, insolvency or liquidation of the relevant Issuer or, as the case may be, the Guarantor for a liquidated sum or sums in respect of amounts due

under these presents (other than this Clause). Any such deficiency as aforesaid shall be deemed to constitute a loss suffered by the Noteholders, the Receiptholders and the Couponholders and no proof or evidence of any actual loss shall be required by the relevant Issuer or the Guarantor or their liquidator or liquidators.

## **25. NEW TRUSTEE**

**25.1** The power to appoint a new trustee of these presents shall, subject as hereinafter provided, be vested solely in the relevant Issuer and the Guarantor jointly but no person shall be appointed who shall not previously have been approved by an Extraordinary Resolution. One or more persons may hold office as trustee or trustees of these presents but such trustee or trustees shall be or include a Trust Corporation. Whenever there shall be more than two trustees of these presents the majority of such trustees shall be competent to execute and exercise all the duties, powers, trusts, authorities and discretions vested in the Trustee by these presents provided that a Trust Corporation shall be included in such majority. Any appointment of a new trustee of these presents shall as soon as practicable thereafter be notified by the Issuer to the Principal Paying Agent and the Noteholders.

### **SEPARATE AND CO-TRUSTEES**

**25.2** Notwithstanding the provisions of subclause 25.1 above, the Trustee may, upon giving prior notice to the relevant Issuer and the Guarantor (but without the consent of the relevant Issuer, the Guarantor, the Noteholders, Receiptholders or Couponholders), appoint any person established or resident in any jurisdiction (whether a Trust Corporation or not) to act either as a separate trustee or as a co-trustee jointly with the Trustee:

- (a) if the Trustee considers such appointment to be in the interests of the Noteholders;
- (b) for the purposes of conforming to any legal requirements, restrictions or conditions in any jurisdiction in which any particular act or acts is or are to be performed; or
- (c) for the purposes of obtaining a judgment in any jurisdiction or the enforcement in any jurisdiction of either a judgment already obtained or any of the provisions of these presents against the relevant Issuer and/or the Guarantor.

Each of the Issuer and the Guarantor irrevocably appoints the Trustee to be its attorney in its name and on its behalf to execute any such instrument of appointment. Such a person shall (subject always to the provisions of these presents) have such trusts, powers, authorities and discretions (not exceeding those conferred on the Trustee by these presents) and such duties and obligations as shall be conferred or imposed by the instrument of appointment. The Trustee shall have power in like manner to remove any such person. Such reasonable remuneration as the Trustee may pay to any such person, together with any attributable Liabilities incurred by it in performing its function as such separate trustee or co-trustee, shall for the purposes of these presents be treated as Liabilities incurred by the Trustee.

## **26. TRUSTEE'S RETIREMENT AND REMOVAL**

A trustee of these presents may retire at any time on giving not less than 60 days' prior written notice to the relevant Issuer and the Guarantor without giving any reason and without being responsible for any Liabilities incurred by reason of such retirement. The Noteholders may by Extraordinary Resolution remove any trustee or trustees for the time being of these presents. The relevant Issuer and the Guarantor each undertakes that in the event of the only trustee of these presents which is a Trust Corporation (for the avoidance of doubt, disregarding for this purpose any separate or co-trustee appointed under Clause 25.2) giving notice under this Clause or being removed by Extraordinary Resolution they will use their best endeavours to procure that a new trustee of these

presents being a Trust Corporation is appointed as soon as reasonably practicable thereafter. The retirement or removal of any such trustee shall not become effective until a successor trustee being a Trust Corporation is appointed. If, in such circumstances, no appointment of such a new trustee has become effective within 60 days of the date of such notice or Extraordinary Resolution, the Trustee shall be entitled to appoint a Trust Corporation as trustee of these presents, but no such appointment shall take effect unless previously approved by an Extraordinary Resolution.

## **27. TRUSTEE'S POWERS TO BE ADDITIONAL**

The powers conferred upon the Trustee by these presents shall be in addition to any powers which may from time to time be vested in the Trustee by the general law or as a holder of any of the Notes, Receipts or Coupons.

## **28. NOTICES**

Any notice or demand to the relevant Issuer, the Guarantor or the Trustee to be given, made or served for any purposes under these presents shall be given, made or served by sending the same by pre-paid post (first class if inland, first class airmail if overseas) or facsimile transmission or by delivering it by hand as follows:

to ESB:                                   Electricity Supply Board  
  27 Lower Fitzwilliam Street  
  Dublin 2  
  Ireland  
  
  (Attention: The Secretary)  
  
  Facsimile No. +353 1 702 7060  
  
  (with a copy to the Group Treasurer)

to ESB Finance:                       ESB Finance Limited  
  27 Lower Fitzwilliam Street  
  Dublin 2  
  Ireland  
  
  (Attention: The Company Secretary)  
  
  Facsimile No.+353 1 702 7060  
  
  (with a copy to the Group Treasurer of ESB)

to the Trustee:                       Citigroup Centre  
  Canada Square  
  Canary Wharf  
  London E14 5LB  
  
  (Attention: Agency & Trust)  
  
  Facsimile No. +44 (0)20 7500 5857

or to such other address or facsimile number as shall have been notified (in accordance with this Clause) to the other parties hereto and any notice or demand sent by post as aforesaid shall be deemed to have been given, made or served two days in the case of inland post or seven days in the



case of overseas post after despatch and any notice or demand sent by facsimile transmission as aforesaid shall be deemed to have been given, made or served at the time of despatch PROVIDED THAT in the case of a notice or demand given by facsimile transmission a confirmation of transmission is received by the sending party and such notice or demand shall forthwith be confirmed by post. The failure of the addressee to receive such confirmation shall not invalidate the relevant notice or demand given by facsimile transmission.

## **29. GOVERNING LAW**

These presents and any non-contractual obligations arising out of or in connection with these presents are governed by, and shall be construed in accordance with, English law.

## **30. CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999**

A person who is not a party to these presents has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of these presents, but this does not affect any right or remedy of a third party which exists or is available apart from that Act.

## **31. SUBMISSION TO JURISDICTION**

**31.1** Each of ESB and ESB Finance irrevocably agrees for the benefit of the Trustee, the Noteholders, the Receiptholders and the Couponholders that the courts of England are to have exclusive jurisdiction to settle any dispute which may arise out of or in connection with these presents and that accordingly any suit, action or proceedings arising out of or in connection with these presents (together referred to as **Proceedings**) may be brought in the courts of England. Each of ESB and ESB Finance irrevocably and unconditionally waives and agrees not to raise any objection which it may have now or subsequently to the laying of the venue of any Proceedings in the courts of England and any claims that any Proceedings have been brought in an inconvenient or inappropriate forum and unconditionally agrees that a judgment in any Proceedings brought in the courts of England shall be conclusive and binding upon it and may be enforced in the courts of any other jurisdiction. The Trustee, the Noteholders, the Receiptholders and the Couponholders may take any suit, action or proceeding arising out of or in connection with this Trust Deed (together referred to as **Proceedings**) against each of ESB and ESB Finance in any other court of competent jurisdiction and concurrent Proceedings in any number of jurisdictions.

**31.2** Each of ESB and ESB Finance irrevocably and unconditionally appoint Jordans International at its registered office at 21 St Thomas Street, Bristol BS1 6JS for the time being and in the event of its ceasing so to act will appoint such other person as the Trustee may approve and as ESB and ESB Finance may nominate in writing to the Trustee for the purpose to accept service of process on its behalf in England in respect of any Proceedings. Each of ESB and ESB Finance:

- (a) agrees to procure that, so long as any of the Notes remains liable to prescription, there shall be in force an appointment of such a person approved by the Trustee with an office in London with authority to accept service as aforesaid;
- (b) agrees that failure by any such person to give notice of such service of process to ESB or ESB Finance shall not impair the validity of such service or of any judgment based thereon;
- (c) consents to the service of process in respect of any Proceedings by the airmailing of copies, postage prepaid, to ESB or ESB Finance (as the case may be) in accordance with Clause 28; and
- (d) agrees that nothing in these presents shall affect the right to serve process in any other manner permitted by law.

**31.3** Each of ESB and ESB Finance irrevocably and unconditionally waives and agrees not to raise with respect to these presents any right to claim sovereign or other immunity from jurisdiction or execution and any similar defence, and irrevocably and unconditionally consents to the giving of any relief or the issue of any process, including, without limitation, the making, enforcement or execution against any property whatsoever (irrespective of its use or intended use) of any order or judgment made or given in connection with any Proceedings.

**32. COUNTERPARTS**

This Trust Deed and any trust deed supplemental hereto may be executed and delivered in any number of counterparts, all of which, taken together, shall constitute one and the same deed and any party to this Trust Deed or any trust deed supplemental hereto may enter into the same by executing and delivering a counterpart.

**IN WITNESS** whereof this Trust Deed has been executed as a deed by the relevant Issuer, the Guarantor and the Trustee and delivered on the date first stated on page 1.

## SCHEDULE 1

### TERMS AND CONDITIONS OF THE NOTES

This Note is one of a Series (as defined below) of Notes issued by either Electricity Supply Board (**ESB**) or ESB Finance Limited (**ESB Finance**) as specified in the applicable Final Terms (the **Issuer**) constituted by a Trust Deed (such Trust Deed as modified and/or supplemented and/or restated from time to time, the **Trust Deed**) dated 12 February 2010 made between ESB and ESB Finance as issuers, ESB as guarantor of Notes issued by ESB Finance (the **Guarantor**) and Citicorp Trustee Company Limited (the **Trustee**, which expression shall include any successor as Trustee).

References herein to the **Notes** shall be references to the Notes of this Series and shall mean:

- (a) in relation to any Notes represented by a global Note (a **Global Note**), units of each Specified Denomination in the Specified Currency;
- (b) any Global Note; and
- (c) any definitive Notes issued in exchange for a Global Note.

The Notes, the Receipts (as defined below) and the Coupons (as defined below) have the benefit of an Agency Agreement (such Agency Agreement as amended and/or supplemented and/or restated from time to time, the **Agency Agreement**) dated 12 February 2010 and made between ESB and ESB Finance as issuers, the Guarantor, the Trustee, Citibank, N.A., London Branch as issuing and principal paying agent and agent bank (the **Agent**, which expression shall include any successor agent) and the other paying agents named therein (together with the Agent, the **Paying Agents**, which expression shall include any additional or successor paying agents).

Interest bearing definitive Notes have interest coupons (**Coupons**) and, if indicated in the applicable Final Terms, talons for further Coupons (**Talons**) attached on issue. Any reference herein to Coupons or coupons shall, unless the context otherwise requires, be deemed to include a reference to Talons or talons. Definitive Notes repayable in instalments have receipts (**Receipts**) for the payment of the instalments of principal (other than the final instalment) attached on issue. Global Notes do not have Receipts, Coupons or Talons attached on issue.

The final terms for this Note (or the relevant provisions thereof) are set out in Part A of the Final Terms attached to or endorsed on this Note which supplement these Terms and Conditions (the **Conditions**) and may specify other terms and conditions which shall, to the extent so specified or to the extent inconsistent with the Conditions, replace or modify the Conditions for the purposes of this Note. References to the **applicable Final Terms** are to Part A of the Final Terms (or the relevant provisions thereof) attached to or endorsed on this Note.

The Trustee acts for the benefit of the holders for the time being of the Notes (the **Noteholders**, which expression shall, in relation to any Notes represented by a Global Note, be construed as provided below), the holders of the Receipts (the **Receiptholders**) and the holders of the Coupons (the **Couponholders**, which expression shall, unless the context otherwise requires, include the holders of the Talons), in accordance with the provisions of the Trust Deed.

As used herein, **Tranche** means Notes which are identical in all respects (including as to listing and admission to trading) and **Series** means a Tranche of Notes together with any further Tranche or Tranches of Notes which are (a) expressed to be consolidated and form a single series and (b) identical in all respects (including as to listing and admission to trading) except for their respective Issue Dates, Interest Commencement Dates and/or Issue Prices.

Copies of the Trust Deed and the Agency Agreement are available for inspection during normal business hours at the registered office for the time being of the Trustee being at 12 February 2010 at Citigroup Centre, Canada Square, London E14 5LB, United Kingdom and at the specified office of each of the Paying Agents. Copies of the applicable Final Terms are available for viewing at the registered office of the Issuer and of the Agent and copies may be obtained from those offices save that, if this Note is neither admitted to trading on a regulated market in the European Economic Area nor offered in the European Economic Area in circumstances where a prospectus is required to be published under the Prospectus Directive, the applicable Final Terms will only be obtainable by a Noteholder holding one or more Notes and such Noteholder must produce evidence satisfactory to the Issuer, the Guarantor (where the Issuer is ESB Finance), the Trustee and the relevant Paying Agent as to its holding of such Notes and identity. The Noteholders, the Receiptholders and the Couponholders are deemed to have notice of, are bound by and are entitled to the benefit of, all the provisions of the Trust Deed, the Agency Agreement and the applicable Final Terms which are applicable to them. The statements in the Conditions include summaries of, and are subject to, the detailed provisions of the Trust Deed and the Agency Agreement.

Words and expressions defined in the Trust Deed, the Agency Agreement or used in the applicable Final Terms shall have the same meanings where used in the Conditions unless the context otherwise requires or unless otherwise stated and provided that, in the event of inconsistency between the Trust Deed and the Agency Agreement, the Trust Deed will prevail and, in the event of inconsistency between the Trust Deed or the Agency Agreement and the applicable Final Terms, the applicable Final Terms will prevail.

## 1. FORM, DENOMINATION AND TITLE

The Notes are in bearer form and, in the case of definitive Notes, serially numbered, in the Specified Currency and the Specified Denomination(s). Notes of one Specified Denomination may not be exchanged for Notes of another Specified Denomination.

This Note may be a Fixed Rate Note, a Floating Rate Note, a Zero Coupon Note, an Index Linked Interest Note, a Dual Currency Interest Note or a combination of any of the foregoing, depending upon the Interest Basis shown in the applicable Final Terms.

This Note may be an Index Linked Redemption Note, an Instalment Note, a Dual Currency Redemption Note, a Partly Paid Note or a combination of any of the foregoing, depending upon the Redemption/Payment Basis shown in the applicable Final Terms.

Definitive Notes are issued with Coupons attached, unless they are Zero Coupon Notes in which case references to Coupons and Couponholders in the Conditions are not applicable.

Subject as set out below, title to the Notes, Receipts and Coupons will pass by delivery. The Issuer, the Guarantor (where the Issuer is ESB Finance), the Paying Agents and the Trustee will (except as otherwise required by law) deem and treat the bearer of any Note, Receipt or Coupon as the absolute owner thereof (whether or not overdue and notwithstanding any notice of ownership or writing thereon or notice of any previous loss or theft thereof) for all purposes but, in the case of any Global Note, without prejudice to the provisions set out in the next succeeding paragraph.

For so long as any of the Notes is represented by a Global Note held on behalf of Euroclear Bank SA/NV (**Euroclear**) and/or Clearstream Banking, société anonyme (**Clearstream, Luxembourg**), each person (other than Euroclear or Clearstream, Luxembourg) who is for the time being shown in the records of Euroclear or of Clearstream, Luxembourg as the holder of a particular nominal amount of such Notes (in which regard any certificate or other document issued by Euroclear or Clearstream, Luxembourg as to the nominal amount of such Notes standing to the account of any person shall be conclusive and binding for all purposes save in the case of manifest error) shall be treated by the Issuer, the Guarantor (where the Issuer is ESB Finance), the Paying Agents and the Trustee as the holder of such nominal amount of such Notes for all purposes other than with respect

to the payment of principal or interest on such nominal amount of such Notes, for which purpose the bearer of the relevant Global Note shall be treated by the Issuer, the Guarantor (where the Issuer is ESB Finance), any Paying Agent and the Trustee as the holder of such nominal amount of such Notes in accordance with and subject to the terms of the relevant Global Note and the expressions **Noteholder** and **holder of Notes** and related expressions shall be construed accordingly. In determining whether a particular person is entitled to a particular nominal amount of Notes as aforesaid, the Trustee may rely on such evidence and/or information and/or certification as it shall, in its absolute discretion, think fit and, if it does so rely, such evidence and/or information and/or certification shall, in the absence of manifest error, be conclusive and binding on all concerned.

Notes which are represented by a Global Note will be transferable only in accordance with the rules and procedures for the time being of Euroclear and Clearstream, Luxembourg, as the case may be. References to Euroclear and/or Clearstream, Luxembourg shall, whenever the context so permits, be deemed to include a reference to any additional or alternative clearing system specified in the applicable Final Terms or as may otherwise be approved by the Issuer, the Agent and the Trustee.

## **2. STATUS OF THE NOTES**

### **2.1 Status of the Notes**

The Notes and any relative Receipts and Coupons are direct, unconditional, unsubordinated and (subject to the provisions of Condition 3 (*Covenants*)) unsecured obligations of the Issuer and rank *pari passu* among themselves and (subject as aforesaid and save for certain obligations required to be preferred by law) equally with all other unsecured obligations (other than subordinated obligations, if any) of the Issuer, from time to time outstanding.

### **2.2 Status of the Guarantee**

Where the Issuer is ESB Finance, the payment of principal and interest in respect of the Notes and all other moneys payable by the Issuer under or pursuant to the Trust Deed has been unconditionally and irrevocably guaranteed by the Guarantor in the Trust Deed (the **Guarantee**). The obligations of the Guarantor under the Guarantee are direct, unconditional, unsubordinated and (subject to the provisions of Condition 3 (*Covenants*)) unsecured obligations of the Guarantor and (subject as aforesaid and save for certain obligations required to be preferred by law) rank equally with all other unsecured obligations (other than subordinated obligations, if any) of the Guarantor, from time to time outstanding.

## **3. COVENANTS**

### **3.1 Negative pledge applicable to the Issuer**

The Issuer undertakes that so long as any of the Notes remains outstanding (as defined in the Trust Deed) it will not and, where the Issuer is ESB, shall ensure that none of its Principal Subsidiaries (as defined below) will, create or permit to subsist any mortgage, charge, pledge, lien or other form of encumbrance or security interest (each a **Security Interest**) upon the whole or any part of its/their respective assets or revenues of whatever nature present or future, to secure any Relevant Debt (other than Non Recourse Indebtedness, as defined in Condition 3.2 below), or any guarantee of or indemnity in respect of any Relevant Debt (other than Non Recourse Indebtedness), unless at the same time or prior thereto the Issuer's obligations under the Notes (a) are secured equally and rateably therewith or benefit from a Security Interest or guarantee or indemnity in substantially identical terms (to the extent permitted by Irish or other applicable law or regulation) thereto or (b) have the benefit of such other security, guarantee, indemnity or other arrangement as the Trustee shall deem not to be materially less beneficial to the Noteholders or as shall be approved by an Extraordinary Resolution.

### 3.2 Negative Pledge applicable to the Guarantor

The Guarantor undertakes that so long as any of the Notes issued by ESB Finance remain outstanding it will not, and shall ensure that none of its Principal Subsidiaries will, create or permit to subsist any Security Interest upon the whole or any part of its/their respective assets or revenues of whatever nature present or future, to secure any Relevant Debt (other than Non Recourse Indebtedness), or any guarantee of or indemnity in respect of any Relevant Debt (other than Non Recourse Indebtedness), unless at the same time or prior thereto the Guarantor's obligations under the Guarantee (a) are secured equally and rateably therewith or benefit from a Security Interest or guarantee or indemnity in substantially identical terms (to the extent permitted by Irish or other applicable law or regulation) thereto or (b) have the benefit of such other security, guarantee, indemnity or other arrangement as the Trustee shall deem not to be materially less beneficial to the Noteholders or as shall be approved by an Extraordinary Resolution.

For the purposes of these Conditions:

**Group** means ESB and its Subsidiaries taken as a whole.

**Non Recourse Indebtedness** means any Relevant Debt incurred by a member of the Group on terms that the provider(s) of the Relevant Debt shall have recourse for repayment of such Relevant Debt and for payment of interest thereon only to revenues generated by and/or the proceeds of realisation of, specified asset(s) held by such member of the Group.

**Principal Subsidiary** means at any time a Subsidiary (other than a Special Purpose Subsidiary) of ESB:

- (a) whose net profits (consolidated in the case of a Subsidiary which itself has Subsidiaries) or whose net assets (consolidated in the case of a Subsidiary which itself has Subsidiaries) represent in each case (or, in the case of a Subsidiary acquired after the end of the financial period to which the then latest audited consolidated accounts of ESB and its Subsidiaries relate, are equal to) not less than 10 per cent. of the consolidated net profits of ESB, or, as the case may be, consolidated net assets, of ESB and its Subsidiaries taken as a whole, all as calculated respectively by reference to the then latest audited accounts (consolidated or, as the case may be, unconsolidated) of such Subsidiary and the then latest audited consolidated accounts of ESB and its Subsidiaries, provided that:
  - (i) if the then latest audited consolidated accounts of ESB and its Subsidiaries show (x) a net loss for the relevant financial period then there shall be substituted for the words "net profits" the words "gross revenues" for the purposes of this definition and/or (y) negative assets at the end of the relevant financial period then there shall be substituted for the words "net assets" the words "total assets" for the purposes of this definition;
  - (ii) in the case of a Subsidiary of ESB acquired after the end of the financial period to which the then latest audited consolidated accounts of ESB and its Subsidiaries relate, the reference to the then latest audited consolidated accounts of ESB and its Subsidiaries for the purposes of the calculation above shall, until consolidated accounts for the financial period in which the acquisition is made have been prepared and audited as aforesaid, be deemed to be a reference to such first-mentioned accounts as if such Subsidiary had been shown in such accounts by reference to its then latest relevant audited accounts, adjusted as deemed appropriate by ESB;

- (b) to which is transferred the whole or substantially the whole of the undertaking and assets of a Subsidiary of ESB which immediately prior to such transfer is a Principal Subsidiary, provided that the transferor Subsidiary shall upon such transfer forthwith cease to be a Principal Subsidiary and the transferee Subsidiary shall cease to be a Principal Subsidiary pursuant to this subparagraph (b) on the date on which the consolidated accounts of ESB and its Subsidiaries for the financial period current at the date of such transfer have been prepared and audited as aforesaid but so that such transferor Subsidiary or such transferee Subsidiary may be a Principal Subsidiary on or at any time after the date on which such consolidated accounts have been prepared and audited as aforesaid by virtue of the provisions of subparagraph (a) above or, prior to or after such date, by virtue of any other applicable provision of this definition; or
- (c) to which is transferred an undertaking or assets which, taken together with the undertaking or assets of the transferee Subsidiary, generated (or, in the case of the transferee Subsidiary being acquired after the end of the financial period to which the then latest audited consolidated accounts of ESB and its Subsidiaries relate, generate net profits equal to) not less than 10 per cent. of the consolidated net profits of ESB, or represent (or, in the case aforesaid, are equal to) not less than 10 per cent. of the consolidated net assets of ESB and its Subsidiaries taken as a whole, all as calculated as referred to in subparagraph (a) above, provided that the transferor Subsidiary (if a Principal Subsidiary) shall upon such transfer forthwith cease to be a Principal Subsidiary unless immediately following such transfer its undertaking and assets generate (or, in the case aforesaid, generate net profits equal to) not less than 10 per cent. of the consolidated net profits of ESB, or its assets represent (or, in the case aforesaid, are equal to) not less than 10 per cent. of the consolidated net assets of ESB and its Subsidiaries taken as a whole, all as calculated as referred to in subparagraph (a) above, and the transferee Subsidiary shall cease to be a Principal Subsidiary pursuant to this subparagraph (c) on the date on which the consolidated accounts of ESB and its Subsidiaries for the financial period current at the date of such transfer have been prepared and audited but so that such transferor Subsidiary or such transferee Subsidiary may be a Principal Subsidiary on or at any time after the date on which such consolidated accounts have been prepared and audited as aforesaid by virtue of the provisions of subparagraph (a) above or, prior to or after such date, by virtue of any other applicable provision of this definition,

all as more particularly defined in the Trust Deed.

