
BUSINESS RESCUE PLAN PREPARED AND PUBLISHED IN TERMS OF SECTION

150 OF THE COMPANIES ACT 71 OF 2008 (as amended)



in relation to

AFRIC OIL PROPRIETARY LIMITED

(Registration No. 1995/001866/07)

(in business rescue)

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(Business Rescue Practitioner)



with the
assistance of



Legal Advisors to Business Rescue
Practitioners

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INTRODUCTION

- THIS DOCUMENT IS IMPORTANT AND REQUIRES THE IMMEDIATE ATTENTION OF ALL AFFECTED PERSONS. IF ANY AFFECTED PERSON IS IN ANY DOUBT AS TO THE IMPACT OF THIS BUSINESS RESCUE PLAN OR THE EFFECT IT WILL HAVE ON ITS IMPLEMENTATION, AND THE ACTION IT SHOULD TAKE, THE AFFECTED PERSON SHOULD CONSULT ITS OWN INDEPENDENT PROFESSIONAL ADVISERS.
- THIS IS A BUSINESS RESCUE PLAN PREPARED AND PUBLISHED IN TERMS OF SECTION 150 OF THE COMPANIES ACT. EACH AFFECTED PERSON IS RESPONSIBLE FOR ASSESSING THE MERITS OF THIS BUSINESS RESCUE PLAN WITH RESPECT TO ITS CLAIM AND/OR SHAREHOLDING IN THE COMPANY.
- THIS DOCUMENT CONTAINS THE TERMS AND CONDITIONS OF A BUSINESS RESCUE PLAN FOR THE COMPANY WHICH, IF ADOPTED BY THE REQUISITE STATUTORY MAJORITY OF CREDITORS AND, IF REQUIRED, SHAREHOLDERS, SHALL, UPON THE FULFILMENT OF THE CONDITIONS OF IMPLEMENTATION AS SET OUT IN THIS DOCUMENT, BECOME BINDING ON THE COMPANY, ITS CREDITORS AND SHAREHOLDERS.
- THIS BUSINESS RESCUE PLAN IS DIVIDED INTO THE FOLLOWING SECTIONS:
 - this introduction, followed by the interpretation and preliminary section.
 - Part A: Background (section 150(2)(a) of the Companies Act).
 - Part B: Proposals (section 150(2)(b) of the Companies Act).
 - Part C: Assumptions and Conditions (section 150(2)(c) of the Companies Act).
 - Part D: Administrative Provisions.
 - BRP's certificate.
 - Part A will set out the general background and statutory information of the Company, a summary of material events in its Business Rescue and the factors that resulted in the Company becoming Financially Distressed and being placed under Business Rescue.
 - Part B sets out the terms of the Business Rescue Plan and the options extended to Creditors and Shareholders as opposed to the Company being placed into liquidation.

- Part C sets out the conditions that must be fulfilled for this Business Rescue to become effective and binding and financial information, actual and projected, relating to the Company.
- Part D sets out certain administrative provisions relevant to this Business Rescue Plan.
- BUSINESS RESCUE IS AIMED AT FACILITATING THE REHABILITATION OF COMPANIES THAT ARE FINANCIALLY DISTRESSED BY PROVIDING FOR THE DEVELOPMENT AND IMPLEMENTATION, IF APPROVED, OF A PLAN TO RESCUE A COMPANY BY RESTRUCTURING ITS AFFAIRS, BUSINESS, PROPERTY, DEBT AND OTHER LIABILITIES, AND EQUITY IN A MANNER THAT MAXIMISES THE LIKELIHOOD OF THE COMPANY CONTINUING ITS EXISTENCE ON A SOLVENT BASIS, ALTERNATIVELY, IN THE EVENT THAT IT IS NOT POSSIBLE FOR A COMPANY TO SO CONTINUE ITS EXISTENCE ON A SOLVENT BASIS, THAT WOULD RESULT IN A BETTER RETURN FOR ITS CREDITORS OR SHAREHOLDERS THAN WOULD RESULT FROM THE IMMEDIATE LIQUIDATION OF SUCH COMPANY.
- THIS BUSINESS RESCUE PLAN IS AIMED AT ACHIEVING THE OBJECTIVES OF BUSINESS RESCUE. IN SIMPLE TERMS, AND WITHOUT DEROGATING OR SIMPLIFYING THE ESSENCE OF THE BUSINESS RESCUE PLAN AS CONTAINED IN THIS DOCUMENT, THE PROPOSAL PUT FORWARD IN THIS BUSINESS RESCUE PLAN IS AS FOLLOWS:
 - FIRSTLY, AN ACCELERATED SALES PROCESS WHEREBY THE SHAREHOLDING IN THE COMPANY, ALTERNATIVELY, THE BUSINESS AND ALL ITS ASSETS ARE DISPOSED OF OR SOLD TO A PREFERRED BIDDER, AND
 - SECONDLY, A WIND-DOWN PROCESS WHEREBY ALL OR PARTS OF THE COMPANY'S ASSETS ARE SOLD BY PRIVATE TREATY OR PUBLIC AUCTION SO AS TO ACHIEVE A BETTER RETURN OR OUTCOME FOR CREDITORS AS OPPOSED TO A WIND-DOWN OF THE COMPANY IN A LIQUIDATION.
- THE BRPs BELIEVE THAT THIS BUSINESS RESCUE PLAN SHALL, UPON ITS IMPLEMENTATION, ACHIEVE A BETTER RETURN FOR CREDITORS THAN WOULD RESULT FROM AN IMMEDIATE LIQUIDATION OF THE COMPANY.
- THIS BUSINESS RESCUE PLAN IS BASED ON INFORMATION PROVIDED TO THE BRPs BY MANAGEMENT. IN COMPILING THIS BUSINESS RESCUE PLAN, THE

BRPs ACCEPTED AND RELIED UPON REPRESENTATIONS AND THE AUTHENTICITY OF ALL DOCUMENTS PROVIDED TO THEM AND TO THEIR ADVISORS. SHOULD IT BECOME NECESSARY TO MAKE REPRESENTATIONS AND DOCUMENTS REFERRED TO IN THIS BUSINESS RESCUE PLAN AVAILABLE IN ANY LEGAL PROCEEDINGS CONNECTED TO OR ARISING FROM THE PUBLICATION OF THIS BUSINESS RESCUE PLAN, THE AUTHORS OF OR THOSE WITH KNOWLEDGE OF THE REPRESENTATIONS AND DOCUMENTS WOULD HAVE TO CONFIRM THESE IN THE LEGAL PROCEEDINGS.

- NOTHING CONTAINED IN THIS BUSINESS RESCUE PLAN SHALL CONSTITUTE TAX, ACCOUNTING OR LEGAL ADVICE TO ANY AFFECTED PERSON, AND THE BRPs DO NOT MAKE ANY REPRESENTATIONS IN RESPECT THEREOF, OTHER THAN AS MAY BE EXPRESSLY STATED IN THIS BUSINESS RESCUE PLAN.
- THE BRPs SHALL NOT BE RESPONSIBLE FOR ACTS TAKEN (OR OMISSIONS) ARISING FROM ANY AFFECTED PERSON'S RELIANCE ON THIS BUSINESS RESCUE PLAN.
- ONCE THIS BUSINESS RESCUE PLAN IS ADOPTED, IT SHALL BE BINDING ON THE COMPANY, CREDITORS AND SHAREHOLDERS, WHETHER OR NOT ANY OF THEM WAS PRESENT AT A MEETING CONVENED IN TERMS OF THE COMPANIES ACT, VOTED IN FAVOUR OF ITS ADOPTION OR, IN THE CASE OF CREDITORS, HAD PROVEN THEIR CLAIMS AGAINST THE COMPANY.

[END OF SECTION]

1. INTERPRETATION AND PRELIMINARY

The headings of paragraphs in this Business Rescue Plan are for the purpose of convenience and reference only and shall not be used in the interpretation of or modify or amplify the terms of this Business Rescue Plan nor any paragraph hereof. Unless a contrary intention clearly appears:

1.1. words importing –

1.1.1. any one gender includes the other gender;

1.1.2. the singular includes the plural and *vice versa*; and

1.1.3. any person includes a natural or juristic person, firm, company, corporation, government, state, agency or organ of state, association, trust or partnership (whether or not having separate legal personality);

1.2. the following terms and/or expressions shall have the meanings assigned to them hereunder and cognate expressions shall have corresponding meanings –

1.2.1. “**Absa**” means Absa Bank Limited (Registration Number: 1986/004794/06), a company with limited liability incorporated in accordance with the Companies Act, carrying on business as a registered bank;

1.2.2. “**Accelerated Sales Proceeds**” means the proceeds generated from the Accelerated Sales Process, as defined in paragraph 15.3.1;

1.2.3. “**Adoption Date**” means the date upon which this Business Rescue Plan is approved in accordance with section 152(2) and section 152(3)(c)(ii) of the Companies Act or, if rejected as contemplated in section 152(3)(a) or section 152(3)(c)(ii)(bb) of the Companies Act, the date on which a court sets aside the result of the vote by holders of voting interests of Creditors and/or Shareholders, as the case may be, on the grounds that it was inappropriate;

1.2.4. “**Advisors**” means the advisors to the BRPs, namely Mazars, Rams and their respective employees or representatives;

1.2.5. “**Affected Person**” or “**Affected Persons**” shall bear the meaning ascribed to it in section 128(1)(a) of the Companies Act and, in relation to the Company, means Shareholders, Creditors, Employees (including labour brokers) and any registered trade union representing employees of the Company;

- 1.2.6. **“Afric Oil Congo”** means Afric Oil Congo S.A.R.L, Registration Number 01-131-N11651S, a company incorporated in accordance with the laws of Democratic Republic of Congo;
- 1.2.7. **“Afric Oil Holdings”** means Afric Oil Holdings Proprietary Limited previously known as Pembani Oil, Registration Number 2006/037679/07, a company incorporated in accordance with the laws of South Africa;
- 1.2.8. **“Afric Oil Logistics”** means Afric Oil Logistics Proprietary Limited, Registration Number 2016/324794/07, a company incorporated in accordance with the laws of South Africa, currently under business rescue;
- 1.2.9. **“Afric Oil Mauritius”** means Afric Oil Mauritius, Company Number: 122497 C1/GBL, a company incorporated as a Private Company limited by shares in accordance with the laws of Republic of Mauritius;
- 1.2.10. **“Afric Oil Petroleum”** means Afric Oil Petroleum (Private) Limited, Registration Number 9709/2004, a company incorporated in accordance with the laws of Zimbabwe;
- 1.2.11. **“Afric Oil Zambia”** means Afric Oil Zambia Limited, Registration Number 120160003668, a company limited by shares incorporated in accordance with the laws of the Republic of Zambia;
- 1.2.12. **“BRPs”** means the business rescue practitioners appointed in terms of section 129 of the Companies Act, being Mkhombo and Singo, operating from premises situated at Eco-Fusion Office Park, Phase 4, Block A, Unit A06, First Floor, 300 Witch-Hazel Street, Eco Park, Highveld Ext59, Centurion;
- 1.2.13. **“Boland Diesel”** means Boland Diesel Proprietary Limited, Registration Number 2012/050748/07, a company incorporated in accordance with the laws of South Africa;
- 1.2.14. **“Business”** means the marketing, selling and distribution of diesel, petrol, paraffin and lubricants to a diverse client base in agriculture, mining, transport, manufacturing, government and general industry;
- 1.2.15. **“Business Day”** means any day other than a Saturday, Sunday or official public holiday in South Africa and **“Business Days”** has a corresponding meaning;

- 1.2.16. **“Business Rescue”** means proceedings under chapter 6 of the Companies Act to facilitate the rehabilitation of a company, which is Financially Distressed, as more fully set out in the Introduction section earlier in this document and defined in section 128(1)(b) of the Companies Act;
- 1.2.17. **“Business Rescue Costs”** means the remuneration and expenses of the BRPs (including, without limitation, all and any legal costs and expenses incurred by the BRPs in the Business Rescue) and all other claims arising out of the costs of the Business Rescue, including without limitation to legal costs and other costs of the Advisors;
- 1.2.18. **“Business Rescue Plan”** means this document together with all of its annexures, as amended from time to time, prepared and published by the BRPs for consideration and adoption by Creditors in accordance with section 150 of the Companies Act;
- 1.2.19. **“CCMA”** means the Commission for Conciliation, Mediation and Arbitration established in terms of section 112 of the LRA;
- 1.2.20. **“CIPC”** means the Companies and Intellectual Property Commission, established in terms of section 185 of the Companies Act;
- 1.2.21. **“Claims”** means any claim of whatsoever nature and howsoever arising against the Company, including a Secured, Preferent or Concurrent Claim as envisaged in terms of the Insolvency Act, the origin, cause of action or agreement in respect whereof arose or was concluded before the Substantial Implementation Date (and including each claim contemplated in this Business Rescue Plan) and without in any way derogating from the generality of the foregoing, shall include an actual, contingent, prospective, conditional or unconditional, liquidated or unliquidated, assessed or unassessed claim, whether due or yet to fall due for payment or performance, including any claim the origin of which arose from statute, regulation or other legislation or arising out of any contract and/or agreement entered into before the Commencement Date and cancelled thereafter and, in no way derogating from the generality of the foregoing, shall include any Claim for Tax or Taxation;
- 1.2.22. **“Company”** means Afric Oil Proprietary Limited, Registration Number 1995/001866/07, a company incorporated in accordance with the laws of South Africa, currently under business rescue;

- 1.2.23. **"Compensation Fund"** means the Compensation Fund, a fund created in terms of the Compensation for Injuries and Diseases Act, No. 130 of 1993;
- 1.2.24. **"Commencement Date"** means 19 April 2021, being the date upon which Business Rescue commenced in accordance with section 129, read with section 132(1)(a)(i), of the Companies Act;
- 1.2.25. **"Companies Act"** means the Companies Act, 2008 (as amended) including the regulations promulgated thereunder;
- 1.2.26. **"Concurrent Claim"** means any Claim (other than a Disputed Claim) which is unsecured and enjoys no preference in accordance with the Insolvency Act and **"Concurrent Creditor"** has the corresponding meaning;
- 1.2.27. **"Contracts"** means any right, title or interest of the Company in any contract, agreement or understanding entered into between the Company and a person before the Commencement Date;
- 1.2.28. **"Costs"** means the costs associated with:
- 1.2.21.1 the Business Rescue, including, without limitation, the remuneration and expenses of the BRPs, any claim arising out of the costs of the Business Rescue, and any other costs whatsoever incurred during the Business Rescue; and
 - 1.2.21.2 Any PCF Employee and PCF creditor claims;
- 1.2.29. **"Creditors"** means all persons, including legal entities and natural persons, having Claims accepted as such by the BRPs as at the Commencement Date and for the period of the Business Rescue, as envisaged in the Insolvency Act, but not a Creditor with a Disputed Claim or claims that can be regarded as a PCF Claim or as being costs of or an expense of the Business Rescue;
- 1.2.30. **"Creditors' Committee"** means a creditors' committee, contemplated in terms of section 145(3) of the Companies Act;
- 1.2.31. **"Directors"** means the directors of the Company as at the Commencement Date;

