SUGAR INDUSTRY AGREEMENT, 2000

CHAPTER 1

INTRODUCTION AND SCOPE OF AGREEMENT

Definitions

1. In this agreement any word or expression to which a meaning has been assigned in the Act shall have that meaning and, unless the context otherwise indicates -

(i) "**the Act**" means the Sugar Act, 1978 (Act No. 9 of 1978);

(ii) "**Administration Board**" means the Sugar Industry Administration Board referred to in clause 10;

(iii) "**Appeals Tribunal**" means the Sugar Industry Appeals Tribunal referred to in clause 22;

(iv) "**Cane Testing Service**" means the cane testing service referred to in clause 136;

(v) **"carry over stock"** means that quantity of each season's total saleable production which, as at 31 March of each season, has neither been sold on the local market nor delivered to Sasexcor for export in terms of clause 183;

(vi) **"community code"** means a code issued and administered by the Administration Board and recorded in the growers' register and which is only used to record the tons cane delivered by each grower in a grower group over the mill weighbridge and is not used for payment of cane proceeds;

(vii) "**contracted**" when used in the context of the supply of cane by growers to mills means the obligation of a grower to supply cane and the corresponding

obligation of a mill to accept cane in terms of a contract between the mill and the grower concerned, including a deemed contract referred to in clause 106*;*

(viii) "**control area**" means a geographical area from time to time delineated by the South African Sugar Association and notified to the Administration Board;

(ix) "**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 134 to fund the Local Grower Structures' costs in terms of clause 1(ix)(a);

(c) how the amounts recovered from growers in terms of clause 134 are to be shared between the Local Grower Structures;

(x) "**crush mill**" means the home mill of a grower or, if arrangements at any time exist for the diversion of deliveries of the grower's cane to another mill, means such other mill at that time;

(xi) "**export market**" includes all territories, other than the local market and "**export**" bears a corresponding meaning;

(xii) **"export deliveries"** means the sugar which is delivered to Sasexcor for export in terms of clause 183;

(xiii) **"Growers' Associations"** means SACGA and SAFDA;

(xiv) **"grower group"** means a group of growers each of whom has delivered to the same mill less than an average of 1800 tons or less of cane per season calculated over the immediately preceding consecutive 4 seasons and who deliver a consolidated estimate to the Mill Group Board to facilitate rateable delivery of cane throughout the season;

(xv) "**growers' register**" means the register referred to in clause 69;

(xvi) "**high test molasses**" means a partly inverted raw syrup containing typically 75-80% total sugars as invert and no more than 25% sucrose at a typical brix of 83-86° brix;

(xvii) "**home mill**", in relation to a grower, means the mill to which the grower is at the time bound to deliver cane under a contract, whether of a long term or short term duration;

(xviii) "**industry obligations**" means expenditure incurred by or at the instance or with the approval of the South African Sugar Association referred to in clause 177 and includes all expenses which in terms of this agreement are industry obligations;

(xix) **"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;

(xx) "**local market**" means the geographical area falling within the borders of the Republic of South Africa and the states of Swaziland, Namibia, Lesotho and Botswana;

(xxi) "**Local Pest, Disease and Variety Control Committee**" means a committee referred to in clause 88;

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

(a) 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;

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

and MCPs shall only include those MCPs which notify the Administration Board, in writing, that they are MCPs;

(xxiii) **"Meeting Costs"** means the total annual fixed fee referred to in clause 7(16) of the South African Sugar Association's Constitution;

(xxiv) **"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 168 as adjusted by clause 169 and/or clause 170 if either of these clauses applies.

(xxv) "**member**", in relation to the Administration Board or the Appeals Tribunal, includes an alternate member of that body;

(xxvi) **"mill"** means a particular sugar mill, and includes the miller in respect of that mill only;

(xxvii) **"Mill Group Board"** means a board referred to in clause 50;

(xxviii) **"Millers' Association"** means the South African Sugar Millers' Association NPC and its successors in title;

(xxix) **"Milling Group"** means a miller or refiner which produces saleable sugar or saleable sugar equivalent per season;

(xxx) **"Official Methods Manual"** means the manual referred to in clause 137 as amended from time to time;

(xxxi) **"out of season cane"** means any cane for which special deliveries to a mill other than the home mill or crush mill of a grower are necessitated, at any time between the closing of the home mill or crush mill of such grower at the conclusion of its crushing season and its opening at the commencement of the ensuing season, by reason of damage by frost, fire, drought, flood, pest or disease;

(xxxii) **"recoverable value"** means the mass of recoverable content of cane delivered by a grower to a mill for crushing, which mass represents recoverable sugar moderated by the value of recoverable molasses of such cane, taking into account adjustments in respect of the sucrose, non-sucrose and fibre content thereof, and which mass of recoverable content shall be calculated in terms of the procedures contained in the Official Methods Manual;

(xxxiii) **"SACGA"** means the South African Cane Growers' Association NPC and its successors in title;

(xxxiv) **"SAFDA"** means the South African Farmers' Development Association and its successors in title;

(xxxv) **"Sasexcor"** means S.A. Sugar Export Corporation (Proprietary) Limited;

(xxxvi) **"season"** or **"crushing season"**, in relation to a mill, means the period, in each year, that a mill is open for the acceptance of cane delivered from growers for crushing at the mill;

(xxxvii) **"sugar beet"** or **"beet"** means, botanically, an annual root crop of the species Beta Vulgaris, grown specifically for the production of sucrose from the roots which constitute a raw material which may be delivered by a grower to a mill for processing;

(xxxviii) **"sugar beet mill"** means a mill which produces sugar exclusively from sugar beet and includes the miller in respect of that mill only;

(xxxix) **"sugar cane"** or **"cane"** means, botanically, a tall grass of the genus Saccharum, agriculturally, a crop produced from hybrids which are the progeny of a number of Saccharum species commonly referred to as cane and, specifically, the raw material which may be delivered by a grower to a mill for processing;

(xl) **"ton"** means a metric ton and "tonnage" has a corresponding meaning;

(xli) **"Union Co-op"** means the Union Co-operative Limited;

(xlii) **"year"** means a period of twelve months commencing on the first day of April.

Date of commencement

2. This agreement shall be called the Sugar Industry Agreement, 2000, and shall come into operation on 1 April 2000.

Scope of Agreement

3. This agreement constitutes an agreement determined by the Minister in terms of section 4(1) of the Act.

4. In terms of section 4(2)(a) of the Act, sugar beet is designated as an agricultural product from which it is possible to manufacture sugar as a product which is subject to this agreement.

5. This agreement shall not apply to sugar beet growers, and only those provisions which expressly refer to sugar beet millers shall apply to sugar beet millers.

6. Subject to clause 5, this agreement shall be binding on every grower, miller and refiner.

7. If any grower had a contractual right to have cane transported to a mill by or at the expense of a mill and that right terminated on 1 April 1984 in consequence of the amendments to the Sugar Industry Agreement, 1979, which came into effect on that date, that right shall not revive notwithstanding the repeal of the Sugar Industry Agreement, 1979.

8. The Administration Board, Appeals Tribunal and each Mill Group Board established in terms of the Sugar Industry Agreement, 1994, shall, upon the coming into force of this agreement, continue in existence and be deemed to have been established in terms of this agreement and the unfinished business of each of those bodies shall be resolved by those bodies, respectively, without interruption notwithstanding the repeal of the Sugar Industry Agreement, 1994, and the coming into force of this agreement.

9. All determinations, decisions and actions lawfully made, taken or done by any person, body or authority constituted or authorised under the provisions of the Sugar Industry Agreement, 1994, hereby repealed, shall be deemed, in all cases not specifically provided for in any other provision of this agreement, to have been made, taken or done by the corresponding person, body or authority constituted or authorised under this agreement, and shall continue to be of full force and effect until repealed or amended by reason of competent action taken according to the provisions of this agreement.

CHAPTER 2

THE SUGAR INDUSTRY ADMINISTRATION BOARD, THE SUGAR INDUSTRY APPEALS TRIBUNAL AND MILL GROUP BOARDS

Sugar Industry Administration Board

10. There is hereby established a board to be known as the Sugar Industry Administration Board.

11. The Administration Board shall consist of -

    (a) one person appointed by the South African Sugar Association;

    (b) two persons appointed by the Millers' Association; and

    (c) two persons appointed by the Growers' Associations, 1 appointed by SACGA and 1 appointed by SAFDA.

12. The member appointed by the South African Sugar Association will be the chairperson of the Administration Board.

13. The South African Sugar Association, the Millers' Association and the Growers' Associations, respectively, may appoint one or more alternate members to act in the place of each Administration Board member appointed by it. If more than one alternate for an Administration Board member is so appointed, the body appointing them shall stipulate the order in which the alternates shall assume office so that the first alternate in the stipulated order who is available to act shall assume temporary office to the exclusion of the others. Each alternate Administration Board member may act in the place of the member to whom he or she is appointed as an alternate during the absence or inability to act of such member and, while so acting, shall have all the powers and duties (including those of the chairperson in the case of the alternate appointed by the South

African Sugar Association) of such a member.

14. Each Administration Board member shall hold office until he or she is removed from office by the body of which he or she is the appointee or he or she resigns or dies. The Sugar Association, the Millers' Association and the Growers' Associations shall, respectively, at any time be entitled to remove from office any Administration Board member appointed by it and to fill a vacancy in the office of any such appointee by making a new appointment.

Functions of Administration Board

15. The Administration Board shall -

(a) exercise the powers and perform the duties conferred upon or imposed on it in terms of this agreement;

(b) conduct the enquiries, investigations, inspections and surveys which it considers to be appropriate for the better performance of its functions in terms of this agreement;

(c) be entitled to refer, of its own volition, any matter within its jurisdiction to the Appeals Tribunal for a directive or decision, in which case it will be bound by any such directive or decision.

16. The Administration Board may -

(a) appoint committees from among its members and delegate to any committee any of its functions;

(b) appoint any person it considers fit to advise it in any matter within its jurisdiction and remunerate the person concerned; and

(c) generally do anything incidental to the proper performance of its functions in terms of this agreement.

Proceedings of Administration Board

17. The Administration Board may meet for the despatch of business, adjourn or otherwise regulate its business as it deems fit and an Administration Board member may at any time request the chairperson to convene a meeting of the Administration Board and the chairperson, on receipt of such request, shall convene the requested meeting.

18. The quorum necessary for the transaction of the business of the Administration Board shall be all five members or their alternates: Provided that if at any meeting a quorum is not present, the chairperson may adjourn the meeting for not less than seven but not more than 14 days and if the chairperson or acting chairperson and at least one member appointed by the Millers' Association and one member appointed by the Growers' Associations are present at such an adjourned meeting, the members then present shall constitute a quorum.

19. Questions arising at an Administration Board meeting shall be decided by a majority of votes.

20. All applications and representations to the Administration Board shall be made in writing in such form as the Administration Board may determine or approve from time to time. In any application or matter before it, the Administration Board shall inform itself of the facts to be taken into account in the manner as it deems fit, including evidence on affidavit: Provided that it shall not receive oral evidence or representations or hold hearings unless, in its sole discretion, it considers that exceptional circumstances exist in any particular application or matter which require it to hear oral evidence or representations.

21. Any notification by the Administration Board of a decision, order, ruling or determination shall be deemed to have been notified to a person -

    (a) when it is delivered to him or her personally or to his or her authorised representative; or

    (b) five days (excluding Saturdays, Sundays and public holidays) after it is sent to him or her by pre-paid certified or registered mail at the address appointed by

him or her for the service of such notification or, failing such appointment, at his or her last known business or residential address.

