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DEPARTMENT OF TRADE, INDUSTRY AND COMPETITION

NO. R. 700

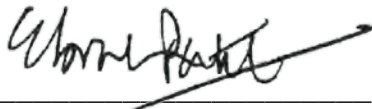
23 JUNE 2020

**NOTICE OF AMENDMENTS TO THE CONSTITUTION OF THE SOUTH AFRICAN
SUGAR ASSOCIATION AND THE SUGAR INDUSTRY AGREEMENT, 2000
IN TERMS OF SECTION 2 AND 4 OF THE SUGAR ACT, 1978
(ACT NO. 09 OF 1978)****AND****NOTICE OF DESIGNATION OF THE SUGAR INDUSTRY IN TERMS OF SECTION
10(3)(b)(iv) OF THE COMPETITION ACT, 1998 (ACT NO. 89 OF 1998)**

I Ebrahim Patel, Minister of Trade, Industry and Competition hereby –

- (a) in terms of section 2(2) and section 4(1)(b)(i) of the Sugar Act, 1978 (Act No. 09 of 1978); and after consultation with the South African Sugar Association (“SASA”) -
- (i) publish the amendments to the Constitution of SASA and the Sugar Industry Agreement, 2000, as embodied in **Annexure A & B** respectively; and
- (ii) inform interested parties that the Constitution and Agreement, incorporating all the amendments, can be accessed on **the dtic** website: www.thedtic.gov.za.

- (b) after consultation with the Minister of Agriculture, Land Reform and Rural Development, designate the sugar industry in terms of section 10(3)(b)(iv) of the Competition Act, 1998 (Act No. 89 of 1998) for a period of 12 months, which period may be extended as necessary by notice in the Government Gazette, to support the economic development, growth, transformation and stability of the sugar industry in line with the objectives of the proposed Sugar Masterplan, as set out in the **Explanatory Memo** attached hereto; and
- (c) determine that this Notice shall commence on 1 July 2020.



MR EBRAHIM PATEL

MINISTER OF TRADE, INDUSTRY AND COMPETITION

DATE:

EXPLANATORY MEMO

MATTERS RELATING TO THE SUGAR INDUSTRY: DEVELOPMENT OF A SUGAR MASTERPLAN, DESIGNATION OF THE INDUSTRY IN TERMS OF THE COMPETITION ACT AND AMENDMENTS TO THE SOUTH AFRICAN SUGAR ASSOCIATION'S CONSTITUTION AND THE SUGAR INDUSTRY AGREEMENT

This Gazette contains details of the proposed Sugar Masterplan that has been developed for the sector, as well as amendments to the Sugar Industry Agreement and the South African Sugar Association's Constitution and the designation of the Sugar Industry in terms of section 10 of the Competition Act.

Part 1. Context and an industry vision

In his State of the Nation Address, following the general election in 2019, President Cyril Ramaphosa committed to a 'reimagined industrial strategy' that will be one of the centre-pieces of rebuilding the economy.

To support the reimagined industrial strategy, the President announced that Government will develop a number of masterplans to help create conducive conditions for industries to grow. This will include assisting companies to improve their industrial capacities and sophistication, focusing more on export orientation, and reclaiming domestic market space lost to imports.

The sugar industry was identified as an important agriculture sector, supporting a large number of jobs, and contributing to the livelihoods of large numbers of South Africans in important regions of the country.

As announced in my budget vote speech in the National Assembly on 11 July 2019, the Department of Trade, Industry and Competition and the Department of Agriculture, Land Reform and Rural Development, have together with industry stakeholders, commenced engagement on the development of a Masterplan for the South African Sugarcane value-chain ('the Sugar Masterplan'). The process to produce the Sugar

Masterplan was co-chaired by the Minister of Agriculture, Land reform and Rural Development, Minister Thoko Didiza.

A proposed Sugar Masterplan has now been developed. It requires a set of collaborative actions by stakeholders in the industry, which in turns require an appropriate exemption from certain provisions of the Competition Act, given that collaboration between competitors is not ordinarily allowed in terms of the Act.

The Sugar Masterplan is the result of the process of extensive engagement and consultation amongst sugar industry stakeholders and social partners, particularly small and large cane growers, millers and refiners, retailers, industrial users of sugar and sugar-derived products, as well as workers and government.

The Masterplan seeks to create a diversified and globally competitive, sustainable and transformed sugarcane-based value chain that actively contributes to South Africa's economic and social development, creating prosperity for stakeholders in the sugarcane value chain, the wider bio-economy, society and the environment.

Phase 1 of the Sugarcane-based value chain Masterplan will run for three years and is focused on key actions with the following objectives:

- Stabilise the industry;
- Restructure industry capacity and costs in an orderly manner to ensure alignment to current and future market size, and establish the appropriate platform for a diversified sugarcane-based value chain by 2030 ('Vision 2030');
- Protect and retain sugarcane value-chain (including upstream and downstream) jobs as far as possible through the transition;
- Secure the foundational role of small-scale growers in the sugarcane value chain, and ensure a balanced approach to supporting small-scale grower sustainability towards Vision 2030;

- Mitigate the impact on workers and small-scale growers of capacity reductions; and
- Ensure that transformation of ownership and participation is significantly advanced through the restructuring and the transition to Vision 2030.