A report by two Directors of ESB addressed to the Trustee that in their opinion a Subsidiary of ESB is or is not or was or was not at any particular time or throughout any specified period a Principal Subsidiary may be relied upon by the Trustee without further enquiry or evidence and, if relied upon by the Trustee, shall, in the absence of manifest error, be conclusive and binding on all parties.

**Relevant Debt** means any present or future indebtedness for borrowed money in the form of, or represented by, bonds, notes or other securities which are for the time being, or are capable of being, quoted, listed or ordinarily dealt in on any stock exchange or other organised securities market.

**Special Purpose Subsidiary** means at any time a Subsidiary of ESB which itself has no Subsidiaries (other than a Subsidiary which is a company which falls within paragraph (a) or (b) of this definition) and which either:

- (a) is established to be the holding company of a company of the type described in paragraph (b) of this definition and the business of which is comprised wholly or substantially of holding shares or other equity interests in a company of the type described in paragraph (b) of this definition; or

- (b) is established solely for the purposes of (i) the design or structure or building of a specified asset or project and/or (ii) holding a specified asset or project and/or receiving revenues therefrom, and/or (iii) incurring Non Recourse Indebtedness, and matters ancillary thereto.

**Subsidiary** means an entity of which a person has direct or indirect control or owns directly or indirectly more than 50 per cent. of the voting capital or similar right of ownership.

### 3.3 Sales of Assets

- (c) ESB will not, and will not permit any Subsidiary to, sell, lease or otherwise dispose of all or any substantial part (as defined in paragraph (b) of this Condition 3.3) of the assets of ESB or the Group (whether by a single transaction or a number of related transactions and whether at the same time or over a period of time), *provided, however*, that:
- (i) ESB or the Issuer where the Issuer is ESB Finance (or any other Subsidiary substituted as issuer pursuant to Condition 15.2) may sell, lease or otherwise dispose of all or substantially all of its assets to any other Person (an **Acquiror**) if (x) such Acquiror (1) is a solvent entity organised under the laws of any Approved Jurisdiction and a certificate of two directors of the Acquiror (or other officers acceptable to the Trustee) that the Acquiror is solvent both at the time at which the relevant transaction is proposed to be effected and immediately thereafter and is organised under the laws of any Approved Jurisdiction shall be conclusive evidence thereof and binding on all parties, (2) is immediately thereafter engaged (on a consolidated basis) in any similar line of business as ESB and its Subsidiaries on a consolidated basis, and (3) executes a trust deed or some other form of undertaking is given by the Acquiror in form and manner satisfactory to the Trustee, agreeing to be bound by the provisions of the Trust Deed and these Conditions with any consequential amendments (including where the Acquiror is incorporated, domiciled or resident in, or subject generally to the taxing jurisdiction of, a territory other than or in addition to the Tax Jurisdiction (as defined in Condition 8), the giving of undertakings or covenants by the Acquiror in terms corresponding to the provisions of Condition 8 (*Taxation*) with the substitution for (or, as the case may be, the addition to) the references to Ireland in the definition of Tax Jurisdiction of references to that other or additional territory in which the Acquiror is incorporated, domiciled or resident or to whose taxing jurisdiction it is subject and (where applicable) Condition 7.2 (*Redemption and Purchase – Redemption for Taxation Reasons*) shall be modified accordingly) which the Trustee may deem appropriate as fully as if the Acquiror had been named in the Trust Deed and these Conditions as the principal debtor in place of the relevant Issuer, and (y) at the time of such transaction and after giving effect thereto, no Event of Default or potential Event of Default shall have occurred and be continuing; and
- (ii) any Subsidiary (other than the Issuer where the Issuer is ESB Finance) may sell, lease or otherwise dispose of all or substantially all of its assets to ESB or any other Subsidiary so long as (x) in any such transaction not involving ESB, ESB shall have at least the same degree of voting control and economic interest with respect to the Acquiror as it had with respect to the Subsidiary that sells, leases or otherwise disposes of all of its assets, (y) if such Subsidiary has been substituted as guarantor pursuant to Condition 15.2, the Acquiror executes a trust deed or some other form of undertaking is given by the Acquiror in form and manner satisfactory to the Trustee, agreeing to be bound by the provisions of the Trust Deed and these Conditions with any consequential amendments (including where the Acquiror is incorporated, domiciled or resident in, or subject generally to the taxing jurisdiction of, a territory other than or in addition to the Tax Jurisdiction (as defined in Condition 8), the



giving of undertakings or covenants by the Acquiror in terms corresponding to the provisions of Condition 8 (*Taxation*) with the substitution for (or, as the case may be, the addition to) the references to Ireland in the definition of Tax Jurisdiction of references to that other or additional territory in which the Acquiror is incorporated, domiciled or resident or to whose taxing jurisdiction it is subject and (where applicable) Condition 7.2 (*Redemption and Purchase – Redemption for Taxation Reasons*) shall be modified accordingly) which the Trustee may deem appropriate as fully as if the Acquiror had been named in the Trust Deed and these Conditions in place of the Guarantor, and (z) at the time of such transaction and after giving effect thereto no Event of Default or potential Event of Default shall have occurred and be continuing; and

*provided, further*, that in the event of a sale described in subparagraph (x) of paragraph (i) or subparagraph (y) of paragraph (ii) of this Condition 3.3(a):

(X) the Trustee shall have received an opinion of independent counsel to the Acquiror, which opinion shall be acceptable to the Trustee, as to (i) the due organisation, valid existence and, if legally applicable, good standing of the Acquiror, (ii) the due authorisation, execution and delivery of any required assumption agreement by the Acquiror, and (iii) the valid, binding and enforceable nature of the obligations of the Acquiror under such assumption agreement subject to reasonable and customary exceptions, assumptions and/or qualifications under the circumstances; and

(Y) the Trustee shall have received from ESB, in the case where the Acquiror shall be the primary obligor of the Notes, unconditional and irrevocable written confirmation and reaffirmation as to its obligations under the Guarantee, provided that the written confirmation is in form and substance satisfactory to the Trustee.

- (d) As used in this Condition 3.3, a sale, lease or other disposition of assets shall be deemed to be a "*substantial part*" of the assets of ESB or the Group only if the book value of such assets, (i) when added to the book value of all other assets sold, leased or otherwise disposed of by ESB or its Subsidiaries taken as a whole during the 365-day period ending on the date on which such sale, lease or other disposition occurs, exceeds 20 per cent. of Consolidated Total Assets as of the immediately preceding Year-End Date or (ii) when added to the book value of all other assets sold, leased or otherwise disposed of by ESB or its Subsidiaries during the period from the Issue Date of the first Tranche of Notes of this Series to and including the date that such sale, lease or other disposition occurs, exceeds 30 per cent. of Consolidated Total Assets as of the immediately preceding Year-End Date.

Computations under this paragraph (b) shall include all issues or sales of any shares (or other equity interests) of any class (including as "shares" for the purposes of this Condition 3.3, any warrants, rights or options to purchase or otherwise acquire shares, other equity interests or other Securities exchangeable for or convertible into shares or equity interests) of any Subsidiary (valued at the aggregate net book value of the assets of such Subsidiary multiplied by a fraction, the numerator of which is the aggregate number of shares (or other equity interests) of such Subsidiary issued or sold and the denominator of which is the aggregate number of shares (or other equity interests) of such Subsidiary outstanding immediately prior to such issuance or sale) to any Person other than the Guarantor or a Subsidiary over which ESB shall have at least the same degree of voting control and economic interest as it did with respect to the Subsidiary issuing or selling such shares (or other equity interests) or whose shares (or other equity interests) are being sold, except shares (or other equity interests) issued or sold for the purpose of qualifying directors, or except shares (or other equity interests) issued or sold in satisfaction of the validly pre-existing preemptive rights of minority shareholders (or equity holders) in connection with

the simultaneous issuance of stock (or equity interests) to ESB and/or Subsidiaries whereby ESB and/or such Subsidiaries maintain their same proportionate interest in such Subsidiary. In the event of a sale of shares, any liabilities or obligations which are assumed by or otherwise become liabilities or obligations of the acquiring Person shall be netted against the assets or shares sold or otherwise disposed of by ESB or any Subsidiary. Computations under this paragraph (b) shall not include sales, leases or other dispositions made:

- (i) in the ordinary course of business of ESB or any Subsidiary (including any sale or securitisation of receivables for cash in an amount not less than the fair market value (as determined in good faith by a Senior Financial Officer and certified to the Trustee upon request) thereof; *provided* that the value of any securitisation of receivables contemplated hereby, together with the value of all other such receivable securitisations having occurred during the 365-day period ending on the date on which such securitisation is completed) shall not exceed 5 per cent. of Consolidated Total Assets as of the immediately preceding Year-End Date;
- (ii) by ESB to a Wholly-Owned Subsidiary (which is not a Special Purpose Subsidiary) or by a Subsidiary to ESB or another Subsidiary (which is not a Special Purpose Subsidiary) with respect to which ESB shall have at least the same degree of voting control and economic interest as it had with respect to the Subsidiary selling, leasing or otherwise disposing of such assets;
- (iii) by a Special Purpose Subsidiary to another Special Purpose Subsidiary;
- (iv) to the extent that, substantially concurrently therewith (and in any event within a period of 60 days), ESB or the Subsidiary involved receives, in exchange therefor, assets which are to be used in the business of ESB or a Subsidiary and are of at least substantially equal value;
- (v) for fair market value (as determined in good faith by a Senior Financial Officer and certified to the Trustee upon request), to the extent that the Net Proceeds Amount of such transaction (or an equal amount) has been or is applied within 545 days before or after the date of such transaction to either or both of:
  - (A) the purchase, acquisition, development, redevelopment or construction of non-financial assets which are to be used or useful in the business of ESB and/or a Subsidiary and a certificate of two directors of ESB addressed to the Trustee that such purchase, acquisition, development, redevelopment or construction are to be used or useful in the business of ESB and/or a Subsidiary shall be conclusive evidence thereof and binding on all parties, or
  - (B) the repayment or prepayment of unsubordinated Financial Indebtedness of ESB or a Subsidiary (other than unsubordinated Financial Indebtedness owed by a member of the Group to another member of the Group); *provided* that ESB shall contemporaneously make an offer to purchase some or all of the Notes pursuant to Condition 7.10 in aggregate amount calculated by multiplying the aggregate amount of unsubordinated Financial Indebtedness of ESB or any Subsidiary to be prepaid pursuant to this clause (B) by a fraction, (a) the numerator of which is the aggregate unpaid principal amount of Notes outstanding at the time of such offer and (b) the denominator of which is aggregate unpaid principal amount of unsubordinated Financial Indebtedness (including the Notes) of ESB or any

Subsidiary at the time of such offer that is to be the subject of any prepayment pursuant to this clause (B);

it being understood that the failure to apply (or have applied) such Net Proceeds Amount of such transaction within such 545 day period will not give rise to a claim by the Trustee or any holder of Notes against the acquirer of such assets; or

- (vi) with respect to assets acquired in an acquisition subsequent to the Issue Date of the first Tranche of Notes of this Series if (a) such assets are outside the principal business areas to which the assets acquired, taken as a whole, relate, and (b) such assets are sold or disposed of for cash or any other consideration which represents the fair market value of such assets.

For the purposes of these Conditions:

**Approved Jurisdiction** means and includes any one of the following jurisdictions: Ireland, the United States, the United Kingdom, Canada, Australia, Switzerland, and any member of the OECD as of 12 February 2010 (other than Greece, Italy, Spain, Turkey, Portugal, Slovenia, the Czech Republic, the Slovak Republic, Hungary, Poland, Korea or Mexico);

**Consolidated Total Assets** means, without duplication, at any time, the aggregate value of the assets of the Group calculated on a consolidated basis in accordance with generally accepted accounting principles in Ireland (**GAAP**);

**Net Proceeds Amount** means, with respect to any sale, lease or disposition of property by any Person, an amount equal to the result of (a) the aggregate amount of the consideration (valued at the fair market value of such consideration at the time of the consummation of such sale, lease or disposition) received by such Person in respect of such sale, lease or disposition, minus (b) all out-of-pocket costs and expenses actually incurred by such Person in connection with, and taxes in respect of, such sale, lease or disposition;

**Person** means an individual, partnership, corporation, limited liability guarantor, association, trust, unincorporated organisation, or a government or agency or political subdivision thereof;

**Senior Financial Officer** means the chief financial officer, finance director, principal accounting officer, treasurer or controller of ESB;

**Wholly-Owned Subsidiary** means, at any time, any Subsidiary 100 per cent. of all of the equity interests (except directors' qualifying shares) and voting interests of which are owned by any one or more of ESB's other Wholly-Owned Subsidiaries at such time and/or employees or directors of ESB or any Subsidiary at such time (provided that the percentage of the equity interests and voting interests of such Subsidiary owned by such employees and directors shall not exceed 5 per cent. of the equity interests and voting interests of such Subsidiary in the aggregate); and

**Year-End Date** means December 31 of any year or any such other date that ESB shall specify in writing as its fiscal year-end date.

## 4. REDENOMINATION

### 4.1 Redenomination

Where redenomination is specified in the applicable Final Terms as being applicable, the Issuer may, without the consent of the Noteholders, the Receiptholders and the Couponholders but after prior consultation with the Trustee, on giving prior notice to the Agent, Euroclear and Clearstream,

Luxembourg and at least 30 days' prior notice to the Noteholders in accordance with Condition 14 (*Notices*), elect that, with effect from the Redenomination Date specified in the notice, the Notes shall be redenominated in euro.

The election will have effect as follows:

- (e) the Notes and the Receipts shall be deemed to be redenominated in euro in the denomination of EUR 0.01 with a nominal amount for each Note and Receipt equal to the nominal amount of that Note or Receipt in the Specified Currency, converted into euro at the Established Rate, provided that, if the Issuer determines, with the agreement of the Agent and the Trustee, that the then market practice in respect of the redenomination in euro of internationally offered securities is different from the provisions specified above, such provisions shall be deemed to be amended so as to comply with such market practice and the Issuer shall promptly notify the Noteholders, the stock exchange (if any) on which the Notes may be listed and the Paying Agents of such deemed amendments;
- (f) save to the extent that an Exchange Notice has been given in accordance with paragraph (d) below, the amount of interest due in respect of the Notes will be calculated by reference to the aggregate nominal amount of Notes presented (or, as the case may be, in respect of which Coupons are presented) for payment by the relevant holder and the amount of such payment shall be rounded down to the nearest EUR 0.01;
- (g) if definitive Notes are required to be issued after the Redenomination Date, they shall be issued at the expense of the Issuer (i) in the case of Relevant Notes in the denomination of EUR 50,000 and/or such higher amounts as the Agent may determine and notify to the Noteholders and any remaining amounts less than EUR 50,000 shall be redeemed by the Issuer and paid to the Noteholders in euro in accordance with Condition 6 (*Payments*); and (ii) in the case of Notes which are not Relevant Notes, in the denominations of EUR 1,000, EUR 10,000, EUR 100,000 and (but only to the extent of any remaining amounts less than EUR 1,000 or such smaller denominations as the Agent and the Trustee may approve) EUR 0.01 and such other denominations as the Agent shall determine and notify to the Noteholders;
- (h) if issued prior to the Redenomination Date, all unmatured Coupons denominated in the Specified Currency (whether or not attached to the Notes) will become void with effect from the date on which the Issuer gives notice (the **Exchange Notice**) that replacement euro-denominated Notes, Receipts and Coupons are available for exchange (provided that such securities are so available) and no payments will be made in respect of them. The payment obligations contained in any Notes and Receipts so issued will also become void on that date although those Notes and Receipts will continue to constitute valid exchange obligations of the Issuer. New euro-denominated Notes, Receipts and Coupons will be issued in exchange for Notes, Receipts and Coupons denominated in the Specified Currency in such manner as the Agent may specify and as shall be notified to the Noteholders in the Exchange Notice. No Exchange Notice may be given less than 15 days prior to any date for payment of principal or interest on the Notes;
- (i) after the Redenomination Date, all payments in respect of the Notes, the Receipts and the Coupons, other than payments of interest in respect of periods commencing before the Redenomination Date, will be made solely in euro as though references in the Notes to the Specified Currency were to euro. Payments will be made in euro by credit or transfer to a euro account (or any other account to which euro may be credited or transferred) specified by the payee or, at the option of the payee, by a euro cheque;

- (j) if the Notes are Fixed Rate Notes and interest for any period ending on or after the Redenomination Date is required to be calculated for a period ending other than on an Interest Payment Date, it will be calculated:
- (i) in the case of the Notes represented by a Global Note, by applying the Rate of Interest to the aggregate outstanding nominal amount of the Notes represented by such Global Note; and
  - (ii) in the case of definitive Notes, by applying the Rate of Interest to the Calculation Amount;
- and, in each case, multiplying such sum by the applicable Day Count Fraction, and rounding the resultant figure to the nearest sub-unit of the relevant Specified Currency, half of any such sub-unit being rounded upwards or otherwise in accordance with applicable market convention. Where the Specified Denomination of a Fixed Rate Note in definitive form is a multiple of the Calculation Amount, the amount of interest payable in respect of such Fixed Rate Note shall be the product of the amount (determined in the manner provided above) for the Calculation Amount and the amount by which the Calculation Amount is multiplied to reach the Specified Denomination, without any further rounding; and
- (k) if the Notes are Floating Rate Notes, the applicable Final Terms will specify any relevant changes to the provisions relating to interest.

## 4.2 Definitions

In the Conditions, the following expressions have the following meanings:

**Established Rate** means the rate for the conversion of the Specified Currency (including compliance with rules relating to roundings in accordance with applicable European Community regulations) into euro established by the Council of the European Union pursuant to Article 123 of the Treaty;

**euro** means the currency introduced at the start of the third stage of European economic and monetary union pursuant to the Treaty;

**Redenomination Date** means (in the case of interest bearing Notes) any date for payment of interest under the Notes or (in the case of Zero Coupon Notes) any date, in each case specified by the Issuer in the notice given to the Noteholders pursuant to Condition 4.1 above and which falls on or after the date on which the country of the Specified Currency first participates in the third stage of European economic and monetary union;

**Relevant Notes** means all Notes where the applicable Final Terms provide for a minimum Specified Denomination in the Specified Currency which is equivalent to at least EUR 50,000 and which are admitted to trading on a regulated market in the European Economic Area;

**Treaty** means the Treaty establishing the European Community, as amended.

## 5. INTEREST

### 5.1 Interest on Fixed Rate Notes

Each Fixed Rate Note bears interest from (and including) the Interest Commencement Date at the rate(s) per annum equal to the Rate(s) of Interest. Interest will be payable in arrear on the Interest Payment Date(s) in each year up to (and including) the Maturity Date.

If the Notes are in definitive form, except as provided in the applicable Final Terms, the amount of interest payable on each Interest Payment Date in respect of the Fixed Interest Period ending on (but excluding) such date will amount to the Fixed Coupon Amount. Payments of interest on any Interest Payment Date will, if so specified in the applicable Final Terms, amount to the Broken Amount so specified.

As used in the Conditions, **Fixed Interest Period** means the period from (and including) an Interest Payment Date (or the Interest Commencement Date) to (but excluding) the next (or first) Interest Payment Date.

Except in the case of Notes in definitive form where an applicable Fixed Coupon Amount or Broken Amount is specified in the applicable Final Terms, interest shall be calculated in respect of any period by applying the Rate of Interest to:

- (A) in the case of Fixed Rate Notes which are represented by a Global Note, the aggregate outstanding nominal amount of the Fixed Rate Notes represented by such Global Note (or, if they are Partly Paid Notes, the aggregate amount paid up); or
- (B) in the case of Fixed Rate Notes in definitive form, the Calculation Amount;

and, in each case, multiplying such sum by the applicable Day Count Fraction, and rounding the resultant figure to the nearest sub-unit of the relevant Specified Currency, half of any such sub-unit being rounded upwards or otherwise in accordance with applicable market convention. Where the Specified Denomination of a Fixed Rate Note in definitive form is a multiple of the Calculation Amount, the amount of interest payable in respect of such Fixed Rate Note shall be the product of the amount (determined in the manner provided above) for the Calculation Amount and the amount by which the Calculation Amount is multiplied to reach the Specified Denomination, without any further rounding.

**Day Count Fraction** means, in respect of the calculation of an amount of interest in accordance with this Condition 5.1:

- (l) if "Actual/Actual (ICMA)" is specified in the applicable Final Terms:
  - (i) in the case of Notes where the number of days in the relevant period from (and including) the most recent Interest Payment Date (or, if none, the Interest Commencement Date) to (but excluding) the relevant payment date (the **Accrual Period**) is equal to or shorter than the Determination Period during which the Accrual Period ends, the number of days in such Accrual Period divided by the product of (I) the number of days in such Determination Period and (II) the number of Determination Dates (as specified in the applicable Final Terms) that would occur in one calendar year; or
  - (ii) in the case of Notes where the Accrual Period is longer than the Determination Period during which the Accrual Period ends, the sum of:
    - (A) the number of days in such Accrual Period falling in the Determination Period in which the Accrual Period begins divided by the product of (x) the number of days in such Determination Period and (y) the number of Determination Dates that would occur in one calendar year; and
    - (B) the number of days in such Accrual Period falling in the next Determination Period divided by the product of (x) the number of days in such

Determination Period and (y) the number of Determination Dates that would occur in one calendar year; and

- (m) if "30/360" is specified in the applicable Final Terms, the number of days in the period from (and including) the most recent Interest Payment Date (or, if none, the Interest Commencement Date) to (but excluding) the relevant payment date (such number of days being calculated on the basis of a year of 360 days with 12 30-day months) divided by 360.

In the Conditions:

**Determination Period** means each period from (and including) a Determination Date to (but excluding) the next Determination Date (including, where either the Interest Commencement Date or the final Interest Payment Date is not a Determination Date, the period commencing on the first Determination Date prior to, and ending on the first Determination Date falling after, such date); and

**sub-unit** means, with respect to any currency other than euro, the lowest amount of such currency that is available as legal tender in the country of such currency and, with respect to euro, one cent.

## 5.2 Interest on Floating Rate Notes and Index Linked Interest Notes

### (n) Interest Payment Dates

Each Floating Rate Note and Index Linked Interest Note bears interest from (and including) the Interest Commencement Date and such interest will be payable in arrear on either:

- (i) the Specified Interest Payment Date(s) in each year specified in the applicable Final Terms; or
- (ii) if no Specified Interest Payment Date(s) is/are specified in the applicable Final Terms, each date (each such date, together with each Specified Interest Payment Date, an **Interest Payment Date**) which falls the number of months or other period specified as the Specified Period in the applicable Final Terms after the preceding Interest Payment Date or, in the case of the first Interest Payment Date, after the Interest Commencement Date.

Such interest will be payable in respect of each Interest Period (which expression shall, in the Conditions, mean the period from (and including) an Interest Payment Date (or the Interest Commencement Date) to (but excluding) the next (or first) Interest Payment Date).