Sugar Industry Appeals Tribunal

22. The South African Sugar Association shall establish a tribunal to be known as the Sugar Industry Appeals Tribunal.

23. The Appeals Tribunal shall consist of -

(a) three persons appointed by the South African Sugar Association;

(b) two persons appointed by the Millers' Association; and

(c) two persons appointed by the Growers' Associations, 1 appointed by SACGA and 1 appointed by SAFDA.

24. The Millers' Association and the Growers' Association, respectively, may appoint one or more alternate members to act in the place of their respective appointed members of the Appeals Tribunal in the absence or inability to act of such appointees. If either Association appoints more than one alternate, it shall stipulate the order in which appointees shall assume acting office so that the first alternate in the stipulated order who is available to act shall assume temporary office to the exclusion of the others.

25. The members of the Appeals Tribunal appointed by the South African Sugar Association shall all be persons having, in the opinion of the South African Sugar Association, no direct material pecuniary interests in the sugar industry ("**the non industry members**") and no member of the Administration Board shall be eligible to be a member of the Appeals Tribunal while he or she is a member of the Administration Board.

26. On 31 July of each year, one of the non industry members shall retire from office and his or her office shall be filled with effect from 1 August of that year by a new appointee. The non industry member to retire in each year will be that non industry member who will have been longest in office since his or her last appointment but, as between persons last appointed on the same day, the one to retire shall be determined by lot.

27. The South African Sugar Association shall designate one of the non industry members as the chairperson of the Appeals Tribunal and one of the other such members as the vice-chairperson thereof.

28. Each member of the Appeals Tribunal appointed respectively by the Millers' Association and the Growers' Associations shall retire from office on 31 July in each year and his or her office shall be filled with effect from 1 August of that year by a new appointee.

29. In the event of any vacancy occurring in the Appeals Tribunal otherwise than in consequence of the expiration of a member's period of office, the body having appointed the member whose office becomes vacant shall appoint a person to fill that vacancy for the unexpired portion of the period of office of the member in whose place that person is appointed. If any of the non industry members becomes temporarily unable to act, the South African Sugar Association shall appoint a person to act in his or her place as an acting member of the Appeals Tribunal for the duration of the member's inability to act.

30. A retiring member of the Appeals Tribunal shall be eligible for re-appointment.

31. The body appointing a member of the Appeals Tribunal may remove that member from office on the ground of the member's improper or irregular conduct or his or her incapacity to perform his or her duties properly.

32. Each member of the Appeals Tribunal shall receive such fees as may be from time to time determined by the South African Sugar Association.

Functions of Appeals Tribunal

33. Any person having a direct interest in a decision, order, ruling or determination of the Administration Board shall have the right to appeal to the Appeals Tribunal against the decision, order, ruling or determination. Unless in regard to the matter in question this agreement otherwise stipulates, the person shall, within 21 days of the date on which the decision, order, ruling or determination of the Administration Board is notified to him or her, lodge with the Administration Board a written notice of appeal, failing which the right to appeal shall lapse and the decision, order, ruling or determination of the Administration Board shall be final and binding. The Administration Board shall, upon

receipt of a notice of appeal, send copies of the notice of appeal to each other party directly affected by the decision, order, ruling or determination against which the appeal shall have been lodged and to the Appeals Tribunal.

34. The Appeals Tribunal shall perform the following functions -

(a) hear and decide any appeal where a right of appeal to the Appeals Tribunal is provided for in this agreement;

(b) hear and decide any issue or issue any directive in regard to any matter referred to it for a decision or directive by the Administration Board or the South African Sugar Association;

(c) hear and decide any dispute which may arise between a mill and a grower arising from a cane supply agreement or any agreement between those parties relating to the supply or delivery of cane;

(d) undertake and resolve any matter which, in terms of this agreement, falls to be undertaken by the Administration Board if the Administration Board is unable to or fails to duly resolve the matter owing to a deadlock or for any other reason; and

(e) hear and decide any matter which, in terms of this agreement, is to be determined by it.

35. Subject to the provisions of this agreement relating to the determination of particular disputes, if any dispute arises between any persons upon whom this agreement is binding, insofar as the dispute relates to the subject matter, application, any right or obligation arising out of, or the interpretation of this agreement, or of any agreement referred to in clause 34(c) (unless such last mentioned agreement otherwise stipulates), the Appeals Tribunal shall have jurisdiction, exclusive of any court of law, to determine such dispute and any party to such dispute may submit such dispute for determination to the Appeals Tribunal.

Proceedings of Appeals Tribunal

36. The Appeals Tribunal may hold hearings for the despatch of its business, adjourn and otherwise regulate its hearings as it deems fit: Provided that the Appeals Tribunal shall convene at least once a quarter for the purpose of hearings. The chairperson or vice-chairperson may, at any time, convene a meeting of the Appeals Tribunal for the purpose of a hearing or any other business.

37. The quorum for any hearing of the Appeals Tribunal shall be the chairperson or vice-chairperson of the Appeals Tribunal and at least two other members thereof.

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 persons appointed by the Millers' Association shall have 2 votes, 1 vote each;

(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.

39. The Appeals Tribunal may, on good cause shown, condone a late noting of an appeal.

40. Hearings of the Appeals Tribunal shall not be open to any party not directly affected by the matter before it: Provided that the chairperson or, in his or her absence, the vice-chairperson may permit anyone having a sufficient interest in the matter but not directly affected thereby to be present.

41. Each party to an appeal or other matter before the Appeals Tribunal shall be entitled to be present and be represented at the hearing of the appeal or other matter.

42. The Appeals Tribunal, at any hearing -

(a) may receive written and oral representations from any party to the matter;

(b) shall not be bound by the strict rules of evidence and may inform itself in relation to any matter before it in such manner as it deems fit;

(c) may take into account all documents, minutes and records of the Administration Board in connection with any matter for which purpose the Administration Board shall make such documents available to the Appeals Tribunal;

(d) may hold an inspection *in loco*;

(e) may adjourn for any purpose.

43. At the hearing of an appeal the Appeals Tribunal shall not be limited to consideration of the evidence before the Administration Board or other body and the Appeals Tribunal may, in its discretion, rehear the evidence or hear or receive additional evidence so as to inform itself fully of the relevant facts.

44. Subject to the provisions of clause 47, any decision, order or ruling of the Appeals Tribunal shall be final and binding on all parties.

45. The Appeals Tribunal shall have the power to confirm, alter or set aside any decision or order of the Administration Board and to make such decision or such order as it deems proper.

46. The Appeals Tribunal may make such rules and regulations not in conflict with the terms of this agreement or the common law or legislation for the conduct of its hearings as it thinks fit.

Appeal Against Finding of Appeals Tribunal

47. A party to a dispute decided by the Appeals Tribunal in terms of clause 34 may within 21 days of the date of the Appeals Tribunal's decision appeal to any provincial or local

division of the High Court of South Africa having jurisdiction against the Appeals Tribunal's finding by lodging with the registrar of the court concerned a notice of appeal setting out in full the grounds of appeal, in which event -

(a) the appellant shall, on the same day or before notice of appeal is so lodged, deliver to the secretary of the Appeals Tribunal a copy of the notice of appeal;

(b) the secretary of the Appeals Tribunal shall within 30 days of the date on which the notice of appeal is delivered to him deliver to the registrar of the court concerned in triplicate -

i. the record of the proceedings of the Appeals Tribunal comprising copies of all notices and documents filed on behalf of the parties to the proceedings, a copy of all documentary evidence admitted in the proceedings, a written transcript of the oral evidence and a copy of the statement of the decision and order of the Appeals Tribunal; and

ii. a statement of the reasons for the Appeals Tribunal's finding;

(c) the appellant shall on request pay to the Appeals Tribunal the reasonable cost, as determined by the Appeals Tribunal, of preparing and copying the documents referred to in clause 47(b);

(d) the appeal shall be prosecuted as if it were an appeal from a judgment of a Magistrate's Court in a civil matter and all rules applicable to an appeal from such a judgment shall *mutatis mutandis* apply to the appeal against the finding of the Appeals Tribunal; and

(e) the court hearing the appeal may -

i. confirm the finding of the Appeals Tribunal; or

ii. set aside such finding; or

iii. substitute its own finding for that of the Appeals Tribunal; and

iv. make such order as to costs as it deems meet.

Secretaries to Administration Board and Appeals Tribunal

48. The South African Sugar Association may -

(a) appoint an officer to exercise the powers and perform the duties of the secretary to the Administration Board;

(b) appoint an officer to exercise the powers and perform the duties of the secretary to the Appeals Tribunal.

Expenses of Administration Board and Appeals Tribunal

49. All costs and expenses incurred by the Administration Board and the Appeals Tribunal in the performance of their functions in terms of this agreement shall be industry obligations.

Mill Group Boards

50. There shall be established for each mill, other than Union Co-op, a board to be known as a Mill Group Board comprising respective representatives of the mill and the growers concerned: Provided that –

(a) a Mill Group Board may be established for more than one mill owned by the same miller;

(b) Union Co-op shall perform the functions of a Mill Group Board in respect of the Union Co-op mill and the growers concerned and all the provisions of the agreement relating to Mill Group Boards, save for clause 54, shall *mutatis mutandis* apply to Union Co-op; and

(c) the membership of each Mill Group Board in existence on the date of the coming into operation of this agreement shall be deemed to have been established in terms of this agreement.

51. At any time, the growers concerned referred to in the foregoing provision in relation to a Mill Group Board shall comprise all those growers who at that time are contracted to deliver cane to that mill, or who shall have delivered cane to that mill during the previous year unless they at that time are contracted to deliver all their cane to another mill.

Functions of Mill Group Boards

52. Mill Group Boards shall -

(a) have as their principal objects the promotion of the interests of the mills and growers to which the respective Mill Group Boards relate, including the provision of services aimed at facilitating the reception and testing of cane delivered to the mills concerned;

(b) perform their duties and exercise their powers in terms of this agreement, and advise the Administration Board on matters relating to the provisions of this agreement, as may be required from time to time; and

(c) undertake the specific functions in relation to cane testing described in clause 53.

53. Each Mill Group Board shall, at the mill concerned, be responsible for -

(a) the provision of all sampling and analysing facilities and equipment required for the determination of the recoverable value of cane delivered by growers to the mill for the purpose of determining -

i. the total mass of recoverable value of cane entering the mill; and

ii. the recoverable value of individual consignments of cane entering the mill,

all in accordance with the Official Methods Manual;

(b) the determination of the total mass of recoverable value of cane entering the mill and the recoverable value of the individual consignments of cane, in accordance with the Official Methods Manual; and

(c) keeping records of all data pertaining to its activities as required by the South African Sugar Association from time to time.

54. To enable it to discharge its functions, each Mill Group Board shall be a legal persona.

55. Each Mill Group Board shall, in respect of the mill concerned, have power to-

(a) provide for the testing of cane in accordance with clause 53 and to decide on all aspects of cane sampling and analysis including but not limited to the frequency of cane sampling and analysis and the manner in which cane sampling and analysis shall be carried out;

(b) enter into contracts in connection with the discharge of its obligations and without limiting the aforegoing generality, if it is resolved that cane testing is to be carried out in terms of a contract with any provider of cane testing services, to engage the services of a contractor to carry out cane testing at the mill concerned and to negotiate and agree the terms of such contract, including any renewal thereof;

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

(d) impose penalties on growers who fail, without good cause, to deliver cane to the mill concerned in terms of their cane delivery estimates;

(e) recover the costs incurred in the discharge of its obligations from the mill and the growers concerned;

(f) own, in its own name, any movable or immovable assets and, where appropriate, to secure registration of such assets in the name of the Mill Group Board;

(g) dispose of any of its assets by public auction or private treaty and on such terms as it may decide;

(h) open and operate bank accounts and to invest any funds surplus to its requirements in any registered financial institution;

(i) borrow money, with or without security, to finance any of its objects and to pledge or mortgage any of its assets as security for any such borrowings;

(j) delegate any of its powers to any person or organisation in such manner as it may from time to time determine;

(k) employ such staff as may be required;

(l) sue or to be sued in its own name;

(m) supervise the entire cane testing process; and

(n) undertake any other matter incidental to the proper performance of its functions.

