

Date: 15 August 2012

**AMENDED AND RESTATED GUARANTEE**

between

**KAGISO TISO HOLDINGS PROPRIETARY LIMITED (RF)**  
as Guarantor

and

**GMG TRUST COMPANY (SA) PROPRIETARY LIMITED**  
as Representative  
(acting in its capacity as the Representative of the Noteholders)

conferred by the Guarantor as a *stipulatio alteri* for the benefit of the Noteholders

relating to

**Kagiso Sizanani Capital Limited (RF)**  
**ZAR2 000 000 000 Domestic Note and Redeemable Preference Share Programme**  
unconditionally and irrevocably

guaranteed or in respect of which a put option has been conferred by  
Kagiso Tiso Holdings Proprietary Limited (RF)

CERTIFIED A TRUE COPY OF THE ORIGINAL  
THIS 20<sup>th</sup> DAY OF August 2012

TAYYIBAH SULTMAN  
COMMISSIONER OF OATHS  
EX OFFICIO  
PRACTISING ATTORNEY RSA  
1 PROTEA PLACE, SANDOWN, JOHANNESBURG

 **DLA CLIFFE DEKKER  
HOFMEYR**



## 1 PARTIES

The parties to this Amended and Restated Guarantee ("**Guarantee**") are:

- 1.1 Kagiso Tiso Holdings Proprietary Limited (RF) (Registration Number 2011/000848/07) ("**Guarantor**"); and
- 1.2 GMG Trust Company (SA) Proprietary Limited (Registration Number 2006/013631/07) ("**GMG Trust**" and, where applicable, the "**Representative**"), acting in its capacity as the Representative on behalf of the Noteholders pursuant to the Representative Agreement (as defined in paragraph G below).

## WHEREAS

- A. The Issuer established a ZAR1 000 000 000 Domestic Note and Redeemable Preference Share Programme ("**Programme**"), pursuant to the Programme Memorandum dated 16 September 2004 (as amended and/or supplemented from time to time) ("**Previous Programme Memorandum**").
- B. Kagiso Sizanani Capital Limited (RF) (Registration Number 2003/028948/07) ("**Issuer**"), Kagiso Trust Investments (Proprietary) Limited (Registration Number 1993/007845/07) ("**KTI**") and Harrow Court Trustees (Proprietary) Limited (Registration Number 2000/017999/07) ("**Harrow Court Trustees**") entered into a Representative Agreement on 16 September 2004 in respect of the Programme ("**Previous Representative Agreement**"), which was subsequently acceded to by Sentinel International Trust Company (Proprietary) Limited (Registration Number 1936/007597/07) (as the first successor Representative) and then by GMG Trust (as the final successor Representative).
- C. KTI and Harrow Court Trustees, acting in its capacity as the Representative for the benefit and on behalf of the Noteholders pursuant to the Previous Representative Agreement, entered into a Guarantee on 16 September 2004 ("**Previous Guarantee**").
- D. Following the merger between Tiso Group (Proprietary) Limited and KTI to form the Guarantor, with the consent of the Instrument Holders of Tranches of Instruments in issue under the Programme prior to the date of the Programme Memorandum (as defined below) ("**Existing Tranches**"), the Issuer has amended and updated the Previous Programme Memorandum, on the basis set out in the Programme Memorandum to be dated on or about 15 August 2012 ("**New Programme Memorandum**"), and has increased the Programme Amount to ZAR2 000 000 000.

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1 PROTEA PLACE, SANDOWN, JOHANNESBURG

As to the extent expressly agreed in writing between the Issuer, the Guarantor and the

Instrument Holder/s of Existing Tranches, the Programme Memorandum applies to all unsecured guaranteed registered notes ("Notes") and registered cumulative non-participating redeemable preference shares ("Redeemable Preference Shares") in issue under the Programme prior to the date of the Programme Memorandum ("Programme Date") and all Notes and Redeemable Preference Shares issued under the Programme on or after the Programme Date and, in respect of such Notes and Redeemable Preference Shares, supersedes and replaces the Previous Programme Memorandum in its entirety.

- F. The Instruments have been or will be issued in individual Tranches which, together with other Tranches, may form a Series of Instruments. Save to the extent expressly agreed in writing between the Issuer, the Guarantor and the Instrument Holder/s of Existing Tranches, each Tranche of Instruments will be subject to the Terms and Conditions set out in Section 7 of the Programme Memorandum headed "**Terms and Conditions of the Instruments**" ("**Terms and Conditions**"); provided that the Applicable Pricing Supplement may specify other terms and conditions (which may replace, modify, or supplement the Terms and Conditions), in which event such other terms and conditions shall, to the extent so specified in the Applicable Pricing Supplement or to the extent inconsistent with the Terms and Conditions, replace, modify or supplement the Terms and Conditions for the purpose of such Tranche of Instruments and all references to "**Terms and Conditions**" in the Programme Memorandum and/or this Guarantee shall, for the purpose of that Tranche of Instruments, wherever the context requires, be deemed to include the Terms and Conditions as so replaced, modified or supplemented.
- G. The Amended and Restated Representative Agreement, entered into between the Issuer, the Guarantor and GMG Trust (as Representative) on or about the date of this Guarantee ("**Representative Agreement**") supersedes the Previous Representative Agreement on and with effect from the Programme Date.

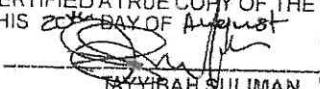
**THE PARTIES AGREE AS FOLLOWS:**

**2 INTERPRETATION**

2.1 Capitalised terms used in this Guarantee are defined in the Terms and Conditions unless separately defined in this Guarantee and/or the Applicable Pricing Supplement.

2.2 The Terms and Conditions are attached to this Guarantee as Annexure "A". In the event of any inconsistency between the provisions of this Guarantee and the Terms and Conditions, the Terms and Conditions shall prevail. References in this Guarantee to any Condition are to that Condition of the Terms and Conditions.

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- 2.3 For purposes of this Guarantee:
- 2.3.1 the Representative will, in respect of the Notes and this Guarantee, act as the Representative of the Noteholders, for the benefit and on behalf of the Noteholders, in accordance with the Terms and Conditions, the Representative Agreement and this Guarantee;
- 2.3.2 subject to clause 6, the Guarantor will act on the instructions of the Representative in making payments under the Guarantee, and the Paying Agent will act on the instructions of the Representative in disbursing such payments to the relevant Group of Noteholders, in accordance with the Terms and Conditions, the Representative Agreement and the Paying Agency Agreement; and
- 2.3.3 the Representative will not hold or own or administer any property for the benefit of Noteholders.

### 3 PREVIOUS GUARANTEE

This Guarantee supersedes the Previous Guarantee on and with effect from the Programme Date.

### 4 THE REPRESENTATIVE

The Representative acts as the representative of the Noteholders for purposes of, among other things, making demands under this Guarantee for the benefit and on behalf of the relevant Group of Noteholders, in accordance with the Representative Agreement and the Terms and Conditions. Subject to Condition 18.2, only the Representative may enforce the Terms and Conditions, this Guarantee and the Representative Agreement, and no Noteholder shall be entitled to proceed directly against the Issuer and/or the Guarantor.

### 5 THE GUARANTEE

- 5.1 The Guarantor hereby irrevocably and unconditionally agrees (as primary obligor and not merely as surety), following an Event of Default and the Enforcement of the Guarantee in respect of a Tranche of Notes, to pay the Guarantee Amount to the relevant Group of Noteholders on the Guarantee Payment Date, on the terms and conditions of this Guarantee, the Terms and Conditions, the Representative Agreement and the Paying Agency Agreement.

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5.2 This Guarantee is in addition to and not in substitution for any other rights which the Representative or the Noteholders or any of them may have under or by virtue of the Representative Agreement and the Paying Agency Agreement.

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of the Terms and Conditions and the Notes, and may be enforced without first having recourse to any such rights and without taking any steps, actions or proceedings against the Issuer. In particular, this Guarantee may be enforced on each and every occasion on which an Event of Default occurs and is continuing in relation to any Tranche of Instruments, notwithstanding that any call under this Guarantee may have been made previously by the Representative or that any proceedings may have been commenced against the Guarantor in respect of sums already due under this Guarantee.

- 5.3 This Guarantee shall be binding on the Guarantor with respect to the Notes even though payment under the Notes is held to be void or unenforceable for any reason and this Guarantee shall continue to be binding on the Guarantor with respect to any payment, or any part thereof, of the Guarantee Amount that is rescinded or must otherwise be returned by the Paying Agent or any Noteholder, if such rescission or return of payment has been compelled by law as the result of the insolvency of the Issuer or any other person or if such rescission or return of payment is a result of any law, regulation or decree applicable to the Issuer or such person.
- 5.4 The Guarantor hereby renounces all benefits arising from the legal exceptions "*non causa debiti*" and "*beneficia excussionis et divisionis*", with the force and effect of which the Guarantor hereby declares itself to be fully acquainted, it being agreed that the Representative shall not be required to make demand for payment from the Issuer prior to making demand for payment from the Guarantor under this Guarantee and the Representative Agreement.
- 5.5 No action in respect of collateral or security (if any) given by the Issuer, or any other person, in respect of the Notes is required to be taken before action is taken by the Representative against the Guarantor under this Guarantee and the Representative Agreement, and the existence or enforceability of this Guarantee shall not affect or be affected by any other security held in respect of the Issuer's obligations under the Notes.
- 5.6 Any admission made by the Issuer in respect of the Notes shall be binding on the Guarantor.
- 5.7 The Representative may from time to time make any arrangement or compromise with the Guarantor in relation to this Guarantee which the Representative may think fit, provided that the Representative shall have obtained the prior (a) written consent of the Noteholders holding or representing not less than two-thirds of the

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Outstanding Principal Amount of all of the Notes, or (b) the sanction by an Extraordinary Resolution of all of the Noteholders, as the case may be, to the terms of such arrangement or compromise.

- 5.8 The Guarantor shall not, without the prior (a) written consent of the Noteholders holding or representing not less than two-thirds of the Outstanding Principal Amount of all of the Notes, or (b) the sanction by an Extraordinary Resolution of all of the Noteholders, as the case may be, at any time after an Event of Default has occurred and is continuing in relation to any Tranche of Instruments or default has been made by the Guarantor in the payment of the Guarantee Amount (or any portion thereof) under or pursuant to this Guarantee and so long as any moneys payable by the Guarantor in terms of this Guarantee remain unpaid, exercise in respect of the Guarantee Amount (or any portion thereof) paid under this Guarantee any right of subrogation or any other right or remedy which may accrue to the Guarantor in respect of or as a result of such payment.

## 6 ENFORCEMENT OF THE GUARANTEE

- 6.1 Upon the occurrence of a Potential Event of Default, the Representative shall send the written notice/s to the Issuer and/or the Guarantor contemplated in the relevant Sub-Paragraph of Condition 17.1).
- 6.2 If the Representative is so instructed by an Extraordinary Resolution of the relevant Group of Noteholders, the Representative shall, following the occurrence of an Event of Default, send a written notice to the Issuer (with a copy to the Guarantor) which notice shall declare that the relevant Notes are immediately repayable on the Early Termination Date, whereupon the relevant Notes shall become immediately repayable on the Early Termination Date
- 6.3 If, following the relevant notice contemplated in clause 6.2, all amounts which are due and payable under the relevant Notes are not paid in full on or before the Early Termination Date, the Representative shall demand payment of the Guarantee Amount from the Guarantor by delivering a Demand to the Issuer and the Guarantor, subject to and in accordance with Condition 18.3 and the Representative Agreement, and the Guarantee Amount shall be due and payable to the relevant Group of Noteholders on the Guarantee Amount Payment Date.

6.4

Forthwith upon receipt of notice from the Issuer that any Potential Event of Default or Event of Default, as the case may be, has occurred and is continuing, the Calculation Agent is required, in terms of the Calculation Agency Agreement,

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1 PROTEA PLACE, SANDOWN, JOHANNESBURG




among other things, (i) to liaise with the Representative for purposes of ascertaining whether there is to be an Enforcement of the Guarantee and, if so, the Guarantee Amount Payment Date, (ii) to calculate the Guarantee Amount payable to the relevant Group of Noteholders, unless otherwise specified in the Applicable Pricing Supplement, in accordance with Condition 18.5.1 and, if otherwise specified in the Applicable Pricing Supplement, in accordance with the applicable provisions of the Applicable Pricing Supplement and (iii) to notify, among other persons, the Issuer, the Guarantor, the Representative and the Paying Agent of the Guarantee Amount.

- 6.5 The provisions of Condition 12.3 shall apply *mutatis mutandis* to all determinations of the Guarantee Amount made by the Calculation Agent in terms of the Calculation Agency Agreement, the Terms and Conditions and this Guarantee and (ii) to any dispute of such determination by any Noteholder.
- 6.6 The Guarantor shall, upon receipt of the Demand from the Representative, in accordance with the Representative Agreement and the Paying Agency Agreement, procure (by no later than the Business Day preceding the Guarantee Amount Payment Date) that an amount equivalent to the Guarantee Amount is paid, in freely transferable funds, into the guarantee bank account specified for this purpose by the Paying Agent.
- 6.7 In terms of the Representative Agreement, the Representative is required, at the same time that it sends the Demand to the Guarantor, to instruct the Paying Agent, in writing, of (i) the manner in which the Guarantee Amount is to be disbursed to the relevant Group of Noteholders, (ii) the Guarantee Amount Payment Date, and (iii) whether, pursuant to Condition 13.5, the holders of Individual Certificates evidencing the relevant Notes are required to surrender such Individual Certificates to the Transfer Secretary (the "**Representative Guarantee Instructions**").
- 6.8 The Paying Agent is required, in terms of and subject to the Paying Agency Guarantee, to disburse the Guarantee Amount, on behalf of the Guarantor, to the relevant Group of Noteholders, in accordance with the Representative Guarantee Instructions, by no later than 16h00 (South Africa time) on the Guarantee Amount Payment Date.
- 6.9 The Guarantor shall not be responsible for the loss in transmission of any funds ~~originally~~ by the Paying Agent to the relevant Group of Noteholders, and payment of the Guarantee Amount by the Guarantor to the Paying Agent (into the guarantee bank account specified for this purpose by the Paying Agent) in accordance with the

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Representative Agreement and the Paying Agency Agreement, shall *pro tanto* cure the relevant default of the Issuer and shall be satisfaction *pro tanto*, to the extent of the Guarantee Amount, of the Guarantor's obligations to the relevant Group of Noteholders under this Guarantee, the Terms and Conditions, the Representative Agreement and the Paying Agency Agreement.

- 6.10 All payments of the Guarantee Amount made by (or on behalf of) the Guarantor to the relevant Group of Noteholders will be made without withholding or deduction for, or on account of, any Tax imposed or levied by, or on behalf of, South Africa, or any political sub-division or any authority in South Africa having power to tax, unless such withholding or deduction is required by Applicable Law. If any such withholding or deduction is required to be made by Applicable Law in respect of Tax imposed or levied on any payments of the Guarantee Amount made by (or on behalf of) the Guarantor to the relevant Group of Noteholders, the Guarantor will make such payments after such withholding or deduction has been made and will account to the relevant Taxation authorities for the amount so required to be withheld or deducted.

## 7 COMPANIES ACT

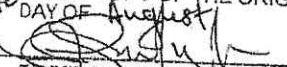
- 7.1 The Guarantor undertakes to the Noteholders that for as long as this Agreement remains in effect, the Guarantor shall, to the extent that it is within the control of the Guarantor –

- 7.1.1 in the event that business rescue proceedings have commenced in relation to the Guarantor or the Issuer in accordance with the provisions of Chapter 6 of the Companies Act, not –

7.1.1.1 vote in favour of amending, approving or rejecting a proposed business rescue plan in relation to such business rescue proceedings in the manner contemplated in section 152 of the Companies Act;

7.1.1.2 propose the development of an alternative business rescue plan in the manner contemplated in section 152 of the Companies Act; and/or

7.1.1.3 present an offer to acquire the interest of any or all of the other creditors of the Guarantor or the Issuer in a manner contemplated in section 153 of the Companies Act,

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if such vote, proposal or offer would reduce or delay payment of the amounts payable to the Noteholders under this Guarantee;

- 7.1.2 pass all resolutions (if any) as may be necessary to ensure that the provisions of the Companies Act are complied with to the extent necessary for the purposes of this Guarantee; and
- 7.1.3 provide the Noteholders with all information regarding any shareholders or directors resolutions relating to the entry into of business rescue proceedings by the Guarantor or the Issuer and shall consult with the Noteholders regarding the appointment of any business rescue practitioner.
- 7.2 All costs and expenses incurred in connection with the implementation by the Guarantor of any of the provisions of the Companies Act shall be borne and paid by the Guarantor.


## 8 WARRANTIES

The Guarantor represents and warrants in favour of the Noteholders on a continuing basis for as long as this Guarantee remains in effect that:

- 8.1 it is a private limited liability company duly incorporated and validly existing under the laws of South Africa with full power and authority to conduct its business as described in the Programme Memorandum, and is lawfully qualified to carry out its business in those jurisdictions in which such business is conducted by it;
- 8.2 it has full power and capacity to enter into this Guarantee, and to undertake and to perform the obligations expressed to be assumed by it in respect of the Terms and Conditions and this Guarantee;
- 8.3 neither the execution of this Guarantee, nor the performance of the obligations expressed to be assumed by it in respect of the Terms and Conditions and this Guarantee will:
- 8.3.1 conflict with, or result in a breach of or default under, any of the terms or provisions of the Memorandum of Incorporation of the Guarantor and/or the laws of South Africa;

8.3.2 conflict with, or result in a breach of or default under any undertaking or other agreement or instrument to which the Guarantor is a party or by

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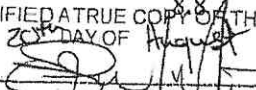


which the Guarantor is bound, which breach or default has or is likely to have a material adverse effect on the Guarantor's ability to perform any of its obligations under this Guarantee;

- 8.3.3 infringe any existing applicable law, rule, regulation, judgement, order or decree of any government, governmental body or court, domestic or foreign, having jurisdiction over the Guarantor and/or any of its assets, which infringement has or is likely to have a material adverse effect on the Guarantor's ability to perform any of its obligations under this Guarantee;
- 8.4 save as disclosed in the Programme Memorandum, the Guarantor is not involved in any litigation or arbitration proceedings or administrative proceedings instituted by a governmental authority or regulatory body relating to claims or amounts which are likely to have a material adverse effect on the ability of the Guarantor to perform any of its obligations under the Terms and Conditions or this Guarantee nor, so far as the Guarantor is aware, are any such litigation or arbitration proceedings or administrative proceedings pending or threatened;
- 8.5 it is not in breach of or in default under any guarantee to which it is a party or which is binding on any of its assets or revenues, which breach or default has or is likely to have a material adverse effect on the ability of the Guarantor to perform any of its obligations under the Terms and Conditions or this Guarantee;
- 8.6 the obligations of the Guarantor under this Guarantee are unconditional and unsecured obligations of the Guarantor and rank (subject to any obligations preferred by law) *pari passu* with all other present and future unsecured and unsubordinated obligations of the Guarantor;
- 8.7 the interim financial statements of the Guarantor for the period ended 31 December 2011 were prepared in accordance with accounting principles generally accepted in South Africa consistently applied except as disclosed therein, and present fairly the financial position of the Guarantor for the periods in respect of which they have been prepared, and present fairly the results of operations and changes in the financial position of the Guarantor for the periods in respect of which they have been prepared;

8.8 save as otherwise disclosed in the Programme Memorandum, since 31 December 2011 there has been no material adverse change in the financial condition or general affairs of the Guarantor, which change has or is likely to have a material

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adverse effect on the ability of the Guarantor to perform any of its obligations under the Terms and Conditions or this Guarantee;

- 8.9 no meeting has been convened for the Guarantor's winding-up and no such step is intended by itself, and as far as it is aware, no petition, application or the like is outstanding or pending for its winding-up.

## 9 AMENDMENT

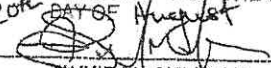
- 9.1 The Guarantor may effect, without the consent of the Noteholders or the Representative, any amendment of this Guarantee which is of a formal, minor or technical nature or is made to correct a manifest error or is necessary to comply with mandatory provisions of the law of South Africa (including, without limitation, the Applicable Procedures) or is otherwise provided for in the Representative Agreement.
- 9.2 Save as provided in clause 9.1, no amendment of this Guarantee may be effected unless in writing and signed by or on behalf of the Guarantor, and (a) signed by or on behalf of the Noteholders holding or representing not less than two-thirds of the Outstanding Principal Amount of all of the Notes, or (b) sanctioned by an Extraordinary Resolution of all of the Noteholders, as the case may be.

## 10 TERMINATION

This Guarantee is a continuing guarantee and accordingly shall remain in operation until the earlier of the happening of any of the following events:

- 10.1 once all amounts due and payable to the Noteholders under the Terms and Conditions have been paid in full; or
- 10.2 following the Enforcement of the Guarantee, once all amounts due and payable to the relevant Noteholders under this Guarantee have been paid in full; or
- 10.3 if, following the Enforcement of the Guarantee, the relevant Noteholders have requested the Representative to make any demands or institute any legal proceedings against the Issuer and/or the Guarantor in terms of the Representative Agreement, once:
- 10.3.1 such demands have been satisfied in full; or

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10.3.2 a final judgment has been granted in respect of such legal proceedings; or

10.3.3 the Representative has been directed by an Ordinary Resolution (as



defined in paragraph D1 of Annexure "C" to the Representative Agreement) of the relevant Noteholders to cease the pursuit of such demands or to cease such legal proceedings.

11 PRESCRIPTION

All claims under this Guarantee in respect of the Notes will prescribe and become void 3 (three) years after the Guarantee Amount Payment Date; provided that if the full amount of the moneys payable under this Guarantee in respect of the Notes has not been received by the CSD's Nominee on or prior to the Guarantee Amount Payment Date, all claims under this Guarantee for payment in respect of the Notes will become void 3 (three) years after the date on which such moneys have been received by the CSD's Nominee and notice to that effect has been given by the Guarantor to the Noteholders in accordance with Condition 23.1.

12 MERGER AND CONSOLIDATION

12.1 Any corporation into which the Guarantor may be merged or converted, or any corporation with which the Guarantor may be consolidated, or any corporation resulting from any merger, conversion or consolidation to which the Guarantor shall be a party, or any corporation to which the Guarantor shall sell or otherwise transfer all or substantially all the assets and/or business of the Guarantor shall, on the date when such merger, conversion, consolidation or transfer becomes effective and to the extent permitted by any applicable laws, become the successor Guarantor under this Guarantee without the execution of any written Guarantee or any further act on the part of the parties hereto, and after the said effective date all references in this Guarantee to the Guarantor shall be deemed to be references to such corporation.

