

The offer of Krugerrand Custodial Certificates does not constitute an "offer to the public" (as defined in the Companies Act, No. 71 of 2008 (as amended)) ("Companies Act") and this Offering Circular does not, nor is it intended to, constitute a "registered prospectus" (as is defined in the Companies Act) prepared and registered under the South African Companies Act.

To the extent that Krugerrand Custodial Certificates are offered for subscription, such offer is made in terms of section 96(1)(b) of the Companies Act such that the total acquisition cost of the Krugerrand Custodial Certificates for any single addressee acting as principal is equal to or greater than ZAR 1 000 000.

Accordingly, any offer made in terms of this Offering Circular does not constitute an "offer to the public or any section of the public" within the meaning of the Companies Act.

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**PROSPECTIVE PURCHASERS OF ANY KRUGERRAND CUSTODIAL CERTIFICATES SHOULD ENSURE THAT THEY UNDERSTAND FULLY THE NATURE OF THE KRUGERRAND CUSTODIAL CERTIFICATES AND THE EXTENT OF THEIR EXPOSURE TO RISKS, AND THAT THEY CONSIDER THE SUITABILITY OF THE KRUGERRAND CUSTODIAL CERTIFICATES AS AN INVESTMENT IN THE LIGHT OF THEIR OWN CIRCUMSTANCES AND FINANCIAL POSITION**

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#### OFFERING CIRCULAR

**For the listing of Krugerrand Custodial Certificates on the Exchange Traded Fund sector of the JSE created, listed and issued by FirstRand Bank Limited**

The Krugerrand Custodial Certificates will be listed on the "Exchange Traded Funds" sector of the JSE under the abbreviated name and alpha code "KCCGLD" and ISIN Code ZAE000195830 with effect from the commencement of business on Monday, 10 November 2014 and traded on the JSE through any authorised user of the JSE.

The directors of FirstRand Bank Limited, whose names are set out in clause 16.4 of this Offering Circular, collectively and individually, accept full responsibility for the accuracy of information contained in this Offering Circular and certify that, to the best of their knowledge and belief, no facts have been omitted, the omission of which would make any statement false or misleading, that they have made all reasonable enquiries to ascertain such facts and that the Offering Circular contains all information required by law and the JSE Listings Requirements.

The JSE's approval of the listing of the Krugerrand Custodial Certificates is not to be taken in any way as an indication of the merits of an ETF or of the Krugerrand Custodial Certificates. The JSE has not verified the accuracy and truth of the contents of this Offering Circular and, to the extent permitted by law, will not be liable for any claim of whatever kind. Claims against the JSE Guarantee Fund may only be made in respect of trading in Krugerrand Custodial Certificates on the JSE and in accordance with the terms of the rules of the Guarantee Fund and can in no way relate to the issue of Krugerrand Custodial Certificates.

The Merchant Bank, Sponsor, Market Maker and Attorneys have consented in writing to act in the capacity stated and to their names being included in this Offering Circular and have not withdrawn their consent prior to the publication of this Offering Circular.

Any prospective investor with questions in relation to the Krugerrand Custodial Certificates is invited to contact Ebrahim Patel on +27 011 282 1275. Queries may also be directed by email to [ebrahim.patel@rmb.co.za](mailto:ebrahim.patel@rmb.co.za).

An abridged version of this Offering Circular was published in the press and released on the Stock Exchange News Service of the JSE on Monday, 10 November 2014.

Date of issue: 21 October 2014



Merchant Bank, Sponsor and Market Maker

**WEBBER WENTZEL**  
in alliance with > **Linklaters**

Attorneys

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## CORPORATE INFORMATION

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(PO Box 786273, Sandton, 2146)  
*Incorporated in the Republic of South Africa on  
11 January 1929*

**Attorneys**

Webber Wentzel  
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**Merchant Bank, Sponsor and Market Maker**

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**Central Securities Depository**

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**Transfer secretaries**

Brink's Southern Africa (Proprietary) Limited  
(Registration number 1996/004662/07)  
40 Electron Road  
Isando, 1601

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**This Offering Circular is available in English only. Copies may be obtained from the registered office of the Market Maker and the Transfer Secretaries at the addresses set out above.**

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## INTERPRETATION AND DEFINITIONS

In this Offering Circular and the annexures hereto, unless the context indicates otherwise, the words in the first column shall have the meanings assigned to them in the second column, the singular includes the plural and vice versa, an expression which denotes one gender includes the other genders, a natural person includes a juristic person and vice versa, and cognate expressions shall bear corresponding meanings.

To the extent that there is a conflict between Offering Circular and the clauses in the Contract, the clauses in the Contract shall prevail.

<b>“Allocated Krugerrand/s” or “Krugerrand Coin/s”</b>	a specific one ounce fine gold Krugerrand coin with a standard mass of approximately 33,965 grams as referred to in Schedule 2 to the South African Reserve Bank Act 90 of 1986, identified by its Unique Number, to be allocated by the Allocator to a Holder through the application of the Allocation Algorithm;
<b>“Allocation Algorithm”</b>	the bespoke algorithm-based allocation system that will be used by the Allocator to identify the Krugerrand to be Delivered to the Holder;
<b>“Allocator”</b>	the Issuer, acting as allocator of Krugerrand Coins as set out in clause 9.3 of the Contract;
<b>“AM”</b>	before noon;
<b>“Block”</b>	a quantity of 1 000 (one thousand) or more Krugerrand Custodial Certificates;
<b>“Business Day”</b>	a day other than a Saturday, Sunday or an official public holiday in the Republic of South Africa;
<b>“CISCA”</b>	the Collective Investment Schemes Control Act 45 of 2002 or any successor Act that may repeal and replace CISCA;
<b>“Collection Conditions”</b>	(i) providing to the Issuer a Collection Notice (by hand, by e-mail, by facsimile, by registered post or in such other manner as the Issuer may authorize from time to time), together with the statements evidencing the title of the Holder of the relevant Krugerrand Custodial Certificates, and (ii) the Holder giving such instructions as are required by the Issuer for the delisting and cancellation thereof;
<b>“Collection Date”</b>	the date of actual receipt of a Collection Notice by the Issuer, provided that the Collection Notice is received during JSE trading hours on a Trading Day. If the Collection Notice is actually received on a day not being a Trading Day, or after close of JSE trading hours on any Trading Day, then the Collection Notice shall be deemed to have been received on the next Trading Day;
<b>“Collection Notice”</b>	a written notice (in the prescribed format required by the Issuer from time to time, available from the Issuer on request), delivered by the Holder to the Issuer, requiring the Issuer to instruct the Custodian to permit the Holder to collect and take physical possession of Allocated Krugerrands comprised of a Block (or such lesser number of Allocated Krugerrands as the Issuer may in its discretion allow) owned by the Holder (and for the avoidance of doubt, reflected in the most recent Ownership Register and actually held by the Custodian), once, inter alia, the delisting and cancellation of the relevant number of Krugerrand Custodial Certificates owned by the Holder has been effected;

<b>“Collection” or “Collect”</b>	the collection of an Allocated Krugerrand by the Holder from the Custodian following on from the delisting and surrender of the Holder’s Krugerrand Custodial Certificate;
<b>“Contract”</b>	the contract setting out the terms and conditions pursuant to which the right to Delivery in respect of a Krugerrand (which upon such Delivery becomes the Allocated Krugerrand) is bought and sold. A full copy of the Contract terms and conditions is set out in Annexure I to this Offering Circular;
<b>“Custodial Agreement”</b>	the custodial agreement entered into between the Issuer and the Custodian in terms of which the Custodian undertakes to hold Krugerrand Coins in custody for Holders, and to give effect to the Delivery thereof and the Collection thereof, on instructions from the Issuer;
<b>“Custodian”</b>	the custodian that will hold the Allocated Krugerrand, being Brink’s Southern Africa (Proprietary) Limited, registration number 1996/004662/07), or such other additional custodian as the Issuer may appoint from time to time;
<b>“Delivery” and “Delivered”</b>	the delivery of a Krugerrand to effect transfer of ownership thereof from the party delivering the Krugerrand to the party receiving it. In respect of the initial delivery (i.e. the first delivery after the manufacture of the Krugerrand by Rand Refinery), by Rand Refinery (as agent of the Issuer) to the Custodian (as agent for a Holder who is entitled to receive delivery and whose name, in respect of such delivery appears in the most recent Ownership Register), delivery is in the form of an actual delivery of the Krugerrand. In respect of further deliveries (once the Krugerrand is in the custody of the Custodian), delivery is in the form of attornment, where the Custodian will, on instructions from the Allocator, duly authorized by the transferor and the transferee, cease to hold the Krugerrand for the transferor and commence holding the Krugerrand on behalf of the transferee;
<b>“ETF”</b>	an exchange traded fund, being an open-ended fund listed on a stock exchange and traded like an ordinary share, enabling investors to gain exposure to an Index or a specific group of assets through the purchase of one security;
<b>“Exchange Control Regulations”</b>	the exchange control regulations, promulgated in terms of the Currency and Exchanges Act 9 of 1933, as amended from time to time;
<b>“FirstRand Limited”</b>	FirstRand Limited (registration number 1966/010753/06), a public company duly registered and incorporated with limited liability in accordance with the company laws of South Africa, the shares of which are listed on Main Board of the JSE;
<b>“FirstRand Bank”</b>	FirstRand Bank Limited (registration number 1929/001225/06) a public company duly registered and incorporated with limited liability in accordance with the company laws of South Africa and a wholly-owned subsidiary of FirstRand Limited;
<b>“FM Act”</b>	the Financial Markets Act 19 of 2012, as amended from time to time;
<b>“Holder”</b>	the person registered from time to time in the Security Register as a registered Holder of a Krugerrand Custodial Certificate;
<b>“Income Tax Act”</b>	the Income Tax Act 58 of 1962, as amended from time to time;
<b>“Investor”</b>	an Investor who applies to purchase Krugerrand Custodial Certificates on the

	basis described in this Offering Circular;
<b>“Issuer” or “FirstRand”</b>	FirstRand Bank acting through its Rand Merchant Bank division;
<b>“JSE Listings Requirements”</b>	the listings requirements of the JSE, as amended and updated from time to time;
<b>“JSE”</b>	the Johannesburg Stock Exchange being the exchange operated by The JSE Limited, (Registration number 2005/022939/06), a public company incorporated in South Africa;
<b>“Krugerrand Custodial Certificate” or “KCC”</b>	a Krugerrand Custodial Certificate, created, listed and issued by the Issuer, in terms of which the Holder acquires (i) the right to Delivery of a specific Krugerrand, identified by its Unique Number, allocated to the Holder by the Allocator through the application of the Allocation Algorithm and (ii) the right to sell the right to Delivery of a specific Krugerrand;
<b>“Krugerrand Index”</b>	the index pursuant to which the NAV of a Krugerrand Custodial Certificate will be determined in accordance with the formula set out clause 13 of this Offering Circular;
<b>“LBMA”</b>	the London Bullion Market Association
<b>“Market Maker”</b>	FirstRand Bank, acting through its Rand Merchant Bank division;
<b>“Maturity Date”</b>	means [ ], being the date upon which Krugerrand Custodial Certificates issued by the Issuer in terms of the Contract and this Offering Circular will mature, and the Holders will be entitled, subject to the provisions of clause 14 of the Contract, to Collect their Krugerrand Coins from the Custodian or, alternatively, elect that the Issuer dispose of their Krugerrands on their behalf as contemplated in clause 14.4 of the Contract;
<b>“NAV”</b>	the net asset value of a Krugerrand Custodial Certificate which will be published on the website of the Issuer on a daily basis, as required by the JSE Listings Requirements and set out in paragraph 16.9 of this Offering Circular;
<b>“Offering Circular” or “this Offering Circular”</b>	this Offering Circular relating to the listing and issuance of Krugerrand Custodial Certificates dated 21 October 2014;
<b>“Ownership Register”</b>	the register of Holders and their Allocated Krugerrands, maintained by the Issuer;
<b>“PM”</b>	after noon;
<b>“Rand Refinery”</b>	Rand Refinery Limited, (Registration number 1920/006598/06), a public company incorporated in South Africa, or its successor in title;
<b>“Security Register”</b>	the register of owners of Krugerrand Custodial Certificates maintained by STRATE, in terms of the FM Act and STRATE’s rules and procedures, as evidenced from time to time by a weekly download thereof, known as the “BND Download”;
<b>“SENS”</b>	the Stock Exchange News Service of the JSE;
<b>“STRATE”</b>	Strate Limited, (Registration number 1998/022242/06), a public company incorporated in South Africa, or its successor in title;
<b>“T + X”</b>	refers to a specified number of days after the date on which a Krugerrand

	<p>Custodial Certificate is purchased on the JSE where:</p> <ul style="list-style-type: none"> <li>• “T” denotes the date of the purchase; and</li> <li>• “X” denotes the number of days following the date of the purchase;</li> </ul>
<b>“Trading Day”</b>	a day on which trading of Krugerrand Custodial Certificates may take place on the JSE;
<b>“Unique Number”</b>	a unique number allocated to each Krugerrand subject to the Contract, and linked to the Krugerrand by placing the Krugerrand in tamperproof plastic packaging which has the unique number affixed to it; and
<b>“ZAR”</b>	the South African rand, being the currency of South Africa.