56. A Mill Group Board shall at no time distribute any of its surplus funds, profits or gains to any person and shall at all times utilise its funds solely for the objects set out in this agreement.

57. If at any time a Mill Group Board is, for any reason whatsoever unable to discharge its obligations in terms of this agreement, the Administration Board shall be entitled, after giving written notice to the Mill Group Board of its intention to do so, to assume control of cane testing at the mill concerned. The Administration Board in so doing shall have all the powers of the Mill Group Board provided for in this agreement. Once it is satisfied that the Mill Group Board is again functional, then the Administration Board shall return control of cane testing at the mill concerned to the Mill Group Board.

Appointment of Members of Mill Group Boards

58. In respect of each Mill Group Board -

(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 representing the mill and two representing growers and, in the case of the grower representatives 1 representative must be appointed by SACGA and 1 representative appointed by SAFDA in terms of clause 58(c) unless agreed otherwise by SACGA and SAFDA in terms of a written agreement;

(b) the mill members shall be appointed by the mill concerned;

(c) the grower members shall be appointed by the Local Grower 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;

(d) for the purpose of assisting it in performing its functions the Mill Group Board may establish an advisory committee as a body subsidiary to itself; and

(e) any dispute as to the establishment, composition or any other matter regarding the operation of any Mill Group Board, shall be determined by the Administration Board.

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 whichever of SACGA's Local Grower Structure, SAFDA's Local Grower Structure or the mill, appointed the absent member, as the case may be.

60. Each Mill Group Board shall appoint its own chairperson and secretary and have power to formulate its own rules of procedure. A chairperson shall be appointed for a year at

a time and, in successive years, the chairperson shall be alternately the nominee of the grower members and the nominee of the mill members.

61. All questions for decision by Mill Group Boards shall be decided by the members present at duly constituted meetings thereof and at each such meeting -

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

(b) the mill members and grower members, respectively, shall each nominate one of their number present to exercise their respective collective vote;

(c) the chairperson shall not have a casting vote; and

(d) the decisions of the Mill Group Board shall be binding on the mill and on all growers who are contracted to deliver cane to that mill.

62. The Administration Board may issue guiding rules and regulations for the establishment of Mill Group Boards and the conduct of the affairs thereof.

63. If, at any time, in respect of a particular mill, a Mill Group Board does not exist or does not perform its functions, then subject to clause 57, the mill concerned shall perform the functions of the Mill Group Board in accordance with the directions of the Administration Board.

64. Save insofar as this agreement otherwise provides, any dispute between a Mill Group Board and a mill or between a Mill Group Board and a grower or between growers and a mill relating to a Mill Group Board shall be referred to the Administration Board, which shall determine the dispute and if a Mill Group Board is unable to resolve an issue before it due to a voting deadlock, the issue shall be referred to the Administration Board for determination.

Mill Group Boards Responsible to Administration Board

65. Mill Group Boards shall be responsible to the Administration Board and shall carry out any direction and instruction of the Administration Board in respect of the performance of their functions.

Appeals Against Decisions of Mill Group Boards

66. Any decision of a Mill Group Board shall be subject to an appeal to the Administration Board by any interested party, save insofar as this agreement otherwise provides.

67. Any such appeal shall be noted in writing to the Administration Board within 21 days of the date on which the decision is notified to the parties concerned, failing which the right to appeal shall lapse.

Expenses of Mill Group Boards

68. The ordinary expenses of Mill Group Boards and their subsidiary bodies shall be financed locally in such a manner as may be agreed upon by the growers and the mills concerned, save that in respect of the costs and expenses of cane testing, clause 159 shall apply in respect of the apportionment of such costs between growers and the mill. A Mill Group Board may impose levies to provide for such expenses and, insofar as such levies are imposed on growers, direct the relative mill to deduct the levies from cane payments which become payable by the mill to the growers concerned. The extraordinary expenses of Mill Group Boards incurred at the instance of the South African Sugar Association or the Administration Board shall be paid by the South African Sugar Association at such rates as may be determined by the South African Sugar Association from time to time.

CHAPTER 3

PRODUCTION OF CANE

Growers' Register

69. The Administration Board shall keep a register to be known as the growers' register in which shall be entered in respect of each grower -

(a) his or her name;

(b) the mill to which he or she is expected to deliver cane;

(c) that grower's code issued to the grower by the Administration Board and, if applicable, the community code issued by the Administration Board to any grower group of which that grower is a member; and

(d) such other information as the Administration Board deems necessary.

70. The Administration Board shall keep the growers' register up-to-date and, as at 1 April in each year, shall have available at its office an up-to-date abstract thereof.

Growers' Right to Deliver Cane

71. A grower may deliver cane to any mill willing to accept his or her cane for crushing, if he or she shall first have lodged with the Administration Board a notice in such form as the Administration Board may from time to time determine, in which is set out -

(a) the grower's name and address and contact details;

(b) whether the grower is a member of a grower group;

(c) such other information as is reasonably required by the Administration Board,

provided that if the name, address or other information notified to the Administration Board changes at any time, the grower concerned shall forthwith give to the Administration Board notice of such change in such form as the Administration Board may from time to time determine.

Seed Cane

72. No grower shall sell or otherwise dispose of any seed cane without the prior approval of the Local Pest, Disease and Variety Control Committee having jurisdiction over the land on which the cane is grown.

73. A Local, Disease and Variety Control Committee may require a grower within its jurisdiction who intends to use his or her own cane for seed cane on his or her own land to obtain the Committee's prior approval therefor.

Permanent Closing Down or Resiting of Mill

74. If a mill intends to resite or close permanently, it shall give the Administration Board and its Mill Group Board at least two months prior written notice thereof and the Mill Group Board shall without delay take all reasonable steps to notify all affected growers of the intended resiting or closure and no grower shall have any claim or obligations against or to the mill in consequence of the resiting or closure, save in respect of any contract which may subsist between the grower and the mill.

Control of Pests and Diseases and Varieties of Cane

75. The provisions of this Chapter relating to the control of pests and diseases and varieties of cane are intended specifically to prevent or abate loss and damage suffered by growers and the sugar industry and shall be read and construed as supplemental, in aid and not in derogation of the Agricultural Pests Act, 1973 (Act No. 3 of 1973), or any other legislation relating to pests and diseases in plants.

76. In clauses 77 to 96, unless the context otherwise indicates -

(a) "**grower**" in relation to land on which cane is growing includes a person who has title to the land or who is actually in occupation of the land or who otherwise has the right of management, care, control or use of the land and does not refer to a grower group; and

(b) "**proclaimed area**" means a control area or part of a control area designated under clause 77.

Pests and Diseases and the Compulsory Harvesting or Destruction of Cane

77. If, in the opinion of the South African Sugar Association, it is expedient that remedial operations on or the harvesting or destruction of any cane infested with any pest or disease be made compulsory in any control area or part of a control area, the South African Sugar Association may by notice in the *Gazette* proclaim the control area or a part of a control area as an area (a "**proclaimed area**") in which remedial operations on or the harvesting or destruction of cane infested with the pest or disease in question shall be compulsory on all growers in respect of land situated within the proclaimed area.

78. The South African Sugar Association may in the notice referred to in clause 77, publish such procedures, directions or orders as it may determine for the purpose of regulating remedial operations to be carried out on or the harvesting or destruction of cane and the South African Sugar Association may from time to time and in like manner amend or withdraw any notice or suspend the operation of any notice for such period as it may deem fit or in relation to such part of the proclaimed area as it may specify.

79. Each grower in respect of land situated within a proclaimed area shall carry out the remedial operations or the harvesting or destruction of cane with a view to the eradication of the pest or disease in question as may be required to be complied with in terms of a notice referred to in clause 77.

80. If the grower fails or omits to promptly comply with, to the satisfaction of the Local Pest, Disease and Variety Control Committee concerned, any procedure, direction or order published in terms of the notice, the committee may, at the expense of the grower, cause

the procedure, direction or order to be carried out and the grower shall forfeit all rights to the proceeds, if any, of any cane harvested upon the land in question, which proceeds shall be payable to the South African Sugar Association.

81. If the proceeds referred to in clause 80, are insufficient to meet the costs incurred by the South African Sugar Association in causing any procedure, direction or order so carried out, the South African Sugar Association shall be entitled to claim the shortfall from the grower and a certificate by the South African Sugar Association's auditor as to the amount so due shall be *prima facie* proof of the amount.

Varieties of Cane

82. On or before 31 March in each year the South African Sugar Association shall cause to be published a notice in the *Gazette* which shall specify in respect of each control area or respective parts of each control area the varieties of cane approved by the South African Sugar Association for planting and such notice shall come into force on 1 April following the date of publication and shall remain in force until the following 31 March.

83. No grower shall at any time plant cane other than a variety of cane at that time approved by the South African Sugar Association for planting in the relevant control area or part thereof in which the grower's land is situated, in terms of the South African Sugar Association's said notice then in force.

84. A grower who plants land to an approved variety of cane shall, in the event of the approval being withdrawn in respect of the control area or part of a control area concerned, but subject to a right of appeal to the Administration Board, eradicate the cane within the period and in the manner determined by the relative Local Pest, Disease and Variety Control Committee and laid down in a written order duly served on him or her.

85. Save during the period determined by the Local Pest, Disease and Variety Control Committee for the eradication of a previously approved variety of cane, no grower shall deliver to a mill and no mill shall knowingly accept delivery from a grower of a variety of cane which is not, in the year of delivery, an approved variety for planting in the control

area or part of the control area in which the grower's land is situated.

86. Any cane which is not a variety duly approved for planting in the control area concerned or part thereof and any cane which is growing on a grower's land after the expiration of the period determined for the eradication thereof in terms of an order referred to in clause 84, shall be deemed to be diseased sugar cane to which the provisions of clauses 79, 80 and 81 shall *mutatis mutandis* apply.

Compensation for Eradication of Cane

87. The South African Sugar Association may in its discretion and having due regard to equitable considerations compensate a grower for loss suffered due to the eradication of his or her cane before the time it would normally be ploughed out, if the South African Sugar Association is satisfied that -

(a) the grower has become obliged to eradicate the cane due to the pest and disease control provisions or control of varieties provisions of this agreement; and

(b) the loss has occurred due to circumstances beyond the control of the grower:

Provided that if a grower feels aggrieved at any decision of the South African Sugar Association in the exercise of the discretion, he or she shall have the right to appeal against that decision to the Appeals Tribunal, whose decision shall be final and binding on the grower and the South African Sugar Association.

