

## 1. TERMS AND CONDITIONS OF THE TENDER OFFER (EXTRACT FROM TENDER DOCUMENT)

### 1.1 General Terms and Conditions

All tenders must be made through the prescribed Application Channels listed in paragraph **Error! Reference source not found.** A tender will only be valid where the procedures contained within the Application Channels are complied with. The Tender Offer and all tenders will be governed by and construed in accordance with Kenyan law. A submission via any of the Application Channels (“**Acceptance**”) will constitute irrevocable submission to the jurisdiction of the Kenyan courts. The Tender Offer will be subject to the terms and conditions set out in this Tender Offer Document and the Tender Form.

A holder of Ordinary Shares shall only be permitted to tender their Ordinary Shares in the Tender Offer if at the First Closing Date or the Second Closing Date, as applicable such shares are free from all pledges, liens and other encumbrances. Ordinary Shares successfully tendered will be acquired by Diageo Kenya free from all pledges, liens and other encumbrances and together with all rights attaching thereto, including the right to all dividends and other distributions declared, made or paid in respect of such Ordinary Shares after settlement of the Tender Offer. For the avoidance of doubt, Shareholders who tender their shares retain the right to receive any interim dividend in respect of the 2023 financial year proposed by the Board of Directors of EABL, provided that the record date for the Interim Dividend occurs prior to the end of the settlement period of the Tender Offer.

No tenders received by the Agents after 17 March 2023, will be accepted.

All questions as to the number of Ordinary Shares tendered and/or the validity, eligibility (including the time of receipt) and acceptance of any tender of Ordinary Shares will be determined by Diageo Kenya, acting through the Sponsoring Stockbroker, the Agents and the DPA, appointed in connection with the Tender Offer which determination will be final and binding on all of the parties (except as otherwise required under applicable law). Diageo Kenya, acting through the Sponsoring Broker, Agents and the DPA, reserves the absolute right to reject any or all tenders they determine not to be in proper form, or the acceptance or payment for which may, in the opinion of Diageo Kenya, acting through the Agents and the DPA, be unlawful or may violate applicable legal or regulatory requirements. Diageo Kenya, acting through the Agents and the DPA, also reserves the absolute right to waive any of the terms of the Tender Offer and any defect or irregularity in the tender of any particular Ordinary Shares or any particular Shareholder. No tender of Ordinary Shares will be deemed to be validly made until all defects or irregularities have been cured or waived. In the event of a waiver, the consideration under the Tender Offer will not be dispatched until after the Acceptance is complete in all respects and the share certificates and /or other document(s) of title, and identification documents (a copy of ID/passport for individuals or of the certificate of incorporation/registration for companies/groups/societies, in each case certified by an Agent or an attorney), satisfactory to Diageo Kenya, acting through the Agents and the DPA, have been received by the DPA, (in the instance of electronic submission via the portal), or verified by the DPA (in the instance of a mobile application). Neither Diageo Kenya, the Agents, the DPA nor the Sponsoring Broker nor any other person is or will be obliged to give notice of any defects or irregularities in tenders, and none of them will incur any liability for failure to give any such notice. Neither Diageo Kenya, the Agents, the DPA nor the Sponsoring Broker or their respective agents, or any person acting on behalf of any of them, will have any liability to any person for any loss or alleged loss arising from any decision as to the treatment of Acceptances or otherwise in connection therewith.

The failure of any person to access a copy of this Tender Offer Document or the Application Channels will not invalidate any aspect of the Tender Offer. Each Shareholder shall be responsible for all communications, notices, certificates, documents of title and other documents and remittances to be delivered (either electronically or physically) by or to, or sent to or from, him/her or it or his/her or its designated agent.

The Tender Offer is not conditional on a minimum level of Ordinary Shares being tendered in the Tender Offer. There is no minimum level of acceptances.

All references to time in this Tender Offer Document are to East Africa time.

## 1.2 Calculation of Entitlements and Pro Rata Scale Down

The entitlement of each Shareholder as a result of their participation in the Tender Offer will be calculated following the First Closing and the Second Closing, as set out below.

