



BUSINESS RESCUE PLAN

prepared in terms of section 150 of the Companies Act 71 of 2008

in relation to

TONGAAT HULETT SUGAR SOUTH AFRICA LIMITED (IN BUSINESS RESCUE)

prepared by the Joint Business Rescue Practitioners

Publication Date: 31 May 2023

CORPORATE INFORMATION AND ADVISOR DETAILS

Company

Tongaat Hulett Sugar South Africa Limited (in Business Rescue)

Business Rescue Practitioners

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BSM

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CHAPTER 1 – INTRODUCTION

1. Executive Summary:

- 1.1. Capitalised terms and/or expressions shall have the meanings assigned to them in paragraph 3.
- 1.2. The business rescue proceedings of THSSA are inextricably linked with those of THL, its ultimate parent and legal “principal”.
- 1.3. No trading (in a legal context) takes place in THSSA which operates as an agent for a previously undisclosed principal, ultimately being THL. As a result, the business rescue proceedings of THSSA are wholly dependent on the business rescue proceedings and business rescue plan of THL.
- 1.4. The THL business rescue plan, which is published in parallel with this Business Rescue Plan for THSSA, succinctly contemplates the following:
 - 1.4.1. the sale of all material assets of THL either as part of the Strategic Equity Partners process (named Project BSM) or by way of separate sale processes;
 - 1.4.2. securing the continued survival and operation of the underlying THL businesses under new ownership;
 - 1.4.3. realising value from material legal claims;

- 1.4.4. the objective of the anticipated disposals is to release value in order to apply such proceeds towards the relevant THL Creditors' Claims, which will predominantly be THL's Secured Creditors Claims, simultaneously with securing the survival and operation of the underlying THL businesses under new ownership;
 - 1.4.5. to the extent that there is surplus cash and/or proceeds available after having made all distributions to THL's Secured creditors, such surplus will then be available to THL's Unsecured creditors as distributions;
 - 1.4.6. once the THL business rescue plan has been approved, adopted and fully implemented in accordance with the provisions of that plan and Chapter 6 of the Companies Act, including payment of the distributions and/or payments as provided for in the plan, any remaining Creditor Claims against THL will become Unenforceable.
- 1.5. There are no operations taking place in THSSA, which is essentially a dormant company. There are no assets of significance beneficially owned by THSSA to be realised, so any Creditors' Claims against THSSA will be against the THSSA shell which will in turn have a commensurate claim against THL (in terms of the THL business rescue plan).
- 1.6. In the event it becomes necessary to dispose of the THL Mozambique assets of THSSA directly rather than in terms of the Agency Agreements, these assets will be sold as part of the THL process(es) in accordance with the THL business rescue plan. The proceeds arising from this source will accrue to the benefit of the Lender Group in terms of the security held over these assets.
- 1.7. To the extent that a Creditor does lodge a claim against THSSA, it would have arisen from the performance of THSSA as the agent acting on behalf of its undisclosed principal. The principal was disclosed on or about 20 December 2022 to be THL. Therefore, any Claims against THSSA will result

in THSSA having a commensurate claim against THL (in terms of the THL business rescue plan).

- 1.8. Any Claim that THSSA has against THL will be treated, in the THL business rescue plan, on the same basis as all other Unsecured Creditor Claims against THL. To the extent there is any Distribution payable by THL to its Unsecured Creditors, THSSA will be entitled to a recovery on its claim against THL. The proceeds so received will be shared pro-rata between all the Claims against THSSA, which include the Lender Group guarantee/suretyship Claims amounting to c.R7.3 billion.
- 1.9. Once the THSSA Business Rescue Plan has been approved, adopted and fully implemented in accordance with Chapter 6 of the Companies Act, including payment of the Distributions and/or payments as provided for in this Business Rescue Plan, any remaining Creditor Claims will become Unenforceable.
- 1.10. Creditors will be asked to vote on this Business Rescue Plan at the Meeting scheduled for Wednesday the 14th of June 2023.
- 1.11. Affected Persons are referred to Table 2 of this Business Rescue Plan which sets out the Claims that the BRPs have accepted and/or recognised, as well as the status assigned to Creditors.
- 1.12. If any Creditor disputes its status and/or Claim as reflected in this Business Rescue Plan, such Creditor is directed to paragraphs 5.10 and 15 of this Business Rescue Plan.
- 1.13. Creditors each have a Voting Interest equal to the value of their Claims, as determined by the BRPs (refer to paragraph 5.11).
- 1.14. For the Business Rescue Plan to be Adopted it must be supported by the holders of more than 75% of the Creditors' Voting Interests that were voted,

and the votes in support of the Business Rescue Plan must include at least 50% of the Independent Creditors' Voting Interests, if any, that were voted.

- 1.15. The Business Rescue Plan does not alter the rights of the Shareholder of the Company and the Shareholder will therefore not be required to, nor is it entitled to, vote on this Business Rescue Plan.
- 1.16. Creditor's attention is directed to the outcome of the vote on and implementation of the THL business rescue plan, which directly impacts the outcome of this (the Company's) Business Rescue Plan and its resulting impact on THSSA's Creditors. This is directly as a result of the impact of or the operation of the Agency Agreements.

2. Structure of the Business Rescue Plan

For the purposes of section 150(2) of the Companies Act, this Business Rescue Plan is divided into several chapters.

2.1. Chapter 1 – Introduction

This chapter sets out general information about the Business Rescue Plan, the meaning of defined terms, and contains an executive summary of the Proposals put forward in terms of this Business Rescue Plan.

2.2. Chapter 2 – Proposals

This chapter contains the Proposals in terms of the Business Rescue Plan and is comprised of several sub-parts in accordance with the Companies Act.

2.2.1. Part A – Background

This part sets out background information on the Company, the circumstances that resulted in the Company's Financial Distress and the events leading to the commencement of the Company's Business Rescue.

2.2.2. Part B – Proposals

This part describes the Proposals to Affected Persons and the benefits and risks of Adopting the Business Rescue Plan.

2.2.3. Part C — Assumptions and Conditions

This part sets out the conditions that must be fulfilled and the assumptions applied in respect of the Business Rescue Plan.

2.3. Chapter 3 – General

This chapter sets out administrative and general matters pertaining to the Business Rescue and the Business Rescue Plan and deals, amongst other things, with potential amendments to the Business Rescue Plan and the mandatory Dispute Mechanism to be employed to resolve disputed matters relating to this Business Rescue Plan.

2.4. Chapter 4 – Conclusion and BRPs Certificates

This chapter contains the BRPs' recommendation and the certificate that is required to accompany each business rescue plan in terms of the Companies Act.

3. Interpretation

3.1. The following terms and/or expressions shall have the meanings assigned to them hereunder and cognate expressions shall have corresponding meanings;

3.1.1. **"Adopted/Adoption/Adopting"** means that a business rescue plan has been finally approved in accordance with section 152(2), read with section 152(3) of the Companies Act;

3.1.2. **"Advisors"** means the advisors to the BRPs, including but not limited to Metis, Werksmans and BSM and the advisors' respective officers, representatives, and employees;

- 3.1.3. "**Affected Person/s**" shall bear the meaning ascribed thereto in section 128(1)(a) of the Companies Act, being (as may be applicable) the Company's Shareholders, Creditors, employees and trade unions;
- 3.1.4. "**AFSA**" means the Arbitration Foundation of Southern Africa;
- 3.1.5. "**Agency Agreements**" means various legal agreements, entered into by THL and certain of its subsidiaries (including the Company), which entail one or more subsidiaries acting as the agent for an undisclosed principal. In all such cases, the ultimate principal is THL, whereas the agent subsidiary conducts(ed) relevant business on behalf of the ultimate principal;
- 3.1.6. "**Albertyn**" means Gerhard Conrad Albertyn a BRP as contemplated in section 128(1)(d) of the Companies Act;
- 3.1.7. "**Board**" means the board of directors of the Company as at the Publication Date as set out in paragraph 5.25.2;
- 3.1.8. "**BRPs**" means the joint business rescue practitioners of the Company, being van den Steen, Murgatroyd and Albertyn;
- 3.1.9. "**BSM**" means BSM Advisory Proprietary Limited (registration number: 2019/457342/07), a company registered and incorporated in accordance with the company laws of South Africa;
- 3.1.10. "**Business Day**" means any day other than a Saturday, Sunday, or official public holiday in South Africa;
- 3.1.11. "**Business Rescue**" means the business rescue proceedings of the Company conducted under Chapter 6 of the Companies Act;

- 3.1.12. "**Business Rescue Costs**" means the remuneration, expenses, disbursements, and fees of the BRPs and their Advisors, as well as other costs of the Business Rescue;
- 3.1.13. "**Business Rescue Plan**" means this document together with all of its annexures, as amended from time to time, prepared in accordance with section 150 of the Companies Act;
- 3.1.14. "**CIPC**" means the Companies and Intellectual Property Commission, established in terms of section 185 of the Companies Act;
- 3.1.15. "**Claims**" means all actual and/or alleged monetary claims against the Company including claims which are disputed, contingent, conditional, liquidated, or unliquidated (including claims for damages), the cause of action in respect of which arose prior to the Commencement Date and/or under section 136(3) of the Companies Act;
- 3.1.16. "**Commencement Date**" means 23 December 2022, being the date upon which Business Rescue commenced in accordance with section 129 of the Companies Act;
- 3.1.17. "**Company**" or "**THSSA**" means Tongaat Hulett Sugar South Africa Limited (registration number: 1965/000565/06), a private company with limited liability incorporated in accordance with the laws of South Africa, at present in Business Rescue;
- 3.1.18. "**Companies Act**" means the Companies Act 71 of 2008, as amended, including the regulations promulgated thereunder;
- 3.1.19. "**Concurrent Claim**" means any Claim (other than a Disputed Claim) which is unsecured and which does not enjoy a statutory preference as envisaged in the Companies Act;

- 3.1.20. "**Creditor**" means any creditor, including Disputed Creditors and contingent Creditors, with a monetary Claim against the Company;
- 3.1.21. "**Disputed Claim**" – means any Claim where the existence, value, class of the Claim, or security in respect of a Claim, is disputed by the BRPs and/or by an Affected Person;
- 3.1.22. "**Disputed Creditor**" means a Person with a Disputed Claim;
- 3.1.23. "**Dispute Mechanism**" means the dispute resolution mechanism set out in paragraph 15;
- 3.1.24. "**Distributions**" means payments made to Creditors in respect of their approved Claims as provided for in this Business Rescue Plan;
- 3.1.25. "**Financially Distressed**" or "**Financial Distress**" shall bear the meaning ascribed thereto in section 128(i)(f) of the Companies Act;
- 3.1.26. "**High Court**" means the High Court of South Africa;
- 3.1.27. "**Independent Creditor**" means a Creditor, with a Claim as accepted and/or recognised by the BRPs, to whom the definition in section 128(1)(g) of the Companies Act applies;
- 3.1.28. "**Insolvency Law**" means the Insolvency Act 24 of 1936, as amended and Chapter 14 of the Companies Act 61 of 1973, read with item 9 of Schedule 5 of the Companies Act;
- 3.1.29. "**Lender Group**" means the group of lenders to THL, all of whom are Secured Creditors, including The Standard Bank of South Africa Limited (acting through its Corporate and Investment Banking division), Absa Bank Limited, FirstRand Bank Limited (acting through its Rand Merchant Bank division), Investec Bank Limited

(acting through its Investment Banking Division, Corporate Solutions), Investec Bank Limited (acting through its Corporate and Institutional Banking division), The Land and Agricultural Development Bank of South Africa, Sanlam Life Insurance Limited (acting through its Sanlam Specialised Finance Markets division), Sanlam Investment Management Proprietary Limited (acting on behalf of its third party clients), Sanlam Life Insurance Limited (acting through its Sanlam Investment Management division), Sanlam Specialised Finance Proprietary Limited, Momentum Metropolitan Life Limited, Nedbank Limited, and Ashburton Fund Managers Proprietary Limited (acting on behalf of its clients);

- 3.1.30. "**LRA**" means the Labour Relations Act 66 of 1995, as amended;
- 3.1.31. "**Management**" means the management team of the Company who have been responsible for managing the day-to-day operations of the Company from the Commencement Date under the supervision and authority of the BRPs;
- 3.1.32. "**Meeting**" means the virtual meeting to be held in terms of section 151 of the Companies Act on **Wednesday, 14 June 2023** at **11h00** for the purpose of voting on this Business Rescue Plan;
- 3.1.33. "**Metis**" means Metis Strategic Advisors Proprietary Limited (registration number 2015/220685/07) a limited liability company registered and incorporated in accordance with the laws of South Africa;
- 3.1.34. "**Murgatroyd**" means Trevor John Murgatroyd a BRP as contemplated in section 128(1)(d) of the Companies Act;
- 3.1.35. "**PCF**" means post commencement finance obtained by THSSA from a PCF Creditor as contemplated in section 135(2) of the Companies Act;

- 3.1.36. "**PCF Creditor**" means a Creditor, authorised and accepted as such by the BRPs, from whom the Company has obtained PCF during the Business Rescue;
- 3.1.37. "**PCF Employee**" means any employee of the Company, if applicable, who rendered services to the Company and is owed any remuneration, reimbursement for expenses or other amount of money relating to employment that became due and payable during the Business Rescue as contemplated in section 135(1) of the Companies Act;
- 3.1.38. "**Preferent Employee**" means current and former employees of the Company, if applicable, who hold an unsecured preferent claim against the Company in terms of section 144(2) of the Companies Act, arising from any remuneration, reimbursement for expenses or other amount of money relating to employment that became due and payable by the Company to that employee at any time before the Commencement Date, and which had not been paid to that employee immediately before the Commencement Date;
- 3.1.39. "**Proposal/s**" means the proposals set out in Chapter 2 of this Business Rescue Plan;
- 3.1.40. "**Publication Date**" means the date on which this Business Rescue Plan is published to Affected Persons in terms of section 150(5) of the Companies Act, being **31 May 2023**;
- 3.1.41. "**Rand**" or "**R**" or "**ZAR**" means the lawful currency of South Africa;
- 3.1.42. "**Rejection Date**" means the date on which a Claim is rejected by the BRPs in accordance with the provisions of this Business Rescue Plan;