Local Pest, Disease and Variety Control Committees and Officers

88. The South African Sugar Association -

(a) shall establish, cause the appointment of committee members of and make rules by which to regulate the procedures to be followed by respective Local Pest, Disease and Variety Control Committees and Local Pest, Disease and Variety Control Officers (hereinafter referred to as officers) for respective control areas or parts of control areas and shall determine the area of jurisdiction of each

committee and officer and shall provide for the identification of and the written authority to be produced by all officers so appointed;

(b) may delegate any of its functions in terms of clauses 77 to 96 to a Local Pest, Disease and Variety Control Committee; and

(c) shall have the power to impose levies in accordance with the recommendations of a Local Pest, Disease and Variety Control Committee on particular mills and particular growers to fund the costs and expenses of such committee and shall have the power to require the relative mills to deduct any levies imposed on growers from payments due to growers for cane deliveries.

Powers of Officers to Enter Upon Lands

89. Each grower in respect of land situated in a control area shall permit an officer on production by such officer of his or her written authority to enter upon the grower's land in order to perform any of his or her functions or those of a Local Pest, Disease and Variety Control Committee or any order or instruction given to him or her by the South African Sugar Association.

Inspection of Land and Order to Eradicate Pests or Diseases

90. Without incurring any obligation to pay compensation, a Local Pest, Disease and Variety Control Committee may cause an officer to inspect any cane on any land situated within its area of jurisdiction and to remove samples of any cane in order to ascertain whether any pest or disease inimical to cane exists on the land.

91. If an officer discovers upon any land within a proclaimed area the presence of any such pest or disease, or reasonably suspects the presence thereof on the land, the Local Pest, Disease and Variety Control Committee concerned may -

(a) by order in writing duly served on the grower concerned declare the whole of the land or any specified portion thereof to be quarantined for such period or periods as may be determined by the Local Pest, Disease and Variety Control Committee concerned and specified in the order;

(b) by order in writing duly served on the grower require the grower to carry out in the manner and within the period specified in the order such measures as the Local Pest, Disease and Variety Control Committee concerned may specify for the eradicating or combating the pest or disease; and

(c) by order in writing duly served on the grower require the grower to carry out any remedial operation on or to harvest or destroy any cane growing on his or her land in the manner and within the period specified in the order and to keep his or her land or any portion thereof free of any such sugar cane for a period specified in the order.

92. Any order issued under clause 91 shall be subject to an appeal to the Administration Board.

93. Should a grower upon whom an order under clause 91 has been duly served fail or omit to duly observe or comply with the terms and requirements of the order, the South African Sugar Association may cause the order to be carried out in accordance with the provisions of clause 80.

94. The Administration Board shall have power to consider and decide any matter in respect of which any Local Pest, Disease and Variety Control Committee is unable, due to a disagreement among its members, to come to a decision.

95. Any appeal to the said Administration Board shall be noted in writing and delivered at the office of the South African Sugar Association within 14 days of the service upon the grower concerned of the order against which the appeal is noted.

Service of Notice or Order

96. Any order in terms of the provisions of clauses 84 or 91 shall be deemed to have been duly served on the grower concerned -

(a) if it is delivered to the grower personally;

(b) if it is delivered to his or her duly authorised representative;

(c) five days, excluding Saturdays, Sundays and public holidays, after it is sent by certified or registered post to the last known business or residential address of the grower; or

(d) if it is delivered at the land concerned, in the absence therefrom of the grower, to a person apparently in charge thereof.

CHAPTER 4

SUPPLY OF CANE

Cane Delivery Estimates

97. Each Mill Group Board shall, after consultation with the growers and mill concerned, and subject to the provisions of this agreement, from time to time make rules for the taking out of cane delivery estimates by growers and grower groups who are contracted to supply cane to the mill, and for the better performance of its functions.

98. A grower shall, whenever so requested by his Mill Group Board, submit an estimate of the cane which he or she or any grower group of which he or she is a member proposes to deliver to the relative mill during the crushing season in each year and all such estimates shall be made in good faith and the grower shall, with due regard to a mill's obligation to accept deliveries of cane, use his or her best endeavours to compile his or her cane delivery estimates or where the grower is a member of a grower group, the grower group's cane delivery estimate, with reasonable accuracy. A grower or grower group may not submit an estimate for delivery of the same cane to more than 1 mill.

99. Reductions or increases in a grower's or grower group's cane delivery estimates shall be permitted only in accordance with the rules determined by his or her or its Mill Group Board in accordance with the provisions of clause 97.

100. By not later than 30 September in each year, or such earlier date as is agreed upon by the Mill Group Board and the mill concerned, or such later date as may, with the approval of the South African Sugar Association, be so agreed, each grower contracted to deliver cane to the relative mill or where a grower is a member of a grower group, that grower group, shall be required to submit to the Mill Group Board a cane delivery estimate relative to the current season, which shall constitute an undertaking by the grower or grower group to deliver the mass of cane indicated in the estimate and after that date the grower or grower group may only increase or reduce his or her or its undertaking, on

good cause shown, to the extent permitted by the relative Mill Group Board and the mill concerned. The words "**good cause**" in this clause shall be construed as including agronomic and such other factors and circumstances as may be considered appropriate.

101. If the Mill Group Board and the mill concerned cannot agree on a date other than 30 September, either party may refer the matter to the Administration Board for adjudication.

102. It shall be the duty of each Mill Group Board to take out at regular intervals and in accordance with its rules, estimates of cane which the growers or grower groups concerned propose to deliver during the crushing season and to advise the Administration Board, the growers, the grower groups and the mill concerned of the estimates. Mills shall not be liable for incorrect estimates made by Mill Group Boards.

103. Mill Group Boards may determine any question relating to growers' or grower groups' estimates of production not specifically provided for in this agreement.

Cane Supply Agreements

104. A mill and a grower may enter into a contract (commonly called a "**cane supply agreement**") in terms of which -

(a) such grower will be obliged to grow cane on such grower's land;

(b) for a period, such grower will be obliged to deliver such cane to such mill and such mill will be obliged to accept such deliveries; and

(c) the mill and the grower concerned agree to ancillary contractual terms which are not in conflict with the terms of this agreement.

105. Cane supply agreements in existence when this agreement comes into operation, shall be suspended during the subsistence of this agreement insofar as they are in conflict with the provisions of this agreement, but otherwise they shall remain in force: Provided that references in any such existing cane supply agreement to sucrose or sucrose in cane

shall be construed as references to recoverable value.

106. If a grower who is not contracted to deliver cane to the relevant mill, submits a cane delivery estimate to a Mill Group Board and such estimate is included, in whole or in part, in the Mill Group Board's delivery allocations for the year concerned, such grower and the mill concerned shall be deemed to have entered into a contract for the supply of that mass of cane referred to in such grower's initial estimate to the extent included in such delivery allocations, as it may be amended from time to time, for the year concerned. If a group estimate by several such growers is submitted (and without limiting the general meaning of this clause, a group estimate includes an estimate submitted by a grower group) and included in the delivery allocations, each of those several growers shall be deemed to have so entered into such a contract with the mill concerned in relation to his or her respective share of the group estimate.

Deliveries to Mills

107. Each grower shall -

(a) deliver his or her cane to his or her crush mill;

(b) ensure that all the cane is delivered in such a condition that the mill concerned will be able to crush the cane efficiently, to which end, without derogating from the generality of the foregoing, each grower shall ensure that the cane is reasonably topped and either trashed or burnt.

108. Save insofar as may be otherwise agreed between a particular grower and his or her home mill and subject to any provision in this agreement to the contrary, each grower shall bear his or her own costs of transport of cane to the home mill concerned.

Times and Modes of Delivery

109. Each Mill Group Board shall be responsible, according to the terms of this agreement, for regulating all matters relative to the delivery time and mode of delivery applicable to each grower and grower group delivering cane to the mill concerned. The expression "**delivery time**" embraces the days of a week and the hours of a day during which a

grower or grower group is required to deliver cane to a mill and the expression "**mode of delivery**" embraces the method by which cane is to be bundled, including the size of bundles, or not bundled and the type of delivery vehicle employed, so determining the manner in which the cane is presented for off-loading at a mill's receiving facilities.

110. If, to suit the receiving facilities of a mill, the mill tranships or moves cane from one mode of delivery to another, the costs of transport from the transhipment point to the mill or the cost of moving the cane to the other mode of delivery shall be borne by the mill, save insofar as the parties may otherwise agree.

111. If a mill undertakes the haulage of a grower's cane by locomotive from railhead to mill, the costs of the haulage shall be borne by the mill, save insofar as the parties may otherwise agree.

112. Save insofar as this agreement otherwise provides, each grower shall deliver his or her cane to the mill concerned at the same delivery time and by the same mode of delivery he or she was entitled to employ immediately prior to the coming into force of this agreement.

113. If a mill or a grower or grower group wishes to effect a change in the grower's or grower group's time of delivery or the mode of delivery to the mill concerned -

(a) the proposal for the change shall be referred to the Mill Group Board concerned;

(b) the Mill Group Board concerned shall not effect the change unless -

i. in the case of the delivery time, the grower concerned consents thereto together with any other grower affected by the change in delivery time if the grower is a member of a grower group, and, if the proposed change will affect the rate at which cane in any particular mode is received by the mill concerned from other growers contracted to that mill, the mill consents thereto;

ii. in the case of the grower's or grower group's mode of delivery, except if the proposed change results from a change in such mill's receiving

facilities effected pursuant to clause 115, both the mill and the grower consent thereto provided that where a grower group is delivering, consent is required of every grower who is a member of that grower group; and

if any dispute arises as to whether a delivery time or mode of delivery may be duly changed in accordance with the provisions of clauses 113(a) and (b), no change shall be given effect to until such time as the right to appeal has lapsed or such time thereafter as any appeal duly noted to the Administration Board or further appeal to the Appeals Tribunal shall have been finally disposed of.

114. A mill may refuse to accept the delivery of cane by a grower who, or grower group which, persistently fails to comply with his or her or its allocated delivery time or mode of delivery.

Mill Receiving Facilities

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 Structure/s concerned.

Varieties of Cane

116. Each grower and grower group shall, as far as possible, deliver different varieties of cane in separate consignments, each identified by variety in the relevant delivery note. Each mill shall weigh consignments separately and keep a proper record thereof. The Mill Group Board concerned shall, as far as practicable, test the different varieties of cane separately for all elements required so as to arrive at the recoverable value. The Mill Group Board shall collate such data for industrial purposes.

Condition of Cane

117. Unless the terms of any contract between the relative mill and relative grower provide otherwise, if a mill is dissatisfied with the condition of cane delivered to it by a grower or

grower group and does not wish to accept such cane, it shall refer the matter to the Mill Group Board concerned. If, in any such matter referred to it by a mill, the Mill Group Board concerned is satisfied that the condition of the cane is so defective that the mill concerned cannot efficiently crush the same, the Mill Group Board concerned shall order the cane to be redelivered to the grower concerned at the grower's expense, regardless of whether or not it has been weighed, in which event the grower shall not receive any payment therefor. A Mill Group Board may delegate any of its functions in terms of this clause to a nominee.

Road Maintenance

118. Where, from 1 April 1984 until immediately before the date on which this agreement comes into operation, a mill has continued to be responsible for making available and maintaining a road over which a grower delivers cane to a mill, the mill shall, to the extent it continues to be legally entitled to do so and unless otherwise agreed between the mill and the grower, continue to make the road available to the grower and continue to maintain the same on the same basis as hitherto on condition that -

(a) if any authority assumes the obligation to maintain the road or provides a suitable alternative road, the mill's obligation shall cease;

(b) subject to any contractual rights the mill may have, the mill shall not charge the grower or his or her transport contractor for the use of the road; and

(c) the provisions of this clause shall not apply if the mill makes available or maintains the relevant road pursuant to a contractual obligation, which obligation shall not be deemed to be extended by the provisions of clause 118(b).

