

ENSafrica

1 north wharf square
loop street foreshore cape town 8001
p o box 2293 cape town south africa 8000
docex 14 cape town
tel +2721 410 2500 fax +2721 410 2555
info@ensafrica.com ensafrica.com

ISSUER INDEMNITY

entered into between

COMMISSIONER STREET NO. 10 (RF) LIMITED

(Registration Number 2012/114143/06)

(the "Issuer")

and

COMMISSIONER STREET NO. 10 SPV (RF) PROPRIETARY LIMITED

(Registration Number 2012/117345/07)

(the "Security SPV")

in respect of Series Transaction 3 under the Issuer's Issuer Programme under the Master Programme

TABLE OF CONTENTS

Clause number and description	Page
1. PARTIES	2
2. INTRODUCTION	2
3. DEFINITIONS AND INTERPRETATION	3
4. ISSUER INDEMNITY FOR CLAIM UNDER THE SECURITY SPV GUARANTEE	3
5. SECURITY SPV TO HOLD SECURITY	7

1. PARTIES

1.1. The parties to this Issuer Indemnity are:

- 1.1.1. Commissioner Street No. 10 (RF) Limited, a public company with limited liability duly incorporated in accordance with the company laws of South Africa, with registration number 2012/114143/06 (the "**Issuer**"); and
- 1.1.2. Commissioner Street No. 10 SPV (RF) Proprietary Limited, a private company with limited liability duly incorporated in accordance with the company laws of South Africa, with registration number 2012/117345/07 (the "**Security SPV**").

1.2. The parties agree as set out below.

2. INTRODUCTION

2.1. The Security SPV has been established for the purpose of holding and realising security for the benefit of the Series Transaction Secured Creditors in respect of the obligations of the Issuer to the Series Transaction Secured Creditors in terms of the Issuer Transaction Documents.

2.2. Pursuant to Series Transaction 3 under the Issuer Programme and in order to give effect to the principles set out in clause 2.1 above, the Security SPV shall:

- 2.2.1. guarantee to the Series Transaction Secured Creditors, on the terms set out in the Security SPV Guarantee, the payment of their claims on the occurrence of an Event of Default;
- 2.2.2. obtain and hold the indemnity which is provided for in this Issuer Indemnity from the Issuer against any claims made by Series Transaction Secured Creditors in relation to the Series Transaction against the Security SPV pursuant to the Security SPV Guarantee; and
- 2.2.3. if an Event of Default occurs:
 - 2.2.3.1. claim from the Issuer in terms of this Issuer Indemnity;
 - 2.2.3.2. realise the Security, if necessary; and
 - 2.2.3.3. pay to each Series Transaction Secured Creditor, in accordance with the Security SPV Guarantee given to such Series Transaction Secured Creditor by the Security SPV and in the order of the Post-Enforcement Priority of Payments, the amount of its claim.

3. DEFINITIONS AND INTERPRETATION

- 3.1. The Common Terms Agreement signed by, *inter alia*, the Security SPV and the Issuer (as amended, novated and/or replaced from time to time with the consent of all the parties to the Common Terms Agreement in accordance with its terms) is expressly and specifically incorporated into this Issuer Indemnity and, accordingly, the expressions defined in, and the terms and provisions of, the Common Terms Agreement (as so amended, novated or replaced from time to time in accordance with its terms) shall, except where the context otherwise requires and save where otherwise defined or provided for in this Issuer Indemnity, have the same meanings in this Issuer Indemnity and shall form part of this Issuer Indemnity.
- 3.2. Subject to the provisions of clause 3.1 above, unless the context otherwise requires, the following terms shall bear the meanings assigned to them below as follows:
- 3.2.1. **"Effective Date"** means the date of deemed acceptance by the Series Transaction Secured Creditors of their rights in terms of clause 3 of the Security SPV Guarantee;
- 3.2.2. **"Issuer Indemnity"** means this agreement, as amended, novated and/or replaced from time to time in accordance with its terms; and
- 3.2.3. **"Series Transaction Secured Creditor"** means "*Series Transaction Secured Creditor*" as that term is defined in the Security SPV Guarantee.

4. ISSUER INDEMNITY FOR CLAIM UNDER THE SECURITY SPV GUARANTEE

- 4.1. The Issuer shall and hereby does, with effect from the Effective Date, indemnify and hold the Security SPV harmless against all and any claims which may be made against the Security SPV by any Series Transaction Secured Creditor arising in any manner whatsoever out of or in connection with the Security SPV Guarantee, including any loss, liability, damage, claim, cost or expense of whatsoever nature, and legal costs as between attorney and own client, which the Security SPV might suffer or incur in consequence of executing or furnishing, or arising out of or in the enforcement of and/or compliance with, the Security SPV Guarantee.