- 3.1.43. "**SA Sugar**" means THL's sugar operations comprising of the following divisions:
- 3.1.43.1. agriculture land
 - 3.1.43.2. milling
 - 3.1.43.3. agriculture and cane supply management
 - 3.1.43.4. marketing, sales and distribution
 - 3.1.43.5. refinery and
 - 3.1.43.6. Voermol animal feeds division;
- 3.1.44. "**SARS**" means the South African Revenue Services;
- 3.1.45. "**Secured Creditor**" means a Creditor who holds security for a Claim against the Company in terms of Insolvency Law;
- 3.1.46. "**Securities**" means any shares or other similar instruments, irrespective of their form or title, issued or authorised to be issued by a profit company, as defined in the Companies Act;
- 3.1.47. "**Shareholder**" means a shareholder, as defined in section 1 of the Companies Act, of the Company;
- 3.1.48. "**South Africa**" means the Republic of South Africa;
- 3.1.49. "**Substantial Implementation Date**" means the date upon which the BRPs file a notice of substantial implementation of the Business Rescue with the CIPC, which filing will be in the BRPs' sole and absolute discretion, as envisaged in paragraph 12;
- 3.1.50. "**Tax**" includes any tax, imposition, levy, duty, charge, fee, deduction or withholding of any nature (including securities transfer tax and stamp, documentary, registration, or other like duty) and any interest, penalty or other amount payable in connection therewith, which is lawfully imposed, levied, collected, withheld or assessed under the laws of South Africa or any other relevant

jurisdiction and "**Taxes**", "**Taxation**" and other cognate terms shall be construed accordingly;

- 3.1.51. "**THL**" means Tongaat Hulett Limited (registration number: 1892/000610/06)), a public company incorporated in accordance with the laws of South Africa;
- 3.1.52. "**THL Group**" means THL and each of its subsidiaries;
- 3.1.53. "**Unenforceable**" means the inability to enforce any and all Claims against the Company, as envisaged in section 154 and/or as read with section 152 of the Companies Act, upon the Adoption and implementation of the Business Rescue Plan;
- 3.1.54. "**Unsecured Creditors**" means all Creditors with Concurrent Claims against the Company;
- 3.1.55. "**van den Steen**" means Petrus Francois van den Steen a BRP as contemplated in section 128(1)(d) of the Companies Act;
- 3.1.56. "**VAT**" means the value-added tax levied in terms of the Value-Added Tax Act 89 of 1991, as amended;
- 3.1.57. "**Voermol**" means Voermol Feeds Proprietary Limited (registration number 1936/007892/07), a private company with limited liability incorporated in accordance with the laws of South Africa, at present in Business Rescue
- 3.1.58. "**Voting Interest**" means a voting interest as defined in section 128(1)(j) of the Companies Act, calculated on the value of a Creditor's Claim as accepted and/or recognised by the BRP per this Business Rescue Plan;

- 3.1.59. "**Werksmans**" means Werksmans Incorporated (registration number: 1990/007215/21), a firm of attorneys practising as such at The Central, 96 Rivonia Road, Sandton, 2196.
- 3.2. Paragraph headings in this Business Rescue Plan are for the purpose of convenience and reference only and shall not be used in the interpretation of, nor modify or amplify the terms of this Business Rescue Plan or any paragraph hereof, unless a contrary intention clearly appears.
- 3.3. Words importing:
- 3.3.1. any one gender includes the other gender;
- 3.3.2. the singular includes the plural and vice versa; and
- 3.3.3. a natural person includes an artificial or juristic person and vice versa ("**Person**");
- 3.4. Any reference to any statute, regulation or other legislation in this Business Rescue Plan shall be a reference to that statute, regulation, or other legislation as at the Publication Date, and as amended or substituted from time to time.
- 3.5. Any reference in the Business Rescue Plan to any other agreement or document shall be construed as a reference to such other agreement, as may from time to time be amended, varied, novated, or supplemented.
- 3.6. If any provision in a definition in this Business Rescue Plan is a substantive provision conferring a right or imposing an obligation on any person or entity then, notwithstanding that it is only in a definition, effect shall be given to that provision as if it were a substantive provision in the body of this Business Rescue Plan.

- 3.7. Where any term is defined in this Business Rescue Plan within a particular paragraph other than this paragraph 3, that term shall bear the meaning ascribed to it in that paragraph wherever it is used in this Business Rescue Plan.
- 3.8. Where any number of days is to be calculated from a particular day, such number shall be calculated as excluding such particular day and commencing on the next day, if the last day of such number so calculated falls on a day which is not a Business Day, the last day shall be deemed to be the next succeeding day which is a Business Day.
- 3.9. Any reference to days (other than a specific reference to Business Days), months or years shall be a reference to calendar days, months or years, as the case may be.
- 3.10. Words or terms that are capitalised and not otherwise defined in the body of this Business Rescue Plan (excluding capitalised words or terms used for the purpose of headings or tables) shall bear the meaning assigned to them in the Companies Act.
- 3.11. The use of the word "**including**", "**includes**" or "**include**" followed by specific examples shall not be construed as limiting the meaning of the general wording preceding it and *the eiusdem generis* rule shall not be applied in the interpretation of such general wording or such specific examples.
- 3.12. To the extent that any provision of this Business Rescue Plan is ambiguous, it is to be interpreted in a manner that is consistent with the purposes of the Business Rescue provisions in Chapter 6 of the Companies Act.
- 3.13. Unless otherwise stated, all references to sections are references to sections in the Companies Act.

3.14. All information provided in the Business Rescue Plan is reflected as at the Publication Date, unless otherwise indicated in the Business Rescue Plan.

4. Disclaimer

4.1. The BRPs in the preparation of this Business Rescue Plan have relied on information obtained from the books and records of the Company, meetings held with relevant persons including the Company's directors, Management, staff, suppliers, clients, Advisors and other service providers of the Company, and studies and reports commissioned from various technical and other professional advisors in connection with the affairs of the Company.

4.2. Whilst the BRPs have made efforts to ensure the accuracy of the information contained herein, it should be noted that the BRP's investigations have been limited in nature due to:

4.2.1. the time constraints placed on the BRPs by the Companies Act and Creditors;

4.2.2. pressure from Affected Persons to effect a reasonably paced rescue;

4.2.3. limited financial and human resources available to the Company;
and

4.2.4. the state of affairs of the Company.

4.3. The BRPs have not carried out an audit of the Company's documents and/or records, nor have they had adequate opportunity to independently verify all information provided to them by the Company and/or relevant third parties.

4.4. Nothing contained in the Business Rescue Plan shall constitute any form of legal or other advice to any Affected Person, and the BRPs do not make any representations in respect thereof.

- 4.5. Neither the BRPs nor their Advisors shall be responsible for any acts taken by (or omissions arising from) any Affected Persons' reliance on this Business Rescue Plan.

- 4.6. Affected Persons are advised and encouraged to consult with their own independent attorney, accountant, or other professional advisor in respect of this Business Rescue Plan should they so wish or require.

CHAPTER 2 – PROPOSAL

5. PART A – Background

5.1. Holding Company:

5.1.1. The Company is a private company which is a wholly owned subsidiary of THL. An organogram of the THL Group is contained in Annexure A.

5.2. Director(s) of the Company:

5.2.1. As at the Publication Date, the directors of the Company, according to the CIPC, are Mr Robert Aitken, Mr Avinash Gobind and Mr David Howells.

5.3. Company Information:

Financial Year End	31 March
Registered Business Address	Amanzimnyama Hill Tongaat Kwa-Zulu Natal 4399
Postal Address	P O Box 3 Tongaat KwaZulu Natal 4400
Business Telephone Number	+27 (32) 439 4000
Auditors	Ernst & Young

5.4. Company Background:

5.4.1. The Company is part of the THL Group which is an agri-processing business with a c.130-year history and a strong socio-economic legacy in Southern Africa. The THL Group has operations in South Africa, Zimbabwe, Mozambique and Botswana which collectively make up the THL Group.

5.4.1.1. Tongaat Hulett Sugar focuses on cane growing, sugar milling and refining throughout the Southern African region.

5.4.1.2. The businesses of THL in South Africa have historically, in part, been carried on by operational or functional subsidiaries, in terms of two broad contractual relationships, briefly described as follows:

- Main Agency Agreement concluded in April 1989 in terms of which a main agent, being THSSA, acts as the agent of THL; and
- Sub-Agency Agreement concluded in August 1997 in terms of which a sub-agent, being Voermol, acts as the agent for THSSA, the intention being that the sub-agent, Voermol, performs for THSSA the obligations that THSSA has undertaken to perform as agent of THL.

5.4.1.3. As a result of the Agency Agreement THSSA does not in a legal sense carry on any activities for its own benefit that would generate revenue for itself, and is wholly financially dependent on THL. The respective Agency Agreements are now in the process of being unwound.

5.4.1.4. Ultimately, from a THSSA perspective, the Agency Agreements entail:

- Assets: Assets are those of the ultimate principal, being THL;
- Tenure: The Agency Agreement(s) and agency arrangement(s) are active for an indefinite period of time and terminable on one month's written notice. All Agency Agreements are in the process of being unwound;
- Disclosure: The existence of the Agency Agreement(s) was previously undisclosed to third parties. However, pursuant to a letter dated 20 December 2022 from THSSA and Voermol to all known creditors of those companies, the Agency Agreement arrangements were disclosed;
- Recourse: The Company has at all times acted as the agent of THL, on the basis that THL has been its undisclosed principal. Consequently, all transactions that have historically been concluded by the Company with any person or entity, have been so concluded by the Company in its capacity as agent for a previously undisclosed principal, being THL. Now that the existence of the Agency Agreements have been disclosed, any dealings with the Company will be expressly on the basis that it is contracting on behalf THL. As an extension of this THSSA/THL relationship, Voermol has at all times acted as the agent of the Company (and by virtue of the aforementioned THSSA/THL agency arrangement as the sub agent of THL), on the basis

that the Company has been its direct undisclosed principal and THL its ultimate undisclosed principal. Consequently, all transactions that have historically been concluded by Voermol with any person or entity, have been so concluded by Voermol in its capacity as agent for an undisclosed principal, being the Company and, by virtue of the aforementioned THSSA/THL agency, as the sub agent of THL. The agency arrangements in relation to the Company, THL and Voermol are in the process of being unwound.

- In summary: The effect is that all assets, liabilities, income and expenses of the Company are legally those of THL, as its ultimate principal.

5.4.1.5. The extent of the challenges faced by THL, and its current strained financial position, are well publicised and arose from years of high and increasing debt levels, financial misstatements and historic mismanagement. These factors have resulted in the loss of significant value for THL's shareholders and other stakeholders.

5.5. Events which led to the Company commencing Business Rescue:

5.5.1. The cause of the Company's Financial Distress is set out in the statement attached hereto as Annexure B.

5.6. Aims and objectives of Business Rescue:

5.6.1. In terms of the Companies Act, the Company's Business Rescue will aim to facilitate its rehabilitation by (inter alia) providing for –

- 5.6.1.1. the temporary supervision of the Company by the BRPs, and the management of its affairs, business, and property by the BRPs;
- 5.6.1.2. a temporary moratorium on the rights of claimants against the Company or in respect of property in its possession; and
- 5.6.1.3. the development and implementation of a Business Rescue Plan which has as its aim either or both of –
- the rescue of the Company by restructuring its affairs, business, property, debt and other liabilities, and equity in a manner that maximises the likelihood of the Company continuing in existence on a solvent basis; and/or
 - achieving a better return for the Company's Creditors or Shareholder than would result from the immediate liquidation of the Company.
- 5.6.1.4. The proposed rescue of the Company as set out in this Business Rescue Plan seeks to meet the dual standards set out in paragraph 5.6.1.3 above.

5.7. Business Rescue events:

- 5.7.1. Salient dates pertaining to the Business Rescue of the Company are set out in Table 1 below;

Table 1
Business Rescue events

BUSINESS RESCUE EVENT	DATE
Board Resolution to commence the Business Rescue	18 December 2022
Commencement date of the Business Rescue	23 December 2022
Appointment of the BRPs	
Notice to Affected Persons of the commencement of Business Rescue and the appointment of the BRPs	23 December 2022
First statutory meeting of employees	N/A
First statutory meeting of Creditors	11 January 2023
Requests for an extension of the date to publish the Business Rescue Plan	25 January 2023, 22 February 2023, 28 March 2023 and 25 April 2023
Confirmation of extension of the date to publish the Business Rescue Plan to 28 February 2023, to 31 March 2023, 30 April 2023 and 31 May.	27 January 2023, 27 February 2023, 31 March 2023 and 28 April 2023
Notice concerning subordinated Creditors' Voting Interests	N/A
Publication of the Business Rescue Plan	31 May 2023
Latest dates for receipt of proxies:	
Delivery by hand	12 June 2023
Delivery by e-mail	13 June 2023
Meeting to consider this Business Rescue Plan	14 June 2023

5.7.2. All notices that have been published to the Affected Persons of the Company can be obtained from the THL website at www.tongaat.com, under the Business Rescue tab.

5.8. Steps taken since the appointment of the BRPs:

5.8.1. Statutory Obligations – the Company and the BRPs have met and complied with statutory reporting and meeting obligations as required in terms of Chapter 6 of the Companies Act.

- 5.8.2. Management Control - In terms of section 140(1)(a) of the Companies Act, the BRPs took full management control of the Company and have delegated certain functions to Management in terms of section 140(1)(b) of the Companies Act.
- 5.8.3. Investigations - The BRPs have investigated the affairs of the Company and have satisfied themselves that, inter alia, the Company is in Financial Distress and that there is a reasonable prospect of the Company being rescued.
- 5.8.4. Extension of the Date for Publication of Business Rescue Plan – In terms of section 150(5) of the Companies Act, the Business Rescue Plan was required to be published on or about 30 January 2023 (i.e. within 25 business days from the date of the appointment of the BRPs). The BRPs obtained approval from the Creditors for various extensions of the Publication Date, the latest such date being to 31 May 2023, in accordance with section 150(5)(b) of the Companies Act.
- 5.8.5. Employees
- 5.8.5.1. The Company has no employees.
- 5.8.6. Creditors
- 5.8.6.1. The first meeting of Creditors, as contemplated in section 147 of the Act, was convened virtually on 11 January 2023.
- 5.8.6.2. No Creditors Committee has been formed.
- 5.8.7. Claims Reconciliation

5.8.7.1. Other than the Claims of the Lender Group the BRPs have received Claims directly against the Company (rather than against THL, the ultimate principal) only from the Creditors listed in the table hereunder. A verification process has been undertaken to reconcile the Claims received (below and those made against THL) with the amounts reflected in the records of the Company. For the avoidance of doubt, the BRPs will rely on the records of the Company unless proven otherwise.