- 1.2.32. "**Disputed Claim**" means any Claim which may have been lodged with the BRPs during Business Rescue and which Claim has been rejected either in whole or in part, including, *inter alia*, the Claims listed in **Annexure C**;
- 1.2.33. "**Disputed Creditors**" means persons who have Disputed Claims or alleged that they are Creditors or who dispute the amount for which their Claims are reflected in **Annexure B** or who dispute the class in which they are reflected in **Annexure B** and/or who dispute the existence, extent, nature and/or value of their security as reflected in **Annexure B**;
- 1.2.34. "**Dispute Resolution Mechanism**" means the dispute resolution mechanism set out in this Business Rescue Plan;
- 1.2.35. "**Distribution/s**" means the respective payments to be made to Creditors by the BRPs, to discharge their Claims, in accordance with the terms and conditions of this Business Rescue Plan;
- 1.2.36. "**Efora**" means Efora Energy Limited, Registration Number 1993/000460/06, a company with limited liability incorporated in accordance with the laws of South Africa;
- 1.2.37. "**Employees**" means all persons employed by the Company as at the Commencement Date and who remain employed at the Adoption Date;
- 1.2.38. "**Employees' Committee**" means the committee established on 29 April 2021 in terms of section 144(3)(c) of the Companies Act, to be used for the purposes of consulting with the Employees on matters relating to the Business Rescue;
- 1.2.39. "**Employees Contracts**" means any right, title or interest of the Company in any contract, agreement or understanding entered into before the Commencement Date between the Company and any Employee for the employment of such Employee by the Company as an Employee;
- 1.2.40. "**Encumbrance**" means any claim, charge, mortgage, lien, burden, option, pledge, security, withholding, retention of title, right of pre-emption, right of first refusal or other third-party rights or claims, restrictions on the free transferability or security interest or an agreement, arrangement or obligation to create any of the foregoing;

- 1.2.41. **“Engen”** means Engen Petroleum Limited, Registration Number 1989/003754/06, a company incorporated in accordance with the laws of South Africa;
- 1.2.42. **“Expunged”** means the full and final discharge and extinguishing of Claims, or portions of Claims in terms of this Business Rescue Plan, and which Claims, or portions of Claims, are consequently no longer enforceable and recoverable, save and except as set out in this Business Rescue Plan;
- 1.2.43. **“Financially Distressed”** shall bear the same meaning ascribed to this term in section 128(1)(f) of the Companies Act;
- 1.2.44. **“Final Claims Date”** means the final date for the filing of Claims, being 30 (thirty) days from the Adoption Date;
- 1.2.45. **“FNB”** means First National Bank, a division of FirstRand Bank Limited, Registration Number: 1929/001225/06, a company with limited liability incorporated in accordance with the Companies Act, carrying on business as a registered bank;
- 1.2.46. **“Forever Fuels”** means Forever Fuels, a division of the Company located in Randfontein and a bulk distributor of petrol, diesel and illuminating paraffin to the mining, agriculture, commercial and retail industries;
- 1.2.47. **“Genesis”** means Genesis Corporate Solutions Proprietary Limited, Registration Number 2016/479741/07, a company incorporated in accordance with the laws of South Africa, herein represented by Mkhombo;
- 1.2.48. **“Group”** means the group of companies related to the Company;
- 1.2.49. **“Insolvency Act”** means the Insolvency Act, 1936 (as amended);
- 1.2.50. **“LRA”** means the Labour Relations Act, 1995 (as amended);
- 1.2.51. **“Management”** means the management team of the Company, including the Company's directors, who had, and continue to have, the delegated and supervised responsibility of managing the day-to-day operations of the Company as at the Commencement Date;

- 1.2.52. **“Management Restructuring Plan”** means the plan developed by Management for the restructuring of the Company prior to the commencement of Business Rescue;
- 1.2.53. **“Mazars Recovery and Restructuring”** means Mazars Recovery and Restructuring Proprietary Limited, with their business address at Mazars House, Glenhove Road, Melrose Estate, Johannesburg, 2196, Gauteng;
- 1.2.54. **“Mkhombo”** means Phahlani Lincoln Mkhombo, a business rescue practitioner as defined in section 128(1)(d) read with Regulation 126 to the Companies Act, a director of Genesis;
- 1.2.55. **“Nedbank”** means Nedbank Limited, Registration Number: 1951/000009/06, a company with limited liability incorporated in accordance with the Companies Act, carrying on business as a registered bank;
- 1.2.56. **“Notice of Meeting”** means the notice of meeting to all Affected Persons as contemplated in terms of section 151(2) of the Companies Act;
- 1.2.57. **“Ordinary Shares”** means shares with a R1 no par value issued by the Company;
- 1.2.58. **“PCF”** means post-commencement finance obtained by the Company, as authorised by the BRPs in terms of section 135 of the Companies Act, after Commencement Date;
- 1.2.59. **“PIC”** means the Public Investment Corporation SOC Limited, a state-owned company (Registration Number: 2005/0090984/06), acting in the sole capacity as representative for and on behalf of the Compensation Fund and the UIF;
- 1.2.60. **“Post-commencement Claims”** means any claim against the Company, the cause of action in respect of which arose after the Commencement Date;
- 1.2.61. **“Post-commencement Creditors”** means all persons, including legal entities and natural persons, having Post-commencement Claims;
- 1.2.62. **“Pre-commencement Claims”** means any claim against the Company, the cause of action which arose prior to the Commencement Date;
- 1.2.63. **“Pre-commencement Creditors”** means all persons, including legal entities and natural persons, having Pre-commencement Claims;

- 1.2.64. **“Pre-commencement Secured Creditors”** means all Pre-commencement Creditors holding security for their Claims;
- 1.2.65. **“Preferent Claim”** means any Claim (other than a Disputed Claim) which is preferent in accordance with the provisions of the Insolvency Act and **“Preferent Creditor”** has the corresponding meaning;
- 1.2.66. **“Proposal”** means the proposal to rescue the Company, being firstly the Accelerated Sales Process, and secondly, the structured Wind-Down Process, more fully dealt with in Part B of this Business Rescue Plan;
- 1.2.67. **“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 30 July 2021;
- 1.2.68. **“Rams”** means Rams Attorneys, attorneys practising as such at 70 Grayston Drive, Sandton, Johannesburg;
- 1.2.69. **“Rand”** or **“R”** or **“ZAR”** means the lawful currency of South Africa;
- 1.2.70. **“Receivable”** means any claim of whatsoever nature which the Company has as at the Commencement Date against any person indebted to it and includes any bank balances and deposits, and any claim of whatsoever nature against SARS;
- 1.2.71. **“Receiver”** means the receivers to be appointed in terms of paragraph 24, being Mkhombo and Singo;
- 1.2.72. **“Receivership”** means the process which will commence on the Adoption Date, more fully dealt with in paragraph 24;
- 1.2.73. **“Receivership Administration Expenses”** means the remuneration and expenses of the Receivers and other claims arising out of the costs of the Receivership;
- 1.2.74. **“Sales Process”** means the sales process embarked upon by the BRPs to rescue the Company, comprising the Accelerated Sales Process and the Wind-Down Process, more fully dealt with in paragraph 17 and 18 of this Business Rescue Plan;
- 1.2.75. **“SARS”** means the South African Revenue Services;

- 1.2.76. **“Section 151 Meeting”** means the meeting to determine the future of the company as contemplated in terms of section 151 of the Companies Act;
- 1.2.77. **“Secured Claim”** means any Claim (other than a Disputed Claim) which would be secured in accordance with the Insolvency Act and **“Secured Creditors”** has the corresponding meaning;
- 1.2.78. **“Shareholders”** means the shareholders of the company at the Commencement Date;
- 1.2.79. **“Singo”** means Nndingeni Moses Singo, a business rescue practitioner as defined in section 128(1)(d) read with Regulation 126 to the Companies Act, a partner of Genesis;
- 1.2.80. **“South Africa”** means the Republic of South Africa;
- 1.2.81. **“Substantial Implementation Date”** means the date upon which the BRPs file with CIPC, a notice of substantial implementation of the Business Rescue Plan, whereupon Business Rescue will terminate in terms of section 132(2)(c)(ii) once all the transaction agreements have been concluded and the purchase consideration received and Distribution made in respect of the Accelerated Sales Process. However, in respect of the Wind-Down Process, Substantial Implementation Date will be the date upon which the BRPs have successfully disposed of all the Company’s assets and the Distribution made in accordance with the sanctioned Business Rescue Plan;
- 1.2.82. **“Tax/Taxation”** means:
- 1.2.82.1. levies payable to government authorities;
 - 1.2.82.2. normal taxation;
 - 1.2.82.3. capital gains tax;
 - 1.2.82.4. value-added tax;
 - 1.2.82.5. any taxation arising from new assessments of taxation and/or the reopening of any income tax assessments of the Company for any period prior to the Commencement Date;
 - 1.2.82.6. donations tax;

- 1.2.82.7. customs duty;
 - 1.2.82.8. securities transfer tax;
 - 1.2.82.9. all Pay-As-You-Earn taxation (PAYE) not paid over;
 - 1.2.82.10. all other forms of taxation, other than deferred tax; and
 - 1.2.82.11. any penalties or interest on any of the afore going.
- 1.2.83. **“UIF”** means the South African Unemployment Insurance Fund (a fund established in terms of section 4 of the Unemployment Insurance Act, 2001);
- 1.2.84. **“UIF Loan”** means the written loan agreement concluded between the UIF and the Company on 3 February 2017 in terms of which the UIF agreed to lend and advance an amount up to R210 000 000.00 for the acquisition of the Forever Fuels transaction, capital expansion or growing the logistics network, recapitalization of Afric Oil Petroleum and to fund the Company’s working capital requirement; and
- 1.2.85. **“VAT”** means the value-added tax levied in terms of the Value-Added Tax Act, No. 89 of 1991, as amended.
- 1.3. any reference in this Business Rescue Plan to:
- 1.3.1. a paragraph is a reference to the relevant paragraph of this Business Rescue Plan;
 - 1.3.2. a Part is a reference to the relevant part of this Business Rescue Plan;
 - 1.3.3. any section is a reference to that section in the Companies Act unless it is otherwise indicated in which event it shall be a reference to that legislation;
 - 1.3.4. any section of the Insolvency Act is a reference to such section as read with chapter 14 of the Companies Act, 1973 and item 9 of schedule 5 of the Companies Act;
 - 1.3.5. 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;

- 1.3.6. 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;
- 1.3.7. where any term is defined in this Business Rescue Plan within a particular paragraph other than this paragraph 1, that term shall bear the meaning ascribed to it in that paragraph wherever it is used in this Business Rescue Plan;
- 1.3.8. 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;
- 1.3.9. any reference to days (other than a reference to Business Days), months or years shall be a reference to calendar days, months or years, as the case may be; and
- 1.3.10. words or terms that are capitalised and not otherwise defined in the narrative of this Business Rescue Plan (excluding capitalised words or terms used for the purpose of tables) shall bear the meaning assigned to them in the Companies Act.

[END OF SECTION]

PART A – BACKGROUND

2. COMPANY INFORMATION

2.1 Shareholding Structure

As at the Publication Date:

2.1.1 the authorised share capital of the Company is 4000 Ordinary No Par Value Shares;

2.1.2 the issued share capital of the Company is 2695 Ordinary No Par Value Shares, all of which are held and beneficially owned as follows:

Name of Shareholder	Shareholding	Number of Shares
Afric Oil Holdings (Pty) Ltd	71.13%	1917
Compensation Fund	28.87%	778

2.1.3 the Company holds the following direct and indirect interests (controlling or otherwise) in any other Company as at Publication Date.

Name of Company	Shareholding
Afric Oil Congo SARL	100%
Afric Oil Logistics (Pty) Limited	100%
Afric Oil Mauritius Private Company Limited	100%
Afric Oil Zambia Limited	100%
Boland Diesel (Pty) Ltd	100%

2.2 Directors

2.2.1 As at the Publication Date, the Directors are:

Name of Director	Active or Resigned	Date of Appointment
Ahlben Dale Phillipus	Active	26 January 2021
Kholofelo Kgongwedi Dorcas Masoga	Active	08 March 2010
Xoliswa Florence Eugenia Kula	Active	10 March 2020

2.2.2 None of the Directors have resigned since the Commencement Date and, according to the records of CIPC, all the Directors listed in paragraph 2.2.1 remain in office as at the Publication Date.

2.3 Company Information

Financial Year End:	February
Registered Business Address and Head Office:	2 nd Floor, Building 11, Design Quarters Street, Leslie Avenue, Fourways 2191
Auditors:	SizweNtsalubaGobodo Grant Thornton Inc Audit Partner: Gerard Bramie Musthan

3. COMPANY BACKGROUND

3.1. Background to the Company

- 3.1.1` As South Africa reinvented itself as a democracy, a watershed event in 1994, there was an unspoken consensus that other spheres of society had to transform. The South African business landscape was destined to change dramatically. Soon enough, a raft of black-owned companies set up in a range of industries. One of those companies, Worldwide African Investment Holdings (WAIH), started out as an investment company with an appetite for greatness and a forward-thinking approach.
- 3.1.2 The following year, in September 1995, WAIH set up its first company, Afric Oil, after inking an empowerment deal with Caltex – a first in the industry. The Company was founded in 1995 by Pembani Group (previously known as WAIH) whose founders were a group of entrepreneurs who saw a gap in the petroleum sector in which a black company could operate and flourish. The Company is currently owned 71.13% by Afric Oil Holdings with the remaining 28.87% being held by the Compensation Fund.
- 3.1.3 The Company is operating in the highly competitive fuel wholesale market as a supplier of diesel, petrol and illuminating paraffin. It is also the first emerging oil company to consistently transport refined product through Transnet Pipeline (Durban – Johannesburg) and this provided the company with additional flexibility in meeting customers' delivery needs in Gauteng and beyond.
- 3.1.4 As part of growth and development of the Northern and Western Cape market, the Company acquired Boland Diesel in 2014. Boland Diesel is owned by the Company and consists of land and buildings of 9000sqm in Moorreesburg and storage facility of 863 kilolitres – mainly of diesel and petrol. Boland Diesel owns a fleet of tankers – used to transport fuel to its customers. The facility supplies customers in Namibia and the West Coast.
- 3.1.5 In February 2017, the Company acquired Forever Fuels as part of its expansion strategy. Forever Fuels is a bulk distributor of petrol, diesel and illuminating paraffin to the agricultural, commercial and retail industries. It is located in Randfontein and operates as a division of the Company. It owns a fleet of 33 trucks, 3 of which are 18000 litres rigids and a fully-fledged workshop for servicing and maintenance of fleet. The distribution network by Forever Fuels covers an area ranging from the South to the North of Gauteng and reaches the Limpopo Province and the Northern Cape.