- 4.2. If any Series Transaction Secured Creditor lodges a claim against the Security SPV arising in any manner whatsoever out of the Security SPV Guarantee given by the Security SPV to that Series Transaction Secured Creditor or upon the Security SPV becoming liable to pay a Series Transaction Secured Creditor under the Security SPV Guarantee:
- 4.2.1. the Issuer shall forthwith be liable to the Security SPV in terms of this Issuer Indemnity in respect of the amount for which the Security SPV is liable under the Security SPV Guarantee; and
- 4.2.2. the Security SPV shall, not later than the close of business on the first Business Day after it receives that claim in writing, notify the Issuer and demand payment forthwith of the amount of that claim from the Issuer, provided that any delay in notifying the Issuer of a claim under this Issuer Indemnity shall not release the Issuer from liability in terms of this Issuer Indemnity.
- 4.3. Upon receipt by the Issuer of any written notice from the Security SPV stating that an amount is payable by the Issuer pursuant to this Issuer Indemnity, or that the Issuer is obliged to perform any obligation to the Security SPV in terms of this Issuer Indemnity, the Issuer shall pay such amount or perform such obligation, forthwith upon demand as envisaged in clause 4.2.2 above, in cash, without set-off, withholding or deduction of any nature whatsoever, into a bank account nominated in writing by the Security SPV.
- 4.4. The Security SPV shall not apply any monies recovered from the Issuer pursuant to this Issuer Indemnity to meet any liability on the part of the Security SPV to Series Transaction Secured Creditors for any loss occasioned by or arising from the Security SPV's dishonesty, negligence or breach of contract and the Security SPV shall not claim any monies from the Issuer in relation to any such liability.
- 4.5. The Issuer shall not be entitled to refuse to make payment of the indemnified claims to the Security SPV by reason of the fact that the Security SPV has not paid the claims of the Series Transaction Secured Creditors under the Security SPV Guarantee, nor shall the Issuer be entitled to refuse to make such payment by reason of the fact that the liability of the Security SPV in respect of the Security SPV Guarantee is limited in the manner set out in the Security SPV Guarantee. The Issuer may, however, refuse to make payment where the payment is in relation to liability on the part of the Security SPV to Series Transaction Secured Creditors for loss occasioned by or arising from the Security SPV's dishonesty, negligence or breach of contract.

- 4.6. Should the Issuer resist any claim arising out of this Issuer Indemnity on the grounds that:
- 4.6.1. there is no reason or basis for the Security SPV's claim (the defence of *non causa debiti*); or
 - 4.6.2. errors have been made in calculating the amount claimed (the defence of *errore calculi*); or
 - 4.6.3. in the case of monies lent, no money, or less money than has been claimed, has been advanced (the defence of *non numeratae pecuniae*); or
 - 4.6.4. no value has been received,
- the onus of proving that ground or those grounds shall be on the Issuer.
- 4.7. The Issuer renounces all the benefits of excussion, division, cession of actions and revision of accounts, the meaning and effect of which it declares it understands.
- 4.8. Any payment made by the Issuer under this Issuer Indemnity shall discharge its liability in like amount for the underlying obligations to which that payment relates.
- 4.9. A certificate signed by a director of the Security SPV, whose appointment or authority need not be proven, reflecting the amount owing by the Issuer to the Security SPV under this Issuer Indemnity, and the due date for payment of such amounts, will be *prima facie* evidence of the contents of such certificate.
- 4.10. On signature of this Issuer Indemnity, the Issuer shall be, and shall remain, bound to the full extent of this Issuer Indemnity, which shall at all times be fully and immediately enforceable, despite:
- 4.10.1. any of the obligations of the Issuer in respect of amounts owing to any Series Transaction Secured Creditors or any security granted by the Issuer or any other person in respect of such amounts owing, being or becoming illegal, invalid, unenforceable or ineffective in any respect;
 - 4.10.2. any incapacity or lack of power, authority or legal personality of or dissolution or change in the members or status of the Issuer or the Security SPV or any other person;
 - 4.10.3. the Issuer or the Security SPV being deregistered, being placed in liquidation, under Business Rescue or judicial management (whether provisionally or finally, voluntarily or compulsorily), or otherwise becoming subject to any other legal liability or to any law for the benefit or assistance of debtors and/or creditors, or

entering into or becoming subject to any scheme of arrangement or compromise;