If more than 118,394,897 Ordinary Shares are tendered by Shareholders in the Tender Offer, each Shareholder's tender may be subject to a *pro rata* scale-down as set out below.

### 1.2.1 Guaranteed Allocation Pool

Of the 118,394,897 Ordinary Shares that are the subject of the Tender Offer, up to 47,500,000 Ordinary Shares will be designated the "**Guaranteed Allocation Pool**" to be allocated to satisfy all tenders of up to a maximum of 10,000 Ordinary Shares tendered by each Shareholder.

In the event that the Tender Offer is oversubscribed, and the Guaranteed Allocation Pool is insufficient to satisfy each accepting Shareholder's first 10,000 Ordinary Shares, then preference to the Guaranteed Allocation Pool will be given to Shareholders appearing on the register on the Record Date, whether or not such Shareholder is an Early Acceptance Shareholder or a Final Acceptance Shareholder.

Of the remaining 70,894,897 Ordinary Shares that are the subject of the Tender Offer, up to 55,000,000 Ordinary Shares will be designated the "**Early Acceptance Pool**" to be allocated in priority to Early Acceptance Shareholders, as described in paragraph 7.2.2 below.

The number of Ordinary Shares equal to or less than 10,000 tendered by each Shareholder in the Tender Offer will constitute such Shareholder's "**Guaranteed Allocation Take-up**". The number of Ordinary Shares in excess of 10,000 tendered by each Shareholder will constitute that Shareholder's "**Excess Tender**".

### 1.2.2 First Closing

The DPA will calculate the extent to which the Excess Tender of each Early Acceptance Shareholder will be satisfied in the First Closing as follows:

- (i) if the sum of the Excess Tenders of all Early Acceptance Shareholders (in aggregate) is equal to or less than the Early Acceptance Pool, then Early Acceptance Shareholders will not be subject to any *pro rata* scale-down and each Early Acceptance Shareholder's Excess Tender will be satisfied in full in the First Closing (together with their Guaranteed Allocation Take-up, each Early Acceptance Shareholder's "**Initial Entitlement**"); or
- (ii) if the sum of the Excess Tenders of all Early Acceptance Shareholders (in aggregate) is greater than the Early Acceptance Pool, then:
  - a. the Early Acceptance Pool will be allocated to the Early Acceptance Shareholders *pro rata* to the size of each Early Acceptance Shareholder's Excess Tender (or as near thereto as the DPA in its absolute discretion considers practicable) and each Early Acceptance Shareholder's Excess Tender will be satisfied to the extent of such allocation in the First Closing (together with their Guaranteed Allocation Take-up, each Early Acceptance Shareholder's "**Initial Entitlement**"); and
  - b. the amount of each Early Acceptance Shareholder's Excess Tender that is not satisfied by such allocation (the "**Early Acceptance Tender Balance**") will be taken into account in the calculation of Final Entitlements following the Second Closing, as described below.

Diageo Kenya will publish the results of the calculation of the Initial Entitlements of the Early Acceptance Shareholders following the First Closing by **6 March 2023** via a securities exchange announcement and in two newspapers of national circulation in Kenya.

Each Early Acceptance Shareholder will receive the settlement of its Initial Entitlement, calculated as described above in accordance with paragraph 7.4 below.

### 1.2.3 **Second Closing**

The DPA will calculate the extent to which the Excess Tender of each Final Acceptance Shareholder and the Early Acceptance Tender Balance of each Early Acceptance Shareholder will be satisfied in the Second Closing, as follows:

- (i) The number of Ordinary Shares that will be allocated to satisfy the Excess Tender of each Final Acceptance Shareholder and to satisfy the Early Acceptance Tender Balances of each Early Acceptance Shareholder (the “**Final Allocation Pool**”) will be equal to 118,394,897 Ordinary Shares minus: (i) the number of Ordinary Shares allocated to Early Acceptance Shareholders in the First Closing; and (ii) the aggregate sum of the Guaranteed Allocation Take-up of all Final Acceptance Shareholders.
- (ii) If the sum of: (i) the Excess Tenders of all Final Acceptance Shareholders (in aggregate); and (ii) the Early Acceptance Tender Balances of the Early Acceptance Shareholders (in aggregate), is equal to or less than the Final Allocation Pool, then no Shareholder will be subject to a *pro rata* scale-down and each Early Acceptance Shareholder’s Early Acceptance Tender Balance and each Final Acceptance Shareholder’s Excess Tender will be satisfied in full at the Second Closing (each Early Acceptance Shareholder’s, and, together with their Guaranteed Allocation Take-Up, each Final Acceptance Shareholder’s, “**Final Entitlement**”).
- (iii) If the sum of: (i) the Excess Tenders of all Final Acceptance Shareholders (in aggregate); and (ii) the Early Acceptance Tender Balances of the Early Acceptance Shareholders (in aggregate), is greater than the Final Allocation Pool, then the Final Allocation Pool will be allocated to satisfy each Final Acceptance Shareholder’s Excess Tender and to satisfy each Early Acceptance Shareholder’s Early Acceptance Tender Balance *pro rata* to the size of each Final Acceptance Shareholder’s Excess Tender and each Early Acceptance Shareholder’s Early Acceptance Tender Balance (or as near thereto as the DPA in its absolute discretion considers practicable and treating for these purposes each Final Acceptance Shareholder’s Excess Tender and each Early Acceptance Shareholder’s Early Acceptance Tender Balance equivalently), each Final Acceptance Shareholder’s Excess Tender and each Early Acceptance Shareholder’s Early Acceptance Tender Balance will be satisfied in the Second Closing only to the extent of such allocation (each Early Acceptance Shareholder’s, and, together with their Guaranteed Allocation Take-Up, each Final Acceptance Shareholder’s, “**Final Entitlement**”) and the tenders made by each Early Acceptance Shareholder and each Final Acceptance Shareholder will be scaled down accordingly.

### 1.2.4 **General**

On calculation of the Initial Entitlements and Final Entitlements, if the DPA finds that the number of shares tendered exceeds the Final Allocation Pool, the number of Ordinary Shares tendered will be subject to a *pro rata* scale-down. Fractional entitlements will not be taken into account as part of the calculation of any Initial Entitlements or Final Entitlements. The number of Ordinary Shares that Shareholders who tender their shares in the Tender Offer and are subject to a *pro rata* scale-down are deemed to have tendered will be rounded down to the nearest 100 Ordinary Shares. As a result, and taking into account the calculation mechanism described above, Shareholders who tender some or all of their Ordinary Shares in the Tender Offer may not know the precise number of Ordinary Shares that they will be deemed to have tendered (and, therefore, the exact amount of cash they will receive pursuant to the Tender Offer) until final settlement of the Second Closing Tender Offer.

For the avoidance of doubt, where Shareholders holding Ordinary Shares as nominees for beneficiaries (“**Nominee Shareholders**”) have completed Acceptances on behalf of underlying beneficial owners, any *pro rata* scale-down will be applied at the level of each entry of the Nominee Shareholders on the register

of members of EABL and will not take account of the underlying holdings or instructions of underlying beneficial owners.

All questions as to the calculation of any *pro rata* scale-down will be determined by Diageo Kenya, acting through the DPA, in its sole discretion. Neither Diageo Kenya, the Agents, the DPA nor the Sponsoring Broker nor any person acting on behalf of any of them, will have any liability to any person for any loss or alleged loss arising from the calculation of any *pro rata* scale-down.

### 1.3 Updates on level of acceptances

From 24 February 2023, the DPA will calculate the number of Ordinary Shares tendered by Shareholders in the Tender Offer and Diageo Kenya will publish such number via a securities exchange announcement and in two newspapers of national circulation in Kenya on/around 6 March 2023 and 5 April 2023.

As noted above, Diageo Kenya will also publish the results of the calculation of the Initial Entitlements of the Early Acceptance Shareholders following the First Closing on/around 6 March 2023 via a securities exchange announcement and in two newspapers of national circulation in Kenya.