During Phase 1 of the Masterplan, which will run for three years, industrial users and retailers of sugar have committed to minimum levels of South African grown and produced sugar, equal to no less than 80% of need during Year 1, and increasing to 95% by Year 3. To support this undertaking, sugar producers have equally committed to price restraint during this period. Over the three-year Phase 1 period, the sugar industry will commence a stabilisation and restructuring plan which will include, inter alia, development of diversified revenue sources for the industry, small-scale grower retention, support and transformation.

Phase 1 will be implemented through seven (7) short-term action commitments aimed at stabilising and restructuring the industry.

To support re-balancing of industry capacity, and improve efficiency and restore profitability, and consider ways to maximise employment and transformation in the industry in line with the Masterplan, exemption of the sugar industry for a period of one year from certain sections of the Competition Act, 1998 (Act No. 89 of 1998), is required to enable the industry to develop the industry restructuring plan.

Within one year of exemption being granted, a detailed sugar industry restructuring plan must be developed and put into operation, that will include detailed plans to:

- Re-balance growing, milling and refining capacity in accordance with market requirements and the long-term requirements of the 2030 vision;
- Ensure that the future industry structure secures and protects the foundational role and participation of small-scale growers and independent mills in the value chain alongside large-scale growers, millers and refiners;

- Facilitate and advance implementation of industry transformation plans as set out in the Masterplan;
- Provide for such actions and/or funding instruments, as appropriate, to incentivise necessary capacity reductions and provide compensation and relief to those exiting the industry; and
- Ensure that the financial benefits of the restructuring plan are shared equitably and appropriately between consumers, users, refiners, millers and both small-scale and commercial growers.

Part 2. Designation of the Sugar industry

The accompanying Notice to this Annexure sets out the decision by the Minister of Trade, Industry and Competition to designate the Sugar Industry under section 10(3)(b)(iv) of the Competition Act, which would enable the processing of an appropriate exemption by the competition authorities to enable implementation of the proposed Sugar Masterplan. It is the objective of the Masterplan to promote inter alia employment stability, transformation and sector growth and the designation is intended to enable these goals to be achieved.

The designation of the sugar industry in terms of the Competition Act is part of a two-step process, which will be followed by an exemption from the Competition Act by the Competition Commission. This exemption will allow for collaboration by sugar industry stakeholders as they work together towards the objectives of the Sugar Masterplan.

Part 3. Amendments to the Sugar Industry Agreement and the South African Sugar Association's Constitution.

The **dtic** is the custodian of the Sugar Act (Act No 9 of 1978).

The **dtic** in consultation with the sugar industry, commenced with the process of reviewing and amending both the Sugar Industry Agreement and the South African Sugar Association's Constitution.

Delegates of the South African Sugar Association (SASA), comprising representatives from the South African Sugar Millers Association (SASMA), South African Cane Growers Association (SACGA) and the South African Farmers Development Association (SAFDA), have approved these amendments and transitional provisions. The parties reached an agreement on issues of (a) membership; (b) representation; and (c) disbursement of grower levies, resulting in SASA Council ratification of the changes to the SASA Constitution and the Sugar Industry Agreement provisions.

These changes represent a significant transformation moment in the institutional arrangements in the sector, with the black, small-scale farmer organisation, SAFDA, now fully incorporated in the South African Sugar Association.

The key amendments to the constitution and agreement are as follows:

- a) **Transitional Period** - means the period of the new Agreement which shall be from 1 July 2020 until 31 March 2024 or any later date determined in terms of clause 15(5).
- b) **The affairs of the Association** shall be administered by a Council consisting of an independent Chairperson who meets the requirements set out in clause 15(9) (b) and 3 Vice-Chairpersons.
- c) **Membership**: The members of the Association shall be the South African Sugar Millers Association (SASMA), South African Cane Growers Association (SACGA) and South African Farmers Development Association (SAFDA).
- d) SACGA and SAFDA shall each comprise half of the Growers' Section and shall collectively comprise the Growers Section.
- e) **Representation**: 18 delegates shall represent each Section, provided that SACGA and SAFDA shall each be entitled to appoint 9 delegates to the Growers' Section.
- f) **Grower representation in SASA** will be shared equally by SAFDA and SACGA.
- g) **Growers Statutory Costs** means for the first year of the Transitional Period, the amount calculated by the sum of the costs of SACGA and SAFDA respectively approved by the Association's Council for the 2019/2020 season,

escalated on 1 April 2020 by a rate equal to the year-on-year change in the headline consumer price index.