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## **INTRODUCTION TO KRUGERRAND CUSTODIAL CERTIFICATES**

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**This Offering Circular is to be read in conjunction with the terms and conditions contained in the Contract set out in Annexure 1 to this Offering Circular.**

### **1. Introduction**

FirstRand has undertaken an initiative to create, list and issue a Krugerrand instrument which proposes to be the first bullion coin backed physically redeemable instrument in South Africa that will allow Investors to take possession of the Krugerrand on expiry, or earlier, if redeeming a Block.

Securities issued in terms of the Krugerrand instrument will be known as "Krugerrand Custodial Certificates". The structure of the Krugerrand product embodies key features of an ETF. These features are enhanced by a more direct ownership structure, no annual management fees charged by the Issuer, a transparent storage cost payable to the Custodian, greater contractual governance and physical redemption with the option for cash.

The Krugerrand Custodial Certificates will be listed in the "Exchange Traded Funds" sector of the JSE under the abbreviated name and alpha code "KCCGLD" and ISIN Code ZAE000195830 with effect from the commencement of business on Monday, 10 November 2014 and traded on the JSE through any authorised user of the JSE.

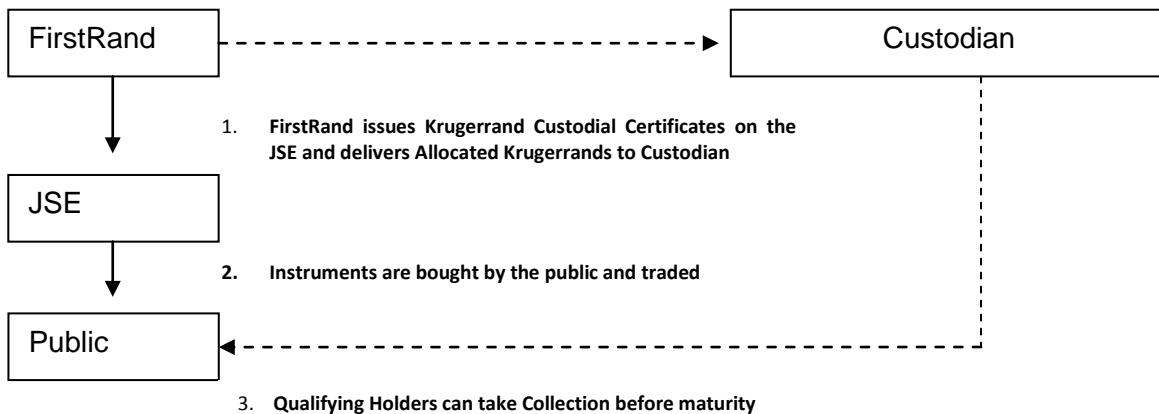
As listed securities, Krugerrand Custodial Certificates are bought and sold on the JSE through a JSE authorised user with FirstRand acting as Market Maker.

The market price of Krugerrand Custodial Certificates at any given time will be subject to market forces. The market value of a Krugerrand Custodial Certificate may be affected by supply and demand and other market factors, but the ability of a Holder of a Block to delist and surrender Krugerrand Custodial Certificates by exercising his right to Collect his Allocated Krugerrand, should operate substantially to avoid or minimise any differentials which may otherwise arise between the relevant Krugerrand price (calculated by using the Krugerrand Index) and the value at which the Krugerrand Custodial Certificates trade on the JSE from time to time.

### **2. The underlying assets of the Krugerrand Custodial Certificates**

The assets underlying the Krugerrand Custodial Certificates will be Allocated Krugerrand Coins that are packaged in tamper proof packing and uniquely numbered which allows the Holder direct ownership of a 1oz Krugerrand coin sourced from Rand Refinery. Therefore every Holder will own a specifically numbered Krugerrand Coin that will belong to him. The Ownership Register will be maintained by the Issuer as proof of such ownership. STRATE will provide a BND download to the Issuer on a weekly basis and the Ownership Register will be updated based on the information contained in the BND download. The tamper proof packaging will be sourced by Rand Refinery from Certiline, based in Italy, or such other packaging as approved by the Issuer

### 3. Structure of the Krugerrand Custodial Certificates



Krugerrand Custodial Certificates constitute a right for the Holder thereof to receive Delivery and ownership of a Krugerrand Coin and entitle the Holder to obtain physical possession thereof by Collecting the Krugerrand Coin, subject to the terms and conditions outlined in clause 14 of the Contract. The Holder will therefore acquire ownership of an Allocated Krugerrand and not merely a personal right to receive a Krugerrand Coin. The Holder will also own a specific Krugerrand, and not be a joint owner of a pool of Krugerrands.

The Issuer will, as soon as it has issued Krugerrand Custodial Certificates, enter into a contract with Rand Refinery for the manufacture of the required Krugerrand Coins. Such Krugerrand Coins, once manufactured, will be delivered to the Custodian to be held in custody for the Holders of the Krugerrand Custodial Certificates.

The detailed mechanics of the structure are as follows:

Upon the creation of Krugerrand Custodial Certificates, RMB will order the corresponding number of Krugerrand coins from Rand Refinery ( $t=1$ ). On  $t=2 / t=3$  RMB will pay over to Rand Refinery the purchase consideration and send proof of payment to the JSE. At this point, the funds paid by the Investor have been put to use to buy the Krugerrand coin that the Investor requires. The Investor thus takes no risk on the Issuer. RMB is only settled at  $t=5$  after RMB has paid Rand Refinery, therefore the Investor takes no credit risk on RMB. If RMB does not pay Rand Refinery, then RMB does not get settled by the JSE. Therefore, up until this point the Investor is at no risk and the KCC is fully covered.

Once RMB pays the purchase price to Rand Refinery, Rand Refinery will credit RMB's unallocated account with an equivalent amount of unwrought gold. RMB will open a separate unallocated account at Rand Refinery to facilitate this, therefore, the investor is always covered with unwrought gold or Krugerrand coins. Rand Refinery will utilise this gold to produce the Krugerrand coins. Should Rand Refinery not be able to produce the Krugerrand coins, then RMB will sell the gold remaining in the unallocated account and distribute the proceeds to Investors as per the Terms and Conditions attached to this Offering Circular. Any Krugerrands that are complete and unnumbered will also be sold and proceeds distributed to Investors as per the terms and Conditions attached to this Offering Circular. Krugerrand coins that are already produced and numbered will be delivered to the owners thereof or bought from them (at their election).

### 4. Krugerrand Custodial Certificates fee structure

The purchase price payable for a Krugerrand Custodial Certificate is the prevailing market price at which Krugerrand Custodial Certificates trade on the JSE from time to time and there are no annual management fees payable to the Issuer. The Issuer undertakes to pay the custody fee to the Custodian.

The Issuer may charge a creation fee of up to 15 basis points plus VAT on all new issues of Krugerrand Custodial Certificates and a redemption fee of up to 15 basis points plus VAT on all redemptions of Krugerrand Custodial Certificates, whether the Krugerrand coins are collected, or a cash settlement takes place as set out hereinafter.

Since there are no management fees payable to the Issuer and the storage fee is payable by the Issuer to the Custodian, there is no requirement to liquidate gold holdings to pay costs (other than in respect of redemption fees, as set out above). Unlike traditional South African gold ETFs which sell a portion of the investor's gold holdings annually in order to pay costs, this does not apply to a Krugerrand Custodial Certificate. Therefore, in a traditional South African ETF the investor's actual gold holdings decrease annually in ounces. In the instance of the Krugerrand Custodial Certificate, an Investor will always own a 1oz Kruggerrand Coin per Krugerrand Custodial Certificate unit.

## 5. Safe custody of the Krugerrand Coins

The Allocated Krugerrands will be kept in custody by the Custodian on the Holder's behalf. The Issuer has appointed the Custodian to exercise custody over the Allocated Krugerrands. The Custodian is a renowned global bullion logistics and storage provider. The Custodian will insure the Krugerrand Coins in terms of its usual storage criteria.

The custody cost of the Krugerrand Coins has been negotiated at a fixed percentage amount for ten years, allowing competitive storage rates. If the Krugerrand Custodial Certificate is extended (as explained in the following clause) a new ten year safe custody rate will be negotiated. The Issuer has the obligation to pay the Custodian for providing storage services to the Holder. The Issuer will utilise its own funds to pay the storage fees, including but not limited to, a portion of the proceeds from the issue of Krugerrand Custodial Certificates.

To ensure that the storage fees are paid timeously by the Issuer and that a Holder of Krugerrand Coins will not be affected by any lien in favour of the Custodian the following procedures have been put in place:

1. if the storage fees have not been paid within 14 days on the due date, the Custodian will notify the JSE. The JSE will then instruct the Issuer to rectify within 7 days, failing which suspension and normal delisting procedures will apply; and
2. a 2 month rolling storage buffer, instituted on each new issue and adjusted in line with the latest monthly storage fee will be paid by the Issuer to the Custodian to allow for a 2 month credit with the Custodian in respect of storage fees at all times.

The Custodian will keep the Krugerrand Coins in custody for a period of ten years and 3 months from the date of listing of the first Krugerrand Custodial Certificate, whereafter the Krugerrand Custodial Certificates may be extended or, alternatively, delisting will occur and the Holder will be entitled to comply with the Collection Conditions and Collect his Allocated Krugerrands from the Custodian or opt for cash settlement.

## 6. Legal nature of the Krugerrand Custodial Certificates

The underlying asset of the Krugerrand Custodial Certificates i.e. the Krugerrand Coin, is legal tender. Investors will, by purchasing a Krugerrand Custodial Certificate, automatically become a party to the Contract between the Issuer, all Holders (who, depending on the capacity they act in from time to time, may be either purchasers or sellers of the right to Delivery of a Krugerrand) and the Custodian. The full terms and conditions of the Contract are set out in Annexure I of this Offering Circular.

The Krugerrand Custodial Certificate represents the legal mechanism pursuant to which the right to obtain acquisition of ownership by Delivery of a Krugerrand, identified by its Unique Number, to be allocated by the Allocator through the application of the Allocation Algorithm, will be bought and sold on the JSE.

The Holder of a Krugerrand Custodial Certificate will be entitled during the term of the Krugerrand Custodial Certificate (if at least a Block is being redeemed, as set out in clause 8 below) and obliged on the Maturity Date (unless the Krugerrand Custodial Certificate is extended and the Holder elects to remain invested or the Holder opts for cash settlement) to Collect his Allocated Krugerrand from the Custodian, subject to the terms and conditions set out in the Contract.

The right of the Holder to delist and surrender his Krugerrand Custodial Certificate and Collect his Allocated Krugerrand is subject to compliance with the Collection Conditions and procedures set out in clause 14 of the Contract.

## **7. Allocation and Delivery of the Allocated Krugerrand**

By purchasing a Krugerrand Custodial Certificate on the JSE, the Holder acquires the right to obtain Delivery of a specific Krugerrand to be determined and allocated by the Allocator through the application of the Allocation Algorithm.

The Allocator will on a regular weekly basis obtain the BND Download/Securities Register, and based thereon apply the Allocation Algorithm to determine which particular Krugerrand shall be Delivered to a new Holder.

The objective of the Contract is to ensure that ownership of the Krugerrand Delivered to the Holder will pass from the seller thereof to a purchaser of a Krugerrand Custodial Certificate when the Allocation Algorithm is applied.

The owner of a particular Krugerrand at any point in time will be the individual reflected in the most up-to-date Ownership Register delivered to and held by the Custodian.

The full terms surrounding the Allocation and Delivery of the Allocated Krugerrand are set out in clauses 9 and 10 of the Contract.