12.2 Written notice of any such merger, conversion, consolidation or transfer shall forthwith be given by the Guarantor to the Representative as soon as the Guarantor is reasonably able to do so. Upon such merger, conversion, consolidation or transfer, the Guarantor shall give notice thereof to the Noteholders in accordance with Condition 23.1.

13 CHANGE OF SPECIFIED OFFICE

If the Guarantor changes its Specified Office it shall give to the Representative written notice of the address of the new Specified Office and the date on which such change is to take effect, which date shall not be less than 45 (forty five) days thereafter. The Guarantor shall, within 15 (fifteen) days of having given such notice to the Representative, give notice

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thereof to the Noteholders in accordance with Condition 23.1.

#### 14 NOTICES

All notices to the Noteholders under this Guarantee shall be given in accordance with Condition 23.1. All notices to the Guarantor by the Representative, and *vice versa*, under this Guarantee shall be given in accordance with clause 24 of the Representative Agreement.

#### 15 BENEFIT OF THIS GUARANTEE

15.1 This Guarantee is conferred by the Guarantor as a *stipulatio alteri* for the benefit of the Noteholders. Noteholders are entitled to the benefit of, and are deemed to have notice of, the provisions of this Guarantee. Each Noteholder, by its subscription for or purchase of Notes, shall be deemed to have accepted such benefits and shall be bound by all of those provisions of this Guarantee which confer rights and/or impose obligations on the Noteholders.

15.2 One copy of this Guarantee shall be made available to each Noteholder, free of charge, at the Specified Offices of the Issuer and the Representative.

#### 16 LIMITED OBLIGATIONS OF THE GUARANTOR

The Guarantor shall not, save as is set out in this Guarantee and the Terms and Conditions, be liable under this Guarantee to any person for the obligations of the Issuer under the Terms and Conditions.

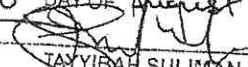
#### 17 GOVERNING LAW AND JURISDICTION

This Guarantee shall be governed by and construed and interpreted in accordance with the laws of South Africa.

#### 18 SEVERABILITY

Any provision in this Guarantee which is, or may become, illegal, invalid or unenforceable shall be ineffective to the extent of such illegality, invalidity or unenforceability, and such provision shall be severed from the balance of this Guarantee, without affecting the legality, validity and enforceability of the balance of this Guarantee.

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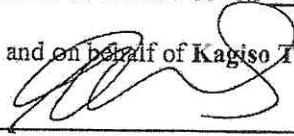
  
TAYYIBAH SULIMAN  
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111, ROETE FLAEC, SANDOWN, JOHANNESBURG





SIGNED at SANDTON on 17 August 2012

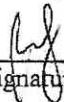
For and on behalf of **Kagiso Tiso Holdings Proprietary Limited (RF)** (as Guarantor)

  
 \_\_\_\_\_  
 Signature:  
 Kencep Galton  
 \_\_\_\_\_  
 Name:  
 Director  
 \_\_\_\_\_  
 Designation:

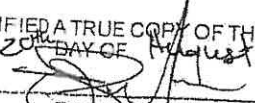
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 Signature:  
 \_\_\_\_\_  
 Name:  
 \_\_\_\_\_  
 Designation:

SIGNED at CAPE TOWN on \_\_\_\_\_ August 2012


For and on behalf of **GMG Trust Company (SA) Proprietary Limited**, acting in its capacity as the Representative on behalf of the Noteholders pursuant to the Representative Agreement

  
 \_\_\_\_\_  
 Signature:  
 JAN WANDRAG  
 \_\_\_\_\_  
 Name:  
 AUTHORIZED REPRESENTATIVE  
 \_\_\_\_\_  
 Designation:

\_\_\_\_\_  
 Signature:  
 \_\_\_\_\_  
 Name:  
 \_\_\_\_\_  
 Designation:

CERTIFIED A TRUE COPY OF THE ORIGINAL  
 THIS 20th DAY OF August 2012  
  
 \_\_\_\_\_  
 TAYYIDAH SULIMAN  
 COMMISSIONER OF OATHS  
 EX OFFICIO  
 PRACTISING ATTORNEY RSA  
 107 LLA PLACE, SANDOWN, JOHANNESBURG

ANNEXURE "A"  
TERMS AND CONDITIONS

CERTIFIED A TRUE COPY OF THE ORIGINAL  
THIS 20th DAY OF August 2012  
  
TAYYIBAH SULIMAN  
COMMISSIONER OF OATHS  
EX OFFICIO  
PRACTISING ATTORNEY RSA  
140 WOTEA PLACE, SANDOWN, JOHANNESBURG







## Section 7

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**TERMS AND CONDITIONS OF THE INSTRUMENTS**


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*The following are the Terms and Conditions. The Applicable Pricing Supplement in relation to any Tranche of Instruments may specify other terms and conditions which shall to the extent so specified or to the extent inconsistent with the following Terms and Conditions, replace or modify the following Terms and Conditions for the purpose of such Tranche of Instruments.*

**1 DEFINITIONS**

Unless inconsistent with the context or separately defined in the Programme Memorandum and/or the Applicable Pricing Supplement, the following expressions shall have the following meanings:

"**Actual Redemption Date**" means, in relation to a Tranche of Instruments, the date on which that Tranche of Instruments is redeemed in full by the Issuer and the full amount due and payable by the Issuer to the holders of such Instruments has been unconditionally paid;

"**Applicable Law**" means, in relation to a person, all and any (i) statutes and subordinate legislation, (ii) regulations, ordinances and directives, (iii) by-laws, (iv) codes of practice, circulars, guidance notices, judgments and decisions of any competent authority, and (v) other similar provisions, from time to time, compliance with which is mandatory for that person;

"**Applicable Maturity Date**" means, in respect of a Tranche of Notes:

- a) in the case of the redemption of that Tranche of Notes pursuant to Condition 14.1, the Maturity Date;
- b) in the case of the redemption of that Tranche of Notes pursuant to Condition 14.2, the Early Redemption Date defined as such in Condition 14.2;

"**Applicable Redemption Date**" means, in respect of a Tranche of Redeemable Preference Shares:

- a) in the case of the redemption of that Tranche of Redeemable Preference Shares pursuant to Condition 14.1, the Redemption Date;
- b) in the case of the redemption of that Tranche of Redeemable Preference Shares pursuant to Condition 14.2, the Early Redemption Date defined as such in Condition 14.2;
- c) in case of the redemption of that Tranche of Redeemable Preference Shares pursuant to Condition 7.2.3C, the Early Redemption Date defined as such in Condition 7.2.3C;

"**Applicable Pricing Supplement**" means, in respect of a Tranche of Instruments, the pricing supplement completed and signed by the Issuer in relation to that Tranche of Instruments, as contemplated in Section 6 of the Programme Memorandum headed "**Pro Forma Applicable Pricing Supplement**", setting out such additional terms and conditions as are applicable to that Tranche of Instruments;

"**Applicable Procedures**" means the rules and operating procedures for the time being of the CSD, CSD Participants, the JSE and/or any other applicable financial exchange, as the case may be;

"**Approved Calculation Agent**" means any of FirstRand Bank Limited, acting through its Rand Merchant Bank division, Nedbank Capital, a division of Nedbank Limited, The Standard Bank of South Africa Limited, Absa Capital, a division of Absa Bank Limited and Investec Bank Limited;

"**Approved Calculation Dispute Agent**" means any of FirstRand Bank Limited, acting through its Rand Merchant Bank division, Nedbank Capital, a division of Nedbank Limited, The Standard Bank of South Africa Limited, Absa Capital, a division of Absa Bank Limited, Investec Bank Limited, Deloitte & Touche, PricewaterhouseCoopers, Ernst & Young and KPMG;

"**Approved Paying Agent**" means any of FirstRand Bank Limited, acting through its Rand Merchant Bank division, Nedbank Capital, a division of Nedbank Limited, The Standard Bank of South Africa Limited, Absa Capital, a division of Absa Bank Limited and Investec Bank Limited;

"**Approved Representative**" means any of FirstRand Bank Limited, acting through its Rand Merchant Bank division, Nedbank Capital, a division of Nedbank Limited, The Standard Bank of

South Africa Limited, Absa Capital, a division of Absa Bank Limited Investec Bank Limited, Maitland Trust Limited and GMG Trust Company (SA) Proprietary Limited;

"**Beneficial Interest**" means, in respect of a Tranche of Instruments which is held in the CSD, the beneficial interest as co-owner of an undivided share of all of the Instruments in that Tranche of Instruments, as provided in section 41(1) of the Securities Services Act, the nominal value of which beneficial interest, in relation to any number of Instruments in that Tranche, is determined by reference to the proportion that the aggregate Outstanding Principal Amount of such number of Instruments bears to the aggregate Outstanding Principal Amount of all of the Instruments in that Tranche, as provided in section 41(3) of the Securities Services Act;

"**BESA**" means the Bond Exchange of South Africa Limited (registration number 2007/034441/06), which was a licensed financial exchange in terms of the Securities Services Act, prior to its merger, on 22 June 2009, with the JSE;

"**BESA Guarantee Fund Trust**" means the guarantee fund established and operated by BESA, prior to its merger with the JSE on 22 June 2009 and, as at the Programme Date, operated by the JSE as a separate guarantee fund, in terms of the rules of the JSE, as required by sections 9(1)(e) and 18(2)(x) of the Securities Services Act or any successor fund;

"**Business Day**" means a day (other than a Saturday, Sunday or public holiday within the meaning of the Public Holidays Act, 1994) on which commercial banks settle payments in Rand in South Africa;

"**Business Day Convention**" means, if the due date for payment under the Instruments falls on a day that is not a Business Day, the due date for such payment will be adjusted to the first Business Day immediately following such due date for payment under the Instruments, unless otherwise specified in the Applicable Pricing Supplement;

"**Calculation Agent**" means Absa Capital, a division of Absa Bank Limited (Registration Number 1986/004794/06), unless the Issuer and the Guarantor elect to appoint another Approved Calculation Agent as a Calculation Agent, as contemplated in Condition 22;

"**Calculation Agency Agreement**" means the Amended and Restated Calculation Agency Agreement, dated on or about the Programme Date, concluded between the Issuer, the Guarantor and Absa Capital, a division of Absa Bank Limited (as Calculation Agent), as amended, novated and/or substituted from time to time in accordance with its terms;

"**Commercial Paper Regulations**" means Government Notice 2172, promulgated under the Banks Act, 1990, and published in Government Gazette 16167 of 14 December 1994;

"**Companies Act**" means the Companies Act, 2008, as amended from time to time;

"**Control**" means, in relation to any company:

- a) the holding of more than 50% of the equity share capital of such company; or
- b) the right to appoint more than one half of the board of directors of such company; or
- c) the right to exercise more than one half of the votes which are exercisable at general meetings of such company;

"**CSD**" means STRATE Limited (Registration Number 1998/022242/06), registered as a central securities depository and operating in terms of the Securities Services Act (or any successor legislation thereto) and/or any additional or alternate depository approved by the Issuer and the relevant Dealer(s) and the JSE;

"**CSD's Nominee**" means any wholly owned Subsidiary of the CSD approved by the Registrar of Securities Services in terms of the Securities Services Act and any reference to "CSD's Nominee" shall, whenever the context permits, be deemed to include any successor nominee operating in terms of the Securities Services Act;

"**CSD Participant**" means a person accepted by the CSD as a participant in in terms of the Securities Services Act;

"**Day Count Fraction**" means, in respect of the calculation of the Interest Amount for Floating Rate Notes or the Dividend Amount for Floating Yield Preference Shares, as the case may be, for any Interest Period or Dividend Period, as the case may be (each such period being hereinafter referred to as a "Period");

- a) if "1/1" is specified in the Applicable Pricing Supplement, 1; or
- b) if "Actual/365", "Act/365", "Actual/Actual" or "Act/Act" is specified in the Applicable Pricing Supplement, the actual number of days in the Period in respect of which payment is being made divided by 365 (three hundred and sixty five) (or, if any portion of that Period falls in a leap year, the sum of (i) the actual number of days in that portion of the Period falling in a leap year divided by 366 (three hundred and sixty six) and (ii) the actual number of days in that portion of the Period falling in a non-leap year divided by 365 (three hundred and sixty five)); or
- c) if "Actual/365 (Fixed)", "Act/365 (Fixed)", "A/365 (Fixed)" or "A/365F" is specified in the Applicable Pricing Supplement, the actual number of days in the Period in respect of which payment is being made divided by 365 (three hundred and sixty five); or
- d) if "Actual/360", "Act/360" or "A/360" is specified in the Applicable Pricing Supplement, the actual number of days in the Period in respect of which payment is being made divided by 360 (three hundred and sixty); or
- e) if "30/360", "360/360" or "Bond Basis" is specified in the Applicable Pricing Supplement, the number of days in the Period in respect of which payment is being made divided by 360 (three hundred and sixty) (the number of days to be calculated on the basis of a year of 360 (three hundred and sixty) days with twelve 30-day months (unless (i) the last day of the Period is the 31<sup>st</sup> day of a month but the first day of the Period is a day other than the 30<sup>th</sup> or 31<sup>st</sup> day of a month, in which case the month that includes that last day shall not be considered to be shortened to a 30-day month or (ii) that last day of the Period is the last day of the month of February, in which case the month of February shall not be considered to be lengthened to a 30-day month); or
- f) if "30E/360" or "Eurobond Basis" is specified in the Applicable Pricing Supplement, the number of days in the Period in respect of which payment is being made divided by 360 (three hundred and sixty) (the number of days to be calculated on the basis of a year of 360 (three hundred and sixty) days with twelve 30-day months, without regard to the date of the first day or last day of the Period unless, in the case of the final Period, the Interest Payment Date or the Dividend Payment Date, as the case may be, is the last day of the month of February, in which case the month of February shall not be considered to be lengthened to a 30-day month); or
- g) such other calculation method as is specified in the Applicable Pricing Supplement;

"Dealer" means Kagiso Tiso Holdings Proprietary Limited (RF) (Registration Number 2011/000848/07) and each additional dealer appointed from time to time by the Issuer and the Guarantor under the Programme pursuant to the Relevant Dealer Agreement, which appointment may be for a specific issue of one or more Tranches of Instruments or for the duration of the Programme, subject to the Issuer's right to terminate the appointment of any Dealer;

"Default Rate" means, if applicable to a Tranche of Instruments, the default rate specified as such in the Applicable Pricing Supplement;

"Demand" means, following an Event of Default in respect of a Tranche of Instruments, subject to Condition 18.3, a written notice (contemplated in Condition 18.3) given by the Representative to the Issuer and the Guarantor, in accordance with the applicable provisions of Condition 18.3, the Guarantee and the Representative Agreement, pursuant to which the Representative, for the benefit and on behalf of the relevant Noteholders, demands payment of the Guarantee Amount from the Guarantor;

"Dividend Amount" means, in respect of a Tranche of Redeemable Preference Shares, the amount of dividend payable, per ZAR1 000 000 on the Principal Amount of that Tranche of Redeemable Preference Shares, on the relevant Dividend Payment Date in respect of the relevant Dividend Period, determined by the Calculation Agent in accordance with Condition 10 and Condition 12.1;

"Dividend Determination Date" means, if applicable to a Tranche of Redeemable Preference Shares, the day falling on the first day of each Dividend Period or, if such day is not a Business Day, the first following day that is a Business Day (or, in the case of the first Dividend Determination Date, such other date, if any, as is specified in the Applicable Pricing Supplement), being the day upon which the Dividend Yield in respect of such Dividend Period shall be determined by the Calculation Agent in accordance with Condition 10.2;

"Dividend Payment Date" means, in respect of a Tranche of Redeemable Preference Shares, the

Dividend Payment Date specified as such in the Applicable Pricing Supplement or, if no Dividend Payment Date is specified in the Applicable Pricing Supplement, the last day of each Dividend Period;

"**Dividend Period**" means, in respect of a Tranche of Redeemable Preference Shares, each successive period in respect of which dividends accrue on that Tranche of Redeemable Preference Shares, commencing on and including a Dividend Payment Date and ending on but excluding the following Dividend Payment Date, provided that the first Dividend Period shall commence on and include the Issue Date and the last Dividend Period shall end on but exclude the Actual Redemption Date;

"**Dividend Yield**" means, in respect of a Tranche of Redeemable Preference Shares, subject to Condition 10, the rate or rates of interest applicable to that Tranche of Redeemable Preference Shares specified in the Applicable Pricing Supplement;

"**Early Redemption Amount**" means, unless otherwise specified in the Applicable Pricing Supplement:

- a) in the case of Zero Coupon Notes, the amount calculated in accordance with Condition 14.3;
- b) in the case of Instruments (other than Zero Coupon Notes), the Final Redemption Amount;

"**Enforcement of the Guarantee**" means, following an Event of Default in respect of a Tranche of Instruments, subject to Condition 18.3, a demand, made by the Representative, for the benefit and on behalf of the relevant Noteholders, for payment of the Guarantee Amount from the Guarantor, by delivering a Demand to the Guarantor and the Issuer, in accordance with Condition 18.3, the Guarantee and the Representative Agreement;

"**Enforcement of the Put Option**" means, following an Event of Default in respect of a Tranche of Instruments, subject to Condition 18.4, the exercise by the Representative, for the benefit and on behalf of the relevant Redeemable Preference Share Holders, of the put option contemplated in the Put Option Agreement by delivering a Put Notice to the Guarantor, in accordance with Condition 18.4, the Put Option Agreement and the Representative Agreement;

"**Event of Default**" means an event of default referred to in Condition 17.1;

"**Exchange Control Authorities**" means the Financial Surveillance Department of the South African Reserve Bank;

"**Exchange Control Regulations**" means the Exchange Control Regulations, 1961 promulgated pursuant to the Currency and Exchanges Act, 1933;

"**Extraordinary Resolution**" means a resolution passed at a duly convened meeting of Instrument Holders (or the relevant Group of Instrument Holders) by a majority consisting of not less than 66.67% (sixty six point sixty seven per cent) of the persons voting thereat upon a show of hands or, if a poll be duly demanded, then by a majority consisting of not less than 66.67% (sixty six point sixty seven per cent) of the votes given on such poll;

"**Final Redemption Amount**" means, in respect of a Tranche of Instruments, unless otherwise specified in the Applicable Pricing Supplement, the aggregate Principal Amount of that Tranche of Instruments;

"**Fixed Rate Notes**" means Notes which bear interest at a fixed rate of interest, as specified in the Applicable Pricing Supplement and set out in Condition 9.1;

"**Fixed Yield Preference Shares**" means Redeemable Preference Shares which bear dividends at a fixed dividend rate, as specified in the Applicable Pricing Supplement and set out in Condition 10.1;

"**Floating Rate Notes**" means Notes which bear interest at a floating rate of interest, as specified in the Applicable Pricing Supplement and set out in Condition 9.2;

"**Floating Yield Preference Shares**" means Redeemable Preference Shares which bear dividends at a floating dividend rate, as specified in the Applicable Pricing Supplement and set out in Condition 10.2;

"**Group Company**" means any company within the Kagiso Tiso Group;

"**Group of Instrument Holders**" means, in relation to a Tranche of Instruments, the holders of the Instruments in that Tranche;

"**Guarantee**" means the Amended and Restated Guarantee, dated on or about the Programme Date, entered into by the Guarantor, as a *stipulatio alteri* for the benefit of the Noteholders, and concluded

between the Guarantor and GMG Trust Company (SA) Proprietary Limited (as Representative) in its capacity as the Representative of the Noteholders, as amended, novated and/or substituted from time to time in accordance with its terms;

"**Guarantee Amount**" means, following an Event of Default and the Enforcement of the Guarantee in respect of a Tranche of Notes, the amount (determined by the Calculation Agent in accordance with Condition 18.5) payable by the Guarantor to the relevant Noteholders in terms of Condition 18.3 and the Guarantee;

"**Guarantee Amount Payment Date**" means, following an Event of Default and the Enforcement of the Guarantee in respect of a Tranche of Notes, the seventh Business Day after the date of the notice contemplated in the 2<sup>nd</sup> paragraph of Condition 18.3, such Business Day being the date on which the Guarantee Amount is due and payable to the relevant Noteholders;

"**Guarantor**" means Kagiso Tiso Holdings Proprietary Limited (RF), (Registration Number 2011/000848/07), a company duly registered and incorporated under the laws of South Africa;

"**Implied Yield**" means, in respect of a Tranche of Zero Coupon Notes, the yield accruing on the Issue Price of that Tranche of Zero Coupon Notes, specified as a percentage in the Applicable Pricing Supplement;

"**Income Tax Act**" means the Income Tax Act, 1962, as amended;

"**Index-Linked Instruments**" means an Indexed Interest Instrument and/or an Indexed Redemption Amount Instrument;

"**Index Interest Instruments**" means Instruments in respect of which the Interest Amount is calculated by reference to such index and/or formula as indicated in the Applicable Pricing Supplement;

"**Indexed Redemption Amount Instruments**" means Instruments in respect of which the Final Redemption Amount is calculated by reference to an index and/or formula as may be indicated in the Applicable Pricing Supplement;

"**Individual Certificate**" means the single certificate in definitive registered form without interest coupons representing Instruments for which Beneficial Interest has been exchanged in accordance with Condition 20.2 and any further certificate issued in consequence of a transfer thereof;

"**Instruments**" means, collectively, the Notes and the Redeemable Preference Shares;

"**Instrument Holders**" means, collectively, the Noteholders and the Redeemable Preference Share Holders;

"**Interest Amount**" means, in respect of a Tranche of Notes (other than Zero Coupon Notes), the amount of interest payable, per ZAR1 000 000 in Principal Amount of the Notes, on the relevant Interest Payment Date in respect of the relevant Interest Period, determined by the Calculation Agent in accordance with Condition 9 and Condition 12.1;

"**Interest Determination Date**" means, if applicable to a Tranche of Notes, the day falling on the first day of each Interest Period or, if such day is not a Business Day, the first following day that is a Business Day (or, in the case of the first Interest Determination Date, such other date, if any, as is specified in the Applicable Pricing Supplement), being the day upon which the Interest Rate in respect of such Interest Period shall be determined by the Calculation Agent in accordance with Condition 9.2;

"**Interest Payment Date**" means, in respect of a Tranche of Notes (other than Zero Coupon Notes), the Interest Payment Date specified as such in the Applicable Pricing Supplement or, if no Interest Payment Date is specified in the Applicable Pricing Supplement, the last day of each Interest Period;