If a Business Day Convention is specified in the applicable Final Terms and (x) if there is no numerically corresponding day in the calendar month in which an Interest Payment Date should occur or (y) if any Interest Payment Date would otherwise fall on a day which is not a Business Day, then, if the Business Day Convention specified is:

- (A) in any case where Specified Periods are specified in accordance with Condition 5.2(a)(ii) above, the Floating Rate Convention, such Interest Payment Date (a) in the case of (x) above, shall be the last day that is a Business Day in the relevant month and the provisions of (ii) below shall apply *mutatis mutandis* or (b) in the case of (y) above, shall be postponed to the next day which is a Business Day unless it would thereby fall into the next calendar month, in which event (i) such Interest Payment Date shall be brought forward to the immediately preceding Business Day and (ii) each subsequent Interest Payment Date shall be the last Business Day in the month which falls the Specified Period after the preceding applicable Interest Payment Date occurred; or

- (B) the Following Business Day Convention, such Interest Payment Date shall be postponed to the next day which is a Business Day; or
- (C) the Modified Following Business Day Convention, such Interest Payment Date shall be postponed to the next day which is a Business Day unless it would thereby fall into the next calendar month, in which event such Interest Payment Date shall be brought forward to the immediately preceding Business Day; or
- (D) the Preceding Business Day Convention, such Interest Payment Date shall be brought forward to the immediately preceding Business Day.

In the Conditions, **Business Day** means a day which is both:

- (a) a day on which commercial banks and foreign exchange markets settle payments and are open for general business (including dealing in foreign exchange and foreign currency deposits) in London and each Additional Business Centre specified in the applicable Final Terms; and
- (b) either (i) in relation to any sum payable in a Specified Currency other than euro, a day on which commercial banks and foreign exchange markets settle payments and are open for general business (including dealing in foreign exchange and foreign currency deposits) in the principal financial centre of the country of the relevant Specified Currency (if other than London and any Additional Business Centre and which if the Specified Currency is Australian dollars or New Zealand dollars shall be Sydney and Auckland, respectively) or (ii) in relation to any sum payable in euro, a day on which the Trans-European Automated Real-Time Gross Settlement Express Transfer (TARGET2) System (the **TARGET2 System**) is open.
- (o) **Rate of Interest**

The Rate of Interest payable from time to time in respect of Floating Rate Notes and Index Linked Interest Notes will be determined in the manner specified in the applicable Final Terms.

- (i) ISDA Determination for Floating Rate Notes

Where ISDA Determination is specified in the applicable Final Terms as the manner in which the Rate of Interest is to be determined, the Rate of Interest for each Interest Period will be the relevant ISDA Rate plus or minus (as indicated in the applicable Final Terms) the Margin (if any). For the purposes of this subparagraph (i), **ISDA Rate** for an Interest Period means a rate equal to the Floating Rate that would be determined by the Agent under an interest rate swap transaction if the Agent were acting as Calculation Agent for that swap transaction under the terms of an agreement incorporating the 2006 ISDA Definitions, as published by the International Swaps and Derivatives Association, Inc. and as amended and updated as at the Issue Date of the first Tranche of the Notes (the **ISDA Definitions**) and under which:

- (A) the Floating Rate Option is as specified in the applicable Final Terms;
- (B) the Designated Maturity is a period specified in the applicable Final Terms; and



- (C) the relevant Reset Date is either (a) if the applicable Floating Rate Option is based on the London interbank offered rate (**LIBOR**) or on the Euro-zone interbank offered rate (**EURIBOR**), the first day of that Interest Period or (b) in any other case, as specified in the applicable Final Terms.

For the purposes of this subparagraph (i), **Floating Rate, Calculation Agent, Floating Rate Option, Designated Maturity** and **Reset Date** have the meanings given to those terms in the ISDA Definitions.

Unless otherwise stated in the applicable Final Terms the Minimum Rate of Interest shall be deemed to be zero.

- (ii) Screen Rate Determination for Floating Rate Notes

Where Screen Rate Determination is specified in the applicable Final Terms as the manner in which the Rate of Interest is to be determined, the Rate of Interest for each Interest Period will, subject as provided below, be either:

- (A) the offered quotation; or
- (B) the arithmetic mean (rounded if necessary to the fifth decimal place, with 0.000005 being rounded upwards) of the offered quotations,

(expressed as a percentage rate per annum) for the Reference Rate which appears or appear, as the case may be, on the Relevant Screen Page as at 11.00 a.m. (London time, in the case of LIBOR, or Brussels time, in the case of EURIBOR) on the Interest Determination Date in question plus or minus (as indicated in the applicable Final Terms) the Margin (if any), all as determined by the Agent. If five or more of such offered quotations are available on the Relevant Screen Page, the highest (or, if there is more than one such highest quotation, one only of such quotations) and the lowest (or, if there is more than one such lowest quotation, one only of such quotations) shall be disregarded by the Agent for the purpose of determining the arithmetic mean (rounded as provided above) of such offered quotations.

The Agency Agreement contains provisions for determining the Rate of Interest in the event that the Relevant Screen Page is not available or if, in the case of (A) above, no such offered quotation appears or, in the case of (B) above, fewer than three such offered quotations appear, in each case as at the time specified in the preceding paragraph.

If the Reference Rate from time to time in respect of Floating Rate Notes is specified in the applicable Final Terms as being other than LIBOR or EURIBOR, the Rate of Interest in respect of such Notes will be determined as provided in the applicable Final Terms.

**(p) Minimum Rate of Interest and/or Maximum Rate of Interest**

If the applicable Final Terms specifies a Minimum Rate of Interest for any Interest Period, then, in the event that the Rate of Interest in respect of such Interest Period determined in accordance with the provisions of paragraph (b) above is less than such Minimum Rate of Interest, the Rate of Interest for such Interest Period shall be such Minimum Rate of Interest.

If the applicable Final Terms specifies a Maximum Rate of Interest for any Interest Period, then, in the event that the Rate of Interest in respect of such Interest Period determined in

accordance with the provisions of paragraph (b) above is greater than such Maximum Rate of Interest, the Rate of Interest for such Interest Period shall be such Maximum Rate of Interest.

**(q) Determination of Rate of Interest and calculation of Interest Amounts**

The Agent, in the case of Floating Rate Notes, and the Calculation Agent, in the case of Index Linked Interest Notes, will at or as soon as practicable after each time at which the Rate of Interest is to be determined, determine the Rate of Interest for the relevant Interest Period. In the case of Index Linked Interest Notes, the Calculation Agent will notify the Agent of the Rate of Interest for the relevant Interest Period as soon as practicable after calculating the same.

The Agent will calculate the amount of interest (the **Interest Amount**) payable on the Floating Rate Notes or Index Linked Interest Notes (subject to Conditions 5.6 and 5.7 where applicable) for the relevant Interest Period by applying the Rate of Interest to:

- (A) in the case of Floating Rate Notes or Index Linked Interest Notes which are represented by a Global Note, the aggregate outstanding nominal amount of the Notes represented by such Global Note (or, if they are Partly Paid Notes, the aggregate amount paid up); or
- (B) in the case of Floating Rate Notes or Index Linked Interest Notes in definitive form, the Calculation Amount;

and, in each case, multiplying such sum by the applicable Day Count Fraction, and rounding the resultant figure to the nearest sub-unit of the relevant Specified Currency, half of any such sub-unit being rounded upwards or otherwise in accordance with applicable market convention. Where the Specified Denomination of a Floating Rate Note or an Index Linked Interest Note in definitive form is a multiple of the Calculation Amount, the Interest Amount payable in respect of such Note shall be the product of the amount (determined in the manner provided above) for the Calculation Amount and the amount by which the Calculation Amount is multiplied to reach the Specified Denomination, without any further rounding.

**Day Count Fraction** means, in respect of the calculation of an amount of interest in accordance with this Condition 5.2:

- (i) if "Actual/Actual (ISDA)" or "Actual/Actual" is specified in the applicable Final Terms, the actual number of days in the Interest Period divided by 365 (or, if any portion of that Interest Period falls in a leap year, the sum of (I) the actual number of days in that portion of the Interest Period falling in a leap year divided by 366 and (II) the actual number of days in that portion of the Interest Period falling in a non-leap year divided by 365);
- (ii) if "Actual/365 (Fixed)" is specified in the applicable Final Terms, the actual number of days in the Interest Period divided by 365;
- (iii) if "Actual/365 (Sterling)" is specified in the applicable Final Terms, the actual number of days in the Interest Period divided by 365 or, in the case of an Interest Payment Date falling in a leap year, 366;
- (iv) if "Actual/360" is specified in the applicable Final Terms, the actual number of days in the Interest Period divided by 360;

- (v) if "30/360", "360/360" or "Bond Basis" is specified in the applicable Final Terms, the number of days in the Interest Period divided by 360, calculated on a formula basis as follows:

$$\text{Day Count Fraction} = \frac{[360 \times (Y_2 - Y_1)] + [30 \times (M_2 - M_1)] + (D_2 - D_1)}{360}$$

where:

"Y<sub>1</sub>" is the year, expressed as a number, in which the first day of the Interest Period falls;

"Y<sub>2</sub>" is the year, expressed as a number, in which the day immediately following the last day of the Interest Period falls;

"M<sub>1</sub>" is the calendar month, expressed as a number, in which the first day of the Interest Period falls;

"M<sub>2</sub>" is the calendar month, expressed as a number, in which the day immediately following the last day of the Interest Period falls;

"D<sub>1</sub>" is the first calendar day, expressed as a number, of the Interest Period, unless such number is 31, in which case D<sub>1</sub> will be 30; and

"D<sub>2</sub>" is the calendar day, expressed as a number, immediately following the last day included in the Interest Period, unless such number would be 31 and D<sub>1</sub> is greater than 29, in which case D<sub>2</sub> will be 30;

- (vi) if "30E/360" or "Eurobond Basis" is specified in the applicable Final Terms, the number of days in the Interest Period divided by 360, calculated on a formula basis as follows:

$$\text{Day Count Fraction} = \frac{[360 \times (Y_2 - Y_1)] + [30 \times (M_2 - M_1)] + (D_2 - D_1)}{360}$$

where:

"Y<sub>1</sub>" is the year, expressed as a number, in which the first day of the Interest Period falls;

"Y<sub>2</sub>" is the year, expressed as a number, in which the day immediately following the last day of the Interest Period falls;

"M<sub>1</sub>" is the calendar month, expressed as a number, in which the first day of the Interest Period falls;

"M<sub>2</sub>" is the calendar month, expressed as a number, in which the day immediately following the last day of the Interest Period falls;

"D<sub>1</sub>" is the first calendar day, expressed as a number, of the Interest Period, unless such number would be 31, in which case D<sub>1</sub> will be 30; and

"D<sub>2</sub>" is the calendar day, expressed as a number, immediately following the last day included in the Interest Period, unless such number would be 31, in which case D<sub>2</sub> will be 30;

- (vii) if "30E/360 (ISDA)" is specified in the applicable Final Terms, the number of days in the Interest Period divided by 360, calculated on a formula basis as follows:

$$\text{Day Count Fraction} = \frac{[360 \times (Y_2 - Y_1)] + [30 \times (M_2 - M_1)] + (D_2 - D_1)}{360}$$

where:

"Y<sub>1</sub>" is the year, expressed as a number, in which the first day of the Interest Period falls;

"Y<sub>2</sub>" is the year, expressed as a number, in which the day immediately following the last day of the Interest Period falls;

"M<sub>1</sub>" is the calendar month, expressed as a number, in which the first day of the Interest Period falls;

"M<sub>2</sub>" is the calendar month, expressed as a number, in which the day immediately following the last day of the Interest Period falls;

"D<sub>1</sub>" is the first calendar day, expressed as a number, of the Interest Period, unless (i) that day is the last day of February or (ii) such number would be 31, in which case D<sub>1</sub> will be 30; and

"D<sub>2</sub>" is the calendar day, expressed as a number, immediately following the last day included in the Interest Period, unless (i) that day is the last day of February but not the Maturity Date or (ii) such number would be 31, in which case D<sub>2</sub> will be 30.

**(r) Notification of Rate of Interest and Interest Amounts**

The Agent will cause the Rate of Interest and each Interest Amount for each Interest Period and the relevant Interest Payment Date to be notified to the Issuer, the Guarantor (if the Issuer is ESB Finance), the Trustee and any stock exchange on which the relevant Floating Rate Notes or Index Linked Interest Notes are for the time being listed and notice thereof to be published in accordance with Condition 14 (*Notices*) as soon as possible after their determination but in no event later than the fourth London Business Day thereafter. Each Interest Amount and Interest Payment Date so notified may subsequently be amended (or appropriate alternative arrangements made by way of adjustment) without prior notice in the event of an extension or shortening of the Interest Period. Any such amendment will be promptly notified to each stock exchange on which the relevant Floating Rate Notes or Index Linked Interest Notes are for the time being listed and to the Noteholders in accordance with Condition 14 (*Notices*). For the purposes of this paragraph, the expression **London Business Day** means a day (other than a Saturday or a Sunday) on which banks and foreign exchange markets are open for general business in London.

**(s) Determination or Calculation by Trustee**

If for any reason at any relevant time the Agent or, as the case may be, the Calculation Agent defaults in its obligation to determine the Rate of Interest or the Agent defaults in its obligation to calculate any Interest Amount in accordance with subparagraph (b)(i) or

subparagraph (b)(ii) above or as otherwise specified in the applicable Final Terms, as the case may be, and in each case in accordance with paragraph (d) above, the Trustee shall (or shall, at the expense of the Issuer, appoint an expert to) determine the Rate of Interest at such rate as, in its absolute discretion (having such regard as it shall think fit to the foregoing provisions of this Condition, but subject always to any Minimum Rate of Interest or Maximum Rate of Interest specified in the applicable Final Terms), it shall deem fair and reasonable in all the circumstances or, as the case may be, the Trustee shall (or shall, at the expense of the Issuer, appoint an expert to) calculate the Interest Amount(s) in such manner as it shall deem fair and reasonable in all the circumstances and each such determination or calculation shall be deemed to have been made by the Agent or the Calculation Agent, as applicable.

**(t) Certificates to be final**

All certificates, communications, opinions, determinations, calculations, quotations and decisions given, expressed, made or obtained for the purposes of the provisions of this Condition 5.2, whether by the Agent or, if applicable, the Calculation Agent, shall (in the absence of wilful default, bad faith and manifest error) be binding on the Issuer, the Guarantor (if the Issuer is ESB Finance), the Agent, the Calculation Agent (if applicable), the other Paying Agents, the Trustee and all Noteholders, Receipholders and Couponholders and (in the absence of wilful default and bad faith) no liability to the Issuer, the Guarantor (if the Issuer is ESB Finance), the Trustee, the Noteholders, the Receipholders or the Couponholders shall attach to the Agent or, if applicable, the Calculation Agent or the Trustee (or its expert) in connection with the exercise or non-exercise by it of its powers, duties and discretions pursuant to such provisions.

**5.3 Interest on Dual Currency Interest Notes**

The rate or amount of interest payable in respect of Dual Currency Interest Notes shall be determined in the manner specified in the applicable Final Terms.

**5.4 Interest on Partly Paid Notes**

In the case of Partly Paid Notes (other than Partly Paid Notes which are Zero Coupon Notes), interest will accrue as aforesaid on the paid-up nominal amount of such Notes and otherwise as specified in the applicable Final Terms.

**5.5 Accrual of interest**

Each Note (or in the case of the redemption of part only of a Note, that part only of such Note) will cease to bear interest (if any) from the date for its redemption unless, upon due presentation thereof, payment of principal is improperly withheld or refused. In such event, interest will continue to accrue as provided in the Trust Deed.

**5.6 Indexation**

In the case of Index Linked Interest Notes or Index Linked Redemption Notes (unless the contrary appears within the applicable Final Terms), the following provisions of Condition 5.6 shall apply.

**(u) Indexation of principal**

If the Notes are specified as Index Linked Redemption Notes in the applicable Final Terms the Final Redemption Amount payable pursuant to Condition 7.1 and the Early Redemption Amount payable pursuant to Conditions 7.2, 7.3, 7.4, 7.5 or 10 shall be the Final Redemption Amount or Early

Redemption Amount (as the case may be) multiplied by the Index Ratio or Limited Index Ratio, in the case of Limited Index Linked Notes, applicable to the date on which the Final Redemption Amount or the Early Redemption Amount (as the case may be) becomes payable.

The Calculation Agent will calculate such Final Redemption Amount or Early Redemption Amount (as the case may be) as soon as practicable after each time such amount is capable of being determined and will notify the Agent thereof as soon as practicable after calculating the same. The Agent will as soon as practicable thereafter notify the Issuer and any stock exchange on which the Notes are for the time being listed thereof and cause notice thereof to be published in accordance with Condition 14 (*Notices*).

**(v) Definitions**

For the purposes of these Conditions:

**Base Index Figure** means (subject to Condition 5.7) the base index figure relevant to the Interest Commencement Date as specified in the applicable Final Terms;

**Calculation Date** means any date when an Interest Amount, Final Redemption Amount or Early Redemption Amount, as applicable, falls due;

**Expert** means an independent investment bank or other expert in London appointed by the Issuer and approved by the Trustee or (failing such appointment within ten days after the Trustee shall have requested such appointment or failing such approval by the Trustee) appointed by the Trustee;

**Index** or **Index Figure** means, in relation to any Calculation Date, subject as provided in Condition 5.7 below, the Index or Index Figure as specified in the applicable Final Terms for the indexation of inflation as published by the government department of the Sovereign responsible for the publication of such index and applicable to that Calculation Date or, if that index is not published for any Calculation Date, any substituted index or index figures published by the government department responsible for the publication of such index or the comparable index which replaces such index for the purpose of calculating the amount payable on repayment of the Reference Gilt;

Any reference to the **Index Figure applicable** to a particular Calculation Date shall, subject as provided in Condition 5.7 below;

- (i) if the applicable Final Terms specify that interpolation will apply, be calculated in accordance with the following formula:

$$RPI_{m-y} + \frac{(\text{Day of Calculation Date} - 1)}{(\text{Days in month of Calculation Date})} \times (RPI_{m-x} - RPI_{m-y})$$

and rounded to five decimal places (0.000005 being rounded upwards) and where:

$RPI_{m-y}$  means the Index Figure for the first day of the month that is the number of months as specified in the applicable Final Terms (**Indexation Month Reference Period Y**) prior to the month in which the payment falls due; and

$RPI_{m-x}$  means the Index Figure for the first day of the month that is the number of months as specified in the applicable Final Terms (**Indexation Month Reference Period X**) prior to the month in which the payment falls due; or

- (ii) otherwise means the Index Figure for the first day of the month that is the number of months as specified in the applicable Final Terms prior to the month in which the payment falls due;

the **Index Ratio** applicable to any Calculation Date means the Index Figure applicable to such date divided by the Base Index Figure and rounded to five decimal places (0.000005 being rounded upwards);

**Limited Index Ratio** means (a) in respect of any month or date, as the case may be, prior to the relevant Issue Date, the Index Ratio for that month or date, as the case may be, (b) in respect of any Limited Indexation Date after the relevant Issue Date, the product of the Limited Indexation Factor for that month or date, as the case may be, and the Limited Index Ratio as previously calculated in respect of the month or date, as the case may be, the number of months prior thereto (as specified in the applicable Final Terms (**Limited Indexation Month Reference Period**)); and (c) in respect of any other month or date, as the case may be, the Limited Index Ratio as previously calculated in respect of the most recent Limited Indexation Month;

**Limited Indexation Date** means any date falling during the period specified in the relevant Final Terms for which a Limited Indexation Factor is to be calculated;

**Limited Indexation Factor** means, in respect of a Limited Indexation Month or Limited Indexation Date, as the case may be, the ratio of the Index Figure applicable to that month or date, as the case may be, divided by the Index Figure applicable to the month or date, as the case may be, the number of months prior thereto (as specified in the applicable Final Terms (Limited Indexation Month Reference Period)), provided that (a) if such ratio is greater than the Maximum Indexation Factor specified in the relevant Final Terms, it shall be deemed to be equal to such Maximum Indexation Factor and (b) if such ratio is less than the Minimum Indexation Factor specified in the applicable Final Terms, it shall be deemed to be equal to such Minimum Indexation Factor;

**Limited Indexation Month** means any month specified in the applicable Final Terms for which a Limited Indexation Factor is to be calculated;

**Limited Index Linked Instruments** means Index Linked Instruments to which a Maximum Indexation Factor and/or a Minimum Indexation Factor (as specified in the applicable Final Terms) applies;

the **Rate of Interest** applicable to any amount payable unless stated otherwise in the applicable Final Terms shall be the amount calculated by reference to Condition 5.2(d) and rounded to six decimal places (0.0000005 being rounded upwards); and

**Reference Gilt** means Treasury Stock specified as such in the applicable Final Terms for so long as such stock is in issue, and thereafter such issue of index-linked Treasury Stock determined to be appropriate by a gilt-edged market maker or other adviser selected by the Issuer (an **Indexation Adviser**).

## 5.7 Change in circumstances affecting the Index

### (w) Change in base

If at any time the Index is changed by the substitution of a new base for it, then with effect from (and including) the date from and including that on which such substitution takes effect:

- (i) the definition of Index in Condition 5.6(b) shall be deemed to refer to the new date in substitution for the Commencement Date of the Index, as specified in the applicable Final Terms (or, as the case may be, for such other date or month as may have been substituted for it); and

- (ii) the definition of Base Index Figure in Condition 5.6(b) shall be amended to mean the product of the then applicable Base Index Figure and the Index immediately following such substitution, divided by the Index immediately prior to such substitution.

**(x) Delay in publication of the Index**

- (i) If, in relation to a particular Interest Period or to the redemption of all or some only of the Notes and otherwise than in circumstances which the Issuer certifies to the Trustee (in a certificate addressed to the Trustee and signed by two Directors of the Issuer) may fall within Condition 5.7(c) or 7.6 (notwithstanding that the Issuer may subsequently be advised that they do not fall within Condition 5.7(c) or 7.6), the Index Figure relating to any month (the **calculation month**) which is required to be taken into account for the purposes of the determination of the Index Figure for any date is not published on or before the fourteenth day before the date on which such payment is due (the **date for payment**), the Issuer shall appoint an Expert and the Index Figure for the relevant calculation month shall be the substitute index figure (if any) as is published by the government department responsible for the publication of such index for the purposes of indexation of payments on the Reference Gilt or, failing such publication, on any one or more of Sovereign's index-linked stocks, as determined by the Expert; or
- (ii) if no such determination is made by the Expert within seven days, the Index Figure last published before the date for payment.

Where the provisions of this Condition 5.7(b) apply, the certificate of the Issuer (signed by two Directors), acting on the advice of an Expert, as to the Index Figure applicable to the date for payment falls shall be conclusive and binding upon the Issuer, the Guarantor (if the Issuer is ESB Finance), the Trustee and the Noteholders, Receiptholders and Couponholders. If a substitute index is published as specified in 5.7(b)(i) above, a determination made based on that index shall be final and no further payment by way of adjustment shall be made, notwithstanding that the Index Figure applicable to the date for payment may subsequently be published. If no substitute index is so published and the Index relating to the date for payment is subsequently published then:

- (A) in the case of any Note not falling due for redemption on the date for payment, if the Index Figure so subsequently published (if published while that Note remains outstanding) is greater or less than the Index Figure applicable by virtue of 5.7(b)(ii) above, the interest payable on that Note on the Interest Payment Date next succeeding the date of such subsequent publication shall be increased or reduced to reflect the amount by which the interest payable on that Note on the date for payment on the basis of the Index Figure applicable by virtue of 5.7(b)(ii) above fell short of, or (as the case may be) exceeded the interest which would have been payable on that Note if the Index Figure subsequently published had been published on or before the second business day before the date for payment; or
- (B) in the case of any Note falling due for final redemption on the date for payment, no subsequent adjustment to amounts paid will be made.