## **8. Collection of Krugerrand Coins**

For administrative purposes and good governance, Holders may not redeem Krugerrand Custodial Certificates in respect of less than 1,000 Krugerrand Coins at any time. At the same time, Holders need to be able to access their Krugerrand Coins within a reasonable time period. For this reason, Holders need a “redemption window” for smaller numbers of Krugerrand Coins. The redemption window will occur on the Maturity Date.

During the term of the Krugerrand Custodial Certificates and subject to the fulfilment of the Collection Conditions, the Issuer shall use its reasonable commercial endeavours within 5 (five) Trading Days of receipt of the Collection Notice to instruct the Custodian to allow Collection by a Holder of his Allocated Krugerrands, to which the relevant Collection Notice relates, unless reasonable delays are unavoidable.

The Holder shall be bound to surrender to the Issuer, or its agent, as the Issuer may require, all the Krugerrand Custodial Certificates in respect of which that Holder is issuing a Collection Notice, in order that same may be delisted and cancelled or, in the event that Krugerrand Custodial Certificates are dematerialised, take such steps as may be necessary for the records of STRATE to reflect that the Holder has surrendered his Krugerrand Custodial Certificates to the Issuer in order that same may be delisted and cancelled. A redemption fee of up to 15 basis point plus VAT (as determined by the Issuer) is payable on redemption.

As set out in clause 14.4 of the Contract, the Issuer may decide, in its absolute discretion, in lieu of delivery to the Holder of Krugerrand Coins, upon receipt by the Issuer of a completed and executed Collection Notice relating to the Block of Krugerrand Custodial Certificates, to pay an amount of cash equal to the value of the Krugerrand Custodial Certificates comprising the surrendered Block, less any reasonable costs incurred by the Issuer (including costs incurred by the Issuer, should it be the purchaser of the Krugerrand coins, in subsequently disposing of them), to the Holder. In such circumstances, the Issuer will be deemed to have purchased the Krugerrand Custodial Certificate in question. Ownership in respect of such Allocated Krugerrands will accordingly pass from the Holder to the Issuer.

The full terms relating to the Collection of Krugerrand Coins are contained in clause 14 of the Contract.

## **9. Issuer's election and reset mechanism**

The terms relating to the Issuer's election and reset mechanism are contained in clause 15 of the Contract.

The following principles for the "reset" methodology will apply:

- Should the Issuer elect to reset the Krugerrand Custodial Certificates, Holders will, on the Maturity Date, be given the option to roll their current Krugerrand Custodial Certificates into a new Krugerrand Custodial Certificates programme.
- The offer mechanism will, in principle, consist of a ratio of the existing holdings for new holdings as well as a cash portion payable to the Holder. The storage fee for the new extended Krugerrand Custodial Certificates will be funded by the sale of a determined portion of each Holder's Allocated Krugerrands, and any excess proceeds will constitute the cash portion of the offer mechanism. Details of the reset mechanism will be published at the relevant time and Holders will be informed via SENS of the details of the reset mechanism.
- If Holders elect to roll over their Krugerrand Custodial Certificates into a new Krugerrand Custodial Certificate programme, Allocated Krugerrands that they hold at the relevant time will be re-allocated to them by the Allocator, such that they shall not dispose of Allocated Krugerrands other than those required to cover storage fees.
- Storage for the next ten year period will be agreed by the Issuer with the Custodian prior to the start of the next ten year period. This fee will be calculated off the LBMA fix specified by the Issuer on a date to be determined on a per coin basis for ten years. Each Holder will then have to pay a ZAR amount to cover their storage for the next ten year period. The Issuer will then sell, on behalf of the Holder, the relevant number of coins acquired to cover the storage fee for the remaining coins. Any surplus ZAR will be returned to Holders.

## **10. Reconciliation of records**

The records of the Issuer, the Allocator and the Custodian will be reconciled with those of STRATE on a daily basis to ensure that the number of Krugerrand Custodial Certificates in issue correspond to the number of Allocated Krugerrands as well as those Krugerrands which are in process of being manufactured or which have been manufactured and are awaiting delivery to the Custodian.

## **11. Procedure in the event of mismatches**

Should there be a mismatch between the records of STRATE and the Custodian, as a result of Krugerrand Coins which should be held by the Custodian being unaccounted for, the Custodian will relay the following information to the Issuer:

- the number of Krugerrand Coins unaccounted for; and
- the Unique Numbers of the unaccounted Krugerrand Coins.

Upon receipt of this information, the Issuer will assess the quantum of the loss.

If the entire loss (including losses arising in the circumstances set out in clause 14.6 hereof) is less than R3 million (Three Million Rand) calculated cumulatively over any previous losses covered by the Issuer as set out in clause 13 of the Contract, then the Issuer will replace the unaccounted Krugerrand Coins, thereby bringing the records of the Custodian and STRATE in balance again.

A confirmation by the Issuer that it will replace the unaccounted Krugerrand Coins will be regarded as sufficient for the Custodian's and STRATE's records to be deemed to be in balance. The JSE will receive a copy of the proof of payment as well as the receipt once the physical Krugerrand Coin has been bought and delivered.

The Issuer will have the discretion, but not the obligation, to cover losses in excess of R3 million (Three Million Rand), as set out in clause 13 of the Contract.

If the loss is within the R3 million RMB limit, then RMB will replace the Krugerrand coin.

Investors will at any point know the balance of the R3 million threshold still in place by any of the following means:

1. When a loss is covered out of the R3 million limit a SENS announcement will be issued announcing the loss covered and balance remaining.
2. Investors can contact the Issuer for confirmation of the balance remaining on the loss threshold.

All Krugerrand coins stored at the Custodian are fully insured by the Custodian and any loss suffered by an Investor with regards to coins stored at the Custodian or in transit with the Custodian will be made good by the Custodian up to any value as per the standard insurance terms and conditions that apply to all storage arrangements. In terms of the Custodian's liability towards Investors, all losses are fully insured and recoverable by Investors. All claims arising therefrom will be settled in ZAR.

## **12. Delisting procedure**

The delisting of the Krugerrand Custodial Certificates can be triggered by any of the loss events mentioned above, or should the Issuer determine that it is in its or the Holder's interests to do so. In the event of delisting, the Krugerrand Custodial Certificates will be suspended and the final BND download and Krugerrand Coin allocation finalised to determine the Holders of Krugerrand Custodial Certificates and Krugerrand Coins.

Upon delisting, Holders will have to take physical delivery of their Krugerrand Coins, but will have the option of cash settlement. Should cash settlement be elected, the Issuer will (as agent of the Holder) sell the Holder's Allocated Krugerrands, on a date determined by the Issuer, at a price not less than the bullion value of the Krugerrand Coins as per clause 14.4 of the Contract, at the LBMA AM fix, or PM fix, on the date of the sale, as determined by the Issuer to be appropriate for the time of the sale, and pay the proceeds less and necessary and reasonable costs, (including costs incurred by the Issuer, should it be the purchaser of the Krugerrand Coins, in subsequently disposing of them) to the Holder. Should there be any expenses associated with the delisting then the process to be undertaken in the reset procedures after ten years will apply. That is, a portion of the Holder's Krugerrand Coins will be sold to cover the costs and the remaining Krugerrand Coins and cash proceeds returned to the Holder.

## **13. Calculation of NAV**

The calculation of the NAV will be as follows:

$$\text{NAV} = \frac{S_{XAUUSD} \cdot S_{USDZAR} (1 + NP + C)}{T}$$

365

Where

NP = numismatic premium, being 4% at the time of listing. The NP reflects both the cost of obtaining Krugerrand Coins from Rand Refinery and a trading margin earned by the Issuer on initial issue of Krugerrand Custodial Certificates.

C = cost of storage, as a fixed percentage per annum, being 22.8 bps per annum (including VAT).

T = time (measured in days) from value day to the Maturity Date.

The ticker code for the gold price input for the Krugerrand Custodial Certificates NAV calculation is Reuters RIC: XAU=.

## **14. ASSOCIATED RISKS OF INVESTING IN KRUGERRAND CUSTODIAL CERTIFICATES**

The mechanics and nature of the underlying assets of the Krugerrand Custodial Certificate give rise to the following risks:

### **14.1. Market risks**

Market risk refers to the risks arising out of movements in the financial markets as they relate to the Krugerrand Custodial Certificates. Krugerrand Custodial Certificates derive their value primarily from two market rates: the gold price in Dollars and the Rand/Dollar exchange rate. Adverse movements in the Dollar price of gold and/or the Rand/Dollar exchange rate will affect the value of the Krugerrand Custodial Certificates.

### **14.2. Trading risks**

Krugerrand Custodial Certificates are listed on the JSE and will trade according to supply and demand in the market. While the Krugerrand Custodial Certificates have a NAV that represents a theoretical fair price for the Krugerrand Custodial Certificates taking into account the factors that influence the price of the Krugerrand Custodial Certificates, the actual price achieved on the JSE will be determined by market conditions, volumes traded, etc. The prices achieved on the JSE could vary from the NAV and the Investor bears the risk of any market impact resulting from large volumes of Krugerrand Custodial Certificates being bought or sold. This deviation from NAV could result in the Investor purchasing Krugerrand Custodial Certificates at a value above NAV or selling Krugerrand Custodial Certificates at a value below NAV.

### **14.3. Fabrication and Delivery risks**

Each Krugerrand Custodial Certificate issued will be backed by a physical Krugerrand Coin stored with the Custodian. When a Krugerrand Custodial Certificate is issued, the Issuer will order the required Krugerrand Coins from Rand Refinery. Depending on the size of the order, Rand Refinery may have to first fabricate the Krugerrand Coins. Once the Krugerrand Coins are fabricated, they have to be placed in the tamper proof packaging and numbered before being delivered to the Custodian.

The holder of a Krugerrand Custodial Certificate whose Krugerrand Coin is in the process of being fabricated and/or placed in packaging and/or awaiting delivery to the Custodian at Rand Refinery assumes the following risks:

- that Rand Refinery may become insolvent, liquidated, cease to exist or be permanently unable to produce the Krugerrand Coins in question;
- that the Krugerrand Coins are lost, destroyed or stolen while at Rand Refinery before they can be delivered to the Custodian;
- that the Krugerrand Coins are lost, stolen or destroyed in transit.

The risk of non-fabrication by Rand Refinery will be mitigated to some extent by the fact that Rand Refinery will credit the unallocated account of the Issuer with an amount of gold equal to the number of Krugerrand Coins to be manufactured. Should any Holder have a proven and finalised claim against Rand Refinery, the Issuer will sell the gold in its unallocated account relating to the Krugerrand Custodial Certificates in question and pass the proceeds onto the affected Holder. Should Krugerrand Coins that have been fabricated and/or packaged be lost, destroyed or stolen prior to delivery to the Custodian, the affected Holders will have recourse to Rand Refinery. Similarly, should a Krugerrand Coin be lost or destroyed during transit, Holders will have recourse to the Custodian who provides the transport services.

Because the Krugerrand Coins are uniquely numbered and the owner of each Krugerrand Coin or in the case of Krugerrand Coins yet to be fabricated, the Holder of the right to receive the Allocated Krugerrand, can be specifically identified, any loss incurred will affect only the holder of the relevant Allocated Krugerrand.

#### **14.4. Storage risks**

The packaged Krugerrand Coins underlying each Krugerrand Custodial Certificate will be stored by the Custodian on behalf of the owners of the Allocated Krugerrand. Should a Krugerrand Coin, while in custody, be lost, stolen, destroyed or otherwise impacted, the owner of the Allocated Krugerrand will have a claim against the Custodian. However, to the extent that the Custodian is not liable for the loss, the owner of the Allocated Krugerrand will have to bear the loss.

Krugerrand Coins can only be removed from custody on instruction of the Holder of the Allocated Krugerrand to the Issuer, who will then instruct the Custodian accordingly. The Issuer, will not make decisions on behalf of Holders, but will only act on instruction from Holders, or in accordance with its powers in terms of the Contract.

The Krugerrand Coins belong to the Holders. As such, in the unlikely event that the Custodian was to be liquidated or become insolvent, the Krugerrand Coins will not form part of the Custodian's assets – i.e. they will not form part of the insolvent estate. Alternative arrangements will be sought with another custodian, alternatively the normal delisting procedures outlined in clause 12 above will occur.

The Issuer, as agent of the Holders, will have the power to instruct The Custodian as to the handling of the Krugerrand Coins. In acting as agent, the Issuer is limited by mandate:

- The Contract clearly sets out the scope of the Issuer's power as agent.
- Krugerrand Coins can only be removed on instruction of the Holder of the Allocated Krugerrand to the Issuer, who will then instruct the Custodian accordingly. The Issuer will not make decisions on behalf of Holders, but will only act on instruction from Holders.