"**Interest Period**" means, in respect of a Tranche of Notes (other than Zero Coupon Notes), each successive period in respect of which interest accrues on Notes commencing on and including an Interest Payment Date and ending on but excluding the following Interest Payment Date; provided that the first Interest Period shall commence on and include the Issue Date and the last Interest Period shall end on but exclude the Redemption Date;

"**Interest Rate**" means, in respect of a Tranche of Notes (other than Zero Coupon Notes), subject to Condition 9, the rate or rates of interest applicable that Tranche of Notes specified in the Applicable Pricing Supplement;

"ISDA" means International Swaps and Derivatives Association, Inc;

"ISDA Definitions" means the 2000 ISDA Definitions (Interest Rate and Currency Derivative Transactions) published by ISDA (as amended, supplemented, revised or republished from time to time);

"Issue Date" means, in respect of a Tranche of Instruments, the date specified as such in the Applicable Pricing Supplement;

"Issue Price" means, in respect of a Tranche of Instruments, the price specified as such in the Applicable Pricing Supplement;

"Issuer" means Kagiso Sizanani Capital Limited (RF) (Registration Number 2003/028948/07), a company duly registered and incorporated under the laws of South Africa;

"JSE" means JSE Limited (Registration Number 2005/022939/06), a licensed financial exchange in terms of the Securities Services Act or any exchange which operates as a successor exchange to the JSE;

"JSE Debt Listings Requirements" means the document published by the JSE entitled "*Debt Listings Requirements*", dated March 2011, which came into effect on 1 June 2011, as amended and/or supplemented from time to time;

"Kagiso Tiso Group" means the Guarantor's group of companies comprising of the Issuer and each Subsidiary of the Guarantor from time to time whose financial results are consolidated with the financial results of the Guarantor;

"Last Day to Register" means, in respect of a Tranche of Instruments, the sixth day (whether such is a Business Day or not) preceding each Payment Date until 17h00 (South African time) on that sixth day, such sixth day being the last day on which the Transfer Secretary will accept Transfer Forms and record in the Register the transfer of Instruments in that Tranche represented by Certificates;

"Late Payment Date" means:

- a) in respect of a Tranche of Instruments for purposes of Condition 11, the earlier of (i) the date on which the outstanding amount due and payable to the Instrument Holders of Instruments in that Tranche has been paid to such Instrument Holders, and (ii) the date on which such outstanding amount has been paid to CSD's Nominee and notice to that effect has been given by the Issuer to such Instrument Holders in accordance with Condition 23.1;
- b) following an Event of Default and the Enforcement of the Guarantee or the Enforcement of the Put Option, as the case may be, in respect of a Tranche of Instruments (and for purposes of Condition 18.5), the earlier of (i) the date on which the Guarantee Amount or the Put Option Amount, as the case may be, has been paid to the relevant Noteholders or the relevant Redeemable Preference Share Holders, as the case may be, and (ii) the date on which the Guarantee Amount or the Put Option Amount, as the case may be, has been paid to CSD's Nominee and notice to that effect has been given by the Issuer to the relevant Noteholders or the relevant Redeemable Preference Share Holders, as the case may be, in accordance with Condition 23.1;

"Late Redemption Amount" means, for purposes of Condition 11, unless otherwise specified in the Applicable Pricing Supplement:

- a) in the case of Zero Coupon Notes, the amount calculated in accordance with Condition 11.2;
- b) in the case of Notes (other than Zero Coupon Notes), the amount calculated in accordance with Condition 11.1;
- c) in the case of Redeemable Preference Shares, the amount calculated in accordance with Condition 11.3;

"Long Term Notes" means Notes issued with a Maturity Date which falls more than 364 (three hundred and sixty four) days after the Issue Date, as specified in the Applicable Pricing Supplement;

"Maturity Date" means, in respect of a Tranche of Notes, the date specified as such in the Applicable Pricing Supplement;

"NACA" means nominal annual compounded annually;

"NACM" means nominal annual compounded monthly;

"NACQ" means nominal annual compounded quarterly;

"NACS" means nominal annual compounded semi-annually;

"Notes" means the unsecured guaranteed registered notes issued by the Issuer, under the Programme, pursuant to the Programme Memorandum;

"Noteholders" means, subject to Condition 4, the holders of Notes (as recorded in the Register);

"Outstanding Principal Amount" means, in respect of the Programme at any point in time, the aggregate Principal Amount of all of the Instruments in issue under the Programme at that time;

"Partly Paid Instruments" means Instruments which are issued with the Issue Price partly paid and which Issue Price is paid up fully by the Instrument Holder in instalments (as indicated in the Applicable Pricing Supplement);

"Paying Agent" means The Standard Bank of South Africa Limited (Registration Number 1962/000738/06), a company duly registered and incorporated under the laws of South Africa, unless the Issuer and the Guarantor elect to appoint another Approved Paying Agent as a Paying Agent, as contemplated in Condition 22;

"Paying Agency Agreement" means the Amended and Restated Paying Agency Agreement, dated on or about the Programme Date, concluded between the Issuer, the Guarantor and The Standard Bank of South Africa Limited (as Paying Agent), as amended, novated and/or substituted from time to time in accordance with its terms;

"Payment Amount" means, in respect of a Tranche of Instruments, the aggregate amount due and payable by the Issuer in respect of that Tranche of Instruments on a Payment Date, calculated by the Calculation Agent in accordance with Condition 12.1.1 and the Calculation Agency Agreement;

"Payment Date" means:

- a) in respect of a Tranche of Notes, the Applicable Maturity Date (as adjusted, if applicable, in accordance with Condition 13.1) and (in the case of Notes other than Zero Coupon Notes) each Interest Payment Date (as adjusted, if applicable, in accordance with Condition 9.3);
- b) in respect of a Tranche of Redeemable Preference Shares, the Applicable Redemption Date (as adjusted, if applicable, in accordance with Condition 13.1) and each Dividend Payment Date (as adjusted, if applicable, in accordance with Condition 10.3);

"Potential Event of Default" means any event or circumstance specified in Condition 17.1(a) to Condition 17.1(o) inclusive which would (with the expiry of a grace period, the giving of notice, the making of any determination under the Terms and Conditions or any combination of the foregoing), be an Event of Default;

"Preference Dividend" means in relation to a Redeemable Preference Share Holder, the right to receive, in priority to the holders of ordinary shares and the holders of any other class of shares in the share capital of the Issuer not ranking prior to or *pari passu* with the Redeemable Preference Shares, a preferential cash dividend;

"Principal Amount" means:

- a) in relation to each Note in a Tranche, the nominal value of that Note (being the amount of ZAR1 000 000) and, in relation to any number of Notes in that Tranche, such number of Notes multiplied by ZAR1 000 000;
- b) in relation to each Redeemable Preference Share in a Tranche at any date, the aggregate of (i) the Issue Price of that Redeemable Preference Share (including share premium, where applicable) and (ii) the aggregate of each Dividend Amount in respect of that Redeemable Preference Share which would have been (but was not paid on a Dividend Payment Date had dividends in respect of that Redeemable Preference Share been declared prior to that Dividend Payment Date), and in relation to any number of Redeemable Preference Shares in that Tranche, such number of Redeemable Preference Shares multiplied by that aggregate amount;

"Programme Amount" means the maximum aggregate Principal Amount of all of the Instruments that may be issued under the Programme at any one point in time being, as at the Programme Date, ZAR2 000 000 000 or such increased amount as is determined by the Issuer and the Guarantor from time to time subject to and in accordance with all applicable laws, as set out in Section 2 of this Programme Memorandum headed "General Description of the Programme";

**"Programme Date"** means the date of this Programme Memorandum, being 17 August 2012;

**"Programme Memorandum"** means this document so entitled in respect of the Instruments, dated 17 August 2012; provided that if (as contemplated in Section 1 of the Programme Memorandum headed **"Documents Incorporated by Reference"**), the Issuer publishes a new Programme Memorandum or a supplement to the Programme Memorandum, as the case may be, references to **"Programme Memorandum"** shall be construed as references to that new Programme Memorandum or the Programme Memorandum as supplemented, as the case may be;

**"Programme"** means the Kagiso Sizanani Capital Limited (RF) ZAR2 000 000 000 Domestic Note and Redeemable Preference Share Programme pursuant to which the Issuer may issue Instruments from time to time;

**"Put Notice"** means, following an Event of Default in respect of a Tranche of Instruments, subject to Condition 18.4, a written notice (contemplated in Condition 18.4) given by the Representative to the Issuer and the Guarantor in accordance with the applicable provisions of Condition 18.4, the Put Option Agreement and the Representative Agreement, pursuant to which the Representative, for the benefit and on behalf of the relevant Redeemable Preference Share Holders, exercises the put option contemplated in the Put Option Agreement;

**"Put Option Agreement"** means the Second Amended and Restated Put Option Agreement, dated on or about the Programme Date, entered into by the Guarantor as a *stipulato alteri* for the benefit of the Redeemable Preference Share Holders, and concluded between the Guarantor and GMG Trust Company (SA) Proprietary Limited (as Representative) in its capacity as the Representative of the Redeemable Preference Share Holders, as amended, novated and/or substituted from time to time in accordance with its terms;

**"Put Option Amount"** means, following an Event of Default and the Enforcement of the Put Option in respect of a Tranche of Redeemable Preference Shares, the purchase consideration for the relevant Redeemable Preference Shares (determined by the Calculation Agent in accordance with Condition 18.5) payable by the Guarantor to the relevant Redeemable Preference Share Holders in terms of Condition 18.4 and the Put Option Agreement;

**"Put Option Exercise Date"** means, following an Event of Default and the Enforcement of the Put Option in respect of a Tranche of Redeemable Preference Shares, the seventh Business Day after the date (contemplated in the 2<sup>nd</sup> paragraph of Condition 18.4) on which the Put Notice is given to the Guarantor by the Representative;

**"Put Option Implementation Date"** means, following an Event of Default and the Enforcement of the Put Option in respect of a Tranche of Redeemable Preference Shares, the seventh Business Day after the Put Option Exercise Date;

**"Redeemable Preference Shares"** means the registered cumulative non-participating redeemable preference shares issued by the Issuer, under the Programme, pursuant to the Programme Memorandum and the Issuer's Memorandum of Incorporation;

**"Redeemable Preference Share Holders"** means, subject to Condition 4, the holders of Redeemable Preference Shares (as recorded in the Register);

**"Redemption Date"** means, in respect of a Tranche of Redeemable Preference Shares, the date specified as such in the Applicable Pricing Supplement;

**"Register"** means the register of Instrument Holders maintained by the Transfer Secretary in terms of Condition 21;

**"Relevant Dealer Agreement"** means the relevant dealer agreement in respect of the Instruments concluded (or to be concluded) between the Issuer and Kagiso Tiso Holdings Proprietary Limited (RF) (Registration Number 2011/000848/07) (as Guarantor, Arranger and Dealer);

**"Representative"** means GMG Trust Company (SA) Proprietary Limited (Registration Number 2006/013631/07), a company duly registered and incorporated under the laws of South Africa, unless the Issuer and the Guarantor elect to appoint another Approved Representative as Representative, as contemplated in Condition 22;

**"Representative Agreement"** means the Amended and Restated Representative Agreement, dated on or about the Programme Date, concluded between the Issuer, the Guarantor and GMG Trust Company (SA) Proprietary Limited (as Representative), as amended, novated and/or substituted from time to time in accordance with its terms;



"**Securities Services Act**" means the Securities Services Act, 2004, as amended from time to time, or any successor act;

"**Senior Notes**" means Notes, specified as such in the Applicable Pricing Supplement, issued with the status and characteristics set out in Condition 5.1 and which enjoy the benefit of the negative pledge set out in Condition 7;

"**SENS**" means Securities Exchange News Service established by the JSE;

"**Series of Instruments**" and "**Series**" means a Tranche of Instruments which, together with any other Tranche(s) of Instruments, is expressed in the Applicable Pricing Supplement to form a single series of Instruments, identified in the relevant Applicable Pricing Supplements by way of a unique numeral;

"**South Africa**" means the Republic of South Africa;

"**Specified Currency**" means, in respect of a Tranche of Instruments, subject to all Applicable Laws, the currency specified as such in the Applicable Pricing Supplement;

"**Specified Office**" means, in relation to each of the Issuer, the Guarantor, the Representative, the Calculation Agent, the Paying Agent and the Transfer Secretary, the address of the office specified in respect of such entity at the end of the Programme Memorandum, or such other address as is notified by such entity (or, where applicable, a successor to such entity) to the Instrument Holders in accordance with Condition 23.1, as the case may be;

"**Subordinated Notes**" means Notes, specified as such in the Applicable Pricing Supplement, issued with the status and characteristics set out in Condition 5.2;

"**Subsidiary**" shall bear the meaning assigned thereto in section 1 of the Companies Act;

"**Tax**" means all present and future taxes, duties, imposts, levies, charges, fees withholdings or deductions of whatever nature imposed, levied, collected, withheld or assessed by, or on behalf of, any governmental, fiscal or other competent authority in South Africa (including any penalty payable in connection with any failure to pay, or delay in paying, any of the same) and "**Tax**" and "**Taxation**" will be construed accordingly;

"**Terms and Conditions**" means, subject to the 3rd paragraph of Condition 2.1, the terms and conditions of the Instruments set out in this Section 7 of the Programme Memorandum headed "**Terms and Conditions of the Instruments**";

"**Third Party Security**" means, in relation to any company, any guarantee, suretyship, indemnity or other personal security of any nature whatsoever given by that company to any person for the debts of any other person;

"**Tranche of Instruments**" and "**Trauche**" means those Instruments which are identical in all respects (including as to listing) and in respect of which the same Applicable Pricing Supplement applies;

"**Transfer Form**" means the written form for the transfer of Instruments represented by an Individual Certificate, in the form approved by the Transfer Secretary, and signed by the transferor and transferee;

"**Transfer Secretary**" means Computershare Investor Services Proprietary Limited (Registration Number 2004/003647/07), a company duly registered and incorporated under the laws of South Africa, unless the Issuer (with the written consent of the Guarantor) elects to appoint another entity as Transfer Secretary, as contemplated in Condition 22;

"**Transfer Secretary Agreement**" means the Amended and Restated Transfer Secretary Agreement, dated on or about the Programme Date, concluded between the Issuer and Computershare Investor Services Proprietary Limited (as Transfer Secretary), as amended, novated and/or substituted from time to time in accordance with its terms;

"**ZAR**" means the official currency of South Africa, being South African Rand, or any successor currency;

"**ZAR-JIBAR-SAFEX Rate**" means the mid-market rate for deposits in ZAR for a period of the Designated Maturity (as specified in the Applicable Pricing Supplement) which appears on the Reuters Screen SAFEX Page at or about 12h00 (South African time) on the relevant Interest Determination Date or Dividend Determination Date, as the case may be;

"**Zero Coupon Notes**" means Notes which are offered and sold at a discount to their aggregate

Principal Amount and which will not bear interest.

All references in the Terms and Conditions to any legislation (including, without limiting the generality of the foregoing, any statute, regulation, rule or Applicable Procedure) shall be deemed to include any successor or replacement legislation to such legislation. Unless otherwise specified, references to any Condition are to that Condition of the Terms and Conditions.

## 2 ISSUE

### 2.1 All Instruments

The Issuer may, at any time and from time to time (without the consent of any Instrument Holder), issue one or more Tranche(s) of Instruments; provided that the total aggregate Outstanding Principal Amount of all of the Instruments issued under the Programme from time to time does not exceed the Programme Amount and provided further that nothing contained herein shall preclude the Issuer from, at any time, increasing the Programme Amount, as set out in Section 2 of this Programme Memorandum headed "General Description of the Programme".

Instruments will be issued in individual Tranches which, together with other Tranches, may form a Series of Instruments.

Each Tranche of Instruments is subject to the Terms and Conditions; provided that the Applicable Pricing Supplement may specify other terms and conditions (which may replace, modify, or supplement the Terms and Conditions), in which event such other terms and conditions shall, to the extent so specified in the Applicable Pricing Supplement or to the extent inconsistent with the Terms and Conditions, replace, modify or supplement the Terms and Conditions for the purpose of that Tranche of Instruments, and all references to "Terms and Conditions" in the Programme Memorandum or any other agreement, deed or document relating to the Programme Memorandum shall, for the purpose of that Tranche of Instruments, wherever the context requires, be deemed to include the Terms and Conditions as so replaced, modified or supplemented.

### 2.2 Notes

Each Note will be a Senior Note or a Subordinated Note, and each Note will be a Short-Term Note or a Long-Term Note, as indicated in the Applicable Pricing Supplement. Each Note may be a Fixed Rate Note, a Floating Rate Note, a Zero Coupon Note, or such combination of any of the foregoing, or such other type of Note provided in the Programme Memorandum, as may be determined by the Issuer and specified in the Applicable Pricing Supplement.

### 2.3 Redeemable Preference Shares

Each Tranche of Redeemable Preference Share will, subject to Condition 30:

- a) be issued with a Redemption Date which falls more than three years plus one day after the Issue Date; and
- b) be issued in accordance with the Companies Act and the Memorandum of Incorporation of the Issuer; and
- c) bear the status set out in Condition 6.

Subject to the preceding paragraph, each Redeemable Preference Share may be a Fixed Yield Preference Share or a Floating Yield Preference Share, or such combination of any of the foregoing, or such other type of Redeemable Preference Share provided in the Programme Memorandum, as may be determined by the Issuer and specified in the Applicable Pricing Supplement.

## 3 FORM AND DENOMINATION

Each Instrument will be issued with a denomination of ZAR1 000 000.

Each Tranche of Instruments which is listed on the Interest Rate Market of the JSE and each Tranche of unlisted Instruments will be issued in registered uncertificated form in terms of section 37 of the Securities Services Act, and will be held in the CSD. Instruments issued in uncertificated form will not be represented by any certificate or written instrument.

All Instruments which are held in the CSD will be held subject to the Securities Services Act and the Applicable Procedures. All amounts to be paid and all rights to be exercised in respect of Instruments held in the CSD will be paid to and may be exercised only by the CSD's Nominee for the holders of

Beneficial Interests in such Instruments.

A holder of a Beneficial Interest shall only be entitled to exchange such Beneficial Interest for Instruments represented by an Individual Certificate in accordance with Condition 20.1.

4 **TITLE**

4.1 **Instruments issued in uncertificated form**

The CSD's Nominee will be named in the Register as the registered holder of each Tranche of Instruments which is held in the CSD.

4.2 **Beneficial Interests in Instruments held in the CSD**

While a Tranche of Instruments is held in its entirety in the CSD, the CSD's Nominee will be named in the Register as the sole Instrument Holder of the Instruments in that Tranche.

Beneficial Interests which are held by CSD Participants will be held directly through the CSD, and the CSD will hold such Beneficial Interests, on behalf of such CSD Participants, through the central securities accounts maintained by the CSD for such CSD Participants.

Beneficial Interests which are held by clients of CSD Participants will be held indirectly through such Participants, and such CSD Participants will hold such Beneficial Interests, on behalf of such clients, through the securities accounts maintained by such Participants for such clients. The clients of CSD Participants may include the holders of Beneficial Interests or their custodians. The clients of CSD Participants, as the holders of Beneficial Interests or as custodians for such holders, may exercise their rights in respect of the Instruments held by them in the CSD only through their CSD Participants.

In relation to each person shown in the records of the CSD or the relevant CSD Participant, as the case may be, as the holder of a Beneficial Interest in a particular Principal Amount of Instruments, a certificate or other document issued by the CSD or the relevant CSD Participant, as the case may be, as to the aggregate Principal Amount of such Instruments standing to the account of such person shall be *prima facie* proof of such Beneficial Interest. The CSD's Nominee (as the registered holder of such Instruments named in the Register) will be treated by the Issuer, the Guarantor, the Paying Agent, the Transfer Secretary, the Representative and the relevant CSD Participant as the holder of that aggregate Principal Amount of such Instruments for all purposes.

Beneficial Interests in Instruments may be transferred only in accordance with the Applicable Procedures. Such transfers will not be recorded in the Register and the CSD's Nominee will continue to be reflected in the Register as the registered Instrument Holder of such Instruments, notwithstanding such transfers.

Any reference in the Terms and Conditions to the relevant CSD Participant shall, in respect of a Beneficial Interest, be a reference to the CSD Participant appointed to act as such by the holder of such Beneficial Interest.

Following an Event of Default and the Enforcement of the Guarantee and/or the Enforcement of the Put Option, the holder of a Beneficial Interest shall be deemed to be in the same position, in relation to the Representative, as the holder of Instruments represented by an Individual Certificate whose name is entered in the Register.

4.3 **Instruments represented by Individual Certificates**

Each holder of Instruments represented by an Individual Certificate will be named in the Register as the registered holder of such Instruments.

Title to Instruments represented by Individual Certificates will pass upon registration of transfer in the Register in accordance with Condition 19.2.

4.4 **Register**

The Issuer, the Guarantor, the Paying Agent, the Representative and the Transfer Secretary will recognize an Instrument Holder as the absolute owner of the Instruments registered in that Instrument Holder's name in the Register (notwithstanding any notice of ownership or writing thereon or notice of any previous loss or theft thereof) and neither the Issuer, the Guarantor, the Paying Agent, the Transfer Secretary nor the Representative shall be obliged to record any trust in the Register or to take notice of or to accede to the execution of any trust (express, implied or constructive) to which any Instrument may be subject.

## 5 STATUS AND CHARACTERISTICS OF NOTES

### 5.1 Senior Notes

Senior Notes are direct, unconditional, unsubordinated and unsecured obligations of the Issuer and rank *pari passu* among themselves and, subject to Condition 7 and save for certain debts required to be preferred by law, rank *pari passu* with all other present and future unsecured and unsubordinated obligations of the Issuer.

### 5.2 Subordinated Notes

Subordinated Notes are direct, unconditional, unsecured and subordinated obligations of the Issuer and rank *pari passu* among themselves and, save for certain debts required to be preferred by law, rank *pari passu* with all other Subordinated Indebtedness.

Subject to Applicable Law, in the event of the dissolution, winding-up, liquidation or the commencement of business rescue proceedings in respect of the Issuer, the claims of Noteholders of Subordinated Notes shall be subordinated to all other claims in respect of any other indebtedness of the Issuer (except for other Subordinated Indebtedness). In any such event, and provided as aforesaid, no amount shall be payable to any Noteholders entitled to be paid amounts due in respect of the Subordinated Notes until all other indebtedness of the Issuer which is admissible in any such dissolution, liquidation, winding-up or business rescue proceedings (other than Subordinated Indebtedness) has been paid or discharged in full.