Rateable Deliveries

119. Total deliveries of cane shall be made by a grower or grower group to the relative mill rateably over the full length of the crushing season, unless otherwise agreed to by the mill and the Mill Group Board concerned.

120. Each Mill Group Board shall, in consultation with the mill concerned -

(a) determine rateable delivery allocations based on growers' or grower groups' delivery estimates in respect of all growers contracted to deliver cane to the mill concerned;

(b) endeavour to facilitate co-operation amongst groups of growers to arrange for the sharing by the groups concerned of delivery allocations as may be appropriate in the interests of a rateable delivery schedule and the convenience of the parties concerned; and

(c) advise growers, grower groups and the mill concerned on all questions relating to delivery allocations and the rateable delivery of cane.

Special Delivery Allocations

121. A Mill Group Board may make special delivery allocations to growers and grower groups at any time to secure the reasonably prompt delivery of cane damaged by frost, fire, drought, flood, pest or disease, or cane required to be harvested in terms of an order issued in terms of this agreement by a Local Pest, Disease and Variety Control Committee.

Supply of Information to Mill Group Boards

122. Each mill and grower contracted to a mill shall supply to the Mill Group Board concerned all information reasonably necessary for the Mill Group Board concerned to perform its functions in terms of this agreement, including information related to grower groups.

123. Each such grower shall supply to the Mill Group Board concerned, by 30 April of each year or such later date as the Administration Board may allow, the following information regarding -

(a) the area of his or her land reaped and tonnage of cane harvested therefrom in the previous year;

(b) the estimated area of his or her land to be reaped and tonnage of cane capable of being harvested therefrom in the current year;

(c) the estimated area of his or her land -

i. under cane cultivation as at the previous 31 March;

ii. to be planted to cane during the current year; and

iii. which will be under cane cultivation on the following 31 March; and

(d) such additional information as the Administration Board may reasonably require.

Failure by a Grower to Submit Estimates or Information

124. In respect of growers contracted to a mill, a Mill Group Board may withhold, or itself determine, a cane delivery allocation to a grower or grower group if -

(a) the grower either directly or as part of a grower group, fails to duly submit estimates as required by this agreement the accuracy of which is acceptable to the Mill Group Board of the cane he or she or the grower group proposes to deliver to the mill concerned; or

(b) the grower fails timeously and adequately to furnish all the information and returns which he or she is required to furnish in terms of this agreement.

125. A Mill Group Board may, if the relative mill or any relative grower fails to carry out its or his or her obligations to furnish any information required of it or him or her, make estimates of the required information.

Cane Diversions

126. Mills may at any time divert supplies of cane from one mill to another.

127. Where mills agree to make diversions of supplies of cane in terms of this agreement, the identification of and payments for all cane deliveries shall be a matter for agreement between the mills concerned on condition that details thereof shall be notified to the Administration Board from time to time.

128. Save insofar as may be otherwise agreed by the grower and the home mill concerned -

(a) any additional costs of cane delivery or of cane testing incurred in consequence of a diversion of cane from a grower's home mill to another mill to suit the convenience of mills, shall be borne by the grower's home mill;

(b) where the diversion results in a saving of costs of delivery, the saving shall be for the benefit of the grower concerned;

(c) where a diversion takes place mainly to suit the grower concerned, any additional costs of cane delivery or of cane testing shall be borne by the grower; and

(d) any dispute between the grower and the home mill concerned in relation to the provisions of clauses 128 (a), (b) and (c) and any claim arising therefrom which is not resolved by negotiation between the parties, must be referred to the Administration Board which will have jurisdiction to determine that dispute.

The expression "**costs of cane delivery**" in this clause means the costs incurred in the loading, handling, transportation and unloading of cane from the time it is first loaded on a vehicle to the time it is off-loaded at the receiving facilities of the mill concerned.

129. Each mill shall notify its Mill Group Board and the South African Sugar Association monthly of the estimates of cane diversions agreed between any of them in terms of this agreement.

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 131 may only be concluded and deductions in terms of clause 134 may only be made from cane proceeds, if and when those Local Grower Structures conclude a Co-operation Agreement.

131. 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 -

(a) any agreement the mill may wish to enter into in relation to the length of its milling season;

(b) the payment of compensation by the growers concerned to the mill concerned or by the mill concerned to the growers concerned if the milling season is extended beyond the agreed length thereof;

(c) cane quality schemes and by-product payment schemes which may be offered to the growers concerned generally;

(d) the liability of a grower concerned for damages or a penalty if such grower fails, without good cause, to deliver cane to such mill in accordance with such grower's cane delivery estimate;

(e) any other matter relative to cane deliveries or cane supply which is of general application to all the growers concerned; and

(f) the continuing application of any specific provision of any cane supply or similar agreement subsisting between the mill concerned and a grower at the time this agreement comes into force and that may otherwise fall away or be superseded according to clause 132.

132. 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 131, the provisions of the latter agreement shall prevail, save as may otherwise be agreed in terms of clause 131(f). Any agreement concluded in terms of clause 131, 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 131.

133. If any dispute arises between a mill and a grower in relation to an agreement negotiated between the mill and a Local Grower Structure/s, either party may refer the dispute to the Appeals Tribunal for determination.

134. 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 131); 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.

CHAPTER 5

PAYMENT FOR CANE

Payment for Cane

135. For the cane delivered by a grower to a mill in each year, the grower's home mill shall pay the grower a price per ton based on the recoverable value of the cane, not less than the price determined in accordance with the provisions of this Chapter: Provided that, if a grower delivers cane to a mill in the month of March in any year, the South African Sugar Association may, on the application of the Mill Group Board concerned, declare that such cane shall, for the purposes of this Chapter, be deemed to be delivered in the following year.

Cane Testing

136. The South African Sugar Association shall establish and maintain a Cane Testing Service which -

(a) shall provide an audit function in respect of the determination of the total mass of recoverable value of cane entering each mill in accordance with clause 53; and

(b) may undertake the sampling and laboratory procedures aimed at the determination of the recoverable value of cane delivered by growers to each mill, in respect of which the relevant Mill Group Board has entered into a contract with the South African Sugar Association for the provision of such services.

137. The South African Sugar Association shall issue and keep up-to-date a manual called the "Official Methods for the Determination and Distribution of Total Recoverable Value of Cane" (**"the Official Methods Manual"**) and no amendment shall be effected to the Official Methods Manual, except with the prior written approval of the South African Sugar Association.

138. Each mill shall provide and maintain all such measuring equipment as specified by the South African Sugar Association from time to time for the measurement of the mass of cane and mixed juice and any other relevant substance derived from cane, which equipment shall also comply and be maintained in accordance with the Legal Metrology Act, 2014 (Act No. 9 of 2014), if applicable. The mass determinations shall be carried out in accordance with the procedures detailed in the Official Methods Manual.

139. The Mill Group Board at each mill shall be responsible for the determination of the total mass of recoverable value of cane entering the mill concerned in terms of clause 53 to the satisfaction of the South African Sugar Association. The South African Sugar Association shall at all times have access to all facilities, data and other information which it deems necessary in order to verify the accuracy of the determination of the total mass of recoverable value of cane entering the mill.

140. Should the South African Sugar Association be dissatisfied with the determination of the total mass of recoverable value of cane entering a particular mill, it shall advise the relevant Mill Group Board of its findings and of the steps it requires to be taken to remedy the situation and may order amendments to the results of determinations by the Mill Group Board, with retrospective effect. The Mill Group Board shall implement the requirements of the South African Sugar Association: Provided that should the Mill Group Board or the mill or grower(s) concerned dispute the validity of the steps or the amendments, they shall be entitled to refer the matter to the Administration Board for a ruling.

141. Each Mill Group Board shall provide and maintain all equipment, devices, chemicals and other facilities as are necessary to ensure compliance with the Official Methods Manual.

Analysis of Cane Deliveries

142. In order to determine the recoverable value of each consignment of cane delivered to a mill by a grower -

(a) individual cane consignments shall be tested in a manner and at a frequency determined by the Mill Group Board concerned from time to time;

(b) each mill shall, in consultation with the Mill Group Board concerned, design and operate its mill cane yard and cane carrier systems so as to facilitate the determinations required in terms of clause 53;

(c) when cane is delivered to a reloading site, the cane shall, as far as practicable in the light of the quantities of individual consignments, be stored so that the reload vehicle is filled with cane from one grower only;

(d) notwithstanding the provisions of clauses 142(a) to (c), inclusive, if consignments from any particular growers are, in the opinion of the Mill Group Board concerned, consistently too small for separate sampling or cannot practically be separately sampled for good and sufficient reason, the Mill Group Board may direct that such consignments be grouped for combined sampling and testing and the results of such combined sampling and testing of the cane shall apply to all the cane consignments so grouped within a distribution period referred to in clause 144;

(e) as far as practicable, consignments shall be crushed in the sequence of the dates and times of their delivery to a mill (and similarly reloaded on a first in first out basis at reloading sites);

(f) storage times in a mill yard shall be kept to a minimum and the Mill Group Board concerned shall monitor the delay of all consignments stored in a mill yard;

(g) a Mill Group Board may annul or adjust any test results which it considers to be irrational;

(h) any consignment of cane which for any reason is not sampled, shall be credited a recoverable value in accordance with the procedures provided for in the Official Methods Manual.

Application of Adjusting Factors

143. The individual consignment analytical parameters arrived at shall then be adjusted in respect of each distribution period by the Mill Group Board concerned by the application

of adjusting factors which shall be determined for the distribution period according to the Official Methods Manual.

144. Each distribution period, which shall normally be seven days, shall be fixed by the Mill Group Board concerned or, if the Mill Group Board is unable to agree, a distribution period shall be determined by the Administration Board.

Variations

145. If at any particular mill circumstances should arise which warrant a variation from the strict interpretation of any of the procedures relating to the determination of recoverable value of cane the Mill Group Board concerned may, subject to the approval of the South African Sugar Association, authorise such variation on such basis and for such period as it shall determine.

Monthly Cane Delivery Statements

146. Each Mill Group Board shall report monthly to the mill concerned and to the Administration Board and the Growers' Associations the total mass of cane delivered by each grower to the mill during the preceding monthly period, and the recoverable value thereof.

Relative Recoverable Value and Payment

147. For the purpose of clauses 148 to 156, inclusive, the term "**growers**" in relation to a mill means all growers in respect of which such mill is their home mill.

148. Subject to any provisions herein to the contrary, each mill shall pay growers prices for cane deliveries based on the relative recoverable value of the cane, but Union Co-op may adopt its own system of payment for the growers contracted to deliver cane to its mill.

149. Notwithstanding anything to the contrary contained in this chapter, the prices payable by a mill to a grower in respect of sugar beet deliveries shall be subject to agreement between the mill concerned and the grower concerned.

150. Payment for all out of season cane shall be based on actual recoverable value and not relative recoverable value of the cane.