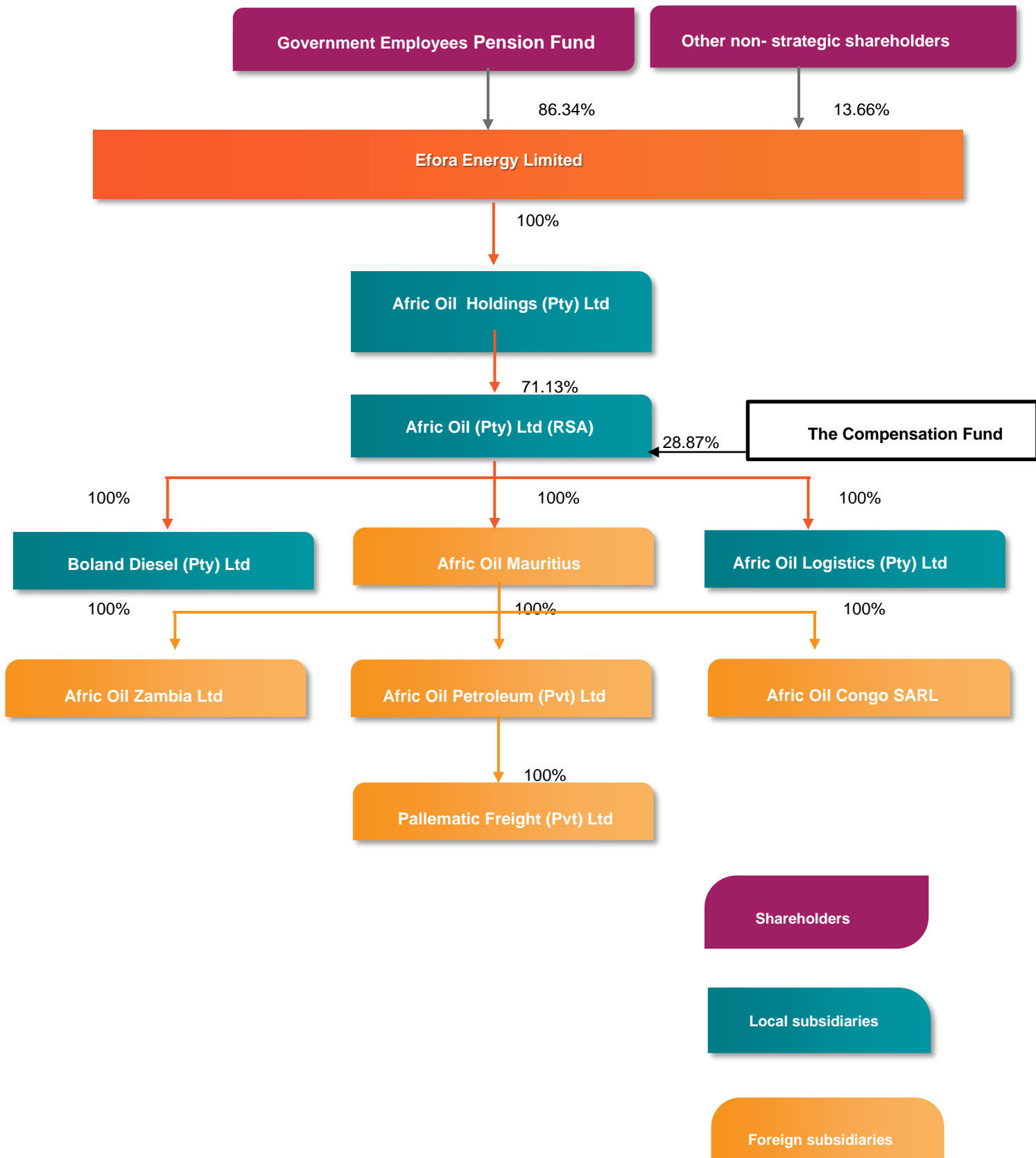
3.1.6 As at the Commencement Date the Company employed approximately 55 employees including employees at Boland Diesel and Forever Fuels. In addition, the Company is a shareholder of the following subsidiaries:

- Afric Oil Congo;
- Afric Oil Logistics,
- Afric Oil Mauritius;
- Afric Oil Zambia; and
- Boland Diesel.

Afric Oil Mauritius owns Afric Oil Petroleum, a Zimbabwean company.

3.1.7 As stated above, the Company is owned by Afric Oil Holdings which holds 71.13% shares in the Company and the Compensation Fund which holds 28.87% shares in the Company since 2014. 100% of the shareholding in Afric Oil Holdings was acquired in June 2017 by Efora.

3.1.8 Set out hereunder is a simplified group organogram:



3.2. Background to the Company's Financial Distress

3.2.1 The main reasons for the Company becoming Financial Distressed, can be summarised as follows:

3.2.1.1 The Company recorded losses of R72m, R108m, R143m and R128m in the financial years ending 2016, 2018, 2019 and 2020 respectively, after a sustained period of poor operational performances and burdened with an unaffordable interest and capital repayment obligations that further depleted much needed working capital to sustain the business. A repositioning of the Company's strategic direction commenced in financial year 2021. This strategy was to drive alternative revenue streams and present more opportunities for products and services offering healthier margins.

3.2.1.2 The financial performance and the ability to deliver on the repositioning of the Company and its group of companies was adversely impacted by numerous events that took place during 2021 financial year. The Covid-19 pandemic introduced new challenges to the Company and its subsidiaries. The hard lockdown commenced at the end of March 2020 and this drastically reduced the demand for fuel products as most businesses were restricted from operating except those that were deemed as essential service providers. The Company was identified as an essential service provider through its role in the Fuels industry.

3.2.1.3 The turnover in the first month of the lockdown declined sharply from R158m for the month of March 2020 to R59m in April 2020, reflecting the drastic impact of low fuel demand which was further impacted by fuel supply shortages during the same period. The activity steadily recovered between June and September 2020. At the same time, one of the key customer contracts expired and consequently, this further contributed to the Company's poor financial performance from October to December 2020.

3.2.1.4 The Management prepared an adjusted forecast which took into account the adjusted expected performance of the Company given the impact of the national lockdown on the economy. The adjusted forecast also assumed that the operating performance would be in line with the forecast and that the UIF Loan would be restructured, and a significant portion thereof would be converted into equity.

3.2.1.5 By December 2020, the actual performance was 59% worse than what was budgeted. The assumptions underpinning the budgets were not realised. Gross margin performance reduced in line with the decline in volumes. However, better sourcing opportunities were identified and utilised and these offered some protection from margin deterioration. Despite the implementation of these initiatives the benefit derived was offset by the fixed monthly rental obligation for fuel handling and storage to Vopak, irrespective of utilisation. Overall gross margin performance was 56% lower than budgeted.

3.2.1.6 The total liabilities of the Company and its subsidiaries measured at fair value exceeded the fair value of assets as at 31 December 2020. As a result, the Company and its subsidiaries were technically insolvent. The financial position of the Company was substantially affected by the impairment of assets and the continuing inability to service debt commitments as they became due and payable during the 2021 financial year. This was as a result of weak operating performance because of difficult trading environment, shortage of product, loss of key a customer and staff; and lockdown restrictions as a result of Covid-19.

3.2.1.7 Accordingly, the aforesaid factors resulted in the Company becoming financially distressed and accordingly the board resolved to commence voluntary business rescue proceedings on 16 April 2021.

4. SUMMARY OF THE BUSINESS RESCUE

4.1. Introduction and Business Rescue Timeline

4.1.1. Business Rescue, as defined in section 128(1)(b), refers to proceedings to facilitate the rehabilitation of a company that is Financially Distressed by providing for –

4.1.1.1. the temporary supervision of a company by one or more business rescue practitioners, and of the management of its affairs, business and property by the appointed business rescue practitioner/s;

4.1.1.2. a temporary moratorium on the rights of claimants against a company or in respect of property in its possession; and

- 4.1.1.3. the development and implementation, if approved, of a plan to rescue the company in question by restructuring its affairs, business, property, debt and other liabilities, and equity in a manner that maximises the likelihood of the company in question continuing in existence on a solvent basis or, if it is not possible for the company to so continue in existence, results in a better return for the company or creditors or shareholders than would result from the immediate liquidation of the company.
- 4.1.2. The objective of Business Rescue in a general sense is the development and implementation, if approved, of a Business Rescue Plan which:
- 4.1.2.1. rescues a 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; or
- 4.1.2.2. results in a better return for the company's creditors and/or shareholders than would result from the immediate liquidation of the company.
- 4.1.3. The following summary sets out the salient dates on which certain events have taken and will take place during Business Rescue proceedings –

Event	Date
Board Resolution to commence Business Rescue filed with CIPC	19 April 2021
BRPs appointed	22 April 2021
First Employees' meeting	29 April 2021
First Creditors' meeting	30 April 2021
Publication of Business Rescue Plan	30 July 2021
Publication of Notice of Meeting to consider the Business Rescue Plan (in terms of section 151 of the Companies Act)	30 July 2021
Section 151 meeting to consider published Business Rescue Plan	12 August 2021

- 4.1.4. All notices that have been published and circulated to Affected Persons during this Business Rescue can be accessed from the Company's website, being www.africoil.co.za.

5. STEPS TAKEN SINCE THE APPOINTMENT OF THE BRPs

5.1. ADMINISTRATIVE MATTERS

5.1.1. Appointment of BRPs

The BRPs were appointed on 22 April 2021 in terms of section 129.

5.1.2. Management Control

In terms of section 140(1)(a), the BRPs took over full management control of the Company but, as they were entitled to do, delegated certain functions to Management in terms of section 140(1)(b).

5.1.3. Reporting to CIPC and Affected Persons

5.1.3.1. The BRPs have complied with all statutory obligations under chapter 6 of the Companies Act and will render, monthly reports to CIPC and Affected Persons as contemplated in section 132(3).

5.1.3.2. All other notices relevant to the Business Rescue are available on the Company's website (www.africoil.co.za).

5.1.4. Committee Meetings

It was agreed between the BRPs, the Directors of the Company and Management, that regular meetings would be held with the respective committees for purposes of providing updates on developments in the Business Rescue.

5.1.5. Mazars Recovery and Restructuring Appointed to Calculate Potential Liquidation Dividend

5.1.5.1. The BRPs appointed Mazars Recovery and Restructuring, a restructuring and insolvency practitioners, as an independent expert to: (i) calculate the potential liquidation dividend that

would have been realised if the Company had been placed into liquidation as at the Commencement Date, (ii) determine a fair and reasonable estimate of the return to each Secured Creditor, Preferent Creditor and Concurrent Creditor if the Company was liquidated.

5.1.5.2. Mazars Recovery and Restructuring's mandate is to act as independent experts.

5.1.5.3. As will more fully appear below, if the Company had been placed into liquidation as at the Commencement Date, Concurrent Creditors would have received a dividend of 0 (zero) cents in the Rand.

5.1.5.4. If the Company had been placed into liquidation as at Publication Date, Concurrent Creditors would have still received a dividend of 0 (zero) cents in the Rand.

5.1.5.5. The figures in the liquidation scenario take into account the costs of administration associated with liquidation, as calculated in terms of section 89 of the Insolvency Act.

5.1.5.6. Having regard to the liquidation scenario independently and expertly calculated by Mazars Recovery and Restructuring, the liquidation dividend that would accrue to all subordinated creditors of the Company would equally be 0 (zero) cents. Accordingly, the voting interest attached to the claims of subordinated creditors, in accordance with section 145 is 0%.

5.1.6. **Extension for Publication of Business Rescue Plan**

In terms of section 150(5), this Business Rescue Plan was required to be published within 25 (twenty-five) Business Days from the date of appointment of the BRPs. The BRPs obtained extensions from the Creditors, as contemplated in section 150(5)(b), for various reasons critical to the publication of a viable Business Rescue Plan, for the publication of the Business Rescue Plan firstly to 30 June 2021, and secondly to 31 July 2021.

5.1.7. Publication of Notice of Meeting and Business Rescue Plan

- 5.1.7.1. This Business Rescue Plan will be published to all Affected Persons on 30 July 2021.
- 5.1.7.2. Publication will take place in the following manner:
 - 5.1.7.2.1. via email to all known Creditors, to the extent that the email addresses of known Creditors are available to the BRPs;
 - 5.1.7.2.2. publication on the website of the Company (www.africoil.co.za);
 - 5.1.7.2.3. copies will be available at the registered office of the Company, at the reception area, from 08:00 to 16:00, between Mondays and Fridays; and
 - 5.1.7.2.4. copies will be available at the office of Genesis from Matimu Mandlhazi, from 08:00 to 17:00, between Mondays and Fridays.
- 5.1.7.3. The Notice of Meeting will be delivered to all Affected Persons simultaneously with the publication of the Business Rescue Plan.

5.1.8. Cash Resources

- 5.1.8.1. As at Commencement Date, the Company had R8 164 648.00 cash available in its bank accounts held with Absa, FNB and Nedbank. The funds were used to cover critical operating expenses.
- 5.1.8.2. The Company generates revenue through its normal trading activities which includes the sale and distribution of petroleum products to its customers.
- 5.1.8.3. In order to preserve and manage the already laced cash resources of the Company, the BRPs have implemented a process whereby all purchase orders and other expenses are

vetted before it is approved by management. Without the approval of the BRPs no payments can be made.

5.1.8.4. In addition, the BRPs have also implemented immediate cash relief initiatives and explored broader cost optimisation initiatives and suspension of identified onerous contracts concluded prior to the Commencement Date in terms of section 136 of the Companies Act.

5.2. EMPLOYEES

5.2.1 Employees' Meeting:

A first meeting of Employees, as contemplated in section 148, was held on 29 April 2021. During this meeting:

5.2.1.1 Business Rescue process was explained, and possible outcomes were presented, to the Employees;

5.2.1.2 assistance was also given to Employees by providing answers to various questions and concerns arising from Business Rescue process;

5.2.1.3 Employees expressed their support for Business Rescue and implored on the BRPs to rescue the Company.

5.2.2 Employees Committee:

5.2.2.1 At the first meeting of Employees, nominations were requested for the establishment of an Employees' Committee. Thereafter, an Employees Committee was established in accordance with the Employees' nominations.

5.2.2.2 The Employees Committee as at the Publication Date is set out below:

Name of Employee	Site
Peace Oompie	Head Office
Chadiko Mokonyane	Head Office

Name of Employee	Site
Malvern Mpofu	Head Office
Jacob Chikusa	Head Office
Linette Van Wyk	Boland
Mario Albertus	Boland
Juanita Green	Boland
JP Du Plessis	Forever Fuels
Nombulelo Malebo	Forever Fuels

5.2.2.3 The BRPs maintained contact with Employees through the Employees' Committee after the first meeting of Employees held on 29 April 2021 including having one on one sessions with all employees.

5.2.2.4 The Employees' Committee met with the BRPs on 27 May 2021, 28 June 2021, 08 July 2021 and 21 July 2021. In total, 4 (four) meetings of the Employees' Committee were held prior to the Publication Date.

5.2.3 Consultation During the Development of the Proposed Business Rescue Plan

5.2.3.1 On 27 May, 28 June 2021, 08 July 2021 and 21 July 2021, the BRPs consulted with, *inter alia*, representatives of the Employees' Committee on the development of the proposed Business Rescue Plan to:

5.2.3.1.1 enable them to make representations to the BRPs for consideration, subject to the BRPs' overall responsibility to publish a Business Rescue Plan which they regard as representing the best prospects of rescuing the Company as contemplated in the Companies Act; and

5.2.3.1.2 the BRPs requested the Employees' Committee to submit any questions in regard to the proposed Business Rescue Plan to enable the BRPs to consider same prior to the Publication Date.

5.2.4 Lay-off and Section 189 of the LRA Process

- 5.2.4.1 No Employee has been laid-off since the Commencement Date. However, the implementation of the Sales Process may lead to positions being declared redundant across various job categories and in significant numbers. This may, in turn, result in the dismissals of some of the Employees, for operational reasons subject to the outcome and implementation of the Sales Process.
- 5.2.4.2 It should be emphasised that no final decisions have yet been taken, nor will any final decisions be taken until the Employees and the Company have exhausted consultation (and hopefully achieved consensus).
- 5.2.4.3 However, should it transpire, after the adoption of the Business Rescue Plan or such earlier date determined by the BRPs in their sole discretion, that there is no interest in acquiring the Business as a going concern or acquire shares in the Company or certain assets through the Accelerated Sales Process, the BRPs shall immediately embark on an accelerated retrenchment process with shortened timelines as part of the Wind-Down Process envisaged in paragraph 18 in order to ensure that the retrenchment process is concluded expeditiously.
- 5.2.4.4 It is proposed that the Company will issue notices in terms of section 189(3) read together with section 189A of the LRA ("**section 189(3) notices**") to all Employees.
- 5.2.4.5 The issuance of the section 189(3) notices will be the first step in a statutory consultation process which, it is envisaged, will commence after the adoption of the Business Rescue Plan as part of the implementation of the Sales Process to ensure that the retrenchment process is concluded expeditiously.

5.2.4.6 The Company and the consulting parties will hold consultation meetings as scheduled.

5.2.4.7 The Company will consult with the consulting parties on all the issues set out in the section 189(3) notice, read with the provisions of section 189A, or by consensus, use their best endeavours to accelerate the consultation process in order to have the consultation and the retrenchment process concluded expeditiously.