Creditor	Category	Claim (R)
Bester Feed and Grain (Pty) Ltd	Unsecured	28 012 198
*Spill Tech (Pty) Ltd	Unsecured	1 020 577
TOTAL:		29 032 775

** claim is expected to be withdrawn and submitted against THL.*

5.9. Material assets and security (Section 150(2)(a)(i)):

- 5.9.1. Any Claim made by Creditors against the Company will result in a claim against THL for a similar amount.
- 5.9.2. Although it would not be legally correct, if one were to ignore the legal effect of the Agency Agreements, the balance sheet of THSSA as at 31 December 2022, the nearest practicable date to the Commencement Date, would record the following:

BALANCE SHEET AT 31 DECEMBER 2022		TONGAAT HULETT SUGAR SOUTH AFRICA (PTY) LTD
		(ZAR) '000
ASSETS		977 651
NON CURRENT ASSETS		730 888
INVESTMENTS IN SUBSIDIARIES AND JOINT OPERATIONS		730 888
AMOUNTS OWING FROM GROUP COMPANIES		0
CURRENT ASSETS		246 763
CASH AND CASH EQUIVALENTS		R246 763
EQUITY & LIABILITIES		977 651
CAPITAL & RESERVES		(2 880 163)
SHARE CAPITAL AND PREMIUM		0
RETAINED EARNINGS / (ACCUMULATED LOSSES)		(2 880 163)
LIABILITIES		3 857 814
NON CURRENT LIABILITIES		3 857 814
AMOUNTS OWING TO GROUP COMPANIES - THL		3 857 814
CURRENT LIABILITIES		-

- Readers are reminded of the fact that, despite THSSA being a dormant company, it has provided a guarantee/suretyship in favour of the Lender Group for the obligations of THL towards the Lender Group. In addition, THSSA has also provided a cession of shares and claims to the Lender Group as security for the suretyship/guarantee. Therefore, in an unlikely scenario that it were to be found that the Agency Agreement is not valid, the Lender Group will have security over any assets found to be owned by THSSA.
- Taking account of the Agency Agreement in place and its legal effect, the THSSA balance sheet reflects the following assets and liabilities:

BALANCE SHEET AT 31 DECEMBER 2022		TONGAAT HULETT SUGAR (ZAR)
ASSETS		-
AMOUNT DUE BY HOLDING COMPANY - THL		100
EQUITY & LIABILITIES		-
CAPITAL & RESERVES		-
<i>SHARE CAPITAL</i>		
ISSUED AND FULLY PAID: 100 ORDINARY SHARES OF R1 EACH		100

5.10. Creditors of the Company (Section 150(2)(a)(ii)):

- 5.10.1. The BRPs will continue to accept the Company's records in respect of any Creditor as being correct, unless and until the relevant Creditor proves otherwise.
- 5.10.2. To this end, the BRPs have accepted that THSSA has no Creditors in its own right, and that THSSA's obligations to Creditors are assumed by THL pursuant to the relevant Agency Agreement(s).
- 5.10.3. However, the counterparties to contracts entered into by THSSA as agent for an undisclosed principal have the right to elect to pursue their claims against the agent (i.e. THSSA) or against the principal (i.e. THL), once the principal has been disclosed (which it has).
- 5.10.4. As THL has been disclosed as the ultimate principal, Creditors may therefore elect to claim against THSSA or against THL. As at the Publication Date, only Bester Feed and Grain (Pty) Ltd has elected to pursue a Claim against THSSA. Spill Tech (Pty) Ltd had also originally elected to pursue a claim against THSSA however withdrew that claim and elected to instead claim against THL. Since the withdrawal has not been recorded in writing, it remains as a claim against THSSA until such time it is formally withdrawn. In addition, the Lender Group has a claim in an amount of c.R7.3

billion against the Company pursuant to a guarantee/suretyship signed by the Company in favour of the Lender Group for the obligations of THL towards the Lender Group.

- 5.10.5. Although not legal advice, it is the BRPs suggestion that all such claims should be made against THL and not THSSA. Creditors should take their own legal advice in this regard.
- 5.10.6. Claims that are not reflected in this Business Rescue Plan will be regarded as Disputed Claims, should any be submitted, and Disputed Creditors may be allowed a Voting Interest at the Meeting only as determined by the BRPs in their sole discretion. Any such allowance by the BRPs shall be without prejudice to the Company's rights to continue to dispute the Disputed Claim, and will be further dealt with in accordance with the Dispute Mechanism set out in paragraph 15.
- 5.10.7. The Claims that the BRPs have accepted, in whole or in part, are set out in the table hereunder. A summary of the various classes of Creditors of the Company as at the Commencement Date, updated for subsequent movements/repayments where applicable and PCF advanced, is reflected in the table hereunder:

Table 2
Summary of the Various Classes of Creditors of the Company
(updated as at 30 April 2023)

CREDITOR TYPE / DESCRIPTION	ACCEPTED/PROVEN CLAIM AMOUNT (R)
SECURED CREDITORS	7 313 848 950
PCF CREDITORS	R0
PREFERENT CREDITORS	R0
Preferent Creditors (<i>N/A in business rescue</i>)	R0
Preferent Employees	R0

INDEPENDENT UNSECURED CREDITORS	29 032 775
Trade Creditors	29 032 775
NON-INDEPENDENT UNSECURED CREDITORS	0
Inter-Company Loans	0
TOTAL	7 342 881 725

5.10.8. All Creditors who believe that they have a Claim against the Company are referred to and should treat Table 2 as the BRPs' notification of the Claims (including the quantum thereof) that have been accepted by the BRPs for purpose of the Business Rescue. If any Creditor is in disagreement with the information provided in Table 2 (being a Disputed Creditor), such Disputed Creditor should utilise the Dispute Mechanism set out in paragraph 15.

5.10.9. Following the Adoption and implementation of this Business Rescue Plan, any remaining Claims of Creditors of the Company will become Unenforceable, other than as provided for in this Business Rescue Plan.

5.11. **Voting interests and voting by proxy:**

5.11.1. Voting Interests

5.11.1.1. In accordance with section 145(4) of the Companies Act, a Creditor is entitled to vote on the Adoption of the Business Rescue Plan, as follows –

- a Secured Creditor and/or Unsecured Creditor has a Voting Interest equal to the value of the amount owed to that Creditor by the Company; and
- an Unsecured Creditor who would be subordinated in a liquidation has a Voting Interest, as independently and expertly appraised and valued

at the request of the BRPs, equal to the amount, if any, that the Unsecured Creditor could reasonably expect to receive on a liquidation of the Company as set out in section 145(4)(b) of the Companies Act.

- It is recorded that there are no subordinated creditors.

5.11.2. Voting

5.11.2.1. All Creditors will have a Voting Interest as set out in Table 2 above in respect of any vote conducted at the Meeting, subject to the BRPs discretion contemplated in paragraph 5.10.6 and directly below.

- Disputed Creditors may be allowed a Voting Interest at the Meeting as may be determined by the BRPs in their sole discretion and any such determination shall be without prejudice to the Company's rights to continue to dispute the Disputed Claim.
- Disputed Creditors are invited to seek an amendment to their Voting Interest (relative to Table 2 above) up to 24 hours before the Meeting. Any BRP agreement to amend a Disputed Creditor's Voting Interest shall not be construed as an acceptance of the existence or quantum of such Claim, as such determination will be made solely for the purposes of determining that Disputed Creditor's Voting Interest at the Meeting. Unless the BRPs specifically advise a Disputed Creditor otherwise, Disputed Creditors will still be required

to follow the Dispute Mechanism set out in paragraph 15 below.

5.11.3. Independent Creditors

5.11.3.1. In accordance with sections 145(5)(a) and 145(5)(c) of the Companies Act, the BRPs are required to determine whether or not a Creditor is an Independent Creditor for purposes of the Business Rescue.

5.11.3.2. For purposes of this Business Rescue Plan, the BRPs have determined that all Creditors with accepted and/or recognised Claims are Independent Creditors and will be counted as such for purposes of any votes cast at the Meeting to approve this Business Rescue Plan.

5.11.4. Shareholders

5.11.4.1. In accordance with section 146(d) of the Companies Act, a Shareholder is entitled to vote on the Business Rescue Plan if it alters the rights associated with the class of Securities held by that Shareholder.

5.11.4.2. This Business Rescue Plan does not alter the rights associated with any Securities and/or class of Securities and, accordingly, the sole Shareholder is not required to, nor entitled to, vote on this Business Rescue Plan.

5.11.5. Vote by Proxy

5.11.5.1. Voting by proxy is permitted. A proxy form is enclosed as Annexure C.

- 5.11.5.2. Notwithstanding these forms, the BRPs have the discretion to accept any proxy submitted, acceptable to the BRPs, no matter its form.
- 5.11.5.3. The proxy forms must include an appropriate resolution (for a juristic entity or trust) or power of attorney (for an individual) giving such representative the authority to attend and vote at the meeting on behalf of the juristic person, trust or individual.
- 5.11.5.4. Affected Persons who are voting by proxy are reasonably required to lodge each or any of their proxy forms by no later than **17h00 on Monday, 12 June 2023** or if by email, by no later than **17h00 on Tuesday, 13 June 2023**.

5.12. **Probable Liquidation Dividend Estimate (Section 150(2)(a)(iii)):**

- 5.12.1. The BRPs have not engaged an independent expert to determine the probable dividend that Creditors and/or Shareholders would likely receive if, instead of being placed into Business Rescue, the Company was placed in liquidation as at the Commencement Date. The effect of the Agency Agreements is that all assets, liabilities, incomes and expenses are legally those of THL as principal and as a result there are no assets in the Company. Therefore the probable liquidation dividend estimate for Creditors of the Company would be zero. Affected Persons are referred to the THL business rescue plan and the probable liquidation dividend estimate contained therein.

5.13. **Holders of the Company's issued Securities (Section 150(2)(a)(iv)):**

5.13.1. This Business Rescue Plan does not alter the rights of Shareholders as envisaged in section 152(3)(c) of the Companies Act.

5.14. **BRPs' remuneration (Section 150(2)(a)(v)):**

5.14.1. Since THSSA operates as the agent of THL, the affairs of the Company are inextricably linked to the affairs of THL, therefore no separate BRP remuneration agreement has been concluded with the Company. The THL BRP remuneration agreement has been designed in a manner that recognises that the financial affairs of THL and of the Company are inexorably linked and that, consequently, the most efficient methodology to be adopted in remunerating the BRPs is through THL, notwithstanding that certain of the activities they undertake in earning such remuneration will relate directly to the Company.

5.15. **Proposal made informally by Creditors (Section 150(2)(a)(vi)):**

5.15.1. No informal proposals have been made by a Creditor or Creditors of the Company with regards to this Business Rescue Plan.

6. PART B – The Proposal

6.1. Terms of the Proposal

6.1.1. The effect of the Agency Agreements is that all of THSSA's assets, liabilities, income and expenses are ultimately those of THL as ultimate principal.

6.1.2. There are thus no assets of significance beneficially owned by the Company to be realised and available to satisfy any Creditor claims made directly against THSSA in this Business Rescue. Creditors have the choice to elect to submit a claim directly against the Company or against THL (the principal). Should a Creditor choose

to prove their Creditor Claim against the Company there will be no prospect of any direct recovery from THSSA by such Creditor(s), however, as noted in the paragraphs below, indirect claims against THL will be in effect.

- 6.1.3. In the event it becomes necessary to dispose of the THL Mozambique assets of THSSA directly rather than in terms of the Agency Agreements, these assets will be sold as part of the THL process(es) in accordance with the THL business rescue plan. The proceeds arising from this source will accrue to the benefit of the Lender Group in terms of the security held over these assets.
- 6.1.4. In accordance with the Agency Agreements, the Company operated as agent for the ultimate principal, being THL. Therefore, any Creditor Claims submitted to the Company will result in the Company having a commensurate claim against THL, its principal.
- 6.1.5. The resulting claim by the agent (the Company) against the principal (THL) will be treated as a concurrent claim in the Business Rescue proceedings of THL and will share pro-rata in any distributions made by THL to its Unsecured Creditors.
- 6.1.6. The aggregate of all recoveries made from any distributions by THL to the Company will firstly be utilised to fund any Business Rescue costs of the Company and, secondly, should there be any remaining funds, such funds will be made available by the Company as Distributions to its Creditors.
- 6.1.7. The Creditors of the Company will then share pro-rata in any such Distributions.
- 6.1.8. It should be noted that the Lender Group has a claim against the Company in an amount of c.R7.3 billion, which will share in any Distributions made. As there are no significant other Claims against

the Company, the Lender Group is likely to be the recipient of significantly all of any Distributions. Readers should bear in mind that despite the Company being a dormant company, it has provided security to the Lender Group by way of a cession of shares and claims for its suretyship/guarantee obligations to the Lender Group.

6.2. **Effects of the Proposal:**

6.2.1. Ongoing role of the Company and the treatment of existing contracts (Section 150(2)(b)(iii)):

6.2.1.1. Where the BRPs determined it to be in the best interests of Creditors to continue with counterparty agreements concluded with the Company, such agreements have continued.

6.2.1.2. Agreements concluded with the Company are, however, subject to ongoing evaluation and negotiations by the BRPs in an effort to mitigate risks and optimise the success of the Business Rescue.

6.2.1.3. Section 136(2)(a) of the Companies Act allows the BRPs to entirely, partially, or conditionally suspend, for the duration of the Business Rescue, any obligation of the Company that arises under an agreement (including any form of *sui generis* agreement) to which the Company was a party at the Commencement Date and would otherwise become due during the Business Rescue. All Company obligations are currently under review and the BRPs reserve their rights in this regard. All Unsecured Creditor amounts owing and unpaid as at the Commencement Date will remain subject to the moratorium and will be treated as an Unsecured

Creditor Claim. Any such Claim which remains outstanding as at the Substantial Implementation Date in terms of this Business Rescue Plan will become Unenforceable.

6.2.1.4. The BRPs further have the right, in terms of section 136(2)(b) of the Companies Act, to apply to the High Court to cancel and/or terminate any obligation of the Company that arises under an agreement to which the Company was a party at the Commencement Date and that would otherwise become due during the Business Rescue.