151. The percentage of the relative recoverable value of the cane delivered by growers to a mill shall be calculated in each year according to the following provisions -

(a) In respect of the cane delivered by each grower, the percentage of the relative recoverable value of the cane crushed each week shall be calculated by adding the actual recoverable value percent of the cane as determined by the Mill Group Board concerned to the mean recoverable value percent cane for all the growers for the entire year concerned (excluding out of season cane deliveries), and deducting therefrom the mean recoverable value percent cane for all the growers during the week in which the cane is crushed; and

(b) until the actual mean recoverable value percent cane for the year is finally established for the mill concerned, the figure shall be estimated by the Mill Group Board concerned;

(c) each Mill Group Board shall advise the Administration Board monthly, at the time of submitting cane and recoverable value estimates, of the estimated mean recoverable value percent cane for the year of all the relative growers and should the Mill Group Board fail to agree on an estimate, the Administration Board shall determine the estimate;

(d) in order to assist with the determination of the estimates as accurately as possible, without derogating from the power conferred on the Mill Group Boards or the Administration Board in terms of clauses 151(a), (b) and (c), a committee comprising two representatives of each of the Millers' and Growers' Associations (1 appointed by SACGA and 1 appointed by SAFDA) and two representatives of the South African Sugar Association shall determine independent statistical forecasts and review these at least monthly with a view to making recommendations to each Mill Group Board on the estimates of seasonal mean recoverable value percent cane of the relative mill, and the committee may co-opt additional members as it thinks fit; and

(e) when the actual mean recoverable value percent cane for the year is established for the mill concerned, a final adjustment shall be made to incorporate the actual seasonal mean in place of the estimated seasonal mean for the growers concerned.

152. At each mill the Mill Group Board shall calculate the relative recoverable value percent cane for each grower on a weekly mean basis and each grower shall be informed by the Mill Group Board concerned at the end of each week of his or her mean actual and relative recoverable value percent cane for the week, as well as of the mean for all growers for the week and the estimated corresponding mean for the year concerned.

153. Payment by a home mill to a grower for the cane delivered by the grower to a mill shall be made on the basis that -

(a) a provisional payment for cane delivered in each respective mill month shall be made 30 days after the last day of the corresponding calendar month and the amount of each provisional payment shall be not less than the sum of the product obtained by multiplying 90% of the estimated price per ton of recoverable value, as determined in terms of the provisions of Chapter 6 for the immediately preceding month, by the accumulated recoverable value of the cane deliveries of the grower from the commencement of the year up to and including the last day of the mill month in respect of which the payment is due, less the total of all provisional payments previously made to him in respect of the year concerned;

(b) a mill may differentiate between provisional payments made to different categories of growers as determined by the mill in the light of delivery patterns and other factors but in no case shall any provisional payment be based on less than 90% of the estimated price per ton of recoverable value and, in the event of such differentiation, the retention interest values shall be calculated separately for each respective category in terms of clause 154; and

(c) a final payment shall be made on 31 March in each year and the amount of the final payment shall be the sum of the product obtained by multiplying the price per ton of recoverable value, as finally determined in terms of the provisions of

Chapter 6 for that year, by the accumulated recoverable value of the cane deliveries of the grower during the year, less the total of all provisional payments previously made to the grower in respect of the year concerned together with retention interest calculated in accordance with the provisions of clause 154.

154. At each mill there shall be calculated retention interest values per ton of recoverable value, which shall be the total of a calculation for each month during the year in which cane is delivered, divided by the total tons of the recoverable value of the cane delivered by the growers during the year, which calculation shall be made in accordance with the following formula:

$$(V \times W - R \times M) \times \frac{P}{12} \times Z$$

In which formula the factor -

(a) V represents the total cumulative tons of the recoverable value of the cane delivered from the commencement of the year up to and including the last day of the month concerned;

(b) W represents the price per ton of the recoverable value of cane as finally determined for that year in accordance with the provisions of Chapter 6 or, if clause 155 applies, the deemed recoverable value price determined by the South African Sugar Association in terms of that clause in respect of the period concerned;

(c) R represents the total cumulative tons of relative recoverable value of the cane delivered from the commencement of the year up to and including the last day of the month concerned;

(d) M represents the estimated price per ton of the recoverable value of the cane used as the basis in determining the provisional payment for the month concerned, less the retention deducted by the mill;

(e) P represents the period of time in months until the following payment (normally one month, except for the period between the last provisional payment and 31 March); and

(f) Z represents the weighted average of the daily prime bank overdraft rate chargeable by the Sugar Association's bankers from 1 March in the preceding year to 28 February in the year concerned, less one half of a percentage point.

155. For the purpose of the formula set out in clause 154, if any notional local market price referred to in Chapter 6 is increased or reduced during any year, the South African Sugar Association shall –

(a) estimate and determine the effect that such increase or reduction has on the finally determined recoverable value price for that year and the date from which it will have such effect; and

(b) determine a deemed recoverable value price which excludes this effect and which shall be applied to all deliveries of cane up to the date so determined, and the recoverable value price as finally determined for that year which shall be applied in respect of the period after that date, subject to any directions or adjustments that may be laid down by the South African Sugar Association.

156. The retention interest payment to each grower shall be calculated by multiplying the tonnage of recoverable value of the cane delivered by him or her by the retention interest value per ton of recoverable value for the grower's home mill.

Share of Filter Press Cake

157. Growers contracted to deliver cane to a mill shall have the right to participate in filter press cake residual from the milling process in accordance with such arrangements as may be made between that mill and its Mill Group Board and, failing that, such arrangements as may be decided by the Administration Board. If a mill loads, rails or delivers such cake, the cost of such service shall be paid by the growers concerned and delivery shall be in accordance with arrangements to be made to suit the convenience of the parties concerned.

Access to Data

158. Any person duly authorised thereto by the South African Sugar Association shall have reasonable access to mills and their records relating to cane testing and to the records of the Mill Group Board concerned in the course of performing their duties or carrying out any authorised inspection or investigation. Each mill and any person duly authorised thereto by a mill shall have reasonable access to the Mill Group Board's records in the course of performing the mill's duties or carrying out any inspection or investigation. The Millers' and Growers' Associations shall at all times have access to the data relating to cane testing in the possession of the South African Sugar Association.

Financing of Cane Testing Service

159. The amount required for the costs and expenses of cane testing at each mill shall be apportioned between the mill and the growers concerned in the percentage share in the division of proceeds fixed in clauses 170 to 172: Provided, however, that the Mill Group Board may determine a different apportionment of such costs. Such costs shall be recovered by Mill Group Boards in terms of clause 68.

160. The amount required for the operating costs and expenses of cane testing at each mill where the service is provided by the South African Sugar Association, as determined from time to time by the South African Sugar Association, regardless of the method of testing employed may be advanced by the South African Sugar Association. The South African Sugar Association shall recover such amount on the basis determined by it.

161. The amount required for the costs and expenses of the audit function of the Cane Testing Service referred to in clause 136(a) shall be an industry obligation.

CHAPTER 6

DETERMINATION AND DISTRIBUTION OF PROCEEDS AND CANE PRICES

Interpretation

162. In this Chapter, unless the context otherwise indicates -

(a) **"Growers' Statutory Costs"** means:

i. R125 138 479 being the sum of the costs of SACGA and SAFDA respectively approved by the South African Sugar Association's Council for the 2023/2024 season from 1 April 2023; and

ii. for each season 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 177.

(b) **"the notional local market price"** means the notional price attributed to local market brown sugar, refined sugar and molasses, respectively, determined from time to time by the South African Sugar Association in terms of clause 163; and

(c) **"milling"** includes refining and **"miller"** includes refiner.

163. The South African Sugar Association shall, for the purpose of determining the gross proceeds from the sale of production in terms of this Chapter, from time to time determine –

(a) separately for brown and refined sugar, respectively, the notional local market price of sugar to be sold on the local market by millers, ex-factory in bulk or packed in one ton bags or 25kg pockets; and

(b) for molasses, the notional market price of molasses to be sold on the local market by millers ex-factory and which will also represent the value of molasses utilised by millers.

164.

(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. MCPs shall be subject to a maximum levy equal to the lesser of R4.66 per ton cane delivered (and this R4.66 amount shall be adjusted for each season starting from 1 April 2024 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.

165. If the South African Sugar Association, in terms of the proviso to clause 135, declares that any cane delivered in March of any year shall be deemed to be delivered in the following year the sugar and molasses produced from such cane by the mill concerned shall similarly be deemed to be produced in that following year.

Determination of Gross Proceeds

166. In respect of each year the South African Sugar Association shall determine the gross proceeds from the sale of production, which shall be the total of -

(a) the proceeds of local market refined sugar, calculated by multiplying the tonnage of such sugar produced and estimated to be produced during the year, by the weighted average notional local market price of refined sugar applicable during that year;

(b) the proceeds of local market brown sugar, calculated by multiplying the tonnage of such sugar produced and estimated to be produced during the year, by the weighted average notional local market price of brown sugar applicable during that year;

(c) the proceeds of export sugar, including high test molasses, received by millers from Sasexcor, calculated by multiplying the tonnage of such sugar, including the sugar equivalent as determined by the South African Sugar Association of high test molasses produced for export and the local market during the year, by the net average export price per ton of all export sugar produced during the year, and for which purposes -

i. the net average export price shall comprise the net free alongside ship or free on board proceeds of such export sugar including any polarisation awards and quality bonuses or penalties to which shall be added other income applicable to export sugar such as, *inter alia*, address commission, despatch money and interest and from which proceeds shall be deducted any other costs or charges applicable to export sugar, excluding those which comprise industry obligations and any adjustment, in respect of a previous year, referred to in clause 166(c)ii; and

ii. the final determination of export proceeds for each year shall be made by the South African Sugar Association not later than 31 March in each year and, if certain components of proceeds require to be estimated in

order that the final proceeds may be so determined, any differences between the actual and the estimate of such components shall be brought to account as an adjustment in the calculation of the net average export price for the following year;

(d) the net amount of any adjustment in respect of a previous year, resulting from the differences referred to in clause 166(c)ii between the estimated and actual amounts of any components of the export proceeds; and

(e) the proceeds of final molasses including refinery molasses, produced and estimated to be produced during the year, as determined by the South African Sugar Association; which proceeds represent -

i. proceeds from local market sales of molasses and the value of molasses utilised by millers, based on the notional local market price of molasses; and

ii. proceeds from export market molasses being the total realisation of export market molasses sold, less costs of distribution, handling, storage and transport.

Net Divisible Proceeds

167. In respect of each year, the South African Sugar Association shall determine the net divisible proceeds by deducting from the gross proceeds calculated in accordance with the provisions of clause 166, the industry obligations in respect of the year concerned.

Allocation of Share of Net Divisible Proceeds to Growing

168. For the purpose of determining the price per ton of recoverable value of cane payable by mills to growers in each year there shall be allocated to growing a share being a percentage of the net divisible proceeds, which percentage shall, subject to clause 170, be 64.3127%.

169. The percentage of the net divisible proceeds allocated to growing shall be adjusted for any year during which the aggregate tonnage of saleable sugar produced by all millers is less than 1,8 million tons by reducing such percentage by one half of a percentage point.

170. The basis of allocation of a share of the net divisible proceeds to growing referred to in clauses 168 and 169 may at any time be varied by agreement in writing by the Millers' Association and the Growers' Associations, which Associations may at any time, if they all agree, meet with a view to reviewing the basis of allocation.

Proceeds of Recoverable Value

171. 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 167, which is to be allocated to growing in accordance with the provisions of clauses 168 and 169, subject, if applicable, to clause 170, 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.

Price for Recoverable Value of Cane

172. In each year, the price per ton of recoverable value payable by mills to growers for cane deliveries shall be equal to the recoverable value of such cane calculated by dividing the total proceeds determined as payable by mills to growers in accordance with the provisions of clause 171 by the total tonnage of the recoverable value of cane delivered during the year concerned.

Provisional and Final Prices for Recoverable Value of Cane

173. All elements of the determination of prices payable by mills to growers based on the recoverable value of cane deliveries shall be estimated by the South African Sugar Association at the commencement of each year and thereafter monthly during the year for the purpose of enabling provisional payments to be made to growers in accordance

with the provisions of clause 153(a).

