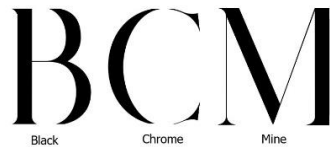


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**AMENDED AND REVISED BUSINESS RESCUE PLAN PREPARED AND PUBLISHED**

**IN TERMS OF THE COMPANIES ACT 71 OF 2008 (as amended)**



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in relation to

**BLACK CHROME MINE PROPRIETARY LIMITED**

(Registration No. 1998/010730/07)

(in business rescue)

---

**PHAHLANI LINCOLN MKHOMBO**

(Business Rescue Practitioner)



**DATE: 03 APRIL 2024**

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## 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:

### 1.2. words importing –

1.2.1. any one gender includes the other gender;

1.2.2. the singular includes the plural and vice versa; and

1.2.3. 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);

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

1.3.1. **“Accelerated Sales Process”** means the sales process embarked upon by the BRP and his Advisors to rescue the Company, more fully dealt with in paragraphs 18.6 and following of this Business Rescue Plan;

1.3.2. **“Adoption Date”** means the date upon which this Business Rescue Plan is approved in accordance with section 152(2), and, to the extent necessary, 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, as the case may be, the date on which a court in terms of 153(1)(a)(ii) or 153(1)(b)(i)(bb) 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;

1.3.3. **“Advisors”** means the advisors to the BRP and the Company, namely Deloitte, Genesis Corporate Solutions, Goshawk, Luhlelo, Minxcon, Nurizon International, Obsideo Consulting, R&R Project Managers, Segope and Werksmans and their respective employees or representatives;

1.3.4. **“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 and Trade Unions of the Company;

- 1.3.5. **“BRP”** means the business rescue practitioner appointed in terms of section 129(3)(b) of the Companies Act, being Mkhombo;
- 1.3.6. **“Burgers”** means Burgers Equipment and Spares South Africa Proprietary Limited with registration number: 2019/626559/07, a private company incorporated in accordance with the laws of South Africa;
- 1.3.7. **“Business”** means the mining of Chrome ore, quarrying and, in the future, beneficiation;
- 1.3.8. **“Business Day”** means any day other than a Saturday, Sunday or official public holiday in South Africa and **“Business Days”** has a corresponding meaning;
- 1.3.9. **“Business Rescue”** means proceedings, as it relates to the Company, under Chapter 6 of the Companies Act to facilitate the rehabilitation of a company, which is Financially Distressed, as more fully defined in section 128(1)(b) of the Companies Act;
- 1.3.10. **“Business Rescue Costs”** means the remuneration and expenses of the BRP (including, without limitation, all and any legal, accounting and other professional costs and expenses incurred by the BRP 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;
- 1.3.11. **“Business Rescue Plan”** means this document , being the Company's revised and amended business rescue plan, for consideration and adoption by Creditors;
- 1.3.12. **“C4 Hot Commissioning”** means the Introduction of chrome ore. The purpose of this stage of commissioning is to introduce material to the equipment or system, starting at low rates and building up progressively until rated capacities are achieved. Once the equipment or system is fully commissioned with material, the Contractor shall commence with the optimisation of each relevant piece of equipment. The equipment and/or system shall be manned and run for at least six continuous running hours during the optimisation process. This optimisation process is to optimise the process in line with the plant design parameters only in preparation for the C5 Commissioning;
- 1.3.13. **“C5 Commissioning”** means the stage of commissioning to verify that the plant can perform in accordance with the plant design parameters for an extended

period of time, ultimately producing a sellable concentrate with operationally stable feed, concentrate and tailings streams;

- 1.3.14. "**Chrometco**" means Chrometco Limited, with registration number: 2002/026265/06, a public company incorporated in accordance with the laws of South Africa and listed with Johannesburg Stock Exchange (JSE Limited);
- 1.3.15. "**CIPC**" means the Companies and Intellectual Property Commission, established in terms of section 185 of the Companies Act;
- 1.3.16. "**Claims**" means any and all debts of whatsoever nature and howsoever arising that is owed by the Company, including but not limited to a Secured, Preferent or Concurrent Claim as envisaged in terms of the Insolvency Act as read with the Companies Act, as well as an actual, contingent, prospective, conditional or unconditional, liquidated or unliquidated, assessed or unassessed debt, whether due or yet to fall due for payment or performance, whether its origin arose before the Commencement Date from delict, statute, regulation or other legislation; or arising out of any contract and/or agreement entered into before the Commencement Date; or arising from any other cause of action whatsoever; and, in no way derogating from the generality of the a foregoing, shall include any Claim for Tax or Taxation;
- 1.3.17. "**Commencement Date**" means 09 June 2022, being the date upon which Business Rescue commenced in accordance with section 129, read with section 132(1)(a)(i), of the Companies Act;
- 1.3.18. "**Company**" means Black Chrome Mine Proprietary Limited, Registration Number 1998/010730/07, a private company incorporated in accordance with the laws of South Africa, currently under business rescue;
- 1.3.19. "**Companies Act**" means the Companies Act, 71 of 2008 (as amended) including the regulations promulgated thereunder;
- 1.3.20. "**Concurrent Claim**" means any Claim (other than a Disputed Claim) which is unsecured and enjoys no preference;
- 1.3.21. "**Concurrent Creditor**" means a creditor with a Concurrent Claim against the Company;

- 1.3.22. "**Contracts**" means any contract, agreement or understanding entered into between the Company and a person before the Commencement Date;
- 1.3.23. "**Costs**" means the costs associated with the Business Rescue proceedings, including, without limitation, the remuneration and expenses of the BRP, and any costs of whatsoever nature and howsoever incurred by the BRP during the Business Rescue, including but not limited the costs of the Advisors;
- 1.3.24. "**Creditor**" means any persons, including legal entities and natural persons, having a Claim/s as at the Commencement Date and for the period of the Business Rescue;
- 1.3.25. "**Creditors' Committee**" means a committee of Creditors, contemplated in terms of section 145(3), read with section 147(1)(b), of the Companies Act;
- 1.3.26. "**Deloitte**" means Deloitte & Touche, a professional partnership established in accordance with the laws of South Africa, with IRBA registration number: 902276;
- 1.3.27. "**Directors**" means the directors of the Company as at the Publication Date set out in 4.2;
- 1.3.28. "**Dirt Diggers**" means Dirt Diggers Proprietary Limited, registration number: 2008/005340/07, a private company incorporated in accordance with the laws of South Africa;
- 1.3.29. "**Disputed Claims**" means all Claims, (including Claims that may be contingent, prospective, conditional, unassessed or for damages, whether liquidated or unliquidated) which are disputed in the Business Rescue, which dispute relates, *inter alia*, to Claim amounts as are reflected in **Annexure B** and/or the classification of a Claim as reflected in **Annexure B** and/or the existence, extent, nature and/or value of an Encumbrance as reflected in **Annexure B**, and which dispute shall be determined in terms of the Dispute Resolution Mechanism;
- 1.3.30. "**Disputed Creditors**" means persons who have Disputed Claim/s, and may include Intercompany and Regulatory Creditors. Disputed Creditors may, at the discretion of the BRP, be granted a Voting Interest for purposes of voting on the Business Rescue Plan only, and any such indulgence by the BRP should not be construed as an admission that the value of the allocated Voting Interest



is the value of an admitted debt owed by the Company to the Disputed Creditor. The Company's rights against the Disputed Creditor will, in those circumstances, accordingly remain reserved in respect of the Disputed Claim;

- 1.3.31. "**Dispute Resolution Mechanism**" means the dispute resolution mechanism set out in paragraph 36 of this Business Rescue Plan;
- 1.3.32. "**Distribution/s**" means the respective payments to be made to Creditors by the BRP, that will render the balance of those Creditors' Claims Unenforceable, in accordance with the terms and conditions of this Business Rescue Plan;
- 1.3.33. "**DMRE**" or "**DMR**" means the National Department of Mineral Resources and Energy;
- 1.3.34. "**Employees**" means all persons employed by the Company;
- 1.3.35. "**Employees Contracts**" means any contract, agreement or understanding entered into between the Company and any Employee for the employment of such Employee by the Company as an Employee;
- 1.3.36. "**Encumbrance**" means any security over the Company's assets to secure repayment of a Claim, as contemplated in the Insolvency Act, and retention of title. "**Encumber**" will have a corresponding meaning;
- 1.3.37. "**Financial Distress**" or "**Financially Distressed**" shall bear the same meaning ascribed to this term in section 128(1)(f) of the Companies Act;
- 1.3.38. "**Final Claims Date**" means the final date for the filing of Claims, being 08 April 2024;
- 1.3.39. "**Genesis**" means Genesis Corporate Solutions Proprietary Limited, registration number: 2016/479741/07, a private company incorporated in accordance with the laws of South Africa;
- 1.3.40. "**GMG**" means GMG Mining Supplies Proprietary Limited, registration number: 2016/483077/07, a private company incorporated in accordance with the laws of South Africa;
- 1.3.41. "**Goshawk**" means Goshawk Network Technologies Close Corporation, registration number: 1996/047922/23, a close corporation incorporated in accordance with the laws of South Africa;

- 1.3.42. **“Group”** or **“Sail Group”** means Sail Holdings and its subsidiary entities, including but not limited to Sail Contracting, Sail Minerals, Sail Resources, Chrometco and the Company, as well as those other companies related, as defined in section 1 of the Companies Act, to the Company;
- 1.3.43. **“Guardrisk”** means Guardrisk Insurance Company Limited, a company with registration number: 1992/001639/06 who is duly registered in terms of the company laws of South Africa;
- 1.3.44. **“IDC”** means the Industrial Development Corporation of South Africa, Limited, registration number: 1940/014201/06, being a corporation established in terms of section 2 of the Industrial Development Corporation Act, 1940 (as amended);
- 1.3.45. **“Insolvency Act”** means the Insolvency Act, 24 of 1936 (as amended);
- 1.3.46. **“Kulani Resources”** means Mason Resources Proprietary Limited with registration number: 2016/194136/07, a private company incorporated in accordance with the laws of South Africa, previously known as Kulani Resources Proprietary Limited, incorporating the Previous Shareholders;
- 1.3.47. **“LRA”** means the Labour Relations Act, 66 of 1995 (as amended);
- 1.3.48. **“Luhlelo”** means Luhlelo Mining Holdings Proprietary Limited with registration number: 2023/095091/07, a private company incorporated in accordance with the laws of South Africa;
- 1.3.49. **“Management”** means the management team of the Company, including the 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;
- 1.3.50. **“Mkhombo”** means Phahlani Lincoln Mkhombo, a business rescue practitioner as defined in section 128(1)(d) read with Regulation 126 to the Companies Act, duly appointed to supervise the Company during its Business Rescue;
- 1.3.51. **“Mine”** means the Chrome mine situated at the farm Mooihoek 225KT, owned by the Company and known as Black Chrome Mine;
- 1.3.52. **“Mining Right”** means the mining right and associated license held by the Company, as duly granted to it in terms of section 11 of the MPRDA;

- 1.3.53. **“Minxcon”** means Minxcon Proprietary Limited with registration number: 2004/029587/07 a company registered in accordance with the laws of South Africa;
- 1.3.54. **“MPRDA”** means the Minerals and Petroleum Resources Development Act, 28 of 2002;
- 1.3.55. **“Notice of Meeting”** means the notice of the adjourned Section 151 Meeting to consider the Business Rescue Plan delivered to all Affected Persons as contemplated in terms of section 151(2) of the Companies Act;
- 1.3.56. **“Obsideo”** means Obsideo Project and Technical Services Proprietary Limited with registration number: 2018/377417/07, a private company incorporated in accordance with the laws of South Africa;
- 1.3.57. **“Ordinary Shares”** means shares with a R1 no par value issued by the Company;
- 1.3.58. **“PCF”** means post-commencement finance obtained by the Company, as authorised by the BRP in terms of section 135 of the Companies Act, after the Commencement Date;
- 1.3.59. **“Preferent Claim”** means any Claim (other than a Disputed Claim) which is preferent only in accordance with the provisions of the Insolvency Act as read with the Companies Act;
- 1.3.60. **“Preferent Creditor”** means a Creditor with a Preferent Claim;
- 1.3.61. **“Previous Shareholders”** means:
- 1.2.50.1 Crystal Ball holding 378 shares in the Company;
  - 1.2.50.2 African Crest Resources holding 378 shares in the Company;
  - 1.2.50.3 Chrome Management Company holding 140 shares in the Company;
  - 1.2.50.4 IDC holding 600 shares in the Company;
  - 1.2.50.5 Taragona holding 84 shares in the Company; and
  - 1.2.50.6 Umnotho weSizwe holding 420 shares in the Company;

- 1.3.62. **“Proposal”** means the proposal to rescue the Company, more fully dealt with in Part B of this Business Rescue Plan;
- 1.3.63. **“Proposed Rescue Plan”** means the restructuring plan proposed by the BRP to rescue the Company as set out in this Business Rescue Plan;
- 1.3.64. **“Publication Date”** means the date on which this Business Rescue Plan is published to Affected Persons in terms of section 150(5) of the Companies Act, being 31 March 2023;
- 1.3.65. **“Rand”** or **“R”** or **“ZAR”** means the lawful currency of South Africa;
- 1.3.66. **“R&R”** means R&R Project Managers Close Corporation, with registration number: 1996/034589/23, a close corporation incorporated in accordance with the laws of South Africa;
- 1.3.67. **“Regulatory Creditors”** means a regulatory authority as defined in the Companies Act and SARS;
- 1.3.68. **“ROM Chrome”** means run of mine raw Chrome as it is delivered by the mine cars, skips, or conveyors and prior to treatment of any sort;
- 1.3.69. **“S&B”** means Stevridge Mining Proprietary Limited (trading as S&B Mining for the provision of underground mining contracting services) with registration number: 20141050295/07, a private company incorporated in accordance with the laws of South Africa;
- 1.3.70. **“Sail Contracting”** means Sail Contracting Proprietary Limited (in liquidation), with registration number: 2017/048014/07, a private company incorporated in accordance with the laws of South Africa;
- 1.3.71. **“Sail Holdings”** means Sail Holdings Proprietary Limited with registration number: 2016/291369/07, a private company incorporated in accordance with the laws of South Africa;
- 1.3.72. **“Sail Minerals”** means Sail Minerals Proprietary Limited (in liquidation), with registration number: 2013/101076/07, a private company incorporated in accordance with the laws of South Africa;
- 1.3.73. **“Sail Resources”** means Sail Resources Proprietary Limited (in business rescue), with registration number: 2015/017156/07, a private company

incorporated in accordance with the laws of South Africa, being a 64% majority shareholder of the Company;