**(y) Cessation of or fundamental changes to the Index**

If the Index ceases to be published or any changes are made to it which, in the opinion of an Expert, constitute a fundamental change in the rules governing the Index and the change would, in the opinion of the Expert, be detrimental to the interests of the Issuer or the



Noteholders and if, within 30 days after its appointment (or such longer period as the Trustee may consider reasonable), the Expert recommends for the purposes of the Notes one or more adjustments to the Index or a substitute index (with or without adjustments), then provided that such adjustments or substitute index (as the case may be) are not materially detrimental (in the opinion of the Expert) either to the interests of the Issuer or the interests of the Noteholders, as compared to the interests of the Issuer and the Noteholders (as the case may be) as they would have been had the Index continued to be published or such fundamental change in the rules governing the Index not been made, the Index shall be adjusted as so recommended or (as the case may be) shall be replaced by the substitute index so recommended (as so adjusted, if so recommended) and references in these Conditions to the Index shall be construed accordingly and the Issuer shall notify the Noteholders of the adjustments to the Index or the introduction of the substitute index (with or without adjustments) in accordance with Condition 14 (*Notices*).

If any payment in respect of the Notes is due to be made after the cessation or changes referred to in the preceding paragraph but before any such adjustment to, or replacement of, the Index takes effect, the Issuer shall (if the Index Figure applicable (or deemed applicable) to the date for payment is not available in accordance with the provisions of Condition 5.6) make a provisional payment on the basis that the Index Figure applicable to the date for payment is the Index last published. In that event or in the event of any payment on the Notes having been made on the basis of an Index deemed applicable under Condition 5.7(b)(i) above (also referred to below as a **provisional payment**) and in either such case in the event of the Trustee on the advice of the Expert subsequently determining that the relevant circumstances fall within this Condition 5.7(c), then:

- (i) except in the case of a payment on redemption of the Notes, if the sum which would have been payable if such adjustments or such substitute index had been in effect on the due date for such provisional payment is greater or less than the amount of such provisional payment, the interest payable on the Notes on the Interest Payment Date next succeeding the last date by which the Issuer and Trustee receive such recommendation shall be increased or reduced to reflect the amount by which such provisional payment of interest fell short of, or (as the case may be) exceeded, the interest which would have been payable on the Notes if such adjustments or such substituted index had been in effect on that date; or
- (ii) in the case of a payment of principal or interest on redemption of the Notes, no subsequent adjustment to amounts paid will be made.

**(z) Trustee**

The Trustee shall be entitled to assume that no cessation of or change to the Index has occurred until informed otherwise by the Issuer and shall have no obligation to monitor any Index or to check any calculations made pursuant to this Condition and will not be responsible for identifying or appointing an Expert save as provided in these Conditions.

## **6. PAYMENTS**

### **6.1 Method of payment**

Subject as provided below:

- (aa) payments in a Specified Currency other than euro will be made by credit or transfer to an account in the relevant Specified Currency maintained by the payee with, or, at the option of the payee, by a cheque in such Specified Currency drawn on, a bank in the principal

financial centre of the country of such Specified Currency (which, if the Specified Currency is Australian dollars or New Zealand dollars, shall be Sydney and Auckland, respectively); and

- (bb) payments in euro will be made by credit or transfer to a euro account (or any other account to which euro may be credited or transferred) specified by the payee or, at the option of the payee, by a euro cheque.

Payments will be subject in all cases to any fiscal or other laws and regulations applicable thereto in the place of payment, but without prejudice to the provisions of Condition 8 (*Taxation*).

## **6.2 Presentation of definitive Notes, Receipts and Coupons**

Payments of principal in respect of definitive Notes will (subject as provided below) be made in the manner provided in Condition 6.1 above only against presentation and surrender (or, in the case of part payment of any sum due, endorsement) of definitive Notes, and payments of interest in respect of definitive Notes will (subject as provided below) be made as aforesaid only against presentation and surrender (or, in the case of part payment of any sum due, endorsement) of Coupons, in each case at the specified office of any Paying Agent outside the United States (which expression, as used herein, means the United States of America (including the States and the District of Columbia, its territories, its possessions and other areas subject to its jurisdiction)).

Payments of instalments of principal (if any) in respect of definitive Notes, other than the final instalment, will (subject as provided below) be made in the manner provided in Condition 6.1 above only against presentation and surrender (or, in the case of part payment of any sum due, endorsement) of the relevant Receipt in accordance with the preceding paragraph. Payment of the final instalment will be made in the manner provided in Condition 6.1 above only against presentation and surrender (or, in the case of part payment of any sum due, endorsement) of the relevant Note in accordance with the preceding paragraph. Each Receipt must be presented for payment of the relevant instalment together with the definitive Note to which it appertains. Receipts presented without the definitive Note to which they appertain do not constitute valid obligations of the Issuer. Upon the date on which any definitive Note becomes due and repayable, unmatured Receipts (if any) relating thereto (whether or not attached) shall become void and no payment shall be made in respect thereof.

Upon the date on which any Note in definitive form becomes due and repayable, unmatured Coupons and Talons (if any) relating thereto (whether or not attached) shall become void and no payment or, as the case may be, exchange for further Coupons shall be made in respect thereof.

If the due date for redemption of any definitive Note is not an Interest Payment Date, interest (if any) accrued in respect of such Note from (and including) the preceding Interest Payment Date or, as the case may be, the Interest Commencement Date shall be payable only against surrender of the relevant definitive Note.

## **6.3 Payments in respect of Global Notes**

Payments of principal and interest (if any) in respect of Notes represented by any Global Note will (subject as provided below) be made in the manner specified above in relation to definitive Notes and/or otherwise in the manner specified in the relevant Global Note, where applicable against presentation or surrender, as the case may be, of such Global Note at the specified office of any Paying Agent outside the United States. A record of each payment made, whether against presentation or surrender of any Global Note or otherwise, distinguishing between any payment of principal and any payment of interest, will be made on such Global Note by the Paying Agent to

which it was presented or in the records of Euroclear and/or Clearstream, as applicable and in each case such record shall be *prima facie* evidence that the payment in question has been made.

#### 6.4 General provisions applicable to payments

The holder of a Global Note shall be the only person entitled to receive payments in respect of Notes represented by such Global Note and the Issuer and the Guarantor (if the Issuer is ESB Finance) will be discharged by payment to, or to the order of, the holder of such Global Note in respect of each amount so paid. Each of the persons shown in the records of Euroclear or Clearstream, Luxembourg as the beneficial holder of a particular nominal amount of Notes represented by such Global Note must look solely to Euroclear or Clearstream, Luxembourg, as the case may be, for his share of each payment so made by the Issuer or, as the case may be, the Guarantor to, or to the order of, the holder of such Global Note.

Notwithstanding the foregoing provisions of this Condition, if any amount of principal and/or interest in respect of Notes is payable in U.S. dollars, such U.S. dollar payments of principal and/or interest in respect of such Notes will be made at the specified office of a Paying Agent in the United States if:

- (cc) the Issuer has appointed Paying Agents with specified offices outside the United States with the reasonable expectation that such Paying Agents would be able to make payment in U.S. dollars at such specified offices outside the United States of the full amount of principal and interest on the Notes in the manner provided above when due;
- (dd) payment of the full amount of such principal and interest at all such specified offices outside the United States is illegal or effectively precluded by exchange controls or other similar restrictions on the full payment or receipt of principal and interest in U.S. dollars; and
- (ee) such payment is then permitted under United States law without involving, in the opinion of the Issuer and, where applicable, the Guarantor, adverse tax consequences to the Issuer or, as the case may be, the Guarantor.

#### 6.5 Payment Day

If the date for payment of any amount in respect of any Note, Receipt or Coupon is not a Payment Day, the holder thereof shall not be entitled to payment until the next following Payment Day in the relevant place and shall not be entitled to further interest or other payment in respect of such delay. For these purposes, **Payment Day** means any day which (subject to Condition 9 (*Prescription*)) is:

- (ff) a day on which commercial banks and foreign exchange markets settle payments and are open for general business (including dealing in foreign exchange and foreign currency deposits) in:
  - (i) the relevant place of presentation;
  - (ii) London;
  - (iii) each Additional Financial Centre specified in the applicable Final Terms; and
- (gg) either (A) in relation to any sum payable in a Specified Currency other than euro, a day on which commercial banks and foreign exchange markets settle payments and are open for general business (including dealing in foreign exchange and foreign currency deposits) in the principal financial centre of the country of the relevant Specified Currency (if other than the place of presentation, London and any Additional Financial Centre and which if the

Specified Currency is Australian dollars or New Zealand dollars shall be Sydney and Auckland, respectively) or (B) in relation to any sum payable in euro, a day on which the TARGET2 System is open.

## **6.6 Interpretation of principal and interest**

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

- (hh) any additional amounts which may be payable with respect to principal under Condition 8 (*Taxation*) or under any undertaking or covenant given in addition thereto, or in substitution therefor, pursuant to the Trust Deed;
- (ii) the Final Redemption Amount of the Notes;
- (jj) the Early Redemption Amount of the Notes;
- (kk) the Optional Redemption Amount(s) (if any) of the Notes;
- (ll) in relation to Notes redeemable in instalments, the Instalment Amounts;
- (mm) in relation to Zero Coupon Notes, the Amortised Face Amount (as defined in Condition 7.6); and
- (nn) any premium and any other amounts (other than interest) which may be payable by the Issuer under or in respect of the Notes.

Any reference in the Conditions to interest in respect of the Notes shall be deemed to include, as applicable, any additional amounts which may be payable with respect to interest under Condition 8 (*Taxation*) or under any undertaking or covenant given in addition thereto, or in substitution therefor, pursuant to the Trust Deed.

## **7. REDEMPTION AND PURCHASE**

### **7.1 Redemption at maturity**

Unless previously redeemed or purchased and cancelled as specified below, each Note (including each Index Linked Redemption Note and Dual Currency Redemption Note) will be redeemed by the Issuer at its Final Redemption Amount specified in, or determined in the manner specified in, the applicable Final Terms in the relevant Specified Currency on the Maturity Date.

### **7.2 Redemption for tax reasons**

The Notes may be redeemed at the option of the Issuer in whole, but not in part, at any time (if this Note is neither a Floating Rate Note, an Index Linked Interest Note nor a Dual Currency Interest Note) or on any Interest Payment Date (if this Note is either a Floating Rate Note, an Index Linked Interest Note or a Dual Currency Interest Note), on giving not less than 30 nor more than 60 days' notice to the Trustee and the Agent and, in accordance with Condition 14 (*Notices*), the Noteholders (which notice shall be irrevocable), if the Issuer satisfies the Trustee immediately before the giving of such notice that:

- (oo) on the occasion of the next payment due under the Notes, the Issuer has or will become obliged to pay additional amounts as provided or referred to in Condition 8 (*Taxation*) or (if the Issuer is ESB Finance) the Guarantor would be unable for reasons outside its control to

procure payment by ESB Finance and in making payment itself would be required to pay such additional amounts, in each case as a result of any change in, or amendment to, the laws or regulations of a Tax Jurisdiction (as defined in Condition 8 (*Taxation*)) or any change in the application or official interpretation of such laws or regulations, which change or amendment becomes effective on or after the date on which agreement is reached to issue the first Tranche of the Notes; and

- (pp) such obligation cannot be avoided by the Issuer or, as the case may be, the Guarantor taking reasonable measures available to it,

provided that no such notice of redemption shall be given earlier than 90 days prior to the earliest date on which the Issuer or, as the case may be, the Guarantor would be obliged to pay such additional amounts were a payment in respect of the Notes then due.

Prior to the publication of any notice of redemption pursuant to this Condition, the Issuer shall deliver to the Trustee a certificate signed by two Directors of the Issuer or, as the case may be, the Guarantor stating that the Issuer is entitled to effect such redemption and setting forth a statement of facts showing that the conditions precedent to the right of the Issuer so to redeem have occurred, and an opinion of independent legal advisers of recognised standing to the effect that the Issuer or, as the case may be, the Guarantor has or will become obliged to pay such additional amounts as a result of such change or amendment and the Trustee shall be entitled to accept the certificate and opinion as sufficient evidence of the satisfaction of the conditions precedent set out above, in which event it shall be conclusive and binding on the Noteholders, the Receiptholders and the Couponholders.

Notes redeemed pursuant to this Condition 7.2 will be redeemed at their Early Redemption Amount referred to in Condition 7.7 below together (if appropriate) with interest accrued to (but excluding) the date of redemption.

### **7.3 Redemption at the option of the Issuer (Issuer Call)**

If Issuer Call is specified in the applicable Final Terms, the Issuer may, having given:

- (qq) not less than 15 nor more than 30 days' notice to the Noteholders in accordance with Condition 14 (*Notices*); and
- (rr) not less than 15 days before the giving of the notice referred to in (a) above, notice to the Trustee and to the Agent;

(which notices shall be irrevocable and shall specify the date fixed for redemption), redeem all or some only of the Notes then outstanding on any Optional Redemption Date and at the Optional Redemption Amount(s) specified in, or determined in the manner specified in, the applicable Final Terms together, if appropriate, with interest accrued to (but excluding) the relevant Optional Redemption Date. Any such redemption must be of a nominal amount not less than the Minimum Redemption Amount and not more than the Maximum Redemption Amount, in each case as may be specified in the applicable Final Terms. In the case of a partial redemption of Notes, the Notes to be redeemed (**Redeemed Notes**) will be selected individually by lot, in the case of Redeemed Notes represented by definitive Notes, and in accordance with the rules of Euroclear and/or Clearstream, Luxembourg, (to be reflected in the records of Euroclear and Clearstream, Luxembourg as either a pool factor or a reduction in nominal amount, at their discretion) in the case of Redeemed Notes represented by a Global Note, not more than 30 days prior to the date fixed for redemption (such date of selection being hereinafter called the **Selection Date**). In the case of Redeemed Notes represented by definitive Notes, a list of the serial numbers of such Redeemed Notes will be published in accordance with Condition 14 (*Notices*) not less than 15 days prior to the date fixed for redemption. No exchange of the relevant Global Note will be permitted during the period from (and

including) the Selection Date to (and including) the date fixed for redemption pursuant to this Condition 7.3 and notice to that effect shall be given by the Issuer to the Noteholders in accordance with Condition 14 (*Notices*) at least five days prior to the Selection Date.

#### **7.4 Redemption at the option of the Noteholders (Investor Put)**

If Investor Put is specified in the applicable Final Terms, upon the holder of any Note giving to the Issuer in accordance with Condition 14 (*Notices*) not less than 15 nor more than 30 days' notice the Issuer will, upon the expiry of such notice, redeem, subject to, and in accordance with, the terms specified in the applicable Final Terms, such Note on the Optional Redemption Date and at the Optional Redemption Amount together, if appropriate, with interest accrued to (but excluding) the Optional Redemption Date. It may be that before an Investor Put can be exercised, certain conditions and/or circumstances will need to be satisfied. Where relevant, the provisions will be set out in the applicable Final Terms.

To exercise the right to require redemption of this Note the holder of this Note must, if this Note is in definitive form and held outside Euroclear and Clearstream, Luxembourg, deliver, at the specified office of any Paying Agent at any time during normal business hours of such Paying Agent falling within the notice period, a duly completed and signed notice of exercise in the form (for the time being current) obtainable from any specified office of any Paying Agent (a **Put Notice**) and in which the holder must specify a bank account (or, if payment is required to be made by cheque, an address) to which payment is to be made under this Condition accompanied by this Note or evidence satisfactory to the Paying Agent concerned that this Note will, following delivery of the Put Notice, be held to its order or under its control. If this Note is represented by a Global Note or is in definitive form and held through Euroclear or Clearstream, Luxembourg, to exercise the right to require redemption of this Note the holder of this Note must, within the notice period, give notice to the Agent of such exercise in accordance with the standard procedures of Euroclear and Clearstream, Luxembourg (which may include notice being given on his instruction by Euroclear or Clearstream, Luxembourg or any common depositary or common safekeeper, as the case may be, for them to the Agent by electronic means) in a form acceptable to Euroclear and Clearstream, Luxembourg from time to time and, if this Note is represented by a Global Note, at the same time present or procure the presentation of the relevant Global Note to the Agent for notation accordingly.

Any Put Notice or other notice given in accordance with the standard procedures of Euroclear and Clearstream, Luxembourg given by a holder of any Note pursuant to this Condition 7.4 shall be irrevocable except where, prior to the due date of redemption, an Event of Default has occurred and the Trustee has declared the Notes to be due and payable pursuant to Condition 10 (*Events of Default and Enforcement*), in which event such holder, at its option, may elect by notice to the Issuer to withdraw the notice given pursuant to this Condition 7.4 and instead to declare such Note forthwith due and payable pursuant to Condition 10 (*Events of Default and Enforcement*).

#### **7.5 Redemption as a result of a Change of Control of the Issuer**

An **Event Risk Put Event** will occur if, while any of the Notes remains outstanding (as defined in the Trust Deed) a Change of Control Event occurs and during the Change of Control Period either:

- (i) a Ratings Downgrade occurs; or
- (ii) if at the time of the commencement of the Change of Control Period the Notes do not carry a credit rating from a Rating Agency, the relevant Issuer is unable to obtain an investment grade rating from any Rating Agency before the end of the Change of Control Period.

Further, if at the time of the commencement of the Change of Control Period the Notes carry a non-investment grade credit rating (as described below) from any Rating Agency, an Event Risk Put Event will be deemed to occur upon the occurrence of a Change of Control Event alone.

If an Event Risk Put Event occurs (unless the Issuer has given notice under Condition 7.2 (*Redemption or repurchase for tax reasons*) or Condition 7.3 (*Redemption and repurchase at the option of the Issuer*) in respect of all of the Notes then outstanding):

- (ss) the Issuer shall, within 10 Dublin Business Days after the occurrence of such Event Risk Put Event, and at any such time upon the Trustee becoming similarly so aware the Trustee may, and if so requested by the holders of at least one-fifth in nominal amount of the Notes then outstanding or if so directed by Extraordinary Resolution of the Noteholders, shall (subject in each case to being indemnified and/or secured and/or prefunded to its satisfaction), give notice (a **Event Risk Put Event Notice**) to the Noteholders in accordance with Condition 14 (*Notices*) specifying the nature of the Event Risk Put Event and the procedure for exercising the option contained in this Condition 7.5; and
- (tt) the holder of each Note will have the option to require the Issuer to redeem or, at the relevant Issuer's option, purchase (or procure the purchase of) that Note on the Event Risk Put Date (as defined below) at its principal amount, together with any interest accrued up to (but excluding) the Event Risk Put Date.

To exercise the right to require redemption of the Notes following an Event Risk Put Event, the holder of the Notes must, if the Notes are in definitive form and held outside Euroclear and Clearstream, Luxembourg, deliver, at the specified office of any Paying Agent at any time during normal business hours of such Paying Agent on any Business Day falling within the Event Risk Put Period, deliver a duly completed and signed notice of exercise in the form (for the time being current) obtainable from any specified office of any Paying Agent (an **Event Risk Put Notice**) and in which the holder must specify a bank account (or, if payment is required to be made by cheque, an address) to which payment is to be made under this Condition. If the Notes are in definitive bearer form, the Event Risk Put Notice must be accompanied by the Notes (together with all Coupons appertaining thereto maturing after the Event Risk Put Date), or evidence satisfactory to the Paying Agent concerned that the Notes (and such Coupons) will, following delivery of the Event Risk Put Notice, be held to its order or under its control.

If the Notes are represented by a Global Note or are in definitive form and held through Euroclear or Clearstream, Luxembourg, to exercise the right to require redemption of the Notes following an Event Risk Put Event the holder of the Notes must, within the Event Risk Put Period, give notice to the Agent of such exercise in accordance with the standard procedures of Euroclear and Clearstream, Luxembourg (which may include notice being given on his instruction by Euroclear and Clearstream, Luxembourg, or any common depositary or common safekeeper, as the case may be, for them to the Agent by electronic means) in a form acceptable to Euroclear and Clearstream, Luxembourg from time to time and, if the Notes are represented by a Global Note and the terms of such Global Note so provide, at the same time present or procure the presentation of the relevant Global Note to the Agent for notation accordingly.

The Issuer shall redeem or, at the option of the Issuer, purchase (or procure the purchase of) the relevant Notes on the Event Risk Put Date at their principal amount, together with any interest accrued up to (but excluding) the Event Risk Put Date unless previously redeemed or purchased.

If 80 per cent. or more in nominal amount of the Notes originally issued have been redeemed or purchased and cancelled pursuant to the provisions of this Condition 7, the Issuer may, on not less than 30 or more than 60 days' notice to the Noteholders given within 30 days after the Event Risk

Put Date, redeem the remaining Notes as a whole at a redemption price of the principal amount thereof plus interest accrued to but excluding the date of such redemption.

If the rating designations employed by Moody's, Fitch and S&P are changed from those which are described within the applicable definition of Ratings Downgrade (below), or if a rating is assigned by another Rating Agency, the Issuer shall determine, with the agreement of the Trustee the rating designations of Moody's, Fitch and S&P or such other Rating Agency (as appropriate) as are most equivalent to the prior rating designations of Moody's, Fitch and S&P and this Condition shall be construed accordingly.

The Trustee is under no obligation to ascertain whether an Event Risk Put Event or any event which would lead to the occurrence of or could constitute an Event Risk Put Event has occurred and, until it shall have actual knowledge or notice pursuant to the Trust Deed to the contrary, the Trustee may assume that no Event Risk Put Event or other such event has occurred.

Where the definitions within this Condition 7.5 state that the Issuer will seek to obtain a rating from a Rating Agency, the Issuer undertakes that it will make all reasonable endeavours to seek a rating in respect of the Notes from a Rating Agency either prior to or not later than the timeframe as specified.

For the purpose of these Conditions:

A **Change of Control Event** shall occur if the Government of Ireland ceases, directly or indirectly (through any government agency or political subdivision thereof or otherwise), to have Control of ESB.

**Change of Control Period** means the period:

- (a) commencing on the date that is one Business Day before the earlier of (a) the date of the relevant Change of Control Event and (b) the date of the earliest Relevant Potential Change of Control Announcement (if any); and
- (b) ending 90 days after the date of the Change of Control Event or such longer period for which the Notes are under consideration by a Rating Agency for rating or rating review (such consideration having been announced publicly within the period ending 90 days after the date of the Change of Control Event and such period not to exceed 60 days after the public announcement of such consideration).

**Control of ESB** means the right, by virtue of holding shares in ESB or otherwise, or by virtue of any contract or other arrangement with any holder of shares in such body corporate, to exercise or control the exercise of more than 50 per cent. of the total voting rights conferred upon the holders of the entire capital stock for the time being of ESB.

**Dublin Business Day** means a day on which commercial banks and foreign exchange markets settle payments and are open for general business (including dealing in foreign exchange and foreign currency deposits) in Dublin.

**Event Risk Put Date** means the date falling seven days after the expiry of the Event Risk Put Period.

**Event Risk Put Period** means the period of 45 days after a Event Risk Put Event Notice is given.

**Rating Agency** means Moody's Investors Service, Inc. (**Moody's**), Fitch Ratings Ltd. (**Fitch**) or Standard & Poor's Rating Services, a division of the McGraw-Hill Companies Inc, (**S&P**), or their respective successors, replacements or substitutes.