174. The final determination of such prices shall be made by the South African Sugar Association not later than 31 March in each such year for the year then ending.

Production Schedules

175. For the purpose of complying with the provisions of this agreement –

(a) each mill, including a sugar beet mill, shall during each year and according to a timetable to be issued before the commencement of the year submit to the South African Sugar Association returns, in such form as is determined from time to time by the South African Sugar Association, of -

i. in the case of a mill other than a sugar beet mill, the estimated annual and actual monthly deliveries to the mill of cane and of the recoverable value of cane;

ii. the estimated annual and actual monthly sugar and molasses production; and

iii. total sugar production in respect of the year concerned which must be supported by a certificate of verification by the relative mill's independent auditor in a form acceptable to the South African Sugar Association.

(b) in respect of each year the South African Sugar Association shall prepare –

i. final production schedules in respect of all cane supplied by growers to mills and the recoverable value thereof;

ii. final sugar and molasses production schedules in respect of each mill including sugar beet mills.

176. If any mill, including a sugar beet mill, fails to supply the information required in terms of clause 175, according to the timetable issued by the South African Sugar Association, then the South African Sugar Association may, in writing, call upon any such mill to supply such information as has not been supplied within 14 days of the date of such request. If the mill concerned does not supply such information within the 14 day period, then the South African Sugar Association may make an assessment of the relevant tonnage of cane, recoverable value of cane, sugar or molasses, as the case may be, and its assessment shall be binding, for all purposes, on such mill.

CHAPTER 7

SOUTH AFRICAN SUGAR ASSOCIATION AND DISPOSAL OF CROP

Industry Obligations

177. Subject to clause 178, all expenditure incurred by or at the instance of 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.

178. The South African Sugar Association may at any time resolve that expenditure incurred by it or to be incurred by it shall not be an industry obligation by reason of the fact that such expenditure relates specifically to a particular grower, miller or refiner or to a particular group of growers, millers or refiners.

Determination of Local Market and Export Market Requirements

179. During each season, the South African Sugar Association shall in respect of each year determine estimates of the quantities of sugar required for the local market, including carry over stocks, and for the export market, respectively, and shall allocate to each mill, including a sugar beet mill, an allocation of each such quantity. Allocations so allocated to each mill shall be allocated separately in respect of local market refined sugar and local market brown sugar, on the one hand, and to export sugar on the other hand, and shall be determined for each such category, as may be applicable in each year in the proportion which each mill's total saleable production of sugar bears to the total quantity of saleable sugar produced by all mills, including sugar beet mills.

180. As at 31 March of each season, the South Africa Sugar Association shall confirm and calculate the quantity of sugar actually sold and deemed to be sold into the local market and sold into the export market. The South African Sugar Association shall calculate each mill's final allocation for the season as at 31 March in respect of local market refined sugar and local market brown sugar, on the one hand, and to export sugar on the other hand in the proportion which each mill's total saleable production of sugar bears to the total quantity of saleable sugar produced by all mills, including sugar beet mills.

181. Each season, the South African Sugar Association shall verify the quantity of local market carry over stock which each mill or refiner has on hand as at 31 March of that season in the manner determined by the South African Sugar Association and all mills and refiners must cooperate fully to facilitate that verification. All carry over raw sugar which a mill or refiner has on hand as at 31 March shall be deemed to be refined sugar and the quantity of deemed refined sugar shall be the refined sugar equivalent tons determined as prescribed by the South African Sugar Association, from time to time provided that, at the beginning of each season, any estimated refining loss taken into account in calculating the conversion of carry over raw sugar to refined sugar for the preceding season shall be reversed.

Exports

182. There is no obligation on any mill, including a sugar beet mill, to export or provide for export that quantity of sugar that is represented by its export allocation allocated in terms of clause 179.

183. Each mill shall in respect of each year provide and deliver to Sasexcor for export the quantity of sugar produced by it and which it does not require for sale on the local market.

184. All sugar delivered to the sugar terminals at the ports of Durban or Maputo shall be deemed to be delivered to Sasexcor for export in terms of clause 183

unless a mill notifies the South African Sugar Association, in writing, that the sugar is not for export or withdraws the sugar from export in terms of clause 185. Sugar provided for export shall, unless the South African Sugar Association otherwise determines, comprise only bulk raw sugar and it shall otherwise comply with the terms and conditions as are or may be determined by the South African Sugar Association.

185. On terms and conditions determined by the South African Sugar Association from time to time, by giving written notice to South African Sugar Association, a mill may withdraw for sale on the local market a quantity of sugar equal to the quantity of sugar delivered by that mill for export. Unless otherwise determined by the South African Sugar Association, if a mill withdraws sugar from export in terms of this clause 185:

(a) before collecting the withdrawn sugar, the mill must pay to the South African Sugar Association all storage costs in respect of that sugar from the date it was delivered to the sugar terminals;

(b) before collecting the withdrawn sugar, the mill must refund to the South African Sugar Association all amounts paid to the mill in terms of clause 186(c)i in respect of that sugar plus interest on those amounts at the rate determined by the South African Sugar Association from time to time;

(c) the sugar which the mill originally delivered for export will have been comingled with other sugar and the mill will only be entitled to withdraw the same quantity of sugar as it delivered and shall not have any claim against the South African Sugar Association arising from or in connection with any quality or other difference between the sugar delivered and the sugar withdrawn.

186. Sasexcor shall acquire from the respective mills all the sugar to be so exported and ensure that it is exported, according to the following provisions-

(a) Each mill shall in each year sell or ensure the sale to Sasexcor and Sasexcor shall purchase all sugar which comprises that mill's export deliveries;

(b) The prices payable by Sasexcor shall be determined by the South African Sugar Association from time to time in order to comply with the provisions of Chapter 6;

(c) When the proceeds of each sale are received by Sasexcor, payment for sugar purchased by Sasexcor shall be made to the respective mills as follows: payment shall first be made to the South African Sugar Association on behalf of each respective mill of any amount which that mill owes the South African Sugar Association in terms of this Agreement; and thereafter, any remaining balance of the proceeds shall be paid to the respective mill: Provided that -

i. all export sugar delivered by mills in any one month, the proceeds of which are not received during the succeeding 45 days from the end of that month shall, on the expiry of the said 45 days, be financed by Sasexcor to the full extent of the estimated value at which export sugar is to be paid for by Sasexcor and the South African Sugar Association shall at the same time finance Sasexcor to the full extent of the estimated value of the proceeds which Sasexcor will pay for the sugar in accordance with the provisions of clause 191; and

ii. in the case of sugar sold in respect of which the proceeds are not received by 31 March in each year Sasexcor shall finance mills and the South African Sugar Association shall finance Sasexcor in accordance with the provisions of clause 186(c)i until payment is received.

(d) For all purposes in this agreement except determining whether sugar which a mill wishes to withdraw from export has been sold by Sasexcor for export in terms of clause 185, the sale and delivery to Sasexcor of sugar to be purchased by it shall be deemed to be effected immediately prior to delivery to the buyer to whom it is re-sold on condition that any export sugar unsold as at 31 March in any year shall be purchased by and delivered to Sasexcor on that date and the South African Sugar Association shall in turn purchase from Sasexcor, at a price to be agreed between them, any such sugar;

(e) Sasexcor shall bear no risks or other liabilities or obligations in respect of any of the sugar purchased or sold by it and the South African Sugar Association shall accordingly indemnify Sasexcor and hold it harmless against any claim which Sasexcor may be compelled in law to meet, subject to any right of recovery which the South African Sugar Association or Sasexcor may have as against any mill or other person; and

(f) The South African Sugar Association shall be responsible for ensuring that Sasexcor performs its functions in terms of this agreement.

Redistribution of Local Market Proceeds

187. The provisions of clause 188 apply to all mills, including sugar beet mills and, in that clause, the expression "**mill**" includes a sugar beet mill.

188. In each year, if the sum of a mill's sales on the local market and its local market carry over stocks is a greater quantity of refined sugar or brown sugar than the quantity allocated to it as its local market allocation in terms of clause 179, that mill will pay to the South African Sugar Association an amount for redistribution amongst those mills which, during that year, sell on the local market quantities of refined sugar or brown sugar, respectively

including their local market carry over stocks, which are less than their allocated local market allocations, according to the following provisions –

(a) During April of each year, the South African Sugar Association shall provisionally estimate each mill's local market allocations for refined sugar and brown sugar, respectively, and during the year shall continuously revise such estimates until the allocations are finally determined at the end of the year. References in this clause to a local market allocation shall be construed as such allocation from time to time so estimated, until finally determined.

(b) The quarters referred to in this clause are sugar marketing quarters as determined by the South African Sugar Association in respect of each year, the last days of which need not co-incide with the last days of the calendar quarters concerned.

(c) In respect of each quarter ending on the last day of June, September, December and March, each mill ("**an over-performing mill**") which sells on the local market more refined sugar or brown sugar ("**the excess quantity**") than the pro rata share that its local market allocation bears to the aggregate quantity of all such sugar sold in the quarter concerned by all mills on the local market, shall pay an amount calculated in terms of clause 188(d) to the South African Sugar Association, for redistribution as hereinafter provided.

(d) The amount payable in respect of each quarter to the South African Sugar Association by an over-performing mill will be equal to the excess quantity sold by that mill during that quarter multiplied by the difference between the weighted average of the notional local market price (determined by the South African Sugar Association in terms of Chapter 6 applicable during that quarter) and the export price used by the South African Sugar Association to calculate the price per ton of recoverable value for the last month of that quarter, less (except in the case of a sugar beet mill) the financial levy imposed by the South

African Sugar Association in terms of this Chapter applicable thereto, and less a manufacturing allowance determined according to rules laid down by the South African Sugar Association: Provided that -

i. the amounts payable for redistribution in respect of the quarters ending on the last days of September, December and March will include a recalculation of the previous quarter or quarters (as the case may be) from the beginning of the year on a cumulative basis;

ii. unless otherwise determined by the South African Sugar Association, the manufacturing allowance will not be deducted from the amounts payable for redistribution in respect of the quarter ending on the last day of June and the manufacturing allowance for that quarter will then be taken into account as a deduction in the recalculation of the amounts payable for redistribution in the calculation made at the end of the September quarter;

iii. any amount deducted in terms of the proviso set out in 188(e)i from the amounts payable to under-performing mills, will be credited in calculation of the amounts payable by over-performing mills for redistribution in respect of the quarter concerned, pro rata in relation to the amounts payable by them, respectively, and those credits will be reversed in the recalculation at the end of the next quarter;

iv. the calculations to be made at the end of the June, September and December quarters will each be based on the South African Sugar Association's latest estimate at that time of the respective mills' local market allocations for the year concerned and the final calculation to be made at the end of the March quarter will be based on the actual

local market allocations for that year.

(e) The amounts payable by over-performing mills to the South African Sugar Association in terms of the foregoing provisions shall then be redistributed by the South African Sugar Association to those mills ("**under-performing mills**"), respectively, which, during the quarter concerned, will have sold on the local market less refined sugar or brown sugar, respectively, than the pro rata shares that their local market allocations bear to the aggregate quantity of all such sugar sold by all mills on the local market during that quarter; which redistribution, subject to paragraph 188(f), shall be made pro rata in relation to the respective shortfalls of the mills concerned: Provided that, if, at the end of a quarter, an under-performing mill has not realised in full its previous year's carry-over stocks of sugar -

i. an amount calculated by multiplying the difference between the weighted average of the notional local market price (determined by the South African Sugar Association in terms of Chapter 6 applicable during that quarter) and the export price used by the South African Sugar Association to calculate the price per ton of recoverable value for the last month of that quarter, less (except in the case of a sugar beet mill) the financial levy imposed by the South African Sugar Association in terms of this Chapter applicable thereto, and less a manufacturing allowance determined according to rules laid down by the South African Sugar Association; by the tons unrealised carry-over stocks will be deducted in calculating the amount to be redistributed to that mill in respect of that quarter;

ii. the debit in respect of the amount so deducted will be reversed in the recalculation of the amount to be redistributed at the end of the next quarter.