- h) **Voting** - All questions arising at general and special meetings of SASA shall be determined by a majority representing at least two-thirds of the delegates present at the meeting, provided that such majority includes at least 1 vote from the Millers Section and the Growers Section. Furthermore, the votes from the Growers Section must include at least 1 vote by a delegate representing SACGA and at least 1 vote by a delegate representing SAFDA

Full details of the changes are contained in the Annexures.

ANNEXURE A**CONSTITUTION OF THE SOUTH AFRICAN SUGAR ASSOCIATION****GENERAL EXPLANATORY NOTE:**

[] Words in bold type in square brackets indicate omissions from existing enactments.

_____ Words underlined with a solid line indicate insertions in existing enactments.

1. The Constitution of the South African Sugar Association (SASA) is hereby amended –

(a) by the substitution for clause 2 of the following clause:

“2 Membership and Representation

2(1) **Membership:** The members of the Association shall be the South African Sugar Millers' Association NPC (representing millers and refiners and hereinafter referred to as “the Millers' Section”), South African Cane Growers' Association NPC (hereinafter referred to as “SACGA”) and South African Farmers' Development Association (hereinafter referred to as “SAFDA”). SACGA and SAFDA represent all growers and are both hereinafter collectively referred to as “the Growers' Section”. The Millers' Section and the Growers' Section shall be equally represented as members of the Association.

2(2) SACGA and SAFDA shall each comprise half of the Growers' Section and shall collectively comprise the Growers' Section.

2(3) **Representation:** Each Section shall be represented by 18 delegates, provided that SACGA and SAFDA shall each be entitled to appoint 9 delegates to the Growers' Section.”.

(b) by the substitution in clause 6 for sub-clause 4 of the following sub-clause:

“(4) The funds of the Association shall be invested only with registered financial institutions as defined in section 1 of the [**Financial Institutions (Investment of Funds) Act, 1984,**] Financial Institutions (Protection of Funds) Act, 28 of 2001 and/or in securities listed on a stock exchange as defined in the [**Stock Exchanges Control Act, 1985,**] Financial Markets Act, 19 of 2012 and shall

be invested in the name of the South African Sugar Association, or in the name of any committee, fund division or department of the Association duly appointed or established in terms hereof. An amount paid on behalf of the Association or any such committee, fund, division or department thereof shall be paid in such manner and under such authorisations as the Council may from time to time determine.”.

- (c) by the addition of the following clause after clause 14:

“15. Transitional Provisions

(1) Despite any other provision of this Constitution, during the Transitional Period contemplated in clause 15(1)(a), the following words and phrases have the meanings attributed to them in this clause 15 and cognate expressions have similar meanings:

(a) **Transitional Period** means from 1 July 2020 until 31 March 2024 or any later date determined in terms of clause 15(5);

(b) **Transitional Provisions** means this clause 15 and clauses 198 to 207 of the Sugar Industry Agreement, 2000;

(c) **2018 Transitional Provisions** means the amendments to the Constitution and the Sugar Industry Agreement, 2000 promulgated in Government Gazette 41967 on 9 October 2018.

(2) In applying the Transitional Provisions, the Transitional Provisions in the Constitution must be read together with the Transitional Provisions in the Sugar Industry Agreement, 2000, both as amended and applied during the Transitional Period. In applying the Transitional Provisions of this Constitution, the Transitional Provisions of this Constitution shall prevail over any of the other provisions of the Constitution which conflict with or differ from those Transitional Provisions.

(3) The Transitional Provisions apply during the Transitional Period.

(4) After consultation with the Association, the Minister may amend the Transitional Provisions, by publishing notice of the amendments in the Government Gazette.

(5) After consultation with the Association, the Minister may extend the Transitional Period whenever necessary by publishing notice of each extension in the Government Gazette by the date on which the Transitional Period is due to expire.

(6) For the Transitional Period and with effect from 1 July 2020, the Constitution is deemed to have been amended by the Transitional Provisions.

- (7) The publication of the Constitution as amended in terms of section 2(2) of the Act is conclusive proof of the consent of the Minister thereto.
- (8) The provisions of this clause 15(8) apply in relation to the 2018 Transitional Provisions:
- (a) Anything done from 1 April 2018 until 9 October 2018 in terms of section 2(2) of the principal Act, both dates included, and which is done in accordance with, or to give effect to, or in anticipation of, the resolutions passed by the Association's Council on 15 March 2018 and 16 April 2018 and the Association at the special meeting on 16 April 2018 and the 2018 Transitional Provisions and anything else done by the Association in good faith in order to effect recognition and funding of SAFDA, shall be deemed to be valid in law.
- (b) Neither the Association nor any of its delegates, Councillors (including the Association's Chairperson and Vice-Chairpersons), members, members of its committees, employees, contractors or agents nor any miller, refiner nor grower shall be liable for anything done in accordance with, or to give effect to, or in anticipation of:
- (i) the resolutions passed by the Association's Council on 15 March 2018 and 16 April 2018;
- (ii) the resolutions passed by the Association at the special meeting on 16 April 2018;
- (iii) the 2018 Transitional Provisions; and
- (iv) anything else done by the Association in good faith in order to effect recognition and funding of SAFDA between 1 April 2018 and 9 October 2018, both dates included.
- (9) The Transitional Provisions apply only during the Transitional Period as follows:

Administration

- (a) The affairs of the Association shall be administered by a Council consisting of an independent Chairperson who meets the requirements set out in clause 15(9)(b) and 3 Vice-Chairpersons and all references in the Constitution to the Chairman shall be replaced with Chairperson and the Vice-Chairman shall be replaced with reference to 3 Vice-Chairpersons;
- (b) ¹The Association's independent Chairperson must be independent in character and judgment and free of relationships and

- circumstances which are likely to affect, or could appear to affect, this independence. The Chairperson shall exercise objective and unfettered judgment and shall have no interest, position, association or relationship, which when judged from the perspective of a reasonable and informed third party, is likely to influence unduly or cause bias in decision-making;
- (c) The independent Chairperson shall receive fees as may be from time to time determined by the Association;
- (d) Any person or persons nominated by a majority decision of the Association's Council made in accordance with clause 15(9)(v) shall be considered for election as Chairperson by the delegates of the Association and the delegates of the Association shall elect from amongst those nominees a Chairperson for the Association;
- (e) Subject to clause 15(9)(m), there shall be a Chairperson and 3 Vice-Chairpersons elected annually at a general meeting of the Association provided that 1 Vice-Chairperson shall be elected from persons nominated by the Millers' Section, 1 Vice-Chairperson shall be elected from persons nominated by SACGA and 1 Vice-Chairperson shall be elected from persons nominated by SAFDA;
- (f) The Association's Council shall comprise 20 Councillors appointed at a meeting of the Association, of whom 10 shall be nominated by the delegates of the Millers' Section, 5 shall be nominated by SACGA's delegates of the Growers' Section and 5 shall be nominated by SAFDA's delegates of the Growers' Section;
- (g) The delegates of the Millers' Section may nominate a total of 4 alternates to its elected Councillors, the delegates of SACGA may nominate a total of 2 alternates to its elected Councillors and the delegates of SAFDA may nominate a total of 2 alternates to its elected Councillors;
- (h) In addition to the requirements of clause 3(1), casual vacancies of Councillors or alternates elected to represent the Growers' Section shall be filled by whichever of SACGA or SAFDA nominated the retired Councillor or alternate;
- (i) Except for the Council's Local Pest, Disease and Variety Control Committees, and where otherwise agreed by Council, the Council's committees shall comprise 16 members, of whom 8 shall be nominated by the Millers' Section, 4 shall be nominated by SACGA for the Growers' Section and 4 shall be nominated by SAFDA for the Growers Section. The Millers' Section may appoint 4 alternates to its committee members and SACGA and SAFDA may each appoint 2 alternates to their respective committee members;

- (j) The Council's Local Pest, Disease and Variety Control Committees shall comprise a minimum of 4 members, of whom 2 shall be nominated by the Millers' Section, 1 shall be nominated by SACGA for the Growers' Section and 1 shall be nominated by SAFDA for the Growers' Section. The Millers' Section may appoint 2 alternates to its nominees to Local Pest, Disease and Variety Control Committees and SACGA and SAFDA may each appoint 1 alternate to the Local Pest, Disease and Variety Control Committees;
- (k) The Association shall pay a total annual fixed fee to the Millers' Section, SACGA and SAFDA in respect of all the meetings associated with the business of the Association including but not limited to the Association's general, special, Council and committee meetings. The total annual fixed fee shall be for attendance at the meetings of at least sufficient representatives of each of the Millers' Section and SACGA and SAFDA respectively required to render each such meeting quorate. The total annual fixed fee is all inclusive and, without limiting the general scope of this provision, includes the costs of the Vice-Chairpersons and all costs of and associated with preparing for and attending meetings including all travel and subsistence costs. The Association shall pay half the total annual fixed fee to the Millers' Section and one quarter of the total annual fixed fee to SACGA and SAFDA respectively. The Association shall pay the total annual fixed fee in 4 equal quarterly instalments on 1 April, 1 July, 1 October and 1 January. The total annual fixed fee for the period from 1 April 2020 to 31 March 2021, both dates inclusive, shall be R12 million and that amount shall escalate on 1 April each year thereafter for the remainder of the Transitional Period starting from 1 April 2021 by the year on year change in the headline consumer price index, for all urban areas, for January as reflected in table P0141 or its successor as published by Statistics SA or its successor;