Physical access to the coins is limited to relevant staff of the Issuer and for legitimate purposes.

#### **14.5. Allocation risks**

Ownership of a Krugerrand Coin, as identified by the Allocation Algorithm administered by the Issuer in its capacity as Allocator, only passes to a purchaser of a Krugerrand Custodial Certificate when the Allocation Algorithm assigns such Krugerrand Coin to him (in conjunction with the relevant Delivery mechanism, being either actual Delivery to an agent of the Holder or constructive delivery via attornment).

A Holder of a Krugerrand Custodial Certificate faces the risk that should the seller of a Krugerrand Custodial Certificate, whose Allocated Krugerrand was allocated to a purchaser of a Krugerrand Custodial Certificate, be declared insolvent or liquidated prior to the Delivery of that Krugerrand Coin to the Holder to whom it was allocated, and the liquidator then prevents the transfer of such Krugerrand Coin to the Holder, the loss will be for the account of the Holder.

#### **14.6. Issuer's Guarantee**

The Issuer, in order to ensure timely balancing with STRATE and to maintain the integrity of the Krugerrand Custodial Certificates, will make good losses arising from the above mentioned fabrication and delivery, storage and allocation risks up to a cumulative limit of R3 million for any such losses covered during the life of the Krugerrand Custodial Certificates. The Issuer has the discretion, but not the obligation, to make good losses in excess of this limit should it deem it fit to do so.

The description of risks above is not exhaustive and is provided to highlight the risks identified by the Issuer

#### **14.7. Continuity Risk**

The Krugerrand Custodial Certificate is envisaged to be listed for three ten year periods, with each ten year period maturing so that investors who so wish may take physical delivery of their Allocated Krugerrands (investors owning a Block may take delivery of the Block at any time). Notwithstanding this, it is possible that the Krugerrand Custodial Certificates may be delisted due to the following factors:

1. a loss occurs (that is: Krugerrand Coins are lost, stolen, destroyed or an investor suffers a loss arising from the liquidation/insolvency of the seller of a Krugerrand Coin or any other loss arising) that is beyond the Issuer's stated guarantee of a cumulative amount of R3 million and the Issuer opts not to increase this amount;
2. the ability of the Custodian to continue storing Krugerrand Coins on behalf of owners is diminished and no suitable replacement Custodian can be found which will satisfy the JSE and the Issuer;
3. the Issuer's internal risk assessment on the Custodian necessitates the delisting of the product;
4. the ability of Rand Refinery to produce Krugerrand Coins is extinguished or diminished; or
5. any other prudent reason which would necessitate such delisting.

The above list is not meant to be exhaustive of the circumstances which could lead to the delisting of the Krugerrand Custodial Certificates. Should the Krugerrand Custodial Certificates be delisted, investors can opt to take physical delivery of their Allcoated Krugerrands or instruct the Issuer to dispose of their Krugerrand Coins on their behalf and receive a net cash amount (after deduction of costs, as set out in clause 14.4 of the Contract) based on the relevant LBMA fix price as announced on SENS by the Issuer.

In the event that the Krugerrand Custodial Certificate is delisted due to one or more Krugerrand Coins being lost, destroyed, stolen etc., the owners of such Allocated Krugerrands will bear the loss directly. As each Krugerrand Coin and its owner are uniquely identified, losses will not be shared proportionately amongst all holders, but will be borne by the owners of the Krugerrand Coins so affected. The delisting of the Krugerrand Custodial Certificate will not extinguish the rights of owners who have suffered a loss to claim compensation from the responsible party or from pursuing any claims that may arise.

## **15. REGULATORY CONSIDERATIONS IN RESPECT OF THE KRUGERRAND CUSTODIAL CERTIFICATES**

### **15.1. JSE Listings Requirements**

The Issuer undertakes to comply in full with the JSE Listings Requirements as applicable to the Krugerrand Custodial Certificate. All Krugerrand Custodial Certificates will rank pari passu with each other and are fully paid up and freely transferable.

The Market Maker will act for this purpose and generally as contemplated in section 19.51(n) of the JSE Listings Requirements which require an issuer of listed securities to endeavour to provide and maintain a reasonable bid and offer in respect of such securities.

The Market Maker may from time to time acquire Krugerrand Custodial Certificates in the secondary market from Holders on the JSE. When the Market Maker acquires a Krugerrand Custodial Certificate, the terms and conditions set out in the Contract will apply to it by virtue of it becoming a Holder of a Krugerrand Custodial Certificate.

The Market Maker will attempt to ensure that a liquid secondary market in Krugerrand Custodial Certificates will develop but will not guarantee such a market.

Any termination of listing will be subject to the JSE Listings Requirements.

### **15.2. Exchange control considerations**

The Financial Surveillance Department of the South African Reserve Bank has approved the creation and listing of the Krugerrand Custodial Certificates on the JSE.

### **15.3. Tax considerations for Holders of Krugerrand Custodial Certificates**

The information provided under this section on the tax consequence of disposals of Krugerrand Custodial Certificates is intended for general guidance only and not intended to be tax advice. Each Holder should seek professional tax advice as to the tax consequences of acquiring and disposing of a Krugerrand Custodial Certificate and Krugerrand Coins.

The capital or revenue nature of the Krugerrand Custodial Certificates and Krugerrand Coins in the hands of the Holders should be assessed on a case-by-case basis.

The tax position of the Holder will be governed by the intention with which the Holder enters into the relevant investments. If the Holder enters into the relevant investments as part of a scheme of profit-making, any profits will be subject to income tax. Conversely, if the Holder enters into the relevant investments as long-term investments on capital account, any gains will be subject to CGT.

Where held on capital account, in broad terms the Holder would be subject to CGT (or would suffer a capital loss for CGT purposes, which can be off-set against capital gains) on the difference between the proceeds on disposal and original cost of acquisition of the investment.

Where held on revenue account, that is as part of a scheme of profit-making, the relevant investment would comprise trading stock. Generally speaking, the Holder would be subject to income tax (or would suffer a tax deductible loss) on the difference between the selling price and original cost of acquisition of the trading stock in the year in which the Krugerrand Custodial Certificate or Krugerrand Coin is disposed of.

In most instances due to the nature of the Krugerrand Custodial Certificate or Krugerrand the sale proceeds will be included in gross income and taxed on revenue account.

#### **15.3.1. Securities transfer tax**

Section 1 of the Securities Transfer Tax Act defines a security, inter alia, as “a share or depository receipt in a company”.

As the Krugerrand Custodial Certificate will not constitute a depository receipt in a company but rather a security linked to an underlying Krugerrand, the issue, subsequent sale and redemption of the Krugerrand Custodial Certificate will not be subject to Securities transfer tax.

#### **15.3.2. Tax implications of ten year reset mechanism**

At the end of the initial 10-year period, Holders may be given the option to roll their current holdings into a new Krugerrand Custodial Certificate. As costs will be incurred in rolling into a new Krugerrand Custodial Certificate, and as a portion of the Holder's Allocated Krugerrands will need to be sold to fund such costs the offer, if made, will consist of a ratio of the existing holdings being exchanged for new holdings, and the difference between the proceeds of the Allocated Krugerrands disposed of, and the costs incurred, will constitute a cash portion payable to the Holder. The Holder will therefore exchange the existing Krugerrand Custodial Certificate for a new Security and cash. The Holder will remain the owner of the Allocated Krugerrand except those disposed of in terms of the provisions of the offer.

To the extent a cash portion is realised by the Purchaser from the exchange this will be taxed as part of the Purchaser's gross income.

### **15.4. Governance and disclosure of financial information**

Corporate governance of the Krugerrand Custodial Certificate can be divided into two categories, each of which needs to be adequately catered for in order to achieve a product that is fair and transparent:

- fiduciary duty, disclosures and interests of the parties; and
- audit procedures on inventory and relevant financial disclosure.

#### **15.4.1. Fiduciary duty, disclosures and interests of the parties**

The Krugerrand Custodial Certificate structure does not involve the creation of a Manco nor does it constitute a Collective Investment Scheme (“CIS”) as defined. Furthermore, the relationship between Issuer and Investor is defined contractually, with the Issuer exercising very limited discretion with regards to the functioning of the Krugerrand Custodial Certificates. As such, the traditional fiduciary duty that would arise between a Manco and Investors into a CIS portfolio does not arise.

In the absence of the traditional CIS structure, alternate measures are required to deal with any potential conflicts of interest and to ensure maximum protection of Investor interests. The Issuer has used the following mechanisms to achieve this:

- contractual delineation of functions, responsibilities and duties;
- full upfront disclosure of risks, product features, product limitations and operational procedures; and
- transparency as to the Issuer's points of profit on the Krugerrand Custodial Certificate.

In particular, Investors will have full upfront knowledge and disclosure of the following:

- a) The numismatic premium at which Krugerrand Coins trade is known (through the publicly available NAV calculation) to the Investor, and to the extent that the Issuer is able to source coins at a lower premium, such difference is legitimate profit for the Issuer.
- b) The entire mechanics of the Krugerrand Custodial Certificate (numismatic premium, storage costs, Allocation Algorithm, insurance cover, production lead times, possible risks and procedures in the case of loss) are fully documented in this Offering Circular.
- c) Storage costs on the Krugerrand Coins are calculated as a fixed percentage of average gold prices over time, whereas Investors pay a fixed percentage at a point in time. Any variance that results (under or over) through time will be for the Issuer's account. In meeting its obligation to cover any variances, FirstRand may employ such internal risk management strategies as it deems necessary and prudent to assist it in fulfilling its obligations.

The main difference between the unique structure of the Krugerrand Custodial Certificate and a CIS/traditional ETF structure is that the Issuer in the Krugerrand Custodial Certificate acts more as a product vendor (coin and storage) than a discretionary asset manager. As such, the Investor's risks are largely determined contractually, imposing an obligation on the Issuer and Market Maker to act in accordance with their contractually defined obligations as opposed to imposing a fiduciary duty on them to exercise discretion in the interests of the Investor. The interests of the Investor are objectively protected by contract and product design rather than by relying on the subjective interpretation of fiduciary duty by a discretionary manager.

#### **15.4.2. Audit Procedures and Financial Disclosure**

Due to the fact that the Issuer does not exercise any discretion over the Investor's funds, but rather acts as a product vendor, the financial performance of the business unit responsible for Market Making the Krugerrand Custodial Certificate and seeing to its efficient functioning does not hold any relevance to the Investor. The Investor owns the Allocated Krugerrands directly and as such, is removed from reliance on the solvency of the Issuer. The two main issues that affect the Investor are as follows:

1. The safety and continued existence of their Allocated Krugerrands in storage with the Custodian.
2. The timeous payment of storage fees by the Issuer. A 2 month rolling storage buffer, instituted on each new issue and adjusted in line with the latest monthly storage fee will be paid by the Issuer to the Custodian to allow for a 2 month credit with the Custodian in respect of storage fees at all times.

The integrity of the Allocated Krugerrand holdings at the Custodian will be maintained and verified using a three tier system:

1. Daily verification by the Custodian, in which it reports its balances to STRATE where such balances must match.
2. External verification, twice a year, by the Issuer's personnel who will oversee a physical count of Krugerrand Coins.
3. External verification, once a year, by an external auditor, who will oversee a physical count of Krugerrand Coins and will provide records of such count to the JSE for their records.

Other than as set out above, the Issuer's personnel will have no access to the Krugerrand coins.

The Issuer believes that the above represents a diversified and continuous process of independent verification, that at the very least meets, if not exceeds, current audit practices on traditional ETFs.

## **16. THE ISSUER**

### **16.1. Information on FirstRand Limited**

Details on FirstRand Limited's directors, share capital, major shareholders, borrowings, material loans, directors' interest in securities and in transactions, litigation statement, material contracts, financial information and corporate governance can all be found on FirstRand Limited's website <http://www.firstrand.co.za/InvestorCentre/Pages/annual-reports.aspx>, the details of which remain unchanged as a result of the listing of the Krugerrand Custodial Certificates.

### **16.2. Nature of business, incorporation and background of FirstRand Limited**

FirstRand Limited is a public company and registered bank controlling company. The Group provides banking and investment products and services to retail, commercial, corporate and public sector customers through its portfolio of market-leading franchises. FirstRand Limited is the holding company of the FirstRand group of companies and is listed on the securities exchange of the Johannesburg Stock Exchange (under Financial – Banks, share code: FSR) and the Namibian Stock Exchange (NSX) (share code: FST).