(f) If, in any quarter, a sugar beet mill is an under-performing mill, the South African Sugar Association shall adjust the *pro rata* shares of the amount to be redistributed in terms of paragraph 188(e) by adding back to the amount to be redistributed any financial levy that will have been deducted from the amount payable by each over-performing mill.

(g) An amount payable by an over-performing mill for redistribution in terms of the foregoing provisions shall be paid within thirty days of the last day of the quarter concerned, except for an amount in respect of the final quarter which shall be payable upon the date on which, in terms of this agreement, each mill is deemed to have sold into the local market carry-over stocks of local market refined sugar, local market brown sugar and local market molasses.

(h) In respect of each quarter, the amounts to be redistributed in terms of the foregoing provisions will be payable on the next day after the amounts payable by over-performing mills are due in terms of paragraph 188(g) and shall be paid by the South African Sugar Association whether or not it shall have received the amounts payable by over-performing mills. If the South African Sugar Association suffers any loss in consequence of a default by an over-performing mill, that loss will be borne as an industry obligation.

(i) All calculations necessary to give effect to the foregoing provisions shall be undertaken by the South African Sugar Association.

189. The proceeds of final molasses referred to in clause 166(e), before the deduction of rebates, shall be subject to a financial redistribution amongst mills based on the molasses production of the respective mills, which redistribution shall be undertaken by the South African Sugar Association at the end of each year in accordance with rules laid down by the South African Sugar Association.

Export Deliveries

190. The quantity of sugar to be exported in each year shall be determined in accordance with the constitution of the South African Sugar Association, the provisions of this agreement and such rules as may be laid down by the South African Sugar Association.

Financing Arrangements

191. The following financing arrangements shall be carried out by the South African Sugar Association -

(a) all export sugar and export high test molasses delivered by mills in any one month, the proceeds of which are not received during the succeeding 45 days from the end of that month shall, on the expiry of the 45 days referred to in clause 186(c)i, be financed by the South African Sugar Association on the basis of 100% of the estimated export value thereof;

(b) all export sugar and export high test molasses sold as at 31 March of each year, the proceeds of which are not received by that date, shall be financed by the South African Sugar Association on the basis of 100% of the estimated export value thereof, subject to clause 186(c)i;

(c) the carry-over stocks of local market refined sugar and local market brown sugar unsold as at 31 March of each year and which each mill has on hand as at 31 March of each year shall be deemed to have been sold by that mill into the local market on and as at that date in order that the total output of each year may be regarded as sold during that year and the year's recoverable value prices may be properly determined with the least possible delay on the following basis -

i. the prices of carry over stocks of local market refined sugar and local market brown sugar respectively shall be the

notional local market prices referred to in Chapter 6 applicable on 31 March of that year;

ii. the purchase price of export sugar, including the sugar equivalent as determined by the South African Sugar Association of high test molasses produced for export, shall be based on the estimated prices thereof as determined by the South African Sugar Association on the basis of the calculation of proceeds of export sugar referred to in clause 166(c)*;* and

iii. each miller and refiner will undertake the realisation, as soon as possible, of the local market carry over stocks which it will be deemed to have sold into the local market and, within such period after realisation (being when the sugar concerned is actually sold to such miller's or refiner's customers) as will be laid down by the South African Sugar Association, shall notify the South African Sugar Association so that it may stop paying financing and storage costs for such carry over stocks;

iv. except for each mill's obligation to report to the South African Sugar Association actual sales during a subsequent season of carry over sugar deemed to have been sold as at 31 March of the immediately preceding season, carry over sugar which is deemed to be sold as at 31 March of a season shall not be included in the sales for the next season; and

(d) any final molasses sold as at 31 March of each year, the proceeds of which are not received by that date and any stocks of final molasses unsold as at 31 March of each year, shall be financed by the South African Sugar Association on the basis of 100% of the estimated net value thereof; and

(e) the amount paid by SASA in terms of clause 193 towards the cost of financing and storing carry over stocks of local market refined sugar and local market brown sugar deemed to have been sold into the local market in terms of clause 191(c) and the cost of financing final molasses in terms of clause 191(d) shall be industry obligations.

192. A miller or refiner will be deemed to have sold into the local market at the notional prices prevailing as at 31 March all local market carry over stocks held as at 31 March so that the total saleable production each year may be regarded as sold during that year.

193. The South African Sugar Association shall pay as an industry obligation, the sum of millers' and refiners' costs of financing carry over stocks in an amount calculated by applying the South African Sugar Association's borrowing cost and, in respect of the millers' and refiners' storage costs for carry over stocks, a storage fee calculated at a rate determined by the South African Sugar Association from time to time.

Sugar Transport

194. Millers shall be responsible for the transport and the costs of transport of export sugar produced by them, which transport and costs will cover delivery to the port of Durban or Maputo, or such other port as the South African Sugar Association may approve. A mill delivering sugar to a terminal or warehouse operated by the South African Sugar Association shall utilise a mode of transport suitable for the receiving facilities thereat and shall not, without the South African Sugar Association's prior written approval change that mode of transport.

195. The costs of loading export bulk raw sugar on board ships, including storage and handling will be borne by the South African Sugar Association and will be industry obligations.

196. All bulk raw sugar which is to be exported shall be delivered to and exported from the port of Durban or Maputo, unless otherwise agreed by the South African Sugar Association: Provided that, if the South African Sugar Association does not agree to allow a mill to deliver sugar to the port of Maputo (or another port approved by the South African Sugar Association) and the cost of transport to Durban exceeds what it would have been if delivered to Maputo (or such other approved port), the excess transport costs incurred by the mill concerned shall be borne by the South African Sugar Association as an industry obligation. Furthermore, should the South African Sugar Association not be able to make available to a mill its nearest qualifying port for the purposes of its export deliveries, any increased cost of transport to another qualifying port shall be for the account of the South African Sugar Association.

Imposition of Levies

197. Industry obligations 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.

198. 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 clause 164(a) of this agreement.

199. The expenditure of the South African Sugar Association referred to in clause 178 shall be met by means of financial levies imposed on any grower, miller or refiner or group of growers, millers or refiners as the South African Sugar Association may deem appropriate having regard to the nature of the expenditure concerned.

200. The levies referred to in clause 197 shall be imposed upon all refiners and millers in respect of and *pro rata* in relation to the respective output of each miller and refinery in respect of any period and for that purpose -

(a) "**output**" in relation to a refiner, means the tonnage of sugar of its own manufacture sold by it being that part of its saleable production as determined by the South African Sugar Association from time to time;

(b) "**output**" in relation to a mill, means the tonnage of sugar of its own manufacture sold by it together with the tonnage of other sugar acquired and sold by it, after deduction of the tonnage thereof sold to a refiner, being that part of its saleable production as determined by the South African Sugar Association from time to time; and

(c) "**sold by it**" shall include any sugar sold or disposed of by a refiner to a mill and the tonnage of sugar so sold by a refiner to a mill or by one mill to another mill, for whatever purpose, shall be leviable upon such sale on condition that this shall not preclude the pooling of the production of any grade of sugar and the levying thereof upon sale, on such basis as may be approved by the South African Sugar Association.

201. Each refiner and each miller shall within 14 days notify the South African Sugar Association in writing when called upon to do so of its respective output of sugar during a stated period and if any refiner or any miller declines or fails to notify the South African Sugar Association of its output for the relevant period, the South African Sugar Association may estimate the output of the refiner or miller concerned, on such information as is available to the South African Sugar Association, and charge the levies on such estimate.

202. Each such levy shall be a debt due to the South African Sugar Association and recoverable by it on such date in each month as the South African Sugar Association shall determine.

203. No title in milling equipment shall be transferred from a miller to any other party (whether a miller in its own right or not) unless the South African Sugar Association has certified that the transferring miller has paid all amounts due by it, in terms of this agreement, to the South African Sugar Association, or that provision has been made to the satisfaction of the South African Sugar Association for the payment thereof. For the purposes of this clause:

(a) "**milling equipment**" shall mean: all moveable or immoveable property over a value specified in terms of clause 203(b) forming part of the physical infrastructure necessary for the operation of a sugar mill or refinery but shall not include non-specialized tools, office equipment or vehicles that are capable of being purchased on the open market and of being used for non-milling or non-refining activities.

(b) The South African Sugar Association's Council shall have the power to determine the value for the purposes of clause 203(a) provided that:

(i) the value may not be amended more than once in any year except with a two-thirds majority of votes cast at South African Sugar Association's Council;

(ii) the value shall not be amended retrospectively but may be determined together with an effective date.

Small Cane Growers' Financial Aid Fund

204. Notwithstanding the repeal of the Sugar Industry Agreement, 1979, the Small Cane Growers' Financial Aid Fund established in terms of clause 60(2) of that Agreement for the purpose of assisting those growers who may be eligible shall continue to exist and shall be administered by the South African Sugar Association in accordance with such regulations or directives as the South African Sugar Association may from time to time determine.

Development Fund

205. Notwithstanding the repeal of the Sugar Industry Agreement, 1979, the Sugar Industry Development Fund established in terms of clause 61(1) of that Agreement for the purpose of promoting the development of sugar production and improving the overall economy of the Industry shall continue to exist and shall be administered by the South African Sugar Association in accordance with such directives or regulations as the South African Sugar Association may from time to time determine and the financing of that Fund shall be an industry obligation.

Repeal of Sugar Industry Agreement, 1994

206. The Sugar Industry Agreement, 1994, published under Government Notice No. R592 of 31 March 1994, as amended was repealed upon publication of the Sugar Industry Agreement, 2000, which came into operation on 1 April 2000 in terms of clause 2 thereof and was published in General Notice No. 1208 of 2000 in Government Gazette 21139 dated 3 May 2000.

Inclusion of SAFDA

207. Anything done from 1 April 2018 until 9 October 2018 relating to amendment of the agreement in terms of section 4(1)(c) of the Act, both dates included, and which is done in good faith in order to effect recognition and funding of SAFDA 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 amendments to the Constitution and the Sugar Industry Agreement, 2000 promulgated in Government Gazette 41967 on 9 October 2018 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, to the extent permitted by law.

208. To the extent permitted by 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 good faith to recognise and fund SAFDA between 1 April 2018 and 9 October 2018 in accordance with, or to give effect to, or in anticipation of:

(a) the resolutions passed by the South African Sugar Association's Council on 15 March 2018 and 16 April 2018;

(b) the resolutions passed by the South African Sugar Association at the special meeting on 16 April 2018;

(c) the amendments to the South African Sugar Association's Constitution and this agreement which were promulgated in Government Gazette 41967 on 9 October 2018; and

(d) 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

209. The Sugar Industry Agreement, 2000, published under Government Notice No. 1208, Government Gazette 21139 of 3 May 2000 as amended (the most recent amendment being that effective from 1 April 2024 in terms of Government Notice No. 4585, Government Gazette 50415 published on 28 March 2024) is hereby further amended effective from the date of publication in the Government Gazette.

Publication of this Agreement

210. 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.