“Subordinated Indebtedness” means, for the purposes of this Condition 5.2 and Condition 6, any indebtedness of the Issuer in respect of moneys borrowed (including guarantees given by the Issuer in respect of such indebtedness) under which the right of payment of the person(s) entitled thereto is, or is expressed to be, or is required by any present or future agreement of the Issuer to be, subordinated to the rights of all unsubordinated creditors of the Issuer in the event of the dissolution, winding-up, liquidation or business rescue proceedings in respect of the Issuer.

## 6 STATUS AND CHARACTERISTICS OF REDEEMABLE PREFERENCE SHARES

Redeemable Preference Shares comprise share capital of the Issuer and, subject to the Memorandum of Incorporation of the Issuer, rank (i) *pari passu* among themselves, (ii) in priority to the ordinary shares of the Issuer, and (iii) below all claims (including the claims of Noteholders) in respect of any indebtedness of the Issuer.

Subject to Applicable Law, in the event of the dissolution, winding-up, liquidation or business rescue of the Issuer, the claims of the Redeemable Preference Share Holders shall be subordinated to, and rank in priority of payment below, all claims in respect of any indebtedness of the Issuer (including Subordinated Indebtedness and the claims of Noteholders). In any such event, and provided as aforesaid, but without detracting from the Put Option Agreement, no amount shall be payable to any Redeemable Preference Share Holders entitled to be paid amounts due in respect of the Redeemable Preference Shares until all indebtedness of the Issuer which is admissible in any such dissolution, liquidation, winding-up or business rescue proceedings (including Subordinated Indebtedness and the claims of Noteholders) has been paid or discharged in full.

## 7 NEGATIVE PLEDGE

### 7.1 Senior Notes

This Condition 7 shall apply only to Senior Notes. For as long as there is any Outstanding Principal Amount in respect of any Senior Notes, each of the Issuer and the Guarantor undertake not to, and the Guarantor will procure that each Affected Subsidiary will not, create or permit the creation of any Encumbrance over the whole or any Substantial Part of the undertaking or assets (including any uncalled capital) of each of the Issuer and the Guarantor and each Affected Subsidiary, to secure any Indebtedness without at the same time securing Senior Notes equally and rateably with such Indebtedness in the same manner or in a manner satisfactory to the Representative, or such other security shall be provided as the Representative shall, in its absolute discretion, deem not less beneficial to the Noteholders of Senior Notes or as shall be approved by Extraordinary Resolution of such Noteholders.

The provisions set out in the preceding paragraph shall not apply to:

- a) any Encumbrance existing at the Programme Date; or
- b) any Encumbrance created over property, at the time of purchase thereof, solely as security

for the payment of all or part of the purchase price of such property; provided that the relevant Indebtedness thereby secured does not exceed such purchase price; or

- c) any Encumbrance arising by operation of law; or
- d) any Encumbrance created in the ordinary course of trading of the Issuer or the Guarantor or any Affected Subsidiary ; or
- e) any statutory Encumbrance; or
- f) any Encumbrance over or affecting any asset of any company which becomes an Affected Subsidiary after the Programme Date, where the Encumbrance is created prior to the date on which that company became an Affected Subsidiary; or
- g) any Encumbrance over or affecting any asset acquired by the Issuer or the Guarantor or any Affected Subsidiary after the Programme Date if:
  - A. the Encumbrance was not created in contemplation of the acquisition of that asset by the Issuer or the Guarantor or such Affected Subsidiary; and
  - B. the principal amount secured has not been increased in contemplation of or since the acquisition of that asset by the Issuer or the Guarantor or such Affected Subsidiary; or
- h) any extension or renewal of any Encumbrance contemplated in paragraphs (a) to (g) inclusive above.

## 7.2 Redeemable Preference Shares

### 7.2.1 Guarantor undertakings

The Guarantor undertakes that it shall not, until all Redeemable Preference Shares have been redeemed in full and all Dividend Amounts have been declared and paid up to the Actual Redemption Date, without the consent of Redeemable Preference Share Holders who between them hold at least 67% of the aggregate Principal Amount of the Redeemable Preference Shares then in issue (such consent to be obtained in the manner set out in Condition 7.2.3):

- a) create any Encumbrance, other than a Permitted Encumbrance, over the whole or any Substantial Part of its undertaking or assets;
- b) allow any Affected Subsidiary to create any Encumbrance, other than a Permitted Encumbrance, over the whole or any Substantial Part of its undertaking or assets;
- c) provide any Third Party Security for the debts of any person or allow any Affected Subsidiary to provide any Third Party Security for the debts of any person.

### 7.2.2 Issuer undertakings

The Issuer shall not, until all Redeemable Preference Shares have been redeemed in full and all Dividend Amounts have been declared and paid up to the Actual Redemption Date, without the consent of Redeemable Preference Share Holders who between them hold at least 67% of the aggregate Principal Amount of the Redeemable Preference Shares then in issue (such consent to be obtained in the manner set out in Condition 7.2.3):

- a) incur any Indebtedness in an amount in excess of the greater of ZAR2 000 000 000 or an amount which is equivalent to the Substantial Part (such amount to be determined *mutatis mutandis* in accordance with the definition of "Substantial Part" in Condition 7.3);
- b) create any Encumbrance, other than a Permitted Encumbrance, over the whole or any Substantial Part of its undertaking or assets;
- c) provide any Third Party Security for the debts of any person.

### 7.2.3 Consent of Redeemable Preference Share Holders

- A. If the Guarantor or the Issuer, as the case may be, requires any consent pursuant to Condition 7.2.1 or Condition 7.2.2, as the case may be:
  - a) the Guarantor or the Issuer, as the case may be, shall in writing advise the Representative;

- b) the Representative shall either (1) convene a meeting of the Redeemable Preference Share Holders or (2) in writing advise each Redeemable Preference Share Holder and request each such Redeemable Preference Share Holder to advise, within 7 (seven) Business Days, whether it is prepared to provide the required consent.
- B. If the required consent of the Redeemable Preference Share Holders is obtained (either at a meeting of the Redeemable Preference Share Holders convened in accordance with Condition 7.2.3A(b)(1) above or informally in accordance with Condition 7.2.3A(b)(2) above), the Representative shall advise the Issuer thereof within 7 (seven) Business Days of having obtained such consent.
- C. If the required consent of the Redeemable Preference Share Holders cannot be obtained within 20 (twenty) Business Days of request, the Issuer shall be entitled (but not obliged), subject to the Companies Act, having given not less than 10 (ten) days' notice to the Transfer Secretary, the Calculation Agent, the Paying Agent, the Representative, and the Redeemable Preference Share Holders in accordance with Condition 23.1, to redeem each Tranche of Redeemable Preference Shares on the date for early redemption stipulated as such in such notice (such date being the "Early Redemption Date"), at its Early Redemption Amount together, if applicable, with dividend accrued to the Early Redemption Date and any and all other amounts payable under that Tranche of Redeemable Preference Shares as at the Early Redemption Date and, after each Tranche of Redeemable Preference Shares has been redeemed (but not before each Tranche of Redeemable Preference Shares has been redeemed) the Issuer shall be entitled to incur the applicable Indebtedness, create the applicable Encumbrance and/or provide the applicable Third Party Security.

### 7.3 Definitions

For the purposes of this Condition 7:

"**Affected Subsidiary**" means each Subsidiary of the Guarantor as reflected in the Guarantor's most recent audited annual financial statements;

"**Encumbrance**" means any mortgage, charge, pledge, lien or other arrangement creating real rights of security, it being recorded, for the avoidance of doubt, that Encumbrance shall not include any guarantee, suretyship or other arrangement creating personal rights of security;

"**Indebtedness**" means any moneys scheduled for payment in respect of any redeemable preference share or indebtedness in respect of moneys borrowed and guarantees given in respect of such indebtedness, whether present or future, actual or contingent, save that it shall not include Kagiso Tiso Group inter-company indebtedness or redeemable preference shares (and guarantees given in respect of such indebtedness or redeemable preference shares) incurred between the Issuer and/or the Guarantor and/or any Affected Subsidiary and/or any other Kagiso Tiso Group company;

"**Permitted Encumbrance**" means:

- a) in relation to the Issuer, those permitted Encumbrances contemplated in Conditions 7.1(a) to (h) (all inclusive) above to the extent that they form part of the permitted transactions contemplated under 1.1 to 1.5 (all inclusive) of the last paragraph of Schedule 1 (Special Conditions) of the Memorandum of Incorporation of the Issuer which sets out the additional special conditions that apply to the Issuer; and
- b) in relation to the Guarantor, those Encumbrances contemplated in Conditions 7.1(a) to (h) (all inclusive) above.

"**Substantial Part**" means, in relation to each of the Issuer, the Guarantor and each Affected Subsidiary, an aggregate amount equal to or greater than 15% of the aggregate value of the investment assets and current assets of the Kagiso Tiso Group, such value and such assets being determined by reference to the then most recently published audited consolidated balance sheet of the Kagiso Tiso Group. A report by the auditors of the Issuer and the Guarantor that, in their opinion, (i) the amounts shown in a certificate provided by the Issuer and the Guarantor showing the investment assets and current assets of the relevant part and those investment assets and current assets expressed as a percentage of the investment assets and current assets of the Kagiso Tiso Group have been correctly extracted from the accounting records of the Kagiso Tiso Group, and (ii) the percentage of the investment assets and current assets of that part to the investment assets and the current assets of the

Kagiso Tiso Group has been correctly calculated shall, in the absence of manifest error, be prima facie evidence of the matters to which it relates.

## 8 GUARANTEE AND PUT OPTION

### 8.1 Guarantee

In terms of the Guarantee, following an Event of Default and the Enforcement of the Guarantee in respect of a Tranche of Notes, the Guarantor has irrevocably and unconditionally agreed to pay the Guarantee Amount to the relevant Noteholders, on the Guarantee Payment Date, in accordance with the Guarantee, the Terms and Conditions, the Representative Agreement and the Paying Agency Agreement.

The obligations of the Guarantor under the Guarantee are unconditional and unsecured obligations of the Guarantor and rank (subject to any obligations preferred by law) *pari passu* with all other present and future unsecured and unsubordinated obligations of the Guarantor.

### 8.2 Put Option Agreement

In terms of the Put Option Agreement, the Guarantor has irrevocably and unconditionally granted to the Redeemable Preference Share Holders, following an Event of Default, an irrevocable put option to sell the relevant Tranche of Redeemable Preference Shares to the Guarantor, for a consideration equal to the Put Option Amount, in accordance with the Put Option Agreement, the Terms and Conditions and the Representative Agreement. Following the Enforcement of the Put Option, the Guarantor shall pay the Put Option Amount to the relevant Redeemable Preference Share Holders on the Put Option Implementation Date, in accordance with the Put Option Agreement, the Terms and Conditions, the Representative Agreement and the Paying Agency Agreement.

The obligations of the Guarantor under the Put Option Agreement are unconditional and unsecured obligations of the Guarantor and rank (subject to any obligations preferred by law) *pari passu* with all other present and future unsecured and unsubordinated obligations of the Guarantor.

### 8.3 Role of the Representative

The Representative will act as the representative of the Instrument Holders in respect of the Instruments, the Guarantee and the Put Option Agreement, in accordance with the Terms and Conditions and the Representative Agreement.

Subject to Condition 18.3, the Representative (for the benefit and on behalf of the relevant Noteholders) will, following an Event of Default, demand payment of the Guarantee Amount from the Guarantor by delivering a Demand to the Issuer and the Guarantor, in accordance with the Terms and Conditions, the Representative Agreement and the Guarantee.

Subject to Condition 18.4, the Representative (for the benefit and on behalf of the relevant Redeemable Preference Share Holders) will, following an Event of Default, exercise the put option contemplated in the Put Option Agreement by delivering a Put Notice to the Guarantor, in accordance with the Terms and Conditions, the Representative Agreement and the Put Option Agreement.

## 9 INTEREST

### 9.1 Interest on Fixed Rate Notes

Each Fixed Rate Note will bear interest on its Principal Amount from (and including) the Issue Date to (but excluding) the Applicable Maturity Date at the rate per annum equal to the Interest Rate. Subject to Condition 9.3, such interest shall fall due for payment in arrears on each Interest Payment Date and on the Applicable Maturity Date (if the Applicable Maturity Date does not fall on an Interest Payment Date).

Unless otherwise specified in the Applicable Pricing Supplement, the Interest Amount payable on each Fixed Rate Note in respect of any six-monthly Interest Period shall be calculated by dividing the Interest Rate by two and multiplying the product by the Principal Amount, provided that:

- a) if an Initial Broken Amount is specified in the Applicable Pricing Supplement, the first Interest Amount shall equal the Initial Broken Amount specified in the Applicable Pricing Supplement; and
- b) if a Final Broken Amount is specified in the Applicable Pricing Supplement, the final

Interest Amount shall equal the Final Broken Amount.

Save as provided in the preceding paragraphs, if interest is required to be calculated for a period other than one year (in the case of annual interest payments) or other than six months (in the case of semi-annual interest payments), as the case may be, such interest shall be calculated on the basis of the actual number of days in such period divided by 365 (three hundred and sixty five).

## 9.2 Interest on Floating Rate Notes and Indexed Interest Notes

### 9.2.1 Interest Payment Dates

Each Floating Rate Note will bear interest on its Principal Amount from (and including) the Issue Date to (but excluding) the Applicable Maturity Date at the rate per annum equal to the Interest Rate. Subject to Condition 9.3, such interest shall fall due for payment in arrears on each Interest Payment Date and on the Applicable Maturity Date (if the Applicable Maturity Date does not fall on an Interest Payment Date).

### 9.2.2 Rate of Interest

The Interest Rate which is applicable to a Tranche of Floating Rate Notes will be determined:

- a) on the basis of ISDA Determination; or
- b) on the basis of Screen Rate Determination; or
- c) on such other basis as may be determined by the Issuer, all as specified in the Applicable Pricing Supplement.

### 9.2.3 ISDA Determination

Where ISDA Determination is specified in the Applicable Pricing Supplement as the manner in which the Interest Rate is to be determined, the Interest Rate for each Interest Period will be the relevant ISDA Rate plus or minus (as specified in the Applicable Pricing Supplement) the Margin (if any).

For the purposes of this Condition 9.2.3, the following words shall have the meanings ascribed thereto:

"ISDA Rate" for an Interest Period means a rate equal to the Floating Rate that would be determined by such agent as is specified in the Applicable Pricing Supplement under a notional interest rate swap transaction if that agent were acting as Calculation Agent for that swap transaction under the terms of an agreement incorporating the ISDA Definitions and under which:

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

"Floating Rate", "Floating Rate Option", "Designated Maturity" and "Reset Date" have the meanings given to those expressions in the ISDA Definitions. Other expressions used in this Condition 9.2.3 or in the Applicable Pricing Supplement (where ISDA Determination is specified) not expressly defined shall bear the meaning given to those expressions in the ISDA Definitions.

Where this Condition 9.2.3 is applicable, the Calculation Agent will, in respect of each Interest Period, be deemed to have discharged its obligations under Condition 9.2.6 in respect of the determination of the Interest Rate if it has determined the Interest Rate in respect of such Interest Period in the manner provided in this Condition 9.2.3.

### 9.2.4 Screen Rate Determination

Where Screen Rate Determination is specified in the Applicable Pricing Supplement as the manner in which the Interest Rate is to be determined, the Interest Rate for each Interest Period will, subject as provided below, be either:

- a) the offered quotation (if there is only one quotation on the Relevant Screen Page); or
- b) the arithmetic means (rounded if necessary to the fifth decimal place, with 0,00005 being



rounded upwards) of the offered quotations,

for the Reference Rate(s) which appear(s) on the Relevant Screen Page at or about 12h00 (South African time) on the Interest Determination Date, plus or minus (as specified in the Applicable Pricing Supplement) the Margin (if any), all as determined by the Calculation Agent.

If five or more such offered quotations are available on the Relevant Screen Page the highest (or, if there is more than one such highest quotation, one only of such quotations) and the lowest (or, if there is more than one such lowest quotation, one only of such quotations) shall be disregarded by the Calculation Agent for the purpose of determining the arithmetic mean (rounded as provided above) of such offered quotations.

If the Relevant Screen Page is not available or if, in the case of paragraph (a) above in this Condition 9.2.4, no such offered quotation appears or, in the case of paragraph (b) above in this Condition 9.2.4, fewer than three such offered quotations appear, in each case at the time specified in the aforementioned paragraph, the Calculation Agent shall request the principal Johannesburg office of each of the Reference Banks to provide the Calculation Agent with its offered quotation (expressed as a percentage rate per annum) for the Reference Rate at approximately 12h00 (South African time) on the Interest Determination Date. If two or more of the Reference Banks provide the Calculation Agent with such offered quotations, the Interest Rate for such Interest Period shall be the arithmetic mean (rounded if necessary to the fifth decimal place with 0,00005 being rounded upwards) of such offered quotations plus or minus (as appropriate) the Margin (if any), all as determined by the Calculation Agent.

If the Interest Rate cannot be determined by applying the provisions of the preceding paragraphs of this Condition 9.2.4, the Interest Rate for the relevant Interest Period shall be the rate per annum which the Calculation Agent determines as being the arithmetic mean (rounded if necessary to the fifth decimal place, with 0,00005 being rounded upwards) of the rates, as communicated to (and at the request of) the Calculation Agent by the Reference Banks (or any two or more of them), at which such banks offered, at approximately 12h00 (South African time) on the relevant Interest Determination Date, in respect of deposits in an amount approximately equal to the Principal Amount of the Floating Rate Notes of the relevant Tranche, for a period equal to that which would have been used for the Reference Rate, to Reference Banks in the Johannesburg inter-bank market plus or minus (as appropriate) the Margin (if any). If fewer than two of the Reference Banks provide the Calculation Agent with such offered rates, the Interest Rate for the relevant Interest Period will be determined by the Calculation Agent as the arithmetic mean (rounded as provided above) of the rates for deposits in an amount approximately equal to the Principal Amount of the Floating Rate Notes of the relevant Tranche, for a period equal to that which would have been used for the Reference Rate, quoted at approximately 12h00 (South African time) on the relevant Interest Determination Date, by four leading banks in Johannesburg (selected by the Calculation Agent and approved by the Issuer) plus or minus (as appropriate) the Margin (if any). If the Interest Rate cannot be determined in accordance with the foregoing provisions of this paragraph, the Interest Rate shall be determined as at the last preceding Interest Determination Date (though substituting, where a different Margin is to be applied to the relevant Interest Period from that which applied to the last preceding Interest Period, the Margin relating to the relevant Interest Period, in place of the Margin relating to that last preceding Interest Period).

If the Reference Rate from time to time in respect of Floating Rate Notes is specified in the Applicable Pricing Supplement as being other than the ZAR-JIBAR-SAFEX Rate, the Interest Rate in respect of such Notes will be determined, in the manner provided above, or as may be provided in the Applicable Pricing Supplement.

"Reference Banks" means the four leading banks in the South African inter-bank market selected by the Calculation Agent and approved by the Issuer.

#### 9.2.5 *Minimum Interest Rate and/or Maximum Interest Rate*

If the Applicable Pricing Supplement specifies a Minimum Interest Rate for any Interest Period, the Interest Rate for such Interest Period shall not be less than such Minimum Interest Rate. If the Applicable Pricing Supplement specifies a Maximum Interest Rate for any Interest Period, the Interest Rate for such Interest Period shall not be greater than such Maximum Interest Rate.

#### 9.2.6 *Determination of Rate of Interest and Calculation of Interest Amount*

The Calculation Agent will, on each Interest Determination Date, determine the Interest Rate and calculate the Interest Amount payable in respect of Floating Rate Notes for each Interest Period.

Unless stated otherwise in the Applicable Pricing Supplement, each Interest Amount shall be calculated by multiplying the Interest Rate by the Principal Amount, then multiplying the product by the applicable Day Count Fraction and rounding the resultant product to the nearest cent, half a cent being rounded upwards.

### 9.3 Business Day Convention

Notwithstanding anything to the contrary contained in the Terms and Conditions, if any Interest Payment Date is not a Business Day, then:

- a) if a Business Day Convention is not specified in the Applicable Pricing Supplement, such Interest Payment Date shall be the next Business Day;
- b) if a Business Day Convention is specified in the Applicable Pricing Supplement, such Interest Payment Date shall be adjusted according to such Business Day Convention.

## 10 DIVIDENDS

### 10.1 Dividend on Fixed Yield Preference Shares

Each Fixed Yield Preference Share will bear a dividend on its Principal Amount from (and including) the Issue Date to (but excluding) the Applicable Redemption Date at the rate per annum equal to the Dividend Yield. Subject to Condition 10.3 and the law applicable to redeemable preference shares, such dividend shall fall due for payment in arrear on each Dividend Payment Date and on the Applicable Redemption Date (if the Applicable Redemption Date does not fall on a Dividend Payment Date).

Unless otherwise specified in the Applicable Pricing Supplement, the Dividend Amount payable on each Fixed Yield Preference Share in respect of any six-monthly Dividend Period shall be calculated by dividing the Dividend Yield by two and multiplying the product by the Principal Amount, provided that:

- a) if an Initial Broken Amount is specified in the Applicable Pricing Supplement, the first Dividend Amount shall equal the Initial Broken Amount specified in the Applicable Pricing Supplement; and
- b) if a Final Broken Amount is specified in the Applicable Pricing Supplement, the final Dividend Amount shall equal the Final Broken Amount.

Save as provided in the preceding paragraphs, if a dividend is required to be calculated for a period other than one year (in the case of annual dividend payments) or other than six months (in the case of semi-annual dividend payments), as the case may be, such dividend shall be calculated on the basis of the actual number of days in such period divided by 365 (three hundred and sixty five).

### 10.2 Dividend on Floating Yield Preference Shares

#### 10.2.1 Dividend Payment Dates and Dividend Amount

- a) Each Floating Yield Preference Share will bear a dividend on its Principal Amount from (and including) the Issue Date to (but excluding) the Applicable Maturity Date at the rate per annum equal to the Dividend Yield. Subject to Condition 10.3 and the law applicable to redeemable preference shares, such dividend shall fall due for payment in arrears on each Dividend Payment Date and on the Applicable Redemption Date (if the Applicable Redemption Date does not fall on a Dividend Payment Date).
- b) Unless otherwise specified in the Applicable Pricing Supplement, for each Dividend Period, the Dividend Amount payable in respect of a Tranche of Floating Yield Preference Shares shall be calculated in accordance with the following formula:

$$A = B \times C \times D$$

Where

- "A" = the Dividend Amount;
- "B" = the aggregate Principal Amount of that Tranche of Floating Yield Preference Shares on the first day of that Dividend Period;
- "C" = the Dividend Yield for that Dividend Period;
- "D" = the number of days in that Dividend Period divided by 365 (three hundred

and sixty five).