FirstRand Bank Limited is a wholly owned subsidiary of FirstRand Limited, and has a number of divisions, including Rand Merchant Bank (the investment bank), FNB (the retail and commercial bank) and WesBank (the instalment finance provider).

Whilst the Group is predominantly South African based, it has subsidiaries in Namibia, Botswana, Zambia, Mozambique, Tanzania, Nigeria, Swaziland and Lesotho. FirstRand Bank has branches in India and the United Kingdom, and representative offices in Dubai, Kenya, Angola and China. FirstRand Limited's banking origins date back approximately 180 years to the forming of the Eastern Province Bank in Grahamstown in 1838.

RMB Global Markets is a division of Rand Merchant Bank — a leading African corporate and investment bank with roots firmly in South Africa. The division's on-the ground presence across the African continent coupled with its local knowledge and expertise perfectly positions the team to be investor's single point of contact for all African transactional banking, fixed income, currency and commodity needs.

RMB Global Markets offers a comprehensive range of products and solutions, which cover all aspects of risk relating to interest rate, currency and commodity exposures as well as innovative structuring funding solutions. RMB Global Markets are renowned for their focus on unlocking Africa's vast economic potential. More information on RMB Global Markets can be found on the following the website:<http://www.rmb.co.za/globalmarkets/index.asp>

The Krugerrand Custodial Certificates comprise two key elements:

1. A listed element involving:
  - a. Structuring of the security
  - b. Market making
  - c. Ongoing JSE disclosure, settlement and related activities
  - d. Related infrastructure and expertise
2. A physical element, involving:
  - a. Sourcing of Krugerrands
  - b. Storing of Krugerrands
  - c. Related infrastructure and expertise

The Metals and Energy Desk (“Desk”) in FirstRand Bank has a track record of structuring and implementing innovative commodity investment products in a listed environment including:

1. Inward listed futures on SAFEX
2. Quanto futures on SAFEX
3. Commodity ETNs on the JSE
4. FirstRand Gold Bond

The Desk has actively and successfully made a market for many years in the above products, and has the expertise and infrastructure to continue doing so. In addition to these products, the Desk has been an approved market maker for the NewGold ETF for at least the past 3 years, and continues to actively make a market in the NewGold ETF securities. In addition to the Desk specifically, FirstRand Bank has successfully listed and made a market in a number of equity ETFs listed on the JSE, and this expertise, knowledge and infrastructure is available to the Desk. In fact, the Desk has unfettered access to the entire skillset in FirstRand Bank comprising all aspects of JSE market making and issuance, both in ETFs and other products.

In terms of expertise in physical gold, the Desk currently exports a significant portion of South Africa’s gold production annually. In exporting gold, the Desk has developed capabilities in gold logistics and storage, hedging, sourcing, pricing and distribution. The Desk has strong relationships with key service providers such as Rand Refinery for the supply of gold and The Custodian for the safe custody and transport of gold. FirstRand Bank has an internal logistics committee that assesses the capabilities of service providers, sets credit limits, oversees reviews and monitoring of all risks associated with the storage and movement of physical gold. FirstRand Bank also has internal collateral manager who inspects vaulting facilities and logistics arrangements.

In terms of expertise with Krugerrands, the Desk pioneered the sale of Krugerrands through online banking channels by developing the FNB Share Invest Krugerrand offering. The product offers live pricing on the FNB Online platform, instant cash settlement to and out of FNB bank accounts, secure storage of the coins and physical delivery of the coins to customers. In developing the physical gold business as well as the Krugerrand business, FirstRand Bank has developed legal and systems expertise in structuring, administering and maintaining a physical gold business.

### **16.3. Responsible parties**

The Krugerrand Custodial Certificates will be managed by the Market Maker.

The persons employed by the Market Maker and responsible for the development and running of the Krugerrand Custodial Certificates are as follows:

<b>Full name</b>	<b>Function and experience</b>	<b>Business address</b>
Henry Collins	Head of trading RMB Global Markets	Rand Merchant Bank 1 Merchant Place Cnr Rivonia Road & Fredman Drive Sandton, 2146 (PO Box 786273, Sandton, 2146) Switchboard: 011 282 8000
Ettienne van Wyk B.Sc (Mathematics and Mathematical Statistics), Rand Afrikaans University B.Sc Hons (Mathematical Statistics) , Rand Afrikaans University M.Sc (Mathematics) , University of Johannesburg M.Sc (Risk Analysis), Northwest University FRM, GARP, CFA levels 1&2	Head of Metal & Energy Desk RMB Global Markets Etienne has been involved in financial markets for 14 years, 5 of these years were spent in equities and 9 in commodities, specifically gold. Etienne's experience relates to derivative structuring, risk management and trading as well as logistics of physical commodities.	Rand Merchant Bank 1 Merchant Place Cnr Rivonia Road & Fredman Drive Sandton, 2146 (PO Box 786273, Sandton, 2146) Switchboard: 011 282 8000

Ebrahim Patel <i>Qualifications:</i> BSc (Applied Maths/Stats) – Univ of Natal BScHons (Statistics) – Univ of Natal MPhil (Ethics)- Univ of Jhb LLB - UNISA Postgraduate Certificate in Advanced Taxation - UNISA Certificate in Advanced Corporate and Securities Law - UNISA Programme in Investment Analysis and Portfolio Management - UNISA Registered Persons Exams (Equities, Bonds Trader, Bonds Compliance, Futures, Money Market)- SAIFM	Commodity specialist Product Development  <i>Work Experience:</i> Ebrahim worked as a strategy consultant in retail banking and as an analyst in asset management before joining Rand Merchant Bank as a quants analyst. He then joined the "Class Of" programme at FirstRand Bank and has worked in private equity, asset based finance, mining and resources credit and in commodities trading. Ebrahim currently works on the RMB Metals and Energy Desk as a commodity specialist, focusing on new product development, strategy and business growth. He has been instrumental in pioneering innovative commodity investment products in the South African market such as the FNB Share Invest Krugerrand product, Coal and Oil ETN's listed on the JSE, commodity quanto futures listed on SAFEX and the FirstRand Gold Bond.	Rand Merchant Bank 1 Merchant Place Cnr Rivonia Road & Fredman Drive Sandton, 2146 (PO Box 786273, Sandton, 2146) Switchboard: 011 282 8000
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Note:

- All parties above are South African citizens.

#### 16.4. Directors of the Issuer

Full name	Business address
Lauritz Lansen Dippenaar*	4 Merchant Place, Cnr Rivonia Road and Fredman Drive, Sandton, 2146, Gauteng
Sizwe Errol Nxasana**	4 Merchant Place, Cnr Rivonia Road and Fredman Drive, Sandton, 2146, Gauteng
Vivian Wade Bartlett#	740 Nick's Place, Eagle Canyon Golf Estate, Blue Berry Road, Honeydew, 2040, Gauteng
Jurie Johannes Human Bester#	6 Neptune Close, Simons Town, Western Cape, 7995
Mary Sina Bomela*	4 Eton Road, Parktown, Gauteng
Johan Petrus Burger**	4 Merchant Place, Cnr Rivonia Road and Fredman Drive, Sandton, 2146, Gauteng
Peter Cooper^	3 <sup>rd</sup> Floor, 2 Merchant Place, Cnr Rivonia Road and Fredman Drive, Sandton, 2146, Gauteng
Leon Crouse*	Millenia Park, 16 Stellentia Avenue, Stellenbosch, Western Cape, 7600
Jan Jonathan Durand*	Millenia Park, 16 Stellentia Avenue, Stellenbosch, Western Cape, 7600
Grant Glenn Gelink#	25 Kingsbridge Manor, Malgas Road, Douglaston, 2191
Patrick Maguire Goss#	15 Suffert Street, Pinetwon, Kwa Zulu Natal, 3600
Nolulam Nobambiswano Gwagwa#	1 <sup>st</sup> Floor, Commerce Square, Rivonia Road, Illovo, 2196, Gauteng

Paul Kenneth Harris*	3 <sup>rd</sup> Floor, 2 Merchant Place, Cnr Rivonia Road and Fredman Drive, Sandton, 2146
William Rodger Jardine#	6th Floor, Primedia Place, 5 Gwen Lane, Sandown, 2196, Gauteng
Hetash Surendrakumar Kellan*	4 Merchant Place, Cnr Rivonia Road and Fredman Drive, Sandton, 2146, Gauteng
Ethel Gothatamodimo Matenge-Sebesho#	178/180 Beyers Naude Drive, Risidale, 2195, Gauteng
Amanda Tandiwe Nzimande*	Unit DG0001, Ground Floor, Grosvenor Gate, Hyde Park Lane, Hyde Park, 2199, Gauteng
Deepak Premnarayen**	4 <sup>th</sup> Floor, A Block Business Square, Solitaire Corporate Park, Chakala, Andheri (East), Mumbai, 4000 093 India,
Kgotso Buni Schoeman*	27 Scott Street, Waverley, 2090, Gauteng
Benedict James van der Ross#	4 Merchant Place, Cnr Rivonia Road and Fredman Drive, Sandton, 2146, Gauteng
Jan Hendrik van Greuning#	10937 Hunter Gate Way, Reston, Virginia, 20194-1449, United States of America

\* Non-executive director

\*\* Executive director.

# Independent non-executive director

^ Alternate non-executive director

#### **16.5. Credit rating**

The credit rating of FirstRand Limited can be found on the following link:

<http://www.firstrand.co.za/InvestorCentre/Pages/credit-ratings.aspx>

#### **16.6. Rights of Holders of Krugerrand Custodial Certificate in the event of liquidation and business rescue of the Issuer**

In the event of the liquidation or business rescue of the Issuer, ownership rights of Holders of Allocated Krugerrands held in custody by the Custodian will be unaffected, and the only consequence would be that the Krugerrand Custodial Certificate will be delisted. In respect of Krugerrand Coins in production, the Issuer will have paid Rand Refinery for the Krugerrand Coin, and ceded its rights against Rand Refinery to the Holder, and the Holder will thus have a claim on Rand Refinery. The Allocation Algorithm would stop running and the Krugerrand Custodial Certificates will delist and Holders can collect their Krugerrand Coins, in terms of clause 8 above.

#### **16.7. Advisor's consents**

The Merchant Bank and Sponsor, Market Maker and Attorneys, whose names appear on the front cover of this Offering Circular, have consented to their names being referred to in this Offering Circular in the form and context in which they are included and have not withdrawn such consent prior to the publication of this Offering Circular.

## **16.8. Expenses relating to the creation and listing of the Krugerrand Custodial Certificates**

The costs relating to the creation and issuing of the Krugerrand Custodial Certificates are anticipated to be as follows:

Description	Name	R
JSE documentation fees	JSE	75 559.25
Printing of the Offering Circular	INCE	10 000.00
Merchant Bank, Sponsor and Market Maker fees	RMB	100 000.00
Legal fees	Webber Wentzel	1 500 000.00
<b>Total</b>		<b>1 685 559.25</b>

## **16.9. Documents available on the website**

Copies of this Offering Circular will be published on the website of the Market Maker ([www.rmb.co.za](http://www.rmb.co.za)). The NAV of the Krugerrand Custodial Certificates (as calculated in clause 13 above) will be published on each business day on the above website.

The price at which the Krugerrand Custodial Certificates trade on the secondary market may be distributed by business newspapers daily.

As FirstRand Limited is a listed company on the main board of the Johannesburg Stock Exchange, FirstRand Limited will provide regular updates on material price sensitive information and release periodic financial information as required. The performance of the Issuer however, has no affect on the performance of the Krugerrand Custodial Certificates.

## **16.10. Documents available for inspection**

Copies of the following documents will be available for inspection at the registered office of the Issuer at any time during office hours for 14 Business Days after publication of this Offering Circular:

- a signed copy of this Offering Circular;
- the written advisor's consents to act in the capacities stated in clause 16.7 above;
- a summary of all the agreements relating to the Krugerrand Custodial Certificates.