6.2.1.5. Counterparties to all agreements in which the Company's obligations are suspended or cancelled should be guided by the moratorium which excludes a claim by a contractual counterparty for specific performance. Such party will have a Claim for damages in terms of section 136(3) of the Companies Act. Where that Claim is not reflected in Table 2, the course of action available to that party is to submit a claim for damages as a Disputed Creditor and to follow the Dispute Mechanism set out in paragraph 15.

6.2.2. The property of the Company that is to be available to pay Creditors' Claims in terms of the Business Rescue Plan (Section 150(2)(b)(iv))

6.2.2.1. As there are no assets of consequence beneficially owned, due to the effect of the Agency Agreements, there is unlikely to be any recovery for Creditors from this source.

6.2.3. Effect on Creditors (Section 150(2)(b)(v))

- 6.2.3.1. Distributions will be made in the following order of priority in accordance with the Business Rescue Plan for the duration of Business Rescue. This ranking is in accordance with the provisions of the Companies Act.
- 6.2.3.2. Proceeds from Unencumbered Assets, if any, will be applied in the following order of priority:
- Business Rescue Costs;
 - PCF Employees to the extent that amounts due and payable, for services rendered during Business Rescue, that remain unpaid. The Company does not have any employees;
 - Unsecured PCF Creditors, who will rank in the order in which the PCF was provided;
 - Preferent Employees;
 - Unsecured Creditors (if there is any residual); and thereafter
 - Shareholders (if there is any residual).
- 6.2.3.3. A Secured Creditor will receive Distributions arising from the realisation of the value of its security. If any residual secured Claim remains unpaid from the realisation of any security, that Creditor's remaining Claim will be treated as an Unsecured Claim as provided for elsewhere in this Business Rescue Plan. If this Business Rescue Plan is Adopted and implemented by payment of a final Distribution, all remaining Claims will thereafter become Unenforceable.
- 6.2.3.4. Expected Distribution to Creditors: Creditors' Claims against the Company, arising from the Agency Arrangements, will be submitted as a claim in the Business Rescue of THL. Accordingly the expected Distribution to Creditors of THL will be commensurate

with those provided for in the THL business rescue plan.

6.2.3.5. To the extent that agreements concluded between the Company and counterparties and/or obligations are cancelled, modified, suspended or restructured, any Claim for damages will be limited as contemplated in paragraph 6.2.3.6.

6.2.3.6. Claims for damages, whether contractual or delictual against the Company, once determined through the Dispute Mechanism paragraph 15 or by the High Court or similar proceedings, as the BRPs may consent to, will be treated as follows–

- as an Unsecured Creditor, unless the Creditor holds security for such Claim;
- shall be limited to general damages as determined through the Dispute Mechanism or by the High Court or similar proceedings as the BRPs may in their sole discretion consent to. For purposes hereof, general damages are those which, on an objective basis, would be reasonably foreseeable at the time of entering into the relevant contract as a probable consequence of, and with a sufficiently close connection to, any breach by the Company of an agreement so as to be said to flow naturally and generally and not to be too remote; and
- shall exclude all indirect, punitive, special, incidental, or consequential loss, including injury to

business reputation, loss of profits and/or loss of business opportunities.

- 6.2.3.7. If this Business Rescue Plan is Adopted and implemented by payment of a final Distribution, if applicable, in accordance with this Business Rescue Plan, all remaining Claims will become Unenforceable. Should there not be any funds available for Distributions, all Claims will become Unenforceable.
- 6.2.3.8. For the avoidance of doubt, any past or prospective claim which SARS may have against the Company, among other things, under section 22(3) of the Value Added Tax Act 89 of 1991, or in respect of an audit under the Tax Administration Act 28 of 2011 for any date or year of assessment preceding the Commencement Date will be Unenforceable under and in terms of this Business Rescue Plan.
- 6.2.3.9. Any VAT related claims from SARS and any other SARS Claims arising from transactions that occurred prior to the Commencement Date will be recognised as an Unsecured Creditor in the Business Rescue and will be treated in the same manner as all other Unsecured Creditors and therefore will be entitled to the same cents in the Rand Distribution as all other Unsecured Creditors.
- 6.2.3.10. This means that upon payment of a final Distribution, or if no Distributions are available, in terms of this Business Rescue Plan, any remaining unpaid portions of the Claims will have become Unenforceable and no Creditor will be entitled to enforce the balance of its

Claim, or any portion of its Claim, against the Company.

- 6.2.3.11. Creditors voting in favour of the Business Rescue Plan do not thereby accede to the discharge of the whole or part of their debt in terms of section 154(1) of the Companies Act. No Creditors are deemed to have lost the right to enforce their Claims, save that upon Adoption and implementation of the Business Rescue Plan, Creditors' remaining Claims will become Unenforceable against the Company in terms of section 154(2).
- 6.2.3.12. After payment of the final Distribution, or if no Distributions are available, and prior to a notice of substantial implementation being filed with the CIPC, the Company may be returned to its director(s) or an application may be made for the Company's deregistration, alternatively, the Company's provisional or final liquidation, as the BRPs in their sole discretion may determine.
- 6.2.3.13. Claims will only become Unenforceable in accordance with the Business Rescue Plan upon the Adoption and implementation of the Business Rescue Plan. In the event of any breach by the Company of its obligations to creditors in terms of the Business Rescue Plan, or in the event the Company is placed in liquidation other than as catered for in this Business Rescue Plan under paragraph 6.2.3.12, the full balance due to creditors in terms of their original Claims against the Company shall immediately become due, owing and payable by the Company to the creditors, subject to the provisions of section 135 of the Companies Act.

6.2.4. Effect on Employees (Section 150(2)(c)(ii)) – The Company has no employees.

6.2.5. Effect on Director(s) and Management - Directors have continued to exercise the functions of a director, subject to the authority of the BRPs.

7. Binding nature of this Business Rescue Plan

7.1. The BRPs draw the attention of Affected Persons to the provisions of section 152(4) of the Companies Act.

7.2. This section provides that once a Business Rescue Plan has been Adopted, it is binding on the Company, its Creditors (including all Claims, whether accepted by the BRPs as Creditors, whether Disputed Creditors, conditional Claims, prospective Claims, damages Claims and/or unliquidated Claims) and every holder of the Company's Securities (the latter in terms of the provisions of section 146(d) and 152(3)(c) of the Companies Act) whether or not such a Person was –

7.2.1. present at the Meeting to determine the future of the Company;

7.2.2. voted in favour of the Adoption of the Business Rescue Plan; or

7.2.3. in the case of Creditors, has proven a Claim against the Company.

8. Moratorium (Section 150(2)(b)(i))

8.1. The moratorium imposed by section 133 of the Companies Act prohibits any legal proceedings, including enforcement action, against the Company, or in relation to any property belonging to the Company or lawfully in its possession, from being commenced or proceeded with for the duration of the

Business Rescue except with the written consent of the BRPs or with the leave of the High Court.

8.2. This means, among other things, that Affected Persons will not be able to proceed in any forum against the Company for, among other things, the non-payment of debts during Business Rescue, except with the written consent of the BRPs or with the leave of the High Court.

8.3. The moratorium in relation to the Company took effect on the Commencement Date and will remain in place for the duration of Business Rescue, until the termination of Business Rescue as defined in paragraph 11.

9. Benefits of Adopting the Business Rescue Plan compared to liquidation (Section 150(2)(b)(vi))

9.1. With this, the Business Rescue of the Company is intended to rescue the Company or, in the alternative, achieve a better return compared to liquidation as outlined in paragraph 5.6.1.3.

9.2. Should the SA Sugar division be sold, it is likely that the shares in THSSA will be sold with the business of SA Sugar.

10. Risks of the Business Rescue Plan

10.1. The implementation of the Proposals contained in this Business Rescue Plan is subject to factors potentially not known to the BRPs as at the Publication Date. The following risks should be borne in mind, as they may adversely impact the ultimate outcome of the implementation of this Business Rescue Plan:

10.1.1. General:

- 10.1.1.1. Unforeseen litigation of any nature whatsoever, howsoever arising, from any cause of action whatsoever.
- 10.1.1.2. Existing litigation not progressing in the manner anticipated.
- 10.1.1.3. Any changes in legislation that impact the Business Rescue.
- 10.1.1.4. Any legal challenges to this Business Rescue Plan, the rejection thereof or any amendments thereto.
- 10.1.1.5. Any regulatory challenges of any nature whatsoever, howsoever arising as well as any consequential statutory liability.
- 10.1.1.6. Any unforeseen circumstances, outside of the control of the BRPs, of any nature whatsoever, howsoever arising, that impact the Business Rescue.
- 10.1.1.7. Any damages or penalties claimed against the Company which were unforeseen.
- 10.1.1.8. Unexpected liquidity events, withdrawal or restricted access to PCF provided by the PCF Lenders or delays thereto.
- 10.1.1.9. The final verification and agreement of Claims taking longer than expected.
- 10.1.1.10. Material discrepancies in the information made available to the BRPs by Management.

- 10.1.1.11. Incomplete, inaccurate accounting records of the Company and inadequate supporting information.
- 10.1.1.12. The deterioration and worsening of market conditions.
- 10.1.1.13. Any events and outcomes that may lead to the discovery of fraud, misrepresentation, corrupt practices, or other such matters relating to the Company prior to the implementation of the Business Rescue Plan.
- 10.1.1.14. The variation in the exchange rates affecting the Business Rescue.
- 10.1.1.15. Ambiguous provisions in the Companies Act which are subject to varied interpretation.
- 10.1.1.16. Adverse judgements or rulings which may have the effect of reducing cash flow available for the Distributions, given that the estimated Distributions have been calculated on the basis that the Company's legal interests are preserved in terms of section 134(1)(c) of the Companies Act.

11. Termination of Business Rescue (Section 150(2)(c)(iii))

11.1. The Business Rescue will end:

- 11.1.1. if the Business Rescue Plan is proposed and rejected, and no Affected Person/s or the BRPs act in any manner contemplated by the Companies Act to propose an amended Business Rescue Plan;

- 11.1.2. if this Business Rescue Plan is Adopted and implemented and the BRPs have filed a notice of substantial implementation of the Business Rescue Plan with the CIPC;
- 11.1.3. if the BRPs make application to the High Court to terminate the Business Rescue; or
- 11.1.4. if a High Court orders the conversion of the Business Rescue into a liquidation.

12. Substantial Implementation (Section 150(2)(c)(i)(bb))

- 12.1. Substantial Implementation will be deemed to have occurred upon the BRPs deciding, in their sole discretion, that the following has taken place:
 - 12.1.1. the THL business rescue plan has been adopted and implemented to the satisfaction of the BRPs;
 - 12.1.2. final Distributions have been paid to Creditors of the Company; and
 - 12.1.3. to the extent relevant, all Business Rescue Costs relating to the Business Rescue of the Company have been paid and settled in full or suitable arrangements acceptable to the BRPs have been put in place in this regard.
- 12.2. Notwithstanding the above, the Substantial Implementation of this Business Rescue will remain within the sole and reasonable discretion of the BRPs.

13. Projected Balance Sheet and Projected Income Statement (Section 150(2)(c)(iv))

- 13.1. The Company does not, as a result of the Agency Agreements, have any assets or liabilities of significance and is not expected to trade. As a result,

the projected balance sheet will most likely remain as it currently is and its income statement will remain with no income.

- 13.2. The effect of the Agency Agreements is that all assets, liabilities, incomes and expenses are those of THL as principal.
- 13.3. Accordingly, the BRPs have not provided any detailed projected balance sheet and/or income statement.

CHAPTER 3 – ADMINISTRATIVE MATTERS

14. Existing litigation or alternate dispute resolution proceedings

- 14.1. Annexure D lists the matters already subject to a dispute resolution process as at the Publication Date.
- 14.2. Save as is otherwise provided for in this Business Rescue Plan and/or the Companies Act, all Affected Persons who have or will institute legal proceedings, including any enforcement action, in respect of any Claims against the Company in any forum will be required to submit a Claim for consideration by the BRPs in accordance with the provisions of this Business Rescue Plan.
- 14.3. The BRPs shall be entitled to institute any proceedings against any Affected Person in any forum (and will not be subject to the Dispute Mechanism in paragraph 15 below) for any purpose, including, recovering money that is due to the Company or preventing Affected Persons from delaying the implementation of the Business Rescue Plan or bringing any application to liquidate the Company.

15. Dispute Mechanism

- 15.1. Subject to paragraph 14 and save as provided for in section 133 of the Companies Act, any disputes related to the interpretation or application of this Business Rescue Plan, the Business Rescue Proceedings, and/or the Disputed Claims of all Disputed Creditors (“Disputed Matters”) must be resolved in accordance with the Dispute Mechanism outlined below, other than in circumstances where the BRPs and the relevant counterparty (the “Disputing Party”) otherwise mutually agree in writing. Even in circumstances where an agreement legally requires otherwise as to how a Disputed Matter must be resolved, Disputing Parties and the Company are

encouraged, and may elect and agree in writing, to resolve such matters through the Dispute Mechanism.

15.2. The Dispute Mechanism procedure will be as follows –

15.2.1. The BRPs have incorporated into this Business Rescue Plan a Dispute Resolution Process (refer to Annexure E) that has been jointly established and endorsed by the Arbitration Foundation of South Africa (AFSA) and the South African Restructuring and Insolvency Practitioners Association NPD (SARIPA) specifically for the purpose of resolving disputes arising in connection with business rescue proceedings (“the AFSA/SARIPA Process”). The advantages of adopting the AFSA/SARIPA Process are (inter alia) that it:

15.2.1.1. is specifically designed for use in business rescue plans;

15.2.1.2. will be populated by arbitrators experienced in business rescue law and proceedings;

15.2.1.3. is designed to avoid the costs and time delays experienced in court proceedings, and in certain overcomplicated and extended arbitration proceedings;

15.2.1.4. has a mechanism which enables the arbitrator to adapt each arbitration to fit the specific circumstances; and

15.2.1.5. brings with it a flexibility which allows the BRPs and claimant’s, by mutual agreement, to opt out of the AFSA/SARIPA Process if so elected.