- 4.10.4. any intended security not being obtained or protected or being released or ceasing to be enforceable or ceasing to be held for any other reason;
- 4.10.5. the obligations of the Issuer or the Security SPV being varied or novated, whether by agreement, operation of law or otherwise;
- 4.10.6. any amendment (however fundamental) or replacement of any Issuer Transaction Document or any other document or security;
- 4.10.7. the taking, variation, compromise, exchange, renewal or release of, or refusal or neglect to perfect, take up or enforce, any rights against, or security over assets of, the Issuer or any other person; or
- 4.10.8. any other cause which, but for the provisions of this clause 4, would or might have the effect of terminating, discharging or in any other manner whatsoever affecting any of the Issuer's obligations under this Issuer Indemnity,

provided that nothing in this clause 4 shall prevent the Issuer from raising a defence in good faith that the amount claimed from it by the Security SPV is not owing and due for payment by the Security SPV in terms of the Security SPV Guarantee.

- 4.11. The obligation of the Issuer and liability under this Issuer Indemnity shall continue and remain in full force and effect as a continuing security and indemnity until such time as:

- 4.11.1. the Security SPV is entirely and finally released and discharged from its obligations under the Security SPV Guarantee; and
- 4.11.2. the Issuer has finally discharged all of its obligations under this Issuer Indemnity,

and the Issuer shall not be entitled to withdraw from or terminate this Issuer Indemnity until the Security SPV has been fully and finally released and discharged and the Security SPV Guarantee has been cancelled.

- 4.12. The Issuer shall, upon the Security SPV informing the Noteholder(s) that the Issuer has no further assets available for payment of any sums outstanding and owing by the Issuer and upon the Security SPV's release under the Security SPV Guarantee, be entitled to request the Security SPV to confirm in writing that the obligations owing by the Issuer to the Security SPV in terms of this Issuer Indemnity have been discharged. Any such confirmation of release shall not however apply in respect of any liability of the Issuer which is reinstated

following such release, or in respect of the Security SPV's and/or the Issuer's liability for all obligations existing at the date of release (including any variation or novation of the obligations as a result of any subsequent agreement between the Issuer and the Series Transaction Secured Creditors, or which may take effect by operation of law or otherwise).

- 4.13. Upon the release of the Issuer from liability under this Issuer Indemnity, the original of this Issuer Indemnity shall be delivered to the Issuer, provided that if at any time thereafter any of the Security SPV's obligations under the Security SPV Guarantee are reinstated, the original of this Issuer Indemnity shall be returned forthwith to the Security SPV.

5. SECURITY SPV TO HOLD SECURITY

- 5.1. As security for the obligations arising out of this Issuer Indemnity to the Security SPV, the Issuer shall execute or procure the execution of the Security Agreements in favour of the Security SPV.
- 5.2. The Issuer shall and hereby undertakes to the Security SPV that it shall not in any manner whatsoever create any Encumbrances of any nature whatsoever (other than those created by the execution of the Security Agreements) in favour of third parties over any assets of any nature whatsoever from time to time held by it, including (but without limitation) the assets which are the subject of any cession in security to the Security SPV in terms of the Security Agreements.
- 5.3. If the Issuer does not forthwith pay any amount due and payable by it pursuant to the demand in terms of clause 4.2.2 above as read with the proviso to clause 4.10 above, the Security SPV shall be entitled and obliged:
- 5.3.1. to take all such steps as may be reasonably necessary in order to realise the Security given to the Security SPV in terms of the Security Agreements and otherwise to enforce the claim against the Issuer pursuant to this Issuer Indemnity; and
 - 5.3.2. out of the proceeds of that Security and amounts recovered pursuant to this Issuer Indemnity, pay the claims of the Series Transaction Secured Creditors in accordance with the Post-Enforcement Priority of Payments.


SIGNED AT JOHANNESBURG ON THE 5th DAY OF MAY 2017

For: **COMMISSIONER STREET NO. 10 (RF) LIMITED**
(as Issuer)

Signature: _____
who warrants that he / she is duly authorised thereto

Name: _____

Capacity: _____


Signature:  _____
who warrants that he / she is duly authorised thereto

Name: B Korb

Capacity: Director

SIGNED AT JOHANNESBURG ON THE 5th DAY OF MAY 2017

For: **COMMISSIONER STREET NO. 10 SPV (RF) PROPRIETARY LIMITED**
(as Security SPV)

Signature:  _____
who warrants that he / she is duly authorised thereto

Name: T Edwards

Capacity: Director