**Ratings Downgrade** means, with respect to a Rating Agency and a Change of Control Event, immediately prior to the commencement of the relevant Change of Control Period, such Rating Agency rated the Notes as investment grade (being at or above Baa3, BBB- or BBB- for Moody's, Fitch and S&P respectively, or its respective equivalent for the time being), or, in the case of a Rating Agency which had not assigned a rating to the Notes immediately prior to the commencement of the relevant Change of Control Period, such Rating Agency assigns an investment grade rating to the Notes during the relevant Change of Control Period, and during such Change of Control Period:

- (a) such Rating Agency rates the Notes as non-investment grade (being at or below Ba1, BB+ or BB+ for Moody's, Fitch and S&P respectively, or its respective equivalent for the time being) and such rating is not within such Change of Control Period restored to an investment grade rating by such Rating Agency or replaced by an investment grade rating of another Rating Agency, or
- (b) such Rating Agency withdraws its rating of the Notes and that rating is not within such Change of Control Period replaced by an investment grade rating of another Rating Agency,

and in each case such Rating Agency publicly announces or confirms in writing to the Issuer, the Guarantor (if the Issuer is ESB Finance) or the Trustee that such non-investment grade rating or withdrawal of rating was the result, in whole or in part, of any event or circumstance comprised in or arising as a result of, or in respect of, the applicable Change of Control Event (whether or not such Change of Control Event shall have occurred at the time such rating is given or rating is withdrawn).

**Relevant Potential Change of Control Announcement** means any formal public announcement or statement by or on behalf of ESB or the Government of Ireland relating to any potential Change of Control Event where, within 180 days of the date of such announcement or statement, a Change of Control Event occurs.

## 7.6 Redemption for Indexation Reasons

In the case of Index Linked Interest Notes or Index Linked Redemption Notes (unless the contrary appears within the applicable Final Terms):

- (c) if the Index ceases to be published or any changes are made to it which, in the opinion of an Expert, constitute a fundamental change in the rules governing the Index and the change would, in the opinion of the Expert, be detrimental to the interests of the Noteholders and if the Expert fails within 30 days after its appointment (or such longer period as the Trustee considers reasonable), or states to the Issuer and the Trustee that it is unable, to recommend for the purposes of the Notes any adjustments to the Index or any substitute index (with or without adjustments) as described in Condition 5.7(c), the Issuer shall, within 14 days after the expiry of such period or (as the case may be) after the date of such statement, give notice (which shall be irrevocable and shall state the date fixed for redemption which shall be not more than 15 days after the date on which the notice is given) to redeem the Notes then outstanding, at a price equal to their principal amount multiplied by the Index Ratio (or Limited Index Ratio in the case of Limited Index Linked Notes), applicable to the date on which the date fixed for redemption falls, together with accrued interest; or
- (d) if the Index ceases to be published or any changes are made to it which, in the opinion of an Expert, constitute a fundamental change in the rules governing the Index and the change would, in the opinion of the Expert, be detrimental to the interests of the Issuer and if the Expert fails within 30 days after its appointment (or such longer period as the Trustee considers reasonable), or states to the Issuer and the Trustee that it is unable, to recommend for the purposes of the Notes any adjustments to the Index or any substitute index (with or without adjustments) as described in Condition 5.7(c), the Issuer may at its option, within 14

days after the expiry of such period or (as the case may be) after the date of such statement, give notice (which shall be irrevocable and shall state the date fixed for redemption which shall be not more than 15 days after the date on which the notice is given) to redeem the Notes then outstanding, at a price equal to their principal amount multiplied by the Index Ratio or Limited Index Ratio (in the case of Limited Index Linked Notes) applicable to the date on which the date fixed for redemption falls, together with accrued interest.

## 7.7 Early Redemption Amounts

For the purpose of Condition 7.2 above and Condition 10 (*Events of Default and Enforcement*), each Note will be redeemed at its Early Redemption Amount calculated as follows:

- (e) in the case of a Note with a Final Redemption Amount equal to the Issue Price, at the Final Redemption Amount thereof;
- (f) in the case of a Note (other than a Zero Coupon Note but including an Instalment Note and a Partly Paid Note) with a Final Redemption Amount which is or may be less or greater than the Issue Price or which is payable in a Specified Currency other than that in which the Note is denominated, at the amount specified in, or determined in the manner specified in, the applicable Final Terms or, if no such amount or manner is so specified in the applicable Final Terms, at its nominal amount; or
- (g) in the case of a Zero Coupon Note, at an amount (the **Amortised Face Amount**) calculated in accordance with the following formula:

$$\text{Early Redemption Amount} = \text{RP} \times (1 + \text{AY})^y$$

where:

**RP** means the Reference Price;

**AY** means the Accrual Yield expressed as a decimal; and

$y$  is a fraction the numerator of which is equal to the number of days (calculated on the basis of a 360-day year consisting of 12 months of 30 days each) from (and including) the Issue Date of the first Tranche of the Notes to (but excluding) the date fixed for redemption or (as the case may be) the date upon which such Note becomes due and repayable and the denominator of which is 360,

or on such other calculation basis as may be specified in the applicable Final Terms.

## 7.8 Instalments

Instalment Notes will be redeemed in the Instalment Amounts and on the Instalment Dates. In the case of early redemption, the Early Redemption Amount will be determined pursuant to Condition 7.7.

## 7.9 Partly Paid Notes

Partly Paid Notes will be redeemed, whether at maturity, early redemption or otherwise, in accordance with the provisions of this Condition and the applicable Final Terms.

## 7.10 Purchases

The Issuer, the Guarantor (where the Issuer is ESB Finance) or any of their respective Subsidiaries may at any time purchase Notes (provided that, in the case of definitive Notes, all unmatured Receipts, Coupons and Talons appertaining thereto are purchased therewith) at any price in the open market or otherwise. All Notes so purchased will be surrendered to a Paying Agent for cancellation.

### **7.11 Cancellation**

All Notes which are redeemed, or purchased pursuant to Condition 7.10, will forthwith be cancelled (together with all unmatured Receipts, Coupons and Talons attached thereto or surrendered therewith at the time of redemption). All Notes so cancelled and any Notes purchased and cancelled pursuant to Condition 7.10 above (together with all unmatured Receipts, Coupons and Talons cancelled therewith) shall be forwarded to the Agent and cannot be reissued or resold.

### **7.12 Late payment on Zero Coupon Notes**

If the amount payable in respect of any Zero Coupon Note upon redemption of such Zero Coupon Note pursuant to Condition 7.1, 7.2, 7.3, 7.4 or 7.5 above upon its becoming due and repayable as provided in Condition 10 (*Events of Default and Enforcements*) is improperly withheld or refused, the amount due and repayable in respect of such Zero Coupon Note shall be the amount calculated as provided in Condition 7.7 above as though the references therein to the date fixed for the redemption or the date upon which such Zero Coupon Note becomes due and payable were replaced by references to the date which is the earlier of:

- (h) the date on which all amounts due in respect of such Zero Coupon Note have been paid; and
- (i) five days after the date on which the full amount of the moneys payable in respect of such Zero Coupon Notes has been received by the Agent or the Trustee and notice to that effect has been given to the Noteholders in accordance with Condition 14 (*Notices*).

## **8. TAXATION**

All payments in respect of the Notes, Receipts and Coupons by the Issuer or the Guarantor (where the Issuer is ESB Finance) will be made without withholding or deduction for or on account of any present or future taxes or duties of whatever nature imposed or levied by or on behalf of any Tax Jurisdiction unless such withholding or deduction is required by law. In such event, the Issuer, or as the case may be, the Guarantor (where the Issuer is ESB Finance) will pay such additional amounts as shall be necessary in order that the net amounts received by the holders of the Notes, Receipts or Coupons after such withholding or deduction shall equal the respective amounts which would otherwise have been receivable in respect of the Notes, Receipts or Coupons, as the case may be, in the absence of such withholding or deduction; except that no such additional amounts shall be payable with respect to any Note, Receipt or Coupon:

- (j) presented for payment by or on behalf of a holder who is liable for such taxes or duties in respect of such Note, Receipt or Coupon by reason of his having some connection with a Tax Jurisdiction other than the mere holding of such Note, Receipt or Coupon; or
- (k) presented for payment more than 30 days after the Relevant Date (as defined below) except to the extent that the holder thereof would have been entitled to an additional amount on presenting the same for payment on such thirtieth day assuming that day to have been a Payment Day (as defined in Condition 6.5); or
- (l) where such withholding or deduction is imposed on a payment to an individual and is required to be made pursuant to European Council Directive 2003/48/EC on the taxation of

savings income or any law implementing or complying with, or introduced in order to conform to, such Directive; or

- (m) presented for payment by or on behalf of a holder who would have been able to avoid such withholding or deduction by presenting the relevant Note, Receipt or Coupon to another Paying Agent in a Member State of the European Union.

As used herein:

- (i) **Tax Jurisdiction** means Ireland or any political subdivision or any authority thereof or therein having power to tax; and
- (ii) the **Relevant Date** means the date on which such payment first becomes due, except that, if the full amount of the moneys payable has not been duly received by the Trustee or the Agent on or prior to such due date, it means the date on which, the full amount of such moneys having been so received, notice to that effect is duly given to the Noteholders in accordance with Condition 14 (*Notices*).

## 9. PRESCRIPTION

The Notes, Receipts and Coupons will become void unless presented for payment within a period of 10 years (in the case of principal) and five years (in the case of interest) after the Relevant Date (as defined in Condition 8 (*Taxation*)) therefor.

There shall not be included in any Coupon sheet issued on exchange of a Talon any Coupon the claim for payment in respect of which would be void pursuant to this Condition or Condition 6.2 or any Talon which would be void pursuant to Condition 6.2.

## 10. EVENTS OF DEFAULT AND ENFORCEMENT

### 10.1 Events of Default

If any one or more of the following events (each an **Event of Default**) shall occur and be continuing the Trustee at its discretion may, and if so requested in writing by the holders of at least one-fifth in principal amount of the Notes then outstanding or if so directed by an Extraordinary Resolution shall (subject in each case to being indemnified and/or secured and/or prefunded to its satisfaction), (but in the case of the happening of any of the events described in paragraphs (b) to (d) (other than the winding up or dissolution of the Issuer or the Guarantor, if applicable), (e) to (g) and (i) inclusive below, only if the Trustee shall have certified in writing to the Issuer and, if applicable, the Guarantor that such event is, in its opinion, materially prejudicial to the interests of the Noteholders), give notice in writing to the Issuer or the Guarantor, if applicable, that each Note is, and each Note shall thereupon immediately become, due and repayable at its Early Redemption Amount together with accrued interest as provided in the Trust Deed:

- (n) if default is made in the payment of any amount due in respect of the Notes or any of them and the default continues for a period of 3 days in the case of principal or 7 days in the case of interest; or
- (o) if the Issuer or the Guarantor (where the Issuer is ESB Finance) fails to perform or observe any of its other obligations under the Conditions or the Trust Deed and (except in any case where, in the opinion of the Trustee, the failure is incapable of remedy when no such continuation or notice as is hereinafter mentioned will be required) the failure continues for the period of 30 days next following the service by the Trustee on the Issuer or the

Guarantor (where the Issuer is ESB Finance), as the case may be, of notice requiring the same to be remedied; or

- (p) if (i) any Indebtedness for Borrowed Money (as defined below) of the Issuer, the Guarantor (where the Issuer is ESB Finance) or any of ESB's Principal Subsidiaries is declared due and repayable prematurely by reason of an event of default (however described); (ii) the Issuer, the Guarantor (where the Issuer is ESB Finance) or any of ESB's Principal Subsidiaries fails to make any payment in respect of any Indebtedness for Borrowed Money on the due date for payment as extended by any originally applicable grace period; (iii) any security given by the Issuer, the Guarantor (where the Issuer is ESB Finance) or any of ESB's Principal Subsidiaries for any Indebtedness for Borrowed Money is enforced; or (iv) default is made by the Issuer, the Guarantor (where the Issuer is ESB Finance) or any of ESB's Principal Subsidiaries in making any payment due under any guarantee and/or indemnity given by it in relation to any Indebtedness for Borrowed Money of any other person; or
- (q) if any order is made by any competent court or resolution passed for the winding up or dissolution of the Issuer, the Guarantor (where the Issuer is ESB Finance) or any of ESB's Principal Subsidiaries, save for the purposes of reorganisation, amalgamation, merger, consolidation or restructuring (i) in the case of a Principal Subsidiary, whilst solvent, (ii) in the case of the Issuer or the Guarantor, on terms previously approved in writing by the Trustee or by an Extraordinary Resolution; or
- (r) if the Issuer, the Guarantor (where the Issuer is ESB Finance) or any of ESB's Principal Subsidiaries ceases or threatens to cease to carry on the whole or a substantial part of its business, save for the purposes of reorganisation, amalgamation, merger, consolidation or restructuring (i) in the case of a Principal Subsidiary, whilst solvent, or (ii) in the case of the Issuer or the Guarantor, on terms previously approved in writing by the Trustee or by an Extraordinary Resolution or, the Issuer, the Guarantor (where the Issuer is ESB Finance) or any of ESB's Principal Subsidiaries stops or threatens to stop payment of, or is unable to, or admits inability to, pay, its debts (or any class of its debts) as they fall due, or is deemed unable to pay its debts pursuant to or for the purposes of any applicable law, or is adjudicated or found bankrupt or insolvent; or
- (s) if (A) proceedings are initiated against the Issuer, the Guarantor (where the Issuer is ESB Finance) or any of ESB's Principal Subsidiaries under any applicable liquidation, insolvency, composition, examination, reorganisation or other similar laws, or an application is made (or documents filed with a court) for the appointment of an administrative or other receiver, manager, examiner, administrator or other similar official, or an administrative or other receiver, manager, examiner, administrator or other similar official is appointed, in relation to the Issuer, the Guarantor (where the Issuer is ESB Finance) or any of ESB's Principal Subsidiaries or, as the case may be, in relation to the whole or a substantial part of the undertaking or assets of any of them, or an encumbrancer takes possession of the whole or a substantial part of the undertaking or assets of any of them, or a distress, execution, attachment, sequestration or other process is levied, enforced upon, sued out or put in force against the whole or a substantial part of the undertaking or assets of any of them and (B) in any case (other than the appointment of an administrator) is not discharged within 30 business days; or
- (t) if the Issuer, the Guarantor (where the Issuer is ESB Finance) or any of ESB's Principal Subsidiaries initiates or consents to judicial proceedings relating to itself under any applicable liquidation, insolvency, composition, examination, reorganisation or other similar laws (including the obtaining of a moratorium) or makes a conveyance or assignment for the benefit of, or enters into any composition or other arrangement with, its creditors generally

(or any class of its creditors) or any meeting is convened to consider a proposal for an arrangement or composition with its creditors generally (or any class of its creditors); or

- (u) if (where the Issuer is ESB Finance) ESB Finance ceases to be a subsidiary wholly owned and controlled, directly or indirectly, by ESB; or
- (v) if (where the Issuer is ESB Finance) the Guarantee ceases to be, or is claimed by the Issuer or the Guarantor not to be, in full force and effect; or
- (w) if any event occurs which, under the laws of any relevant jurisdiction, has or may have, in the Trustee's opinion, an analogous effect to any of the events referred to in paragraphs (d) to (i) above.

## 10.2 Enforcement

The Trustee may at any time, at its discretion and without notice, take such proceedings against the Issuer or the Guarantor (where the Issuer is ESB Finance) as it may think fit to enforce the provisions of the Trust Deed, the Notes, the Receipts and the Coupons, but it shall not be bound to take any such proceedings or any other action in relation to the Trust Deed, the Notes, the Receipts or the Coupons unless (i) it shall have been so directed by an Extraordinary Resolution or so requested in writing by the holders of at least one-fifth in principal amount of the Notes then outstanding and (ii) it shall have been indemnified and/or secured and/or prefunded to its satisfaction.

No Noteholder, Receiptholder or Couponholder shall be entitled to proceed directly against the Issuer or the Guarantor (where the Issuer is ESB Finance) unless the Trustee, having become bound so to proceed, fails so to do within a reasonable period and the failure shall be continuing.

## 10.3 Definitions

For the purposes of the Conditions:

**Indebtedness for Borrowed Money** means any indebtedness (whether being principal, premium, interest or other amounts), other than Non Recourse Indebtedness which singularly or in the aggregate is in excess of €50,000,000 (or its equivalent in other currencies) for or in respect of any notes, bonds, debentures, debenture stock, loan stock or other securities or any borrowed money or any liability under or in respect of any acceptance or acceptance credit.

## 11. REPLACEMENT OF NOTES, RECEIPTS, COUPONS AND TALONS

Should any Note, Receipt, Coupon or Talon be lost, stolen, mutilated, defaced or destroyed, it may be replaced at the specified office of the Agent upon payment by the claimant of such costs and expenses as may be incurred in connection therewith and on such terms as to evidence and indemnity as the Issuer may reasonably require. Mutilated or defaced Notes, Receipts, Coupons or Talons must be surrendered before replacements will be issued.

## 12. PAYING AGENTS

The names of the initial Paying Agents and their initial specified offices are set out below.

The Issuer and the Guarantor (where the Issuer is ESB Finance) are entitled, with the prior written approval of the Trustee, to vary or terminate the appointment of any Paying Agent and/or appoint additional or other Paying Agents and/or approve any change in the specified office through which any Paying Agent acts, provided that:

- (x) there will at all times be an Agent;
- (y) so long as the Notes are listed on any stock exchange or admitted to listing by any other relevant authority, there will at all times be a Paying Agent with a specified office in such place as may be required by the rules and regulations of the relevant stock exchange or other relevant authority;
- (z) there will at all times be a Paying Agent in a Member State of the European Union that will not be obliged to withhold or deduct tax pursuant to European Council Directive 2003/48/EC or any law implementing or complying with, or introduced in order to conform to, such Directive; and
- (aa) there will at all times be a Paying Agent in a jurisdiction other than a Tax Jurisdiction.

In addition, the Issuer shall forthwith appoint a Paying Agent having a specified office in New York City in the circumstances described in Condition 6.4. Any variation, termination, appointment or change shall only take effect (other than in the case of insolvency, when it shall be of immediate effect) after not less than 30 nor more than 45 days' prior notice thereof shall have been given to the Noteholders in accordance with Condition 14 (*Notices*).

In acting under the Agency Agreement, the Paying Agents act solely as agents of the Issuer and the Guarantor (where the Issuer is ESB Finance) and, in certain circumstances specified therein, of the Trustee and do not assume any obligation to, or relationship of agency or trust with, any Noteholders, Receipholders or Couponholders. The Agency Agreement contains provisions permitting any entity into which any Paying Agent is merged or converted or with which it is consolidated or to which it transfers all or substantially all of its assets to become the successor paying agent.

### **13. EXCHANGE OF TALONS**

On and after the Interest Payment Date on which the final Coupon comprised in any Coupon sheet matures, the Talon (if any) forming part of such Coupon sheet may be surrendered at the specified office of the Agent or any other Paying Agent in exchange for a further Coupon sheet including (if such further Coupon sheet does not include Coupons to (and including) the final date for the payment of interest due in respect of the Note to which it appertains) a further Talon, subject to the provisions of Condition 9 (*Prescription*).

### **14. NOTICES**

All notices regarding the Notes will be deemed to be validly given if published (a) in a leading English language daily newspaper of general circulation in the United Kingdom and (b) if and for so long as the Notes are admitted to trading on, and listed on the Official List of the Irish Stock Exchange and the guidelines of the Irish Stock Exchange so require, filed with the Companies Announcement Office of the Irish Stock Exchange. The Issuer shall also ensure that notices are duly published in a manner which complies with the rules of any stock exchange or other relevant authority on which the Notes are for the time being listed or by which they have been admitted to trading. Any such notice will be deemed to have been given on the date of the first publication or, where required to be published in more than one newspaper, on the date of the first publication in all required newspapers. If publication as provided above is not practicable, a notice will be given in such other manner, and will be deemed to have been given on such date, as the Trustee shall approve.

Until such time as any definitive Notes are issued, there may, so long as any Global Notes representing the Notes are held in their entirety on behalf of Euroclear and/or Clearstream,

Luxembourg, be substituted for such publication in such newspaper(s) the delivery of the relevant notice to Euroclear and/or Clearstream, Luxembourg for communication by them to the holders of the Notes and, in addition, for so long as any Notes are listed on a stock exchange or are admitted to trading by another relevant authority and the rules of that stock exchange or relevant authority so require, such notice will be published in a daily newspaper of general circulation in the place or places required by those rules. Any such notice shall be deemed to have been given to the holders of the Notes on the second day after the day on which the said notice was given to Euroclear and/or Clearstream, Luxembourg.

Notices to be given by any Noteholder shall be in writing and given by lodging the same, together (in the case of any Note in definitive form) with the relative Note or Notes, with the Agent. Whilst any of the Notes are represented by a Global Note, such notice may be given by any holder of a Note to the Agent through Euroclear and/or Clearstream, Luxembourg, as the case may be, in such manner as the Agent and Euroclear and/or Clearstream, Luxembourg, as the case may be, may approve for this purpose.

## **15. MEETINGS OF NOTEHOLDERS, MODIFICATION, WAIVER AND SUBSTITUTION**

### **15.1 Meetings of Noteholders, Modification and Waiver**

The Trust Deed contains provisions for convening meetings of the Noteholders to consider any matter affecting their interests, including the sanctioning by Extraordinary Resolution of a modification of the Notes, the Receipts, the Coupons or any of the provisions of the Trust Deed. Such a meeting may be convened by the Issuer, the Guarantor (where the Issuer is ESB Finance) or the Trustee and shall be convened by the Issuer if required in writing by Noteholders holding not less than five per cent. in nominal amount of the Notes for the time being remaining outstanding. The quorum at any such meeting for passing an Extraordinary Resolution is one or more persons holding or representing not less than 50 per cent. in nominal amount of the Notes for the time being outstanding, or at any adjourned meeting one or more persons being or representing Noteholders whatever the nominal amount of the Notes so held or represented, except that at any meeting the business of which includes the modification of certain provisions of the Notes, the Receipts or the Coupons or the Trust Deed (including modifying the date of maturity of the Notes or any date for payment of interest thereon, reducing or cancelling the amount of principal or the rate of interest payable in respect of the Notes or altering the currency of payment of the Notes, the Receipts or the Coupons), the quorum shall be one or more persons holding or representing not less than two-thirds in nominal amount of the Notes for the time being outstanding, or at any adjourned such meeting one or more persons holding or representing not less than one-third in nominal amount of the Notes for the time being outstanding. The Trust Deed provides that (i) a resolution passed at a meeting duly convened and held by a majority consisting of not less than three-fourths of votes cast on such resolution, (ii) a resolution in writing signed by or on behalf of the holders of not less than three-fourths in principal amount of the Notes for the time being outstanding or (iii) consents given by way of electronic consents through the relevant clearing system(s) (in a form satisfactory to the Trustee) by or on behalf of the holder(s) of not less than three-fourths in principal amount of the Notes for the time being outstanding, shall, in each case, be effective as an Extraordinary Resolution of the Noteholders. An Extraordinary Resolution passed at any meeting of the Noteholders shall be binding on all the Noteholders, whether or not they are present at the meeting, and on all Receiptholders and Couponholders.

The Trustee may agree, without the consent of the Noteholders, Receiptholders or Couponholders, to any modification of, or to the waiver or authorisation of any breach or proposed breach of, any of the provisions of the Notes or the Trust Deed, or determine, without any such consent as aforesaid, that any Event of Default or potential Event of Default shall not be treated as such, where, in any such case, it is not, in the opinion of the Trustee, materially prejudicial to the interests of the Noteholders so to do or may agree, without any such consent as aforesaid, to any modification which is of a



formal, minor or technical nature or to correct a manifest error. Any such modification shall be binding on the Noteholders, the Receiptholders and the Couponholders and any such modification shall be notified to the Noteholders in accordance with Condition 14 (*Notices*) as soon as practicable thereafter.