- 15.2.2. All Disputing Parties are referred to Table 2 in relation to their Disputed Matters and are required to contact the BRPs at br@tongaat.com within 30 days of the Disputing Party becoming aware of the Disputed Matters in order to register their disagreement ("Disagreement").
 - 15.2.3. The Disputing Party must endeavour to reach agreement with the BRPs on the Disputed Matter within the ensuing 15 days after their Disagreement has been registered, or such longer period as the BRPs may allow. If the Disputing Party does not avail itself of this opportunity within the time period allowed, then the Disputing Party shall be deemed to have abandoned its Claim and will not, in accordance with section 154 of the Companies Act, be entitled to enforce, at a later date, any Claim that that Disputing Party believes it has against the Company.
 - 15.2.4. If the Disagreement is not so resolved, the BRPs will inform the Disputing Party accordingly and this will be known as the Rejection Date.
- 15.3. Any Disputed Matter of whatsoever nature relating to:
- 15.3.1. the acceptance or rejection of any Claim whether in whole or in part or the value or ranking of any Claim or the recognition of any security or preference, lien or hypothec attaching to such claim;
 - 15.3.2. claims which are not reflected in the records of the Company and are not recognised under the Business Rescue Plan; and/or
 - 15.3.3. the proper interpretation or implementation of any provision or matter addressed in this Business Rescue Plan;

which is not resolved in terms of 15.2.3 shall be submitted for final determination in accordance with the AFSA-SARIPA RULES, attached hereto

as Annexure E, by an accredited arbitrator appointed by the Secretariat of the AFSA-SARIPA Division.

- 15.4. The BRPs may, however, in their sole and absolute discretion agree with the Disputed Creditor that the Disputed Claim/s be settled. To the extent that any amount remains unpaid after such settlement, the remaining amount will become Unenforceable.
- 15.5. Should any monetary award be made against the Company, including a costs award, then that award will be treated as a Concurrent Claim in the Business Rescue.
- 15.6. Notwithstanding anything to the contrary in this paragraph 15 or elsewhere in the Business Rescue Plan, the BRPs shall not, in any circumstance, be obliged to prosecute, progress or further the Claim of any Creditor beyond the provisions of this paragraph 15. The Company may, however, in the discretion of the BRPs, continue to prosecute any one or more of its counterclaims.

16. Domicilium

- 16.1. The BRPs choose *domicilium citandi et executandi* ("**Domicilium**") for all purposes relating to the Business Rescue up until the Substantial Implementation Date, including the giving of any notice and the serving of any process, at the physical and e-mail addresses set out below:

- 16.1.1. Physical address: Amanzimnyama Hill Road, Tongaat, Kwa-Zulu Natal, 4400

- 16.1.2. E-mail address: br@tongaat.com

- 16.1.3. Attention: Peter van den Steen, Trevor Murgatroyd and Gerhard Albertyn

- 16.2. The BRPs shall be entitled, up until the Substantial Implementation Date, by giving written notice to Affected Persons, to vary their physical Domicilium to any other physical address (not being a post office box or poste restante) and to vary their e-mail Domicilium to any other e-mail address.
- 16.3. Any notice given or process served by any Affected Person to the BRPs, which is delivered by hand between the hours of 09h00 and 17h00 on any Business Day to the BRPs' physical Domicilium for the time being, shall be deemed (unless the contrary is proved by the BRPs) to have been received by the BRPs at the time of delivery.
- 16.4. Any notice given or process served by any Affected Person to the BRPs, which is transmitted by e-mail to the BRPs' e-mail Domicilium for the time being, shall be deemed (unless the contrary is proved by the BRPs) to have been received by the BRPs on the Business Day immediately succeeding the date of successful transmission thereof.
- 16.5. Any notice or process in terms of, or in connection with, this Business Rescue Plan shall be valid and effective only if in writing and if received or deemed to have been received by the BRPs.
- 16.6. For the avoidance of doubt, it is recorded that –
- 16.6.1. following the Substantial Implementation Date, the Business Rescue of the Company would have terminated; and
- 16.6.2. no notice or process served in terms of this paragraph shall be taken into consideration by the BRPs (unless they in their sole discretion choose to consider such notice or process) on or after the Substantial Implementation Date.

17. Ability to amend the Business Rescue Plan

- 17.1. In respect of an amendment to correct a clerical error and that will not be prejudicial to the rights of Creditors as set out herein, the BRPs shall have the ability, in their sole and absolute discretion, to amend, modify or vary any provision of this Business Rescue Plan. The amendment will be deemed to take effect on the date of written notice of the amendment to all Affected Persons.
- 17.2. In the event of any other amendments to this Business Rescue Plan, the BRPs shall consult with Affected Persons in terms of section 150, and be entitled to propose an amendment for consideration and voting at a Meeting conducted in terms of section 151. Such amendment shall only be effective should it be Adopted in the same manner as provided for in section 152 of the Companies Act.

18. Severability

- 18.1. Each provision of this Business Rescue Plan is, notwithstanding the grammatical relationship between that provision and the other provisions of this Business Rescue Plan, severable from the other provisions of this Business Rescue Plan.
- 18.2. Any provision of this Business Rescue Plan, which is or becomes invalid, unenforceable, or unlawful in any jurisdiction shall, in such jurisdiction only, be treated as *pro non scripto* to the extent that it is so invalid, unenforceable, or unlawful, without invalidating or affecting the remaining provisions of this Business Rescue Plan which shall remain of full force and effect.
- 18.3. The BRPs declare that it is their intention that this Business Rescue Plan would be executed without such invalid, unenforceable or unlawful provision if they were aware of such invalidity, unenforceability, or unlawfulness at the time of execution of this Business Rescue Plan.

CHAPTER 4 – CONCLUSION AND BRPs’ CERTIFICATES

19. Conclusion

19.1. For the reasons set out above it is the view of the BRPs, notwithstanding the risks and challenges inherent in this Business Rescue Plan, that:

19.1.1. there is a reasonable prospect of a successful Business Rescue, that balances the rights and interests of all relevant stakeholders and Affected Persons, in accordance with the objectives of Chapter 6 of the Companies Act; and

19.1.2. should the Business Rescue Plan not be Adopted, the BRPs are of the view that the Business Rescue will have to be converted to liquidation proceedings immediately.

20. BRPs’ certificates

20.1. We, the undersigned, hereby certify that to the best of our knowledge and belief:

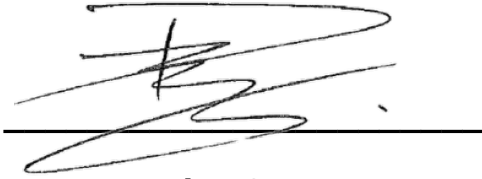
20.1.1. any information provided herein appears to be reasonably accurate, complete, and up to date;

20.1.2. we have relied on financial information including opinions and reports furnished to us by the Board and Management;

20.1.3. any projections provided are reasonable estimates made in good faith based on factual information and assumptions as set out herein;

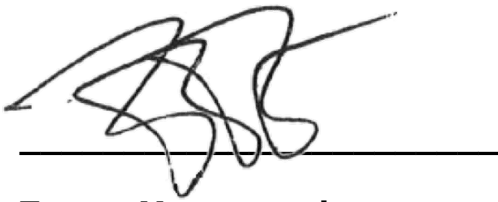
20.1.4. in preparing the Business Rescue Plan, we have not undertaken an audit of the information provided to us, although where practical,

we have endeavoured to satisfy ourselves of the accuracy of such information.

A handwritten signature in black ink, consisting of several overlapping loops and a horizontal line at the end, positioned above a solid horizontal line.

Peter van den Steen

Date: 31 May 2023

A handwritten signature in black ink, featuring a large, stylized 'T' and 'M' with several loops, positioned above a solid horizontal line.

Trevor Murgatroyd

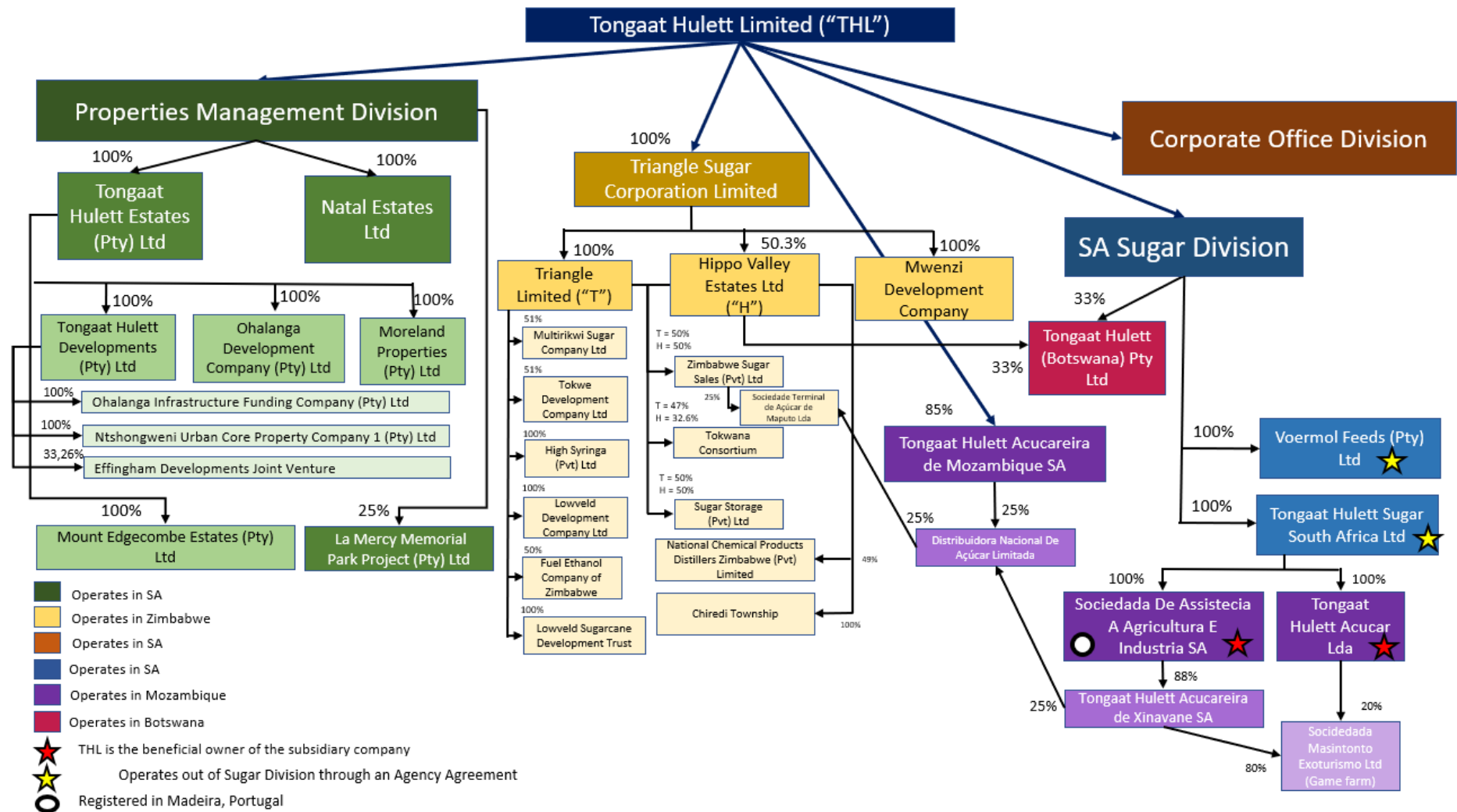
Date: 31 May 2023

A handwritten signature in black ink, with a series of overlapping loops and a horizontal line at the end, positioned above a solid horizontal line.

Gerhard Albertyn

Date: 31 May 2023

ANNEXURE A – GROUP STRUCTURE



Source: Extract from the Company's Organogram updated as of 18/05/2023.

**ANNEXURE B – EVENTS WHICH LED TO THE COMPANY COMMENCING
BUSINESS RESCUE**

(THL DIRECTORS STATEMENT ATTACHED BELOW)

SWORN STATEMENT

I, the undersigned,

JOHN GAVIN HUDSON

(Identity Number: 700818524082)

do hereby state as follows –

- 1 I am a director of TONGAAT HULETT LIMITED (REGISTRATION NUMBER: 1892/000610/06) ("**Company**"), a company listed on the JSE Limited stock exchange, with its registered address at Amanzimnyama Hill Road, Tongaat, KwaZulu Natal, 4400, and principal place of business at Amanzimnyama Hill Rd, Tongaat, KwaZulu Natal, 4400.
- 2 I am duly authorised to depose to this sworn statement on behalf of the Company.
- 3 This Sworn Statement is made by me on behalf of the Company to support the commencement of business rescue proceedings ("**Business Rescue**") in terms of Section 129 of the Companies Act 71 of 2008 ("**Act**").
- 4 With this Sworn Statement, I intend to provide the relevant information that was presented to the Company's board of directors and is required in order to demonstrate that the Company should be placed in Business Rescue.
- 5 The information contained in this Sworn Statement and the opinions expressed in the Sworn Statement relate to the financial difficulties of the Company and how the Company can –
 - 5.1 be rescued and continue as a going concern as an alternative to liquidation; or
 - 5.2 pay a higher dividend to its creditors than that which would become payable to creditors if the Company were to be liquidated.

BACKGROUND

- 6 The extent of the challenges faced by the Company, and its current strained financial position, are well publicised and arose from years of high and increasing debt levels,

financial misstatements and historic mismanagement. These factors have resulted in the loss of significant value for the Company's shareholders and other stakeholders.

7 By way of background, the Company is a leading agri-business with a 130 year history and a strong socio-economic legacy in Southern Africa. It has operations in South Africa, Zimbabwe, Mozambique and Botswana.

8 Across Southern Africa, the Company's operations are of significant scale geographically, economically, and socially, as set out below:

8.1 the Company's 14 production facilities have the capacity to crush 12.7 million tons of sugarcane (5.8 million tons provided by third-party growers) to produce 1.5 million tons of raw sugar, 750 000 tons of refined sugar, 400 000 tons of animal feed and 40 million litres of ethanol; and

8.2 at the peak of the sugar season, the Company's operations employ more than 23 000 people, create more than 185 000 employment opportunities and provide a livelihood to more than 21 000 farmers (many of whom are small-scale growers).