- 1.3.74. **"SARS"** means the South African Revenue Services;
- 1.3.75. **"Section 151 Meeting"** means the adjourned meeting to vote on the adoption of this Business Rescue Plan as contemplated in terms of section 151 of the Companies Act;
- 1.3.76. **"Secured Claim"** means any Claim (other than a Disputed Claim) over which there is an Encumbrance as contemplated in the Insolvency Act as read with the Companies Act;
- 1.3.77. **"Secured Creditors"** means a Creditor with a Secured Claim;
- 1.3.78. **"Segope"** means Segope Water and Environmental Services Proprietary Limited with registration number: 2015/112863/07 a private company incorporated in accordance with the laws of South Africa;
- 1.3.79. **"Shareholders"** means the shareholders of the Company at the Commencement Date as set out in 4.1.2;
- 1.3.80. **"South Africa"** means the Republic of South Africa;
- 1.3.81. **"Substantial Implementation Date"** means the date upon which the BRP files with CIPC, a notice of substantial implementation of this Business Rescue Plan in terms of section 152(8) of the Companies Act, whereupon the Company's Business Rescue will end in terms of section 132(2)(c)(ii) once all the transaction agreements have been concluded and implemented;
- 1.3.82. **"Standard Bank"** means The Standard Bank of South Africa Limited, Registration Number: 1962/000738/06, a public company with limited liability incorporated in accordance with the Companies Act, carrying on business as a registered bank;
- 1.3.83. **"Tax/Taxation"** means:
  - 1.3.83.1. levies payable to government authorities;
  - 1.3.83.2. normal taxation;

- 1.3.83.3. capital gains tax;
  - 1.3.83.4. VAT;
  - 1.3.83.5. 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; and
  - 1.3.83.6. donations tax;
  - 1.3.83.7. customs duty;
  - 1.3.83.8. securities transfer tax;
  - 1.3.83.9. all Pay-As-You-Earn taxation (PAYE) not paid over;
  - 1.3.83.10. all other forms of taxation, other than deferred tax; and
  - 1.3.83.11. any penalties or interest on any of the foregoing.
- 1.3.84. "**Unenforceable**" means that all Claims will, upon the adoption and implementation of the Business Rescue Plan, become unenforceable against the Company as envisaged in section 154, and/or as read with section 152(4) of the Companies Act;
- 1.3.85. "**Unsecured Commercial Creditors**" means those creditors as per Annexure B but excluding employees, IDC, Sail Resources, Regulatory Creditors and the Unsecured Intercompany Creditors;
- 1.3.86. "**Unsecured Intercompany Creditors**" means Chrometco and Sail Minerals;
- 1.3.87. "**VAT**" means the value-added tax levied in terms of the Value-Added Tax Act, No. 89 of 1991, as amended;
- 1.3.88. "**Vis Major**" means any circumstances beyond the reasonable control of the BRP and/or the Company, and includes but is not limited to an act of nature or public enemy, fire, explosion, earthquake, flood, storm or other adverse weather, war declared or undeclared, civil war, revolution, civil commotion or other civil strife, riot, strikes, industrial action, blockade, embargo, sanctions, epidemics, pandemics, act of any government or other authority, compliance with government orders, demands or regulations, as well as shortages,

interruptions, fluctuations or the unavailability of electrical power, water supply or means of communication; and

1.3.89. “**Werksmans**” means Werksmans Incorporated, attorneys practising as such at The Central, 96 Rivonia Road, Sandton, Johannesburg;

1.4. any reference in this Business Rescue Plan to:

1.4.1. a paragraph is a reference to the relevant paragraph of this Business Rescue Plan;

1.4.2. a Part is a reference to the relevant part of this Business Rescue Plan;

1.4.3. 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;

1.4.4. any section of the Insolvency Act is a reference to such section, as read with chapter 14 of the Companies Act, 61 of 1973 and item 9 of schedule 5 of the Companies Act;

1.4.5. 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;

1.4.6. any reference in this Business Rescue Plan to any other agreement or document shall be construed as a reference to such other agreement or document as same may have been, or may from time to time, be amended, varied, novated or supplemented;

1.5. 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;

1.6. 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;

1.7. 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;

- 1.8. any reference to days, months or years shall be a reference to Business Days, and calendar months or years, as the case may be; and
- 1.9. 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.

## **2. ACTIONS TO BE TAKEN BY AFFECTED PERSONS**

- 2.1 If any Affected Person is in doubt as to what action should be taken arising from the contents of this Business Rescue Plan, such Affected Person or Affected Persons are advised to consult an independent attorney, accountant or other professional advisor in addition to any consultation with or direction received from the BRP.
- 2.2 Nothing contained in this Business Rescue Plan shall constitute legal, tax or accounting advice to any Affected Person, nor does the BRP make any representations in respect thereof.

## **3. STRUCTURE OF THE BUSINESS RESCUE PLAN**

For the purposes of section 150(2) of the Companies Act, this Business Rescue Plan is divided into 3 (three) parts as follows –

### **3.1 PART-A - BACKGROUND**

This part sets out the background to the Company and its business, and the factors that resulted in the Company being Financially Distressed and being placed under Business Rescue.

### **3.2 PART-B - PROPOSAL**

This part describes the terms of the Proposal and includes, *inter alia*, the benefits and/or effect of adopting the Business Rescue Plan as opposed to the Company being placed into liquidation.

### **3.3 PART-C - ASSUMPTIONS AND CONDITIONS**

This part sets out, *inter alia*, what conditions need to be fulfilled in order for the Business Rescue Plan to become effective, and to be implemented.



## PART A – BACKGROUND

### 4. COMPANY INFORMATION

#### 4.1 Shareholding Structure

As at the date of this Business Rescue Plan:

4.1.1 the authorised share capital of the Company is 1 000 000 000 (one billion) ordinary no par value shares;

4.1.2 the issued share capital of the Company is 100 000 000 (one hundred million) ordinary no par value shares, all of which are held and beneficially owned as follows:

Name of Shareholder	Shareholding	Number of Shares
Sail Resources	64%	64 000 000
IDC	10%	10 000 000
Kulani Resources	5%	4 998 600
Khumo Africa	11%	11 000 000
Pulane Maroga Community Trust	5%	5 000 000
Mooihoek Mine Employee Share Trust	5%	5 000 000
Previous Shareholders	0.0014%	1 400

4.1.3 the Company held no direct or indirect interests (controlling or otherwise) in any other company as at Publication Date.

#### 4.2 Directors

4.2.1 As at the date of this Business Rescue Plan, the Directors are:

Name of Director	Active or Resigned	Date of Appointment
Vusumuzi Monde Africa	Active	21 July 2021
Gregory David Hunter	Active	13 August 2021

Edward Maroga	Active	11 January 2023
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4.2.2 As at the date of this Business Rescue Plan, the Directors listed in paragraph 4.2.1 remain in office.

### 4.3 Company Information

Financial Year End: February

Registered Business Address and Head Office: Unit 25 Sunninghill Office Park  
No 4 Peltier Drive, Sunninghill,  
Gauteng, 2146

Postal Address: PO Box 1553  
Kelvin  
Gauteng, 2054

Auditors: Moore Stephens Johannesburg  
Inc

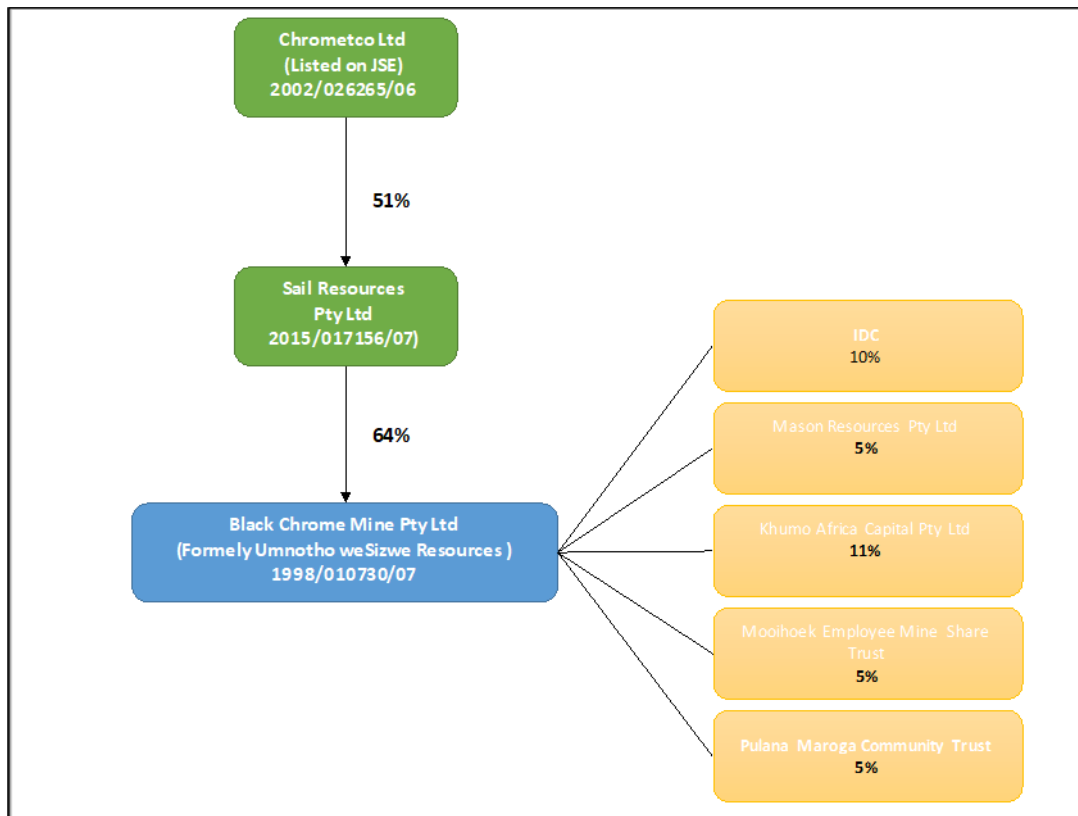
## 5. COMPANY BACKGROUND

### 5.1. Background to the Company

5.1.1 The Company, then named Umnotho Wesizwe Resources Proprietary Limited (“UWR”), was awarded a mining right in 2009 on the Mooihoek property, post completion of a feasibility study. UWR raised funding from the IDC in the form of debt and equity, resulting in the IDC becoming a 30% shareholder in UWR. UWR started developing the mine in 2010, with Redpath Mining South Africa Propriety Limited (“Redpath”), a mining contracting and engineering company, being appointed to develop the mine and to provide mining contracting services. Approximately 200 000t of run of mine (“ROM”) was produced before the mine was placed into Business Rescue in February 2013. The distress leading to the mine being placed into Business Rescue can be attributed to under capitalisation of the project and a slow production build up. The IDC subsequently bought the claims of all the creditors and became the sole creditor of UWR, with UWR owing R376 million to the IDC.

- 5.1.2 In 2015, the Sail Group entered into formal discussions with the IDC to purchase UWR and take it out of Business Rescue. A term sheet was signed in January 2016, with transactional documents being signed in June 2016.
- 5.1.3 Black Chrome Holdings Proprietary Limited (later renamed Sail Resources) bought a controlling stake in UWR in a transaction that saw a cash portion of R 100 million being paid to the IDC and the remainder of the creditors' debt being purchased by the IDC being and structured as a R 110 million senior loan, and with a shareholding of 10% in the Company being issued with ZAR 100 million of additional preference shares to the IDC.
- 5.1.4 The Section 11 filing for the proposed structure was submitted in October 2016 and was approved in February 2018 under DMR reference LP 30/5/1/2/2/90 MR, as a condition of the sale of the 64% shareholding to Black Chrome Holdings Proprietary Limited (later renamed Sail Resources). With 10% equity owned by the IDC as part of the restructuring and in order to meet the requirements for BEE under the MPRDA, 26% of the shares in the Company are in the hands of BEE parties as reflected in the simplified organogram below. While the DMRE was processing the Section 11 application the mine was operated under a management agreement with the IDC. During this time the Sail Group reversed listed its assets into the listed entity called Chrometco, which is listed on the JSE AltX exchange.
- 5.1.5 The Company was renamed, and its mine (i.e. then the Mooihoek Mine) became known as Black Chrome Mine in March 2020. In July 2021, the Mine was placed under care and maintenance with a skeleton crew responsible for maintaining the mine in order to keep the infrastructure in the best possible condition for a resumption of underground mining activities. In March 2023, the Company resumed underground mining activities at its mine following the appointment of an underground mining contractor. The new order mining right at the mine is valid until 2033 and can be renewed thereafter.