In connection with the exercise by it of any of its trusts, powers, authorities and discretions (including, without limitation, any modification, waiver, authorisation, determination or substitution), the Trustee shall have regard to the general interests of the Noteholders as a class (but shall not have regard to any interests arising from circumstances particular to individual Noteholders, Receiptholders or Couponholders whatever their number) and, in particular but without limitation, shall not have regard to the consequences of any such exercise for individual Noteholders, Receiptholders or Couponholders (whatever their number) resulting from their being for any purpose domiciled or resident in, or otherwise connected with, or subject to the jurisdiction of, any particular territory or any political sub-division thereof and the Trustee shall not be entitled to require, nor shall any Noteholder, Receiptholder or Couponholder be entitled to claim, from the Issuer, the Guarantor (where the Issuer is ESB Finance), the Trustee or any other person any indemnification or payment in respect of any tax consequences of any such exercise upon individual Noteholders, Receiptholders or Couponholders except to the extent already provided for in Condition 8 (*Taxation*) and/or any undertaking or covenant given in addition to, or in substitution for, Condition 8 (*Taxation*) pursuant to the Trust Deed.

## **15.2 Substitution**

The Trustee may, without the consent of the Noteholders, Receiptholders or Couponholders agree:

(a) with the Issuer and the Guarantor (where the Issuer is ESB Finance) to the substitution in place of the Issuer (or of any previous substitute of the Issuer under this Condition) as the principal debtor under the Notes, the Receipts, the Coupons and the Trust Deed, of another company, being either ESB itself or another Subsidiary of ESB, or

(b) with ESB to the substitution in place of ESB, either as Issuer or as Guarantor (or of any previous substitute of ESB in either capacity under this Condition) as the principal debtor under the Notes, the Receipts, the Coupons and the Trust Deed, or under the Guarantee, as the case may be, of another company,

in each case subject to (i) (in the case of a substitution under (a) above of another Subsidiary of ESB) the Notes being unconditionally and irrevocably guaranteed by ESB; (ii) the Trustee being satisfied that such substitution will not be materially prejudicial to the interests of the Noteholders; and (iii) certain other conditions set out in the Trust Deed being complied with.

## **16. INDEMNIFICATION OF THE TRUSTEE AND TRUSTEE CONTRACTING WITH THE ISSUER**

The Trust Deed contains provisions for the indemnification of the Trustee and for its relief from responsibility, including provisions relieving it from taking action unless indemnified and/or secured and/or prefunded to its satisfaction.

The Trust Deed also contains provisions pursuant to which the Trustee is entitled, *inter alia*, (a) to enter into business transactions with the Issuer, the Guarantor (where the Issuer is ESB Finance) and/or any of their Subsidiaries and to act as trustee for the holders of any other securities issued or guaranteed by, or relating to, the Issuer, the Guarantor (where the Issuer is ESB Finance) and/or any of their Subsidiaries, (b) to exercise and enforce its rights, comply with its obligations and perform its duties under or in relation to any such transactions or, as the case may be, any such trusteeship without regard to the interests of, or consequences for, the Noteholders, Receiptholders or

Couponholders and (c) to retain and not be liable to account for any profit made or any other amount or benefit received thereby or in connection therewith.

## **17. FURTHER ISSUES**

The Issuer shall be at liberty from time to time without the consent of the Noteholders, the Receipholders or the Couponholders to create and issue further notes having terms and conditions the same as the Notes or the same in all respects save for the amount and date of the first payment of interest thereon and so that the same shall be consolidated and form a single Series with the outstanding Notes.

## **18. CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999**

No person shall have any right to enforce any term or condition of this Note under the Contracts (Rights of Third Parties) Act 1999, but this does not affect any right or remedy of any person which exists or is available apart from that Act.

## **19. GOVERNING LAW AND SUBMISSION TO JURISDICTION**

### **19.1 Governing law**

The Trust Deed, the Agency Agreement, the Notes, the Receipts, the Coupons and any non-contractual obligations arising out of or in connection with the Trust Deed, the Agency Agreement, the Notes, the Receipts and the Coupons are governed by, and shall be construed in accordance with, English law.

### **19.2 Submission to jurisdiction**

The Issuer and the Guarantor (where the Issuer is ESB Finance) each irrevocably agrees, for the benefit of the Trustee, the Noteholders, the Receipholders and the Couponholders, that the courts of England are to have exclusive jurisdiction to settle any disputes which may arise out of or in connection with the Trust Deed, the Notes, the Receipts and/or the Coupons (including a dispute relating to any non-contractual obligations arising out of or in connection with the Trust Deed, the Notes, the Receipts and/or the Coupons) and accordingly submits to the exclusive jurisdiction of the English courts.

The Issuer and the Guarantor (where the Issuer is ESB Finance) each waives any objection to the courts of England on the grounds that they are an inconvenient or inappropriate forum. The Trustee and (where entitled under the Trust Deed to do so) the Noteholders, the Receipholders and the Couponholders may take any suit, action or proceedings (together referred to as **Proceedings**) arising out of or in connection with the Trust Deed, the Notes, the Receipts and the Coupons (including any Proceedings relating to any non-contractual obligations arising out of or in connection with the Trust Deed, the Notes, the Receipts and the Coupons) against the Issuer or the Guarantor in any other court of competent jurisdiction and concurrent Proceedings in any number of jurisdictions.

### **19.3 Appointment of Process Agent**

The Issuer and the Guarantor (where the Issuer is ESB Finance) each appoints Jordans International Limited at its registered office at 21 St Thomas Street, Bristol BS1 6JS as its agent for service of process, and undertakes that, in the event of Jordans International Limited ceasing so to act or ceasing to be registered in England, it or they will appoint another person approved by the Trustee as its agent for service of process in England in respect of any Proceedings. Nothing herein shall affect the right to serve proceedings in any other manner permitted by law.

#### **19.4 Waiver of immunity**

The Issuer and the Guarantor (where the Issuer is ESB Finance) each hereby irrevocably and unconditionally waives with respect to the Notes, the Receipts and the Coupons any right to claim sovereign or other immunity from jurisdiction or execution and any similar defence and irrevocably and unconditionally consents to the giving of any relief or the issue of any process, including without limitation, the making, enforcement or execution against any property whatsoever (irrespective of its use or intended use) of any order or judgment made or given in connection with any Proceedings.

**PRINCIPAL PAYING AGENT**

Citibank, N.A., London Branch  
Citigroup Centre,  
Canada Square  
Canary Wharf  
London E14 5LB

## SCHEDULE 2

### FORMS OF GLOBAL AND DEFINITIVE NOTES, RECEIPTS, COUPONS AND TALONS

#### PART 1

##### FORM OF TEMPORARY GLOBAL NOTE

[ANY UNITED STATES PERSON WHO HOLDS THIS OBLIGATION WILL BE SUBJECT TO LIMITATIONS UNDER THE UNITED STATES INCOME TAX LAWS, INCLUDING THE LIMITATIONS PROVIDED IN SECTIONS 165(j) AND 1287(a) OF THE INTERNAL REVENUE CODE.]<sup>1</sup>

##### **[ELECTRICITY SUPPLY BOARD**

(the **Issuer**)

*(a body corporate established in Ireland under the Electricity (Supply) Acts 1927 to 2004 of Ireland)*

##### **ESB FINANCE LIMITED**

(the **Issuer**)

*(a private company incorporated with limited liability in Ireland with registration number 480184)]<sup>2</sup>*

##### **TEMPORARY GLOBAL NOTE**

[unconditionally and irrevocably guaranteed by

##### **ELECTRICITY SUPPLY BOARD,**

(the **Guarantor**)

*(a body corporate established in Ireland under the Electricity (Supply) Acts 1927 to 2004 of Ireland)]<sup>3</sup>*

This Note is a Temporary Global Note in respect of a duly authorised issue of Notes of the Issuer (the **Notes**) of the Nominal Amount, Specified Currency(ies) and Specified Denomination(s) as are specified in the Final Terms applicable to the Notes (the **Final Terms**). References herein to the Conditions shall be to the Terms and Conditions of the Notes as set out in Schedule 1 to the Trust Deed (as defined below) as supplemented, replaced and modified by the relevant information appearing in the Final Terms attached hereto but, in the event of any conflict between the provisions of the said Conditions and such information in the Final Terms, such information will prevail.

Words and expressions defined in the Conditions shall bear the same meanings when used in this Global Note.

This Global Note is issued subject to, and with the benefit of, the Conditions and a Trust Deed (such Trust Deed as modified and/or supplemented and/or restated from time to time, the **Trust Deed**) dated 12 February 2010 and made between the Issuer[, the Guarantor] and Citicorp Trustee Company Limited as trustee for the holders of the Notes.

For value received, the Issuer, subject as hereinafter provided and subject to and in accordance with the Conditions and the Trust Deed, promises to pay to the bearer hereof on each Instalment Date (if the Notes are repayable in instalments) and on the Maturity Date and/or on such earlier date(s) as all or any of the Notes represented by this Global Note may become due and repayable in accordance with the Conditions and the Trust Deed, the amount payable under the Conditions in respect of such Notes on each such date and to

<sup>1</sup> Delete where the original maturity of the Notes is 1 year or less.

<sup>2</sup> Delete as applicable.

<sup>3</sup> Insert where Issuer is ESB Finance only.

pay interest (if any) on the nominal amount of the Notes from time to time represented by this Global Note calculated and payable as provided in the Conditions and the Trust Deed together with any other sums payable under the Conditions and the Trust Deed, upon presentation and, at maturity, surrender of this Global Note to or to the order of the Principal Paying Agent or any of the other Paying Agents located outside the United States, its territories and possessions (except as provided in the Conditions) from time to time appointed by the Issuer in respect of the Notes.

If the Final Terms indicates that this Global Note is intended to be a New Global Note, the nominal amount of the Notes represented by this Global Note shall be the aggregate amount from time to time entered in the records of both Euroclear Bank S.A./N.V. (**Euroclear**) and Clearstream Banking, société anonyme (**Clearstream, Luxembourg** and together with Euroclear, the **relevant Clearing Systems**). The records of the relevant Clearing Systems (which expression in this Global Note means the records that each relevant Clearing System holds for its customers which reflect the amount of each such customer's interest in the Notes) shall be conclusive evidence of the nominal amount of Notes represented by this Global Note and, for these purposes, a statement issued by a relevant Clearing System (which statement shall be made available to the bearer upon request) stating the nominal amount of Notes represented by this Global Note at any time shall be conclusive evidence of the records of the relevant Clearing System at that time.

If the Final Terms indicates that this Global Note is not intended to be a New Global Note, the nominal amount from time to time of this Global Note and of the Notes represented by this Global Note shall be the amount stated in the Final Terms or, if lower, the nominal amount most recently entered by or on behalf of the Issuer in the relevant column in Part II, III, or IV of Schedule One hereto or in Schedule Two hereto.

On any redemption of, or payment of an instalment or interest being made in respect of, or purchase and cancellation of, any of the Notes represented by this Global Note the Issuer shall procure that:

- (b) if the Final Terms indicates that this Global Note is intended to be a New Global Note, details of such redemption, payment or purchase and cancellation (as the case may be) shall be entered *pro rata* in the records of the relevant Clearing Systems, and, upon any such entry being made, the nominal amount of the Notes recorded in the records of the relevant Clearing Systems and represented by this Global Note shall be reduced by the nominal amount of the Notes so redeemed or purchased and cancelled or the amount of such instalment; or
- (c) if the Final Terms indicates that this Global Note is not intended to be a New Global Note, details of such redemption, payment or purchase and cancellation (as the case may be) shall be entered by or on behalf of the Issuer in Schedule One hereto and the relevant space in Schedule One hereto recording any such redemption, payment or purchase and cancellation (as the case may be) shall be signed by or on behalf of the Issuer. Upon any such redemption, payment of an instalment or purchase and cancellation, the nominal amount of this Global Note and the Notes represented by this Global Note shall be reduced by the nominal amount of such Notes so redeemed or purchased and cancelled or the amount of such instalment.

Payments due in respect of Notes for the time being represented by this Global Note shall be made to the bearer of this Global Note and each payment so made will discharge the Issuer's obligations in respect thereof. Any failure to make entries referred to above shall not affect such discharge.

Payments of principal and interest (if any) due prior to the Exchange Date (as defined below) will only be made to the bearer hereof to the extent that there is presented to the Agent by Clearstream, Luxembourg or Euroclear a certificate to the effect that it has received from or in respect of a person entitled to a beneficial interest in a particular nominal amount of the Notes represented by this Global Note (as shown by its records) a certificate of non-US beneficial ownership in the form required by it. The bearer of this Global Note will not (unless upon due presentation of this Global Note for exchange, delivery of the appropriate number of Definitive Notes (together, if applicable, with the Receipts, Coupons and Talons appertaining thereto in or substantially in the forms set out in Parts 3, 4, 5 and 6 of Schedule 2 to the Trust Deed) or, as

the case may be, issue and delivery (or, as the case may be, endorsement) of the Permanent Global Note is improperly withheld or refused and such withholding or refusal is continuing at the relevant payment date) be entitled to receive any payment hereon due on or after the Exchange Date.

On or after the date (the **Exchange Date**) which is 40 days after the Issue Date this Global Note may be exchanged (free of charge) in whole or in part for, as specified in the Final Terms, either (a) Definitive Notes and (if applicable) Receipts, Coupons and/or Talons (on the basis that all the appropriate details have been included on the face of such Definitive Notes and (if applicable) Receipts, Coupons and/or Talons and the relevant information supplementing, replacing or modifying the Conditions appearing in the Final Terms has been endorsed on or attached to such Definitive Notes) or (b) either (if the Final Terms indicates that this Global Note is intended to be a New Global Note) interests recorded in the records of the relevant Clearing Systems in a Permanent Global Note or (if the Final Terms indicates that this Global Note is not intended to be a New Global Note) a Permanent Global Note, which in either case, is in or substantially in the form set out in Part 2 of Schedule 2 to the Trust Deed (together with the relevant information appearing in the Final Terms attached thereto).

If Definitive Notes and (if applicable) Receipts, Coupons and/or Talons have already been issued in exchange for all the Notes represented for the time being by the Permanent Global Note, then this Global Note may only thereafter be exchanged for Definitive Notes and (if applicable) Receipts, Coupons and/or Talons pursuant to the terms hereof. This Global Note may be exchanged by the bearer hereof on any day (other than a Saturday or Sunday) on which banks are open for business in England and Wales.

The Issuer shall procure that Definitive Notes or (as the case may be) the Permanent Global Note shall be issued and delivered and (in the case of the Permanent Global Note where the Final Terms indicates that this Global Note is intended to be a New Global Note) interests in the Permanent Global Note shall be recorded in the records of the relevant Clearing Systems in exchange for only that portion of this Global Note in respect of which there shall have been presented to the Principal Paying Agent by Euroclear or Clearstream, Luxembourg a certificate to the effect that it has received from or in respect of a person entitled to a beneficial interest in a particular nominal amount of the Notes represented by this Global Note (as shown by its records) a certificate of non-US beneficial ownership in the form required by it.

On an exchange of the whole of this Global Note, this Global Note shall be surrendered to the Principal Paying Agent. The Issuer shall procure that:

- (i) if the Final Terms indicates that this Global Note is intended to be a New Global Note, on an exchange of the whole or part only of this Global Note, details of such exchange shall be entered *pro rata* in the records of the relevant Clearing Systems such that the nominal amount of Notes represented by this Global Note shall be reduced by the nominal amount of this Global Note so exchanged; or
- (ii) if the Final Terms indicates that this Global Note is not intended to be a New Global Note, on an exchange of part only of this Global Note details of such exchange shall be entered by or on behalf of the Issuer in Schedule Two hereto and the relevant space in Schedule Two hereto recording such exchange shall be signed by or on behalf of the Issuer, whereupon the nominal amount of this Global Note and the Notes represented by this Global Note shall be reduced by the nominal amount of this Global Note so exchanged. On any exchange of this Global Note for a Permanent Global Note, details of such exchange shall be entered by or on behalf of the Issuer in Schedule Two to the Permanent Global Note and the relevant space in Schedule Two thereto recording such exchange shall be signed by or on behalf of the Issuer.

Until the exchange of the whole of this Global Note as aforesaid, the bearer hereof shall (subject as provided in the next paragraph) in all respects (except as otherwise provided herein) be entitled to the same benefits as if he were the bearer of Definitive Notes and the relative Receipts, Coupons and/or Talons (if any) in the form(s) set out in Part 3, Part 4, Part 5 and Part 6 (as applicable) of Schedule 2 to the Trust Deed.

Each person (other than Euroclear or Clearstream, Luxembourg) who is for the time being shown in the records of Euroclear or Clearstream, Luxembourg as the holder of a particular nominal amount of the Notes represented by this Global Note (in which regard any certificate or other document issued by Euroclear or Clearstream, Luxembourg as to the nominal amount of such Notes standing to the account of any person shall be conclusive and binding for all purposes save in the case of manifest error) shall be treated by the Issuer, [the Guarantor,] the Trustee, the Principal Paying Agent and any other Paying Agent as the holder of such nominal amount of such Notes for all purposes other than with respect to the payment of principal and interest on such nominal amount of such Notes, the right to which shall be vested, as against the Issuer[ and the Guarantor], solely in the bearer of this Global Note in accordance with and subject to the terms of this Global Note and the Trust Deed.

This Global Note and any non-contractual obligations arising out of or in connection with it are governed by, and shall be construed in accordance with, English law and the Issuer has in the Trust Deed submitted to the jurisdiction of the English courts for all purposes in connection with this Global Note.

This Global Note shall not be valid unless authenticated by Citibank, N.A., London Branch as Principal Paying Agent and, if the Final Terms indicates that this Global Note is intended to be a New Global Note (a) which is intended to be held in a manner which would allow Eurosystem-eligibility or (b) in respect of which effectuation is to be applicable, effectuated by the entity appointed as common safekeeper by the relevant Clearing Systems.

**IN WITNESS** whereof the Issuer has caused this Global Note to be signed manually or in facsimile by a person duly authorised on its behalf.

Issued as of [            ].

**[ELECTRICITY SUPPLY BOARD/ ESB FINANCE LIMITED]**

By: .....

**Duly Authorised**

Authenticated without recourse, warranty or liability by  
Citibank, N.A., London Branch,  
as Principal Paying Agent.

By: .....

**Authorised Officer**

[<sup>4</sup>Effectuated without recourse,  
warranty or liability by

.....  
as common safekeeper

By:    ]

*[Form of Final Terms or relevant information appearing in the Final Terms to be attached hereto.]*

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<sup>4</sup> This should only be completed where the Final Terms indicates that this Global Note is intended to be a New Global Note.













## PART 2

### FORM OF PERMANENT GLOBAL NOTE

[ANY UNITED STATES PERSON WHO HOLDS THIS OBLIGATION WILL BE SUBJECT TO LIMITATIONS UNDER THE UNITED STATES INCOME TAX LAWS, INCLUDING THE LIMITATIONS PROVIDED IN SECTIONS 165(j) AND 1287(a) OF THE INTERNAL REVENUE CODE.]<sup>11</sup>

**[ELECTRICITY SUPPLY BOARD,**  
(the **Issuer**)

*(a body corporate established in Ireland under the Electricity (Supply) Acts 1927 to 2004 of Ireland)/*

**ESB FINANCE LIMITED**  
(the **Issuer**)

*(a private company incorporated with limited liability in Ireland with registration number 480184)]<sup>12</sup>*

### PERMANENT GLOBAL NOTE

[unconditionally and irrevocably guaranteed by

**ELECTRICITY SUPPLY BOARD,**  
(the **Guarantor**)

*(a body corporate established in Ireland under the Electricity (Supply) Acts 1927 to 2004 of Ireland)]<sup>13</sup>*

This Note is a Permanent Global Note in respect of a duly authorised issue of Notes of the Issuer (the **Notes**) of the Nominal Amount, Specified Currency(ies) and Specified Denomination(s) as are specified in the Final Terms applicable to the Notes (the **Final Terms**). References herein to the Conditions shall be to the Terms and Conditions of the Notes as set out in Schedule 1 to the Trust Deed (as defined below) as supplemented, replaced and modified by the relevant information appearing in the Final Terms attached hereto but, in the event of any conflict between the provisions of the said Conditions and such information in the Final Terms, such information will prevail.

Words and expressions defined in the Conditions shall bear the same meanings when used in this Global Note.

This Global Note is issued subject to, and with the benefit of, the Conditions and a Trust Deed (such Trust Deed as modified and/or supplemented and/or restated from time to time, the **Trust Deed**) dated 12 February 2010 and made between the Issuer[, the Guarantor] and Citicorp Trustee Company Limited as trustee for the holders of the Notes.

For value received, the Issuer, subject to and in accordance with the Conditions and the Trust Deed, promises to pay to the bearer hereof on each Instalment Date (if the Notes are repayable in instalments) and on the Maturity Date and/or on such earlier date(s) as all or any of the Notes represented by this Global Note may become due and repayable in accordance with the Conditions and the Trust Deed, the amount payable under the Conditions in respect of such Notes on each such date and to pay interest (if any) on the nominal amount of the Notes from time to time represented by this Global Note calculated and payable as provided in the Conditions and the Trust Deed together with any other sums payable under the Conditions and the Trust Deed, upon presentation and, at maturity, surrender of this Global Note to or to the order of the Principal Paying Agent or any of the other Paying Agents located outside the United States, its territories and

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<sup>11</sup> Delete where the original maturity of the Notes is 1 year or less.

<sup>12</sup> Delete as applicable.

<sup>13</sup> Insert where Issuer is ESB Finance only.

possessions (except as provided in the Conditions) from time to time appointed by the Issuer in respect of the Notes.

If the Final Terms indicates that this Global Note is intended to be a New Global Note, the nominal amount from time to time of this Global Note of the Notes represented by this Global Note shall be the aggregate amount from time to time entered in the records of both Euroclear Bank S.A./N.V. (**Euroclear**) and Clearstream Banking, société anonyme (**Clearstream, Luxembourg** and together with Euroclear, the **relevant Clearing Systems**). The records of the relevant Clearing Systems (which expression in this Global Note means the records that each relevant Clearing System holds for its customers which reflect the amount of each such customer's interest in the Notes) shall be conclusive evidence of the nominal amount of Notes represented by this Global Note and, for these purposes, a statement issued by a relevant Clearing System (which statement shall be made available to the bearer upon request) stating the nominal amount of Notes represented by this Global Note at any time shall be conclusive evidence of the records of the relevant Clearing System at that time.

If the Final Terms indicates that this Global Note is not intended to be a New Global Note, the nominal amount from time to time of this Global Note of the Notes represented by this Global Note shall be the amount stated in the Final Terms or, if lower, the nominal amount most recently entered by or on behalf of the Issuer in the relevant column in Part II, Part III, or Part IV of Schedule One hereto or in Schedule Two hereto.

On any redemption or payment of an instalment or interest being made in respect of, or purchase and cancellation of, any of the Notes represented by this Global Note the Issuer shall procure that:

- (a) if the Final Terms indicates that this Global Note is intended to be a New Global Note, details of such redemption, payment or purchase and cancellation (as the case may be) shall be entered *pro rata* in the records of the relevant Clearing Systems and, upon any such entry being made, the nominal amount of the Notes recorded in the records of the relevant Clearing Systems and represented by this Global Note shall be reduced by the nominal amount of the Notes so redeemed or purchased and cancelled or the amount of such instalment; or
- (b) if the Final Terms indicates that this Global Note is not intended to be a New Global Note, details of such redemption, payment or purchase and cancellation (as the case may be) shall be entered by or on behalf of the Issuer in Schedule One hereto and the relevant space in Schedule One hereto recording any such redemption, payment or purchase and cancellation (as the case may be) shall be signed by or on behalf of the Issuer. Upon any such redemption, payment of an instalment or purchase and cancellation, the nominal amount of this Global Note and the Notes represented by this Global Note shall be reduced by the nominal amount of such Notes so redeemed or purchased and cancelled or the amount of such instalment.