By order of the Board

Carnita Low  
Company Secretary

21 October 2014

4 Merchant Place  
Cnr Rivonia Road and Fredman Drive  
Sandton, 2146  
(PO Box 786273, Sandton, 2146)

**ANNEXURE I****TERMS AND CONDITIONS ATTACHING TO A KRUGERRAND CUSTODIAL CERTIFICATE**

The following terms and conditions shall attach to each Krugerrand Custodial Certificate, created, listed and issued by the Issuer:

**1. Interpretation**

1.1 Unless the contrary intention clearly appears, the following terms shall bear the following meanings:

1.1.1 "Allocated Krugerrand"	means a specific one ounce fine gold Krugerrand coin with a standard mass of approximately 33,965 grams as referred to in Schedule 2 to the South African Reserve Bank Act 90 of 1986, identified by its Unique Number, which has been allocated by the Allocator to a Holder through the application of the Allocation Algorithm;
1.1.2 "Allocation Algorithm"	means the bespoke algorithm-based allocation system that will be used by the Allocator to identify the Krugerrand to be Delivered to a Holder;
1.1.3 "Allocator"	means the Issuer, acting as allocator of Krugerrands as set out in 9.3 below;
1.1.4 "Block"	means a quantity of 1 000 (one thousand) or more Krugerrand Custodial Certificates;
1.1.5 "CISCA"	means the Collective Investment Schemes Control Act 45 of 2002 or any successor Act that may repeal and replace CISCA;
1.1.6 "Contract"	means this contract, being the terms and conditions pursuant to which the right to Delivery in respect of a Krugerrand (which upon such Delivery becomes the Allocated Krugerrand) is bought and sold;
1.1.7 "Custodian"	the custodian, appointed as envisaged in clause 7.1, that will hold the Allocated Krugerrand and all other Krugerrands delivered to holders of Krugerrand Custodial Certificates in custody, being Brink's Southern Africa (Proprietary) Limited, registration number: 1996/004662/07), or such other or additional custodian as the Issuer may appoint from time to time;
1.1.8 "Custodial Agreement"	means the custodial agreement entered into between the Issuer and the Custodian in terms of which the Custodian undertakes to hold Krugerrands in custody for Holders, and to give effect to the Delivery thereof and the Collection thereof, on instructions from the Issuer;
1.1.9 "Collection" or "Collect"	means the collection of an Allocated Krugerrand by the Holder from the Custodian following on from the delisting and surrender of the Holder's Krugerrand Custodial Certificate;
1.1.10 "Collection Conditions"	means (i) providing to the Issuer a Collection Notice (by hand, by e-mail, by facsimile, by registered post or in such other manner as the Issuer may authorize from time to time), together with the statements evidencing the title of the Holder of the relevant Krugerrand Custodial Certificates and (ii) the Holder giving such instructions as are required by the Issuer for the delisting and cancellation thereof;
1.1.11 "Collection Date"	means the date of actual receipt of a Collection Notice by the Issuer, provided that the Collection Notice is received during JSE trading hours on a Trading Day. If the Collection Notice is actually received on a day not being a Trading Day, or after close of JSE trading hours on any Trading Day, then the Collection Notice shall be deemed to have been received on the next Trading Day;
1.1.12 "Collection Notice"	means a written notice (in the prescribed format required by the Issuer from time to time, available from the Issuer on request), delivered by the Holder to the Issuer, requiring the Issuer to instruct the Custodian to permit the Holder to collect and take physical possession of Allocated Krugerrands comprised in a Block (or such lesser number of Allocated Krugerrands as the Issuer may in its discretion allow) owned by the Holder (and for the avoidance of doubt, reflected in the most recent Ownership Register and actually held by the Custodian), once, <i>inter alia</i> , the delisting and cancellation of the

	relevant number of Krugerrand Custodial Certificates owned by the Holder has been effected;
1.1.13 "Delivery" and "Delivered"	means the delivery of a Krugerrand to effect transfer of ownership thereof from the party delivering the Krugerrand to the party receiving it. In respect of the initial delivery (i.e. the first delivery after the manufacture of the Krugerrand by Rand Refinery), by Rand Refinery (as agent of the Issuer) to the Custodian (as agent for a Holder who is entitled to receive delivery and whose name, in respect of such delivery appears in the most recent Ownership Register), delivery is in the form of an actual delivery of the Krugerrand. In respect of further deliveries (once the Krugerrand is in the custody of the Custodian), delivery is in the form of attornment, where the Custodian will, on instructions from the Allocator, duly authorized by the transferor and the transferee, cease to hold the Krugerrand for the transferor and commence holding the Krugerrand on behalf of the transferee;
1.1.14 "FM Act"	means the Financial Markets Act 19 of 2012 or any successor Act that may repeal and replace the said Act;
1.1.15 "Holder"	means the person registered from time to time in the Security Register as a registered holder of a Krugerrand Custodial Certificate;
1.1.16 "Issuer"	means FirstRand Bank Limited, registration number 1929/001225/06);
1.1.17 "JSE"	means the Johannesburg Stock Exchange being the exchange operated by the JSE Limited, (Registration number: 2005/022939/06), or its successor in title;
1.1.18 "JSE Listings Requirements"	means service issue 17 of the listings requirements of the JSE, as amended and updated from time to time;
1.1.19 "Krugerrand Custodial Certificate" or "KCC"	means a Krugerrand Custodial Certificate, created, listed and issued by the Issuer, in terms of which the Holder acquires (i) the right to Delivery of a specific Krugerrand, identified by its Unique Number, allocated to the Holder by the Allocator through the application of the Allocation Algorithm and (ii) the right to sell the right to Delivery of a specific Krugerrand;
1.1.20 "Market Maker"	means the Issuer, acting through its Rand Merchant Bank division;
1.1.21 "Maturity Date"	means [●]; being the date upon which Krugerrand Custodial Certificates issued by the Issuer in terms of this Contract and the Offering Circular will mature, and the Holders will be entitled, subject to the provisions of clause 14 hereof, to Collect Krugerrands from the Custodian or, alternatively, elect that the Issuer dispose of their Krugerrands on their behalf as contemplated in clause 14.4;
1.1.22 "Offering Circular"	means the Offering Circular relating to the listing and issuance of Krugerrand Custodial Certificates dated 21 October 2014;
1.1.23 "Ownership Register"	means the register of Holders and their Allocated Krugerrands, maintained by the Issuer;
1.1.24 "Rand Refinery"	means Rand Refinery Limited, (Registration number: 1920/006598/06), or its successor in title;
1.1.25 "Security Register"	means the register of owners of Krugerrand Custodial Certificates maintained by STRATE, in terms of the FM Act, and STRATE's rules and procedures, as evidenced from time to time by a weekly download thereof, known as the "BND download";
1.1.26 "STRATE"	means Strate Limited, (Registration number: 1998/022242/06), or its successor in title;
1.1.27 "T + X"	refers to a specified number of days after the date on which a Krugerrand Custodial Certificate is purchased on the JSE where: <ul style="list-style-type: none"> <li>• "T" denotes the date of the purchase; and</li> <li>• "X" denotes the number of days following the date of the purchase;</li> </ul>
1.1.28 "Trading Day"	means a day on which trading of Krugerrand Custodial Certificates may take place on the JSE; and

1.1.29 "Unique Number"	means a unique number allocated to each Krugerrand which is to be delivered pursuant to the issue of a KCC by the Issuer, which number is linked to such Krugerrand by placing such Krugerrand in a tamperproof plastic packaging which has the unique number affixed to it.
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- 1.2 In this Contract:
- 1.2.1 words importing the masculine gender include the feminine and neuter genders and *vice versa*; the singular includes the plural and *vice versa*; and natural persons include artificial persons and *vice versa*;
- 1.2.2 references to a "person" include a natural person, company, close corporation or any other juristic person or other corporate entity, a charity, trust, partnership, joint venture, syndicate, or any other association of persons; and
- 1.2.3 if a definition imposes substantive rights and obligations on a party, such rights and obligations shall be given effect to and shall be enforceable, notwithstanding that they are contained in a definition.

## 2. Introduction

- 2.1 This Contract sets out the rights and obligations which attach to and flow from a Krugerrand Custodial Certificate, and the rights and obligations of Holders in relation to each other.
- 2.2 Krugerrand Custodial Certificates are listed securities created and issued by the Issuer. Krugerrand Custodial Certificates evidence the terms and conditions subject to which the right to acquire ownership by Delivery of a Krugerrand, to be allocated by the Allocator through the application of the Allocation Algorithm, may be bought and sold on the JSE.
- 2.3 When Delivery of the Allocated Krugerrand takes place in accordance with this Contract, the Holder becomes the owner of the Allocated Krugerrand and the Holder's right to acquire a Krugerrand is extinguished by performance.
- 2.4 The Holder of a Block may, at any time prior to the Maturity Date, and in compliance with the Collection Conditions, instruct the Issuer to delist his Krugerrand Custodial Certificates in respect of a Block, surrender such Krugerrand Custodial Certificates and thereafter Collect the relevant Krugerrands owned by him from the Custodian.
- 2.5 On the Maturity Date the Holder will:
- 2.5.1 if the Krugerrand Custodial Certificate is not rolled over at the election of the Issuer; or
- 2.5.2 if the Krugerrand Custodial Certificate is rolled over at the election of the Issuer and the Holder elects to not participate in the rolled over Krugerrand Custodial Certificate programme,
- be entitled to Collect his Allocated Krugerrand from the Custodian or, alternatively, elect that the Issuer dispose of his Allocated Krugerrand on his behalf as contemplated in clause 14.4. No compliance with the Collection Conditions is required in respect of Allocated Krugerrands to be Collected after the Maturity Date.
- 2.6 Krugerrand Custodial Certificates will be listed and traded on the JSE through any authorised user of the JSE.

## 3. Tripartite agreement

This Contract constitutes a binding legal agreement between the Issuer, the Holder from time to time (who, depending on the capacity he acts in from time to time, may be either a purchaser or a seller of the right to Delivery of a Krugerrand) and, by virtue of the provisions of the Custodial Agreement, in terms of which the Custodian undertakes to give effect to the provisions hereof, insofar as it is affected hereby, the Custodian.

## 4. Legal nature of Krugerrand Custodial Certificates

- 4.1 Krugerrand Custodial Certificates represent the legal mechanism pursuant to which the right to acquisition of ownership by Delivery of a Krugerrand, to be allocated by the Allocator through the application of the Allocation Algorithm, will be bought and sold on the JSE.

- 4.2 The Holder of a Krugerrand Custodial Certificate will be entitled to claim and take Delivery of the Allocated Krugerrand, subject to the terms and conditions set out in this Contract and the Offering Circular. When Delivery takes place as contemplated in this Contract, the Holder of a Krugerrand Custodial Certificate will acquire ownership of the Allocated Krugerrand and the Holder's right to take Delivery of the Allocated Krugerrand will be extinguished by performance.
- 4.3 The right of the Holder to delist and surrender his Krugerrand Custodial Certificate and Collect his Allocated Krugerrand prior to the Maturity Date is subject to compliance with the Collection Conditions and the procedure set out in 14 below.
- 4.4 Krugerrand Custodial Certificates are not "*participatory interest[s] in a collective investment scheme as defined in the Collective Investment Schemes Control Act, 2002 (Act No. 45 of 2002), and units or any other form of participation in a foreign collective investment scheme approved by the Registrar of Collective Investment Schemes in terms of section 65 of that Act*" as contemplated under the (a)(v) section of "securities" contained in section 1 of the FM Act.

## **5. Matching on JSE does not result in transfer of ownership in respect of the Allocated Krugerrand**

- 5.1 The matching of a buyer and seller of a Krugerrand Custodial Certificate on the JSE does not result in the transfer of ownership in respect of the Allocated Krugerrand or any other specific Krugerrand, but constitutes the sale by the seller and the purchase by the purchaser of the right to receive Delivery of a Krugerrand, to be allocated by the Allocator by the application of the Allocation Algorithm.
- 5.2 The arrangements set out in this Contract relating to Delivery are acknowledged by the parties to this Contract to be the only mechanism pursuant to which ownership in respect of the Allocated Krugerrand can be transferred.

## **6. Market Maker's acquiring of Krugerrand Custodial Certificates in the secondary market**

The Market Maker may from time to time acquire Krugerrand Custodial Certificates in the secondary market from Holders on the JSE. When the Market Maker acquires a Krugerrand Custodial Certificate, the terms and conditions set out in this Contract will apply to it by virtue of its becoming a Holder.

## **7. Custodial arrangements**

- 7.1 Allocated Krugerrands will be kept in custody by the Custodian on the Holders' behalf. The Issuer has appointed the Custodian to exercise custody over the Allocated Krugerrands. The Issuer has the obligation to pay the Custodian for providing storage services.
- 7.2 The Custodian will exercise custody over the Allocated Krugerrands pursuant to the Custodial Agreement.
- 7.3 The Custodian will keep the Allocated Krugerrand in custody for a period of 10 years and 3 months from the date of listing of the first Krugerrand Custodial Certificate, whereafter the arrangements set out in clause 15 (as read with clause 2.5) will apply.