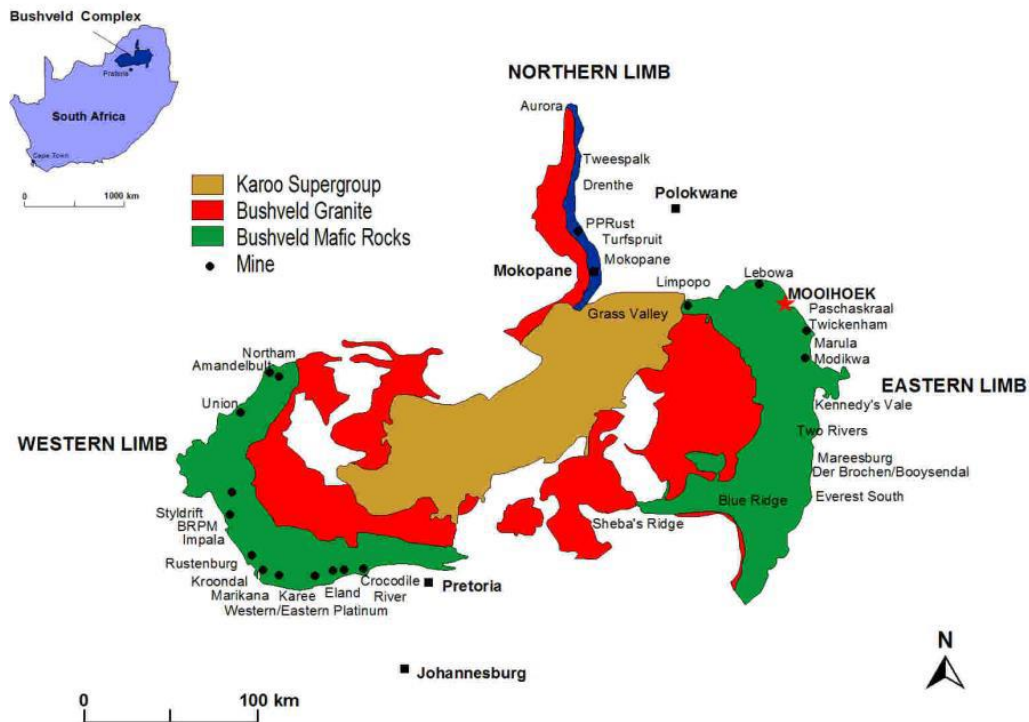
5.1.6 Simplified Company organogram:



5.1.7 The Mine is located in the Limpopo Province of South Africa on the farm Mooihoek 225KT, 100 km south-east of Polokwane and 130 km north-west of Nelspruit. It is situated in the Eastern Limb of the Bushveld Complex near Impala Platinum’s Marula Platinum project and several of the Company’s mining operations. The tarred R37 road runs through the Mooihoek farm.

5.1.8 The Mine contains two predominate chromite reefs known as the LG6 and LG6A, which are said to be some of the shallowest and highest-grade reefs in the area in which the mine is situated. A compilation of all the available geological data by the competent person indicated a strike direction of 170° to 180° for all seams, with the outcrop position along the eastern side of a hill. The dip of the layering is reasonably constant with apparent dip ranging from 14° to 16° west. The Mine has approximately 18Mt of Chrome resource and 9Mt of reserve as of August 2020.

5.1.9 The chromite reefs have been mined both opencast and underground. The underground mining, since the Sail Group purchased the operations has been a trackless mechanised mining bord and pillar mining method. Access to the mine and extraction of ROM Chrome ore is effected by way of a decline system. When the mine was put on care and maintenance on 4 July 2021, it was producing 80 – 90 ktpm of ROM Chrome ore.



## 5.2. Background to the Company's Financial Distress

As set out in the sworn statement accompanying the section 129 resolution, the filing of which commenced the Business Rescue, some of the main reasons for the Company becoming Financially Distressed, can be summarised as follows:

- 5.2.1 The Company is a majority owned subsidiary of Sail Resources, which is a subsidiary of Chrometco, a JSE listed entity, with the ultimate parent company of the Sail Group of companies, being Sail Holdings. Within the Sail Group of companies is Sail Contracting and Sail Minerals.
- 5.2.2 The Company's Business (i.e. mine) is located on the farm Mooihoek in the central region of Eastern Limb of the Bushveld Igneous Complex in South Africa's Limpopo province. The Mooihoek farm is underlain by a number of

Chrome seams, notably the LG6 and LG6A. The Company has a mining right that runs until 2033 and which can be renewed thereafter.

- 5.2.3 Sail Contracting, which provided mining services to the Company, was placed into provisional liquidation on 5 July 2021 and final liquidation on 20 October 2021. The majority of the employment agreements were concluded within Sail Contracting, and it owns certain mining assets.
- 5.2.4 Consequent upon Sail Contracting's provisional liquidation, the Mine was placed under care and maintenance and has not generated any revenue since then. Notwithstanding, the Company incurred considerable monthly standing costs, such as insurance, electricity and security costs, and which had to be paid irrespective of whether or not the Mine was operational, in order to protect the plant and equipment and infrastructure of the Mine.
- 5.2.5 Furthermore, on 23 September 2021, Sail Minerals, which operated the Chrome processing plant, was placed into business rescue in terms of an order of the High Court. Sail Minerals and the Company was each indebted, each to the other, for a significant amount of money and set-off applied. Sail Minerals is now also in liquidation.
- 5.2.6 In addition to the above, the Company also owed sizeable amounts to the IDC at the Commencement Date. The Company was due to make a payment of R4 million by the end of May 2022 to the IDC in terms of the Amended and Restated Senior Debt Loan Agreement with the IDC, but the Company was unable to make that payment.
- 5.2.7 Notwithstanding, the Mine has sizeable Chrome ore resources and reserves, with high in-situ Chrome grades with established infrastructure, which is capable of producing a superior quality saleable Chrome product that is in demand on the open market and, in the right circumstances, attracts a premium over normal pricing benchmarks. The nature of the orebody also lends itself to low-cost mining methods. The Company, at the time, estimated that it required approximately R7.5 million to commence open cast mining to extract Chrome from an initial small scale open pit operation to generate short-term cashflow, and approximately R80 million to restart underground mining of run of mine Chrome ore. The restart would encompass a phased build up in production as the underground operation was brought off care and maintenance, a contractor mobilized, people employed, infrastructure and equipment refurbished to the

extent necessary. The ROM Chrome would initially be screened to produce a saleable fines product that would be sold to the export market.

5.2.8 The Management were of the view that if bridge funding was to be provided, to commence open cast and underground mining of Chrome at the Mine, it would be able to generate revenue and repay most of the Company's debt over time. Potential funders advised the Company that such funding could not be accommodated at that time, given the Company's level of indebtedness and lack of liquidity, unless the Company was placed into a formal Business Rescue process in terms of the Companies Act.

5.2.9 In light of the above, the Company was Financially Distressed, within the meaning of section 128 of chapter 6 of the Companies Act, in that, *inter alia* –

5.2.9.1 it was estimated that the Company, under market conditions as at the Commencement Date, required an amount of R640 million to repay its debts, fund its working capital requirements and restart its mining operations. The Company was unable to generate these funds itself, nor was it able to raise such funding from the companies within the Sail Group, its Shareholders and/or third parties in the immediate future; and

5.2.9.2 it therefore appeared at or about the Commencement Date to be reasonably unlikely that the Company would be able to pay all of its debts as and when they fell due and payable in terms of section 128(1)(f)(i) of the Companies Act.

## **6. SUMMARY OF THE BUSINESS RESCUE**

### **6.1. Introduction and Business Rescue Timeline**

6.1.1. 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 –

6.1.1.1. 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;

- 6.1.1.2. a temporary moratorium on the rights of claimants against a company or in respect of property in its possession; and
- 6.1.1.3. 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.
- 6.1.2. The following summary sets out the salient dates on which certain events have taken place since the commencement of the Business Rescue and which will take place during the Company's ongoing Business Rescue proceedings –

<b>Event</b>	<b>Date</b>
Board Resolution to commence Business Rescue filed with CIPC	08 June 2022
BRP appointed	09 June 2022
First Employees' meeting	22 June 2022
First Creditors' meeting	23 June 2022
Request for an extension to publish the Business Rescue Plan	11 July 2022
Request for an extension to publish the Business Rescue Plan	29 August 2022
Further request for an extension to publish the Business Rescue Plan	13 October 2022
Further request for an extension to publish the Business Rescue Plan	31 October 2022
Further request for an extension to publish the Business Rescue Plan	28 November 2022
Publication of Business Rescue Plan	31 March 2023
Publication of Notice of Meeting to consider the Business Rescue Plan (in terms of section 151 of the Companies Act)	31 March 2023
Section 151 meeting to consider published Business Rescue Plan	18 April 2023



<b>Event</b>	<b>Date</b>
Meeting adjourned (“ <b>First Adjournment</b> ”)	16 May 2023
Meeting adjourned (“ <b>Second Adjournment</b> ”)	18 July 2023
Meeting adjourned (“ <b>Third Adjournment</b> ”)	31 October 2023
Meeting adjourned (“ <b>Fourth Adjournment</b> ”)	30 November 2023
Meeting adjourned (“ <b>Fifth Adjournment</b> ”)	29 February 2024
Publication of the Amended Business Rescue Plan	03 April 2024
Section 151 meeting to consider published Business Rescue Plan	11 April 2024

## **7. STEPS TAKEN SINCE THE APPOINTMENT OF THE BRP**

### **7.1 ADMINISTRATIVE MATTERS**

#### **7.1.1 Appointment of BRP**

The BRP was appointed on 09 June 2022 in terms of section 129.

#### **7.1.2 Management Control**

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

#### **7.1.3 Notices**

The BRP has been publishing notices to Affected Persons in terms of the Companies Act. 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.blackcr.com](http://www.blackcr.com).

#### **7.1.4 Reporting to CIPC and Affected Persons**

7.1.4.1 The BRP has complied with all statutory obligations under chapter 6 of the Companies Act and rendered monthly reports to CIPC and Affected Persons as contemplated in section 132(3).

7.1.4.2 All other notices relevant to the Business Rescue have been (and will continue to be) circulated via email to all Affected Persons.

**7.1.5 Genesis Corporate Solutions Appointed to provide support to the BRP**

7.1.5.1 Soon after the commencement of Business Rescue, the BRP appointed Genesis Corporate Solutions. The BRP relies on Genesis Corporate Solutions to provide back-office support, such as maintaining records, data management, finance, and technological functions.

**7.1.6 Deloitte Appointed to Calculate Potential Liquidation Dividend**

7.1.6.1 Soon after the commencement of Business Rescue, the BRP appointed Deloitte as an independent expert to: (i) calculate the potential liquidation dividend that would have been received by Creditors, in their specific classes, if the Company had been placed into liquidation as at the Commencement Date; and (ii) determine a fair and reasonable estimate of the return to each Secured Creditor, Preferent Creditor and Concurrent Creditor if the Company was liquidated.

7.1.6.2 With regard to the potential liquidation dividend calculation, attached as **Annexure C**, if the Company had been placed into liquidation as at the Commencement Date, Concurrent Creditors would have received a dividend of 0c (zero) cents in the Rand.

7.1.6.3 More details regarding the potential liquidation dividend calculation are set out in 12.

**7.1.7 Appointment of technical advisors**

7.1.7.1 The BRP appointed Minxcon as a lead independent mining consultant to undertake a comprehensive review of the technical data, and of the financial model and to provide technical advice to the BRP.

7.1.7.2 In addition, the BRP and the Company appointed R&R as project manager for the Chrome processing plant integration,

optimisation and tailings storage project. R&R does not only specialise in project management but also provides quantity surveying services, and is expected to add value during the project construction stage.

7.1.7.3 Specialist service providers were then appointed to evaluate and conduct an option study and ultimately a final costed project to be delivered on an agreed critical path. These service providers are Obsideo for the processing plant and integration, Nurizon for the tailings storage and water management and Segope for Environmental approvals as required.

7.1.7.4 In addition, the Company, with R&R, decided as a discipline within the project process to imbed an ongoing peer review process at various stages of the project. In this regard, Luhelo were appointed to review the operational parameters, and Goshawk the process design – they will continue to do this until the plant is commissioned.

#### **7.1.8 Appointment of Werksmans as legal advisors**

7.1.8.1 Shortly after the commencement of the Company's Business Rescue, the BRP appointed Werksmans to provide legal advice.

#### **7.1.9 Extension for Publication of Business Rescue Plan**

7.1.9.1 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 BRP. The BRP obtained extensions from the Creditors for the publication of the Business Rescue Plan, as contemplated in section 150(5)(b), for various reasons, firstly to 31 August 2022, secondly to 14 October 2022, thirdly to 31 October 2022, fourthly to 30 November 2022 and finally to 31 March 2023.

7.1.9.2 The Company's original business rescue plan was published on 31 March 2023, and following a fifth adjournment with directions by the Creditors to amend the Business Rescue Plan, the Section 151 meeting to consider the Business Rescue Plan will

be held on 11 April 2024 following publication of this amended Business Rescue Plan.

#### **7.1.10 Publication of Notice of Meeting and Business Rescue Plan**

7.1.10.1 This Business Rescue Plan is published to all Affected Persons within the extended deadline, on the 3 April 2024.

7.1.10.2 Publication has and/or is taking place in the following manner:

7.1.10.2.1 via email to all known Affected Persons, to the extent that the email addresses of known Affected Persons are available to the BRP;

7.1.10.2.2 publication on the website of the Company ([www.blackcr.com](http://www.blackcr.com)); and

7.1.10.2.3 a copy will be posted on a notice board accessible to Employees at the Mine;

7.1.10.2.4 copies will be available at the office of Genesis from Matimu Mandlhazi, from 08:00 to 17:00, between Mondays and Fridays.

7.1.10.3 The Notice of Meeting is being delivered to all Affected Persons simultaneously with the publication of the Business Rescue Plan.

#### **7.1.11 Cash Resources**

7.1.11.1 As at Commencement Date, the Company had R12,458,575 (twelve million four hundred and fifty-eight thousand five hundred and seventy-five Rands) cash available in its bank accounts, held with Standard Bank. The funds were used to cover critical operating expenses during the Business Rescue.