5.3 CREDITORS

5.3.1 Creditors' Meeting:

5.3.1.1 A first meeting of Creditors, as contemplated in section 147 was convened on 30 April 2021.

5.3.1.2 At the first meeting of Creditors:

5.3.1.2.1 Business Rescue process was explained, and possible outcomes were presented to the Creditors;

5.3.1.2.2 assistance was also given to the Creditors by providing answers to various questions;

5.3.1.2.3 claims were submitted by some of the Creditors;

5.3.1.2.4 Creditors elected not to form a Creditors' Committee; and

5.3.1.2.5 Creditors voted in favour of the extension of the date of publication of the Business Rescue Plan to 30 June 2021.

5.3.1.3 The BRPs expressed the view that there was a reasonable prospect of rescuing the Company, subject to obtaining PCF and support from Creditors.

5.3.2 Consultation During the Development of the Proposed Business Rescue Plan

5.3.2.1 On 27 May 2021, 21 June 2021, 14 July 2021 and 27 July 2021, the BRPs consulted with, *inter alia*, representatives of some of the major Creditors and other Affected Persons on the development of the proposed Business Rescue Plan to:

5.3.2.1.1 Enable them to make representations to the BRPs for consideration, subject to the BRPs' overall responsibility to publish a Business Rescue Plan which they regard as representing the best prospects of rescuing the Company as contemplated in the Companies Act; and

5.3.2.1.2 Requested the Creditors and other Affected Persons to submit any questions in regard to the proposed Business Rescue Plan to enable the BRPs to consider same prior to the Publication Date.

5.4 LEGAL

5.4.1 Moratorium

5.4.1.1 The moratorium imposed by section 133 read with section 150(2)(b)(i) prohibits any legal proceedings, including enforcement actions, against the Company, or in relation to any property belonging to the Company or lawfully in its possession, from being commenced or being proceeded with for the duration of the Business Rescue of the Company.

5.4.1.2 This means that no person is entitled to proceed in any forum against the Company for non-payment of debts during the Business Rescue of the Company unless the BRPs or a High Court consents to any such proceedings.

5.4.1.3 The intention of a moratorium, within the context of a Business Rescue, is to give the Company breathing space and a window of

opportunity while it establishes and publishes a Business Rescue Plan.

5.4.1.4 The moratorium in relation to the Company took effect from the Commencement Date and will remain in place until the termination of the Business Rescue of the Company in accordance with the provisions of the Companies Act.

5.4.2 Suspension and Cancellation of Contracts

5.4.2.1 Section 136(2)(a) of the Companies Act authorises the BRPs, during Business Rescue, to entirely, partially or conditionally suspend, for the duration of the business rescue proceedings, any obligation of the Company that arises under an agreement to which the Company was a party at the Commencement Date and would otherwise become due during the Business Rescue.

5.4.2.2 Identified onerous contracts including but not limited to IT, office equipment and other service contracts were suspended in an effort to reduce operating expenses.

5.4.3 Continuation of Contracts

Where the BRPs, on their own or in consultation with Management, determines it to be in the best interests of the Company to continue with a contract, the contract has continued and remains of full force and effect.

5.4.4 Other Contracts

Contracts not specifically dealt with in the above paragraphs 5.4.2 to 5.4.3 are subject to ongoing evaluation and negotiations by the BRPs in an effort to mitigate risks and optimise the Distribution.

5.4.5 Investigation of the Affairs of the Company

5.4.5.1 Section 141(1) requires that “as soon as practicable after being appointed, a practitioner must investigate the company’s affairs, business, property, and financial situation, and after having done so, consider whether there is any reasonable prospect of the company being rescued”.

- 5.4.5.2 In the course of their investigations, into whether or not a reasonable prospect exists for the Company to be rescued, the BRPs have concluded that there is a reasonable prospect of the Company being rescued alternatively, that the process will yield a better return for Creditors or Shareholders than would result from the immediate liquidation of the Company.
- 5.4.5.3 Section 141(2) provides that if at any time during Business Rescue the BRPs conclude that there is evidence, in the dealings of the Company before the Commencement Date of:
- 5.4.5.3.1 voidable transactions or the failure by the Company or any director to perform any material obligation relating to the Company, the BRPs must take any necessary steps to rectify the matter and may direct management to take appropriate steps;
 - 5.4.5.3.2 reckless trading, fraud or other contravention of any law relating to the Company, the BRPs must forward the evidence to the appropriate authority for further investigation and possible prosecution and direct management to take any necessary steps to rectify the matter, including recovering any misappropriated assets of the Company.
- 5.4.5.4 So far, the BRPs, through their investigation of the Company's affairs before the Commencement Date, have identified the following:
- 5.4.5.4.1 the Company's last audited annual financial statements are for the financial year ended 28 February 2019. As at the Publication Date, the Company has prepared annual financial statements for the 2020 financial year, the audit of which is still outstanding. The Company is required in terms of the Companies Act to prepare and finalise financial statements within 5 months from the date of the Company's financial year end. Failure to prepare and finalise annual financial

statements within the prescribed time is deemed as non-compliance with the Companies Act and a reportable irregularity in terms of the Auditing Profession Act.

5.4.5.4.2 the Company is required in terms of paragraph 15.3.1 of the Company's Memorandum of Incorporation ("MOI"), to hold an Annual General Meeting ("AGM") each year within six months after the end of each financial year, i.e., by 31 August of each year. Section 61(8) of the Companies Act states that a meeting convened in terms of section 61(7) must, at a minimum, provide for the following business to be transacted: (i) presentation of the directors' report; (ii) audited financial statements for the immediately preceding financial year; and (iii) an audit committee report.

5.4.5.4.3 the Company's last AGM was held on 30 August 2019. However, it was unable to hold the AGM in 2020 due to the 2020 annual financial statements that were outstanding and remain outstanding as at Publication Date. To avoid being non-compliant with the MOI and the Companies Act, the Company applied to the Companies Tribunal on 24 August 2020 for extension to hold the AGM by no later than 30 November 2020. The extension was granted with subsequent extensions granted until 31 May 2021. On 14 May 2021, the Company applied and was granted further extension of time to hold the AGM by no later than 31 October 2021.

5.4.5.4.4 in 2017, the Company and the UIF concluded the UIF Loan Agreement in the amount of R210 000 000,00 for the acquisition of the Forever Fuels transaction, capital expansion or growing the logistics network, recapitalization of Afric Oil Petroleum and to fund the Company's working

capital requirement. However, it is alleged that the purchase consideration paid for the Forever Fuels transaction was overpriced and not proportionate with the value of the assets and the business of Forever Fuels that was acquired by the Company through the UIF Loan. The BRPs will forward this allegations to the relevant authority for further investigation and possible prosecution as envisaged in terms of section 141(2)(ii)(aa) of the Companies Act.

5.4.5.4.5 following on the acquisition of Forever Fuels, the Company failed to sustain monthly volumes as previously achieved by Forever Fuels prior to the acquisition transaction. The Company did not enjoy the same procurement terms that Forever Fuels enjoyed while under the previous ownership. Product was sourced at an incredibly attractive price during a period immediately prior to the acquisition of Forever Fuels and this was the biggest factor driving sales volume. Therefore, revenue generated by Forever Fuels was not sufficient to service the UIF Loan.

5.4.5.4.6 the Company and Efora operate as one entity. The employees of both entities are housed under the same office building but with separate boards and bank accounts. An approved cost allocation policy was shared with the BRPs detailing the cost sharing and allocation method for staff, IT costs and rental expenses given the current office sharing arrangement. Costs incurred by the Company on behalf of Efora were recovered primarily through repayment of the shareholder loan. There exists an approved restructuring of the Efora group and in terms of which the Company's structure would be merged into Efora. This restructure has not yet been completed. The BRPs,

Management and Efora have subsequently agreed that the recovery of costs by Efora through the repayment of its shareholder loan was inconsistent with the legislative prescript and the spirit of Chapter 6, of the Companies Act as Efora's loan repayment was subject to the moratorium since the Commencement Date as envisaged in the Business Rescue regime contemplated in Chapter 6 of the Companies Act. The BRPs, Management and Efora have agreed that Efora will repay any monies or loan repayment amounts paid since the Commencement Date.

5.4.5.4.7 in the last 10 (ten) months prior to the Commencement Date, the Company paid approximately R16m for storage facility in respect of the storage facility agreements concluded with Vopak South Africa Development (Pty) Ltd ("VOPAK") and the Company did not generate revenue out of the VOPAK storage facility. The Company made payments to VOPAK but failed to pay the products suppliers at the time when the Company was already in financial distress. The BRPs sought legal opinion in respect of the VOPAK agreements to ascertain whether these agreements and the payments made in the last 10 (ten) months could be classified as voidable transactions as envisaged in terms of section 141(2)(c)(i) of the Companies Act. The legal opinion concluded that there is no evidence to conclude that the transactions were not in the ordinary course of business; and were intended to favour VOPAK above other creditors.

5.4.5.4.8 Prior to March 2020, the Company traded with its customers on open accounts without any form of securities in place to mitigate for failure by customers to pay when accounts fall due and

payable. In addition, the debtor's department shows lack of capacity for successful debtors' book management. The debtors' days were in most instances more than 60 days against creditors days of 15 to 30 days thereby creating unsustainable working capital cycle. There are instances where sales were concluded but no invoice or invoiced on time. The Company identified weaknesses in both the order to cash and the procure to pay processes. Both processes were redesigned and rolled out across the group in August 2020 to ensure that invoices were processed on time and that an accurate recording of stock entering the systems were being done correctly. The implementation of these processes is commendable but there are still instances where invoices are not done or done on time given that there are cash customers that have credit balances that cannot be linked to under supply of stock or cash customers with debit balances that cannot be linked to oversupply of stock. The BRPs have instructed management to take urgent steps to rectify this as envisaged in terms of section 141(2)(c) during executive and debtor's management meetings.

5.4.5.4.9 Between 2014 and 2019 financial year, export sales transactions were executed to markets where there is no liquidity and without any default instruments in place and currency coverability and availability cover or proper security to mitigate against any credit risk.

5.4.5.4.10 the Company previously made foreign investment without appropriate cover to mitigate against

political risks, i.e., asset confiscation, expropriation, and contract frustration.

5.4.5.4.11 In the previous years, the Company lost some major offtake contracts and won some contracts that are not profitable and with elevated risk of

damages to property thereby showing gaps in the tendering process of the Company.

5.4.5.5 The BRPs are continuing to investigate the dealings of the Company prior to the Commencement Date, but have, to date, not found, or been presented with, any cogent evidence of any voidable transactions or misconduct that would require the BRPs to take any further steps contemplated in Section 141(2). Should any such evidence surface, or be provided, after the Publication Date, the BRPs will immediately report on it to all Affected Persons.

5.4.6 **General**

The BRPs were required to engage the Advisors on, *inter alia*, issues relating to:

- 5.4.6.1 employment;
- 5.4.6.2 competition;
- 5.4.6.3 tax;
- 5.4.6.4 regulatory issues;
- 5.4.6.5 contractual disputes;
- 5.4.6.6 PCF;
- 5.4.6.7 PCF agreements;
- 5.4.6.8 the disposal process;
- 5.4.6.9 Claims against the Company; and
- 5.4.6.10 various issues arising out of the Business Rescue including this Business Rescue Plan.

5.5 BUSINESS RESCUE INITIATIVES

5.5.1 Post-Commencement Finance

5.5.1.1 This special form of financing provided and made available for companies under Financial Distress, typically during a formal chapter 6 Business Rescue, is critical to avoid operations coming to a standstill and the company collapsing into liquidation.

5.5.1.2 Post-commencement finance (“**PCF**”), as envisaged in chapter 6 of the Companies Act, is one of the most imperative building blocks to a successful restructure of a distressed company. It also represents the biggest challenge for BRPs for the business to be successfully restructured.

5.5.1.3 The BRPs approached various PCF funders including shareholders of the Company and investigated all other options for PCF to cover critical operating requirements and general working requirements. Non-Disclosure Agreements were concluded with potential PCF funders in order to commence with the due diligence. However, all the PCF funders including the shareholders were not willing to advance PCF. As at Publication Date, the BRPs were unsuccessful in securing PCF at the required level to support the Management’s Restructuring Plan

5.5.2 Reduction of Operating Costs

5.5.2.1 In an effort to reduce operating costs in order to preserve the already laced cashflow, the BRPs investigated the existence, if any, of unnecessary costs and immediately put in place cost-containment measures to reduce operating costs.

5.5.2.2 Accordingly, identified onerous contracts including other service contracts were immediately suspended and all vacant positions were frozen pending the review and restructure of the entire organisational plan. This will in the short to medium term have the effect of a further reduction of operational costs and ultimately improve the already constrained cashflow of the Company.

5.5.2.3 Both the BRPs and Management continue to investigate further cost-containment initiatives.

5.5.3 Sales Process

A preliminary sales process was embarked upon, with various parties expressing an initial expression of interest and the discussions are currently underway, more details of which are set out in Part B.

5.5.4 Cash Administration

In order to minimise the operating expenses of the Company, the BRPs, together with Management, continue to:

5.5.4.1 Monitor the cashflow and financial position;

5.5.4.2 Perform daily bank reconciliations.

5.5.4.3 Analyse costs;

5.5.4.4 Control payments; and

5.5.4.5 Enforce general controls.

5.5.5 Supplier Negotiations

5.5.5.1 The BRPs and Management negotiated with some of the major suppliers to continue supplying on the same terms that existed prior to the commencement of Business Rescue proceedings. However, most suppliers with the exception of 1 (one) supplier were not willing to continue supplying products procured by the Company during Business Rescue on the same terms that existed prior to the commencement of Business Rescue due to the Company's liquidity position and deteriorated relationship between the Company and the suppliers.

5.5.5.2 As indicated above, suppliers were only willing to continue supporting the Business Rescue initiatives by allowing the Company to procure products or goods and services strictly on a cash-with-order or cash-before-delivery basis (CBD). In other words, the Company pays for all orders and services procured

during Business Rescue proceedings on a CBD basis with the exception of 1 (one) supplier who agreed to supply directly to the Company's customers and split the margins 50:50 after taking out the costs. However, this arrangement was not implemented as it required the consent by the Secured Creditors. This arrangement would have enabled the Company to continue servicing its term customers and honouring its contractual obligations in terms of the supply agreements concluded with those customers.

6. TRADING ACTIVITIES FOLLOWING THE COMMENCEMENT DATE

- 6.1 The Company continued trading and remains operational. The Business Rescue process has provided an opportunity for the BRPs to continue with the Business so as to preserve its goodwill through an effective moratorium in respect of all legal proceedings and claims against the Company. A failure of operations would have resulted in the financial collapse of the Company and an outcome detrimental to the interests of all stakeholders including Creditors and Employees.
- 6.2 The BRPs' main focus has been to stabilise the Business in order to ensure that the Company continues with the business operations as normal with minimal disruptions, and that the economic value of the Business is maintained, and that jobs are preserved.
- 6.3 Both Management and the BRPs have continuously engaged with suppliers, customers and employees, all of whom have expressed support to the Company. This is demonstrated partly, by the fact that some customers remained and continuously placed their orders for products or goods and services offered by the Company during Business Rescue proceedings.
- 6.4 Although trade and other Creditors or suppliers have been largely supportive of the ongoing Business operations, this was done strictly on a CBD basis. In other words, the Company pays for all orders and services procured during Business Rescue proceedings on a CBD basis with the exception of 1 (one) supplier as explained in 5.5.5.2 above, although a managed process was put in place to ensure that any goods or services ordered are critical to turnaround and convertible to inflows in the short term.
- 6.5 It should be noted that the unprecedented economic impact of the COVID-19 pandemic on economies across the world has changed the landscape, for not only the Company and its Business Rescue initiatives, but for all businesses and customers of the Company.