## **8. Market value of this Krugerrand Custodial Certificate**

- 8.1 The purchase price payable for a Krugerrand Custodial Certificate is the prevailing price at which Krugerrand Custodial Certificates trade on the JSE from time to time.
- 8.2 The purchase price of Krugerrand Custodial Certificates at any given time will be subject to market forces.
- 8.3 The market value of a Krugerrand Custodial Certificate may be affected by supply and demand and other market factors, but the ability of a Holder to delist and surrender Krugerrand Custodial Certificates by exercising his right to Collect his Allocated Krugerrand from the Custodian, should operate substantially to avoid or minimize any differential which may otherwise arise between the price of a Krugerrand in the market for Krugerrands and the value at which the Krugerrand Custodial Certificates trade on the JSE from time to time.

## **9. Allocation and Delivery of the Allocated Krugerrand**

- 9.1 For the avoidance of doubt, it is recorded that this clause 9 applies only in circumstances where an Allocated Krugerrand is in existence, has had a Unique Number allocated to it and it has been Delivered to the Custodian. The provisions of clause 10 apply where an Allocated Krugerrand has not yet been manufactured, or where it has been manufactured but not yet Delivered to the Custodian.
- 9.2 By purchasing a Krugerrand Custodial Certificate on the JSE, the Holder acquires the right to Delivery of a Krugerrand. The specific Krugerrand to be delivered shall be determined by the Allocator through the application of the Allocation Algorithm.
- 9.3 The Allocator will, on a regular weekly basis (subject to operational delays beyond its control) obtain the Security Register from STRATE, and, using the information contained in the Security Register, apply the Allocation Algorithm to determine which particular Krugerrand, identified by its Unique Number, shall be Delivered to a Holder.
- 9.4 Following the allocation referred to in 9.3:
- 9.4.1 the Ownership Register will be created (in respect of the first Delivery after the creation of the first Krugerrand Custodial Certificates) and, thereafter, updated weekly, and delivered to the Custodian; and
- 9.4.2 the Ownership Register, once delivered in terms of clause 9.4.1, and hence the records of the Issuer, the Allocator and the Custodian will reflect that a specific Krugerrand, identified by its Unique Number (and constituting an Allocated Krugerrand) is owned by a specified Holder.
- 9.5 The Holder, the Issuer and the Custodian hereby agree that:
- 9.5.1 following the allocation process referred to in 9.3, the Custodian will no longer hold the Allocated Krugerrand on behalf of the previous Holder but will hold the Allocated Krugerrand on behalf of the new Holder as reflected in the Ownership Register;
- 9.5.2 receipt by the Custodian of the Ownership Register will serve as an instruction to transfer by the previous Holder and acceptance of transfer by the new Holder of the Allocated Krugerrand;
- 9.5.3 the receipt by the Custodian of the Ownership Register will also serve as notice of the transfer of the Allocated Krugerrand to the Holder;
- 9.5.4 the tripartite agreement set out in 9.5.1 to 9.5.3 above will constitute Delivery of the Allocated Krugerrand to the Holder following which the Holder will become the owner of such Allocated Krugerrand; and
- 9.5.5 the tripartite agreement set out in 9.5.1 to 9.5.3 above will extinguish and be in fulfilment of the Holder's right to Delivery of a Krugerrand purchased by the Holder through the acquisition of a Krugerrand Custodial Certificate.
- 9.6 Each successive Holder will:
- 9.6.1 by purchasing a Krugerrand Custodial Certificate, acquire the right to Delivery of a Krugerrand, to be allocated to that Holder by the application by the Allocator of the Allocation Algorithm, and the right to sell an equivalent right to Delivery of a Krugerrand; and
- 9.6.2 by selling a Krugerrand Custodial Certificate, sell to the purchaser thereof the right to Delivery of a Krugerrand, to be allocated to that purchaser by the application by the Allocator of the Allocation Algorithm.
- 9.7 In order to ensure that ownership of the Allocated Krugerrand passes from the seller of a Krugerrand Custodial Certificate to a purchaser of a Krugerrand Custodial Certificate, (who may, but who shall not necessarily be the person to whom the seller sells a Krugerrand Custodial Certificate through the JSE) the Custodian and each successive Holder of a Krugerrand Custodial Certificate hereby agree that:
- 9.7.1 each successive seller of a Krugerrand Custodial Certificate will, as an indivisible obligation arising upon the sale of a Krugerrand Custodial Certificate, transfer and Deliver the seller's Allocated Krugerrand to another person to be identified in the Ownership Register by the Allocator through the application of the Allocation Algorithm. This person will not necessarily be the person who purchased the Krugerrand Custodial Certificate from the seller thereof;
- 9.7.2 each successive purchaser of a Krugerrand Custodial Certificate will accept Delivery of any Krugerrand allocated to that purchaser by the Allocator following the application of the Allocation Algorithm. The

- Krugerrand allocated to the purchaser will not necessarily be the same Krugerrand that was held by the seller;
- 9.7.3 the receipt by the Custodian of the updated Ownership Register on a weekly basis will serve as notice of the transfer of a particular Krugerrand to the Holder, such Krugerrand being the Allocated Krugerrand of the new Holder; and
- 9.7.4 as from the moment the Custodian receives the updated Ownership Register, the Custodian will cease to hold the Allocated Krugerrand on behalf of the seller of a Krugerrand Custodial Certificate and will hold such Krugerrand on behalf of the person identified by the Allocator through the application of the Allocation Algorithm, in the updated Ownership Register.
- 9.8 It is recorded that:
- 9.8.1 the objective of the tripartite agreement set out in clause 9.7 above is to ensure that ownership of the Krugerrand Delivered to the Holder of a Krugerrand Custodial Certificate will pass from the seller thereof to a purchaser of a Krugerrand Custodial Certificate when the Allocation Algorithm is applied on a weekly basis (subject to operational delays beyond its control);
- 9.8.2 the owner of a particular Krugerrand at any point in time will be the individual reflected in the most up-to-date Ownership Register held by the Custodian; and
- 9.8.3 the Krugerrand Delivered to the Holder of a Krugerrand Custodial Certificate will not necessarily be transferred by the seller of the relevant Krugerrand Custodial Certificate to the buyer of that Krugerrand Custodial Certificate.
- 10. Procedure and cession of rights in circumstances where Krugerrands have not yet been manufactured or have been manufactured but not Delivered to the Custodian**
- 10.1 In circumstances where an Allocated Krugerrand has not yet been manufactured or has been manufactured but has not yet been Delivered to the Custodian (and has therefore not yet been Delivered to the Holder of a Krugerrand Custodial Certificate), the following procedure will apply:
- 10.1.1 after the initial sale of a Krugerrand Custodial Certificate by the Issuer, the Issuer will on T + 0 place an order for a Krugerrand with Rand Refinery and instruct Rand Refinery which Unique Number should be attached to such Krugerrand; and
- 10.1.2 on or before T+2, the Issuer will pay the purchase price for a Krugerrand to Rand Refinery. The Issuer will send a confirmation that payment has been made and the Unique Number of such Krugerrand to the JSE, whereupon the JSE shall deem the Krugerrand Custodial Certificates in issue and the number of Krugerrands to be Delivered pursuant thereto to be in balance for reporting purposes.
- 10.2 When the Krugerrand to be delivered pursuant to this clause 10 becomes available for delivery to the Holders and has been packed in its tamperproof plastic packaging (which has printed on it the relevant Krugerrand's Unique Number), it will be collected by the Custodian and Delivery to the Holder to whom the Krugerrand has been allocated will be effected.
- 10.3 In the circumstances referred to in clauses 10.1 and 10.2 (i.e. when the Krugerrand to be delivered has not yet been manufactured or has been manufactured but Delivery to the Custodian has not yet occurred), the Issuer hereby, in full discharge of its obligation to Deliver the Krugerrand to a Holder, cedes to the Holder to whom such Krugerrand has been allocated:
- 10.3.1 the Issuer's right to have the Krugerrand manufactured by Rand Refinery (if applicable) and the right to receive delivery of the relevant manufactured Krugerrand from Rand Refinery; and
- 10.3.2 any and all rights that the Issuer may have against Rand Refinery in respect of their failure to package and/or deliver the Krugerrand to the Issuer or the Custodian including, without limitation, the right to claim the return of the purchase price paid in respect of the relevant Krugerrand,
- which cession the Holder hereby accepts.
- 10.4 It is recorded that, by virtue of the cession in clause 10.3, in the event that Rand Refinery fails to comply with its obligation to manufacture and/or deliver the Krugerrands ordered by the Issuer as contemplated by clause 10.1.1, the Holder will not have any rights of recourse against the Issuer if Rand Refinery is unable to comply

with its obligations and the Holder hereby expressly waives and renounces any and all rights of recourse as against the Issuer.

- 10.5 When the Krugerrands to be manufactured pursuant to this clause 10 are manufactured and thus become available for Delivery to the Holders:
- 10.5.1 the Krugerrand will be credited to the Issuer's allocated gold account with Rand Refinery;
- 10.5.2 Rand Refinery (as agent of the Issuer) will deliver such Krugerrands to the Custodian (who will accept Delivery as agent of the Holder) as indicated in the most recent Ownership Register.
- 10.6 Delivery of a Krugerrand to a Holder to whom the Issuer's rights against Rand Refinery were ceded in terms of 10.3 above will extinguish by performance the relevant Holder's rights against Rand Refinery and any residual claim the Holder may have against the Issuer in respect of delivery of the Krugerrand.
- 10.7 The provisions of clause 10 do not preclude a Holder who has not yet obtained Delivery of his Allocated Krugerrand as contemplated in clause 10.5.2 from selling his Krugerrand Custodial Certificate on the JSE. Should a Holder do so, his obligation to Deliver a Krugerrand to a transferee determined by the Allocator as reflected in the Ownership Register is deemed fulfilled by the cession to that transferee of his rights against Rand Refinery on, *mutatis mutandis*, the basis set out in clause 10.2, *et. seq.* Cession of the rights on such basis will be deemed to occur on the delivery of the updated Ownership Register to the Custodian.
- 10.8 Without prejudice to the Issuer's discharge from any obligation to the Holder once the cession contemplated in clause 10.3 has taken place, and the Holder's sole reliance on the performance by Rand Refineries to obtain delivery of a Krugerrand as set out in clauses 10.4 takes effect, should Rand Refinery default in its obligation to deliver a Krugerrand to the relevant Holder, the Issuer will in its sole discretion and without obligation, dispose to the extent that it is able to do so, of the relevant portion of the unallocated gold in its unallocated gold account held with Rand Refinery (if manufacture has not taken place) or the Krugerrands held in its allocated gold account (if manufacture has taken place) and pay to the Holders who have not obtained Delivery of a Krugerrand coin, a *pro rata* portion of the net proceeds of the sale of such gold. For the avoidance of doubt, it is recorded that the Issuer will not exercise the discretion it has in terms of this clause 10.8 in favour of a Holder that has received satisfactory compensation from Rand Refinery.
- 10.9 Upon receipt by a Holder of a *pro rata* portion of the net proceeds of the sale of gold as contemplated in clause 10.8, the relevant Holder will cede back to the Issuer any residual rights that the Holder may have against Rand Refinery as a consequence of the cession contemplated in clause 10.3.2.

## 11. Reconciliation of records

The records of the Issuer, the Allocator and the Custodian will be reconciled with those of STRATE on a daily basis to ensure that the number of Krugerrand Custodial Certificates in issue and Allocated Krugerrands as well as those Krugerrands which are in the process of being manufactured correspond at all times.

## 12. Procedure in the event of mismatches

- 12.1 Should there be a mismatch between the records of STRATE and the Custodian, the Custodian will relay the following information to the Issuer:
- 12.1.1 the number of Krugerrands unaccounted for; and
- 12.1.2 the Unique Numbers of the unaccounted Krugerrands.
- 12.2 Upon receipt of this information, the Issuer will assess the quantum of the loss.
- 12.3 If the entire loss is less than R 3 million (Three Million Rand) calculated cumulatively over any previous losses covered by the Issuer as set out in clause 13 then the Issuer will replace the unaccounted for Krugerrands, thereby bringing the records of the Custodian and STRATE in balance again.
- 12.4 A confirmation by the Issuer that it will replace the unaccounted Krugerrands will be regarded as sufficient for the Custodian's and STRATE's records to be deemed to be in balance.
- 12.5 The replacement Krugerrands will be numbered sequentially from the last allocated Unique Numbers, and the Unique Numbers of the Krugerrands unaccounted for will be cancelled in the allocation register and replaced with the new Unique Numbers.