7.1.11.2 As of the 31 March 2024, the Company has R108.5 million in cash held in various accounts with Standard Bank.

7.1.11.3 The BRP had no choice but to pay for certain critical Sail Group operating expenses at the Mine which were not immediately

recoverable from Sail Group entities. These costs included, *inter alia*, insurance, water, and electricity. As such, these costs are not easily divisible. Therefore, in order to preserve the Mine (including the Mining Right), it was deemed prudent for the Company to pay on behalf of the Group, despite recoverability being improbable.

7.1.11.4 The BRP and Management identified the opencast mining as an immediate opportunity to restart operating the Mine and generate revenue to pay for the Sail Group operating expenses while negotiating for PCF to commence with the underground mining operations and a broader initiative to consolidate and restructure the Sail Group. The opencast commenced in August 2022 and was initially planned to be a 6 (six) months project. By end of August 2023, the opencast was in the process of being concluded and approximately 80 000t of saleable ROM Chrome had been produced and sold.

7.1.11.5 In order to preserve the cash resources of the Company, the BRP implemented immediate cash relief initiatives and explored broader cost optimisation initiatives, including cancelling all discretionary payments and prioritising payments based on revenue generation and asset protection.

## 7.2 EMPLOYEES

### 7.2.1 Employees' Meeting:

A first meeting of Employees, as contemplated in section 148, was held on 22 June 2022. During this meeting:

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

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

7.2.1.3 Employees expressed their support for Business Rescue and implored on the BRP to rescue the Company.

## 7.2.2 Consultation During the Development of the Proposed Business Rescue Plan

7.2.2.1 On Monday, 24 October 2022, the BRP consulted with, *inter alia*, Employees on the development of the Proposed Rescue Plan to:

7.2.2.1.1 enable them to make representations to the BRP for consideration, subject to the BRP's overall responsibility to publish a business rescue plan which the BRP believed as representing the best prospects of rescuing the Company as contemplated in the Companies Act; and

7.2.2.1.2 the BRP requested the Employees to submit any questions in regard to the original business rescue plan to enable the BRP to consider same prior to the Publication Date.

7.2.2.2 The BRP has subsequently continued to consult with Employees in the development of this Business Rescue Plan.

## 7.3 CREDITORS

### 7.3.1 Creditors' Meeting:

7.3.1.1 A first meeting of Creditors, as contemplated in section 147 was convened on 23 June 2022.

7.3.1.2 At the first meeting of Creditors:

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

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

7.3.1.2.3 claims were submitted by some of the Creditors; and

7.3.1.2.4 Creditors elected to form a Creditors' Committee and nominations were subsequently received from 3 (three) creditors. However, it was later determined by the Creditors that a Creditors' Committee was not deemed necessary.

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

7.3.1.4 The BRP has subsequently continued to consult with certain Creditors, as necessary, on the development of this Business Rescue Plan.

### **7.3.2 Consultation During the Development of the Proposed Business Rescue Plan**

7.3.2.1 During the Business Rescue proceedings, the BRP consulted with, *inter alia*, representatives of all the major and/or critical Creditors and other Affected Persons on the development of the original business rescue plan, and subsequently this Business Rescue Plan, to:

7.3.2.1.1 enable them to make representations to the BRP for consideration, subject to the BRP's overall responsibility to publish a business rescue plan which the BRP regards as representing the best prospects of rescuing the Company as contemplated in the Companies Act; and

7.3.2.1.2 request the Creditors and other Affected Persons to submit any questions in regard to the proposed business rescue plan to enable the BRP to consider same prior to the Publication Date, and this Business Rescue Plan prior to its distribution.

## **7.4 SHAREHOLDERS**

### **7.4.1 Consultation During the Development of the Proposed Business Rescue Plan**

7.4.1.1 During the Business Rescue, the BRP consulted with, *inter alia*, representatives of all the Shareholders on the development of the original business rescue plan, and subsequently in respect of this Business Rescue Plan, to:

7.4.1.1.1 enable them to make representations to the BRP for consideration, subject to the BRP's overall responsibility to publish a business rescue plan which the BRP regards as representing the best prospects of rescuing the Company as contemplated in the Companies Act; and

7.4.1.1.2 address questions that the Shareholders submitted with respect to the proposed Business Rescue Plan to prior to the Publication Date.

7.4.1.2 The BRP has subsequently continued to consult with certain Shareholders, as necessary, during the development of this Business Rescue Plan.

## 7.5 COMMUNITY ENGAGEMENTS

7.5.1 The BRP and Management have continuously engaged and maintained contact with the local community and the Pulana Maroga Community Trust since the commencement of Business Rescue proceedings.

## 7.6 LEGAL

### 7.6.1 Suspension of Contracts

Section 136(2)(2) authorises the BRP, during Business Rescue, to entirely, partially or conditionally suspend, for the duration of the Business Rescue, any obligation of the Company that arises under any Contract and would otherwise become due during the Business Rescue. The BRP has not, as at the the date of this Business Rescue Plan, suspended any such obligation, but reserves the right to do so if the BRP deems necessary.



## 7.6.2 Cancellation of contracts

- 7.6.2.1 The BRP has the right, in terms of section 136(2)(b), to entirely, partially or conditionally cancel any obligation of the Company that arises under any Contract and would otherwise become due during the Business Rescue (whether or not the BRP is entitled to do so in terms of the provisions of the contract), on application to court.
- 7.6.2.2 The BRP has not, as at the date of this Business Rescue Plan, cancelled any Contract in terms of section 136(2)(b) of the Companies Act, but reserves the right to do so if the BRP deems necessary,
- 7.6.2.3 The BRP also has the right, if the terms of a Contract so allows, to cancel such a Contract in terms thereof;
- 7.6.2.4 The BRP, through his legal representatives, informed Sail Minerals on 07 September 2022 of the Company's cancellation of the Ore Sale Agreement between the Company and Sail Minerals with immediate effect, on the basis that Sail Minerals, which was then under supervision in terms of Chapter 6 of the Companies Act, had committed an act of "insolvency" in terms of section 8(e) of the Insolvency Act, which therefore constitutes an "Insolvency Event" as defined in the Ore Sale Agreement. Paragraph 13.3 of the Ore Sale Agreement provides that *"[e]ither Party shall be entitled to cancel this Agreement immediately, notwithstanding the provisions of clause 13.1, if the other Party commits an Insolvency Event or an Insolvency Event occurs in relation to the other Party"*.

## 7.6.3 Continuation of Contracts

Where the BRP, has determined 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.

## 7.6.4 New Contracts

During the course of the Business Rescue proceedings, the BRP has, as is allowed by section 140 of the Companies Act, entered into the following contracts which he believes are in the best interest of the Company:

7.6.4.1 The contract with the opencast mining contractor.

7.6.4.2 The contract with S&B. This contract however was signed with a resolute condition that the contract would have been sanctioned by creditors upon the adoption of the Business Rescue plan. In the event that Business Rescue Plan is not adopted, mobilisation and start up costs incurred by the Contractor shall be repayable 6 (six) months after the contract terminates.

7.6.4.3 A contract with Shanxi Coking Coal Group International Trading Co., Limited ("**Shanxi**") for delivery of a fixed volume of Chrome of 100 000t or 30% of the Companies production by no later 29 February 2024 at a fixed price. The purpose of this contract was to effectively set a floor price at an attractive level for 30% of mine production for the first production year, thereby providing an element of revenue protection.

7.6.4.4 A lease to own contract with Burgers for the provision of three front end loaders.

7.6.4.5 Lease to own contracts with Dirt Diggers and Gilbert Mining Group for the provision of underground mining equipment.

7.6.4.6 A contract signed on the 15<sup>th</sup> of March 2024 with Obsideo for the design, engineering, procurement, construction and commissioning of the processing plant.

7.6.4.7 Guardrisk for the environmental rehabilitation guarantee at Black Chrome Mine.

#### 7.6.5 **Other Contracts**

Contracts not specifically dealt with in terms of the above paragraphs 7.6.1 to 7.6.4 are subject to ongoing evaluation and negotiations by the BRP in an effort to mitigate risks and optimise the Distribution to Affected Persons.

#### 7.6.6 **Investigation of the Affairs of the Company**

7.6.6.1 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*".

7.6.6.2 In the course of his investigations, into whether or not a reasonable prospect exists for the Company to be rescued, the BRP has concluded that by implementing the Proposed Rescue Plan, there is a reasonable prospect of the Company continuing in existence on a solvent basis, alternatively, that a better return for Creditors or Shareholders can be achieved in Business Rescue than would result from the immediate liquidation of the Company.

7.6.6.3 Section 141(2) provides that if at any time during Business Rescue the BRP concludes that there is evidence, in the dealings of the Company before the Commencement Date of:

7.6.6.3.1 voidable transactions or the failure by the Company or any director to perform any material obligation relating to the Company, the BRP must take any necessary steps to rectify the matter and may direct management to take appropriate steps;

7.6.6.3.2 reckless trading, fraud or other contravention of any law relating to the Company,

the BRP 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.

7.6.6.4 The BRP has, to date, not found, or been presented with, any cogent evidence of any voidable transactions or misconduct that would require the BRP to take any further steps contemplated in Section 141(2). Should any such evidence surface, or be provided, the BRP will immediately report on it to all Affected Persons.

## 7.6.7 **General**

The BRP was required to engage the Advisors on, *inter alia*, issues relating to:

- 7.6.7.1 employment;
- 7.6.7.2 competition;
- 7.6.7.3 tax;
- 7.6.7.4 legal;
- 7.6.7.5 regulatory issues;
- 7.6.7.6 technical;
- 7.6.7.7 contractual disputes;
- 7.6.7.8 PCF;
- 7.6.7.9 PCF agreements;
- 7.6.7.10 the disposal process;
- 7.6.7.11 Claims against the Company; and
- 7.6.7.12 various issues arising out of the Business Rescue including this Business Rescue Plan.

## 7.7 **BUSINESS RESCUE INITIATIVES**

### 7.7.1 **Post-Commencement Finance (PCF)**

- 7.7.1.1 This special form of financing provided and made available for companies under Financial Distress, typically during a formal Business Rescue, is critical to avoid operations coming to a standstill and a company collapsing into liquidation.
- 7.7.1.2 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 to enable the business to be successfully restructured.

7.7.1.3 During the Business Rescue, the BRP and Management approached various PCF funders including shareholders of the Company and investigated all other options for PCF to cover critical operating requirements, general working requirements and funding to restart the underground mining operations. Non-Disclosure Agreements were concluded with potential PCF funders in order to commence with the due diligence. Shareholders indicated that they were not in a position to provide PCF or not willing to advance PCF.

7.7.1.4 The BRP and Management engaged with 3 (three) other potential PCF funders who had indicated that they were willing to provide PCF to restart the underground mining operations provided that the Company was able to provide security which is acceptable to them. Of the 3 (three) PCF funders, 1 (one) PCF funder has already indicated that its credit committee is not comfortable with the security package that is available to secure the PCF. As a result, it was not willing to provide the PCF. The second PCF funder concluded that they would prefer to potentially participate in the Accelerated Sales Process and the third potential PCF funder signed a term sheet which subsequently terminated on the 9 December 2022.

7.7.1.5 Considerable time and effort was taken up negotiating with the potential PCF providers referred to in 7.7.1.4

## 7.7.2 **Reduction of Operating Costs**

7.7.2.1 In an effort to reduce operating costs and in order to preserve the already constrained cashflow position at the Company, the BRP investigated the existence, if any, of unnecessary costs and

immediately put in place cost-containment measures to reduce ongoing operating costs.

7.7.2.2 Both the BRP and Management continue to investigate further cost-containment initiatives.

### 7.7.3 **Offers Received**

7.7.3.1 Shortly after the commencement of Business Rescue, on 19 September 2022, an invitation was published in Business Day, Engineering News and Mining Weekly for the submission of expressions of interest to potentially acquire the assets of or some or all of the shares in the Company, under an accelerated disposal process.

7.7.3.2 the BRP received expressions of interest from various interested parties who were interested in acquiring a significant shareholding in the Company or business and assets of the Company or part thereof.

7.7.3.3 These expressions of interest were received between 01 July 2022 and 23 September 2023. More details on the more feasible expressions of interest, and the binding offers that followed, are set out in Part B (at paragraph 18) of this Business Rescue Plan.

### 7.7.4 **Unsolicited Offers Received**

Prior to the commencement of the Accelerated Sales Process, the BRP received 3 (three) unsolicited offers. However, after engagements with some of the critical stakeholders, it was agreed that a formal sales process needed to be embarked upon in order to open the process to qualifying bidders and ensure the process is open and transparent.

### 7.7.5 **Approach to Aforesaid Offers**

The BRP, in consultation with his Advisors, determined that post the conclusion of the formal sales process and the evaluation of the offers, that Creditors and Shareholders will stand to benefit more, and receive a greater distribution, from the Proposal than from a disposal of the assets of the Company or by a disposal of some or all of the shares in the Company.

#### 7.7.6 **Cash Administration**

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

- 7.7.6.1 Monitor the cashflow and financial position;
- 7.7.6.2 Perform daily bank reconciliations;
- 7.7.6.3 Analyse costs;
- 7.7.6.4 Control payments; and
- 7.7.6.5 Enforce general controls.