- 6.6 In order to maintain the solvency of the Company during this Business Rescue proceedings, the approval process for all expenditure has been rigorously monitored by the BRPs. The BRPs continuously monitor cash flow and financial projections, perform regular bank reconciliations, control payments and enforce general financial and operational controls.
- 6.7 The BRPs and Management have identified and implemented a number of key strategic interventions and cost containment measures including suspension of onerous contracts, which resulted in significant cost savings and at the same improve operational efficiency.
- 6.8 Of importance to note, the Company had a trade facility with Engen which was secured by a cession of debtors. In January 2021, Engen exercised its rights and called up its cession of debtors as security for the amounts due and payable to Engen by the Company. As a result, all payments received from the debtors of the Company were applied towards the reduction of the Engen trade facility.
- 6.9 However, the BRPs and Engen reached an agreement after the Commencement Date where all payments received from the debtors since the commencement of Business Rescue proceedings will be split between the Company and Engen to enable the Company during Business Rescue to continue trading including payment of critical operating expenses. The agreed split was 60:40 in favour of Engen and the Company, respectively. The 40% split in favour of the Company will be treated as PCF as envisaged in terms of section 135 of the Companies Act.
- 6.10 In addition, Engen agreed to continue supplying the Company on a CBD basis.

7. MATERIAL ASSETS OF THE COMPANY AS AT THE COMMENCEMENT DATE (INCLUDING ESTIMATED REALISATION VALUE ON LIQUIDATION)

As required in terms of section 150(2)(a)(i) of the Companies Act, a complete list of all material assets of the Company at book value, as well as an indication as to which assets were held as security by Creditors as at Commencement Date, is attached hereto as **Annexure A**.

8. CREDITORS OF THE COMPANY AS AT THE COMMENCEMENT DATE

- 8.1 A list of the Creditors, as reflected in the Company's records, as at the Commencement Date, is attached hereto as **Annexure B**.

- 8.2 As required in terms of the Companies Act, **Annexure B** indicates which of the aforesaid Creditors:
- 8.2.1 would qualify as a Creditor in terms of the laws of insolvency as set out in the Insolvency Act;
 - 8.2.2 which of the Creditors have or are held to hold Disputed Claims;
 - 8.2.3 have proved their Claims; and
 - 8.2.4 would be entitled to exercise a vote in the Business Rescue and their voting interest determined and calculated in terms of the Companies Act, according to the Claim amount approved by the BRPs.
- 8.3 The BRPs accepts the Company records as being correct in respect of all Claims and Disputed Claims, unless a Creditor (including a Creditor holding a Disputed Claim) can prove otherwise.
- 8.4 All persons who believe that they have a Claim are referred to **Annexure B** and should treat **Annexure B** as the BRPs' notification of the Claims in this Business Rescue proceedings. If any person is in disagreement with the information provided in **Annexure B** (being a Creditor with a Disputed Claim), such persons should utilise the Dispute Resolution Mechanism set out in this Business Rescue Plan.
- 8.5 Any person who is not recognised as a Creditor in **Annexure B** must follow the Dispute Resolution Mechanism set out in this Business Rescue Plan.
- 8.6 **Engen Security**
- 8.6.1 As explained in 6.8 above, the Company had a trade facility of R75m with Engen in terms of a resellers agreement concluded between the parties. The trade facility was secured by a cession of book debts where the Company ceded all its rights, title and interest in and to the book debts as a continuing general covering security for the due performance and discharge of every obligation and indebtedness from whatsoever cause and howsoever arising.
 - 8.6.2 In January 2021, Engen exercised its rights and called up its cession of book debts as security for the amounts due and payable to Engen by the Company. The total amount owed at the time was R32m. As a result, payments received

from the debtors of the Company were applied towards the reduction of the Engen trade facility.

8.6.3 As at Commencement Date, Engen's exposure in respect of the outstanding debt was R16m. However, the BRPs and Engen reached an agreement after the Commencement Date where all payments received from the debtors since the commencement of Business Rescue proceedings will be split between the Company and Engen to enable the Company during Business Rescue to continue trading including payment of critical operating expenses. The agreed split was 60:40 in favour of Engen (60) and the Company (40), respectively. The 40% split in favour of the Company will be treated as PCF as envisaged in terms of section 135 of the Companies Act.

8.6.4 As at Publication Date, the balance owing to Engen is approximately R9 018 407.00 excluding the PCF amount.

8.7 UIF Security

8.7.1 The Company and the UIF concluded the UIF Loan Agreement on 3 February 2017 in terms of which the UIF agreed to lend and advance an amount of R210 000 000,00 for the acquisition of the Forever Fuels transaction, capital expansion or growing the logistics network, recapitalization of Afric Oil Petroleum and to fund the Company's working capital requirement. The loan is priced at JIBAR plus 420 basis point and is repayable quarterly in arrears over 5 (five) years and 6 (six) months, which includes a capital and interest payment moratorium of 6 (six) months.

8.7.2 The UIF Loan is, in terms of the loan agreement concluded between the UIF and the Company, secured as follows:

8.7.2.1 a cession *in securitatem debiti* and pledge, in the form and substance acceptable to UIF, by the Company of the inventory held by the Company;

8.7.2.2 a cession *in securitatem debiti* and pledge, in the form and substance acceptable to the UIF, by the Company of all the shares in and claims against its subsidiaries;

8.7.2.3 a guarantee by Afric Oil Logistics in favour of the UIF;

- 8.7.2.4 special notarial bond over specified movable assets of Afric Oil Logistics in favour of the UIF;
 - 8.7.2.5 a general notarial bond over the movable assets of the Company in favour of the UIF;
 - 8.7.2.6 covering mortgage bond over the following properties:
 - 8.7.2.6.1 Erf 1402 Morresburg Township, measuring 4631 (four thousand six hundred and thirty one) square metres in the Province of the Western Cape;
 - 8.7.2.6.2 Erf 1052 Morresburg Township, measuring 4049 (four thousand and forty nine) square metres in the Province of the Western Cape; and
 - 8.7.2.6.3 Immovable property acquired in the Forever Fuels transaction.
 - 8.7.2.7 reversionary cession *in securitatem debiti*, in a form and substance acceptable to the UIF, of debtors (and proceeds of any bank accounts) held by the Company; and
 - 8.7.2.8 full subordination of all claims, including the shareholder loans by the Shareholders in the Company.
- 8.7.3 On 08 April 2021, the UIF applied and obtained a court order in the South Gauteng High Court, *inter alia*, authorizing and empowering the UIF, for the purpose of perfecting its security under the covering mortgage bond and registered general notarial bond, to take and retain possession of all the immovable and movable properties and effects of the Company, in the sum of R210 000 000.00 and an additional R42 000 000.00 for expenses, interest and costs.
- 8.7.4 Although the UIF obtained a court order to perfect its security under the covering mortgage bond and the general notarial bond, the UIF did not actually perfect by taking physical possession of all movable assets in terms of the general notarial bond, the UIF is accordingly still recognised as a secured

creditor by virtue of the mortgage bond registered against the immovable properties referred to above in 8.7.2.6 by the Company in favour of the UIF.

8.7.5 As at Commencement Date, the total amount due to the UIF by the Company was R196 144 540.18.

8.8 Payment waterfall in Business Rescue

8.8.1 In terms of section 135, to the extent that there are funds available in the waterfall for Distribution to Creditors, the Distribution to Creditors will be made in the following order of priority in terms of the Business Rescue Plan and while the Company is under Business Rescue:

8.8.1.1 firstly, Business Rescue remuneration and expenses;

8.8.1.2 secondly, Employees in respect of any remuneration, reimbursement for expenses or other amount relating to their employment during Business Rescue;

8.8.1.3 thirdly, Secured PCF Claims;

8.8.1.4 fourthly, unsecured PCF Claims;

8.8.1.5 fifthly Employees in respect of any claims for any remuneration prior to the Commencement Date; and

8.8.1.6 sixthly, unsecured Creditors (made up of Preferent and Concurrent Creditors).

8.8.2 Secured Creditors will be paid the reasonable net proceeds after the deduction of all reasonable costs and expenses relating to the administration and realization of the security subject to an Encumbrance, up to the security value of their claim, on realization of the relevant asset subject to an Encumbrance.

8.8.3 To the extent that a portion of a Claim of a secured creditor is not fully discharged from the net proceeds after the deduction of all costs and expenses relating to the administration and realization of the security subject to an Encumbrance, the balance of the Claim shall be treated as a Claim forming part of the Claims of Concurrent Creditors.

9. CREDITORS VOTING INTEREST AND VOTING BY PROXY

- 9.1 In terms of the Companies Act and for the purposes of any vote by Creditors:
- 9.1.1 a Creditor recognised with a Claim in **Annexure B** has a voting interest equal to the value of the amount owed to that Creditor by the Company as reflected in **Annexure B**;
 - 9.1.2 a Creditor who would have a subordinated claim in 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 Creditor could reasonably expect to receive in a liquidation of the Company.
- 9.2 A Creditor who has a Disputed Claim, contingent Claim, prospective Claim, damages or unliquidated Claim and/or a Disputed Creditor will not be entitled to vote on the approval of this Business Rescue Plan.
- 9.3 A creditor with a PCF claim will have a voting interest in the Business Rescue of the Company.
- 9.4 In light of the regulations and measures implemented by the Government of the Republic of South Africa pursuant to the global outbreak of COVID-19, the following process will apply in respect of the Section 151 Meeting (meeting to determine the future of the Company) and voting called for in terms of section 152 of the Companies Act (consideration of the Business Rescue Plan):
- 9.4.1 As set out above, the BRPs have consulted with the respective committees and other key role players on the development of the proposed Business Rescue Plan prior to the Publication Date. The BRPs have attempted to deal with all questions and/or suggestions prior the Publication Date.
 - 9.4.2 Pursuant to the Publication Date, Affected Persons are requested to provide any further questions and/or proposed amendments to the BRPs prior to the Section 151 Meeting so that the BRPs can consider and address same prior to the Section 151 Meeting to africoilbr@gcs-sa.co.za.
 - 9.4.3 The Section 151 Meeting will be held electronically. A Microsoft Teams hyperlink providing access to the Section 151 Meeting will be circulated prior to the Section 151 Meeting.

- 9.4.4 All voting will be conducted by way of proxy. A form of proxy will be included in the Notice of the Meeting. The form of proxy will also be available at www.africoil.co.za. All forms of proxy given on behalf of a company, a legal entity or a trust must be accompanied by a valid and authorised resolution supporting the appointment of the proxy. Completed forms of proxy must be emailed to africoilbr@gcs-sa.co.za .
- 9.4.5 Creditors are encouraged to lodge their forms of proxy as soon as possible, however, will be afforded an opportunity to lodge their proxy forms by no later than 17h00 on Tuesday, 10 August 2021.
- 9.4.6 In the event that, during the Section 151 Meeting:
- 9.4.6.1 Further questions are raised and/or proposed amendments are moved, which can be fully addressed during the Section 151 Meeting, the BRPs will:
- 9.4.6.1.1 adjourn the Section 151 Meeting for two (2) hours to receive any further forms of proxy or amended forms of proxy; and
- 9.4.6.1.2 reconvene the Section 151 Meeting to announce the outcome of the vote.
- 9.4.6.2 Further questions are raised and/or proposed amendments are moved, which cannot be fully addressed during the Section 151 Meeting for whatsoever reason:
- 9.4.6.2.1 The Section 151 Meeting will be adjourned for one week (“**Adjourned Period**”) to allow the BRPs time to respond to the questions and consider whether the proposed amendments are seconded by the holders of creditors’ voting interests and satisfactory to the BRPs;
- 9.4.6.2.2 The BRPs will publish the response/s to the question/s raised and/or the proposed amendments to the Business Rescue Plan to all Affected Persons during the Adjourned Period;

9.4.6.2.3 Creditors and Affected Persons who have not lodged their forms of proxy or wish to change their forms of proxy will be afforded until 17h00 on Tuesday, 17 August 2021 to do so; and

9.4.6.2.4 The Section 151 Meeting will be reconvened on 19 August 2021 to announce the outcome of the vote.

9.4.7 Creditors who provided forms of proxy prior to the Section 151 Meeting will be deemed to have accepted any amendments made to the Business Rescue Plan during and/or after the Section 151 Meeting, unless expressly advised otherwise in writing to the BRPs prior to the reconvening of the Section 151 Meeting.

9.4.8 Notwithstanding what has been stated in this paragraph, the BRPs have a discretion to accept any form of proxy submitted or change the process referred to above, which change will be notified to Affected Persons.

9.5 Notwithstanding what have been stated above, the BRPs have discretion to accept any proxy submitted.

9.6 The voting interests of Creditors, as at the Publication Date, is set out in **Annexure B**.

10. PROBABLE DIVIDEND ON LIQUIDATION

10.1 The BRPs engaged Mazars Recovery and Restructuring, as an independent expert, to calculate the potential dividend in a liquidation scenario as at Commencement Date.

10.2 The calculation of a liquidation dividend as at Commencement Date is based on an independent exercise undertaken by Mazars Recovery and Restructuring. Affected Persons are encouraged to carefully consider the calculation presented by Mazars Recovery and Restructuring and satisfy themselves as to the accuracy thereof. If any Affected Person requires a full copy of the liquidation and distribution account, please contact Matimu Mandlhazi of Genesis at matimu@gcs-sa.co.za.

10.3 Mazars Recovery and Restructuring relied on financial and other information provided to it by the Company and discussions with Management and the BRPs, for the purpose of calculating the liquidation dividend as at Commencement Date, and the approximate realisation value is set out in the full liquidation calculation document prepared by Mazars Recovery and Restructuring.

- 10.4 The methodology used by Mazars Recovery and Restructuring in calculating the liquidation dividend is the methodology chosen by Mazars Recovery and Restructuring in their sole discretion and the BRPs are not in a position, to comment on the methodology.
- 10.5 The probable dividend which Concurrent Creditors would receive if the Company were to be placed in liquidation, as at Commencement Date, is 0 (zero) cents in the Rand. The liquidation calculation is attached as **Annexure D**.
- 10.6 Based on the dividend calculation of Mazars Recovery and Restructuring as at Commencement Date, the BRPs estimates that the probable dividend which Concurrent Creditors would receive if the Company were placed in liquidation, as at the Publication Date, would still be 0 (zero) cents in the Rand.
- 10.7 The figures in paragraph 10.5 and 10.6 take into account the costs associated with liquidation, as calculated in terms of the Insolvency Act.

11. **HOLDERS OF THE COMPANY'S ISSUED SECURITIES**

As required in terms of section 150(2)(a)(iv) of the Companies Act, Afric Oil Holdings and the Compensation Fund are holders of the Company's issued securities.

12. **THE PRACTITIONERS' REMUNERATION**

- 12.1 The regulations to the Companies Act prescribe an hourly tariff (inclusive of VAT) for the payment of the fees of a business rescue practitioner.
- 12.2 The BRPs' remuneration is based on the tariff, in the Companies Act, in respect of a large-sized company. This is based on a company's public interest score as at Commencement Date. The Company's public interest score, calculated in terms of Regulation 26(2) of the Companies Act, as at Commencement Date, was 1611.
- 12.3 A company is regarded as a large-sized company if its public interest score is more than or over 500.
- 12.4 To date, Mkhombo and Singo have charged out their time at the prescribed tariff rates set out in Regulation 128 of the Companies Act. In terms of section 143(2), the BRPs hereby propose an agreement providing for further remuneration, additional to the prescribed tariff, resulting in an increase in the charge out rate of the BRPs from R1 740.00 per hour to R3 250.00 per hour (excluding VAT) in respect of Mkhombo and

from R1 087.00 per hour to R2 250.00 (excluding VAT) in respect of Singo, retrospectively, with effect from the date of their appointment. This fee is payable on the Adoption Date and is based on an approximation of the BRPs' standard hourly rates and the tariff rates.

- 12.5 It should be recognised that the hourly rate prescribed by the tariff in the regulations is not market related and is outdated as it was determined in or about 2011. The current market related hourly rate is between R3 500.00 and R4 500.00 exclusive of VAT.
- 12.6 On approval of the Business Rescue Plan the Creditors and the Company agree to this increase and the payment of the difference in the prescribed tariff and the agreed increased hourly rate since the date of the BRPs' appointment.
- 12.7 A separate meeting to approve the proposed agreement will be convened in accordance with the terms of section 143 of the Companies Act.