### **13. Losses and Delisting of all Krugerrand Custodial Certificates**

- 13.1 The Issuer will make good all losses of Krugerrands held in custody by the Custodian (for which the Custodian is not liable, pursuant to the provisions of the Custody Agreement) howsoever those losses arise up to an amount of R3 million cumulatively for the period until the Maturity Date.
- 13.2 The Issuer will have the discretion, but not the obligation, to cover losses in excess of R 3 million.
- 13.3 The Holders of Krugerrands that have been replaced in accordance with the provisions of clause 12 or who have been compensated for their losses pursuant to this clause 13, hereby cede to the Issuer, with effect from the date of replacement of the Krugerrand, all rights of recourse they may have against the Custodian or any other party arising out of the loss or theft of Krugerrands held in custody by the Custodian.
- 13.4 Should the R 3 million limit be breached with a particular loss and the Issuer elects not to make good the losses above R3 million, then the Krugerrand Custodial Certificates will be delisted. Holders will be given reasonable notice acceptable to the JSE of the delisting in such circumstances.
- 13.5 In the event of a delisting in the circumstances contemplated in clause 13.4 occurring:
- 13.5.1 the specific Holders who were the owners of such Krugerrands prior to their being lost will suffer a loss. Such loss will not be aggregated among the general body of Holders but will be borne by the Holders of the lost Krugerrands;
- 13.5.2 Holders who may be negatively affected as a result of lost Krugerrands hereby cede to the Issuer, with effect from the date of delisting, whatever rights of action they may have against the Custodian, Rand Refinery or any other relevant third party in respect of the loss they may suffer; and
- 13.5.3 the Issuer will pay over to Holders who were negatively affected as a result of lost Krugerrands and who have ceded their rights of action to the Issuer in accordance with clause 13.5.2, the proceeds received from any successful enforcement action taken by the Issuer against the Custodian, Rand Refinery or any other relevant third party, after deducting from such proceeds the costs associated with such enforcement action: Provided however that the decision as to whether to enforce such rights and the manner of enforcement will be in the sole discretion of the Issuer. To the extent that the Issuer decides not to enforce its rights against the Custodian, Rand Refinery or any other relevant third party or fails to institute an enforcement action within 270 days of the date of delisting of the Krugerrand Custodial Certificates, the Issuer will cede the rights ceded to it by the Holders in terms of clause 13.5.2 back to such Holders so as to enable them to institute the requisite enforcement action themselves. Any actions by the Holders prior to actual formal institution of any legal proceedings must still be undertaken through the Issuer.
- 13.6 In addition to the Issuer's right to delist as contemplated in clauses 13.4 and 13.5, the Issuer may at any time that it determines that it is in its and/or the Holder's interests to do so, delist all Krugerrand Custodial Certificates. Holders will be given reasonable notice acceptable to the JSE of the delisting in such circumstances.
- 13.7 The Issuer may charge a redemption fee of up to 15 basis points plus VAT on redemptions of Krugerrand Custodial Certificates in terms of this clause, whether the Krugerrand coins are Collected or a cash settlement as provided for in this Contract takes place.

### **14. Collection of Krugerrands**

- 14.1 Subject to the fulfillment of the Collection Condition, the Issuer shall use its reasonable commercial endeavours within 5 (five) Trading Days of receipt of the Collection Notice, to instruct the Custodian to allow Collection by a Holder of his Allocated Krugerrands, to which the relevant Collection Notice relates.
- 14.2 The Holder shall be bound to surrender to the Issuer, or its agent, as the Issuer may require, all the Krugerrand Custodial Certificates in respect of which that Holder is issuing a Collection Notice, in order that same may be delisted and cancelled or, in the event that Krugerrand Custodial Certificates are dematerialized, take such steps as may be necessary for the records of STRATE to reflect that the Holder has surrendered his Krugerrand Custodial Certificates to the Issuer in order that same may be delisted and cancelled.
- 14.3 The Issuer may decide, in its absolute discretion, *in lieu* of procuring the right of the Holder to Collect his Allocated Krugerrands, upon receipt by the Issuer of a completed and executed Collection Notice relating to a

Block of Krugerrand Custodial Certificates, to pay an amount of cash equal to the value of the Krugerrand Custodial Certificates comprising the surrendered Block to the Holder. Such amount will be determined on the basis set out in clause 14.4. It is recorded that in such circumstances, the Issuer will be deemed to have purchased the Krugerrand Custodial Certificates in question. Ownership in respect of such Allocated Krugerrands will accordingly pass from the Holder to the Issuer as contemplated herein.

- 14.4 Should a Holder not Collect his Allocated Krugerrand within 3 months of being entitled to do so, the Issuer will sell such Allocated Krugerrand as the Holder's agent (for which purpose the Holder hereby appoints the Issuer as his/her/its agent) for an amount no less than the bullion value of the relevant Allocated Krugerrand at the London Bullion Market pm fix on the date the sale transaction is entered into, converted to Rand at the published Reuters, Bloomberg (or other similar information system used by the Issuer) exchange rate at the said time, and pay the proceeds of such sale less any reasonable costs incurred by the Issuer (including costs incurred by the Issuer, should it be the purchaser of the Krugerrand coins, in subsequently disposing of them) over to the relevant Holder.
- 14.5 The Issuer may, in its absolute discretion, allow the provisions of this clause 14 to apply to less than a Block in a specific instance, or instances or in general, and may also withdraw any general concession previously allowed.
- 14.6 The Issuer may charge a redemption fee of up to 15 basis points plus VAT on redemptions of Krugerrand Custodial Certificates in terms of this clause, whether the Krugerrand coins are Collected or a cash settlement as provided for in this Contract takes place.

## 15. Issuer's election and reset mechanism

- 15.1 The Krugerrand Custodial Certificates will be delisted on the Maturity Date and all Holders will be entitled to Collect their Allocated Krugerrands, on *mutatis mutandis* the basis set out in clause 14 or, alternatively, elect that the Issuer dispose of their Krugerrands on their behalf as contemplated in clause 14.4. For the avoidance of doubt, it is recorded that no Collection Notice will be required in the circumstances contemplated in this clause 15.1.
- 15.2 Should the Issuer elect to do so and should it be able to negotiate acceptable terms with the Custodian and Rand Refinery, it will reset the Krugerrand Custodial Certificate on such basis as it deems appropriate, which may or may not be on the same terms as this Contract.
- 15.3 The following "reset" methodology (or such other methodology as may be stipulated by the Issuer at the time) will apply in the event of a reset:
- 15.3.1 On the Maturity Date, Holders will be given the option to roll their current Krugerrand Custodial Certificates into a new Krugerrand Custodial Certificates programme.
- 15.3.2 The offer will consist of a ratio of the existing holdings for new holdings as well as a cash portion payable to the Holder.
- 15.3.3 Subject to 15.3.2, if Holders elect to roll over their Krugerrand Custodial Certificates into a new Krugerrand Custodial Certificates programme, the same Krugerrands that they hold at the relevant time will be retained by them and re-allocated to them by the Allocator (excluding any Krugerrands that may have been sold in order to generate the cash portion payable to the Holder referred to in 15.3.2), such that they shall not dispose of any Allocated Krugerrands beyond those required to generate the cash portion.
- 15.4 The provisions of clause 15.3 are intended only to set out in principle the methodology to be followed, and the actual methodology followed will be determined by the Issuer, in consultation with the JSE and STRATE at the relevant time.

## 16. Breach

Neither the Issuer nor the Holder shall be entitled to cancel this Contract in the event of a breach of the Contract by the other of them and an aggrieved party's remedy shall be limited to a claim for specific performance and/or damages.

## **17. Protection of personal information**

- 17.1 The Holder consents to the Issuer and any of the Issuer's affiliates, using, processing and storing the Holder's personal information which is provided to the Issuer. The personal information of the Holder includes all information that is necessary for the proper functioning and operation of the Delivery system contemplated in this Contract and the performance by the Issuer, the Holder, the Custodian, Rand Refinery, STRATE and the JSE of their respective obligations thereunder ("Personal Information").
- 17.2 The Issuer may disclose the Holder's Personal Information to carefully selected third parties, including the Custodian and Rand Refinery, for the purposes of this Contract.
- 17.3 The Issuer may disclose the Holder's Personal Information if under a legal duty to do so.
- 17.4 The Issuer will store the Holder's Personal Information only for a reasonable time to enable the Issuer (and the selected third parties) to use it for the purposes described in this Contract.
- 17.5 The Issuer shall take all precautions necessary to preserve the integrity of the Holder's Personal Information and to take reasonable steps against any destruction and/or unauthorised access, use, corruption or loss of the Holder's Personal Information as is required by any applicable data protection legislation.
- 17.6 The Holder consents to the transfer Personal Information across the border of the Republic of South Africa.

## **18. Responsibilities, Acknowledgements and Undertaking of the Holder**

- 18.1 Each Holder, in its capacity as purchaser, seller or owner of a Krugerrand Custodial Certificate and in its capacity transferor, transferee or owner of an Allocated Krugerrand, hereby agrees that:
- 18.1.1 It has taken such legal, tax and accounting advice as it deems necessary;
- 18.1.2 It accepts responsibility for any administrative and operational obligations imposed on it in terms of this Contract;
- 18.1.3 It is aware of and will comply with the exchange control requirements and restrictions relating to the Krugerrand Custodial Certificates and Allocated Krugerrands, and specifically the restrictions on holding, purchasing, selling, exporting, importing, melting or otherwise utilizing Krugerrands;
- 18.1.4 With the exclusion of the scenario contemplated in 13.5.3 where the Issuer cedes back to the Holder all rights of action against the Custodian and/or Rand Refineries to enable the Holder to institute the requisite enforcement action against the Custodian and/or Rand Refineries itself, all of the Holder's other dealings and interactions with the Custodian and with Rand Refineries will be conducted through the Issuer, and it will have no right to deal directly with them, and they will have no obligation to deal directly with it;
- 18.1.5 It appoints the Issuer as its agent for all purposes under this Contract, and specifically for purposes of giving instructions to the Custodian to effect the transfer of Krugerrand Coins as contemplated herein when the Holder has bought or sold a Krugerrand Custodial Certificate. In acting as agent the Issuer will only be authorised to give effect to the provisions of this Contract, and where relevant on the specific instructions from the Holder, and it does not have any discretion or authority to perform any other acts as agent on behalf of Holders; and
- 18.1.6 It agrees in all respects to the Delivery mechanism for the transfer for ownership of Allocated Krugerrands, and to give effect to the provisions thereof, as transferor or transferee, as contemplated herein.

## **19. Limitation of Liability**

- 19.1 Except to the extent specifically provided for herein the Issuer will have no liability to the Holder for:
- 19.1.1 the failure by the Custodian, STRATE or Rand Refineries to perform their obligations contemplated herein; and
- 19.1.2 acts of fraud by third parties in respect of the identity of the Holder and his/her/its holdings.
- 19.2 The Issuer will not be liable for any indirect or consequential losses or damages which the Holder may suffer.

**20. Issuer's right of cession**

Subject to the JSE's consent (if such consent is necessary), the Issuer shall without notice to the Holder be entitled to cede, delegate and/or assign all or any of its rights and/or obligations under this Contract to any other person.

**21. Other terms and conditions**

- 21.1 This Contract constitutes the whole agreement between the Issuer and the Holder relating to the subject matter hereof.
  - 21.2 No amendment or consensual cancellation of this Contract or any provision or term thereof shall be binding unless recorded in a written document signed by the Issuer (or its duly appointed agent), provided that any amendment or consensual cancellation shall be effective if agreed to by a majority representing three-fourths in value of all Krugerrand Custodial Certificates then in issue, present in person or voting by proxy at a meeting of Holders called for that purpose by or on behalf of the Issuer by not less than 14 days' notice posted to Holders by registered mail.
  - 21.3 To the extent permissible by law no party shall be bound by any express or implied term, representation, warranty, promise or the like not recorded (or incorporated by reference) herein, whether it induced the contract and whether it was negligent or not.
  - 21.4 This Contract is governed by South African law. It is agreed that any dispute will be dealt with by the South African courts.
  - 21.5 Obligations under this Contract are binding on all successors, executives, administrators or other legal representatives.
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