Meetings

- (l) All meetings of the Association and of its Council shall be presided over by the Chairperson of the Association and in his or her absence, by 1 of the 3 Vice-Chairpersons, failing which, by a chairperson elected by the meeting;
- (m) During 2020 a special meeting of the delegates of the Association shall be held at such time and place as may be determined by the Association's Council to elect a Chairperson and Vice-Chairpersons and to appoint Councillors and alternates;
- (n) The Council may call a special meeting of the delegates of the Association whenever it deems it necessary and the Chairperson, or in his absence, 1 of the 3 Vice-Chairpersons, shall call a special meeting of delegates of the Association whenever requested by either Section to do so. Particulars of the special business to be

attended to at a general or special meeting of the Associations shall be given in the notice calling the meeting;

- (o) Clause 7(4)(b) shall be replaced with the words, "In the case of an emergency, the Chairperson, or in his absence 1 of the 3 Vice-Chairpersons, may convene a special meeting on less than 7 days' notice";
- (p) The quorum for any general meeting of the Association shall be 20 delegates personally present, of whom at least 10 shall be delegates from the Millers' Section, at least 5 shall be delegates from SACGA and at least 5 shall be delegates from SAFDA;
- (q) The quorum for any special meeting of the Association shall be 11 delegates personally present, of whom at least 4 shall be delegates from the Millers' Section, at least 2 shall be delegates from SACGA and at least 2 shall be delegates from SAFDA;
- (r) The quorum of any meeting of the Association's Council shall be 9 Councillors or their alternates personally present provided that:
 - (i) they include at least 4 Councillors appointed by the Millers' Section and 4 Councillors appointed by the Growers' Section;
 - (ii) of the Councillors representing the Growers' Section, at least 2 Councillors are nominated by SACGA and 2 Councillors are nominated by SAFDA;
- (s) (i) Subject to the provisions of paragraph (ii), at least 7 days' notice of every meeting of the Association's Council shall be given to all Councillors and the notice of the meeting must be accompanied by an agenda for the meeting and copies of all documents to be considered at the meeting, provided that the Chairperson may permit the consideration at, and by, any meeting of the Association's Council of any additional items not on the agenda and/or documents which did not accompany the meeting notice and on less than 7 days' notice including without any notice;
 - (ii) In the case of an emergency, the Chairperson, or in his absence 1 of the 3 Vice-Chairpersons, may convene a meeting of the Association's Council on less than 7 days' notice;
 - (iii) The period of notice shall be calculated from the day of the posting or delivery of the said notice; whichever date is the earlier;
- (t) The quorum for each meeting of every Association committee shall be 40% of the members or their alternates of that committee personally present, provided that those present must include at least 2 representatives of the Millers' Section and 1 representative of each of SACGA and SAFDA, respectively;

- (u) The Department of Trade, Industry and Competition may attend as an observer at any meeting of the Association's Council;

Voting

- (v) All questions arising at general and special meetings of the Association shall be determined by a majority representing at least two-thirds of the delegates present at the meeting, provided that such majority must include at least 1 vote from the Millers' Section and the Growers' Section and that the votes from the Growers' Section must include at least 1 vote by a delegate representing SACGA and at least 1 vote by a delegate representing SAFDA;
- (w) All questions arising at meetings of the Association's Council shall be determined by a majority representing at least two-thirds of the votes cast, provided that such majority must include at least 1 vote of Councillors nominated by the Millers' Section and the Growers' Section and that the votes from the Growers' Section must include at least 1 vote by a Councillor nominated by SACGA and at least 1 vote by a Councillor nominated by SAFDA;
- (x) At any special or general meeting of the Association's delegates or at any meeting of the Association's Council which has been adjourned for lack of a quorum, decisions shall be determined by a majority representing at least two thirds of the votes of those present irrespective of whether those votes include at least 1 vote from the Millers' Section and at least 1 vote from the Growers' Section irrespective of whether the vote from the Growers' Section includes votes from SACGA and SAFDA;
- (y) All questions arising at meetings of the Association's committees shall be determined by a majority representing at least two-thirds of the votes cast provided that such votes must include votes of members (or in their absence, alternates) representing the Millers' Section and the Growers' Section and the votes from the Growers' Section must include at least 1 vote by a member representing SACGA and at least 1 vote by a member representing SAFDA."

ANNEXURE B**SUGAR INDUSTRY AGREEMENT, 2000****GENERAL EXPLANATORY NOTE:**

[] Words in bold type in square brackets indicate omissions from existing enactments.