- c) The Issuer undertakes that it shall procure that all resolutions in terms of which any dividends are declared in respect of Redeemable Preference Shares are adopted in accordance with the applicable provisions of the Companies Act.
- d) The Guarantor indemnifies each Floating Yield Preference Share Holder against any loss or damage of any nature which that Floating Yield Preference Share Holder may incur or suffer as a result of the breach, by the Issuer, of the Issuer undertaking contained in Condition 10.2.1(c) above.

#### 10.2.2 *Dividend Yield*

The Dividend Yield which is applicable to a Tranche of Floating Yield Preference Shares will be determined:

- a) on the basis of ISDA Determination; or
- b) on the basis of Screen Rate Determination; or
- c) on such other basis as may be determined by the Issuer, all as specified in the Applicable Pricing Supplement.

#### 10.2.3 *ISDA Determination*

Where ISDA Determination is specified in the Applicable Pricing Supplement as the manner in which the Dividend Yield is to be determined, the Dividend Yield for each Dividend Period will be the relevant ISDA Rate plus or minus (as specified in the Applicable Pricing Supplement) the Margin (if any).

For the purposes of this Condition 10.2.3, "ISDA Rate", "Floating Rate", "Floating Rate Option", "Designated Maturity" and "Reset Date" shall have the meanings ascribed thereto in Condition 9.2.3; provided that references to the Interest Period shall be construed as references to the Dividend Period.

When this Condition 10.2.3 is applicable, the Calculation Agent will, in respect of each Dividend Period, be deemed to have discharged its obligations under Condition 10.2.6 in respect of the determination of the Dividend Yield if it has determined the Dividend Yield in respect of such Dividend Period in the manner provided in this Condition 10.2.3.

#### 10.2.4 *Screen Rate Determination*

Where Screen Rate Determination is specified in the Applicable Pricing Supplement as the manner in which the Dividend Yield is to be determined, the Dividend Yield for each Dividend Period will, subject as provided below, be either:

- a) the offered quotation (if there is only one quotation on the Relevant Screen Page); or
- b) the arithmetic means (rounded if necessary to the fifth decimal place, with 0,00005 being rounded upwards) of the offered quotations,

for the Reference Rate(s) which appear(s) on the Relevant Screen Page at or about 12h00 (South African time) on the Dividend Determination Date, plus or minus (as specified in the Applicable Pricing Supplement) the Margin (if any), all as determined by the Calculation Agent.

Subject to the preceding paragraph, the provisions of Condition 9.2.4 shall apply *mutatis mutandis* to all calculations of the Dividend Yield in terms of this Condition 10.2.4.

#### 10.2.5 *Minimum Dividend Yield and/or Maximum Dividend Yield*

If the Applicable Pricing Supplement specifies a Minimum Dividend Yield for any Dividend Period, the Dividend Yield for such Dividend Period shall not be less than such Minimum Dividend Yield. If the Applicable Pricing Supplement specifies a Maximum Dividend Yield for any Dividend Period, the Dividend Yield for such Dividend Period shall not be greater than such Maximum Dividend Yield.

#### 10.2.6 *Determination of Dividend Yield and calculation of Dividend Amount*

The Calculation Agent will, on each Dividend Determination Date, determine the Dividend Yield and calculate the Dividend Amount payable in respect of Floating Yield Preference Shares for each Dividend Period.

### 10.3 Business Day Convention

Notwithstanding anything to the contrary contained in the Terms and Conditions, if any Dividend Payment Date is not a Business Day, then:

- a) if a Business Day Convention is not specified in the Applicable Pricing Supplement, such Dividend Payment Date shall be the following Business Day;
- b) if a Business Day Convention is specified in the Applicable Pricing Supplement, such Dividend Payment Date shall be adjusted according to such Business Day Convention.

## 11 LATE PAYMENT

### 11.1 Notes other than Zero Coupon Notes

Each Note (other than a Zero Coupon Note) will cease to bear interest from the Applicable Maturity Date unless principal, or any portion thereof, due and payable on the Applicable Maturity Date or interest, or any portion thereof, due and payable on an Interest Payment Date, as the case may be, is not paid when due and, in such circumstances, interest will continue to accrue on such outstanding amount and any other outstanding amount/s due and payable in respect of such Note, at the Default Rate, from and including the Applicable Maturity Date or the relevant Interest Payment Date or the relevant other payment date, as the case may be, to but excluding the Actual Redemption Date or the Late Payment Date, as the case may be.

### 11.2 Zero Coupon Notes

Where any calculation is to be made in terms of this Condition 11.2 for a period which is not a whole number of years, it shall be calculated on the basis of actual days elapsed divided by 365 (three hundred and sixty five), or such other calculation basis as may be specified in the Applicable Pricing Supplement.

If the principal, or any portion thereof, due and payable in respect of any Zero Coupon Note on the Applicable Maturity Date is not paid when due, such Zero Coupon Note will be redeemed at its Late Redemption Amount calculated (unless otherwise stated in the Applicable Pricing Supplement) as follows:

$$\text{LRA} = \text{IP} + \left( \frac{\text{IY}}{\text{DM}} \times \text{IP} \times D \right)$$

where:

LRA = the Late Redemption Amount of that Zero Coupon Note;

IP = the Issue Price of that Zero Coupon Note;

IY = the Implied Yield;

D = the number of days elapsing between the Issue Date and the Actual Redemption Date or the Late Payment Date, as the case may be (excluding the Issue Date and the Actual Redemption Date or the Late Payment Date, as the case may be);

DM = the number of days elapsing between the Issue Date and the Applicable Maturity Date (excluding the Issue Date and the Applicable Maturity Date).

### 11.3 Redeemable Preference Shares

Each Redeemable Preference Share will cease to bear a dividend from the Applicable Redemption Date. If principal, or any portion thereof, due and payable on the Applicable Redemption Date or dividend (not being accumulated dividends which are not due and payable), or any portion thereof, due and payable on a Dividend Payment Date, as the case may be, is not paid when due (including, without limitation, by virtue of the Issuer being unable to comply with the "solvency and liquidity" test under section 46 of the Companies Act or the Issuer or its board of directors not complying with the provisions of section 46 of the Companies Act), cumulative preferential dividends will continue to accrue on such outstanding amount and any other outstanding amount/s due and payable in respect of such Redeemable Preference Share, at the Default Rate, from and including the Applicable Redemption Date or the relevant Dividend Payment Date or the relevant other payment date, as the case may be, to but excluding the Actual Redemption Date or the Late Payment Date, as the case may be, calculated *mutatis mutandis* in accordance with Condition 10.

#### 11.4 **Event of Default**

For the avoidance of doubt it is recorded that, in circumstances where any non-payment contemplated in this Condition 11 constitutes an Event of Default contemplated in Condition 17.1(a), then (i) following that Event of Default and the Enforcement of the Guarantee in respect of a Tranche of Notes, the amount payable to the relevant Noteholders shall be the Guarantee Amount, (ii) following that Event of Default and the Enforcement of the Put Option in respect of a Tranche of Redeemable Preference Shares, the amount payable to the relevant Redeemable Preference Share Holders shall be the Put Option Amount, and (iii) the Guarantee Amount and the Put Option Amount shall be calculated by the Calculation Agent in accordance with Condition 18.5.

### 12 **CALCULATION AGENT**

The Calculation Agent will, in addition to the obligations and duties set out in the Calculation Agency Agreement, perform all of the obligations and duties imposed on, and all of the functions and services contemplated in respect of, the Calculation Agent in the Terms and Conditions.

#### 12.1 **Amounts payable by the Issuer**

##### 12.1.1 *Determinations*

The Calculation Agent will calculate the Payment Amount, and (among other things) for this purpose, the Calculation Agent will, in relation to each Tranche of Instruments, in accordance with the Calculation Agency Agreement, the Terms and Conditions and the Applicable Pricing Supplement:

- a) on each Interest Determination Date, determine the Interest Rate and calculate the Interest Amount payable in respect of Floating Rate Notes for each Interest Period;
- b) calculate the Interest Amount payable in respect of Fixed Rate Notes for each Interest Period;
- c) on each Dividend Determination Date, determine the Dividend Yield and calculate the Dividend Amount payable in respect of Floating Yield Preference Shares for each Dividend Period;
- d) calculate the Dividend Amount payable in respect of Fixed Yield Preference Shares for each Dividend Period;
- e) calculate the Final Redemption Amount;
- f) calculate the Early Redemption Amount (if applicable) and the Late Redemption Amount (if applicable);
- g) subject to Condition 12.2, determine and calculate all other rates, dates and amounts payable in respect of the Instruments pursuant to the Terms and Conditions.

##### 12.1.2 *Notifications*

The Calculation Agent will, in accordance with the Calculation Agency Agreement, at least seven days before each Payment Date:

- a) send the Paying Agent written notice, duly signed by an authorised signatory of the Calculation Agent, specifying the Payment Amount, and the manner in which the Payment Amount is to be apportioned between, and disbursed to, the Instrument Holders; and
- b) notify the Issuer, JSE, CSD, and Instrument Holders in accordance with Condition 23.1, of the Payment Amount.

#### 12.2 **Amounts payable by the Guarantor**

##### 12.2.1 *Enforcement of the Guarantee and/or Enforcement of the Put Option*

The Calculation Agent will, in accordance with the Calculation Agency Agreement, forthwith upon receipt of notice from the Issuer of any Event of Default, or upon the Calculation Agent itself becoming aware that any Event of Default has occurred and is continuing:

- a) liaise with the Representative for purposes of ascertaining the action to be taken by the Representative in respect of such Event of Default;

- b) forthwith after ascertaining the action to be taken by the Representative in respect of such Event of Default, determine (in accordance with Condition 18.5) the Guarantee Amount payable to the relevant Noteholders following the Enforcement of the Guarantee and/or the Put Option Amount payable to the relevant Redeemable Preference Share Holders following the Enforcement of the Put Option.

#### 12.2.3 *Notifications*

The Calculation Agent will, in accordance with the Calculation Agency Agreement, at least seven days before the Guarantee Amount Payment Date or the Put Option Implementation Date, as the case may be:

- a) send the Paying Agent written notice, duly signed by an authorised signatory of the Calculation Agent, specifying the Guarantee Amount or the Put Option Amount, as the case may be, and the manner in which the Guarantee Amount or the Put Option Amount, as the case may be, is to be apportioned between, and disbursed to, the relevant Noteholders or the relevant Redeemable Preference Share Holders, as the case may be;
- b) notify the Issuer, the Guarantor, the Representative, JSE, CSD, and the relevant Noteholders or the relevant Redeemable Preference Share Holders, as the case may be, in accordance with Condition 23.1, of the Guarantee Amount or the Put Option Amount, as the case may be.

#### 12.3 **Determinations binding**

12.3.1 All notifications, certificates, opinions, determinations, calculations, quotations and decisions given, expressed, made or obtained for the purposes of the Terms and Conditions ("**Calculation**"), whether by a primary dealer or Reference Bank (or any of them) or the Calculation Agent shall, in the absence of wilful deceit, bad faith or manifest error, be binding on the Issuer, the Guarantor, the Paying Agent, the Calculation Agent, the Representative, CSD, CSD Participants and the Instrument Holders and, neither the Issuer nor the Guarantor nor any primary dealer nor any Reference Bank nor the Paying Agent nor the Calculation Agent nor the Representative nor CSD nor any CSD Participant shall be liable to the Instrument Holders (i) in connection with the exercise or non-exercise by any of them of their powers, duties and discretions hereunder, or (ii) as a result of the Calculation Agent having acted on any quotation given by any primary dealer or any Reference Bank which subsequently may be found to be incorrect.

12.3.2 If any Instrument Holder is dissatisfied with a Calculation then, if so authorized by or on behalf of the relevant Group of Instrument Holders holding or representing not less than two-thirds of the Outstanding Principal Amount of all of the Instruments held by that Group or if so authorised by an Extraordinary Resolution of the relevant Group of Instrument Holders passed at a meeting of the relevant Group of Instrument Holders, as the case may be, the Representative shall refer the relevant Calculation for determination to an Approved Calculation Dispute Agent identified by the Representative who shall act as an expert and not as an arbitrator in determining the Calculation on the same basis, with the necessary adjustments, as the Calculation Agent, in terms of Conditions 12.3.1, 12.4 and 12.5 and:

- a) whose determination shall be final and binding;
- b) who, subject to any express provision to the contrary, shall determine the liability for its charges, which shall be paid accordingly;
- c) who shall be entitled to determine such methods and processes as it may, in its sole discretion, deem appropriate in the circumstances provided that it may not adopt any process which is manifestly biased, unfair or unreasonable;
- d) who shall consult with the relevant persons (provided that the extent of such consultation shall be in his or its sole discretion) prior to rendering a determination; and
- e) who, having regard to the sensitivity of any confidential information, shall be entitled to take advice from any person considered by him or it to have expert knowledge with reference to the matter in question.

#### 12.4 **Failure to make determinations**

If the Calculation Agent does not for any reason determine and/or calculate and/or publish any amount, rate or date as provided in the Terms and Conditions, it will forthwith notify the Issuer, the Representative, the Paying Agent, the JSE and CSD thereof. Any failure by the Calculation

Agent to determine and/or calculate and/or publish any of the foregoing will not affect the Issuer's obligations to pay any amount due in respect of the Instruments as and when due or, in the event of the Enforcement of the Guarantee and/or the Enforcement of the Put Option, the Guarantor's obligations to pay any amount due under the Guarantee and/or the Put Option Agreement.

#### 12.5 Good Faith

Whenever the Calculation Agent is required to act or to exercise judgment pursuant to the Terms and Conditions, it will do so in good faith and in a commercially reasonable manner.

### 13 PAYMENTS

#### 13.1 Payments and Business Day Convention

Only Instrument Holders reflected in the Register at 17h00 (South African time) on the relevant Last Day to Register shall be entitled to payments of principal and interest or dividend, as the case may be.

Notwithstanding anything to the contrary contained in the Terms and Conditions, if any Applicable Maturity Date or any Applicable Redemption Date, as the case may be, is not a Business Day, then:

- a) if a Business Day Convention is not specified in the Applicable Pricing Supplement, such Applicable Maturity Date or such Applicable Redemption Date, as the case may be, shall be the next Business Day;
- b) if a Business Day Convention is specified in the Applicable Pricing Supplement, such Applicable Maturity Date or such Applicable Redemption Date, as the case may, shall be adjusted according to such Business Day Convention.

#### 13.2 Method of Payment

All payments of principal and interest or dividend, as the case may be, payable in respect of the Instruments shall be made by the Paying Agent, on behalf of the Issuer, on the terms and conditions of the Paying Agency Agreement and this Condition 13.

The Issuer shall not be responsible for the loss in transmission of any funds paid by the Paying Agent to the Instrument Holders, and payment of the relevant Payment Amount by the Issuer to the Paying Agent (into such separate bank account of the Issuer held with the Paying Agent for the Instruments as is agreed in writing between the Issuer and the Paying Agent from time to time) in accordance with clause 6 of the Paying Agency Agreement, shall be satisfaction *pro tanto*, to the extent of the relevant Payment Amount, of the Issuer's obligations to the Instrument Holders under the Instruments, the Terms and Conditions and the Paying Agency Agreement.

Subject to the Paying Agency Agreement, the Paying Agent shall, on behalf of the Issuer:

- a) pay the principal payable on the Notes (and the interest payable in respect of the last Interest Period) on the Applicable Maturity Date as adjusted, if applicable, in accordance with Condition 13.1;
- b) subject to paragraph (a) above in regard to the payment of interest for the last Interest Period, pay the interest payable on the Notes on each Interest Payment Date as adjusted, if applicable, in accordance with Condition 9.3;
- c) pay the principal payable on the Redeemable Preference Shares (and the dividend payable in respect of the last Dividend Period) on the Applicable Redemption Date as adjusted, if applicable, in accordance with Condition 13.1;
- d) subject to paragraph (c) above in regard to the payment of dividend for the last Dividend Period, pay the dividend payable on the Redeemable Preference Shares on each Dividend Payment Date as adjusted, if applicable, in accordance with Condition 10.3.

Payments will be subject in all cases to any fiscal or other laws and regulations applicable thereto in the place of payment, subject to Condition 15.

Any reference in this Condition 13 to principal in respect of the Instruments shall be deemed to include, as applicable, the Early Redemption Amount, the Late Redemption Amount, and any additional amounts which may be payable with respect to principal under Condition 15.

### 13.2.1 *Instruments held in the CSD or represented by Individual Certificates*

Subject to the Paying Agency Agreement, the Paying Agent, on behalf of the Issuer, shall pay the principal and interest or dividend, as the case may be, payable in respect of the Instruments:

- a) in the case of Instruments which are held in the CSD, in immediately available and freely transferable funds, in ZAR via electronic funds transfer, to the bank account of the CSD's Nominee, as the registered holder of such Instruments;
- b) in the case of Instruments which are represented by Individual Certificates, in immediately available and freely transferable funds, in ZAR via electronic funds transfer, to the bank account of the person named as the registered holder of such Instruments in the Register or, in the case of joint registered Instrument Holders, the bank account of the first one of them named in the Register in respect of such Instruments.

### 13.2.2 *Beneficial Interests*

Following payment to the CSD's Nominee of amounts due and payable in respect of Instruments which are held in the CSD pursuant to Condition 13.2.1(a), the relevant funds will be transferred by the CSD's Nominee, via the CSD Participants, to the holders of Beneficial Interests in such Instruments.

Each of the persons named in the records of the CSD or the relevant CSD Participant, as the case may be, as the holders of Beneficial Interests in Instruments shall look solely to CSD or the relevant CSD Participant, as the case may be, for such person's share of each payment so made by the Paying Agent, on behalf of the Issuer, to or for the order of the CSD's Nominee as the registered Instrument Holder of such Instruments.

Neither the Paying Agent nor the Issuer will have any responsibility or liability for any aspect of the records relating to, or payments made on account of, Beneficial Interests, or for maintaining, supervising or reviewing any records relating to Beneficial Interests.

Payments of principal and interest or dividend, as the case may be, in respect of Beneficial Interests in Instruments shall be recorded by the CSD's Nominee, as the registered Instruments Holder of such Instruments and such record of payments shall be *prima facie* proof of such payments.

### 13.3 **Payment by Cheque**

If the Paying Agent, on behalf of the Issuer, is prevented or restricted directly or indirectly from making any payment by electronic funds transfer in accordance with the preceding paragraphs of this Condition 13 (whether by reason of strike, lock-out, fire, explosion, flood, riot, war, accident, act of God, embargo, legislation, shortage of or breakdown in facilities, civil commotion, unrest or other disturbance, cessation of labour, Government interference or control or any other cause or contingency beyond the control of the Paying Agent) the Paying Agent, on behalf of the Issuer, shall make such payment by cheque or by such number of cheques as may be required in accordance with applicable banking law and practice. All moneys so payable by cheque shall be sent by post, at the risk of the relevant Instrument Holder, to the address of that Instrument Holder, as set forth in the Register or, in the case of joint Instrument Holders, the address set forth in the Register of the first one of them named in the Register in respect of that Instrument. Each such cheque shall be made payable to the relevant Instrument Holder or, in the case of joint Instrument Holders, the first one of them named in the Register. Cheques may be posted by ordinary post, provided that neither the Issuer nor the Paying Agent shall be responsible for any loss, including without limitation any loss due to theft or fraud, in transmission and the postal authorities shall be deemed to be the agent of the Instrument Holders for the purposes of all cheques posted in terms of this Condition 13.3.

Payment by cheque sent in terms of this Condition 13.3 shall be a complete discharge by the Issuer of its obligations in respect of the amount of the cheque.

### 13.4 **Payments under the Guarantee and/or Enforcement of the Put Option**

Following an Event of Default and the Enforcement of the Guarantee in respect of a Tranche of Notes, all payments of the Guarantee Amount and all other amounts (if any) payable under the Guarantee shall be made by the Paying Agent, on behalf of the Guarantor, to the relevant Noteholders on the Guarantee Payment Date (or, in the case of other amounts (if any) payable under the Guarantee, the date specified for this purpose in the Guarantee), in accordance with



Condition 18.3 and the Paying Agency Agreement.

Following an Event of Default and the Enforcement of the Put Option in respect of a Tranche of Redeemable Preference Shares, all payments of the Put Option Amount and all other amounts (if any) payable under the Put Option Agreement shall be made by the Paying Agent, on behalf of the Guarantor, to the relevant Redeemable Preference Share Holders, on the Put Option Implementation Date (or, in the case of other amounts (if any) payable under the Put Option Agreement, the date specified for this purpose in the Put Option Agreement), in accordance with Condition 18.4 and the Paying Agency Agreement.

The provisions of Condition 13.1, Condition 13.2 and Condition 13.3 shall apply *mutatis mutandis* to all payments of the Guarantee Amount and all other amounts (if any) payable under the Guarantee, or the Put Option Amount and all other amounts (if any) payable under the Put Option Agreement, as the case may be; provided that (i) all references to the Issuer shall be construed as references to the Guarantor, (ii) all references to the Instruments shall be construed as references to the relevant Notes or the relevant Redeemable Preference Shares, as the case may be, (iii) all references to the Instrument Holders shall be construed as references to the relevant Noteholders or the relevant Redeemable Preference Share Holders, as the case may be, (iv) all references to principal and interest or dividend, as the case may be, shall be construed as references to the Guarantee Amount and all other amounts (if any) payable under the Guarantee or the Put Option Amount and all other amounts (if any) payable under the Put Option Agreement, as the case may be, and (v) all references to the Applicable Maturity Date and the Interest Payment Date or the Applicable Redemption Date and the Dividend Payment Date, as the case may be, shall be construed as references to the Guarantee Payment Date (or, in the case of other amounts (if any) payable under the Guarantee, the date specified for this purpose in the Guarantee) or the Put Option Implementation Date (or, in the case of other amounts (if any) payable under the Put Option Agreement, the date specified for this purpose in the Put Option Agreement), as the case may be.

### 13.5 Surrender of Individual Certificates

#### 13.5.1 *Payment of principal under the Instruments*

Notwithstanding anything to the contrary contained in the Terms and Conditions, payments of principal payable in respect of any Instrument which is represented by an Individual Certificate shall be made to the Instrument Holder of such Instrument only if, at least three days prior to the Applicable Maturity Date or the Applicable Redemption Date, as the case may be, such Individual Certificate shall have been surrendered to the Transfer Secretary (at its Specified Office) for cancellation.