Diageo Kenya will publish the final results of the Tender Offer and the calculation of the Final Entitlements of Early Acceptance Shareholders and Final Acceptance Shareholders on/around 5 April 2023, via a securities exchange announcement and in two newspapers of national circulation in Kenya.

Trading in EABL's shares may be suspended after the Second Closing to allow for the settlement and transfer of the Ordinary Shares under the Tender Offer.

### 1.4 Settlement

Following the calculation of the Initial Entitlements of the Early Acceptance Shareholders in accordance with paragraph 1.2.2 above, and the calculation of the Final Entitlements of the Early Acceptance Shareholders (if any) and Final Acceptance Shareholders in accordance with paragraph 1.2.3 above and on receipt of relevant regulatory approvals from the Capital Markets Authority, the payment for each Early Acceptance Shareholder's and Final Acceptance Shareholder's Final Entitlement will be processed from 11 April 2023. The payments will be processed in accordance with the preferred method of payment indicated in the Acceptance.

### 1.5 Tendering Shareholder Confirmations

Each Shareholder that tenders Ordinary Shares into the Tender Offer irrevocably undertakes, represents, and warrants to Diageo Kenya and its agents (so as to bind such Shareholder, its representatives and its heirs, successors and assigns) that:

- (i) its Acceptance constitutes the irrevocable appointment by such Shareholder of any director of Diageo Kenya as such Shareholder's attorney and/or agent, and an irrevocable instruction to the attorney and/or agent to complete and execute all or any form(s) of transfer and/or other document(s) at the discretion of the attorney and/or agent in relation to the relevant Ordinary Shares in favour of Diageo Kenya or such other person or persons as Diageo Kenya may direct and to deliver such form(s) of transfer and/or other document(s) at the discretion of the attorney and/or agent, together with the share certificate(s) and/or other document(s) relating to the Ordinary Shares, for registration within six months of the Tender Offer opening and to do all other acts and things as may in the opinion of such attorney and/or agent be necessary or expedient for the purpose of, or in connection with, the acceptance of the tender offer and to vest in Diageo Kenya or its nominee(s) or such other person(s) as Diageo Kenya may direct the Ordinary Shares;
- (ii) such Shareholder will do all such acts and things as may be necessary or expedient to vest in Diageo Kenya or its nominee(s) or such other person(s) as Diageo Kenya may direct the Ordinary Shares;
- (iii) such Shareholder agrees to ratify each and every act or thing which may be done or affected by Diageo Kenya or by any director of Diageo Kenya or its agents, as the case may be, in the proper exercise of any of its or their powers and/or authorities conferred by or referred to in this Tender Offer Document;

- (iv) the Tender Offer may lawfully be made to such Shareholder and the acceptance of the Tender Offer may lawfully be made by such Shareholder and that such Shareholder has taken appropriate steps to satisfy themselves of such legality and has complied with the laws of any relevant jurisdiction in connection with the Tender Offer;
- (v) such Shareholder's Ordinary Shares are sold free from all pledges, liens and other encumbrances and together with all rights attaching thereto, including the right to all dividends and other distributions declared, made or paid in respect of such Ordinary Shares, and, with the right to attend and vote at any general meeting of EABL after settlement of the Tender Offer on or about 11 April 2023. For the avoidance of doubt, Shareholders who tender their shares retain the right to receive any interim dividend in respect of the 2023 financial year proposed by the Board of Directors of EABL, provided that the record date for the Interim Dividend occurs prior to the end of the settlement period of the Tender Offer.

#### **1.6 Nominee Shareholders**

Nominee Shareholders will be responsible for ensuring that Acceptances submitted by them are consistent with the instructions they have received from the relevant underlying beneficial owners and are validly completed (including as regards the giving of the representations, warranties and undertakings described in this Tender Offer Document). None of Diageo Kenya, EABL, the agents, the DPA, the Sponsoring Broker or the Paying Bank will (i) have any obligation to verify that a Nominee Shareholder's Acceptance is consistent with the instructions given by its underlying beneficial owners or is validly completed by the Nominee Shareholder, or (ii) have any liability to Nominee Shareholders or relevant underlying beneficial owners in the event that a Nominee Shareholder's Acceptance is rejected or treated as invalid.