_____ Words underlined with a solid line indicate insertions in existing enactments.

1. The Sugar Industry Agreement, 2000, is hereby amended -

(a) by the addition in clause 1 of the following definition after paragraph (vi):

“(vi)A. **“Co-operation Agreement”** means a binding written agreement concluded for each season and signed by 1 April of each year by all the Local Grower Structures representing growers contracted to deliver cane to a particular mill for that season in terms of which the Local Grower Structures agree:

- (a) how they will collectively perform their functions in terms of this agreement and their collective costs for that season of performing those functions;
- (b) the amount per ton cane to be deducted from the cane proceeds payable by the mill to all growers contracted to deliver cane to that mill in terms of clause 132A to fund the Local Grower Structures’ costs in terms of clause 1(vi)A(b);
- (c) how the amounts recovered from growers in terms of clause 132A are to be shared between the Local Grower Structures;”

(b) by the substitution in clause 1 for the definition of **“Growers’ Association”** of the following definition:

“Growers’ Associations” means SACGA and SAFDA;

(c) by the substitution in clause 1 for the definition of **“Local Grower Council”** of the following definition:

“Local Grower Structure/s” means the structure/s established by SACGA and SAFDA and which are hereby deemed to be authorised to represent all growers contracted to deliver cane to a particular mill;”;

- (d) by the substitution in clause 1 for the definition of “**Millers’ Association**” of the following definition:

“**Millers’ Association**” means the South African Sugar Millers’ Association [**Limited**] NPC and its successors in title;”;

- (e) by the addition in clause 1 of the following definitions after paragraph (xxii), the remaining definitions to be renumbered accordingly:

“(xxiii) “**SACGA**” means the South African Cane Growers’ Association NPC and its successors in title;

“(xxiv) “**SAFDA**” means the South African Farmers’ Development Association and its successors in title;”;

- (f) by the substitution in clause 11 for paragraph (c) of the following paragraph:

“(c) two persons appointed by the Growers’ [**Association**] Associations, 1 appointed by SACGA and 1 appointed by SAFDA;”;

- (g) by the substitution in clause 23 for paragraph (c) of the following paragraph:

“(c) [**one person**] two persons appointed by the Growers’ [**Association**] Associations, 1 appointed by SACGA and 1 appointed by SAFDA;”;

- (h) by the substitution for clause 38 of the following clause:

“38. All questions coming before the Appeals Tribunal shall be decided by a majority of votes of the members of the Appeals Tribunal hearing the issue: Provided that:

- (a) the person appointed by the Millers’ Association shall have 2 votes;
(b) the persons appointed by the Growers Associations shall have 2 votes, 1 vote to be exercised by the person appointed by SACGA and 1 vote to be exercised by the person appointed by SAFDA;
(c) the non-industry members shall have 2 votes each; and
(d) in the case of an equality of votes, the chairperson, or in his or her absence, the vice-chairperson shall have a second or casting vote.”;

- (i) by the substitution in clause 55 for paragraph (c) of the following paragraph:

“(c) undertake such tasks and duties as may from time to time be assigned to it by agreement between the Local Grower [**Council**] Structure/s and the mill concerned;”;

- (j) by the substitution in clause 58 for paragraphs (a) and (c) of the following paragraphs respectively:

“(a) the number of mill members and grower members, respectively, shall be determined by the Mill Group Board concerned on condition that the number of members representing the mill and growers, respectively, shall not be less than two each, 1 appointed by SACGA and 1 appointed by SAFDA in terms of clause 58 (c) unless agreed otherwise by SACGA and SAFDA in terms of a written agreement;”

(c) the grower members shall be appointed by the Local Grower **[Council]** Structure/s concerned, provided that SACGA and SAFDA’s Local Grower Structure/s shall be equally represented on all Mill Group Boards except if SACGA and SAFDA agree otherwise, record such agreement in writing and both sign it;”;

- (k) by the substitution for clause 59 of the following clause:

“59. Mill Group Board members shall be appointed annually in the month of March and, if not replaced during March of the following year, shall hold office until replaced by the newly appointed members. **[Casual vacancies on the Mill Group Board shall be filled, or alternate members appointed, by the Local Grower Council or mill concerned, as the case may be]** Casual vacancies on the Mill Group Board shall be filled, or alternate members appointed, by whichever of SACGA’s Local Grower Structure, SAFDA’s Local Grower Structure or the mill, appointed the absent member, as the case may be;”;

- (l) by the substitution in clause 61 for paragraph (a) of the following paragraph:

“(a) the mill members shall collectively have 1 vote, the grower members appointed by the Local Grower Structure/s shall collectively have 1 vote;”;

- (m) by the substitution for clause 115 of the following clause:

“115. A mill shall not effect a change to its cane receiving facilities if the effect of the change is to render unsuitable the mode of delivery employed by any of the growers contracted to deliver cane to the mill, except with the approval of all affected growers or the Local Grower **[Council]** Structure/s concerned.”;

- (n) by the insertion of the following new clause, the existing clause 130 becoming clause 130A:

“Local Grower Structure/s”;

130. If there is more than 1 Local Grower Structure representing growers contracted to deliver cane to a particular mill, then an agreement in terms of clause 130A may only be concluded and deductions in terms of clause 132A may only be made from cane proceeds, if and when those Local Grower Structures conclude a Co-operation Agreement.”;

- (o) by the substitution in clause 130A for the words preceding paragraph (a) of the following words:

[A Local Grower Council] After conclusion of a Co-operation Agreement, where applicable, the Local Grower Structure/s may negotiate with a mill on behalf of all the growers contracted to deliver cane to such mill in relation to –;”;

- (p) by the substitution for clause 131 of the following clause:

“131. Any agreement resulting from such negotiation shall be binding on the mill concerned and all growers concerned. Any such agreement shall be supplementary to the provisions of any cane supply or similar agreement that may subsist between the mill concerned and a particular grower: Provided that if there is any conflict between the provisions of any such cane supply or similar agreement and any agreement concluded in terms of clause 130, the provisions of the latter agreement shall prevail, save as may otherwise be agreed in terms of clause 130(f). Any agreement concluded in terms of clause 130A, including agreements concluded by the Local Grower Councils which preceded the Local Grower Structure/s (and for clarity, the Local Grower Council was previously defined in this agreement as the Local Grower Council referred to in SACGA’s Memorandum of Incorporation “representing growers contracted to deliver cane to a particular mill”), remains binding until it is replaced by another agreement concluded in terms of clause 130A.”;

- (q) by the substitution for clause 132 of the following clause:

“132. If any dispute arises between a mill and a grower in relation to an agreement negotiated between the mill and a Local Grower **[Council]** Structure/s, either party may refer the dispute to the Appeals Tribunal for determination.”;

- (r) by the addition of the following clause after clause 132:

“132A. The ordinary expenses for the performance of the functions of each Local Grower Structure in terms of this agreement, as agreed in terms of a Co-operation Agreement if applicable, shall be financed by each grower contracted to deliver cane to a mill. After conclusion of a Co-operation Agreement if applicable, every grower contracted

to deliver cane to a particular mill shall be deemed to have authorised that mill to make a deduction from his cane proceeds to fund the Local Grower Structure/s' ordinary expenses, and the Local Grower Structure/s may by written notice to the mill, require the mill to:

- (a) deduct the amount stipulated in that notice from the cane proceeds payable to each grower (which amount may not exceed the amount agreed in terms of the agreement concluded in terms of clause 130); and
 - (b) pay the amount deducted to the Local Grower Structure/s, in the proportions agreed in any applicable Co-operation Agreement, provided that the Local Grower Structure/s shall use the amounts so recovered to perform their functions in terms of this agreement.”;
- (s) by the substitution in clause 160 for paragraph (i) of the following paragraph:

“(i) **“Growers’ Statutory Costs”** means for the first year of the Transitional Period, the amount calculated by the sum of the costs of SACGA and SAFDA respectively approved by the Association’s Council for the 2019/2020 season, escalated on 1 April 2020 by a rate equal to the year on year change in the headline consumer price index, for all urban areas, for January as reflected in table P0141 or its successor as published by Statistics SA, expressed as a percentage, and for each season of the Transitional Period thereafter, the Growers’ Statutory Costs for the immediately preceding season escalated on 1 April (such escalation being compounded each season) by a rate equal to the year on year change in the headline consumer price index, for all urban areas, for January as reflected in table P0141 or its successor as published by Statistics SA, expressed as a percentage and less the Meeting Costs and other industry obligations in terms of clause 175.”.

- (t) by the substitution for clause 162 of the following clause:

“162. (a) The South African Sugar Association shall collect the Growers’ Statutory Costs in each year by way of a levy imposed in terms of Chapter 7. MCP’s shall be subject to a maximum levy equal to the lesser of R4.00 per ton cane delivered (and this R4.00 amount shall be adjusted for each season starting from 1 April 2021 by the year on year change in the headline consumer price index, for all urban areas, for January as reflected in table P0141 or its successor as published by Statistics SA or its successor) and the average per ton cane levy required to recover the Growers’ Statutory Costs each year.

(b) The South African Sugar Association shall pay to SACGA and SAFDA equal portions of the Growers’ Statutory Costs so collected.”.

- (u) by the substitution for clause 169 of the following clause:

“169. In respect of each year, the South African Sugar Association shall calculate and determine the amount of the share of the net divisible proceeds determined by it in accordance with the provisions of clause 165, which is to be allocated to growing in accordance with the provisions of clauses 166 and 167, subject, if applicable, to clause 168 **[by attributing the total amount of the share of the net divisible proceeds, after the deduction of the Growers' Association costs for the year, to the total proceeds payable by mills to growers for cane deliveries in such year]** “, by deducting the Growers' Statutory Costs for the year and adding the Meeting Costs Equalisation Amount, and then attributing the total amount of the remainder of the share of the net divisible proceeds allocated to growing to the total proceeds payable by mills to growers for cane deliveries in such year.”.

- (v) by the substitution for clause 175 of the following clause:

“175. Subject to clause 176, all expenditure incurred by or at the instance or with the approval of the South African Sugar Association from time to time in accordance with the powers conferred upon it in terms of its Constitution or as provided for in this Agreement shall be industry obligations, and which expenditure, without limiting the generality of this provision, includes expenditure pursuant to obligations assumed in respect of loans raised by or at the instance of the South African Sugar Association and Meeting Costs.”.