9 Specifically in South Africa, the profile of the Company's South African sugar operation, property business and corporate office is set out below:

9.1 the Company's operations are located in the KwaZulu-Natal province in the districts of Ethekwini, Zululand, Umkhanyakude, King Cetshwayo (formerly Uthungulu), and iLembe;

9.2 the Company's trading activities during the 2022 financial year generated revenue of c.R7.04 billion of which R6.92 billion arose from the South African sugar operation and R120 million from the sale of developable land by the property business;

9.3 the Company has 5 production facilities with the capacity to crush 5.45 million tons of sugarcane to produce 600 000 tons of raw sugar, 600 000 tons of refined sugar (c.50% of the total South African sugar industry's capacity) and 400 000 tons of animal feed;

9.4 the Company's ongoing agriculture activities span 13 200 hectares and as such it owns a substantial and valuable land portfolio, of which some 9 600 hectares are

considered developable and located within the primary growth corridors of KwaZulu Natal;

9.5 the Company sources c.43% of its sugarcane from independent farmers, over 15 000 of which are small-scale farmers and co-operatives, and its transformational partnership with Uzinzo Sugar Farming has established the largest black grower in the South African sugar industry;

9.6 a total of c.2 500 people are employed by the Company, with a further c.23 000 indirect employment opportunities created within South Africa. The communities in which the Company operates not only benefit from employment opportunities, but also the company's socio-economic development initiatives and investments; and

9.7 as identified in an independent assessment of the Company's economic footprint, it has been estimated that arising from the Company's trading activities during the 2021 financial year, an additional c.R28.8 billion of output was produced within the South African economy, contributing c.R11.0 billion to the GDP of the country (based on direct, indirect and induced impacts).

STRATEGIC AND FINANCIAL REVIEW

10 Over the four year period from April 2014 to March 2018, the Company's published audited separate annual financial statements reflected that its net debt had increased by c.R4.14 billion from R4.80 billion to R8.94 billion being the net result of the cumulative cash flows set out in the following table:

Cash Flow Items	Inflow / (Outflow) R millions
Operating cash flows	5 759
Investment in capital expenditure (net of disposal proceeds)	(2 889)
Finance costs	(3 149)
Funding of group companies	(1 855)
Dividends to shareholders	(1 621)
Other (share incentives, tax, etc)	(385)
Amount funded by increased debt	4 140

- 11 At 31 March 2018, the Company's lenders (on a bilateral basis) had advanced debt facilities totalling c.R12.7 billion (including trade finance related to the purchase of maize of R930 million) based on *inter alia* their reliance on the audited annual financial statements.
- 12 During 2018, when the Company began to report lower profitability and increasing debt levels publicly, the financial difficulties experienced by the Company became apparent. As a result of these financial difficulties, the Company faced pressure on both the headroom on its debt facilities and the financial covenant ratios contained in the various facility agreements.
- 13 In February 2019, the Company's newly appointed management initiated a strategic and financial review of its operations with a view to stabilise the business, address the high and increasing debt levels, and set the path toward acceptable returns for stakeholders. Concurrently, the Company commenced discussions with each of its lenders with respect to concluding a standstill arrangement. Following these discussions, the Company's lenders organised themselves into a lender working group ("**the South African lender group**").
- 14 During the course of 2019, concerns were raised on the appropriateness of the Company's accounting policies, the application thereof, and its accounting practices, which resulted in the financial review escalating into a forensic investigation that uncovered accounting misstatements and irregularities. The key themes of these accounting misstatements and irregularities can be broadly described as follows:
 - 14.1 revenue from sales transactions was recognised too early;
 - 14.2 certain financing transactions were misrepresented as revenue;
 - 14.3 operating expenses and losses were capitalised as if they were assets with a useful life;
 - 14.4 infrastructure obligations were either not recorded or understated;
 - 14.5 sugarcane assets were overvalued; and
 - 14.6 impairments of assets were never assessed or recorded.

- 15 As such, on 31 May 2019, the Company announced that its historical financial statements had to be restated and that reliance could no longer be placed on the financial information contained in its 2018 consolidated and separate annual financial statements.
- 16 In December 2019, the Company released its 2019 annual financial statements, including restated comparative financial information. The cumulative restatement of the Company's historical consolidated and separate financial statements resulted in a reduction in shareholders' equity of R11.0 billion and R8.29 billion respectively.
- 17 The 2019 annual financial statements also reflected that the Company's net debt as at 31 March 2018 had been restated to R10.25 billion compared to the R8.94 billion originally published, an increase of R1.31 billion.
- 18 At 31 March 2019, the Company's net debt had reduced to R9.87 billion having benefitted from the repayment of an intergroup loan owing to the Company by the Mozambique operation. However, the corresponding increase in the external debt of the Mozambique operation meant it too encountered financial difficulties and had to enter into a debt standstill agreement with its lenders and restructure its own in-country debt facilities.

DEBT RESTRUCTURE AND COVID-19 PANDEMIC

- 19 On 9 December 2019, the Company and the South African lender group concluded a restructure of its debt facilities to provide funding until 31 March 2021. The facilities totalled R12.2 billion (including seasonal facilities) and comprised the following:
 - 19.1 Senior Facility A of R9.1 billion which required the Company to conclude sufficient transactions in line with various debt reduction milestones to repay an amount of R8.1 billion before 31 March 2021. The R8.1 billion represented the portion of the debt that was considered to be in excess of what the Company could sustain from its trading activities;
 - 19.2 Senior Facility B of R2.2 billion and overdraft facilities totalling R300 million which were to fund the Company's working capital requirements;
 - 19.3 Senior Facility C of R553 million which was a seasonal facility to support working capital requirements over the peak of the milling season; and

19.4 Senior Facility D of R47 million which was a seasonal facility to support various funding requirements over the peak of the milling season.

20 In order to deliver on its commitment to repay the R8.1 billion of excess debt, the Company initiated multiple transaction workstreams and engaged extensively with interested parties concerning the following:

20.1 raising of equity capital through a rights offer or similar share issue;

20.2 disposal of an equity share in the South African sugar operation ('MillCo');

20.3 disposal of an equity share in the property portfolio ('PropCo');

20.4 disposal of the starch and glucose operation; and

20.5 disposal of the African sugar operations.

21 Despite good progress with its debt reduction obligations, the efforts were significantly hampered during 2020 and 2021 by the COVID-19 pandemic and various other factors summarised below:

21.1 DELAY IN CONCLUDING THE STARCH DISPOSAL – As a result of the COVID-19 pandemic, the purchaser of the starch and glucose operation claimed that a material adverse change had occurred in the financial performance of the business. A dispute of the facts followed which resulted in additional costs being incurred to successfully defend the claim. The closure of the transaction was delayed by some six months, resulting in additional interest being incurred.

21.2 SUGAR MILL MAINTENANCE AND CAPITAL EXPENDITURE – Although the published annual financial statements suggested otherwise, under the Company's previous management, the South African sugar operation's milling and refining assets suffered from neglected asset care practices with a lack of maintenance and minimal capital reinvestment. While the South African sugar operation was classified as an essential service and was able to operate during COVID-19, the initial lockdown period disrupted both the supply chains that supported critical maintenance

programmes and the completion of capital projects necessary to support the turnaround of the business.

- 21.3 'MILLCO' TRANSACTION NOT CONCLUDED – The 'MillCo' transaction sought to dispose of an equity share in the South African sugar operation to farmers with the combined objective of reducing debt and providing sufficient funds to reinvest in the business. While COVID-19 delayed the due diligence processes and added to economic uncertainties, the transaction was ultimately not concluded as the parties were unable to reach agreement on the valuation of the business, the equity contribution and shareholding.
- 21.4 'PROPCO' TRANSACTION NOT CONCLUDED – The 'PropCo' transaction sought to secure a strategic equity partner to help develop the Company's land portfolio. The dual objective of the transaction was to reduce debt and provide sufficient funding to invest in the infrastructure necessary to unlock the land's developable value. The potential investor's due diligence process was initially delayed by the COVID-19 pandemic. The impact of the pandemic contributed to the investor reassessing its position on investing in land with long-term returns and changing its strategy to rather invest in short-term cash generating assets. The transaction was not concluded.
- 21.5 DEPRESSED PROPERTY MARKET – The property business was negatively impacted by the change in market sentiment, demand and prices of property caused by the COVID-19 pandemic. The market is yet to recover to pre-pandemic levels.
- 21.6 RESTRUCTURING COSTS – The Company has incurred significant cost in respect of the forensic investigations, business restructuring and rightsizing costs, transaction costs in respect of asset disposals (i.e. advisors, legal, regulatory) and various debt restructuring initiatives.
- 21.7 AUDIT FEES – The Company had to incur costs to restate its annual financial statements. In addition, the fees for each subsequent audit has attracted a significant audit risk premium associated.
- 22 In November 2020, and in response to the delays in finalising the debt reduction transactions described above, the South African lender group agreed to an extension of its debt facilities from 31 March 2021 to 30 September 2021. This extended the debt reduction

milestones and allowed the Company sufficient time to progress a refinance of its remaining debt of c.R6.4 billion. Work on this refinance commenced in February 2021.

23 By 31 March 2021, the Company had concluded debt reduction transactions totalling R6.57 billion (excluding a further R507 million reduction in specific maize financing facilities that arose after the disposal of the starch and glucose operation) comprising:

- 23.1 the disposal of its starch and glucose operation (R5.16 billion);
- 23.2 the dissolution of its Tongaat Hulett Defined Benefit Pension Fund (R512 million);
- 23.3 the disposal of its shares in the sugarcane estate in Eswatini (R413 million);
- 23.4 the disposal of 9 properties comprising farms and developable land (R223 million);
- 23.5 the dissolution of its Tongaat-Hulett Pension Fund (R151 million); and
- 23.6 the disposal of its shares in Tongaat Hulett Namibia (Pty) Ltd (R111 million).

DEBT REFINANCE, SOCIAL UNREST AND DELAYED RIGHTS OFFER

24 With regards to the refinance mentioned in paragraph 22 above, a credit approved term sheet was agreed with the South African lender group and signed on 12 July 2021. The facilities would mature on 30 June 2024, and comprised the following:

- 24.1 Senior Facility A of R1.5 billion which was to be repaid from the outstanding proceeds of c.R450 million from the disposal of the starch and glucose operation that were held in escrow, as well as surplus cash flows generated by the Company, most notably dividends from the Zimbabwe operation;
- 24.2 Senior Facility B of R1.4 billion and overdraft facilities totalling R300 million which were to fund the Company's working capital requirements;
- 24.3 Senior Facility C of R2.0 billion which was to be repaid with the proceeds of an equity capital raise, and in the event that did not materialise, the disposal of the non-South African sugar assets. At the time of signing the term sheet, the Company was in

negotiations with Magister Investments Limited (“**Magister**”) for Magister to provide an underwrite of R2 billion to the equity capital raise; and

24.4 Senior Facility D of R1.2 billion which was to be repaid with the proceeds of property disposals. At the time of signing the term sheet, the Company was finalising the heads of agreement for the disposal of the long-dated residential portion of the land portfolio for c.R770 million.

25 However, in and around the negotiation and finalisation of the term sheet, the following events posed a significant impediment to the turnaround of the Company’s business:

25.1 SUGAR LOSS AT REFINERY – Operational and asset care challenges at the refinery resulted in the loss of c.27 400 tons of sugar. The financial impact of the loss to the Company was c.R369 million. Subsequently, the necessary corrective action has been taken and the refinery is currently operating normally.

25.2 SOCIAL UNREST OF JULY 2021 ON THE SOUTH AFRICAN SUGAR OPERATION – The riots negatively impacted the South African sugar operation and had a longer-term effect than just the initial ten days of unrest. While the direct loss to the business is estimated to be c.R158 million based on the loss of c.34 500 tons of sugar, the indirect costs have been far higher. The emergency shut down of the mills and refinery resulted in increased costs to carry out a “cold” restart of operations. In addition, with c.1 700 hectares of farmland under sugarcane set alight during the riots, the mills had to crush a significant volume of sugarcane that had been burnt during the riots and had degraded which caused damage to milling equipment. Overall, raw sugar production for the 2022 financial year was 463 000 tons (compared to 535 000 tons and 602 000 tons in the 2021 and 2020 financial years respectively). The related compensation from the Company’s insurance policies has not yet been received as the claims have not yet been accepted by insurers the reasons for which are under review.

25.3 SOCIAL UNREST OF JULY 2021 ON THE PROPERTY BUSINESS – In respect of the impact to the Company’s property business, the riots caused further fear and apprehension around investments into landholdings, resulting in buyers re-considering their investment decision and the cancellation of several property sales that were in progress. The municipality also shifted its focus from delivering infrastructure for new developments, to repairing damage caused by the riots, which

has stalled several sales negotiations. The final negotiations in respect of the c.R770 million property sale that was pivotal to repaying a significant portion Senior Facility D were terminated, with the riots cited as a major contributing factor.

- 26 Considering the above, and to support the business, the South African lender group agreed that the Company could retain the R450 million proceeds received from the disposal of the starch and glucose operation to support its liquidity rather than settle Senior Facility A as had been agreed in the term sheet. In response to this the quantum of the facilities in the term sheet was amended with the commitment under Senior Facility A decreasing from R1.5 billion to R1.1 billion and the commitment under Senior Facility D increasing from R1.2 billion to c.R1.7 billion.
- 27 On 17 November 2021, the Company announced a rights offer of up to R4 billion that was partially underwritten to the extent of R2 billion by Magister. The proceeds from the enlarged rights offer were intended to repay Senior Facility C as well as a substantial portion of Senior Facility D given the depressed state of the property market.
- 28 On 6 December 2021, the refinancing of the Company's debt facilities c.R6.3 billion debt was finally concluded.
- 29 On 18 January 2022, the Company's shareholders voted in favour of the resolutions necessary to proceed with a rights offer of up to R4 billion, including the waiver of the requirement for Magister to make a formal offer for all of the Company's shares in terms of the Companies Act. On 24 January 2022, the Takeover Regulation Panel ("TRP") granted the said waiver, but this was taken under review on 28 January 2022 by a consortium of shareholders. Following a hearing by the Takeover Special Committee, the TRP was asked to investigate specific concerns raised about the existence of concert parties.
- 30 On 3 June 2022, after the conclusion of the investigation, the TRP ruled that parties related to Magister (i.e. the underwriter) had dealt in the Company's shares during a prohibited period in terms of the takeover regulations, and the TRP consequently nullified the waiver it had granted previously. The TRP's ruling resulted in the Company terminating the underwriting agreement on 24 June 2022 and not being recapitalised by an expected c.R4 billion. Although Magister initially appealed the TRP ruling, their appeal was subsequently withdrawn.