If the relevant Individual Certificate is not surrendered to the Transfer Agent (at its Specified Office) in accordance with the preceding paragraph, the amount of principal payable to the Instrument Holder of the Instrument/s represented by that Individual Certificate shall be retained by the Paying Agent for such Instrument Holder, at the latter's risk, until that Individual Certificate shall have been surrendered to the Transfer Secretary (at its Specified Office), and such Instrument Holder will not be entitled to any interest and/or other payments in respect of any delay in payment occasioned as a result of such failure to surrender such Individual Certificate.

#### 13.5.2 *Enforcement of the Guarantee and/or Enforcement of the Put Option*

If, following an Event of Default and the Enforcement of the Guarantee in respect of a Tranche of Notes, such Notes are to be redeemed pursuant to Condition 18.3, the holders of the Individual Certificates representing such Notes shall, at least three days prior to the Guarantee Amount Payment Date, surrender such Individual Certificates at the Specified Office of the Transfer Secretary for cancellation.

Following an Event of Default and the Enforcement of the Put Option in respect of a Tranche of Redeemable Preference Shares, the holders of the Individual Certificates representing such Redeemable Preference Shares shall, at least three days prior to the Put Option Implementation Date, surrender such Individual Certificates at the Specified Office of the Transfer Secretary for cancellation, together with such Transfer Forms as may be required for the transfer of such Redeemable Preference Shares to the Guarantor or its nominee for which purpose the name of the transferee shall be left blank on a non-recourse basis.

## 14 REDEMPTION AND PURCHASE

### 14.1 Redemption on Maturity

A Tranche of Notes will, subject to the Terms and Conditions, be redeemed in ZAR by the Issuer at its Final Redemption Amount, on the Maturity Date, together (if applicable) with interest accrued to the Maturity Date and any and all other amounts payable under that Tranche of Notes as at the Maturity Date.

A Tranche of Redeemable Preference Shares will, subject to the Terms and Conditions and compliance with the Companies Act, be redeemed in ZAR by the Issuer at its Final Redemption Amount, on the Redemption Date, together (if applicable) with dividend accrued to the Redemption Date and any and all other amounts payable under that Tranche of Redeemable Preference Shares as at the Redemption Date.

### 14.2 Early redemption for tax reasons

The Issuer may at its option (but subject, in the case of Redeemable Preference Shares, to the Companies Act), having given not less than 30 (thirty) nor more than 60 (sixty) days' notice to the Transfer Secretary, the Calculation Agent, the Paying Agent, the Representative, and the Instrument Holders in accordance with Condition 23.1, redeem all (and not only some) of the Instruments in any Tranche, on the date for early redemption stipulated as such in such notice (such date being the "Early Redemption Date"), at its Early Redemption Amount together, if applicable, with interest or dividend, as the case may be, accrued to the Early Redemption Date and any and all other amounts payable under that Tranche of Instruments as at the Early Redemption Date, if the Issuer, immediately prior to the giving of such notice, is of the reasonable opinion that there is a substantial likelihood that (i) where such Instruments comprise Redeemable Preference Shares, the Issuer will be obliged to pay additional amounts in accordance with Condition 15.2 in respect of such Redeemable Preference Shares (provided that any such redemption shall not affect and/or prejudice the relevant Redeemable Preference Share Holders' rights (which have accrued prior to the Early Redemption Date) to payment of such additional amounts) or (ii) the economic returns to the Issuer under the Programme will be adversely affected as a result of (in the case of (ii) only):

- a) any actual change, or proposed change which is reasonably imminent, in or amendment to the laws, regulations or rulings of South Africa or any political subdivision or any authority thereof or therein having power to tax; or
- b) any actual change, or proposed change which is reasonably imminent, in the official application or interpretation of such laws, regulations or rulings; or
- c) any action, or proposed action which is reasonably imminent, taken or proposed to be taken by any court of competent jurisdiction of South Africa or any political sub-division or authority thereof or therein having power to tax, whether or not such action was taken or brought, or such proposed action is proposed to be taken or brought, with respect to the Issuer or the Guarantor, as the case may be; or
- d) any actual change, or proposed change which is reasonably imminent, in the official application or interpretation of, or any actual or proposed execution of, or amendment to, any treaty or treaties affecting taxation to which South Africa is or is to be a party,

which change, amendment or execution becomes effective, or proposal is made, on or after the Issue Date or any earlier date specified for this purpose in the Applicable Pricing Supplement.

From the date on which any notice of redemption pursuant to this Condition 14.2 is given, the Issuer shall make available at its Specified Office, for inspection by any holder of Instruments to be so redeemed, a certificate signed by two authorised signatories of the Issuer 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.

### 14.3 Early Redemption Amount: Zero Coupon Notes

Where any calculation is to be made in terms of this Condition 14.3 for a period which is not a whole number of years, it shall be calculated on the basis of actual days elapsed divided by 365 (three hundred and sixty five), or such other calculation basis as may be specified in the Applicable Pricing Supplement.

A Tranche of Zero Coupon Notes which is redeemed pursuant to Condition 14.2 will be redeemed

at its Early Redemption Amount calculated (unless otherwise specified in the Applicable Pricing Supplement) as follows:

$$\text{ERA} = \text{IP} + \left( \frac{\text{IY}}{\text{DM}} \times \text{IP} \times \text{D} \right)$$

where:

ERA = the Early Redemption Amount;

IP = the Issue Price;

IY = the Implied Yield;

D = the number of days elapsing between the Issue Date and the Early Redemption Date (excluding the Issue Date and the Early Redemption Date);

DM = the number of days elapsing between the Issue Date and the Maturity Date (excluding the Issue Date and the Maturity Date).

#### 14.4 Purchase

Subject to the Memorandum of Incorporation of the Issuer, (i) the Issuer may at any time purchase Notes, at any price in the open market or otherwise, and (ii) subject to the Companies Act, the Issuer may at any time purchase Redeemable Preference Shares, at any price in the open market or otherwise. In the event of the Issuer purchasing any Instrument, such Instrument may (subject to restrictions of any applicable law) be held, resold or, at the option of the Issuer, cancelled. Save as is set out in the preceding provisions of this Condition 14.4, no company within the Kagiso Tiso Group may subscribe for or purchase any Instruments; provided that the Guarantor may purchase Redeemable Preference Shares strictly to the extent necessary to enable the Guarantor to fulfil its obligations under the Put Option Agreement. The Guarantor shall not have any voting rights in respect of any Redeemable Preference Shares held by it.

#### 14.5 Cancellation

All Instruments which are redeemed will forthwith be cancelled.

#### 14.6 Applicable Procedures

The redemption of Beneficial Interests shall take place in accordance with the Applicable Procedures and the Securities Services Act.

### 15 TAXATION

#### 15.1 No Gross-Up on Notes

All payments of principal, interest and any other amounts in respect of the Notes by the Issuer will be made without withholding or deduction for or on account of any Tax imposed or levied by or on behalf of South Africa or any political subdivision or any authority thereof or therein having power to tax, unless such withholding or deduction is required by Applicable Law (including any applicable double taxation agreement to which South Africa is a party).

The payment of any Tax by the Issuer or the Guarantor, as the case may be, as an agent or representative taxpayer for a Noteholder shall not constitute a withholding or deduction for the purposes of this Condition 15.1.

If any such withholding or deduction is required to be made by Applicable Law in respect of Tax imposed or levied on any payments (whether in respect of principal, interest or otherwise) in respect of any Notes in a Tranche the Issuer will make such payments after such withholding or deduction has been made and will account to the relevant Taxation authorities for the amount so required to be withheld or deducted. The Issuer will not be obliged to make any additional payments to any Noteholder in respect of such withholding or deduction.

#### 15.2 Gross-Up of Tax on Dividend Amounts

15.2.1 If a Tax Event occurs, in relation to any Dividend Amount which the Issuer has already paid in respect of any Redeemable Preference Share, either

A. within 3 (three) years after the earlier of:

a) the Applicable Redemption Date of that Redeemable Preference Share; or

b) in relation to that Dividend Amount only, the "date of assessment" (as defined in section 1 of the Income Tax Act) of the Redeemable Preference Share Holder of that Redeemable Preference Share, in respect of the year of assessment during which the relevant Dividend Amount was paid; or

B. where the Issuer has failed to comply with the "Use of Proceeds" provisions set out in Section 8 of the Programme Memorandum headed "Use of Proceeds" in relation to such Redeemable Preference Shares, within 5 (five) years after the Applicable Redemption Date of that Redeemable Preference Share,

then, subject to the Issuer's rights to redeem the relevant Tranche of Redeemable Preference Shares pursuant to Condition 14.2(i) (provided that any such redemption shall not affect and/or prejudice the relevant Redeemable Preference Share Holders' rights (which have accrued prior to the Early Redemption Date contemplated in Condition 14.2(i)) to payment of the additional amount referred to in this Condition 15.2.1 below), the Issuer shall pay that Redeemable Preference Share Holder such additional amount (including any Tax on such additional amount) as shall be necessary to place that Redeemable Preference Share Holder in the same net after tax position as it would have been in had the Tax Event not occurred in relation to that Dividend Amount and had that Redeemable Preference Share Holder been subject to Tax at the Corporate Tax Rate and without regard to that Redeemable Preference Share Holder's own tax-paying position or taking into account any assessed loss of that Redeemable Preference Share Holder; provided that if that Redeemable Preference Share Holder actually receives the benefit, after payment of such additional amount, to any tax credit, deduction or allowance, that Redeemable Preference Share Holder shall forthwith reimburse the Issuer with the amount of such tax credit, deduction or allowance to the extent that the Issuer is entitled to recognise, and benefit from, such tax credit, deduction or allowance, in the calculation of such additional amount (*mutatis mutandis* as contemplated in Condition 15.2.2) had such Redeemable Preference Share Holder actually received the benefit of such tax credit, deduction or allowance prior to payment of such additional amount.

- 15.2.2 If a Tax Event occurs and, as a result of such occurrence, any Dividend Amount in respect of any Redeemable Preference Share which has not yet been paid, will become subject to Tax other than the Dividends Tax then, subject to the Issuer's rights to redeem the relevant Tranche of Redeemable Preference Shares pursuant to Condition 14.2(i) (provided that any such redemption shall not affect and/or prejudice the relevant Redeemable Preference Share Holders' rights (which have accrued prior to the Early Redemption Date contemplated in Condition 14.2(i)) to payment of the additional amount referred to in this Condition 15.2.2 below), the Issuer shall pay that Redeemable Preference Share Holder such additional amount (including any Tax on such amount) as is necessary to place that Redeemable Preference Share Holder in the same net after tax position as it would have been in had the Tax Event not occurred and had that Redeemable Preference Share Holder been subject to Tax at the Corporate Tax Rate and without regard to that Redeemable Preference Share Holder's own tax-paying position or taking into account any assessed loss of that Redeemable Preference Share Holder; provided that if that Redeemable Preference Share Holder is satisfied (acting reasonably) that it will actually receive the benefit of any tax credit, deduction or allowance, then that Redeemable Preference Share Holder shall, as soon as reasonably possible after being satisfied (acting reasonably) that it will actually receive the benefit of such tax credit, deduction or allowance, notify the Issuer thereof and the Issuer shall be entitled to recognise, and benefit from, such tax credit, deduction or allowance, in the calculation of such additional amount.
- 15.2.3 For the avoidance of doubt, it is recorded that if, during the period before the relevant Redeemable Preference Share has been redeemed pursuant to Condition 14, the Issuer fails to pay any additional amount referred to in this Condition 15.2 (including any Tax on such additional amounts) which is due and payable to the relevant Redeemable Preference Share Holder, such failure to pay will constitute a Potential Event of Default under Condition 17.1(a) and, subject to Condition 18.4, an Event of Default.
- 15.2.4 During the period after the relevant Redeemable Preference Share has been redeemed pursuant to Condition 14, the Issuer (and the Guarantor, who shall be jointly and severally liable with the Issuer) shall pay the additional amount referred to in this Condition 15.2 (including any Tax on such additional amount) to the relevant Redeemable Preference Share Holder.

15.2.5 Where the Guarantor has become liable to pay any additional amount referred to in this Condition 15.2 (including any Tax on such additional amount) in terms of Condition 15.2.4, the provisions of Condition 18.2 shall apply *mutatis mutandis* to the enforcement of the rights against the Guarantor conferred on the relevant Redeemable Preference Share Holder in terms of this Condition 15.2.

### 15.3 Definitions

For the purposes of this condition 15;

"Corporate Tax Rate" means the rate (currently 28% (twenty eight percent)) at which the "normal tax" (as envisaged in section 5 of the Income Tax Act) is levied on companies generally;

"Dividends Tax" means the withholding tax on dividends imposed under Part VIII of Chapter II of the Income Tax Act, excluding any such withholding tax levied, as a result of the occurrence of any Tax Event, on dividends that were prior to the occurrence of such Tax Event, exempt from such tax;

"Tax Event" means, in relation to a Tranche of Redeemable Preference Shares, an event where, as a result of (a) the coming into force, on or after the Issue Date of that Tranche of Redeemable Preference Shares, of any new Applicable Law, (b) any change in any Applicable Law or any change in the application or official interpretation (including by a court of competent jurisdiction) of any Applicable Law, which change comes into force or occurs on or after the Issue Date of that Tranche of Redeemable Preference Shares, (c) in the absence of any event contemplated in subparagraphs (a) or (b), any willful or negligent act or omission on the part of the Issuer or Guarantor in relation to that Tranche of Redeemable Preference Shares, that leads to the application of any Applicable Law that would not otherwise have been applicable, the Dividend Amounts in respect of such Redeemable Preference Shares become subject to any Tax.

## 16 PRESCRIPTION

### 16.1 Notes and the Guarantee

The Notes, and all claims by the Noteholders under the Terms and Conditions, will prescribe and become void three years after the Applicable Maturity Date; provided that if the full amount of the moneys payable under the Notes has not been received by the CSD's Nominee on or prior to the Applicable Maturity Date, the Notes, and all claims by the Noteholders under the Terms and Conditions, will become void three years after the date on which such moneys have been received by the CSD's Nominee and notice to that effect has been given by the Issuer to the Noteholders in accordance with Condition 23.1.

All claims under the Guarantee for payment in respect of the Notes will prescribe and become void three years after the Guarantee Amount Payment Date; provided that if the full amount of the moneys payable under the Guarantee in respect of the Notes has not been received by the CSD's Nominee on or prior to the Guarantee Amount Payment Date, all claims under the Guarantee for payment in respect of the Notes will become void three years after the date on which such moneys have been received by the CSD's Nominee and notice to that effect has been given by the Guarantor to the Noteholders in accordance with Condition 23.1.

### 16.2 Redeemable Preference Shares and the Put Option Agreement

Subject to the law applicable to redeemable preference shares, all claims by the Redeemable Preference Share Holders under the Terms and Conditions will prescribe and become void three years after the Applicable Redemption Date; provided that if the full amount of the moneys payable under the Redeemable Preference Shares has not been received by the CSD's Nominee on or prior to the Applicable Redemption Date, all claims by the Redeemable Preference Share Holders under the Terms and Conditions will prescribe and become void three years after the date on which such moneys have been received by the CSD's Nominee and notice to that effect has been given by the Issuer to the Redeemable Preference Share Holders in accordance with Condition 23.1.

All claims under the Put Option Agreement in respect of the Redeemable Preference Shares will prescribe and become void three years after the Put Option Implementation Date; provided that if the full amount of the moneys payable under the Put Option Agreement in respect of the Redeemable Preference Shares has not been received by the CSD's Nominee on or prior to the Put Option Implementation Date, all claims under the Put Option Agreement for payment in respect of the Redeemable Preference Shares will become void three years after the date on which such moneys have been received by the CSD's Nominee and notice to that effect has been given by the

Guarantor to the Redeemable Preference Share Holders in accordance with Condition 23.1.

## 17 EVENTS OF DEFAULT

### 17.1 Events of Default

An Event of Default in relation to all Tranches of Instruments shall arise if any one or more of the following events or circumstances shall have occurred and be continuing in respect of any Tranche of Instruments:

- a) the Issuer fails to pay any amount due and payable under any of the Instruments (including any amount scheduled for payment in respect of a Redeemable Preference Share) and such failure to pay continues for more than 5 (five) consecutive days after the date of the written notice sent by the Representative to the Issuer (with a copy to the Guarantor), in terms of the first paragraph of Condition 18.3 or pursuant to the instructions given to the Representative in terms of the first paragraph of Condition 18.4, as the case may be, requiring that failure to be remedied; or
- b) the Issuer fails to perform any of its other obligations under any of the Instruments and such failure to perform has continued for more than 30 (thirty) consecutive days after the date of the written notice sent by the Representative to the Issuer (with a copy to the Guarantor), in terms of the first paragraph of Condition 18.3 or pursuant to the instructions given to the Representative in terms of the first paragraph of Condition 18.4, as the case may be, requiring that failure to be remedied; or
- c) the Issuer fails to pay any amount due and payable under any Indebtedness (taking into account any applicable grace period for such payment) and such failure to pay continues for more than 30 (thirty) consecutive days after the date of the written notice sent by the Representative to the Issuer (with a copy to the Guarantor), in terms of the first paragraph of Condition 18.3 or pursuant to the instructions given to the Representative in terms of the first paragraph of Condition 18.4, as the case may be, requiring that failure to be remedied; provided that such failure to pay shall not constitute an Event of Default if the Issuer, in good faith and on reasonable grounds, institutes proceedings to contest its liability to pay such amount within 30 (thirty) consecutive days of the day on which such amount is purportedly due and payable; provided further that if a final decision which is not subject to any appeal has been given or handed down in respect of such proceedings and such decision has been given or handed down against the Issuer, such failure to pay shall, with effect from the date on which such decision is given or handed down, constitute an Event of Default; or
- d) the Guarantor fails to pay any amount due and payable under any Indebtedness (taking into account any applicable grace period for such payment) and such failure to pay continues for more than 30 (thirty) consecutive days after the date of the written notice sent by the Representative to the Guarantor (with a copy to the Issuer), in terms of the first paragraph of Condition 18.3 or pursuant to the instructions given to the Representative in terms of the first paragraph of Condition 18.4, as the case may be, requiring that failure to be remedied; provided that such failure to pay shall not constitute an Event of Default if the Guarantor, in good faith and on reasonable grounds, institutes proceedings to contest its liability to pay such amount within 30 (thirty) consecutive days of the day on which such amount is purportedly due and payable; provided further that if a final decision which is not subject to any appeal has been given or handed down in respect of such proceedings and such decision has been given or handed down against the Guarantor, such failure to pay shall, with effect from the date on which such decision is given or handed down, constitute an Event of Default; or
- e) the commencement of business rescue proceedings, the granting of an order by any competent court or authority for the liquidation, dissolution or winding-up of the Issuer or the Guarantor, whether provisionally (and such order is not dismissed or withdrawn within 30 (thirty) days of the grant thereof) or finally, or the placing of the Issuer or the Guarantor under voluntary liquidation; provided that no liquidation, dissolution, winding-up or business rescue proceedings shall constitute an Event of Default if (i) the liquidation, dissolution, winding-up or business rescue proceedings are for the purposes of a merger, amalgamation, de-merger, consolidation, reconstruction, re-organisation or other similar arrangement within the Kagiso Tiso Group (provided that the merged entity still has the obligations of the Issuer or the Guarantor, as the case may be, under the

Terms and Conditions of the Put Option Agreement and the Guarantee, as applicable) or (ii) the terms of which were approved by the Representative or an Extraordinary Resolution of Instrument Holders before the date of such liquidation, dissolution, winding-up or commencement of business rescue proceedings; or

- f) proceedings are initiated against the Issuer or the Guarantor such that a person takes possession of the whole or a Material Part of the undertaking or assets of the Issuer or the Guarantor, or an execution or attachment or other process is levied, enforced upon, sued out or put in force against the whole or a Material Part of the undertaking or assets of the Issuer or the Guarantor, as the case may be, and such proceedings are not (or such execution, attachment or other process is not) withdrawn, or settled and satisfied, within 30 (thirty) days after the date of the written notice sent by the Representative to the Issuer or the Guarantor (as applicable), with a copy to the other one of them, in terms of the first paragraph of Condition 18.3 or pursuant to the instructions given to the Representative in terms of the first paragraph of Condition 18.4, as the case may be; or
- g) the Guarantee ceases to be in full force and effect and the Representative has sent a written notice to the Guarantor (with a copy to the Issuer), in terms of the first paragraph of Condition 18.3 or pursuant to the instructions given to the Representative in terms of the first paragraph of Condition 18.4, as the case may be;
- h) the Put Option ceases to be in full force and effect and the Representative has sent a written notice to the Guarantor (with a copy to the Issuer), in terms of the first paragraph of Condition 18.3 or pursuant to the instructions given to the Representative in terms of the first paragraph of Condition 18.4, as the case may be;
- i) the Issuer breaches any undertaking given by it in terms of Condition 7.2.2 and/or Condition 10.2A(b) and the Representative has sent a written notice to the Issuer (with a copy to the Guarantor), in terms of the first paragraph of Condition 18.3 or pursuant to the instructions given to the Representative in terms of the first paragraph of Condition 18.4, as the case may be, requiring that breach to be remedied;
- j) the Guarantor breaches any undertaking given by it in terms of Condition 7.2.1 and the Representative has sent a written notice to the Guarantor (with a copy to the Issuer), in terms of the first paragraph of Condition 18.3 or pursuant to the instructions given to the Representative in terms of the first paragraph of Condition 18.4, as the case may be, requiring that breach to be remedied;
- k) Control of the Issuer changes and the Representative has sent a written notice to the Issuer (with a copy to the Guarantor), in terms of the first paragraph of Condition 18.3 or pursuant to the instructions given to the Representative in terms of the first paragraph of Condition 18.4, as the case may be;
- l) the Issuer disposes of the whole or a Material Part of its undertaking or assets and the Representative has sent a written notice to the Issuer (with a copy to the Guarantor), in terms of the first paragraph of Condition 18.3 or pursuant to the instructions given to the Representative in terms of the first paragraph of Condition 18.4, as the case may be;
- m) the Issuer or the Guarantor is "financially distressed" as contemplated in section 128(1) of the Companies Act or the Issuer is reasonably likely to become "financially distressed" within a period of 6 (six) months and the Representative has sent a written notice to the Guarantor or the Issuer (as applicable), with a copy to the other one of them, in terms of the first paragraph of Condition 18.3 or pursuant to the instructions given to the Representative in terms of the first paragraph of Condition 18.4, as the case may be;
- n) any compromise is proposed between the Guarantor or the Issuer and its creditors in terms of section 155 of the Companies Act and the Representative has sent a written notice to the Guarantor or the Issuer (as applicable), with a copy to the other one of them, in terms of the first paragraph of Condition 18.3 or pursuant to the instructions given to the Representative in terms of the first paragraph of Condition 18.4, as the case may be; or
- o) shareholders holding in aggregate not less than 15% (fifteen percent) of the entire issued share capital of the Guarantor exercise their appraisal rights against the Guarantor in terms of sections 164(5) to 164(8) of the Companies Act, and such shareholders fail to unconditionally waive such appraisal rights within 5 (five) Business Days of receipt by

the relevant shareholders of written notice from the Redeemable Preference Share Holders requiring such appraisal rights to be unconditionally waived and the Representative has sent a written notice to the Guarantor (with a copy to the Issuer), in terms of the first paragraph of Condition 18.3 or pursuant to the instructions given to the Representative in terms of the first paragraph of Condition 18.4, as the case may be.