13. STATEMENT ABOUT WHETHER THE BUSINESS RESCUE PLAN INCLUDES A PROPOSAL MADE INFORMALLY BY A CREDITOR

As required in terms of section 150(2)(a)(vi) of the Companies Act, this Business Rescue Plan does not include any informal proposal made by a Creditor or Creditors of the Company.

[END OF SECTION]

PART B – PROPOSAL

14. OBJECTIVE AND PURPOSE OF BUSINESS RESCUE

14.1 The purpose of Business Rescue as outlined in chapter 6 of the Companies Act, read with section 7(k), is to provide for the efficient rescue and recovery of Financially Distressed companies, in a manner that balances the rights and interests of all relevant stakeholders.

14.2 The objective of Business Rescue, as set out in section 128(1)(b)(iii), is to develop and implement a rescue plan that:

14.2.1 rescues the Company by restructuring its affairs, business, property, debt and other liabilities, in a manner that maximises the likelihood of the Company continuing in existence on a solvent basis; or

14.2.2 if the aforementioned is not possible, results in a better return for the Company's creditors or members than would result from the immediate liquidation of the Company.

14.3 This Business Rescue Plan seeks to rescue the Company by implementing the proposal set out in this document.

14.4 This Business Rescue Plan further seeks to provide Affected Persons with information, so that they may:

14.4.1 assess the likely outcome of the dividend yield calculation under Business Rescue, and

14.4.2 be assured of the likelihood of obtaining a better outcome under Business Rescue for all Affected Persons, when compared to a liquidation.

15. SUMMARY OF THE PROPOSAL IN TERMS OF THIS BUSINESS RESCUE PLAN

15.1 The BRPs, together with Management, conducted an objective assessment of the Company and evaluated various Business Rescue scenarios.

15.2 Pursuant to conducting the aforesaid assessment and evaluation, and after consultation with the relevant Affected Persons, the BRPs propose the implementation of the Sales Process to rescue the Company.

15.3 The Sales Process comprises two parts:

15.3.1 First Part:

15.3.1.1 The first part entails the implementation of an accelerated sales process (“**Accelerated Sales Process**”).

15.3.1.2 In terms of the Accelerated Sales Process, the BRPs:

15.3.1.2.1 First seek to achieve a sale of the entire Business as a going concern or significant shareholding.

15.3.1.2.2 To this end, the BRPs have received a binding offer for the acquisition of the entire business as a going concern or acquisition of the majority or significant shareholding in the Company.

15.3.1.2.3 In addition, the BRPs have received various expressions of interests from interested parties and are currently conducting their due diligence.

15.3.1.2.4 The BRPs assisted by their Advisors intend to embark on an accelerated disposal process involving the entire or certain parts or business of, or assets or shareholding, in the Company. This process will reach out to all potential bidders and others identified by the BRPs and Management and will be subject to the procedures and terms established by the BRPs and their Advisors.

15.3.2 **Second Part:**

15.3.2.1 The second part entails the implementation of a structured or orderly wind-down process (“**Wind-Down Process**”).

15.3.2.2 The Wind-Down Process entails a better return for the Company’s Creditors or Shareholder than would result from the immediate liquidation of the Company through the sale of all of the Company’s assets, certain parts or business of, or assets or shareholding, by way of private treaty or public auction or any manner which the BRPs, in their sole discretion, deem appropriate given the circumstances prevailing at that time, as opposed to the sale of the Business as a going concern.

15.4 The Sales Process is more fully dealt with in paragraph 17 and paragraph 18.

15.5 Since the Commencement Date, the Company has been operating the Business and as at the Publication Date, the Company remains operational.

15.6 The advantages of proceeding with this Business Rescue Plan are, *inter alia*, as follows:

15.6.1 if the Sales Process is implemented, the BRPs will seek to obtain the sale of the Business as a going concern, thereby resulting in the transfer of the relevant Employees and many jobs being preserved or saved.

15.6.2 Employees who are retrenched, if any, would be in a better position than in a liquidation.

15.6.3 The total costs will be less than the costs of liquidation.

15.6.4 The trade creditors will continue to have a sustainable customer to trade with going forward.

15.7 Affected persons are referred to paragraph 27 below for more information relating to the advantages of proceeding in terms of this Business Rescue Plan as opposed to a liquidation.

15.8 The Business Rescue will result in the rescue of the Company or at least certain parts of the Company and will balance the interests of all stakeholders.

16. **BACKGROUND TO THE PROPOSAL IN TERMS OF THIS BUSINESS RESCUE PLAN:**

16.1 Immediately after the BRPs were appointed, they embarked on a process to consider the Management Restructuring Plan, the operational capabilities of the Business and the value residing in the Business. In January 2021, Management developed a Management Restructuring Plan known as the Reposition Strategy.

16.2 Subsequent to this, the BRPs and Management assessed and considered the Management's Restructuring Plan as part of the Business Rescue initiatives. The Management's Restructuring Plan was predicated on:

16.2.1 repositioning of the Company's business from a fuels wholesaler into a diversified downstream petroleum company. A business that generates long term annuity revenues with a clear strategy to reinvest profits into owning a portfolio of strategic assets.

16.2.2 fuels trading as the most strategic enabler to reposition the Company's business. This division will become a cash generating unit and will ensure a more competitive and complete offer into the current wholesale fuels business, by guaranteeing supply in a market that is unable to demonstrate security of supply.

16.2.3 lubricants business to offer customers a complete hydrocarbon solution and the ability for the Company to extract more margin from an existing value chain. By adding a fourth division, to completely diversify and further support the existing Company's B2B market. The Company will enter the retail fuels sector, accessing new opportunities with a larger supply of mogas products and generating revenues through franchise fees, FMCG royalties and positioning the business for the next chapter, being distribution of LNG.

16.3 Although the Management Restructuring Plan was initiated by the Company and approved by the board and shareholders of the Company prior to the Commencement Date, the BRPs continued with the Management's Restructuring Plan and have utilised

the expertise of Management as well as the concepts and proposals developed by Management in the Management's Restructuring Plan during Business Rescue.

- 16.4 Changing market conditions in South Africa and economic forces from oil rich nations in Africa, Middle East and Asia are forcing all refiners to reconsider their midstream and downstream portfolios in South Africa. This uncertainty, the inability to guarantee supply and the need for a proudly South African petroleum business to truly penetrate this market provides the Company with significant opportunity to capture this space and in turn become a diversified downstream petroleum player.
- 16.5 It became apparent that the Management's Restructuring Plan was largely dependent on the PIC leading the recapitalisation of the Company and the restructuring of the UIF and Efora loans in order to release the debt burden from the Company's balance Sheet to allow the Company to access new financing opportunities from both the debt and capital markets.
- 16.6 The BRPs and Management engaged with key suppliers who indicated their unwillingness to continue supplying products or goods and services procured by the Company during Business Rescue and insisted that all products or good and services procured must be on a COD basis due to the Company's current liquidity position, alternatively that the Company must provide security in the form of a guarantee or other form of acceptable security to cover the suppliers during Business Rescue for all the products or goods sold and delivered to the Company on credit.
- 16.7 An estimated amount of R350m was required to implement the Management's Restructuring Plan. The BRPs and Management approached the shareholders and other PCF funders without any success. Due to challenges experienced in raising funding and the fact that key suppliers were not willing to supply the Company on credit during Business Rescue, it became clear that the Management's Restructuring Plan would not be realised or cannot be implemented. The BRPs had to consider other Business Rescue options including alternative proposals to realise value for all stakeholders as envisaged in the Companies Act, being the Accelerated Sales Process.
- 16.8 It also became apparent that, in the absence of any PCF, any proposal to rescue the Company would have to be implemented without delay. Accordingly, the BRPs and Management decided to continue to explore other funding opportunities and, at the same time commence with the Sales Process.

16.9 The BRPs are of the view that one of the options available in order for the objectives of Business Rescue to be achieved is an orderly and accelerated sales/disposal process. The BRPs are constrained by the unavailability of PCF and remain constrained going forward, to sustain a protracted Sales Process. Consequently, the BRPs have prepared this Business Rescue Plan based on the Sales Process, which is detailed below.

16.10 Salient Considerations:

Creditors should note the following challenges the BRPs were faced with, in respect of realising value for Creditors, including, *inter alia*:

16.10.1 The absence of PCF or Shareholder funding severely limits the options open to Management and the BRPs, which led to alternative consideration of the Accelerated Sales Process;

16.10.2 The timing to implement the Sales Process was particularly demanding, considering getting suppliers to continue to supply products or goods and services in order to ensure the sustainability of the Business going forward while under Business Rescue; and

16.10.3 Concerns around the impact on future sales levels as a result of the economic damage of the lockdown.

17. **FIRST PART: ACCELERATED SALES PROCESS**

17.1 As explained above, the BRPs are of the view that one of the options available in order for the objectives of Business Rescue to be achieved is an orderly and accelerated disposal process. The BRPs are constrained by the unavailability of PCF and remain constrained going forward, to sustain a protracted Sales Process.

17.2 A total of 10 (ten) potential bidders initially expressed their interest in a potential transaction involving the Company. All the 10 (ten) interested parties have executed a non-disclosure and confidentiality agreement and were granted access to the data room to enable them to conduct a due diligence on the operational, financial and legal aspects of the Company.

- 17.3 The BRPs have already received binding offers from 2 (two) of the interested parties for the acquisition of the Business as a going concern or for the acquisition of the majority or significant shareholding in the Business. The interested parties have already conducted and concluded due diligence on the operational, financial and legal aspects of the Company. Should any of the 2 (two) offers not be accepted by the Creditors, the Business Rescue proceedings will automatically proceed as outlined in 17.4 below.
- 17.4 In an attempt to secure the best possible outcome for all stakeholders, including Affected Persons, affected by this Business Rescue proceedings, the BRPs, assisted by their Advisors, intend to embark on a Sales Process involving the entire business or parts thereof, or shareholding, in the Company. This process will reach out to all potential bidders and others identified by the BRPs and Management and will be subject to the procedures and terms established by the BRPs and its Advisors.
- 17.5 On Friday, 13 August 2021 before 17h00, interested parties will be invited to submit the following to the BRPs and Advisors, by Wednesday, 18 August 2021:
- (a) an expression of interest covering letter in the form specified by the BRPs;
 - (b) a completed credentials questionnaire in the form specified by the BRPs;
 - (c) a signed non-disclosure and confidentiality agreement (if not already executed).
- 17.6 Each of the documents listed in clause 17.5 must be submitted in order to qualify for an expression of interest. The submission of the documents, and the acceptance thereof, will result in the closure of phase 1 of the Sales Process.
- 17.7 After the completion of phase 1, the parties expressing an interest, and accepted by the BRPs, will receive access to the data room populated by the BRPs with the assistance of the Management of the Company. The BRPs will not provide access to any additional information, nor update any information in the data room, to anyone.
- 17.8 The parties selected by the BRPs at the end of Phase 1, and to whom access to the data room is provided, will be invited to submit indicative bids in respect of the assets or business of, or shares in, the Company by 17h00 on Monday, 06 September 2021 (“Bids” or “indicative Bids”). Where considered necessary or appropriate by the BRPs, the BRPs and their Advisors may seek clarity regarding the content of the Bids.
- 17.9 The following, *inter alia*, must be addressed and contained in the Indicative Bids:

- 17.9.1 whether the transaction will involve the acquisition of the assets and business of, or shareholding in, the Company;
- 17.9.2 the purchase consideration;
- 17.9.3 the form in which the purchase consideration will be settled – in other words, in cash or otherwise;
- 17.9.4 if not in cash, how will the purchase consideration be converted or realised in cash;
- 17.9.5 the working capital requirements of the Company and how and when these will be advanced to the Company;
- 17.9.6 all technical expertise and resources experience and track record, aimed at turning around the operations of the Company and continuing with its business operations;
- 17.9.7 all internal approvals required in respect of any proposed transaction envisaged and the timing to obtain such approvals;
- 17.9.8 a commitment to retain Employees in accordance with the provisions of section 197 of the LRA;
- 17.9.9 an undertaking to conclude the Sales Process, and proposed transaction, in a timely manner; and
- 17.9.10 additional benefits that will contribute towards accelerated and sustainable growth of the business and reduction of expenses, for example, whether additional customers will be introduced to the Company with the consequential increase in sales volumes; whether certain operational expenses can be merged into existing infrastructure so as to reduce the operating cost and thereby increase profitability.

17.10 Prior to the submission of the Bids, and from the date on which the parties selected by the BRPs at the end of Phase 1, a due diligence phase will ensue permitting the parties and/or their respective employees, advisors, agents and representatives (provided all of them have countersigned the non-disclosure and confidentiality agreement) to visit the premises and operations of the Company on pre-arranged dates and times, under

supervised conditions. During this period, the parties so selected will also be given access to Management and all operational personnel of the Company.

17.11 A draft sale agreement, one incorporating an acquisition of the business of the Company as a going concern and another incorporating the acquisition of shares in the Company, will be circulated to the parties selected at the end of Phase 1 during the due diligence phase.

17.12 The Bids can be submitted in any format including a marked-up format of the draft sale agreement provided by the BRPs during the due diligence phase. The Bids must be in respect of the business of the Company, as a going concern, or shares in the Company. To the extent that a Bid is contained in an edited and marked-up version of the draft sale agreement, the Bid will be taken into account in assessing whether or not it is acceptable.

17.13 The BRPs will consider the Bids and enter into negotiations with any of the bidders which, in the BRPs' sole and absolute discretion, is in principle acceptable to the BRPs. The aim and objective of this engagement will be to conclude a sale and all other definitive agreements in relation to any proposed transaction.

17.14 Once the Bids are received, and the BRPs have indicated in principle which Bid is acceptable to them, the BRPs will be entitled, at any stage prior to the execution of transaction agreements, to request the acceptable bidder, within 2 Business Days of being notified that it has been selected as the accepted bidder, to pay a deposit equal to 10% of the purchase consideration, to be held by the Advisors, as escrow agent, on behalf of the BRPs, on the terms and conditions of an escrow agreement to be provided by the Advisors simultaneously with such notification from the BRPs.

17.15 While the BRPs recognise that interested parties may require additional time to assimilate and consider all information provided to them, and to formulate, complete and submit their Bids, the BRPs remain desirous to complete the Sales Process on an accelerated basis and as quickly as possible. The following is accordingly the envisaged timetable:

Invitation to submit initial expression of interest	Friday, 13 August 2021 at 17h00
Submission of Initial Expression of Interest	Wednesday, 18 August 2021 at 17h00

Access to data room	Thursday, 19 August 2021 from 08h00
Commencement of due diligence	Thursday, 19 August 2021 from 08h00
Submission of draft sale agreement to bidders	Thursday, 02 September 2021 by 17h00
End of due diligence, including site visit and engagement with personnel	Friday, 03 September 2021 at 17h00
Submission of Bids	Monday, 06 September 2021 at 17h00
Notify preferred bidder/s	Wednesday, 08 September 2021 at 17h00
Payment of Deposit into escrow agent account by the selected bidder	Friday, 10 September 2021 at 17h00
Negotiations of final definitive transaction agreements commence with selected bidder	Monday, 13 September 2021 at 08h00
Execution of definitive transaction agreements with the selected bidder	Wednesday, 15 September 2021 at 17h00
Note: The above timelines are an abridged timetable and are subject to change in the BRPs' sole discretion.	

17.16 Projected waterfall

17.16.1 Following the adoption of the Business Rescue Plan, the BRPs, acting with their Advisors, having been authorised to do so by the holders of the requisite majority of the Creditors voting interests, shall embark upon a Sales Process as outlined above in this Business Rescue Plan. Once the BRPs are in a position to identify the selected bidder, the BRPs will execute all agreements required to give effect to a disposal and implementation of this Business Rescue Plan.