LIQUIDITY SHORTFALL

- 31 While the rights offer was on hold for the regulatory processes to run their course, the Company was again faced with negative unforeseen events that placed further pressure on liquidity:
- 31.1 LOWER SUGAR SALES – In the last quarter of the 2022 financial year, there was a shift in the sales mix towards low margin bulk sugar sales to satisfy industrial demand, while cash-strapped consumers turned to “house brands” rather than the “miller brands”. The situation was made worse by an influx of these “house brands” from neighbouring Eswatini. In addition, the historical trend of a “buy-in” ahead of the inflationary price increase was muted, as customers opted to purchase additional stocks of other commodities, that were predicted to have above inflationary price increases, rather than sugar, which, based on an industry-wide commitment in line with the Sugar Masterplan, retained price increases in line with inflation.
- 31.2 FLOODING IN APRIL 2022 – Crushing capacity at the sugar mills was lost as sugarcane could not be harvested during the flooding of April 2022, and time was required to allow drying of the fields before harvesting could resume. The situation was exacerbated by additional transportation costs from the fields to the mills due to damage to the roads and railway lines. Following the resumption of sugar production, the floods had a long-lasting and negative impact on sugarcane quality which has lowered sugar production expectations for the season. The animal feeds business was also impacted as access to the by-products from sugar production, which are used in animal feed production, were not being produced by the mills. Damage to the water treatment plant and dam in Tongaat further resulted in a loss of water revenue for the Maidstone mill. In addition, damage to existing infrastructure caused by the floods, has impacted on the ability to deliver the new infrastructure necessary to support the timeous conclusion of future land sales.
- 31.3 REDUCING SUPPLIER TERMS – In June 2022, the final credit insurer that was willing to provide cover to the Company’s suppliers withdrew its support. This caused sudden and unexpected disruptions to the business, particularly the animal feeds business, while the Company renegotiated payment terms which resulted in lost sales opportunities. Generally, over recent months, supplier payment terms have been reducing and this continues to place the Company’s liquidity under pressure.

- 31.4 INCOME FROM AFRICAN SUBSIDIARIES – In the past months there have been several monetary and economic policy measures announced within Zimbabwe that have seen the pricing and cash flows of the Zimbabwe operation come under pressure. This has reduced the availability of surplus cash to support dividend and operational support fee payments from the Zimbabwe sugar operation to the Company. The repatriation of funds from Mozambique to the Company is restricted in terms of the in-country debt agreements.
- 31.5 WAR IN UKRAINE – The war between Russia and Ukraine has resulted in significant cost increases in commodities and raw materials such as coal, fertiliser and urea. With the commitment to inflation-linked sugar price increases in terms of the Sugar Masterplan, these costs increases have largely had to be absorbed by the Company.
- 32 The challenges described in paragraphs 25 and 31 above, have meant the Company's cash flow performance to 31 March 2022 was considerably worse than what had been forecast as part of the debt refinance. Consequently, a shortfall of c.R1.5 billion emerged in the Company's debt facilities available to fund the peak working capital funding requirement and to complete the 2023 financial year.
- 33 With the numerous delays and challenges described above, the turnaround initiative has taken much longer than anticipated as well as increased the overall funding requirements. These factors, together with higher interest rates associated with the Company's increased credit risk and monetary policy decisions, have resulted in finance costs of c.R2.4 billion being incurred from 1 April 2019 to 30 September 2022. To date, the South African lender group has not invoked the contractually agreed interest rate margin ratchets.

DEBT REDUCTION PLAN

- 34 From the outset, the Company's turnaround initiative was a substantial task that needed to concurrently address the high debt levels, stabilise the business operationally and resolve the accounting misstatements and irregularities. By 31 March 2022, the Company had reduced its net debt by c.39%. Despite this progress, the Company remained unable to service its residual debt, the majority (c.87%) of which is carried by the cash flows of the South African sugar operation, the property business, and dividends and operational support fees from the non-South African sugar operations.

- 35 The South African sugar operation requires a substantial reinvestment in its milling and refining assets over the next three years to compensate for a historic lack of maintenance. In addition, the proceeds from property sales are being used to settle legacy infrastructure obligations and the policy changes in Zimbabwe have reduced the certainty around future dividend income. Consequently, the Company's debt carrying capacity in South Africa is limited, and the excess debt that is unable to be serviced by the Company is currently estimated to be c.R6.3 billion. In the absence of a recapitalisation, this debt burden will continue to increase as interest accrues.
- 36 Over the past three and a half years, the South African lender group has remained supportive of the Company and has worked constructively with management.
- 37 To assist with funding the c.R1.5 billion liquidity shortfall, the South African lender group initially made the seasonal overdraft facility available earlier than anticipated in the facility agreements. Thereafter, the lenders proposed a new Borrowing Base facility of R600 million ("**Borrowing Base Facility**"), and the related agreements were concluded on 29 July 2022. The facility was initially repayable on 30 September 2022, but this was subsequently extended to 25 October 2022. The borrowing base against which this facility was made available comprises the South African sugar operation's working capital assets (namely eligible sugar inventory and eligible trade receivables).
- 38 On 23 June 2022, as part of the commitments made in terms of the Borrowing Base Facility, and after a due nomination process, the board of directors appointed a Chief Restructuring Officer, namely Mr Piers Marsden, who has been responsible for the development of a debt restructuring plan.
- 39 The debt restructuring plan considered several options, including an equity capital injection by strategic partners (based on multiple expressions of interest received from credible potential investors), and the disposal of some or all of the African operations or a combination thereof.
- 40 An initial outline of the restructuring plan was presented to the Company's board of directors on 27 July 2022, and a draft plan was presented to the South African lender group on 31 August 2022.
- 41 On 14 October 2022, the Company's board of directors approved the final restructuring plan. The restructuring plan broadly envisaged the following:

- 41.1 the disposal of the non-South African sugar operations;
- 41.2 securing a sponsor to support the capital reinvestment required by the South African sugar operation;
- 41.3 introducing a five-year debt instrument repayable through the disposal of certain of the Company's landholdings;
- 41.4 progressing the respective legal claims arising from the accounting misstatements and irregularities; and
- 41.5 aligning the Company's corporate office with the smaller operating footprint.

FINANCIAL DISTRESS

- 42 In the year to date, the Company's South African sugar operation has shown a marked improvement in operational performance relative to the previous 2021/22 season and is benefitting from the investments made in technical capability, industry expertise, and an extensive maintenance programme carried out before the start of the season. The improved operational performance has coincided with stronger commercial demand for locally produced sugar.
- 43 With the operational and cash flow performance of the Company's South African sugar operation ahead of expectations, and the Zimbabwe sugar operation starting to remit fee income to the Company, the resultant improvement in liquidity has succeeded in delaying the onset of the shortfall in debt facilities and allowed additional time to develop the debt restructuring plan. While this is a positive outcome, due to delays in concluding property sales and higher restructuring costs, the Company has not managed to reduce the peak funding requirement materially.
- 44 While sufficient interest in the Company's assets has been registered by potential purchasers, efforts to raise the balance of the liquidity requirement through the disposal of these assets has not been possible in the time available, particularly with the shareholder approvals that would be required.


- 45 Furthermore, there are existing shareholders and potential new equity investors who are willing to support the recapitalisation of the Company, subject to the existing operating footprint being retained. Whilst the quantum indicated expressed by these parties is material, it has not yet been possible to align the interests of these parties in the time available.
- 46 To secure the balance of the c.R1.5 billion liquidity requirement and ensure the completion of the 2023 financial year, the Company also initiated engagements with potential funders outside the existing lender group. While negotiations with one potential funder were well progressed, including the completion of a due diligence process, the Company was informed on 29 September 2022 that the additional funding would not be forthcoming in the immediate future.
- 47 In the absence of alternate sources of liquidity, the Company requested the South African lender group to consider providing the necessary funding to support the implementation of the restructuring plan.
- 48 On 21 October 2022, the South African lender group informed the Company that they are unable to support the restructuring plan and, by implication, the additional funding required would not be provided and the repayment date for the Borrowing Base Facility would not be extended.
- 49 The lenders have, however, indicated that, within the confines of business rescue proceedings, they are in principle agreeable to advance post-commencement funding, subject to certain conditions. These conditions include the lenders being comfortable with the appointed business rescue practitioners and the Chief Restructuring Officer being retained (subject to a co-operation agreement being reached with those business rescue practitioners).
- 50 The Company's board of directors believe that if adequate bridge funding is provided, it will be able to restructure the Company's affairs, progress the implementation of the debt restructuring plan and generate revenue to repay the Company's remaining debts over time. However, the Company has not been able to secure such funding from potential funders given its level of indebtedness and current lack of liquidity.
- 51 In light of the above, the Company is financially distressed, within the meaning of Section 128 of Chapter 6 of the Act, in that, *inter alia* –

- 51.1 it is estimated that the Company, under current market conditions, requires an amount of R1.5 billion to repay its debts and fund its working capital requirements. The Company is currently not able to generate these funds itself, nor is it able to raise it from the companies within the Tongaat Hulett group, its shareholders and/or third parties in the immediate future; and
- 51.2 it therefore appears to be reasonably unlikely that the Company will be able to pay all of its debts as they fall due and payable within the immediately ensuing six months, in terms of Section 128(1)(f)(i) of the Act.

REASONABLE PROSPECT OF RESCUE


- 52 Notwithstanding the above, the directors of the Company believe that there is a reasonable prospect of rescuing the business of the Company, if action is taken immediately and if the Company commences Business Rescue. If the Company is placed under supervision, initiatives can be taken by business rescue practitioners, when duly appointed, to take the following steps -
- 52.1 imposing an immediate temporary moratorium on all payments to creditors in terms of Section 133 of the Act;
- 52.2 engaging in discussions with various parties regarding the provision of post commencement financing and/or equity funding to the Company, in order to adequately capitalise the Company;
- 52.3 considering the possible suspension or cancellation of various contracts in terms of Section 136(2) of the Act;
- 52.4 continuous engagement with stakeholders to retain value in the Company and its assets; and
- 52.5 a restructure of, *inter alia*, the debt of the Company with its creditors.

53 Accordingly, the Company through its board of directors, is of the view that the Company is financially distressed, but that there remains a reasonable prospect of rescuing the company and accordingly that the Company should be placed in Business Rescue.



JOHN GAVIN HUDSON

I certify that this statement was signed and sworn to before me at Tongaat on this the 26 of OCTOBER 2022 by the deponent after he declared that he knew and understood the contents of this statement, that he had no objection to taking the prescribed oath and has taken the prescribed oath which he considered binding on his conscience, having complied with regulations contained in government notice R1258 of 21 July 1972, as amended.



COMMISSIONER OF OATHS

Name: **SUHAIL EBRAHIM**
LPCM NUMBER 77897
Address: **NOTARY PUBLIC & CONVEYANCER**
COMMISSIONER OF OATHS
Capacity: **PRACTISING ATTORNEY**
24 RICHEFOND CIRCLE, RIDGESIDE OFFICE PARK
UMHLANGA ROCKS 4319

ANNEXURE C - PROXY FORM

For use by the Creditors at a meeting convened in terms of Section 151 of the Companies Act to be held electronically via a video-conferencing platform on **Wednesday, 14 June 2023** at **11h00** ("**Meeting**") or at any subsequent adjournment of the meeting.

I/We _____ do hereby appoint:

i. _____; or failing him/her

ii. _____; or failing him/her

iii. the BRP, who acts as Chairman of the meeting,

as my/our proxy to act for me/us and on my/our behalf at the Meeting which will be held for the purpose of considering and, if deemed fit, voting: (indicate with an X)

A) To direct the BRPs to adjourn the meeting in order to revise the Business Rescue Plan for further consideration:

In Favour: _____ **Against:** _____

B) Approval of the proposed Business Rescue Plan, with or without modification:

In Favour: _____ **Against:** _____

SIGNED at _____ **on this** _____ **day of** _____ **2023.**

SIGNATURE

NAME

Power of Attorney / Authorising Resolution attached (where applicable)

NOTES:

1. A Creditor may insert the name of a proxy or the names of two alternative proxies of his/her choice in the space provided, with or without deleting "the Chairman of the meeting". The person whose name stands first on the form of proxy and who is present at the Meeting will be entitled to act as proxy to the exclusion of those whose names follow.
2. The form of proxy must either be:
 - i. Delivered and lodged at Amanzimnyama Hill Road, Tongaat, Kwa-Zulu Natal, 4400, to be received by not later than 17h00 on **Monday, 12 June 2023**, two days prior to the meeting; or
 - ii. emailed to br@tongaat.com by not later than 17h00 on **Tuesday, 13 June 2023**.
3. The completion and lodging of this form of proxy will not preclude the relevant Creditor from attending the Meeting and speaking and voting in person thereat to the exclusion of the proxy appointed in terms thereof, should such Creditor wish to do so.
4. Capitalised words not otherwise defined in this proxy form shall have the meaning ascribed to them in the Business Rescue Plan.
5. If this proxy is signed under power of attorney or on behalf of a company, such authority (i.e. power of attorney (for an individual) or authorising resolution (for a juristic person), as applicable) must accompany it.