Payments due in respect of Notes for the time being represented by this Global Note shall be made to the bearer of this Global Note and each payment so made will discharge the Issuer's obligations in respect thereof and any failure to make entries referred to above shall not affect such discharge.

If the Notes represented by this Global Note were, on issue, represented by a Temporary Bearer Global Note then on any exchange of such Temporary Bearer Global Note for this Global Note or any part hereof, the Issuer shall procure that:

- (i) if the Final Terms indicates that this Global Note is intended to be a New Global Note, details of such exchange shall be entered in the records of the relevant Clearing Systems such that the nominal amount of Notes represented by this Global Note shall be increased by the nominal amount of the Temporary Bearer Global Note so exchanged; or

(ii) if the Final Terms indicates that this Global Note is not intended to be a New Global Note, details of such exchange shall be entered by or on behalf of the Issuer in Schedule Two hereto and the relevant space in Schedule Two hereto recording such exchange shall be signed by or on behalf of the Issuer, whereupon the nominal amount of this Global Note and the Notes represented by this Global Note shall be increased by the nominal amount of the Temporary Global Note so exchanged.

This Global Note may be exchanged (free of charge) in whole, but not in part, for Definitive Notes and (if applicable) Receipts, Coupons and/or Talons in or substantially in the forms set out in Part 3, Part 4, Part 5 and Part 6 of Schedule 2 to the Trust Deed (on the basis that all the appropriate details have been included on the face of such Definitive Notes and (if applicable) Receipts, Coupons and/or Talons and the relevant information supplementing, replacing or modifying the Conditions appearing in the Final Terms has been endorsed on or attached to such Definitive Notes) either, as specified in the applicable Final Terms:

- (a) upon not less than 60 days' written notice being given to the Agent by the bearer hereof; or
- (b) upon the occurrence of an Exchange Event.

**An Exchange Event** means:

- (a) an Event of Default has occurred and is continuing; or
- (b) the Issuer has been notified that both Euroclear and Clearstream, Luxembourg have been closed for business for a continuous period of 14 days (other than by reason of holiday, statutory or otherwise) or have announced an intention permanently to cease business or have in fact done so and no successor clearing system satisfactory to the Trustee is available.

If this Global Note is exchangeable following the occurrence of an Exchange Event:

- (i) the Issuer will promptly give notice to Noteholders in accordance with Condition 14 (*Notices*) upon the occurrence of such Exchange Event; and
- (ii) the bearer hereof may give notice to the Principal Paying Agent requesting exchange.

Any such exchange shall occur on a date specified in the notice not more than 45 days after the date of receipt of the first relevant notice by the Principal Paying Agent.

The first notice requesting exchange in accordance with the above provisions shall give rise to the issue of Definitive Notes for the total nominal amount of Notes represented by this Global Note.

Any such exchange as aforesaid will be made on any day (other than a Saturday or a Sunday) on which banks are open for business in England and Wales by the bearer of this Global Note.

The aggregate nominal amount of Definitive Notes issued upon an exchange of this Global Note will be equal to the aggregate nominal amount of this Global Note. On exchange of this Global Note for Definitive Notes this Global Note should be surrendered to the Principal Paying Agent.

Until the exchange of the whole of this Global Note as aforesaid, the bearer hereof shall (subject as provided in the next paragraph) in all respects be entitled to the same benefits as if he were the bearer of Definitive Notes and the relative Receipts, Coupons and/or Talons (if any) in the form(s) set out in Parts 3, 4, 5 and 6 (as applicable) of Schedule 2 to the Trust Deed.

Each person (other than Euroclear or Clearstream, Luxembourg) who is for the time being shown in the records of Euroclear or Clearstream, Luxembourg as the holder of a particular nominal amount of the Notes represented by this Global Note (in which regard any certificate or other document issued by Euroclear or



Clearstream, Luxembourg as to the nominal amount of such Notes standing to the account of any person shall be conclusive and binding for all purposes save in the case of manifest error) shall be treated by the Issuer, [the Guarantor,] the Trustee, the Principal Paying Agent and any other Paying Agent as the holder of such nominal amount of such Notes for all purposes other than with respect to the payment of principal and interest on such nominal amount of such Notes, the right to which shall be vested, as against the Issuer[ and the Guarantor], solely in the bearer of this Global Note in accordance with and subject to the terms of this Global Note and the Trust Deed.

This Global Note is governed by, and shall be construed in accordance with, English law and the Issuer has in the Trust Deed submitted to the jurisdiction of the English courts for all purposes in connection with this Global Note.

This Global Note shall not be valid unless authenticated by Citibank, N.A., London Branch as Principal Paying Agent and, if the Final Terms indicates that this Global Note is intended to be a New Global Note (a) which is intended to be held in a manner which would allow Eurosystem eligibility or (b) in respect of which effectuation is to be applicable, effectuated by the entity appointed as common safekeeper by the relevant Clearing Systems.

**IN WITNESS** whereof the Issuer has caused this Global Note to be signed manually or in facsimile by a person duly authorised on its behalf.

Issued as of [                    ].

**[ELECTRICITY SUPPLY BOARD/ ESB FINANCE LIMITED]**

By: .....

**Duly Authorised**

Authenticated without recourse, warranty or liability by  
Citibank, N.A., London Branch,  
as Principal Paying Agent.

By: .....

**Authorised Officer**

[<sup>14</sup>Effectuated without recourse,  
warranty or liability by

.....

as common safekeeper

By:    ]

*[Form of Final Terms or relevant information appearing in the Final Terms to be attached hereto.]*

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<sup>14</sup> This should only be completed where the Final Terms indicates that this Global Note is intended to be a New Global Note.

**Schedule One<sup>[15]</sup>**

**PART I**

**INTEREST PAYMENTS**

Date made	Interest Payment Date	Total amount of interest payable	Amount of interest paid	Confirmation of payment by or on behalf of the Issuer
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
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_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____

<sup>15</sup> Schedule One should only be completed where the Final Terms indicates that this Global Note is not intended to be a New Global Note.

**PART II**

**PAYMENT OF INSTALMENT AMOUNTS**

Date made	Total amount of Instalment Amounts payable	Amount of Instalment Amounts paid	Remaining nominal amount of this Global Note following such payment <sup>16</sup>	Confirmation of payment by or on behalf of the Issuer
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
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_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____

<sup>16</sup> See most recent entry in Part II, III or IV or Schedule Two in order to determine this amount.

**PART III**  
**REDEMPTIONS**

Date made	Total amount of principal payable	Amount of principal paid	Remaining nominal amount of this Global Note following such redemption <sup>17</sup>	Confirmation of redemption by or on behalf of the Issuer
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
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_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
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_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____

<sup>17</sup> See most recent entry in Part II, III or IV or Schedule Two in order to determine this amount.

**PART IV**

**PURCHASES AND CANCELLATIONS**

Date made	Part of nominal amount of this Global Note purchased and cancelled	Remaining nominal amount of this Global Note following such purchase and cancellation <sup>18</sup>	Confirmation of purchase and cancellation by or on behalf of the Issuer
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
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_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

<sup>18</sup> See most recent entry in Part II, III or IV or Schedule Two in order to determine this amount.



### PART 3

#### FORM OF DEFINITIVE NOTE

[ANY UNITED STATES PERSON WHO HOLDS THIS OBLIGATION WILL BE SUBJECT TO LIMITATIONS UNDER THE UNITED STATES INCOME TAX LAWS, INCLUDING THE LIMITATIONS PROVIDED IN SECTIONS 165(j) AND 1287(a) OF THE INTERNAL REVENUE CODE.]<sup>21</sup>

**[ELECTRICITY SUPPLY BOARD,**  
(the **Issuer**)

*(a body corporate established in Ireland under the Electricity (Supply) Acts 1927 to 2004 of Ireland)*

**ESB FINANCE LIMITED**  
(the **Issuer**)

*(a private company incorporated with limited liability in Ireland with registration number 480184)]<sup>22</sup>*

**[Specified Currency and Nominal Amount of Tranche]**  
**NOTES DUE**

**[Year of Maturity]**

[unconditionally and irrevocably guaranteed by

**ELECTRICITY SUPPLY BOARD,**  
(the **Guarantor**)

*(a body corporate established in Ireland under the Electricity (Supply) Acts 1927 to 2004 of Ireland)]<sup>23</sup>*

This Note is one of a Series of Notes of [Specified Currency(ies) and Specified Denomination(s)] each of the Issuer (the **Notes**). References herein to the Conditions shall be to the Terms and Conditions [endorsed hereon/set out in Schedule 1 to the Trust Deed (as defined below) which shall be incorporated by reference herein and have effect as if set out herein] as supplemented, replaced and modified by the relevant information appearing in the Final Terms (the **Final Terms**) endorsed hereon but, in the event of any conflict between the provisions of the said Conditions and such information in the Final Terms, such information will prevail.

Words and expressions defined in the Conditions shall bear the same meanings when used in this Note.

This Note is issued subject to, and with the benefit of, the Conditions and a Trust Deed (such Trust Deed as modified and/or supplemented and/or restated from time to time, the **Trust Deed**) dated 12 February 2010 and made between the Issuer[, the Guarantor] and Citicorp Trustee Company Limited as trustee for the holders of the Notes.

For value received, the Issuer, subject to and in accordance with the Conditions and the Trust Deed, promises to pay to the bearer hereof on [each Instalment Date and] the Maturity Date or on such earlier date as this Note may become due and repayable in accordance with the Conditions and the Trust Deed, the amount payable on redemption of this Note and to pay interest (if any) on the nominal amount of this Note calculated and payable as provided in the Conditions and the Trust Deed together with any other sums payable under the Conditions and the Trust Deed.

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<sup>21</sup> Delete where the original maturity of the Notes is 1 year or less.

<sup>22</sup> Delete as applicable.

<sup>23</sup> Insert where Issuer is ESB Finance only.

This Note shall not be valid unless authenticated by Citibank, N.A., London Branch as Principal Paying Agent.

**IN WITNESS** whereof the Issuer has caused this Note to be signed manually or in facsimile by a person duly authorised on its behalf.

Issued as of [            ].

**[ELECTRICITY SUPPLY BOARD/ ESB FINANCE LIMITED]<sup>24</sup>**

By: .....

**Duly Authorised**

Authenticated without recourse, liability or warranty by  
Citibank, N.A., London Branch,  
as Principal Paying Agent.

By: .....

**Authorised Officer**

*[Form of Final Terms or relevant information appearing in the Final Terms to be attached hereto]*

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<sup>24</sup> Delete as applicable.



**[Conditions]**

[Conditions to be as set out in Schedule 1 to this Trust Deed or such other form as may be agreed between the Issuer and the Trustee, but shall not be endorsed if not required by the relevant stock exchange or other relevant authorities.]

**PART 4**  
**FORM OF RECEIPT**

[*Face of Receipt*]

**[ANY UNITED STATES PERSON WHO HOLDS THIS OBLIGATION WILL BE SUBJECT TO LIMITATIONS UNDER THE UNITED STATES INCOME TAX LAWS, INCLUDING THE LIMITATIONS PROVIDED IN SECTIONS 165(j) AND 1287(a) OF THE INTERNAL REVENUE CODE.]<sup>25</sup>**

**[ELECTRICITY SUPPLY BOARD,**  
(the **Issuer**)  
(*a body corporate established in Ireland under the Electricity (Supply) Acts 1927 to 2004 of Ireland*)/

**ESB FINANCE LIMITED**  
(the **Issuer**)  
(*a private company incorporated with limited liability in Ireland with registration number 480184*)<sup>26</sup>

**[Specified Currency and Nominal Amount of Tranche]**

**NOTES DUE**

**[Year of Maturity]**

**Series No. [       ]**

Receipt for the sum of [       ] being the instalment of principal payable in accordance with the Terms and Conditions applicable to the Note to which this Receipt appertains (the **Conditions**) on [       ].

This Receipt is issued subject to and in accordance with the Conditions which shall be binding upon the holder of this Receipt (whether or not it is for the time being attached to such Note) and is payable at the specified office of any of the Paying Agents set out on the reverse hereof (and/or any other or further Paying Agents and/or specified offices as may from time to time be duly appointed and notified to the Noteholders).

This Receipt must be presented for payment together with the Note to which it appertains. The Issuer shall have no obligation in respect of any Receipt presented without the Note to which it appertains or any unmatured Receipts.

**[ELECTRICITY SUPPLY BOARD/ ESB FINANCE LIMITED]<sup>27</sup>**

By:

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<sup>25</sup> Delete where the original maturity of the Notes is 1 year or less.

<sup>26</sup> Delete as applicable.

<sup>27</sup> Delete as applicable.

**PART 5**  
**FORM OF COUPON**

[*Face of Coupon*]

**[ANY UNITED STATES PERSON WHO HOLDS THIS OBLIGATION WILL BE SUBJECT TO LIMITATIONS UNDER THE UNITED STATES INCOME TAX LAWS, INCLUDING THE LIMITATIONS PROVIDED IN SECTIONS 165(j) AND 1287(a) OF THE INTERNAL REVENUE CODE.]<sup>28</sup>**

**[ELECTRICITY SUPPLY BOARD,**  
(the **Issuer**)  
(*a body corporate established in Ireland under the Electricity (Supply) Acts 1927 to 2004 of Ireland*)/

**ESB FINANCE LIMITED**  
(the **Issuer**)  
(*a private company incorporated with limited liability in Ireland with registration number 480184*)<sup>29</sup>

**[Specified Currency and Nominal Amount of Tranche]**  
**NOTES DUE**  
**[Year of Maturity]**

**Series No. [     ]**

[Coupon appertaining to a Note in the denomination of [Specified Currency and Specified Denomination]].<sup>30</sup>

**Part A**

**[For Fixed Rate Notes**

This Coupon is payable to bearer, separately Coupon for [     ] due on [     ], [     ] negotiable and subject to the Terms and Conditions of the said Notes under which it may become void before its due date.

**Part B**

**[For Floating Rate Notes or Index Linked Interest Notes**

Coupon for the amount due in accordance with the Terms and Conditions endorsed on, attached to or incorporated by reference into the said Notes on [the Interest Payment Date falling in [     ] [     ]/[     ]].

This Coupon is payable to bearer, separately

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<sup>28</sup> Delete where the original maturity of the Notes is 1 year or less.

<sup>29</sup> Delete as applicable.

<sup>30</sup> Delete where the Notes are all of the same denomination.

negotiable and subject to such Terms and Conditions, under which it may become void before its due date.]

**PART 6**  
**FORM OF TALON**

*[Face of Talon]*

**[ANY UNITED STATES PERSON WHO HOLDS THIS OBLIGATION WILL BE SUBJECT TO LIMITATIONS UNDER THE UNITED STATES INCOME TAX LAWS, INCLUDING THE LIMITATIONS PROVIDED IN SECTIONS 165(j) AND 1287(a) OF THE INTERNAL REVENUE CODE.]<sup>31</sup>**

**[ELECTRICITY SUPPLY BOARD,**  
**(the Issuer)**

*(a body corporate established in Ireland under the Electricity (Supply) Acts 1927 to 2004 of Ireland)/*

**ESB FINANCE LIMITED**  
**(the Issuer)**

*(a private company incorporated with limited liability in Ireland with registration number 480184)]<sup>32</sup>*

**[Specified Currency and Nominal Amount of Tranche]**

**NOTES DUE**

**[Year of Maturity]**

**Series No. [       ]**

[Talon appertaining to a Note in the denomination of [Specified Currency and Specified Denomination]]<sup>33</sup>

On and after [       ] further Coupons [and a further Talon]<sup>34</sup> appertaining to the Note to which this Talon appertains will be issued at the specified office of any of the Paying Agents set out on the reverse hereof (and/or any other or further Paying Agents and/or specified offices as may from time to time be duly appointed and notified to the Noteholders) upon production and surrender of this Talon.

This Talon may, in certain circumstances, become void under the Terms and Conditions endorsed on the Note to which this Talon appertains.

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<sup>31</sup> Delete where the original maturity of the Notes is 1 year or less.

<sup>32</sup> Delete as applicable.

<sup>33</sup> Delete where the Notes are all of the same denomination.

<sup>34</sup> Not required on last Coupon sheet.

*[Reverse of Receipts, Coupons and Talons]*

**PRINCIPAL PAYING AGENT**

Citibank, N.A., London Branch  
Citigroup Centre,  
Canada Square  
Canary Wharf  
London E14 5LB

and/or such other or further Agent or other Paying Agents and/or specified offices as may from time to time be duly appointed by the Issuer and notice of which has been given to the Noteholders.

## SCHEDULE 3

### PROVISIONS FOR MEETINGS OF NOTEHOLDERS

#### DEFINITIONS

1. As used in this Schedule the following expressions shall have the following meanings unless the context otherwise requires:

**Block Voting Instruction** means an English language document issued by a Paying Agent in which:

- (a) it is certified that on the date thereof Notes (whether in definitive form or represented by a Global Note) (not being Notes in respect of which a Voting Certificate has been issued and is outstanding in respect of the meeting specified in such Block Voting Instruction) have been deposited with such Paying Agent or (to the satisfaction of such Paying Agent) are held to its order or under its control or are blocked in an account with a Clearing System and that no such Notes will cease to be so deposited or held or blocked until the first to occur of:
  - (i) the conclusion of the meeting specified in such Block Voting Instruction; and
  - (ii) the surrender to the Paying Agent, not less than 48 Hours before the time for which such meeting is convened, of the receipt issued by such Paying Agent in respect of each such deposited Note which is to be released or (as the case may require) the Notes ceasing with the agreement of the Paying Agent to be held to its order or under its control or so blocked and the giving of notice by the Paying Agent to the Issuer in accordance with paragraph 3(f) of the necessary amendment to the Block Voting Instruction;
- (b) it is certified that each holder of such Notes has instructed such Paying Agent that the vote(s) attributable to the Notes so deposited or held or blocked should be cast in a particular way in relation to the resolution(s) to be put to such meeting and that all such instructions are, during the period commencing 48 Hours prior to the time for which such meeting is convened and ending at the conclusion or adjournment thereof, neither revocable nor capable of amendment;
- (c) the aggregate nominal amount of the Notes so deposited or held or blocked is listed distinguishing with regard to each such resolution between those in respect of which instructions have been given that the votes attributable thereto should be cast in favour of the resolution and those in respect of which instructions have been so given that the votes attributable thereto should be cast against the resolution; and
- (d) one or more persons named in such Block Voting Instruction (each hereinafter called a **proxy**) is or are authorised and instructed by such Paying Agent to cast the votes attributable to the Notes so listed in accordance with the instructions referred to in (c) above as set out in such Block Voting Instruction;

**Clearing System** means Euroclear and/or Clearstream, Luxembourg and includes in respect of any Note any clearing system on behalf of which such Note is held or which is the bearer or holder of a Note, in either case whether alone or jointly with any other Clearing System(s). For the avoidance of doubt, the provisions of subclause 1.2(d) of the Trust Deed shall apply to this definition;



**Eligible Person** means any one of the following persons who shall be entitled to attend and vote at a meeting:

- (a) a holder of a Note in definitive form;
- (b) a bearer of any Voting Certificate; and
- (c) a proxy specified in any Block Voting Instruction;

**Extraordinary Resolution** means:

- (a) a resolution passed at a meeting duly convened and held in accordance with these presents by a majority consisting of not less than three-quarters of the Eligible Persons voting thereat upon a show of hands or, if a poll is duly demanded, by a majority consisting of not less than three-quarters of the votes cast on such poll; or
- (b) a resolution in writing signed by or on behalf of the holders of not less than three-quarters in the principal amount of the Notes for the time being outstanding which resolution may be contained in one document or in several documents in like form each signed by or on behalf of one or more of the Noteholders; or
- (c) consent given by way of electronic consents through the relevant Clearing System(s) (in a form satisfactory to the Trustee) by or on behalf of the holders of not less than three-fourths in principal amount of the Notes for the time being outstanding;

**Ordinary Resolution** means:

- (a) a resolution passed at a meeting duly convened and held in accordance with these presents by a clear majority of the Eligible Persons voting thereat on a show of hands or, if a poll is duly demanded, by a simple majority of the votes cast on such poll; or
- (b) a resolution in writing signed by or on behalf of the holders of not less than a clear majority in the nominal amount of the Notes, which resolution may be contained in one document or in several documents in like form each signed by or on behalf of one or more of the Noteholders;

**Voting Certificate** means an English language certificate issued by a Paying Agent in which it is stated:

- (a) that on the date thereof Notes (whether in definitive form or represented by a Global Note) (not being Notes in respect of which a Block Voting Instruction has been issued and is outstanding in respect of the meeting specified in such Voting Certificate) were deposited with such Paying Agent or (to the satisfaction of such Paying Agent) are held to its order or under its control or are blocked in an account with a Clearing System and that no such Notes will cease to be so deposited or held or blocked until the first to occur of:
  - (i) the conclusion of the meeting specified in such Voting Certificate; and
  - (ii) the surrender of the Voting Certificate to the Paying Agent who issued the same; and
- (b) that the bearer thereof is entitled to attend and vote at such meeting in respect of the Notes represented by such Voting Certificate;

**24 Hours** means a period of 24 hours including all or part of a day upon which banks are open for general business in both the place where the relevant meeting is to be held and in each of the places where the Paying Agents have their specified offices (disregarding for this purpose the day upon which such meeting is to be held) and such period shall be extended by one period or, to the extent necessary, more periods of 24 hours until there is included as aforesaid all or part of a day upon which banks are open for general business in all of the places as aforesaid; and

**48 Hours** means a period of 48 hours including all or part of two days upon which banks are open for general business both in the place where the relevant meeting is to be held and in each of the places where the Paying Agents have their specified offices (disregarding for this purpose the day upon which such meeting is to be held) and such period shall be extended by one period or, to the extent necessary, more periods of 24 hours until there is included as aforesaid all or part of two days upon which banks are open for general business in all of the places as aforesaid.

For the purposes of calculating a period of **Clear Days** in relation to a meeting, no account shall be taken of the day on which the notice of such meeting is given (or, in the case of an adjourned meeting, the day on which the meeting to be adjourned is held) or the day on which such meeting is held.

All references in this Schedule to a "meeting" shall, where the context so permits, include any relevant adjourned meeting.

## **EVIDENCE OF ENTITLEMENT TO ATTEND AND VOTE**

2. A holder of a Note (whether in definitive form or represented by a Global Note) may require the issue by a Paying Agent of Voting Certificates and Block Voting Instructions in accordance with the terms of paragraph 3.

For the purposes of paragraph 3, the Principal Paying Agent and each Paying Agent shall be entitled to rely, without further enquiry, on any information or instructions received from a Clearing System and shall have no liability to any Noteholder or other person for any loss, damage, cost, claim or other liability occasioned by its acting in reliance thereon, nor for any failure by a Clearing System to deliver information or instructions to the Principal Paying Agent or any Paying Agent.

The holder of any Voting Certificate or the proxies named in any Block Voting Instruction shall for all purposes in connection with the relevant meeting be deemed to be the holder of the Notes to which such Voting Certificate or Block Voting Instruction relates and the Paying Agent with which such Notes have been deposited or the person holding Notes to the order or under the control of such Paying Agent or the Clearing System in which such Notes have been blocked shall be deemed for such purposes not to be the holder of those Notes.