#### 7.7.7 **Income Generating Initiatives:**

- 7.7.7.1 The BRP and Management identified the opencast mining as an immediate opportunity to restart operating the Mine and generate revenue to pay for the Sail Group operating expenses while negotiating for PCF to commence with the underground mining operations and a broader initiative to consolidate the Sail Group.
- 7.7.7.2 The mining contract was concluded with MJM Minerals to assist with opencast mining as a first step to restart the mining operations.
- 7.7.7.3 The mining contractor is a local, community-based contractor with relevant experience and has hired previous Sail Contracting's Employees to assist with ongoing opencast mining operations.
- 7.7.7.4 The mining contractor has previous experience in opencast mining and has mined in the vicinity of the Mine. The mining contractor has also historically performed open cast operations at the Mine.
- 7.7.7.5 Failure to restart the mining operations could have resulted in the liquidation of the Company, loss of its Mining Right, and would further have had a devastating effect on the local community, that relies on this Mine for their livelihoods.
- 7.7.7.6 The salient features of the opencast mining opportunity that is being pursued is as follows:

- 7.7.7.6.1 As at the end of September 2023, approximately 80 000t of saleable ROM Chrome have been produced and sold with mobilization having commenced in August 2022 and mining in September 2022. During the period, funding for the Business was raised from two off-takers during two discrete periods – September 2022 to November 2022 and December 2022 to February 2023. All commitments have been met in terms of off take and repayment has been made under those agreements.
- 7.7.7.6.2 Opencast mining was completed in October 2023 in terms of any and all remaining remnants still to be mined and agreed rehabilitation will be completed by the mining contractor.
- 7.7.7.6.3 The BRP and management, after taking into consideration the various processes to raise PCF, the timeline and process related to the Accelerated Sale Process and the remaining life of the opencast, decided that it was prudent to look at the re-start of the underground mining operations. The re-start has ensured that the company is self-sustaining while the Business Rescue Plan is being finalized. In addition, as the re-start has thus far proven to be successful, it has provided the BRP with a trade out option to put to Creditors for consideration.
- 7.7.7.6.4 Utilizing a collaborative philosophy, Management and the BRP set out to find service providers willing to assist the Company to re-start underground operations by utilizing their own balance sheets. A mining contractor was identified with suitable skills, knowledge, experience and wherewithal to assist with a low risk re-start beginning early 2023. The mining contract referred to in 7.6.4.2 with S&B was signed on 13 January 2023.
- 7.7.7.6.5 Limited mobilization began not long after, with the contractor establishing a small team on-site starting to evaluate a re-start plan, as the Company had been placed on care and maintenance since July 2021. Numerous engagements with local community stakeholders also began, ultimately resulting in unanimous support by the community for a mine re-start on 12 February 2023.



7.7.7.6.6 In line with the agreed restart on the 12 February 2023, the mining contractor, namely S&B, commenced the process of hiring Employees and readying the mine for its first production month which was March 2023. The Company has been engaged in underground mining since then and is currently producing c. 28 000 – 30 000tpm of ROM.

7.7.7.6.7 The Company also readied itself to process the ROM Chrome as described in 5.2.7. The processing is taking place as expected and both yields and qualities being produced as expected.

7.7.7.6.8 More detail on the mine re-start is given in Part B.

## **8 TRADING ACTIVITIES FOLLOWING THE COMMENCEMENT DATE**

8.1 The Company's Mine was placed under care and maintenance until August 2022. Notwithstanding, the Company was and is still incurring considerable monthly standing costs, such as insurance, electricity and security costs, which must be paid irrespective of whether or not the Mine is operational, in order to protect the infrastructure of the Mine.

8.2 All the cash reserves and revenue generated from the opencast mining was ringfenced to cover the monthly standing costs in order to preserve the economic value and the goodwill in the Business. Failure to preserve the goodwill and economic value would have resulted in Company losing its Mining Right - an outcome most detrimental to the interests of all Affected Persons.

8.3 During August 2022, the Company commenced with the open cast mining in order to generate revenue to cover the standing costs and other critical operating expenses.

8.4 During late February 2023/early March 2023, the Company re-started underground mining operations. The cashflow generated by the opencast operations and the cashflow from the underground operations as production has ramped up, has ensured that the Company is able to sustain itself.

8.5 In order to maintain the solvency of the Company during the Business Rescue proceedings, the approval process for all expenditure has been rigorously monitored. The BRP continuously monitors cash flow and financial projections, performs regular bank reconciliations, controls payments and enforces general financial and operational controls.

8.6 The BRP and Management have also identified and implemented a number of key strategic interventions and cost containment measures, which resulted in significant cost savings and at the same time has improved the cash position.

8.7 As of 31 March 2024, the Company has R108.5 million in cash and approximately R30 million to R35 million in readily realisable stock (processed and unprocessed Chrome) that is being processed where necessary and sold.

## **9 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**.

## **10 CREDITORS OF THE COMPANY AS AT THE COMMENCEMENT DATE**

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

10.2 As required in terms of the Companies Act, **Annexure B** indicates:

10.2.1 which Creditors have proved their Claims;

10.2.2 the Creditors' ranking in terms of the Insolvency Act;

10.2.3 the Creditors' voting interest determined and calculated in terms of the Companies Act, according to the Claim amount approved by the BRP; and

10.2.4 which persons are Disputed Creditors, including the extent of their Disputed Claims. In this regard, Disputed Creditors may, at the discretion of the BRP, be granted a Voting Interest for purposes of voting on the Business Rescue Plan only, and such indulgence by the BRP should not be construed to mean that the value of the allocated Voting Interest is an admitted debt owed by the Company to the Disputed Creditor. The Company's rights against the Disputed Creditor will, in those circumstances, accordingly remain reserved in respect of the Disputed Claim;

10.3 The BRP has considered the Company records, consulted with Management and Creditors to the extent necessary, and considers the recordal in **Annexure B** of all

Claims and Disputed Claims as being correct, unless proven otherwise in terms of the Dispute Resolution Mechanism.

10.4 All persons, who believe that they have a Claim, are referred to **Annexure B** and should treat **Annexure B** as the BRP's notification of the Claims in this Business Rescue for purposes of the Dispute Resolution Mechanism contemplated in 36.

10.5 If any person is in disagreement with the information provided in **Annexure B**, or if any person who is not recognised as a Creditor in **Annexure B** but is of the view that they should be, (being a Creditor with a Disputed Claim), then such persons should utilise the Dispute Resolution Mechanism set out in this Business Rescue Plan at paragraph 36. Intercompany and Regulatory Creditors are also required to utilise the Dispute Resolution Mechanism in 36

#### 10.6 **Payment waterfall in Business Rescue**

10.6.1 In terms of Sections 135 and 144 of the Companies Act, to the extent that there are funds available to pay Creditors, the Distributions 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:

10.6.1.1 Unencumbered Assets:

10.6.1.1.1 firstly, the Costs;

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

10.6.1.1.3 thereafter, unsecured Creditors for PCF, who will rank in the order in which such PCF was provided;

10.6.1.1.4 thereafter, Employees who are preferred unsecured Creditors in terms of section 144 of the Companies Act for any remuneration, reimbursement for expenses or other amount of money relating to employment that became due and payable by the Company before the Commencement

Date (and which had not been paid to the Employees before the Commencement Date); and

10.6.1.1.5 lastly, all other unsecured Creditors.

10.6.1.2 Encumbered Assets, to the extent relevant and/or applicable:

10.6.1.2.1 a Creditor for PCF, which is also a Secured Creditor, will continue to hold their security against the Claims owed by the Company to that Creditor and, where that security is not sufficient to discharge those Claims, any residual Claim of that Creditor will be treated as an unsecured Claim for PCF; and

10.6.1.2.2 a Secured Creditor, that is not a PCF Creditor, will continue to hold their security against the Claims owed by the Company to that Secured Creditor and, where that security is not sufficient to discharge those Claims, any residual Claim of that Secured Creditor will be paid per 10.6.1.1.5.

## 11 CREDITORS VOTING INTEREST AND VOTING BY PROXY

11.1 In terms of the Companies Act and for the purposes of any vote by Creditors:

11.1.1 a Creditor with a recognised 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**, and, as such, a Creditor with a Claim for PCF will have a voting interest in the Business Rescue of the Company for the amount owed by the Company to that Creditor; and

11.1.2 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 BRP, equal to the amount, if any, that the Creditor could reasonably expect to receive in a liquidation of the Company.

11.2 A Creditor who has a Disputed Claim will only be entitled to vote on the approval of this Business Rescue Plan to the extent determined by the BRP, and any such indulgence by the BRP should not be construed as an admission that the value of the allocated Voting Interest is the value of an admitted debt owed by the Company to the Disputed

Creditor. The Company's rights against the Disputed Creditor will, in those circumstances, accordingly remain reserved in respect of the Disputed Claim.

11.3 In order to ensure the maximum attendance by creditors of the Section 151 Meeting, the BRP proposes that 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):

11.3.1 As set out above, the BRP has consulted with the critical Creditors, Employees and other key role players and Affected Persons on the development of the Proposed Rescue Plan prior to the date of this Business Rescue Plan, and the BRP has attempted to deal with all questions and/or suggestions.

11.3.2 Affected Persons are requested to provide any further questions and/or proposed amendments to the BRP prior to the Section 151 Meeting so that the BRP can consider and address same prior to the Section 151 Meeting to [BCMbr@gcs-sa.co.za](mailto:BCMbr@gcs-sa.co.za).

11.3.3 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.

11.3.4 A form of proxy will be included in the Notice of the Section 151 Meeting. 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 [BCMbr@gcs-sa.co.za](mailto:BCMbr@gcs-sa.co.za).

11.3.5 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 Wednesday, 10 April 2024.

11.4 The voting interests of Creditors, as at the date of this Business Rescue Plan, are set out in **Annexure B**.

## **12 PROBABLE DIVIDEND ON LIQUIDATION**

12.1 The BRP engaged Deloitte, as an independent expert, to calculate the potential dividend in a liquidation scenario as at Commencement Date.

- 12.2 The calculation of a liquidation dividend as at Commencement Date is based on an independent exercise undertaken by Deloitte. Affected Persons are encouraged to carefully consider the calculation presented by Deloitte and satisfy themselves as to the accuracy thereof. If any Affected Person requires a full copy of the liquidation and distribution report, please contact Matimu Mandlhazi of Genesis at [matimu@gcs-sa.co.za](mailto:matimu@gcs-sa.co.za). The report is available to Affected Persons on signature of a Hold Harmless Agreement, as further detailed in paragraph 12.10.6.
- 12.3 Deloitte relied on financial and other information provided to it by the Company and discussions with the BRP, 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 Deloitte.
- 12.4 Deloitte was requested to undertake the liquidation calculation on the basis of a final liquidation order being granted against the Company. In a final liquidation, where the Company's Mining Right is lost, value is expected to be significantly eroded and where certain assets within the Company would need to be sold on a fire sale basis.
- 12.5 The majority of the Company's mining development and infrastructure assets are integrated with the Mine and the cost of the separation and transportation of such assets to a third party buyer would potentially far exceed the fire sale value. Deloitte has therefore ascribed a realisation value of nil to these assets.
- 12.6 The time value of money has been taken into account in the calculation of the liquidation dividend with creditor recoveries expected over a two-year period.
- 12.7 The probable dividend which Concurrent Creditors would receive if the Company was to be placed in liquidation, as at Commencement Date, is 0c (zero) cents in the Rand. The liquidation calculation is attached as **Annexure C**.
- 12.8 Based on the dividend calculation of Deloitte as at Commencement Date, the BRP estimates that the probable dividend which Concurrent Creditors would receive if the Company was placed in liquidation, as at the date of this Business Rescue Plan, would still be 0c (zero) cents in the Rand.
- 12.9 The figures in paragraph 12.7 and 12.8 take into account the costs associated with liquidation, as calculated in terms of the Insolvency Act.
- 12.10 Deloitte wishes to highlight the following:

- 12.10.1 the probable liquidation dividend may not necessarily meet the Affected Persons' requirements or objectives or address the specific circumstances of the purpose for which access to the probable liquidation dividend is required by the Affected Persons;
- 12.10.2 the probable liquidation dividend does not constitute tax, accounting or legal advice to any Affected Persons and Affected Persons are advised to consult an independent attorney, accountant or any other professional advisor;
- 12.10.3 Deloitte shall not be held responsible for any acts or omissions taken by an Affected Persons' reliance on the liquidation dividend. Any reliance by the Affected Persons on the probable liquidation dividend is entirely at the Affected Persons' own risk;
- 12.10.4 Deloitte does not warrant or represent that the information set out in the probable liquidation dividend calculation is sufficient or appropriate for the purpose for which access to the probable liquidation dividend is required by the Affected Persons;
- 12.10.5 Deloitte neither owes nor accepts any legal duty to the Affected Persons whether in contract or in delict (including without limitation, negligence and breach of statutory duty), or howsoever otherwise arising, and shall not be liable in respect of any loss, damage or expense of whatsoever nature which is caused by the Affected Persons' use of (or conclusions drawn by it) the Output, or upon any representation, statement, judgement, explanation or other information obtained from Deloitte or made in relation thereto; and
- 12.10.6 Deloitte requires that any Affected Person requesting a copy of the detail supporting the liquidation dividend sign a hold-harmless letter in favour of Deloitte. The liquidation estimated outcome statement, if supplied under a hold harmless letter, will be a redacted version due to the commercial sensitivity of the information contained therein and in order to protect the interests of all Affected Persons.

### **13 HOLDERS OF THE COMPANY'S ISSUED SECURITIES**

As required in terms of section 150(2)(a)(iv) of the Companies Act, the Shareholders are the holders of the Company's issued securities.