ANNEXURE D - EXISTING LITIGATION AND ALTERNATIVE DISPUTE PROCEEDINGS

Plaintiff/ Defendant/ Applicant/ Respondent	Description	Status	Quantum
Competition Commission of SA ("CCSA')	The CCSA commenced with an investigation into complaints of excessive pricing lodged by Coca-Cola Beverages South Africa (CCBSA).	THS cooperated with the Competition Commission's investigation into the CCBSA complaint and provided relevant information to the Commission where requested to do so. The Commission completed its investigation into the complaint in July 2021 and decided not to refer the complaint to the Competition Tribunal for adjudication. CCBSA has brought a review application requesting that the Competition Tribunal review the Commission's decision. CBBSA intend bringing an application to have the matter "transferred" to the Competition Appeal Court. This is being opposed on the basis that the Competition Act nor the Tribunal Rules allow for a "transfer" of the matter.	Fine of 10% of turnover
GR Cane Haulage	Recovery & counterclaim: Diversion Overcharge	THS instituted an action against GR Cane Haulage for diversion overcharges . GR Cane has brought a counterclaim of R6m for, inter alia, penalties, tolls and damages for mill inefficiencies. The matter has, however, been placed on hold given the unavailability of Tongaat witnesses. Attempts to settle the matter continue.	R2.9m

Ex-employee Mara Moyolo	Civil claim for Recovery of funds	Recovery against the employee defrauded the company with over an extended period. The employee was dismissed in 2019. The matter is proceeding.	R5m
Ex- employee Amanda Randeira	Civil action (delictual) instituted against THS	The Plaintiff instituted a delictual claim against THS (and an ex-employee) in the amount of some R31m in relation to employment issues. The matter continues to be defended.	R31m
State	Inquest relating to a fatality of an employee at Mill	Matter pending in the Mtunzini Magistrate's court, an inquest relating to a fatality of an employee in 2015. Awaiting further direction from the Magistrate on setting the matter down for hearing.	Not applicable
Riverwalk Trading 87 CC	Recovery of funds relating to goods sold & delivered	Default Judgment granted on 17 October 2022. Execution proceedings continue.	R3m

Source: The Company's litigation register updated as of 31/03/2023

ANNEXURE E - AFSA-SARIPA RULES

(ATTACHED BELOW)



THE AFSA-SARIPA RULES FOR THE RESOLUTION OF DISPUTES IN BUSINESS RESCUE PROCEEDINGS

1. THE RULES: STATUS AND PURPOSE

- 1.1 These Rules have been established and endorsed by the Arbitration Foundation of South Africa (AFSA) and the South African Restructuring and Insolvency Practitioners Association NPD (SARIPA) for the purpose of resolving disputes arising in connection with business rescue proceedings.
- 1.2 AFSA and SARIPA share joint oversight over the administering Secretariat and the Panel of Arbitrators identified in these Rules and may jointly supplement or amend these Rules from time to time as circumstances dictate.
- 1.3 Such joint oversight is exercised through the AFSA-SARIPA Business Rescue Division within the AFSA corporate structure.

2. SUPERVISION OF THE AFSA SECRETARIAT

- 2.1 The AFSA-SAPIRA Secretariat is the administering authority appointed by the AFSA Business Rescue Division to supervise and administer the resolution of disputes under these Rules.
- 2.2 Parties to any dispute undertake to co-operate with the AFSA Secretariat in order to assist it in its functions. Parties further undertake to deal with any requests made to them by the Secretariat quickly and constructively.
- 2.3 The address of the AFSA Secretariat is c/o AFSA at 1st Floor, Grindrod Tower, 8A Protea Place, Sandown, or PO Box 653007, Benmore, 2010, Telephone no. (011) 320-0600, Docex 143, Randburg.
- 2.4 All communication with the AFSA Secretariat may be effected by email or online.
- 2.5 Any communications between the parties and the arbitrator should take place through the AFSA Secretariat, which is always available to assist the parties with their queries concerning procedural aspects of the dispute and in clarifying issues arising out of these Rules.

3. INITIATING DISPUTE RESOLUTION

- 3.1 Any party to a dispute (the claimant) shall initiate the dispute resolution procedure by submitting the REQUEST FOR ARBITRATION in the form set out in Appendix A accompanied by payment of the claimant's share of the Secretariat's management and administration fee of R15 000.00 (fifteen thousand Rand).

- 3.2 The claimant must simultaneously transmit a copy of the REQUEST FOR ARBITRATION to the Business Rescue Practitioner and to any other party against whom the claimant also seeks any relief or order.

4. INTERRUPTION OF PRESCRIPTION

- 4.1 The simultaneous transmission of the REQUEST FOR ARBITRATION in proper form to the Secretariat and to the BRP and any other person against whom any relief or order is sought shall interrupt the running of prescription subject to 4.3 below.
- 4.2 The date of interruption shall be the date of receipt by AFSA of the REQUEST FOR ARBITRATION but subject to 4.3 below.
- 4.3 Prescription shall only be interrupted in this manner if the AFSA Secretariat accepts the REQUEST FOR ARBITRATION and if the claimant thereafter prosecutes the claim to finalisation under these Rules without falling into default.

5. ACCEPTANCE OR REJECTION OF THE REQUEST FOR ARBITRATION

- 5.1 The Secretariat, if satisfied:

- 5.1.1 that the REQUEST FOR ARBITRATION has been completed in proper form and that payment of the claimant's share of its management and administration fee has been made; and
- 5.1.2 that the dispute falls within the terms of the reference to arbitration contained in the Business Rescue Plan,

shall accept the REQUEST FOR ARBITRATION and must notify the parties that it has referred the matter to arbitration and that the steps set out in the rest of the Rules will follow.

- 5.2 If the REQUEST FOR ARBITRATION does not comply with the requirements of 5.1 above the Secretariat will refuse the request to arbitrate in which case if the deficiency can be rectified, and is rectified, the REQUEST FOR ARBITRATION may be re-submitted.

6. RESPONSE BY THE BRP

Within ten business days from the date of receipt by the BRP, the BRP shall simultaneously transmit to the claimant, the Secretariat and any implicated person the BRP's response to Appendix A to the REQUEST FOR ARBITRATION, such response to be marked Appendix B and in which:

- 6.1 the BRP must either confirm as accurate or otherwise correct the information set out in paragraphs 1 – 4 and 6 of Appendix A;

- 6.2 the BRP must answer the claimant's claim as set out in paragraph 5 of Appendix A by way of a brief written statement indicating which statements made in support of the claim in paragraph 5 of Appendix A are admitted and which parts are denied, and why they are denied, further showing clearly and concisely the reasons and contentions which are relied upon to refute the claimant's claim;
- 6.3 Appendix B shall be accompanied by payment of the BRP's share of the Secretariat's management and administration fee of R15 000.00 (fifteen thousand Rand) plus VAT.

7. RESPONSE BY ANY OTHER IMPLICATED PARTY AND COUNTERCLAIMS

- 7.1 The provisions of Rule 6 will separately apply to any party against whom any claimant seeks an order whether separately from or in addition to any relief sought against the BRP.
- 7.2 In the event that the BRP or other implicated party seeks relief against the claimant for any reason the grounds for such reciprocal claim shall also be concisely set out together with such relief as is sought.

8. MEDIATION

Should both parties agree, or should the AFSA Secretariat so direct, the dispute will first be referred to mediation for a quick and amicable resolution. In such an instance the Secretariat will make the necessary arrangements for the mediation and will appoint the mediator. The Secretariat will issue directions as to the process to be followed.

9. SELECTING THE ARBITRATOR

- 9.1 Unless the parties have notified the Secretariat within four business days of the claimant transmitting the REQUEST FOR ARBITRATION that they have selected a particular arbitrator on the approved Panel of Arbitrators the Secretariat will select an arbitrator from the Panel.
- 9.2 The arbitrator, whether selected by the parties or by the Secretariat, must confirm that he or she is not conflicted in any way and is able to deal with the matter without delay and has signed the AFSA Code of Conduct for Arbitrators.

10. OBJECTION TO ARBITRATOR'S APPOINTMENT, RECUSAL AND REPLACEMENT

- 10.1 In the event that any party has a substantive objection to the appointment of a particular arbitrator or to the conduct of the arbitrator thereafter that party must inform the Secretariat within three days following notification of the appointment or following it first becoming aware of the conduct which is the subject of complaint. The Secretariat

will rule on the merits of the objection and either set aside the arbitrator's appointment or confirm same and its decision is final.

- 10.2 An arbitrator shall recuse himself or herself when, due to physical, mental, or other disability, he or she becomes incapable properly to perform his or her duties, and in circumstances which would require a judicial officer to recuse himself or herself.
- 10.3 The Secretariat shall be entitled, after a written or oral hearing (as directed by the Secretariat) of the parties and the arbitrator, to terminate the appointment of an arbitrator on the grounds that he or she has become disqualified from acting or continuing to act in terms of these Rules, or his or her inability or refusal to act, or that he or she has failed timeously and effectively to perform any of his or her functions as arbitrator.
- 10.4 Where the position of arbitrator falls vacant for any reason the Secretariat will appoint a substitute arbitrator who shall have the power to act in the arbitration and make an award as if originally appointed and the substitute arbitrator may proceed on the evidence recorded in the proceedings before his or her appointment or may make re-call for further examination the person/s who gave such evidence.

11. SECRETARIAT'S NOTIFICATION TO THE ARBITRATOR

- 11.1 The Secretariat must immediately notify the arbitrator of his or her appointment, confirm and approve the fees chargeable by the arbitrator and transmit to the arbitrator Appendix A and Appendix B for the immediate attention of the arbitrator.
- 11.2 The Secretariat must arrange an initial meeting between the arbitrator and the parties as quickly as possible following the arbitrator's appointment.

12. THE INITIAL MEETING AND TIMETABLE

- 12.1 The purpose of the initial meeting is to allow the arbitrator after consultation with the parties to decide whether the fair and expeditious determination of the dispute:
 - 12.1.1 requires further elaboration of the claim or the response and, if so, in what respects;
 - 12.1.2 requires the production of books or documents and if so which books or documents must be produced;
 - 12.1.3 permits the submission of evidence and contentions upon which the parties rely in written form and without the need for oral presentation.

12.2 In determining the procedure for the determination of the dispute the arbitrator:

12.2.1 must draw up a timetable for the progress of the matter to finalisation and notify the Secretariat of the timetable;

12.2.2 must give priority to the need for the expedited determination of the dispute and to a cost-effective process; and

12.2.3 if the substance of the proceedings involves a review of any decision, act or ruling of the Business Rescue Practitioner then the proceedings should be conducted by way of written evidence and submissions save for oral argument;

12.2.4 in choosing the appropriate procedure to be followed the arbitrator must be satisfied that each party will (barring default) enjoy a fair and equal opportunity to present its case.

13. **PAYMENT OF THE ARBITRATOR'S FEES AND CHARGES**

13.1 The fees and charges of the arbitrator will be paid by the Secretariat to the arbitrator and it is the obligation of the parties to pre-pay the Secretariat the invoiced amount of such fees and charges on demand.

13.2 In the event of the failure by any party to pre-pay such amount the provisions of Rule 13 will apply to the defaulting party and the other party or parties will, in the interim, be called upon to pay the deficit.

14. **ARBITRATOR'S POWERS IN THE EVENT OF DEFAULT**

Should any party to the proceedings:

14.1 fail to pay the Secretariat's management and administration fee; or

14.2 fail to pay the amount invoiced for that party's share of the arbitrator's fees and charges; or

14.3 fail to comply with the provisions of these Rules notwithstanding prior warning by the Secretariat or by the arbitrator; or

14.4 fail to carry out the terms of any ruling or directive of the arbitrator or the Secretariat; or

14.5 is guilty of delaying conduct so as to give rise to a substantial risk of serious prejudice to the other party or parties,

then:

- 14.6 where a party is in default due to failure to pay its share of any management and administration fee or arbitrator's fee when requested by the Secretariat that party will lose the right to participate in the arbitration process and the proceedings will continue to their conclusion in the absence of such party unless the arbitrator orders otherwise in the special circumstances of the case; and
- 14.7 where the default is of any other sort as itemised above the arbitrator can either:
- 14.7.1 give that party written notice that unless it remedies the default or omission within a given time, it will forfeit the right to continue to participate in the arbitration with the same consequences as set out above; or
- 14.7.2 warn the party in writing that its default or omission may make it liable to a punitive order of costs irrespective whether it succeeds in the arbitration or not and such punitive award of costs may include an order of attorney and client costs or attorney and own client costs as those expressions are understood in the Uniform Rules of Court.

15. **GENERAL POWERS OF THE ARBITRATOR**

- 15.1 The arbitrator shall have the widest discretion and powers allowed by law to ensure the just, expeditious, economical, and final determination of all the disputes raised in the proceedings, including the matter of costs.
- 15.2 Without detracting from the generality of the foregoing, the arbitrator shall have the powers:
- 15.2.1 to rule on his or her own jurisdiction;
- 15.2.2 to admit claims or any security or preference whether recognised under the Business Plan or not and to review and set aside a ruling of the Business Rescue Practitioner in regard to the admission or rejection of claims including the power to admit a rejected or partially rejected claim or any security or preference;
- 15.2.3 to deal with cases of default in accordance with the powers conferred upon the arbitrator in terms of these Rules;
- 15.2.4 to make any ruling or give any direction mentioned in these Rules or as he or she otherwise considers necessary or advisable for the just, expeditious, economical and final determination of all the disputes raised on the pleadings, including the matter of costs;
- 15.2.5 to extend before or after their expiry, or abbreviate any time limits provided for in these Rules or by his or her rulings or directions;

15.2.6 to order any party who is a claimant, or claimant under a counterclaim, to furnish security for costs in respect of his claim or counterclaim;

15.2.7 to allow (but only with their express written consent) other parties to be joined in the arbitration proceedings, and to make an award on all issues submitted by all parties, including parties so joined;

15.2.8 to make an order as to costs and

15.2.9 to make any settlement agreement concluded between the BRP, claimant and any other party to the arbitration proceedings, an award which will have the same effect as an award made at the conclusion of the arbitration proceedings.

16. INTERLOCUTORY MATTERS AND TEMPORARY ORDERS

Should the need arise for any party to seek interim or temporary relief before the arbitration is finalised, that party may apply to the arbitrator to grant such interlocutory order or give the required temporary relief and the arbitrator shall have the same power to do so as if the matter were one heard by a Judge of the High Court save that if by law such power or order cannot be exercised or given by an arbitrator then, and then only, should the parties refer such matter to an appropriate Court.

17. THE AWARD

17.1 The arbitrator must give his/her award within thirty days after finalisation of the proceedings unless the parties otherwise agree or unless the AFSA Secretariats permits an extension of that time.

17.2 The arbitrator's award must be published to the parties in an appropriate fashion as determined by the AFSA Secretariat.

17.3 Unless the parties have in writing instructed the AFSA Secretariat otherwise at any time before the final award is given, there shall be no right of appeal from the award. In cases where the AFSA Secretariat has been instructed otherwise, the appeal provisions contained in Article 22 of the AFSA Rules for Commercial Arbitrations will apply.

18. NON-LIABILITY OF AFSA-SARIPA DIVISION, THE SECRETARIAT AND THE ARBITRATOR

The AFSA-SARIPA Division and its Secretariat shall not be liable to any party for any act or omission relating to an arbitration conducted under its aegis, and shall have no liability or responsibility towards the parties or to any arbitrator in respect of any arbitration commenced under the aegis of the AFSA-SARIPA

Division but not completed according to these Rules. An arbitrator appointed by the AFSA-SARIPA Division shall not be liable for any act or omission relating to an arbitration in which he or she was the arbitrator, except in the case of deliberate misconduct.