For the purposes of paragraph (c) above "Indebtedness" means, in relation to the Issuer, (i) any moneys scheduled for payment in respect of any Redeemable Preference Share or any indebtedness (whether present or future) in respect of moneys borrowed by the Issuer (amounting in aggregate principal amount to not less than ZAR50 000 000 or the equivalent thereof in other currency/ies), and (ii) any guarantee or indemnity (whether present or in future) given by the Issuer in respect of moneys scheduled for payment in respect of any redeemable preference shares issued by an Affected Subsidiary or in respect of moneys borrowed by an Affected Subsidiary (amounting in aggregate principal amount to not less than ZAR50 000 000 or the equivalent thereof in other currency/ies);

For the purposes of paragraph (d) above "Indebtedness" means, in relation to the Guarantor (i) any moneys scheduled for payment in respect of any redeemable preference shares issued by the Guarantor or any indebtedness (whether present or future) in respect of moneys borrowed by the Guarantor (amounting in aggregate principal amount to not less than ZAR50 000 000 or the equivalent thereof in other currency/ies), (ii) any guarantee or indemnity (whether present or future) given by the Guarantor in respect of moneys scheduled for payment in respect of any redeemable preference shares issued by an Affected Subsidiary or in respect of moneys borrowed by an Affected Subsidiary (amounting in aggregate principal amount to not less than ZAR50 000 000 or the equivalent thereof in other currency/ies), (iii) any indebtedness of the Guarantor under the Guarantee (amounting in aggregate principal amount to not less than ZAR50 000 000 or the equivalent thereof in other currency/ies), and (iv) any indebtedness of the Guarantor under the Put Option Agreement (amounting in aggregate principal amount to not less than ZAR50 000 000 or the equivalent thereof in other currency/ies);

For the purposes of paragraphs (f) and (l) above "Material Part" means, in relation to each of the Issuer and the Guarantor, a part whose value is equal to or greater than 15% of the aggregate value of the investment assets and current assets of the Kagiso Tiso Group, such value and such assets being determined by reference to the then most recently published audited consolidated balance sheet of the Kagiso Tiso Group. A report by the auditors of the Issuer and the Guarantor that, in their opinion, (i) the amounts shown in a certificate provided by the Issuer and the Guarantor showing the investment assets and current assets of the relevant part and those investment assets and current assets expressed as a percentage of the investment assets and current assets of the Kagiso Tiso Group have been correctly extracted from the accounting records of the Kagiso Tiso Group, and (ii) the percentage of the investment assets and current assets of that part to the investment assets and the current assets of the Kagiso Tiso Group have been correctly calculated shall, in the absence of manifest error, be prima facie evidence of the matters to which it relates.

17.2

#### Action upon Potential Event of Default and/or Event of Default

The Issuer, upon becoming aware that any Potential Event of Default or an Event of Default, as the case may be, has occurred and is continuing, shall forthwith notify the Paying Agent, the Calculation Agent, the Representative, the Guarantor, the JSE and the CSD in writing thereof.

The Representative shall not be required to take any steps to ascertain whether any Potential Event of Default or an Event of Default contemplated in Condition 17.1(e), as the case may be, shall have occurred and, until the Representative has actual knowledge or has been served with express notice of such Potential Event of Default or such Event of Default, as the case may be, it shall be entitled to assume that no such Potential Event of Default and no such Event of Default has occurred.

Upon receipt by the Representative of notice from the Issuer of any Potential Event of Default or any Event of Default, as the case may be, or upon the Representative itself becoming aware that any Potential Event of Default or any Event of Default, as the case may be, has occurred and is continuing, the Representative shall promptly give notice of such Potential Event of Default or Event of Default, as the case may be, to the Instrument Holders in accordance with Condition 23.1 and (ii) take instructions from each Group of Instrument Holders, by way of an Extraordinary Resolution (as defined in Condition 18.1.2) of that Group of Instrument Holders in respect of the matters contemplated in the second paragraph of Condition 18.3 or the first and second paragraphs



of Condition 18.4, as the case may be.

## 18 ENFORCEMENT

### 18.1 Interpretation

18.1.1 For the purposes of this Condition 18, following the occurrence of a Potential Event of Default or an Event of Default, as the case may be, then:

- a) in relation to a Tranche of Senior Notes, (i) all references to the "relevant Notes" in this Condition 18 shall be construed as references to the Senior Notes in that Tranche, and (ii) all references to the "relevant Group of Noteholders" in this Condition 18 shall be construed as references to the Noteholders who hold the Senior Notes in that Tranche;
- b) in relation to a Tranche of Subordinated Notes, (i) all references to the "relevant Notes" in this Condition 18 shall be construed as references to the Subordinated Notes in that Tranche, and (ii) all references to the "relevant Group of Noteholders" in this Condition 18 shall be construed as references to the Noteholders who hold the Subordinated Notes in that Tranche;
- c) in relation to a Tranche of Redeemable Preference Shares, (i) all references to the "relevant Redeemable Preference Shares" in this Condition 18 shall be construed as references to the Redeemable Preference Shares in that Tranche, and (ii) all references to the "relevant Group of Redeemable Preference Share Holders" in this Condition 18 shall be construed as references to the Redeemable Preference Share Holders who hold the Redeemable Preference Shares in that Tranche;

18.1.2 For the purposes of this Condition 18, "Extraordinary Resolution" means, in respect of the matters contemplated in the second paragraph of Condition 18.3 or the first and second paragraphs of Condition 18.4, as the case may be:

- a) a resolution passed at a duly convened meeting of the relevant Group of Instrument Holders by a majority consisting of not less than 66.67% (sixty six point sixty seven per cent) of the persons voting thereat upon a show of hands or, if a poll be duly demanded, then by a majority consisting of not less than 66.67% (sixty six point sixty seven per cent) of the votes given on such poll; or
- b) written instructions signed by or on behalf of those Instrument Holders in the relevant Group of Instrument Holders holding not less than 66.67% of the Outstanding Principal Amount of all of the Instruments held by that Group,

provided that the required majority shall, in the case of a Potential Event of Default (or Event of Default) contemplated in each of Condition 17.1(a) and Condition 17.1(c), an Event of Default contemplated in Condition 17.1(e), and a Potential Event of Default (or Event of Default) contemplated in each of Condition 17.1(m), Condition 17.1(n) and/or Condition 17.1(o), be not less than 50% instead of 66.67%.

18.1.3 For the purposes of this Condition 18 "Early Termination Date" means, in relation to a Tranche of Notes, the date of the written notice (contemplated in the second paragraph of Condition 18.3) declaring the relevant Notes to be immediately repayable.

### 18.2 No Enforcement by Instrument Holders

Subject to the proviso to this Condition 18.2:

- a) only the Representative may enforce the Instruments, the Terms and Conditions, the Guarantee, the Put Option Agreement and the Representative Agreement;
- b) no Instrument Holder shall be entitled to enforce any of the Instruments and/or the Terms and Conditions and/or the Guarantee and/or the Put Option Agreement and/or the Representative Agreement; and
- c) no Instrument Holder shall be entitled to proceed directly against the Issuer and/or the Guarantor (and, without limiting the generality of the foregoing, no Instrument Holder shall be entitled to make any demand against the Issuer and/or the Guarantor for payment of any amount under the Instruments and/or the Terms and Conditions and/or the Guarantee and/or the Put Option Agreement, or accelerate or demand from the Issuer and/or the Guarantor early payment of principal in respect of the Instruments, or institute any legal proceedings against the Issuer and/or the Guarantor for the enforcement of the

Instruments and/or the Terms and Conditions and/or the Guarantee and/or the Put Option Agreement and/or the Representative Agreement),

unless the Representative, having become bound so to proceed in terms of the Representative Agreement, fails to do so within 10 (ten) days of the occurrence of the relevant Potential Event of Default or Event of Default, as the case may be, or fails to do so within 10 (ten) days of the Representative having become entitled or obliged to make the demand or acceleration referred to in paragraph (c) above, as the case may be; provided that, if a Demand has been given in accordance with Condition 18.3 or a Put Notice has been delivered in accordance with Condition 18.4, as the case may be, and the Guarantor has failed to pay the Guarantee Amount or the Put Option Amount, as applicable, within the relevant time period allowed for payment after the giving of such Demand or the delivery of such Put Notice, as the case may be, then, notwithstanding the foregoing provisions of this Condition 18.2, any Instrument Holder to which all or any part of such Guarantee Amount or Put Option Amount is payable shall (whether or not the Issuer or the Guarantor dispute the basis upon which that Demand was given or that Put Notice was delivered) be entitled, at its election and in its sole discretion, instead of the Representative, to institute legal proceedings (including, without limitation, the suing out of a summons or the bringing of any application in any court of competent jurisdiction) against the Issuer or the Guarantor for the recovery of any sum due by the Issuer to that Instrument Holder under the relevant Instruments or any sum due by the Guarantor to that Instrument Holder under the Guarantee or the Put Option Agreement, as the case may be, and/or the resolution of any dispute relating thereto, and to continue the prosecution and conduct of such proceedings once instituted and shall advise the Representative in writing of such election.

#### 18.3 Enforcement of the Guarantee

Upon the occurrence of a Potential Event of Default, the Representative shall send the written notice/s to the Issuer and/or the Guarantor contemplated in that sub-paragraph of Condition 17.1 which corresponds to that Potential Event of Default (the "relevant Sub-Paragraph of Condition 17.1").

If the Representative is so instructed by an Extraordinary Resolution of the relevant Group of Noteholders, the Representative shall, following the occurrence of an Event of Default, send a written notice to the Issuer (with a copy to the Guarantor) which notice shall declare that the relevant Notes are immediately repayable on the Early Termination Date, whereupon the relevant Notes shall become immediately repayable on the Early Termination Date.

If, following the notice contemplated in the preceding paragraph of this Condition 18.3, all amounts which are due and payable under the relevant Notes are not paid in full on or before the Early Termination Date, the Representative shall, by written notice to the Guarantor (with a copy to the Issuer), demand payment from the Guarantor of the Guarantee Amount, and the Guarantee Amount shall be due and payable to the relevant Group of Noteholders on the Guarantee Amount Payment Date.

The Guarantor shall, upon receipt of the Demand from the Representative, in accordance with the Representative Agreement and the Paying Agency Agreement, procure (by no later than the Business Day preceding the Guarantee Amount Payment Date) that an amount equivalent to the Guarantee Amount is paid, in freely transferable funds, into the guarantee bank account specified for this purpose by the Paying Agent.

The Representative shall, at the same time that it sends the Demand to the Guarantor, instruct the Paying Agent, in writing, of (i) the manner in which the Guarantee Amount is to be disbursed to the relevant Group of Noteholders, (ii) the Guarantee Amount Payment Date, and (iii) whether, pursuant to Condition 13.5, the holders of Individual Certificates evidencing the relevant Notes are required to surrender such Individual Certificates to the Transfer Secretary ("Representative Guarantee Instructions").

The Paying Agent shall, in terms of and subject to the Paying Agency Agreement, disburse the Guarantee Amount, on behalf of the Guarantor, to the relevant Group of Noteholders, in accordance with the Representative Guarantee Instructions, by no later than 16h00 (South African time) on the Guarantee Amount Payment Date.

The Guarantor shall not be responsible for the loss in transmission of any funds paid by the Paying Agent to the relevant Group of Noteholders, and payment of the Guarantee Amount by the Guarantor to the Paying Agent (into the guarantee bank account specified for this purpose by the

Paying Agent) in accordance with the Representative Agreement and clause 7 of the Paying Agency Agreement, shall *pro tanto* cure the relevant default of the Issuer and shall be satisfaction *pro tanto*, to the extent of the Guarantee Amount, of the Guarantor's obligations to the relevant Group of Noteholders under the Guarantee, the Terms and Conditions, the Representative Agreement and the Paying Agency Agreement.

#### 18.4 Enforcement of the Put Option

If, following the occurrence of a Potential Event of Default, the Representative is so instructed by an Extraordinary Resolution of the relevant Group of Redeemable Preference Share Holders, the Representative shall send the written notice/s to the Issuer and/or the Guarantor contemplated in the relevant Sub-Paragraph of Condition 17.1.

If, following the occurrence of an Event of Default, the Representative is so instructed by an Extraordinary Resolution of the relevant Group of Redeemable Preference Share Holders, the Representative shall exercise the put option contained in the Put Option Agreement, for the benefit and on behalf of the relevant Group of Redeemable Preference Share Holders, by delivering a Put Notice to the Guarantor in accordance with the provisions of the Put Option Agreement.

Following the Enforcement of the Put Option, the relevant Group of Redeemable Preference Share Holders shall be irrefutably deemed to have sold all of the relevant Redeemable Preference Shares to the Guarantor, and the Guarantor shall be irrefutably deemed to have purchased all of the relevant Redeemable Preference Shares from the relevant Group of Redeemable Preference Share Holders, on the Put Option Exercise Date, for a consideration equal to the Put Option Amount, on the terms and conditions of the Put Option Agreement.

The Guarantor shall, upon receipt of the Put Notice, in accordance with the Representative Agreement and the Paying Agency Agreement, procure (by no later than the Business Day preceding the Put Option Implementation Date) that an amount equivalent to the Put Option Amount is paid, in freely transferable funds, into the put option bank account specified for this purpose by the Paying Agent.

The Representative shall, at the same time that it sends the Put Notice to the Guarantor, instruct the Paying Agent, in writing, of (i) the manner in which the Put Option Amount is to be disbursed to the relevant Group of Redeemable Preference Share Holders, (ii) the Put Option Implementation Date and (iii) whether, pursuant to Condition 13.5, the holders of Individual Certificates evidencing the relevant Redeemable Preference Shares are required to surrender such Individual Certificates to the Transfer Secretary ("Representative Put Option Instructions").

The Paying Agent shall, in terms of and subject to the Paying Agency Agreement, disburse the Put Option Amount, on behalf of the Guarantor, to the relevant Group of Redeemable Preference Share Holders, in accordance with the Representative Put Option Instructions, by no later than 16h00 (South African time) on the Put Option Implementation Date.

The Guarantor shall not be responsible for the loss in transmission of any funds paid by the Paying Agent to the relevant Group of Redeemable Preference Share Holders, and payment of the Put Option Amount by the Guarantor to the Paying Agent (into the put option bank account specified for this purpose by the Paying Agent) in accordance with the Representative Agreement and clause 8 of the Paying Agency Agreement, shall *pro tanto* cure the relevant default of the Issuer and shall be satisfaction *pro tanto*, to the extent of the Put Option Amount, of the Guarantor's obligations to the relevant Group of Redeemable Preference Share Holders under the Put Option Agreement, the Terms and Conditions, the Representative Agreement and the Paying Agency Agreement.

#### 18.5 Guarantee Amount and Put Option Amount

Following an Event of Default and the Enforcement of the Guarantee or the Enforcement of the Put Option, as the case may be, the Calculation Agent will (unless otherwise specified in the Applicable Pricing Supplement) calculate the Guarantee Amount or the Put Option Amount, as the case may be, in accordance with this Condition 18.5 and, if otherwise specified in the Applicable Pricing Supplement, in accordance with the applicable provisions of the Applicable Pricing Supplement.

##### 18.5.1 Guarantee Amount

Following an Event of Default and the Enforcement of the Guarantee in respect of a Tranche of Notes (other than Zero Coupon Notes), as contemplated in Condition 18.3, the Guarantee Amount payable to the relevant Group of Noteholders shall be:

- a) in the case of an Event of Default contemplated in Condition 17(1)(a) comprising a failure to pay principal (or any portion thereof) due and payable in respect of such Notes, the sum of (i) the outstanding aggregate Principal Amount of such Notes and any and all other amounts payable under that Tranche of Notes as at the Applicable Maturity Date, (ii) interest accrued on such outstanding aggregate Principal Amount and other amount/s, at the Default Rate, from and including the Applicable Maturity Date to but excluding the Late Payment Date, and (iii) all other amounts (if any) payable to the relevant Group of Noteholders in terms of the Guarantee; or
- b) in the case of an Event of Default contemplated in Condition 17(1)(a) comprising a failure to pay interest (or any portion thereof) due and payable in respect of such Notes, the sum of (i) the outstanding interest due and payable in respect of such Notes and any and all other amounts payable under that Tranche of Notes as at the relevant Interest Payment Date, (ii) interest accrued on such outstanding interest and other amount/s, at the Default Rate, from and including the last Interest Payment Date to but excluding the Late Payment Date, and (iii) all other amounts (if any) payable to the relevant Group of Noteholders in terms of the Guarantee; or
- c) in the case of any Event of Default contemplated in Condition 17.1 (other than an Event of Default contemplated in Condition 17(1)(a) which is subject to the provisions of paragraph (a) and/or paragraph (b) above) following the occurrence of which Event of Default the Representative has declared that such Notes are immediately repayable (as contemplated in Condition 18.3), the sum of (i) the aggregate Principal Amount of such Notes and any and all other amounts payable under that Tranche of Notes as at the Early Termination Date, (ii) interest accrued on such aggregate Principal Amount and other amount/s, at the Default Rate, from and including the Early Termination Date to but excluding the Late Payment Date, and (iii) all other amounts (if any) payable to the relevant Group of Noteholders in terms of the Guarantee.

Following an Event of Default and the Enforcement of the Guarantee in respect of a Tranche of Zero Coupon Notes, as contemplated in Condition 18.3, the Guarantee Amount payable to the relevant Group of Noteholders shall be the sum of (i) an amount calculated *mutatis mutandis* in accordance with the formula set out below plus (ii) any and all other amounts payable under that Tranche of Zero Coupon Notes as at the Early Termination Date plus (iii) all other amounts (if any) payable to the relevant Noteholders in terms of the Guarantee:

$$GA = IP + \left( \frac{IY}{M} \times IP \times D \right)$$

where:

- GA = the Guarantee Amount;
- IP = the Issue Price;
- IY = the Implied Yield;
- D = the number of days elapsing between the Issue Date and the Late Payment Date (excluding the Issue Date and the Late Payment Date);
- DM = the number of days elapsing between the Issue Date and the Applicable Maturity Date (excluding the Issue Date and, as applicable, the Applicable Maturity Date or the Early Termination Date).

#### 18.5.2 Put Option Amount

Following an Event of Default and the Enforcement of the Put Option in respect of a Tranche of Redeemable Preference Shares, as contemplated in Condition 18.4, the Put Option Amount payable to the relevant Group of Redeemable Preference Share Holders shall be the aggregate of the following amounts:

- a) the aggregate Principal Amount of such Redeemable Preference Shares on (and any and all other amounts payable under that Tranche of Redeemable Preference Shares as at) the first day of the Dividend Period during which the put option is exercised (the "Relevant Dividend Period"); plus
- b) for the period which commences on the first day of the Relevant Dividend Period and which terminates on the Late Payment Date (such period the "Final Period") an amount

calculated in accordance with the following formula:

$$A = B \times C \times D$$

where:

- A = the applicable amount to be calculated;
- B = the aggregate Principal Amount of that Tranche of Redeemable Preference Shares on the first day of the Relevant Dividend Period;
- C = the Dividend Yield for that Tranche of Redeemable Preference Shares for the Relevant Dividend Period;
- D = the number of days in the Final Period divided by 365 (three hundred and sixty five); plus

- c) all other amounts (if any) payable to the relevant Group of Redeemable Preference Share Holders in terms of the Put Option Agreement as at the first day of the Relevant Dividend Period, and all additional amounts referred to in Condition 15.2 (including any Tax on such additional amounts) which are due and payable to the relevant Redeemable Preference Share Holder/s in that Group as at the first day of the Relevant Dividend Period; plus
- d) an amount of the income tax that will be suffered or incurred by any Redeemable Preference Share Holder of the Redeemable Preference Shares in that Tranche in respect of the sums referred to in paragraphs (b) and (c) above which will come about as a result of the Enforcement of the Put Option (including Tax on such amount), calculated in accordance with the following formula:

$$A = [B + (1 - T)] - B$$

where:

- A = the applicable amount to be calculated;
- B = the aggregate of the amounts payable by the Guarantor pursuant to paragraphs (b) and (c) above;
- T = the Corporate Tax Rate (as defined in Condition 15.3);

and without regard to that Redeemable Preference Share Holder's own tax-paying position or taking into account any assessed loss of that Redeemable Preference Share Holder; provided that:

- A. if that Redeemable Preference Share Holder actually receives the benefit, after payment of such additional amount, of any tax credit, deduction or allowance, that Redeemable Preference Share Holder shall forthwith reimburse the Issuer with the amount of such tax credit, deduction or allowance to the extent that the Issuer is entitled to recognise, and benefit from, such tax credit, deduction or allowance, in the calculation of such additional amount (*mutatis mutandis* as contemplated in paragraph (B) below) had such Redeemable Preference Share Holder actually received the benefit of such tax credit, deduction or allowance prior to payment of such additional amount; or
- B. if that Redeemable Preference Share Holder is satisfied (acting reasonably) that it will actually receive the benefit, prior to payment of such additional amount, of any tax credit, deduction or allowance, then that Redeemable Preference Share Holder shall, as soon as reasonably possible after being satisfied (acting reasonably) that it will actually receive the benefit of such tax credit, deduction or allowance, notify the Issuer thereof and the Issuer shall be entitled to recognise, and benefit from, such tax credit, deduction or allowance, in the calculation of such additional amount.

## 19 TRANSFER OF INSTRUMENTS

### 19.1 Transfer of Beneficial Interests

Transfers of Beneficial Interests among CSD Participants occur by electronic book entry in the

central securities accounts maintained by the CSD for the CSD Participants, in accordance with the Applicable Procedures.

Transfers of Beneficial Interests to and from clients of CSD Participants occur by electronic book entry in the securities accounts maintained by the CSD Participants for their clients, in accordance with the Applicable Procedures.

Beneficial Interests may be transferred only in accordance with the Applicable Procedures through the CSD. Transfers of Beneficial Interests in Instruments will not be recorded in the Register and the CSD's Nominee will continue to be reflected in the Register as the Instrument Holder of such Instruments notwithstanding such transfers.