## **14 THE PRACTITIONERS' REMUNERATION**

- 14.1 The regulations to the Companies Act prescribe an hourly tariff (inclusive of VAT) for the payment of the fees of a business rescue practitioner.
- 14.2 The BRP's 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 1181.
- 14.3 A company is regarded as a large-sized company if its public interest score is more than or over 500.
- 14.4 Due to cashflow constraints and in an effort to preserve cash, the BRP and Genesis Corporate Solutions each agreed to charge a monthly retainer of R250 000.00 (two hundred and fifty thousand Rand) respectively, exclusive of VAT at the commencement of Business Rescue proceedings. This resulted in a much lesser fee than what would have been payable had the BRP charged out his fees at the prescribed tariff and had Genesis Corporate Solutions charged out their services at their standard rates.
- 14.5 To date, the BRP has charged out his time at a monthly retainer of R250 000.00 (two hundred and fifty thousand Rand). With effect from 01 October 2023, the BRP has charged out his time at the prescribed tariff rates set out in Regulation 128 of the Companies Act, as adjusted in terms of section 14.6 below.
- 14.6 In terms of section 143(2), the BRP hereby proposes an agreement providing for further remuneration, additional to the prescribed tariff, resulting in an increase in the charge out rate of the BRP from R1 740.00 per hour to R4 500.00 per hour (excluding VAT), retrospectively, with effect from the date of his appointment. This fee is payable on the Adoption Date and is based on an approximation of the BRP's standard hourly rates and the tariff rates.
- 14.7 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 R4 000.00 and R6 500.00 exclusive of VAT.
- 14.8 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 BRP's appointment.



14.9 In addition to the above, the BRP will be entitled to a deal fee or success fee (whichever is applicable) of R3 500 000.00 (three million five hundred thousand Rand), exclusive of VAT, in respect of any successful transaction concluded with a third party or upon the successful implementation of the underground mine restart plan. This fee will be payable to the BRP or Genesis Corporate Solutions on or before the date of filing of Substantial Implementation of the adopted BR Plans with CIPC.

14.10 On Substantial Implementation of the Business Rescue Plan, the Creditors, Shareholders and the Company agree to pay the BRP a deal fee or success fee as envisaged in clause 14.9 above.

14.11 Separate meeting to approve the proposed agreement will be convened in accordance with the terms of section 143 of the Companies Act.

**15 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]**

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## **PART B – PROPOSAL**

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### **16. MORATORIUM**

- 16.1 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.
- 16.2 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 BRP or a High Court consents to any such proceedings.
- 16.3 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.
- 16.4 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.

### **17. OBJECTIVE AND PURPOSE OF BUSINESS RESCUE**

- 17.1 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.
- 17.2 The objective of Business Rescue, as set out in section 128(1)(b)(iii) of the Companies Act, is to develop and implement a rescue plan that:
- 17.2.1 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

17.2.2 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.

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

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

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

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

## **18 PROPOSED RESTRUCTURING PLAN IN TERMS OF THIS BUSINESS RESCUE PLAN**

18.1 Prior to the commencement of the Business Rescue, Management and Sail Resources, in its capacity as the Company's majority shareholder, were pursuing the introduction of a potential strategic equity partner for the Company that would provide sufficient capital to restart underground mining operations. The process was well advanced, with the Company, Sail Resources and the potential strategic equity partner having held discussions over approximately 6 (six) months. It was anticipated that this transaction would complete during the early stages of the Business Rescue and position the Company as a sustainable business going forward.

18.2 However, shortly after the Company filed for Business Rescue, this potential strategic equity partner and the proposed transaction fell through.

18.3 Consequently, the BRP together with Management and the Advisors, immediately conducted an objective and independent assessment of the Company and evaluated various Business Rescue scenarios. The BRP also consulted with various critical stakeholders.

18.4 At this point, the proposed restructuring plan envisaged, *inter alia*, re-starting underground mining activities as soon as possible in order to mine ROM Chrome ore that is dry screened to produce a fines product for the export market, and a fraction of larger but lower grade material for domestic sales. It also contemplated consolidating

mining and processing activities conducted by the Sail Group into the Company, to the extent possible, by means of making an offer to Sail Contracting for all its assets and an offer to Sail Minerals for selected assets once underground operations had reached a steady state.

18.5 To achieve the above, the BRP and Management engaged with various potential PCF funders in order to secure funding to restart the underground Mine, as is highlighted in 7.7.7.6.3. However, the process to try and secure PCF took longer and was less successful than anticipated and consequently, and in order to fully explore all options available, the BRP decided to embark on an Accelerated Sales Process while the process of raising PCF was ongoing.

18.6 The Accelerated Sales Process commenced on 19 September 2022. Deloitte was appointed to run the process to ensure that the process was open, fair and transparent. In terms of the process, adverts were placed in the Business Day, Engineering News and Mining Weekly to solicit interest.

18.7 The timeline for the process was as detailed below:

<b>Description</b>	<b>Deadline</b>
Advert placed	19 September 2022
Expression of interest lodged by interested potential acquirers (with refundable deposits being paid)	23 September 2022
Non-binding indicative offers (“NBIO”) received	11 October 2022
Instruction to Bidders released requesting binding offers and commencement of bidders’ due diligence	24 November 2022
BCM site tours	January and February 2023
Conditional Binding Offers received	10 March 2023

18.8 A total of eight Expressions of Interest were received from bidders and evaluated. Seven bidders were then granted access to the data room and requested to submit an NBIO.

18.9 On 11 October 2022, four NBIOs were received.

18.10 On 10 March 2023, two conditional binding offers (referred to as “Offer A” and “Offer B” respectively) were received for the proposed acquisition of the Company’s assets (“Conditional Binding Offers”).

18.11 The BRP in conjunction with its advisers analysed the Conditional Binding Offers received, and concluded that neither of the Conditional Binding Offers received would be suitable to propose under the Business Rescue Plan for the following key reasons:

- 18.11.1 The value of Offer A for the Company as a going concern ("**Offer A Price**") is considered very low and would result in a distribution to concurrent creditors of 0c/R.
- 18.11.2 Further, the Offer A Price would only become payable on conclusion of the transaction, which would necessarily entail, *inter alia*, approval being granted in terms of section 11 of the Minerals and Petroleum Resources Development Act ("**MPRDA**"). This condition has the effect that the Company would under Offer A only receive the proceeds of the sale anywhere between 6 and 18 months (or longer) after conclusion of the legal agreements. It was estimated that it would take a minimum of 3 months to conclude the legal agreements. The Company could therefore expect to receive the proceeds sometime between December 2023 and December 2024.
- 18.11.3 Similarly, Offer B stated that the first tranche of the sale proceeds (representing c.59% of the total purchase consideration offered), would be paid on conclusion of the transaction (i.e. also only once approval in terms of section 11 of the MPRDA has been granted). The second tranche representing c.41% of the total purchase consideration would be payable on the 2<sup>nd</sup> anniversary of the transaction closure. This meant that concurrent creditors could likely expect the second tranche much later than what is proposed in the Proposal below, with the accrued interest owing to the senior creditors further diluting the distribution of the relevant portion of the second tranche to concurrent creditors.
- 18.11.4 When contemplating such time periods, the time value of money plays an important factor, diminishing the ultimate value Creditors would receive over the period.
- 18.11.5 The Conditional Binding Offers also included terms and conditions that introduce significant elements of uncertainty and execution risk to the successful conclusion of the Accelerate Sales Process. Such conditions included, *inter alia*, further due diligence by the offerors and/or their funders

and the payment of a portion of the purchase price through cash flows generated by the Company under its new ownership.

## **19 THE PROPOSAL: MINE RESTART – TRADE OUT PLAN**

19.1 Historically, Sail Minerals and Sail Contracting with their associated infrastructure provided contracted mining, processing, logistics and marketing services to the Company, as the holder of the mining right, land lease and certain utilities. The Chrome mining, processing and marketing businesses was therefore housed separately under the Sail Group.

19.2 The Company will be restructured such that it becomes an integrated Chrome producer and processor and will be the owner of the assets required to be a producer and processor. This is achieved in a number of steps:

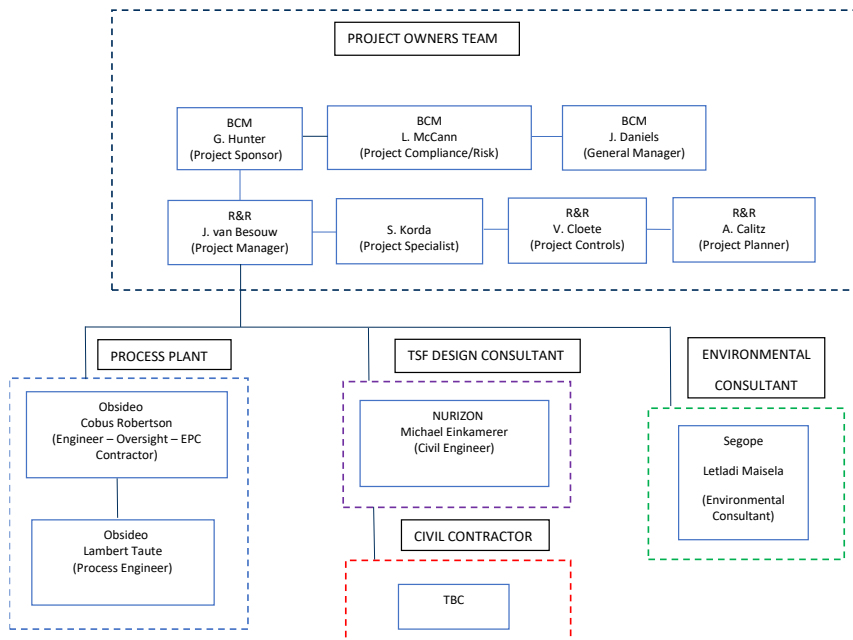
- 19.2.1 Re-start of underground mining – as highlighted in 7.6.4.2 and 7.7.7.6.4, a contract has been signed with a mining contractor, namely S&B. The contract will, once the Business Rescue Plan is approved, continue for a 3 year period. The contractor provides for all mobilisation and restart costs which is provided as PCF and amortised over the life of the contract. The contract is based on a fixed annual rate, with clear deliverables on key metrics, with penalties and bonuses. This allows for a low cost, low risk and early re-start.
- 19.2.2 In addition, this mining contract required (i) that 60% of employees of the mining contractor need to come from the villages comprising the Pulana Maroga Community, giving the previous employees of Sail Contracting a greater opportunity of being employed, and (ii) that previous suppliers of Sail Contracting be engaged to determine whether renewed supply can be achieved on commercial terms.
- 19.2.3 In essence, the mine restart is self-funded and did not require the provision of PCF other than the mobilisation and re-start capital provided by the mining contractor which will be amortised over the 3 year life of the mining contract. Any additional funding is to be funded from internal cashflows.
- 19.2.4 For the first 18 months the underground ROM which the Mine produced was dry screened. 58% of the screened product was a Chrome fines product which was exported and the balance was low grade lumpy product which was sold domestically or processed on site.

- 19.2.5 It was originally estimated that the Mine would produce approximately 200 – 300 000 ROM ton at startup, and then 750 – 800 000 ROM ton per annum from underground thereafter, and that around 400 people would be employed between the mining contractor and the Company. This does not include people that will be employed in the Chrome processing plant.
- 19.2.6 As predicted, the Mine produced 255 000 ROM ton up to the end of February 2024 (mine production month).
- 19.2.7 Further 407 people have in fact been employed to date with 332 being directly employed by the contractor, 40 by sub-contractors and 35 by the Company.
- 19.2.8 The Chrome fines product will either be delivered into the contract as per 7.6.4.3 or sold at the current spot price depending on prevailing market conditions at the time. The intention of entering into the contract for the fixed volume and at a fixed price, was to ensure that should Chrome prices fall over the ensuing twelve months while the Company is re-building, 30% of Chrome volumes to be sold will receive a price that is well in excess of the break-even cost of mining and associated overheads.
- 19.2.9 During the first 18 month as mentioned above, the Company has, in its drive to become an integrated producer as mentioned in clause 19.2, pursued the following initiatives. During the first six months:
- 19.2.9.1 The Company completed a study related to what is required to integrate the processing plant with the mining operation in order to reduce what was historically a high level of internal logistical cost, finalising the optimal processing strategy for the Company given the product suite it wishes to produce and the associated required tailings handlings facilities.
- 19.2.9.2 The BRP and the Company have constituted the following project owners team with duly appointed advisors to deliver on what is determined to be the best outcome in 19.2.7.1. As mentioned in 7.1.7.2. and as depicted in the diagram below, R&R have been appointed as project manager for the Chrome processing plant integration, optimisation and tailings storage project. R&R does not only specialise in project management but

also provides quantity surveying services and is expected to add value during the project construction stage.

19.2.9.3 Specialist service providers were then appointed to evaluate and conduct an option study, review and evaluate the options, conduct test work and ultimately present a final costed project to be delivered on an agreed critical path. These service providers are Obsideo for the processing plant and integration, Nurizon for the tailings storage and water management and Segope for Environmental approvals as required.

19.2.9.4 In addition, the Company, with R&R, decided as a discipline within the project process to imbed an ongoing peer review process at various stages of the project. In this regard, Luhelo were appointed to review the process design and Goshawk the operational parameters – they will continue to do this until the plant is commissioned. No fatal flaws have been identified to date. The diagram below depicts the project management structure that has been implemented:





19.2.9.5 The following preliminary design criteria for the plant has been agreed and will be updated once further design development has been completed and test work received:

DESCRIPTION	UNIT	DESIGN VALUE
Monthly Throughput	tpm	80 000
Annual Throughput	tpa	960 000
Operating Days	Days	365
Hours/Day	Hours	24
Total Hours per Annum	Hours	8 760
Target Availability	%	80.5
Target Utilisation	%	85
Estimated Running Hours per Annum	Hours	5 994
Estimated Running Hours per Month	Hours	500
<b>Plant Hourly Throughput</b>	<b>Dry tph</b>	<b>160</b>
Feed Grade	%	33%-34%
Primary Chrome Conc Met Grade	%	≥ 43.4 -44%
Secondary Chrome Conc Met Grade	%	41-42%
Estimated Coarse Tail Chrome	%	5-10%
Estimated Coarse Tail PGE	g/t	0.8
Monthly Throughput	tpm	16000
Hourly Throughput	tph	23.8
Estimated Fine Tail Chrome	%	20
Estimated Fine Tail PGE	g/t	4.5
Monthly Throughput	tpm	8000
Hourly Throughput	tph	11.9
*Plant Yield (Target) %	%	70

19.2.9.6 The anticipated timeline (subject to final revision) post the delivery of the final project plan at the end of October 2023 and the completion of the tendering process is as follows:

19.2.9.7 Capital expenditure for the above design is expected to be circa

PROJECT MILESTONES	DATES
Project Start	5 June 2023
Options Study Complete	31 Aug 2023
Updated Capex Document	22 Oct 2023
Project report	31 Oct 2023
Site Establishment Civil Contractor	10 Jan 2024
Site Establishment TSF and Stormwater Contractor	10 Mar 2024
Site Establishment SMPP Contractor	20 Feb 2024
Environmental Approval Complete (WUL)	22 May 2024
Plant Construction Complete	24 Sep 2024
Commissioning	25 Sep 2024 – 19 Nov 24

R180 – R220 million. Funding for the projects is to be provided

from internal cashflows and has been modelled as the base case. The Company will investigate the possibility and feasibility of raising funding from external funding sources including off take funding from the pre-sale of Chrome concentrate which will be produced by the re-start of the processing plant.