## **PROCEDURE FOR ISSUE OF VOTING CERTIFICATES, BLOCK VOTING INSTRUCTIONS AND PROXIES**

3. (a) *Definitive Notes not held in a Clearing System – Voting Certificate*

A holder of a Note in definitive form which is not held in an account with any Clearing System (not being a Note in respect of which a Block Voting Instruction has been issued and is outstanding in respect of the meeting specified in such Voting Certificate) may obtain a Voting Certificate in respect of such Note from a Paying Agent subject to such Noteholder having procured that such Note is deposited with such Paying Agent or (to the satisfaction of such Paying Agent) is held to its order or under its control upon terms that no such Note will cease to be so deposited or held until the first to occur of:

- (i) the conclusion of the meeting specified in such Voting Certificate; and
- (ii) the surrender of the Voting Certificate to the Paying Agent who issued the same.

(b) *Global Notes and definitive Notes held in a Clearing System – Voting Certificate*

A holder of a Note (not being a Note in respect of which instructions have been given to the Agent in accordance with paragraph 3(d)) represented by a Global Note or which is in definitive form and is held in an account with any Clearing System may procure the delivery of a Voting Certificate in respect of such Note by giving notice to the Clearing System through which such Noteholder's interest in the Note is held specifying by name a person (an **Identified Person**) (which need not be the Noteholder himself) to collect the Voting Certificate and attend and vote at the meeting. The relevant Voting Certificate will be made available at or shortly prior to the commencement of the meeting by the Principal Paying Agent against presentation by such Identified Person of the form of identification previously notified by such Noteholder to the Clearing System. The Clearing System may prescribe forms of identification (including, without limitation, a passport or driving licence) which it deems appropriate for these purposes. Subject to receipt by the Principal Paying Agent from the Clearing System, no later than 24 Hours prior to the time for which such meeting is convened, of notification of the nominal amount of the Notes to be represented by any such Voting Certificate and the form of identification against presentation of which such Voting Certificate should be released, the Principal Paying Agent shall, without any obligation to make further enquiry, make available Voting Certificates against presentation of the form of identification corresponding to that notified.

(c) *Definitive Notes not held in a Clearing System – Block Voting Instruction*

A holder of a Note in definitive form which is not held in an account with any Clearing System (not being a Note in respect of which a Voting Certificate has been issued and is outstanding in respect of the meeting specified in such Block Voting Instruction) may require a Paying Agent to issue a Block Voting Instruction in respect of such Note by depositing such Note with such Paying Agent or (to the satisfaction of such Paying Agent) by procuring that, not less than 48 Hours before the time fixed for the relevant meeting, such Note is held to the Paying Agent's order or under its control, in each case on terms that no such Note will cease to be so deposited or held until the first to occur of:

- (i) the conclusion of the meeting specified in such Block Voting Instruction; and
- (ii) the surrender to the Paying Agent, not less than 48 Hours before the time for which such meeting is convened, of the receipt issued by such Paying Agent in respect of each such deposited or held Note which is to be released or (as the case may require) the Note or Notes ceasing with the agreement of the Paying Agent to be held to its order or under its control and the giving of notice by the Paying Agent to the Issuer in accordance with paragraph 3(f) hereof of the necessary amendment to the Block Voting Instruction;

and instructing the Paying Agent that the vote(s) attributable to the Note or Notes so deposited or held should be cast in a particular way in relation to the resolution or resolutions to be put to such meeting and that all such instructions are, during the period commencing 48 Hours prior to the time for which such meeting is convened and ending at the conclusion or adjournment thereof, neither revocable nor capable of amendment.

(d) *Global Notes and definitive Notes held in a Clearing System – Block Voting Instruction*

A holder of a Note (not being a Note in respect of which a Voting Certificate has been issued) represented by a Global Note or which is in definitive form and is held in an account with any Clearing System may require the Agent to issue a Block Voting Instruction in respect of such Note by first instructing the Clearing System through which such Noteholder's interest in the Note is held to procure that the votes attributable to such Note should be cast at the meeting in a particular way in relation to the resolution or resolutions to be put to the meeting. Any such instruction shall be given in accordance with the rules of the Clearing System then in effect. Subject to receipt by the Principal Paying Agent of instructions from the Clearing System, no later than 24 Hours prior to the time for which such meeting is convened, of notification of the nominal amount of the Notes in respect of which instructions have been given and the manner in which the votes attributable to such Notes should be cast, the Principal Paying Agent shall, without any obligation to make further enquiry, appoint a proxy to attend the meeting and cast votes in accordance with such instructions.

- (e) Each Block Voting Instruction, together (if so requested by the Trustee) with proof satisfactory to the Trustee of its due execution on behalf of the relevant Paying Agent, shall be deposited by the relevant Paying Agent at such place as the Trustee shall approve not less than 24 Hours before the time appointed for holding the meeting at which the proxy or proxies named in the Block Voting Instruction proposes to vote, and in default the Block Voting Instruction shall not be treated as valid unless the Chairman of the meeting decides otherwise before such meeting proceeds to business. A copy of each Block Voting Instruction shall be deposited with the Trustee before the commencement of the meeting but the Trustee shall not thereby be obliged to investigate or be concerned with the validity of or the authority of the proxy or proxies named in any such Block Voting Instruction.
- (f) Any vote given in accordance with the terms of a Block Voting Instruction shall be valid notwithstanding the previous revocation or amendment of the Block Voting Instruction or of any of the instructions of the relevant Noteholder or the relevant Clearing System (as the case may be) pursuant to which it was executed provided that no intimation in writing of such revocation or amendment has been received from the relevant Paying Agent by the Issuer at its registered office (or such other place as may have been required or approved by the Trustee for the purpose) by the time being 24 Hours before the time appointed for holding the meeting at which the Block Voting Instruction is to be used.

#### **CONVENING OF MEETINGS, QUORUM AND ADJOURNED MEETINGS**

- 4. The relevant Issuer, the Guarantor or the Trustee may at any time, and the relevant Issuer shall upon a requisition in writing in the English language signed by the Noteholders of not less than five per cent. in nominal amount of the Notes of any Series for the time being outstanding, convene a meeting and if the relevant Issuer makes default for a period of seven days in convening such a meeting the same may be convened by the Trustee or the requisitionists. Whenever the relevant Issuer or the Guarantor is about to convene any such meeting the relevant Issuer or the Guarantor, as the case may be, shall forthwith give notice in writing to the Trustee of the day, time and place thereof and of the nature of the business to be transacted thereat. Every such meeting shall be held at such time and place as the Trustee may appoint or approve in writing.
- 5. At least 21 Clear Days' notice specifying the place, day and hour of meeting shall be given to the Noteholders prior to any meeting in the manner provided by Condition 14 (*Notices*). Such notice, which shall be in the English language, shall state generally the nature of the business to be transacted at the meeting thereby convened and, in the case of an Extraordinary Resolution, shall either specify in such notice the terms of such resolution or state fully the effect on the Noteholders of such resolution, if passed. Such notice shall include statements as to the manner in which Noteholders may arrange for Voting Certificates or Block Voting Instructions to be issued. A copy

of the notice shall be sent by post to the Trustee (unless the meeting is convened by the Trustee), to the relevant Issuer (unless the meeting is convened by the relevant Issuer) and to the Guarantor (unless the meeting is convened by the Guarantor).

6. A person (who may but need not be a Noteholder) nominated in writing by the Trustee shall be entitled to take the chair at the relevant meeting, but if no such nomination is made or if at any meeting the person nominated shall not be present within 15 minutes after the time appointed for holding the meeting the Noteholders present shall choose one of their number to be Chairman, failing which the Issuer may appoint a Chairman. The Chairman of an adjourned meeting need not be the same person as was Chairman of the meeting from which the adjournment took place.
7. At any such meeting one or more Eligible Persons present and holding or representing in the aggregate not less than one-tenth in the nominal amount of the Notes for the time being outstanding shall (except for the purpose of passing an Extraordinary Resolution) form a quorum for the transaction of business (including the passing of an Ordinary Resolution) and no business (other than the choosing of a Chairman) shall be transacted at any meeting unless the requisite quorum be present at the commencement of the relevant business. The quorum at any such meeting for passing an Extraordinary Resolution shall (subject as provided below) be one or more Eligible Persons present and holding or representing in the aggregate not less than 50 per cent. in nominal amount of the Notes for the time being outstanding PROVIDED THAT at any meeting the business of which includes any of the following matters (each of which shall, subject only to Clauses 20 and 23 of the Trust Deed, only be capable of being effected after having been approved by Extraordinary Resolution) namely:
  - (a) reduction or cancellation of the amount payable or, where applicable, modification, except where such modification is in the opinion of the Trustee bound to result in an increase, of the method of calculating the amount payable or modification of the date of payment or, where applicable, of the method of calculating the date of payment in respect of any principal or interest in respect of the Notes;
  - (b) alteration of the currency other than redenomination into euro in which payments under the Notes and Coupons are to be made;
  - (c) alteration of the majority required to pass an Extraordinary Resolution;
  - (d) the sanctioning of any such scheme or proposal or substitution as is described in paragraphs 19(i) and (j); and
  - (e) alteration of this proviso or the proviso to paragraph 9,

the quorum shall be one or more Eligible Persons present and holding or representing in the aggregate not less than two-thirds of the nominal amount of the Notes for the time being outstanding.

8. If within 15 minutes (or such longer period not exceeding 30 minutes as the Chairman may decide) after the time appointed for any such meeting a quorum is not present for the transaction of any particular business, then, subject and without prejudice to the transaction of the business (if any) for which a quorum is present, the meeting shall if convened upon the requisition of Noteholders be dissolved. In any other case it shall stand adjourned to the same day in the next week (or if such day is a public holiday the next succeeding business day) at the same time and place (except in the case of a meeting at which an Extraordinary Resolution is to be proposed in which case it shall stand adjourned for such period, being not less than 13 Clear Days nor more than 42 Clear Days, and to such place as may be appointed by the Chairman either at or subsequent to such meeting and approved by the Trustee). If within 15 minutes (or such longer period not exceeding 30 minutes as the Chairman may decide) after the time appointed for any adjourned meeting a quorum is not

present for the transaction of any particular business, then, subject and without prejudice to the transaction of the business (if any) for which a quorum is present, the Chairman may either (with the approval of the Trustee) dissolve such meeting or adjourn the same for such period, being not less than ten Clear Days (but without any maximum number of Clear Days), and to such place as may be appointed by the Chairman either at or subsequent to such adjourned meeting and approved by the Trustee, and the provisions of this sentence shall apply to all further adjourned such meetings.

9. At any adjourned meeting one or more Eligible Persons present (whatever the nominal amount of the Notes so held or represented by them) shall (subject as provided below) form a quorum and shall have power to pass any resolution and to decide upon all matters which could properly have been dealt with at the meeting from which the adjournment took place had the requisite quorum been present PROVIDED THAT at any adjourned meeting the quorum for the transaction of business comprising any of the matters specified in the proviso to paragraph 7 shall be one or more Eligible Persons present and holding or representing in the aggregate not less than one-third in the nominal amount of the Notes for the time being outstanding.
10. Notice of any adjourned meeting at which an Extraordinary Resolution is to be submitted shall be given in the same manner as notice of an original meeting but as if 10 were substituted for 21 in paragraph 5 and such notice shall state the required quorum. Subject as aforesaid it shall not be necessary to give any notice of an adjourned meeting.

#### **CONDUCT OF BUSINESS AT MEETINGS**

11. Every question submitted to a meeting shall be decided in the first instance by a show of hands. A poll may be demanded (before or on the declaration of the result of the show of hands) by the Chairman, the relevant Issuer, the Guarantor, the Trustee or any Eligible Person (whatever the amount of the Notes so held or represented by him).
12. At any meeting, unless a poll is duly demanded, a declaration by the Chairman that a resolution has been carried or carried by a particular majority or lost or not carried by a particular majority shall be conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against such resolution.
13. Subject to paragraph 15, if at any such meeting a poll is so demanded it shall be taken in such manner and, subject as hereinafter provided, either at once or after an adjournment as the Chairman directs and the result of such poll shall be deemed to be the resolution of the meeting at which the poll was demanded as at the date of the taking of the poll. The demand for a poll shall not prevent the continuance of the meeting for the transaction of any business other than the motion on which the poll has been demanded.
14. The Chairman may, with the consent of (and shall if directed by) any such meeting, adjourn the same from time to time and from place to place; but no business shall be transacted at any adjourned meeting except business which might lawfully have been transacted at the meeting from which the adjournment took place.
15. Any poll demanded at any such meeting on the election of a Chairman or on any question of adjournment shall be taken at the meeting without adjournment.
16. Any director or officer of the Trustee, its lawyers and financial advisors, any director or officer of the relevant Issuer or, as the case may be, the Guarantor, their lawyers and financial advisors, any director or officer of any of the Paying Agents and any other person authorised so to do by the Trustee may attend and speak at any meeting. Save as aforesaid, no person shall be entitled to attend and speak nor shall any person be entitled to vote at any meeting unless he is an Eligible Person. No

person shall be entitled to vote at any meeting in respect of Notes which are deemed to be not outstanding by virtue of the proviso to the definition of "outstanding" in Clause 1 of the Trust Deed.

17. At any meeting:
- (a) on a show of hands every Eligible Person present shall have one vote; and
  - (b) on a poll every Eligible Person present shall have one vote in respect of each EUR1.00 or such other amount as the Trustee may in its absolute discretion stipulate (or, in the case of meetings of holders of Notes denominated in another currency, such amount in such other currency as the Trustee in its absolute discretion may stipulate), in nominal amount of the Notes held or represented by such Eligible Person.

Without prejudice to the obligations of the proxies named in any Block Voting Instruction, any Eligible Person entitled to more than one vote need not use all his votes or cast all the votes to which he is entitled in the same way.

18. The proxies named in any Block Voting Instruction need not be Noteholders. Nothing herein shall prevent any of the proxies named in any Block Voting Instruction from being a director, officer or representative of or otherwise connected with the relevant Issuer or the Guarantor.
19. A meeting shall in addition to the powers hereinbefore given have the following powers exercisable only by Extraordinary Resolution (subject to the provisions relating to quorum contained in paragraphs 7 and 9 and without prejudice to the provisions of Clause 23 of the Trust Deed) namely:
- (a) Power to sanction any compromise or arrangement proposed to be made between the relevant Issuer, the Guarantor, the Trustee, any attorney, manager, agent, delegate, nominee, custodian or other person (each, an Appointee) and the Noteholders and Couponholders or any of them.
  - (b) Power to sanction any abrogation, modification, compromise or arrangement in respect of the rights of the Trustee, any Appointee, the Noteholders, the Couponholders, the relevant Issuer or the Guarantor against any other or others of them or against any of their property whether such rights arise under these presents or otherwise.
  - (c) Power to assent to any modification of the provisions of these presents which is proposed by the relevant Issuer, the Guarantor, the Trustee or any Noteholder.
  - (d) Power to give any authority or sanction which under the provisions of these presents is required to be given by Extraordinary Resolution.
  - (e) Power to appoint any persons (whether Noteholders or not) as a committee or committees to represent the interests of the Noteholders and to confer upon such committee or committees any powers or discretions which the Noteholders could themselves exercise by Extraordinary Resolution.
  - (f) Power to approve of a person to be appointed a trustee and power to remove any trustee or trustees for the time being of these presents.
  - (g) Power to discharge or exonerate the Trustee and/or any Appointee from all liability in respect of any act or omission for which the Trustee and/or such Appointee may have become responsible under these presents.

- (h) Power to authorise the Trustee and/or any Appointee to concur in and execute and do all such deeds, instruments, acts and things as may be necessary to carry out and give effect to any Extraordinary Resolution.
  - (i) Power to sanction any scheme or proposal for the exchange or sale of the Notes for or the conversion of the Notes into or the cancellation of the Notes in consideration of shares, stock, notes, bonds, debentures, debenture stock and/or other obligations and/or securities of the Issuer or any other company formed or to be formed, or for or into or in consideration of cash, or partly for or into or in consideration of such shares, stock, notes, bonds, debentures, debenture stock and/or other obligations and/or securities as aforesaid and partly for or into or in consideration of cash.
  - (j) Power to approve the substitution of any entity for the relevant Issuer and/or the Guarantor (or any previous substitute) as principal debtor and/or guarantor, as the case may be, under these presents.
20. Any resolution passed (i) at a meeting of the Noteholders duly convened and held in accordance with these presents (ii) passed as a resolution in writing in accordance with these presents or (iii) passed by way of electronic consents given by holders through the relevant Clearing System(s) in accordance with these presents shall be binding upon all the Noteholders whether or not present or whether or not represented at any meeting and whether or not voting on the resolution and upon all Receiptholders, Couponholders and Talonholders and each of them shall be bound to give effect thereto accordingly and the passing of any such resolution shall be conclusive evidence that the circumstances justify the passing thereof. Notice of the result of the voting on any resolution duly considered by the Noteholders shall be published in accordance with Condition 14 (*Notices*) by the relevant Issuer within 14 days of such result being known, PROVIDED THAT the non-publication of such notice shall not invalidate such result.
21. Minutes of all resolutions and proceedings at every meeting shall be made and entered in books to be from time to time provided for that purpose by the relevant Issuer and any such minutes as aforesaid, if purporting to be signed by the Chairman of the meeting at which such resolutions were passed or proceedings transacted, shall be conclusive evidence of the matters therein contained and, until the contrary is proved, every such meeting in respect of the proceedings of which minutes have been made shall be deemed to have been duly held and convened and all resolutions passed or proceedings transacted thereat to have been duly passed or transacted.
22. (a) If and whenever the Issuers have issued and have outstanding Notes of more than one Series, the foregoing provisions of this Schedule shall have effect subject to the following modifications:
- (i) a resolution which in the opinion of the Trustee affects the Notes of only one Series shall be deemed to have been duly passed if passed at a separate meeting of the holders of the Notes of that Series;
  - (ii) a resolution which in the opinion of the Trustee affects the Notes of more than one Series but does not give rise to a conflict of interest between the holders of Notes of any of the Series so affected shall be deemed to have been duly passed if passed at a single meeting of the holders of the Notes of all the Series so affected;
  - (iii) a resolution which in the opinion of the Trustee affects the Notes of more than one Series and gives or may give rise to a conflict of interest between the holders of the Notes of one Series or group of Series so affected and the holders of the Notes of another Series or group of Series so affected shall be deemed to have been duly



passed only if passed at separate meetings of the holders of the Notes of each Series or group of Series so affected; and

(iv) to all such meetings all the preceding provisions of this Schedule shall apply *mutatis mutandis* as though references therein to Notes and Noteholders were references to the Notes of the Series or group of Series in question or to the holders of such Notes, as the case may be.

(b) If the relevant Issuer has issued and has outstanding Notes which are not denominated in EUR, or in the case of any meeting of the holders of Notes of more than one currency, the nominal amount of such Notes shall:

(i) for the purposes of paragraph 4, be the equivalent in EUR at the spot rate of a bank nominated by the Trustee for the conversion of the relevant currency or currencies into EUR on the seventh dealing day prior to the day on which the requisition in writing is received by the relevant Issuer; and

(ii) for the purposes of paragraphs 7, 9 and 17 (whether in respect of the meeting or any adjourned such meeting or any poll resulting therefrom), be the equivalent at such spot rate on the seventh dealing day prior to the day of such meeting.

In such circumstances, on any poll each person present shall have one vote for each EUR1.00 (or such other EUR amount as the Trustee may in its absolute discretion stipulate) in the nominal amount of the Notes (converted as above) which he holds or represents.

(c) In the case of any meeting of the holders of the Notes of a Series which is not denominated in EUR, each person present shall have one vote for such amount of such currency as the Trustee may in its absolute discretion stipulate.

23. Subject to all other provisions of these presents the Trustee may (after consultation with the relevant Issuer and the Guarantor where the Trustee considers such consultation to be practicable but without the consent of the relevant Issuer, the Guarantor, the Noteholders, the Receiptholders or the Couponholders) prescribe such further or alternative regulations regarding the requisitioning and/or the holding of meetings and attendance and voting thereat as the Trustee may in its sole discretion reasonably think fit (including, without limitation, the substitution for periods of 24 Hours and 48 Hours referred to in this Schedule of shorter periods). Such regulations may, without prejudice to the generality of the foregoing, reflect the practices and facilities of any relevant Clearing System. Notice of any such further or alternative regulations may, at the sole discretion of the Trustee, be given to Noteholders in accordance with Condition 14 (*Notices*) at the time of service of any notice convening a meeting or at such other time as the Trustee may decide.

## SCHEDULE 4

### FORM OF SENIOR OFFICER'S CERTIFICATE

[ON THE HEADED PAPER OF THE RELEVANT [ISSUER/GUARANTOR]]

To: Citicorp Trustee Company Limited  
Citigroup Centre  
Canada Square  
Canary Wharf  
London E14 5LB

[Date]

Dear Sirs

**[Description of Notes]**

This certificate is delivered to you in accordance with Clause 14(f) of the Trust Deed dated 12 February 2010 (the **Trust Deed**) and made between ESB Finance Limited (**ESB Finance** and as an **Issuer**), Electricity Supply Board (**ESB** and as an **Issuer** and the **Guarantor** (in the case of Notes issued by ESB Finance)) and Citicorp Trustee Company Limited (the **Trustee**). All words and expressions defined in the Trust Deed shall (save as otherwise provided herein or unless the context otherwise requires) have the same meanings herein.

I hereby certify that, to the best of my knowledge, information and belief (having made all reasonable enquiries):

- (a) as at [ ]<sup>35</sup>, no Event of Default, Potential Event of Default, Event Risk Put Event or Change of Control Event existed [other than [ ]<sup>36</sup> and no Event of Default, Potential Event of Default, Event Risk Put Event or Change of Control Event had existed at any time since [ ]<sup>37</sup> [the certification date (as defined in the Trust Deed) of the last certificate delivered under Clause 14(f)]<sup>38</sup> [other than [ ]<sup>39</sup>; and
- (b) from and including [ ]<sup>37</sup> [the certification date of the last certificate delivered under Clause 14(f)]<sup>38</sup> to and including [ ]<sup>35</sup>, [each of] the ESB/ESB Finance [and the Guarantor] has complied in all respects with its obligations under these presents (as defined in the Trust Deed) [other than [ ]<sup>40</sup>.

For and on behalf of

**[Electricity Supply Board / ESB Finance Limited]**

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<sup>35</sup> Specify a date not more than 7 days before the date of delivery of the certificate.

<sup>36</sup> If any Event of Default, Potential Event of Default, Event Risk Put Event or Change of Control Event did exist, give details; otherwise delete.

<sup>37</sup> Insert date of Trust Deed in respect of the first certificate delivered under Clause 14(f), otherwise delete.

<sup>38</sup> Include unless the certificate is the first certificate delivered under Clause 14(f), in which case delete.

<sup>39</sup> If any Event of Default, Potential Event of Default, Event Risk Put Event or Change of Control Event did exist, give details; otherwise delete.

<sup>40</sup> If the Issuer [and/or Guarantor] has failed to comply with any obligation(s), give details; otherwise delete.

.....

**[Title]**

**SIGNATORIES**

THE SEAL of )  
**ELECTRICITY SUPPLY BOARD** )  
was affixed to this deed and this Deed was delivered )  
by )

*[Handwritten signature]*  
.....

*[Handwritten signature]*  
.....



PRESENT when the COMMON SEAL )  
of **ESB FINANCE LIMITED** )  
was affixed hereto and this Deed was delivered by )

*[Handwritten signature]*  
.....

Director

*[Handwritten signature]*  
.....

Director/Secretary



**THE COMMON SEAL** of )  
**CITICORP TRUSTEE COMPANY LIMITED** )  
was affixed to this deed in )  
the presence of: )

Authorised Signatory

Authorised Signatory