For the avoidance of doubt, cash due to Shareholders under the terms of the Tender Offer will be paid to Nominee Shareholders and will not be paid directly to relevant underlying beneficial owners. Payment to Nominee Shareholders in accordance with the terms of the Tender Offer will be a complete discharge of Diageo Kenya's payment obligations, and none of Diageo Kenya, EABL, the agents, the DPA, the Sponsoring Broker or the Paying Bank will have any obligation in relation to the application of the monies so paid to the Nominee Shareholder under the terms of the Tender Offer.

#### **1.7 Overseas Shareholders**

Shareholders who are not residents of Kenya should read the notices on page 2 of this Tender Offer Document. The Tender Offer is for securities of a company incorporated under the laws of Kenya and is subject to the procedural and disclosure requirements of Kenyan law. Since this Tender Offer Document has been prepared in accordance with Kenyan law, the information disclosed may not be the same as that which would have been provided in accordance with the laws of any other jurisdiction. No person outside of Kenya accessing a copy of this Tender Offer Document or the Application Channels may treat the same as constituting an invitation or offer to him unless the Tender Offer is lawfully made in the relevant territory. It is the responsibility of any such person to satisfy themselves as to full observance of the laws of that territory, including obtaining any requisite governmental or other consents, observing any other requisite formalities and paying any issue, transfer or other taxes due in such territory.

#### **1.8 Further Tender Offers**

Diageo Kenya reserves the right, subject to obtaining any necessary approvals from the Capital Markets Authority or any other relevant regulatory authorities, and to compliance with applicable law, to launch one or more additional tender offers in relation to EABL, or otherwise to acquire additional shares through on-market transactions in EABL, following the close of the Tender Offer.

### **Acceptance of the Tender Offer**

#### **1. Declining the Offer**

**YOU DO NOT NEED TO TAKE ANY ACTION IF YOU DO NOT WISH TO ACCEPT THE TENDER OFFER.**

**2. Completing the Tender Form**

If you are in any doubt as to how to complete your application using either the USSD code \*483\*902# or the online application portal accessible via <https://offers.image.co.ke> (the **Electronic Application Channels**), please contact the Sponsoring Stockbroker - SBG Securities, or an Agent or Image Registrars Limited.

**3. If the sole registered East African Breweries PLC shareholder is deceased**

If probate or letters of administration has/have been registered with **East African Breweries PLC's** registrars, Image Registrars Limited, the personal representative(s) of the deceased must complete the application using either of the Electronic Application Channels.

If probate or letters of administration has/have not been registered with East African Breweries PLC or East African Breweries PLC's registrars, Image Registrars Limited, the personal representative(s) (or prospective personal representative(s)) should complete the application using either of the Electronic Application Channels. If you complete the application using the online application portal, and upload a certified true copy of the death certificate (or a notarised copy), the relevant certified true copies of probate or letters of administration and evidence of the authority to sign of the personal representative(s) to the online application portal. If you complete this application using the USSD code, send certified true copies of these documents to your Agent or Image Registrars Limited.

**4. If one of the registered East African Breweries PLC shareholders in a joint account is deceased**

The surviving registered East African Breweries PLC shareholder(s) should complete the application using either of the Electronic Application Channels. If you complete the application using the online application portal, and upload a certified true copy of the death certificate (or a notarised copy), and the relevant certified true copy of the probate or letters of administration (or a notarised copy) of the deceased East African Breweries PLC shareholder to the online application portal. If you complete the application using the USSD code send certified true copies of these documents to your Agent or Image Registrars Limited.

**5. If the Tender Form is signed under a power of attorney**

Complete the application using either of the Electronic Application Channels. If you complete the application using the online application portal, upload a certified true copy of the power of attorney (or a notarised copy), to the online application portal. If you complete the application using the USSD code, send certified true copies of these documents to your Agent or Image Registrars Limited.