19.3 In order to achieve the above restart, the production of Chrome fines for 18 months, the completion of the studies, the associated construction and commissioning to ultimately produce Chrome concentrate, the following steps have been taken while others still need to be taken:

19.3.1 During January 2023, the contract with the mining contractor was signed and limited mobilisation started. This process picked up momentum in February 2023, post a community mass meeting that was held on 12 February 2023. Since then, hiring of labour has progressed at pace.

19.3.2 Working in conjunction with the Company's mine legal appointee, once the relevant sign offs had been received, the contractor has initiated an organised and planned re-start.

19.3.3 First Chrome tonnes were removed from underground late February 2023 and a first blast was conducted in the first week of March 2023, officially signalling the re-start of production.

19.3.4 The dry screen was commissioned during the last week of February 2023 with all associated surface infrastructure and initial ROM tonnes processed in the first week of March 2023.

19.3.5 Various stakeholders have been engaged including but not limited to communities, regulatory authorities, Employees, service providers and others to ensure that the re-start is compliant and well understood.

19.3.6 The mine has to the end of February 2024 (mine production month) produced 255 000 ROM t.

19.3.7 407 people have been employed to date with 332 being directly employed by the contractor, 40 by sub-contractors and 35 by the mine.

19.3.8 Production volumes continue to build month on month and the overall trend is positive. There have however been a number of work stoppages and other disruptions that the contractor and management have had to

deal with including late delivery of equipment, breakdowns due to the mine standing for 18 months, illegal blockages of the gate to the mine, sabotage of electricity supply to the mine, Section 54 and 55 stoppages by the DMR. However, these incidents are all becoming less prevalent.

19.4 An offer was made to Sail Contracting on 15 September 2023 to purchase Sail Contracting's Property, Plant, Equipment, and other assets for R36 million excluding VAT, based on an indicated in situ forced sale value. This offer was accepted and the transaction closed on 14 November 2023. The Property, Plant, Equipment, and other assets now belong to the Company.

19.5 Engagements have begun with specialists around Chrome processing and tailings storage solutions as part of the process referred to in 19.2.7.1. As the discussion with the specialists on Chrome processing progresses over the next few months, it will become clearer whether any assets are required from Sail Minerals. A potential proposal would be made to Sail Minerals or other suppliers for the required assets.

19.6 The Company has put in place a number of risk mitigants that should assist in protecting the Company from a number of identified potential risks associated with the re-start:

19.6.1.1 Revenue: – Price - As per 7.5.4.3, a contract was signed with Shanxi for the delivery of a fixed volume of Chrome being the greater of 100 000t or 30% of the Company's at a fixed price – this price being well in excess of the break-even cost of production - by no later than 29 February 2024. The purpose of this contract is to effectively set a floor price at an attractive level for 30% of mine production for the first production year which is also in line with the first financial year, thereby providing an element of revenue protection. The Shanxi long term fixed price agreement ran for 12 months ending February 2024 with a total tonnage deliverable of 100,000 at a 42% Cr<sub>2</sub>O<sub>3</sub> price of \$220. The intention behind the agreement was to remove price risk from a portion of exported production for the 2024 financial year and therefore hedge the risk of a crash in the Chrome price. During the term of the agreement, the spot price remained at higher levels and through ongoing amicable agreement with Shanxi, the parties agreed that half the tonnage can be delivered into the fixed price agreement and the remaining exportable production can be sold at the higher spot price. As at end of

February 2024, BCM will have delivered 50,000 tons into the long term fixed price agreement with Shanxi and 125,000 tons to Shanxi at spot price. The parties are currently, in good faith, negotiating the amendment to the original long term contract which will result in a portion of tonnage being rolled over into the 2025 financial year. Such amendment will be concluded during the month of April 2024 due to China going on leave from 29 January 2024 to 19 February 2024 for the annual Spring Festival and Chinese New Year holiday.

19.6.1.2 The Company pre-dominantly conducts sales of Chrome on a Free on Truck basis, with the significant bulk of revenue for Chrome sales being realised on product being dispatched from the mine, thereby ensuring that the Company is not exposed to a working capital cycle of any significance for sale of its product.

19.6.1.3 Volume – the planned restart volumes are at 50 - 75% of volumes that were being produced when the mine was put on care and maintenance. The production profile was reviewed by the technical advisor.

19.6.2 Cost - The use of a mining contractor with a contracting cost based on a Rand per tonne cost with appropriate penalties and bonuses for delivery of the agreed mine plan. The roll over of the annual cost is to be agreed but cannot be more than the previous years actual cost inflated by Mining PPI as published by Statistics SA. In addition, a contingency has been allowed for in the base case financial model for any unanticipated cost overruns during the restart over the first financial year.

19.6.3 Other:

19.6.3.1 A working capital reserve of R90 million, which is equivalent to approximately three months of fixed operating costs, is being built up over a period of five months from May to December 2023. An additional c.R74 million will be built up from when the plant is commissioned and the end of FY2026. This will act as buffer for any unexpected event and is deemed appropriate for a commodity business which is exposed to uncontrollable market variables.

19.6.3.2 Individual scenarios as per below were applied to the base case model to assess how robust the model is in terms of being able to absorb stress by assessing nett cashflow available to service commitments including depleting the working capital reserve in order to still meet the proposed offer to concurrent creditors. As can be seen from the sensitivities below, a reasonably significant movement on an individual basis of either the exchange rate, Chrome price or volumes is required before the working capital buffer is depleted but the Company can still meet its commitments as contemplated.

19.6.3.2.1 a 16.5% strengthening of the Rand from the base case of USDZAR of 17.96;

19.6.3.2.2 a 12.5% decrease in the CIF Chrome price of USD220/t; and

19.6.3.2.3 a 30% decrease in the base case production profile.

19.7 As can be seen from **Annexure E**, the projected balance sheet shows a marked improvement relative to the position the Company was in when entering Business Rescue on the basis that the restructuring in this plan is adopted as proposed, the re-start plan is implemented as envisaged and that the statement of income and expenses as reflected is delivered upon as per the base case model.

19.8 Distribution to Creditors:

Creditor	Approximate Claim value	Potential distribution	Comment
IDC	[R135m]	100c	To be repaid in full over the course of 8 years from adoption of the Business Rescue Plan. Up until the 30 June 2024, there is a moratorium on the payment and accrual of interest. Thereafter interest accrues at the SARB prime lending rate. Capital and interest are to be paid from FY 2026 – paid in bi-annual payments (August and February) over 84 months. An initial payment of R6.74m will however be made by no later than the 28 February 2025. Repayment is via operational

			cash flows generated through the restart of underground mining operations which started in February/March 2023. In a liquidation scenario, the IDC is expected to recover 1c in the Rand.
Sail Resources	[R123m]	100c	To be repaid in full following the repayment of the IDC loan above. The loan will not be serviced until the IDC loan is extinguished. Up until the 30 June 2024 there is a moratorium on the payment and accrual of interest. Thereafter interest accrues at the SARB prime lending rate. In a liquidation scenario, Sail Resources is expected to recover 1c in the Rand.
Employees	[R1.1m]	100c	Employees will continue to be employed as the Company is returned to going concern status.
Unsecured intercompany and regulatory creditors	[R318m]	circa 50c	R159m has been set aside for the payment of these creditors, once their Disputed Claims have been resolved by means of the Dispute Resolution Mechanism, from operational cashflow. An initial amount of R7.95m will be payable by the 28 February 2025. The balance will be payable over a 7-year period commencing FY2026. No interest is payable. The distribution exceeds the anticipated liquidation dividend of R0c as described in paragraph 12.7 and 12.8.
Unsecured Commercial creditors	[R5.5m]	50c	R2.25m is allocated to the payment of the Unsecured Commercial Creditors from operational cashflow. Repayment will take place within a period of 12 months from 30 June 2024 No interest is payable. The distribution exceeds the anticipated liquidation dividend of R0c as described in paragraph 12.7 and 12.8.

*Note: The Company has a February year end. FY2025 is therefore 1 March 2024 until 28 February 2025.*

19.9 It is worth mentioning, for the avoidance of doubt, that:

19.9.1 certain Claims, or portions thereof, of the Unsecured Intercompany and Regulatory Creditors are presently considered to be Disputed Claims. Nonetheless, they will be granted a Voting Interest as set out in Annexure B for purposes of voting on the Business Rescue Plan only, and any such indulgence by the BRP should not be construed as an admission that the value of the allocated Voting Interest per Annexure B is the value of an admitted debt owed by the Company to Creditors;

19.9.2 the IDC's preference share (with a redemption value of R100m) is unaffected by this Business Rescue Plan, save that the BRP has undertaken to convene a special meeting of shareholders at which a special resolution will be considered to amend the Company's Memorandum of Incorporation such that the full unredeemed value of the IDC's preference shares are converted to a prime rate interest bearing debt instrument if not redeemed in full by 1 February 2034. As this preference share currently remains equity (not debt) the IDC will not have a voting interest on this Business Rescue Plan in respect of its preference share.

19.10 Security -

19.10.1 No security will be given to any Creditor.

19.10.2 The Company, for as long as any debt is outstanding to the IDC, will not Encumber any assets without the consent of the IDC which shall not be unreasonably withheld.

## **20 WIND DOWN PROCESS**

20.1 Should it transpire, after the publication or adoption of the Business Rescue Plan or such earlier date determined by the BRP in his sole discretion, that the Proposal is not implementable or that there is no interest from the parties who have to date provided Binding Offers to re-engage with the BRP on the commencement of a new accelerated sales process, then the BRP may proceed to realise all the assets of the Company in terms of a Wind-Down Process.

20.2 In such event, the BRP proposes and is hereby mandated in terms of this Business Rescue Plan that the Business Rescue may proceed in terms of the Wind-Down Process as set out below.

- 20.3 The Wind-Down Process will result in the Accelerated Sales Process being reopened and the BRP engaging in discussions with the parties that have to date provided Binding Offers, and will also entail the following:
- 20.3.1 Realisation of all of the Company's shares and/or assets (including trademarks if any) by way of but not limited to, private treaty, auction or any other manner which the BRP, in his sole discretion, deem appropriate given the circumstances prevailing at that time; and
  - 20.3.2 Proposed retrenchment of all Employees or all remaining Employees.
- 20.4 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 24 – 36 months to finalize or even longer and would be value destructive.
- 20.5 The BRP will convene meetings with critical Creditors as and when the need arises to provide updates on the Wind-Down Process. The BRP will have the authority to make the final determination with regard to the processes adopted and acceptance of offers, subject to the written consent of the Secured Creditors insofar as the acceptance of offers are concerned.
- 20.6 The BRP is hereby mandated and authorised by the Creditors, Shareholders 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 BRP shall have the 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 BRP, his Advisors, Genesis and the Company.
- 20.7 Proceeds from the Wind-Down Process will be paid into the bank account opened and operated by the BRP, if necessary, who will make payment in accordance with the terms of this Business Rescue Plan.
- 20.8 The advantages of proceeding with the Wind-Down Process are as follows:
- 20.8.1 professional fees and administration costs would be lower compared to liquidation proceedings;



- 20.8.2 SARS' claim ranks as concurrent creditors and not as a Preferent Creditor as would be the case under liquidation;
- 20.8.3 timing of distribution/s should be faster than in liquidation proceedings; and
- 20.8.4 the assets will be realised at market related values, where possible as opposed to forced sale values in liquidation proceedings.

## **21 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 Proposed Rescue Plan, the Company will continue operating in accordance with the Proposed Rescue Plan.

## **22 EFFECT OF THE BUSINESS RESCUE PLAN**

### **22.1 Creditors, including Disputed Creditors**

- 22.1.1 Once the Distribution is made to Creditors, all Claims against the Company will become Unenforceable. For the avoidance of doubt, upon payment of the Distribution, all Claims against the Company will become Unenforceable as against the Company terms of section 154 read with section 152(4).
- 22.1.2 That is, for the avoidance of doubt, any Disputed Claim (including any Disputed Claims which SARS may have against the Company, for any Claim that may arise from a period of assessment preceding the Commencement Date), will become Unenforceable under and in terms of this Business Rescue Plan once a final Distribution is made.

### **22.2 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 Proposed Rescue Plan, certain Contracts will have to be cancelled, modified or restructured. To the extent that Contracts are cancelled, Disputed Claims for damages will be limited as contemplated in paragraph 22.3.