17.16.2 According to section 154(1), a Business Rescue Plan may provide that, if implemented in accordance with its terms and conditions, a creditor who has acceded to the discharge of the whole or part of a debt owing to that creditor will lose the right to enforce the relevant debt or part of it.

17.16.3 According to section 154(2), if a Business Rescue Plan has been approved and implemented, in accordance with chapter 6, a creditor is not entitled to enforce

any debt owed by the Company immediately before the Commencement Date, except to the extent provided for in the Business Rescue Plan.

17.16.4 For the avoidance of doubt, it is expressly recorded that:

17.16.4.1 this Business Rescue Plan is an offer in full and final settlement of all Claims;

17.16.4.2 the Company will make a Distribution from any sale in accordance with the following waterfall or order of preference:

17.16.4.2.1 the BRPs' remuneration and expenses (s135(3) read with s143);

17.16.4.2.2 the costs and expenses of the Business Rescue which will include, but are not limited to, the costs and charges of Rams, the Advisors and Mazars Recovery and Restructuring (s135(3));

17.16.4.2.3 remuneration, reimbursement for expenses and other amounts relating to employment which became due and payable after the Commencement Date (s135(3)(a) read with s135(1));

17.16.4.2.4 secured PCF in the order incurred (s135(3)(b) read with s135(2));

17.16.4.2.5 unsecured PCF in the order incurred (s135(3)(b) read with s135(2));

17.16.4.2.6 secured debt;

17.16.4.2.7 remuneration, reimbursement for expenses and other amounts relating to employment which became due and payable before the Commencement Date (s144(2)); and

17.16.4.2.8 unsecured debt at the Substantial Implementation Date.

17.16.5 The mechanism of any transaction concluded pursuant to the disposal process outlined above will take the form of either a disposal of a significant or majority

or 100% of the shareholding of the Company or the entire business and its assets as a going-concern. In order to illustrate the sequence of payments outlined above, the table provides an illustration and estimate of the potential distribution to Creditors of the Company in terms of this Business Rescue Plan. Affected Persons must however note that this table is no more than an illustration of the waterfall and is by no means binding on the BRPs or its Advisors. Furthermore, the table assumes a transaction value, derived from the Sales Process, of R 40 000 000.00:

Waterfall	Amount
Proceeds realised on disposal	R40 000 000.00
BRPs remuneration and expenses (s135(3))	R1 750 000.00
Estimate costs of Business Rescue proceedings (s135(3))	R250 000.00
Employees post-Commencement Date Claims (s135(3)(a) and 135(1))	R0.00
PCF - Engen	R3 881 362.32
Secured creditor – UIF	R34 118 637.68
Employee's pre-Commencement Date Claims	R0.00
Unsecured or concurrent creditors (including subordinated creditors)	R0.00

17.16.6 The illustration above postulates a distribution in full settlement of Engen's PCF claim, BRPs remuneration and expenses, and partial settlement of the UIF's claim as secured creditor.

17.16.7 On the figures postulated on the table above, this will result in an estimated Distribution to unsecured or concurrent Creditors of 0 (zero) cents in the Rand.

17.17 Should it transpire, after the publication or adoption of the Business Rescue Plan or such earlier date determined by the BRPs in their sole discretion, that there is no interest in acquiring the Business as a going concern or acquire shares in the Company or certain assets through the Accelerated Sales Process, then the BRPs will proceed to realise all

the assets of the Company in terms of the second part of the Sales Process, being the Wind-Down Process.

18. SECOND PART - WIND-DOWN PROCESS

18.1 The second part of the Sales Process is the implementation of the Wind-Down Process, which will be implemented should it transpire, after the adoption of the Business Rescue Plan or such earlier date determined by the BRPs in their sole discretion, that there is no interest in acquiring the Business as a going concern or acquiring shares in the Company or certain assets through the Accelerated Sales Process.

18.2 In such event, the BRPs propose and are hereby mandated in terms of this Business Rescue Plan that the Business Rescue proceeds be applied in terms of the Wind-Down Process is as set out below.

18.3 The Wind-Down Process entails the following:

18.3.1 Realisation of all of the Company's assets (including trade marks) and those assets which are sold pursuant to the Accelerated Sales Process, by way of but not limited to, trade out process, private treaty, auction or any other manner which the BRPs, in their sole discretion, deem appropriate given the circumstances prevailing at that time, including trading out of inventory over a period determined by the BRPs in their sole discretion, subject to written consent by the Secured Creditor;

18.3.2 Proposed cancellation of Contracts which could not be assigned; and

18.3.3 Proposed retrenchment of all Employees or all remaining Employees.

18.4 This will be done to maximise the value of the assets and also to reduce the duration of the Wind-Down Process as a liquidation process could easily last 18 - 24 months to finalize even longer especially taking into account the COVID-19 pandemic.

18.5 The BRPs will convene meetings with Creditors to provide updates on the Wind-Down Process. The BRPs will, notwithstanding the views of the Creditors, have the authority to make the final determination with regard to the processes adopted and acceptance of offers.

18.6 The BRPs are hereby mandated and authorised by the Creditors, shareholder and all Affected Persons to, pursue third parties and/or other debtors for recovery of, *inter alia*,

funds and/or damages, litigate and investigate the affairs of the Company in order to realise cash to pay Creditors in accordance with the provisions of this Business Rescue Plan. The BRPs shall have final say on all legal proceedings (including but not limited to, settlement of matters) and the disposal price of the assets. Creditors waive any or all claim/s (of whatsoever nature or kind and howsoever arising, including but not limited to damages) against the BRPs, their Advisors, Genesis and the Company.

18.7 Proceeds from the Accelerated Sales Process and Wind-Down Process will be paid into the bank account opened and operated by the BRPs, if necessary, who will make payment in accordance with the terms of this Business Rescue Plan.

18.8 The advantages of proceeding with the Wind-Down Process are as follows:

18.8.1 professional fees and administration costs would be lower compared to liquidation proceedings;

18.8.2 SARS claim ranks as concurrent creditors and not as a preferential creditor as would be the case under liquidation;

18.8.3 timing of distribution/s should be faster than in liquidation proceedings; and

18.8.4 the assets will be realised at market related values, where possible as opposed to forced sale values in liquidation proceedings.

19 ONGOING ROLE OF THE COMPANY

As required in terms of section 150(2)(b)(iii) of the Companies Act, if the Business Rescue proceeds in accordance with the Sales Process, the Company will no longer operate as a Business and/or including any remaining assets, will be sold.

20 EFFECT OF THE BUSINESS RESCUE PLAN

20.1 Creditors

Once the Distribution is made to Creditors, all Claims against the Company will be Expunged. For the avoidance of doubt, upon the Distribution, all liabilities, provisions and obligations, of whatsoever nature, howsoever and when so ever arising of the Company will be deemed to be discharged in full in terms of section 154 read with section 152(4).

20.2 **Contracts**

As required in terms of section 150(2)(b)(iii) of the Companies Act, in the event that the Business Rescue proceeds in terms of the Sales Process, certain Contracts will have to be cancelled, modified or restructured. To the extent that Contracts are cancelled, Claims for damages will be limited as contemplated in paragraph 20.3.

20.3 **Damages**

In the event that Creditors claim damages, whether contractual or delictual, against the Company, which damages Claim is accepted by the BRPs or proved by way of the Dispute Resolution Mechanism or by Court or similar proceedings, such damages Claims:

20.3.1 will include any claim based on a guarantee or a suretyship given by the Company to any Creditor where the guaranteed debt (in the case of a guarantee), or the principal debt (in the case of a suretyship), comprises a damages claim arising from any Contract, including any delictual claim against the Company.

20.3.2 must be brought against the Company before the Final Claims Date, failing which, a Creditor in these circumstances will be precluded from bringing a damages claim against the Company.

20.3.3 shall be a Concurrent Claim, unless the Creditor holds security for such claim.

20.3.4 must be mitigated and can only be claimed if proven.

20.3.5 In respect of damages related to leases and rentals:

20.3.5.1 Will be deemed to be limited to a maximum Claim equivalent to 3 (three) month's rental (not operational costs), as payable at the Commencement Date. For the sake of clarity, it is recorded that the damages are limited in nature to early termination; and

20.3.5.2 If the landlord or lessor was given an opportunity to assign a lease or rental agreement, but refused to do so on reasonable grounds, such landlord or lessor will be precluded from submitting a claim for damages.

20.3.6 In respect of damages related to other Contracts, will be deemed to be limited to general damages suffered over the lesser of 3 (three) months from the date on which the alleged claim for damages arose or the balance of the Contract duration.

20.3.7 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 such Contract so as to be said to flow naturally and generally and not to be too remote.

20.3.8 will be deemed to exclude all consequential and indirect damages, loss of profit, penalty; and

20.3.9 if disputed, will be resolved in terms of the Dispute Resolution Mechanism, detailed in part D.

21 PROPERTY OF THE COMPANY AVAILABLE TO PAY CREDITORS

As required in terms of section 150(2)(b)(iv) of the Companies Act, the Business Rescue Plan contemplates the sale of the Company's Business, and/or assets, and the distribution of the proceeds by the BRPs in accordance with the payment waterfall in paragraph 25.

22 EFFECT OF THE BUSINESS RESCUE PLAN ON THE HOLDERS OF THE COMPANY'S ISSUED SHARES

As required in terms of section 150(2)(b)(vii) of the Companies Act, if the Sales Process is implemented, the rights of the shareholders, being Afric Oil Holdings and the Compensation Fund, may be altered depending on whether it is a sale of shares or sale of the Business as a going concern or part thereof.

23 COMPARISON OF THE BUSINESS RESCUE TO LIQUIDATION

23.1 As at the Publication Date, the outcome of the Accelerated Sales Process is unknown. Consequently, the estimated Business Rescue dividend set out in this Business Rescue Plan has been determined based on the Wind-Down Process, as envisaged in paragraph 18.

23.2 The following table sets out a comparison of the outcomes that are likely to arise under the Business Rescue (in terms of the Wind-Down Process) as compared to a liquidation

(the liquidation calculation is based on the information provided in Mazars Recovery and Restructuring's liquidation calculation):

	Liquidation	Business Rescue (Based on Wind-Down Process)
Secured Creditors	13 cents/Rand	18 cents/Rand
Employees	Limited R28 000	100 cents/Rand
PCF	N/A	100 cents/Rand
Concurrent/unsecured Creditors	0 (zero) cents/Rand	0 (zero) cents/Rand

24 RECEIVERSHIP

24.1 With effect from the Adoption Date, the BRPs will also be appointed as the Receivers in order to:

24.1.1 receive the Accelerated Sales Proceeds; and

24.1.2 distribute the aforesaid proceeds in accordance with the provisions of this Business Rescue Plan.

24.2 The Receivers will have all such powers as may be necessary for them to discharge their obligations in terms of the Receivership and without in any way restricting the generality of such powers, the Receivers shall have the following powers and obligations:

24.2.1 to perform all acts and discharge all duties which the Receivers are required to perform and discharge in order to give effect to the implementation of terms of the Receivership;

24.2.2 to open and operate banking accounts and investments, if necessary, as if they were the trustee in terms of section 70(1) of the Insolvency Act, *mutatis mutandis*.

24.2.3 to admit or reject any Claims tendered for proof as provided for in paragraph 26;

- 24.2.4 to compromise the Claims and defend any proceedings which may be instituted against the Receivers for enforcement of Claims disputed by the Receivers;
 - 24.2.5 to abandon to Secured Creditors any property held as security at a value agreed to between the Secured Creditor and the Receivers;
 - 24.2.6 to proceed in terms of the Dispute Resolution mechanism or institute any legal proceedings in their capacity as the Receivers, as they may in their sole discretion deem appropriate, against any person as may be required to give effect to the Receivership and to defend any proceedings brought against the Receivers arising out of the Receivership where the subject matter of the dispute relates to their powers and obligations in terms of the Receivership;
 - 24.2.7 to have access to all books, records, documentation and trading figures of the Company as they may reasonably and properly require for the execution of their duties as Receivers in terms of the Receivership;
 - 24.2.8 to engage the service of attorneys, advocates, other professional advisors and service providers in connection with any matter concerning the Receivership, their function and duties, to dispense with taxation and to agree on the amount of their reasonable fees and charges and to pay such fees and disbursements of such persons out of the monies becoming available to the Receivers in terms of the Receivership;
 - 24.2.9 to receive any and all amounts payable to them in terms of transaction documents concluded pursuant to the Sales Process and the power to disburse all such amounts to any relevant person/s and Creditors contemplated in this Proposed Transaction; and
 - 24.2.10 to investigate the Company's affairs, business, property and financial situation and to take appropriate steps as contemplated in section 141(1) of the Companies Act.
- 24.3 The Receivers will be entitled to charge out their time at the rate of R3 250.00 per hour excluding VAT in respect of Mkhombo and R2 250.00 per hour excluding VAT in respect of Singo.

25 ORDER OF DISTRIBUTION – PAYMENT WATERFALL IN BUSINESS RESCUE AND RECEIVERSHIP

25.1 As required in terms of section 150(2)(b)(v) of the Companies Act, the order of preference in which proceeds will be applied to pay Creditors if the Business Rescue Plan is adopted and the payment waterfall is set out below.

25.2 In terms of section 135 and 144 of the Companies Act, Creditors are to be paid in the following order of priority (to the extent that there are funds available to pay all categories of Creditors) (i.e. the payment waterfall):

25.2.1 The Business Rescue Costs, including but not limited to legal costs, the costs of the Advisors, operating costs and other costs associated with the Business Rescue;

25.2.2 Employees for any remuneration, reimbursement for expenses or other amount of money relating to employment which becomes due and payable by the Company to the Employees during the Business Rescue (to the extent that they have not been paid);

25.2.3 Secured PCF Creditors;

25.2.4 Unsecured PCF Creditors;

25.2.5 Unsecured / Concurrent Creditors, including Secured Creditors in respect of any residual Claim remaining after realisation of their security.

25.3 In respect of Pre-commencement Secured Creditors, their Claims will rank in respect of such secured asset in priority to all other claims, other than the BRPs' remuneration and expenses, as contemplated in section 143 of the Companies Act.

25.4 The Receivers will make Distributions as soon as it is practically possible to do so.

26 PROOF OF CLAIMS BY CREDITORS

26.1 The exchange rate in respect of all Claims expressed in foreign currency will be determined as at the Commencement date.

26.2 Concurrent Creditors will not be entitled to charge interest on their Pre-Commencement Claims from the Commencement Date.

26.3 Creditors are required to lodge their Claims with the BRPs at africoilbr@gcs-sa.co.za prior to the Final Claims Date for purposes of participating in the Distributions made by the BRPs:

26.3.1 The BRPs have a discretion as to whether to allow a Creditor to lodge any Claim after the Final Claims Date; and

26.3.2 Creditors who have lodged Claims after the Final Claims Date, and whose Claims have been accepted by the BRPs in the exercise of the BRPs' aforesaid discretion, forfeit their right to participate in Distributions that have been made prior to the lodgement of their Claims.

26.4 The provisions in paragraph 26.3 will apply *mutatis mutandis* to Creditors asserting a claim for damages.

26.5 Claims, including claims for damages, shall be proved to the satisfaction of the BRPs.

26.6 The BRPs have discretion as to whether to allow a Creditor to lodge any Claim after the Final Claims Date.

26.7 In the event that the BRPs dispute a Claim or security, such disputed Claims will be dealt with in accordance with the Dispute Resolution Mechanism more fully dealt with in Part D.