**6. If your East African Breweries PLC Shares are in certificated form**

Please contact Image Registrars, SBG Securities Limited, or any of the Agents to open a CDS account before submitting your acceptance **which should be received no later than 5.00 p.m. on 17 March 2023.**

**7. If you are not resident in or if you are subject to the laws of a jurisdiction other than Kenya**

East African Breweries PLC shareholders not resident in Kenya or who are subject to the laws of a jurisdiction other than Kenya (and custodians, nominees or trustees thereof) must read and apply paragraph **7.7 of the Tender Offer Document.**

**8. Validity of acceptance of the Tender Offer**

Without prejudice to the provisions of the Tender Offer Document, subject to the provisions of the Regulations, Diageo Kenya Limited reserves the right to treat as valid in whole or in part any acceptance of the Tender Offer that is not entirely in order or which is not accompanied by the relevant supporting documentation.

## 9. Acceptance of Tender Offer:

By Accepting the Tender Offer and submitting the application through either of the Electronic Application Channels, I/We herein state that:

- (a) I/We have full legal capacity to contract and, having read the Tender Offer Document and the terms and conditions herein, hereby irrevocably and unconditionally accept the offer of the KES 192.00 per share for my/our ordinary shares made by Diageo Kenya.
- (b) I/ We hereby request the Central Depository and Settlement Corporation (CDSC) /Registrar to transfer my/our tendered shares to Diageo Kenya's Central Depository Settlement (CDS) account.
- (c) In consideration of your acceptance of the Tender Offer through either of the Electronic Application Channels, I/we agree that this acceptance shall be irrevocable and shall constitute a contract which shall become binding on me/us and governed by the laws of Kenya, upon submission to the Agent.
- (d) I/We accept the terms and conditions contained herein and in the Tender Offer Document.
- (e) I/We irrevocably undertake, represent, and warrant to Diageo Kenya and its agents (so as to bind me/us and my/our representatives, heirs, successors and assigns) in the terms of the Tendering Shareholder Confirmations set out in paragraph 7.5 of the Tender Offer Document.

If you are a licensed custodian who is acting on behalf of a Shareholder, by submitting your acceptance through either of the Electronic Application Channels, you also confirm that:

- (a) you have carried out the relevant "know your customer" checks on your client and they are not a sanctioned party under any sanctions list published by any governmental, judicial or regulatory institutions, agencies, departments and authorities of the European Commission, the United States of America, the United Kingdom, the United Nations and any other relevant sanctions authority;
- (b) you have strictly complied with all applicable laws in the jurisdictions in which you operate and international guidelines, rules, laws and regulations (to the extent that they apply to you) governing money laundering and terrorist financing matters; and
- (c) your acceptance will be submitted to the Sponsoring Broker and Lead Acceptance Agent, SBG Securities.

## 10. Your personal information

- (d) All personal information that you include in the Electronic Application Channel is collected and processed in accordance with Image Registrars Limited's Privacy Notice available at [image.co.ke](http://image.co.ke). It is important that you read this Privacy Notice which contains more detailed information about our data processing.
- (e) In submitting your acceptance using either of the Electronic Application Channels you agree and understand that your personal information will be shared by Image Registrars Limited with Diageo Kenya, Diageo Plc, the Capital Markets Authority and all such parties that require access to your information for the purposes of meeting their obligations under the Tender Offer Document.
- (f) Where an acceptance using either of the Electronic Application Channels on behalf of a third party, you confirm that you have all necessary consents and authorisations from the relevant shareholder.

All collection and processing of personal information will be carried out in accordance with the Data Protection Act 2019, Laws of Kenya and the regulations issued thereunder.

**PLEASE NOTE THAT ACCEPTANCES SUBMITTED WITHOUT A CERTIFIED COPY OF ID/PASSPORT FOR INDIVIDUALS OR CERTIFIED COPY OF THE CERTIFICATE OF INCORPORATION/REGISTRATION FOR COMPANIES/GROUPS/SOCIETIES MAY BE REJECTED. WHILE SUBMITTING THIS TENDER FORM, ONLY COPIES CERTIFIED BY THE AGENT OR NOTARY / ADVOCATE WILL BE ACCEPTED**