### **22.3 Damages**

In the event that Creditors claim damages, whether contractual or delictual, against the Company, which Disputed (damages) Claim is accepted by the BRP or proved by way

of the Dispute Resolution Mechanism or by Court or similar proceedings, such damages Claims:

- 22.3.1 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;
- 22.3.2 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;
- 22.3.3 shall be a Concurrent Claim, unless the Creditor holds security for such claim;
- 22.3.4 must be mitigated and can only be claimed if proven;
- 22.3.5 in respect of damages related to 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;
- 22.3.6 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;
- 22.3.7 will be deemed to exclude all consequential and indirect damages, loss of profit, penalty; and
- 22.3.8 if disputed, will be resolved in terms of the Dispute Resolution Mechanism, detailed in part C.

## **23 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 implementation of a Proposed Rescue Plan and the distribution by the BRP in accordance with the payment waterfall in paragraph 10.6 and 27.

**24 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 Business Rescue proceeds in terms of the Proposed Rescue Plan, the rights of the Company's shareholders will not be altered.

**25 COMPARISON OF THE BUSINESS RESCUE TO LIQUIDATION**

25.1 The following table sets out a comparison of the outcomes that are likely to arise under the Business Rescue (in terms of the Proposed Rescue Plan) as compared to a liquidation (the liquidation calculation is based on the information provided in Deloitte's liquidation calculation):

	<b>Liquidation</b>	<b>Business Rescue (Based on Proposed Rescue Plan)</b>
<b>IDC and Sail Resources</b>	1 cents/Rand	100 cents/Rand
<b>Employees</b>	Preferent Creditors with limited preference up to a maximum of  R32 000 / Employee	100 cents/Rand
<b>PCF</b>	N/A	N/A
<b>Unsecured intercompany and regulatory creditors, Unsecured Commercial creditors</b>	0 (zero) cents/Rand	50 cents/Rand*  <i>* refer to table in paragraph 19.8</i>

**26 ORDER OF DISTRIBUTION – PAYMENT WATERFALL IN BUSINESS RESCUE**

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 Substantially Implemented is set out in paragraph 10.6.

## **27 PROOF OF CLAIMS BY CREDITORS**

With reference to paragraph 10.4 above, insofar any person's Claim is not reflected in **Annexure B**, that person must follow the Dispute Resolution Mechanism set out in this Business Rescue Plan.

## **28 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:

### **28.1 Continuity of Business**

28.1.1 If the Business proceeds in terms of the Proposed Rescue Plan, and the Proposed Rescue Plan is successfully implemented the Company's business, affairs, and debt will be restructured in a manner that will allow the Company to continue operating its Business on a solvent basis.

28.1.2 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.

### **28.2 Quantum**

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

28.2.2 By way of illustration, please refer to paragraph 25.

### **28.3 Timing**

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

28.3.2 The anticipated time estimated for completing the Business Rescue is approximately 12 months.

28.3.3 The average time it takes to conclude a liquidation process can be between 24 – 36 months, or longer depending on the complexity of the business and affairs of the company.

## 28.4 Employees

28.4.1 Employees continue to receive salaries since the Commencement Date.

28.4.2 In liquidation:

28.4.2.1 Employees would be entitled to receive a maximum amount of R32 000.00 (thirty-two thousand Rand) per employee as a Preferent Creditor, to the extent that there are funds available.

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

## 28.5 General Benefits of Business Rescue

### 28.5.1 In General:

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

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

28.5.1.3 payment of Claims to unsecured Creditors will be implemented in a period not exceeding 12 months from the Adoption Date;

28.5.1.4 retention and creation of jobs and contribution by the Company to the alleviation of very high levels of unemployment if the Proposed Rescue Plan is implemented successfully. 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;

28.5.1.5 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 C**; and

28.5.1.6 the Substantial Implementation of the Proposed Rescue Plan 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.

## **29 RISKS OF THE BUSINESS RESCUE**

29.1 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:

- 29.1.1 unforeseen litigation of any nature whatsoever, howsoever arising, from any cause of action whatsoever, including but not limited to industrial action;
- 29.1.2 deteriorating market conditions;
- 29.1.3 the revocation of support from Affected Persons, service providers and/or suppliers;
- 29.1.4 unforeseen damages claims arising from the cancellation of any contracts or agreements of any nature whatsoever, howsoever arising;
- 29.1.5 any changes in legislation that impact Business Rescue;
- 29.1.6 any challenges to this Business Rescue Plan, the rejection thereof or any amendments thereto;
- 29.1.7 any regulatory challenges of any nature whatsoever, howsoever arising;
- 29.1.8 any unforeseen circumstances, outside of the control of the BRP of any nature whatsoever howsoever arising that impacts on Business Rescue;
- 29.1.9 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; and
- 29.1.10 material discrepancies in the information made available to the BRP by the Directors and Management.

29.2 If the BRP and the Company is, in whole or in part, prevented from implementing this Business Rescue Plan as a result of Vis Major, the BRP and/or Company's failure to implement this Business Rescue Plan will not be deemed to be a breach of the Business Rescue Plan, nor will it subject either of them to any liability to the Creditors and/or other Affected Persons.

29.3 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]**

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## PART C – ASSUMPTIONS AND CONDITIONS

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### **30 CONDITIONS FOR THE BUSINESS RESCUE PLAN TO COME INTO OPERATION AND FULLY IMPLEMENTED**

- 30.1 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.
- 30.2 As required in terms of section 150(2)(c)(i)(bb) of the Companies Act, the Business Rescue Plan will be Substantially Implemented, unless paragraph 29.2 applies, upon:
- 30.2.1 Distribution or payment of dividend of 50c (fifty cents) in a Rand to Concurrent Commercial Creditors in terms of this Business Rescue Plan;
  - 30.2.2 C4 hot commissioning of the Chrome processing plant;
  - 30.2.3 Sail Resources or the holder of its Encumbrance over the Company's assets having given an undertaking that it will not enforce that Encumbrance until it has invited the IDC to proceed with the enforcement of the IDC's Encumbrance over the Company's assets at the same time Sail Resources or the aforesaid holder, as the case may be, does so;
  - 30.2.4 a special meeting of shareholders having been convened by or with the consent of the BRP, at which a special resolution will be considered to amend the Company's Memorandum of Incorporation such that the full unredeemed value of the IDC's preference shares are converted to a prime rate interest bearing debt instrument if not redeemed in full by 1 February 2034; and
  - 30.2.5 Such regulatory approvals and consents having been obtained, as may be required by law.
- 30.3 Save where paragraph 29.2 may apply, to the extent that the Company is unable to meet its payment obligations to its unsecured post-commencement creditors, it should then be allowed a remedy period of a further 3 months, whereafter, if any such default persists, the BRP will proceed to wind-down the Company as aforesaid.



### **31 EFFECT OF THE BUSINESS RESCUE PLAN ON EMPLOYEES**

As required in terms of section 150(2)(c)(ii) of the Companies Act, this Business Rescue Plan has no effect on Employees.

### **32 CIRCUMSTANCES IN WHICH THE BUSINESS RESCUE WILL END AND THE DURATION OF BUSINESS RESCUE**

32.1 As required in terms of section 150(2)(c)(iii) of the Companies Act, the Business Rescue will end in terms of section 132(2) of the Companies Act, when:

32.1.1 The Business Rescue Plan is:

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

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

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

32.1.3 The BRP file a notice of termination of the Business Rescue with the CIPC.

### **33 PROJECTED BALANCE SHEET AND PROJECTED STATEMENT OF INCOME AND EXPENSES**

33.1 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.

33.2 The projected balance sheet, income statement and cash flow in respect of Proposed Rescue Plan is attached as **Annexure E**.

33.3 The projected balance sheet and income statement is based on the Company exiting Business Rescue in accordance with the terms of this Business Rescue Plan.

33.4 It further postulates the Claims of the PCF Creditors and Secured Creditors being paid in full while the Unsecured Creditors or Concurrent Creditors' Claim will become Unenforceable.

#### **34 EXISTING LITIGATION**

Affected Persons have been kept abreast of existing litigation by the Company, as it was required to do in terms of the Companies Act.

#### **35 EFFECT OF BUSINESS RESCUE ON CLAIMS**

Claims will become Unenforceable as set out in paragraph 22.1.

#### **36 DISPUTE RESOLUTION MECHANISM**

36.1 Save as provided for in section 133 of the Companies Act, in respect of all or any Disputed Claims, and/or any disputes regarding the interpretation of this Business Rescue Plan, such dispute may be resolved in accordance with the Dispute Resolution Mechanism outline below.

36.2 The Dispute Resolution Mechanism procedure will be as follows:

36.2.1 Disputed Creditors, or where a dispute arises in respect of the interpretation of this Business Rescue Plan ("**Interpretive Dispute**") those parties ("**Claimant**"), are required to contact and meet with the BRP within 15 (fifteen) days of receipt of the notice contemplated in 10.4, or such longer period as the BRP may agree, in an attempt to reach agreement on the Disputed Claim and/or Interpretive Dispute.

36.2.2 If the Disputed Creditor/Claimant does not avail itself of the opportunity contemplated in 36.2.1 above, the Disputed Creditor/Claimant will be deemed to have accepted the BRP's position in regard to the Disputed Claim/Interpretive Dispute.

36.2.3 If the Disputed Creditor/Claimant does avail itself of the of the opportunity contemplated in 36.2.1 above, but without any resolution, and the Disputed Creditor/Claimant persists with the dispute surrounding the Disputed Claim/Interpretive Dispute ("**Dispute**"), the Disputed Creditor/Claimant must propose and agree with the BRP to the appointment of the retired judge as an arbitrator to preside over and to resolve the dispute (unless another process has been agreed or legislated for).

- 36.2.4 Should the parties fail to reach an agreement on a retired judge as an arbitrator, then the Arbitration Foundation of South Africa must be requested by the Disputed Creditor/Claimant to make the appointment.
- 36.2.5 The appointed arbitrator must endeavour to complete his/her mandate within 30 (thirty) days of his/her appointment or within such further time period as the arbitrator in his/her sole discretion may determine.
- 36.2.6 The arbitrator will in his/her sole and absolute discretion determine:
- 36.2.6.1 the venue at which the dispute is to be resolved;
  - 36.2.6.2 the rules, regulations and procedures that will govern the determination of the dispute;
  - 36.2.6.3 the date(s) for the determination of the dispute;
- 36.2.7 The arbitrator will give his award/determination within 10 (ten) days of the completion of the process as determined by him, and will give a costs award as he deems appropriate and which will include his/her costs, legal costs, venue costs, recording equipment (if applicable), transcript of evidence (if applicable) and the like.
- 36.2.8 Save for any manifest error the award/determination of the arbitrator will be final and binding on the Disputed Creditor/ Claimants, the Company and the BRP and will not be subject to any subsequent review or appeal application/procedure/process.
- 36.2.9 If the Disputed Creditor/Claimant does not at any point avail itself of the opportunity contemplated in 36.2.3 to 36.2.8 above, the Disputed Creditor/Claimant will be deemed to have accepted the BRP's position in regard to the Disputed Claim/Interpretive Dispute. After the Substantial Implementation Date the Disputed Claim/Interpretive Dispute will become Unenforceable.
- 36.3 To the extent necessary, should the BRP be of the view that certain disputes may be settled or compromised, the BRP shall be authorised at any point to settle and compromise such a dispute.

36.4 The BRP may in his 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 BRP 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.

### **37 ABILITY TO AMEND THE BUSINESS RESCUE PLAN**

37.1 In the event of an amendment to correct a clerical error and that will not be prejudicial to the rights of Creditors as set out herein, the BRP shall have the ability, in his sole and absolute discretion, to amend, modify or vary any provision of this Business Rescue Plan. The amendment will be deemed to take effect on the date of written notice of the amendment to all Affected Persons.

37.2 In the event of any other amendments, the BRP shall consult with Affected Persons in terms of section 150(1), and be entitled to propose an amendment for consideration and voting at a meeting of Creditors (and Shareholders, if relevant and necessary) convened in terms of section 151. Such amendment shall only be effective should it be adopted in terms of section 152 of the Companies Act.

### **38 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.

### **39 PRESERVATION OF CLAIMS AGAINST OTHERS**

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

39.2 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.

39.3 Any investigation of misconduct by Directors and Shareholders shall be conducted and funded by the Creditors, subject to the laws of South Africa.

39.4 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.

39.5 The BRP 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.

#### **40 CONTINUING TAX OBLIGATIONS**

The BRP undertakes that the Company shall ensure that all future tax obligations (including the filing of returns and payment of outstanding taxes) will be met until proceedings have been terminated on any ground listed in terms of section 132 of the Companies Act of 2008.

#### **41 DEFAULT CLAUSE**

Any Unenforceability of Claims contemplated in this Business Rescue Plan is conditional upon the Company fully meeting its obligations to Creditors as set out in this Business Rescue Plan. In the event of any breach by the Company of its obligations to Creditors in terms of the Business Rescue Plan, or in the event the Company is placed under liquidation, the full balance due to Creditors in terms of their original Claims against the Company shall immediately become due, owing and payable by the Company to the Creditors. Business Rescue proceedings will, in such instance be deemed to have terminated.

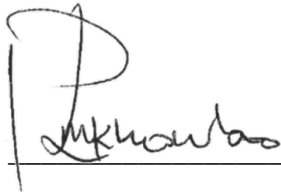
#### **42 CONCLUSION**

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

#### **43 BRPs CERTIFICATE**

43.1 I the undersigned, Phahlani Lincoln Mkhombo, hereby certify to the best of our knowledge and belief that –

- 43.1.1 any actual information provided herein appears to be accurate, complete and up to date;
- 43.1.2 the BRP has relied on financial information including opinions and reports furnished to me by Management and the Advisors;
- 43.1.3 any projections provided are estimates made in good faith on the basis of factual information and assumptions as set out herein; and
- 43.1.4 in preparing the Business Rescue Plan, the BRP has 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 BRP has endeavoured to satisfy himself of the accuracy of such information.



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Date: 03 April 2024

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