- (w) by the substitution for clause 190 of the following clause:

“190. Industry obligations and Growers' Statutory Costs shall be met by means of financial levies imposed upon sugar from time to time by the South African Sugar Association in terms of its constitution.”.

- (x) by the addition of the following Transitional Provisions after clause 197:

“Transitional Provisions

198. Despite any other provision of this agreement, during the Transitional Period as contemplated in clause 198.5, words and phrases which are defined in the South African Sugar Association's Constitution shall have the same meaning in this agreement unless otherwise indicated or clearly apparent from the context and the following words and phrases have the meanings attributed to them in these Transitional Provisions and cognate expressions have similar meanings:

198.1 **MCP** means miller cum planter, that is, a grower which is wholly owned by a Milling Group but excluding:

198.1.1 any venture, without limitation and irrespective of its form, in which growers which are not themselves MCP have any direct interest (including a minority interest) in that venture;

198.1.2 any venture which operates on communal land, irrespective of whether or not a Milling Group owns that venture;

and MCP's shall only include those MCPs which notify the Administration Board, in writing, that they are MCPs.

198.2 **Meeting Costs** means the total annual fixed fee referred to in clause 15(9)(k) of the South African Sugar Association's Constitution.

198.3 **Meeting Costs Equalisation Amount** means the amount which comprises the difference between half the Meeting Costs and the amount calculated by applying to the Meeting Costs the percentage of the net divisible proceeds allocated to growing in terms of clause 166 as adjusted by clause 167 and/or clause 168 if either of these clauses applies.

198.4 **Milling Group** means a miller or refiner which produces saleable sugar or saleable sugar equivalent per season.

198.5 **Transitional Period** means from 1 July 2020 until 31 March 2024 or any later date determined in terms of clause 15.4 of the South African Sugar Association's Constitution.

198.6 **Transitional Provisions** means clauses 198 to 207 of this agreement and clause 15 of the South African Sugar Association's Constitution;

198.7 **2018 Transitional Provisions** means the amendments to the Constitution and the Sugar Industry Agreement, 2000 promulgated in Government Gazette 41967 on 9 October 2018.

199. In applying the Transitional Provisions, the Transitional Provisions in the Constitution must be read together with the Transitional Provisions in the Sugar Industry Agreement, 2000, both as amended and applied during the Transitional Period. In applying the Transitional Provisions of this agreement, unless otherwise indicated or clearly apparent from the context, the Transitional Provisions of this agreement shall prevail over any of the other provisions of this agreement (the Sugar Industry Agreement, 2000) which conflict with, or differ from, those Transitional Provisions.

200. The Transitional Provisions apply during the Transitional Period only.

201. After consultation with the South African Sugar Association, the Minister may amend the Transitional Provisions by publishing notice of the amendments in the Government Gazette.

202. After consultation with the South African Sugar Association, the Minister may extend the Transitional Period whenever necessary by publishing notice of each extension in the Government Gazette by the date on which the Transitional Period is due to expire.

203. This agreement shall come into effect on 1 July 2020.

204. The provisions of this clause 204 apply in relation to the 2018 Transitional Provisions:

Anything done from 1 April 2018 until 9 October 2018 comprising amendments to the agreement in terms of section 4(1)(c) of the Act, both dates included, and which is done in accordance with, or to give effect to, or in anticipation of, the resolutions passed by the South African Sugar Association's Council on 15 March 2018 and 16 April 2018 and the South African Sugar Association at the special meeting on 16 April 2018 and the 2018 Transitional Provisions and anything else done by the South African Sugar Association in good faith in order to effect recognition and funding of SAFDA, shall be deemed to be valid in law.

Neither the South African Sugar Association nor any of the delegates, Councillors (including the South African Sugar Association's Chairperson and Vice- Chairpersons), members, members of its committees, employees, contractors or agents nor any miller, refiner nor grower shall be liable for anything done in accordance with, or to give effect to, or in anticipation of:

- (i) the resolutions passed by the South African Sugar Association's Council on 15 March 2018 and 16 April 2018;
- (ii) the resolutions passed by the South African Sugar Association at the special meeting on 16 April 2018;
- (iii) the 2018 Transitional Provisions; and
- (iv) anything else done by the South African Sugar Association to recognise and fund SAFDA between 1 April 2018 and 9 October 2018, both dates included.

Amendment of Sugar Industry Agreement, 2000

205. The Sugar Industry Agreement, 2000, published under Government Notice No. 1208, Government Gazette 21139 of 3 May 2000 is hereby amended upon publication in the Government Gazette and with effect from 1 July 2020.

Publication of this Agreement

206. The publication of these amendments to the agreement in terms of section 4(1)(c) of the Act confirms that the Minister is satisfied that such amendments are in the interests of the sugar industry and not detrimental to the public interest.”.