#### 19.2 **Transfer of Instruments represented by Individual Certificates**

Transfer of Instruments which are represented by an Individual Certificate will not be recorded in the Register by the Transfer Secretary unless the transferor of such Instruments procures that:

- a) the transfer of such Instruments is embodied in the Transfer Form;
- b) the Transfer Form is signed by the registered Instrument Holder and the transferee, or an authorised representative of that registered Instrument Holder and/or transferee; and
- c) the Transfer Form is delivered to the Transfer Secretary at its Specified Office together with the relevant Individual Certificate for cancellation.

Instruments represented by an Individual Certificate may only be transferred in whole or in part (in amounts of not less than ZAR1 000 000 or any multiple thereof). The transferor of any Instruments represented by a Certificate shall be deemed to remain the owner thereof until the transferee is registered in the Register as the holder thereof.

Before any transfer of any Instruments represented by an Individual Certificate is registered in the Register, all relevant transfer taxes (if any) must have been paid by the transferor and/or the transferee and such evidence must be furnished as the Issuer and the Transfer Secretary may reasonably require as to the identity and title of the transferor and the transferee.

Subject to the provisions of this Condition 19.2, the Transfer Secretary will, within three Business Days of receipt by it of a valid Transfer Form (or such longer period as may be required to comply with any Applicable Laws and/or Applicable Procedures), record the transfer of Instruments represented by an Individual Certificate (or the relevant portion of such Instruments) in the Register and authenticate and deliver to the transferee at the Transfer Secretary's Specified Office or, at the risk of the transferee, send by mail to such address as the transferee may request, a new Individual Certificate in respect of the Instruments transferred reflecting the Outstanding Principal Amount of the Instruments transferred.

Where an Instrument Holder has transferred part only of Instruments represented by an Individual Certificate, the Transfer Secretary will authenticate and deliver to such Instrument Holder at the Transfer Secretary's Specified Office or, at the risk of such Instrument Holder, send by mail to such address as such Instrument Holder may request, at the risk of such Instrument Holder, a new Individual Certificate representing the balance of the Instruments held by such Instrument Holder.

The transferor of any Instruments represented by an Individual Certificate will be deemed to remain the owner thereof until the transferee is registered in the Register as the Instrument Holder of such Instruments.

If a transfer of any Instruments represented by an Individual Certificate is registered in the Register, the Transfer Form and cancelled Individual Certificate will be retained by the Transfer Secretary.

No transfer of any Instruments represented by an Individual Certificate will be registered whilst the Register is closed.

## 20 **EXCHANGE OF BENEFICIAL INTERESTS AND REPLACEMENT OF INDIVIDUAL CERTIFICATES**

### 20.1 **Exchange of Beneficial Interests**

The holder of a Beneficial Interest in Instruments may, in terms of the Applicable Procedures and subject to section 44 of the Securities Services Act, by written notice to the holder's nominated CSD Participant (or, if such holder is a Participant, the CSD), request that such Beneficial Interest

be exchanged for Instruments in definitive form represented by an Individual Certificate (the "Exchange Notice"). The Exchange Notice shall specify (a) the name, address and bank account details of the holder of the Beneficial Interest and (b) the day on which such Beneficial Interest is to be exchanged for an Individual Certificate; provided that such day shall be a Business Day and shall fall not less than 30 (thirty) calendar days after the day on which such Exchange Notice is given.

The holder's nominated CSD Participant will, following receipt of the Exchange Notice, through the CSD, notify the Transfer Secretary that it is required to exchange such Beneficial Interest for Instruments represented by an Individual Certificate. The Transfer Secretary will, as soon as is practicable but within 14 (fourteen) days after receiving such notice, in accordance with the Applicable Procedures, procure that an Individual Certificate is prepared, authenticated and made available for delivery, on a Business Day falling within the aforementioned 14 day period, to the CSD Participant acting on behalf of the holder of the Beneficial Interest in respect of the conversion at the Specified Office of the Transfer Secretary; provided that joint holders of a Beneficial Interest shall be entitled to receive only one Individual Certificate in respect of that joint holding, and the delivery to one of those joint holders shall be delivery to all of them.

Instruments which are held in the CSD are issued in uncertificated form and, in order to effect the exchange of a Beneficial Interest in any such Instruments (a) the CSD's Nominee will, prior to the Exchange Date, surrender (through the CSD system) such Instruments to the Transfer Secretary at its Specified Office and (b) the Transfer Secretary will obtain the release of such Instruments from the CSD in accordance with the Applicable Procedures.

An Individual Certificate shall, in relation to a Beneficial Interest in any number of Instruments of a particular aggregate Principal Amount standing to the account of the holder thereof, represent that number of Instruments of that aggregate Principal Amount, and shall otherwise be in such form as may be agreed between the Issuer and the Transfer Secretary; provided that if such aggregate Principal Amount is equivalent to a fraction of ZAR1,000,000 or a fraction of any multiple thereof, such Individual Certificate shall be issued in accordance with, and be governed by, the Applicable Procedures.

#### 20.2 Replacement of Individual Certificates

If any Individual Certificate is mutilated, defaced, stolen, destroyed or lost it may be replaced at the Specified Office of the Transfer Secretary, on payment by the claimant of such costs and expenses as may be incurred in connection therewith, and upon such terms as to evidence of title and the provision of such indemnity or security as the Issuer or the Transfer Secretary may require. Mutilated or defaced Individual Certificates must be surrendered at the Specified Office of the Transfer Secretary before replacements will be issued.

#### 20.3 Death and Sequestration or Liquidation of the Instrument Holder

Any person becoming entitled to Instruments in consequence of the death or sequestration or liquidation of the holder of such Instruments may, upon producing such evidence that he holds the position in respect of which he proposes to act under this Condition 20.4 or of his title as the Issuer, the Transfer Secretary and (if applicable) the CSD and the CSD Participant may require, be registered or recorded himself as the holder of such Instruments or, subject to the requirements of the Applicable Procedures, Condition 19 and this Condition 20, may transfer such Instruments. The Issuer, the Transfer Secretary and (if applicable) the CSD and the CSD Participant shall be entitled to retain any amount payable upon the Instruments to which any person is so entitled until such person shall be registered or recorded as aforesaid or shall duly transfer the Instruments.

#### 20.4 Costs

Individual Certificates shall be provided (whether by issue, delivery or exchange) by the Issuer without charge, save as otherwise provided in the Terms and Conditions. Separate costs and expenses relating to the provision of Individual Certificates and/or the transfer of Instruments may be levied by other persons, such as CSD Participants, under the Applicable Procedures, and such costs and expenses shall not be borne by the Issuer or the Guarantor. The costs and expenses of delivery of Individual Certificates otherwise than by ordinary post (if any) and all taxes or governmental charge or insurance charges that may be imposed in relation to such mode of delivery shall be borne by the Instrument Holder.

## 21 REGISTER

The Register shall be kept at the Specified Office of the Transfer Secretary. The Register shall contain the name, address, and bank account details of each Instrument Holder. The Register shall set out the number of Instruments issued to such Instrument Holder and the Principal Amount thereof or the total Outstanding Principal Amount of Registered Notes transferred to an Instrument Holder, as the case may be, and shall show the Issue Date or the date of transfer, as the case may be, and the date upon which such Instrument Holder became registered as such. The Register shall record the number of Instruments issued and outstanding, the Outstanding Principal Amount, and the serial number of each Individual Certificate (if any) issued. The Register shall be open for inspection during the normal business hours of the Transfer Secretary to any Instrument Holder or any person authorised in writing by any Instrument Holder. The Transfer Secretary shall not be bound to record any trust in the Register or to take notice of or to accede to the execution of any trust (whether express, implied or constructive) to which any Instrument may be subject.

The Register shall, in respect of a Tranche of Instruments, be closed during the five days preceding each Payment Date from 17h00 (South African time) on the Last Day to Register.

The Transfer Secretary shall alter the Register in respect of any change of name, address or bank account details of each Instrument Holder of which the Transfer Secretary is notified in writing; provided that the Register will only be amended to reflect a transfer of Instruments if such transfer is carried out in accordance with Condition 14.1.

Neither the Issuer nor the Transfer Secretary shall be bound to enter any trust in the Register or to take notice of or to accede to the execution of any trust (express, implied or constructive) to which any Instrument may be subject.

## 22 TRANSFER SECRETARY, CALCULATION AGENT, PAYING AGENT AND REPRESENTATIVE

## 22.1 Transfer Secretary, Calculation Agent, Paying Agent and additional agents

The Issuer (with the written consent of the Guarantor) is entitled to vary or terminate the appointment of the Transfer Secretary. The Issuer and the Guarantor are entitled to vary or terminate the appointment of the Calculation Agent (in relation to any Tranche or Series of Instruments or all of the Instruments) and/or the Paying Agent and/or to appoint additional or other agents, provided that any such successor or replacement Calculation Agent and/or Paying Agent shall be an Approved Calculation Agent and/or an Approved Paying Agent.

If the Issuer (with the written consent of the Guarantor) elects to appoint another entity as Transfer Secretary, that other entity, on execution of an agreement substantially in the form of the Transfer Secretary Agreement shall serve in that capacity.

If the Issuer and the Guarantor elect to appoint another Approved Calculation Agent as a Calculation Agent (in relation to any Tranche or Series of Instruments or all of the Instruments), that Approved Calculation Agent, on execution of an agreement substantially in the form of the Calculation Agency Agreement or an accession letter substantially in the form of annexure "B" to the Calculation Agency Agreement, as the case may be, shall serve in that capacity in respect of that Tranche or Series of Instruments or all of the Instruments, as applicable.

If the Issuer and the Guarantor elect to appoint another Approved Paying Agent as a Paying Agent, that Approved Paying Agent, on execution of an agreement substantially in the form of the Paying Agency Agreement or an accession letter substantially in the form of annexure "B" to the Paying Agency Agreement, as the case may be, shall serve in that capacity.

The Transfer Secretary, the Calculation Agent and the Paying Agent act solely in such capacities as the agent of the Issuer and, in the case of the Paying Agent (following the Enforcement of the Guarantee and/or the Enforcement of the Put Option), the Guarantor, and do not assume any obligation towards, or relationship of agency or trust for or with, any Instrument Holders.

## 22.2 Representative

The Issuer and the Guarantor are entitled to vary or terminate the appointment of the Representative, provided that any such successor or replacement Representative shall be an Approved Representative.



If the Issuer and the Guarantor elect to appoint another Approved Representative as a Representative that Approved Representative, on execution of an agreement substantially in the form of the Representative Agreement or an accession letter substantially in the form of annexure "B" to the Representative Agreement, as the case may be, shall serve in that capacity.

22.3 **Specified Offices**

There will at all times be a Representative, a Transfer Secretary, a Calculation Agent and a Paying Agent with a Specified Office in such place as may be required by the Applicable Procedures.

23 **NOTICES**

23.1 **Notice to Instrument Holders**

Notices to Instrument Holders shall be in writing and shall, subject to the 3<sup>rd</sup> paragraph below, be sent by registered mail to their registered addresses appearing in the Register.

Subject to the paragraph below, a notice given to Instrument Holders in terms of the above paragraph shall be deemed to have been received by the Instrument Holders on the tenth day after the date on which such notice is so sent by registered mail.

Notwithstanding the provisions of the first paragraph above, for so long as all of the Instruments in a Tranche of Instruments are held in their entirety in the CSD, there may be substituted for the notice contemplated in the first paragraph above the delivery by hand of the relevant notice to the JSE, and to the CSD's Nominee (as the registered Instrument Holder of such Instruments) for communication by the CSD's Nominee to the CSD Participants who will, in turn, communicate such notice to the holders of Beneficial Interests in such Instruments in accordance with the Applicable Procedures. Each such notice will be deemed to have been received by the holders of Beneficial Interests on the day of such delivery by hand to the CSD's Nominee.

In addition to the applicable notice requirements set out in this Condition 23.1 above, (i) all notices of meetings of all of the Instrument Holders or the relevant Group (or Groups) of Instrument Holders (as applicable) and (ii) each other notice to be given under the Terms and Conditions as is determined by the Issuer, shall be published on SENS.

23.2 **Notice by Instrument Holders**

Notices (including all demands or requests under the Terms and Conditions) to be given to the Issuer by any Instrument Holder of Instrument/s represented by an Individual Certificate (or any other Instrument/s which is/are not held in the CSD) shall be in writing and shall be sent by registered mail or delivered by hand (together with a certified copy of the relevant Individual Certificate, where applicable) to the Issuer at its Specified Office. Such notice shall be deemed to have been received by the Issuer, if the relevant notice (together with a certified copy of the relevant Individual Certificate, where applicable) is delivered by hand, on the date of delivery or, if the relevant notice (together with a certified copy of the relevant Individual Certificate, where applicable) is sent by registered mail, on the tenth day after the date on which such notice is so sent by registered mail, as the case may be.

All notices to be given by any holder of a Beneficial Interest in Instruments to the Issuer shall be in writing and given by such holder via such holder's CSD Participant, in accordance with the Applicable Procedures, and in such manner as the Issuer and the relevant CSD Participant may approve for this purpose.

24 **MEETINGS OF INSTRUMENT HOLDERS**

Annexure "C" to the Representative Agreement contains provisions for convening meetings of Instrument Holders (or any Group of Instrument Holders) to consider any matter affecting their interests. Certain of these provisions are set out below.

The Issuer and/or the Guarantor and/or the Representative may at any time, by notice on SENS, convene a meeting of Instrument Holders. The Representative shall, upon a requisition in writing of any Group of Instrument Holders holding not less than the majority of the Outstanding Principal Amount of the Instruments held by that Group, convene a meeting of that Group.

The quorum at any meeting for passing an Extraordinary Resolution of Instrument Holders (or any Group of Instrument Holders) will be Instrument Holders holding or representing not less than a majority of the Outstanding Principal Amount of (i) all of the Instruments or (ii) all of the Instruments held by that Group, as the case may be, or at any adjourned meeting, Instrument Holders holding or

representing not less than one-third of the Outstanding Principal Amount of (i) all of the Instruments, or (ii) all of the Instruments held by that Group, as the case may be.

At a meeting where the business includes, among other things, the amendment of the Terms and Conditions (subject to Condition 25), the necessary quorum for passing an Extraordinary Resolution of Instrument Holders (or any Group of Instrument Holders) will be Instrument Holders holding or representing not less than two-thirds of the Outstanding Principal Amount of (i) all of the Instruments or (ii) all of the Instruments held by that Group, as the case may be, or at any adjourned such meeting, Instrument Holders holding or representing not less than one-third of the Outstanding Principal Amount of (i) all of the Instruments or (ii) all of the Instruments held by that Group, as the case may be.

Any resolution passed at a meeting of Instrument Holders or any Group of Instrument Holders, as the case may be, duly convened and held in accordance with the applicable provisions of the Representative Agreement, shall be binding upon all the Instrument Holders or all the Instrument Holders in that Group, as the case may be, whether present or not present at such meeting and whether or not voting, and all the Instrument Holders or all the Instrument Holders in that Group, as the case may be, shall be bound to give effect thereto accordingly.

## 25 AMENDMENT

### 25.1 Amendment

Subject to Condition 25.2, the Issuer and the Guarantor may effect, without the consent of any Instrument Holder or the Representative, any amendment of the Terms and Conditions which is of a formal, minor or technical nature or is made to correct a manifest error or is necessary to comply with mandatory provisions of the law of South Africa (including, without limitation, the Companies Act and the Applicable Procedures) or is otherwise provided for in the Representative Agreement. For the avoidance of doubt, the exercise by the Issuer and/or the Guarantor of their rights under Condition 22 shall not constitute an amendment of the Terms and Conditions.

Subject to the preceding paragraph of this Condition 25.1, the immediately following paragraph and Condition 25.2, no amendment of the Terms and Conditions may be effected unless such amendment is in writing and signed by or on behalf of the Issuer, the Guarantor and the Representative, and:

- a) if such amendment affects the rights, under the Terms and Conditions, of all of the Instrument Holders, (i) signed by or on behalf of the Instrument Holders holding or representing not less than two-thirds of the Outstanding Principal Amount of all of the Instruments, or (ii) sanctioned by an Extraordinary Resolution of all of the Instrument Holders, as the case may be; or
- b) if such amendment affects only the rights, under the Terms and Conditions, of a particular Group (or Groups) of Instrument Holders, (i) signed by or on behalf of the Instrument Holders in that Group (or those Groups) holding or representing not less than two-thirds of the Outstanding Principal Amount of all of the Instruments held by that Group (or those Groups), or (ii) sanctioned by an Extraordinary Resolution of that Group (or those Groups), as the case may be.

Notwithstanding anything to the contrary contained in the Terms and Conditions, the required majority (including the required majority for an Extraordinary Resolution) for purposes of any amendment to or deletion of the provisions of Condition 7, Condition 8.1, Condition 8.2, Condition 15.1, Condition 15.2, Condition 15.3, Condition 17, and/or Condition 18 and/or this Condition 25.1 shall be not less than 90% instead of 66.67%.

### 25.2 General

Any amendment to the Terms and Conditions effected pursuant to this Condition 25 shall be made in compliance with the JSE Debt Listings Requirements (it being recorded that a new Programme Memorandum or a supplement to the Programme Memorandum, as the case may be, must be approved by the JSE, as set out in Section 1 of the Programme Memorandum headed "Documents Incorporated by Reference") and shall be subject to the adoption of any necessary amendment to the Issuer's Memorandum of Incorporation by the board of directors of the Issuer. Any such amendment shall forthwith be binding on the Instrument Holders or the relevant Group (or Groups) of Instrument Holders, as the case may be. The Representative shall notify the JSE, and the Instrument Holders or the relevant Group (or Groups) of Instrument Holders, as the case may

be, of such amendment as soon as practicable thereafter in accordance with Condition 23.1.

## 26 BENEFIT OF AGREEMENTS

### 26.1 Representative Agreement and Paying Agency Agreement

Instrument Holders are entitled to the benefit of, and are deemed to have notice of, the provisions of the Representative Agreement and the Paying Agency Agreement, and the Instrument Holders shall be bound by all those provisions of the Representative Agreement and the Paying Agency Agreement which confer rights and/or impose obligations on the Instrument Holders.

Each Instrument Holder undertakes in favour of the Representative and the Paying Agent, respectively, that the Instrument Holder shall perform all obligations imposed on the Instrument Holder in terms of the Representative Agreement and the Paying Agency Agreement, and that it shall execute and attend to all deeds, documents and things and take all such action which the Representative and the Paying Agent, respectively, may reasonably require to enable the Representative and the Paying Agent, respectively, to carry out, exercise or discharge the powers, rights, authorities, provisions and/or obligations contained in the Representative Agreement and the Paying Agency Agreement, respectively.

One copy of the Representative Agreement shall be made available, free of charge, to each Instrument Holder, at the Specified Offices of the Issuer and the Representative. One copy of the Paying Agency Agreement shall be made available, free of charge, to each Instrument Holder, at the Specified Offices of the Issuer and the Paying Agent.

### 26.2 Guarantee

The Guarantee is conferred by the Guarantor as a *stipulatio alteri* for the benefit of the Noteholders. Noteholders are entitled to the benefit of, and are deemed to have notice of, the provisions of the Guarantee. Each Noteholder, by its subscription for or purchase of Notes, shall be deemed to have accepted such benefits, and shall be bound by all of those provisions of the Guarantee which confer rights and/or impose obligations on the Noteholders.

One copy of the Guarantee shall be made available, free of charge, to each Noteholder, at the Specified Offices of the Issuer and the Representative.

### 26.3 Put Option Agreement

The Put Option Agreement is conferred by the Guarantor as a *stipulatio alteri* for the benefit of the Redeemable Preference Share Holders. The Redeemable Preference Share Holders are entitled to the benefit of, and are deemed to have notice of, the provisions of the Put Option Agreement. Each Redeemable Preference Share Holder, by its subscription for or purchase of Redeemable Preference Shares, shall be deemed to have accepted such benefits, and shall be bound by all those provisions of the Put Option Agreement which confer rights and/or impose obligations on the Redeemable Preference Share Holders.

One copy of the Put Option Agreement shall be made available, free of charge, to each Redeemable Preference Share Holder, at the Specified Offices of the Issuer and the Representative.

## 27 APPROVAL AND LISTING

The Programme Memorandum was approved by the JSE on 14 August 2012. A Tranche of Instruments may be listed on the Interest Rate Market of the JSE or on such other or additional exchange(s) as may be determined by the Issuer, subject to Applicable Laws. Unlisted Instruments may also be issued under the Programme. Unlisted Instruments are not regulated by the JSE. The Applicable Pricing Supplement will specify whether or not a Tranche of Instruments will be listed and, if so, on which exchange.

## 28 FURTHER ISSUES

The Issuer may, with the prior consent of the Instrument Holders of Existing Instruments (as defined below), create and issue a Tranche of Instruments (the "Additional Instruments") having terms and conditions which are identical to any other Tranche of Instruments already in issue under the Programme (the "Existing Instruments") (save for their respective Issue Prices, Issue Dates and aggregate nominal amounts), so that the Additional Notes (i) are consolidated and form a single series with the Existing Notes and (ii) rank *pari passu* in all respects with the Existing Notes.

29 **GOVERNING LAW**

The Instruments, the Terms and Conditions, the Guarantee and the Put Option Agreement are governed by, and shall be construed in accordance with, the laws of South Africa.

30 **REDEEMABLE PREFERENCE SHARES AND THE COMPANIES ACT**

Notwithstanding anything to the contrary contained in the Terms and Conditions or the Programme Memorandum, (i) the Issuer, (ii) each Tranche of Redeemable Preference Shares, and (iii) each of the Redeemable Preference Share Holders, shall be subject to all of the applicable provisions of the Companies Act including, without limiting the generality of the foregoing, sections 36, 37(5)(b), 46, 48, 77(3)(e)(vi) and 77(4)(t) (the "Applicable Provisions").

For the purpose of the Redeemable Preference Shares and in relation to (i) the Issuer, (ii) each Tranche of Redeemable Preference Shares, and (iii) each of the Redeemable Preference Share Holders:

- a) the Applicable Provisions are deemed to be incorporated by reference into the Terms and Conditions; and
- b) to the extent that there is any conflict or inconsistency between the Applicable Provisions and any of the Terms and Conditions, the Applicable Provisions shall prevail; and
- c) to the extent that, in consequence of such conflict, the Applicable Provisions replace, amend, or supplement any of the Terms and Conditions, any reference to "Terms and Conditions" in the Programme Memorandum and/or the Applicable Pricing Supplement shall be deemed to include the Terms and Conditions as so replaced, amended or supplemented.