27 BENEFITS OF ADOPTING THE BUSINESS RESCUE PLAN COMPARED TO LIQUIDATION

As required in terms of section 150(2)(b)(vi) of the Companies Act, the benefits to Creditors of adopting the Business Rescue Plan compared to a liquidation are as follows:

27.1 Continuity of Business

27.1.1 To the extent that the Business is sold in terms of Sales Process:

27.1.1.1 A significant number of the jobs pertaining to the Business would be preserved.

27.1.1.2 The trade creditors, many of whom rely on the Business for distributing their goods/products will continue to have a sustainable customer to trade with going forward.

27.2 Quantum

27.2.1 Creditors will receive a better dividend in Business Rescue than on a liquidation of the Company.

27.2.2 By way of illustration, please refer to paragraph 23.

27.3 Timing

27.3.1 The Business Rescue Plan will be implemented in a far shorter time frame than liquidation proceedings.

27.3.2 The anticipated time estimated for completing the Business Rescue is approximately 6 months.

27.3.3 The average time it takes to conclude a liquidation process can be between 18 – 24 months, or longer depending on the complexity of the business and affairs of the company.

27.4 Employees

27.4.1 Employees continue to receive salaries since the Commencement Date.

27.4.2 In liquidation:

27.4.2.1 Employees would be entitled to receive a maximum amount of R28 000.00 (twenty eight thousand Rand) per employee as a preferent claim, to the extent that there are funds available.

27.4.2.2 Employees will only receive payment once the final liquidation and distribution account has been approved at the end of the liquidation process.

27.5 Fees

27.5.1 The BRPs submit that the entire costs of the Business Rescue will be significantly lower than the entire costs associated with a liquidation process.

27.5.2 The estimated fees a liquidator would be entitled to in terms of the liquidation calculation prepared by Mazars Recovery and Restructuring is approximately R2.5m based on realisation of the assets.

27.6 General Benefits of Business Rescue

27.6.1 Stock

The sale of stock in terms of liquidation typically results in minimum value being realised, generally less than cost.

27.6.2 Protecting Goodwill

27.6.2.1 By virtue of uninterrupted trading, the BRPs were able to preserve the goodwill in relation to the Business. Accordingly, in the absence of an investor, the BRPs are able to sell the Business of the Company as a going concern with goodwill which has value.

27.6.2.2 In a liquidation scenario the Company will have to be closed down immediately if the liquidator determines not to continue trading. A liquidator would only continue to trade if he or she received indemnity to cover him or her for any losses in trading – given the circumstances it is highly unlikely that this would happen.

27.6.3 Avoiding Breakdown of Controlled Environment

27.6.3.1 During Business Rescue because the Company is continuing to trade in the ordinary course of business, the BRPs are able to wind-down the affairs of the Company to the extent required in an orderly fashion.

27.6.3.2 Stricter controls remain over all assets of the Company, which avoids or minimises risks of theft and damage.

27.6.4 In General:

27.6.4.1 Secured Creditors' Claims will be settled as set out in this Business Rescue Plan;

27.6.4.2 Creditors will receive a better outcome than the dividend of 0 (zero) cents in the Rand in the event of the liquidation of the Company;

- 27.6.4.3 payment of Claims to Creditors will be implemented in a period not exceeding 6 months;
- 27.6.4.4 retention of 55 jobs and contribution by the Company to the alleviation of very high levels of unemployment if the Business is sold. In a liquidation, Employees risk losing jobs which will be disastrous taking into account the very low prospect of them finding new jobs in a country experiencing severe recession and possible retraction of its growth as a result of the COVID-19 pandemic and lockdown restrictions;
- 27.6.4.5 the avoidance of the Company incurring administration costs associated with liquidation. In liquidation, the estate of the Company will be further burdened with costs of administration associated with liquidation and calculated in terms of the Insolvency Act. Creditors also run the risk of pro rata contributions towards the administration costs as set out in Annexure D; and
- 27.6.4.6 sale of Business will result in continuity of existing business relationships between the Company and its suppliers/Creditors as well as contributions to the South African economy and tax fiscus.

28 RISKS OF THE BUSINESS RESCUE

- 28.1 Notwithstanding what has been stated in this Business Rescue Plan, the Business Rescue and the amount which Creditors could receive in terms of the Business Rescue may be adversely affected by, *inter alia*, the following factors:
 - 28.1.1 the uncertainty surrounding the economic climate in light of COVID-19 and the risk that the country or certain provinces, metropolitan districts or hotspots are placed back into lockdown;
 - 28.1.2 the approval of any proposed transaction by the Competition Commission taking longer than expected;
 - 28.1.3 the discrepancies in the asset registers and inventory lists differing materially from the actual assets and inventory on hand, thus reducing the purchase price as being received on the sale of such assets;

- 28.1.4 the expected realisation value of stock and other assets that the BRPs anticipate to achieve at a sale or at an auction or through trading differs materially from the actual realised value;
- 28.1.5 the final verification and agreement of the quantum of the Creditors' Claims takes longer than expected or if the records of the Company are irreconcilable with the Claims received;
- 28.1.6 unforeseen litigation of any nature whatsoever, howsoever arising, from any cause of action whatsoever;
- 28.1.7 the closure, consolidation and stock verification process during the period of handover of the Company to a successful purchaser being more complex and costly than anticipated thereby resulting in a downward adjustment of the purchase consideration;
- 28.1.8 deteriorating market conditions;
- 28.1.9 the revocation of support from any Affected Persons, service providers and/or suppliers;
- 28.1.10 increase in claims for damages for certain leases or rental agreements not being ceded and assigned;
- 28.1.11 unforeseen damages claims arising from the cancellation of any contracts or agreements of any nature whatsoever, howsoever arising;
- 28.1.12 any changes in legislation that impact Business Rescue;
- 28.1.13 any challenges to this Business Rescue Plan, the rejection thereof or any amendments thereto;
- 28.1.14 any regulatory challenges of any nature whatsoever, howsoever arising;
- 28.1.15 any unforeseen circumstances, outside of the control of the BRPs of any nature whatsoever howsoever arising that impacts on Business Rescue; and
- 28.1.16 material discrepancies in the information made available to the BRPs by the Directors and Management.

28.2 It should be noted that, in the unlikely event of an immediate liquidation of the Company, the risks set out in this paragraph would still apply.

[END OF SECTION]

PART C – ASSUMPTIONS AND CONDITIONS

29 CONDITIONS FOR THE BUSINESS RESCUE PLAN TO COME INTO OPERATION AND FULLY IMPLEMENTED

29.1 As required in terms of section 150(2)(c)(i)(aa) of the Companies Act, the Business Rescue Plan will come into operation upon the Adoption Date.

29.2 As required in terms of section 150(2)(c)(i)(bb) of the Companies Act, the Business Rescue Plan will be fully implemented upon the finalisation of the Sales Process or Wind-Down Process, as the case may be, payment of the Final Distribution and upon the Substantial Implementation Date.

30 EFFECT OF THE BUSINESS RESCUE PLAN ON EMPLOYEES

As required in terms of section 150(2)(c)(ii) of the Companies Act, the effect of the Business Rescue Plan on Employees is set out in paragraph 5.2.4.

31 CIRCUMSTANCES IN WHICH THE BUSINESS RESCUE WILL END AND THE DURATION OF BUSINESS RESCUE

31.1 As required in terms of section 150(2)(c)(iii) of the Companies Act, the Business Rescue will end when the Business Rescue ends.

31.2 In terms of section 132(2) of the Companies Act, the Business Rescue will end when:

31.2.1 The Business Rescue Plan is:

31.2.1.1 Proposed and rejected and the BRPs and Affected Person/s do not take any action to extend the Business Rescue in any manner contemplated by the Companies Act; or

31.2.1.2 Adopted and implemented (with the conditions fulfilled) and the BRPs have filed a notice of substantial implementation of the Business Rescue Plan with CIPC (i.e. on the Substantial Implementation Date); or

31.2.2 A High Court orders the conversion of the Business Rescue into liquidation proceedings; or

31.2.3 The BRPs file a notice of termination of the Business Rescue with the CIPC.

32 PROJECTED BALANCE SHEET AND PROJECTED STATEMENT OF INCOME AND EXPENSES

32.1 In terms of section 150(2)(c)(iv) of the Companies Act, a projected balance sheet for the Company and statement of income and expenses for the ensuing 3 (three) years must be included in the Business Rescue Plan.

32.2 If the Business Rescue proceeds in terms of the Sales Process or Wind-Down Process, there will be no continuation of the Company and as such no projected balance sheet or statement of income and expenses for the ensuing 3 (three) years.

33 EXISTING LITIGATION

All parties who have instituted legal proceedings, including any enforcement action, in respect of any Claims against the Company in any forum will be subject to the provisions of Part B dealing with proof of claims.

34 EFFECT OF BUSINESS RESCUE ON CLAIMS

34.1 After the adoption and implementation of this Business Rescue Plan, Creditors shall not retain their Claims against the Company for any balance that may still be due to them by the Company after receiving any payment made in terms of this Business Rescue Plan.

34.2 If the Business Rescue Plan is implemented in accordance with its terms and conditions, a Creditor will be deemed to have acceded to the discharge of the whole or part of the debt owing to that Creditor and will lose its rights to enforce the relevant debt or part of such debt against the Company with the provisions of section 154 applying to the debt.

34.3 A Creditor shall not be entitled to enforce any debt owed to it immediately before the Commencement Date except for any payment due to it in respect of that debt in terms of this Business Rescue Plan.

[END OF SECTION]

PART D – ADMINISTRATIVE PROVISIONS

35 DISPUTE RESOLUTION

35.1 Subject to paragraph 35.4, save as provided for in section 133 of the Companies Act, in respect of all or any disputes by the BRPs on Claims, which disputes include, but are not limited to, disputes on the existence or otherwise of a Claim(s), on quantum of a Claim(s), security claimed by a Creditor, the nature of the security, the extent and value of the security and the like (“**dispute**”), such dispute may be resolved in accordance with the dispute resolution mechanism outline below (“**Dispute Resolution Mechanism**”).

35.2 The Dispute Resolution Mechanism procedure will be as follows:

35.2.1 All Creditors who have received notification from the BRPs of a dispute are required within 15 (fifteen) days of receipt of such notice to contact the BRPs and meet with the BRPs during this period in an attempt to reach agreement on the dispute (“**Settlement Meeting**”).

35.2.2 If the Creditor does not avail itself of this 15 (fifteen) day opportunity, the Creditor will be deemed to have accepted the BRPs’ position in regard to the dispute.

35.2.3 If the Creditor does avail itself of the Settlement Meeting, however, the dispute is not resolved and the Creditor persists with the dispute, the BRPs and the Creditor must agree to the appointment of the retired judge as an expert (not as an arbitrator or mediator) to preside over and to resolve the dispute.

35.2.4 Should the BRPs and the Creditor fail to reach an agreement on the expert, then the Arbitration Foundation of South Africa will be requested to make the appointment.

35.2.5 The appointed expert must endeavour to complete his/her mandate within 30 (thirty) days of his/her appointment or within such further time period as the expert in his/her sole discretion may determine.

35.2.6 The expert will in his/her sole and absolute discretion determine:

- 35.2.6.1 the venue at which the dispute is to be resolved;
 - 35.2.6.2 the rules, regulations and procedures that will govern the determination of the dispute;
 - 35.2.6.3 the date(s) for the determination of the dispute;
 - 35.2.6.4 will give his award/determination within 5 (five) days of the Completion of the process as determined by him; and
 - 35.2.6.5 will as part of his award/determination determine who is liable for the costs of the determination such costs to include his/her costs, legal costs, venue costs, recording equipment (if applicable), transcript of evidence (if applicable) and the like.
- 35.2.7 The Creditor/s agree/s that, save for any manifest error the determination of the expert will be final and binding on the Creditor/s, the Company and the BRPs and will not be subject to any subsequent review or appeal application/procedure/process.
- 35.2.8 The expert shall be entitled to make an award for costs in his/her discretion.
- 35.2.9 The Creditor, the Employee/s, the Company and the BRPs agree to use their utmost endeavours to ensure that the entire dispute is determined by the expert as expeditiously as possible.
- 35.3 To the extent necessary, should the BRPs be of the view that certain disputes may be settled or compromised, the BRPs shall be authorised to settle and compromise such a dispute.
- 35.4 The BRPs may in their sole and absolute discretion decide that the Dispute Resolution Mechanism is not appropriate for resolving the disputes and/or that the application of the Dispute Resolution Mechanism may result in prejudice to other Creditors or Employees or the Company. In such event, the BRPs shall be entitled in terms of section 133 of the Companies Act to refer the dispute to Court and if an expert has already been nominated, such nomination will lapse and be of no force or effect.

36 ABILITY TO AMEND THE BUSINESS RESCUE PLAN

Provided that any amendment will not be prejudicial to any of the Affected Persons, the BRPs shall have the ability, in their sole and absolute discretion, to amend, modify or vary any provision of this Business Rescue Plan, provided that at all times the BRPs act reasonably. The BRPs shall give 5 (five) days written notice to All Affected Persons of their intention to amend, modify or vary any of the provisions 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.

37 SEVERABILITY

Any provision in this Business Rescue Plan which is or may become illegal, invalid or unenforceable shall be ineffective to the extent of such prohibition or unenforceability and shall be treated *pro non scripto* and severed from the balance of this Business Rescue Plan, without invalidating the remaining provisions of this Business Rescue Plan or affecting the validity or enforceability of such provision in any other jurisdiction.

38 PRESERVATION OF CLAIMS AGAINST OTHERS

38.1 The liability of Directors and/or prescribed officers for the Company's debts, under section 218 of the Companies Act, as read with sections 77(3)(b) and 22 of the Companies Act, is not affected by this Business Rescue Plan.

38.2 The liability of the Company's sureties for the Company's debt is not affected by this Business Rescue Plan.

38.3 Any investigation of misconduct by Directors and Shareholders shall be funded by the Creditors requesting such investigation or if a surplus remains after the sale, the surplus funds will be utilised to investigate.

38.4 Similarly to matters where section 103(4) of the Insolvency Act applies, no Creditor who was not a party to the funding of investigation proceedings shall derive any benefit from any monies or from the proceeds of any property recovered as a result of such proceedings before the claim and costs of every Creditor who was a party to such proceedings have its Creditors' outstanding claims and disbursements, including the cost of forensic investigators, accounts or lawyers.

38.5 The BRPs shall oversee these investigations and their costs will have to be paid by these Creditors and not the Company unless a surplus is available after Distribution.

39 CONCLUSION

For the reasons set out above, the BRPs are of the view that if the Business Rescue proceeds in terms of the Sales Process, same will result in an efficient rescue of the Company, in a manner that balances the rights and interests of all relevant stakeholders.

40 BRPs CERTIFICATE

40.1 We the undersigned, Phahlani Lincoln Mkhombo and Ndingeni Moses Singo, hereby certify to the best of our knowledge and belief that –

40.1.1 any actual information provided herein appears to be accurate, complete and up to date;

40.1.2 the BRPs have relied on financial information including opinions and reports furnished to me by Management and the Advisors;

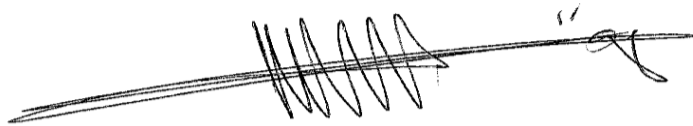
40.1.3 any projections provided are estimates made in good faith on the basis of factual information and assumptions as set out herein; and

40.1.4 in preparing the Business Rescue Plan, the BRPs have not undertaken an audit or forensic investigation on the Company or the information provided to me by Management and by the Company's auditors, although where practical, the BRPs have endeavoured to satisfy themselves of the accuracy of such information.



Date: 30 July 2021

Phahlani Lincoln Mkhombo, in my capacity as the appointed Business Rescue Practitioner (in terms of the Companies Act)



Date: 30 July 2021

Ndingeni Moses Singo, in my capacity as the appointed Business Rescue Practitioner (in terms of the Companies Act)