

**AMENDED AND RESTATED MANAGEMENT AGREEMENT**

entered into between

**RH BOPHELO MANAGEMENT COMPANY PROPRIETARY LIMITED**

(Registration No.2016/533552/07)

("Manco")

and

**RH BOPHELO OPERATING COMPANY PROPRIETARY LIMITED**

(Registration No. 2016/533529/07)

("OpCo")

and

**RH BOPHELO LIMITED**

(Registration No. 2016/533398/07)

("HoldCo")

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## 1. PARTIES

1.1. The "**Parties**" to this Agreement, collectively or individually (as the context may require) are:

1.1.1. RH Bophelo Management Company Proprietary Limited;

1.1.2. RH Bophelo Operating Company Proprietary Limited; and

1.1.3. RH Bophelo Limited

1.2. The Parties agree as set out below.

## 2. INTERPRETATION

2.1. In this Agreement, unless the context indicates a contrary intention, the following words and expressions bear the meanings assigned to them and cognate expressions bear corresponding meanings:

2.1.1. "**Accounting Period**" means the period commencing on the first day of the financial year of HoldCo in each calendar year and ending on the last day of such financial year of HoldCo in the immediately succeeding calendar year;

2.1.2. "**Agreement**" means this management agreement, together with all annexures and schedules hereto;

2.1.3. "**Auditors**" means the auditors of the Group from time to time;

2.1.4. "**Average Market Capitalisation**" shall bear the meaning ascribed thereto in clause 5 of **Annexure A** hereto;

2.1.5. "**B Share**" shall bear the meaning ascribed thereto in clause 11.1;

2.1.6. "**Bank**" means HoldCo's primary bank from time to time, which (as at the Signature Date) is Rand Merchant Bank (a division of FirstRand Bank Limited), (Registration No. 1929/001225/06), at the Signature Date;

2.1.7. "**Cash Balance**" means the total cash balance for the relevant Quarter;

2.1.8. "**Commencement Date**" means the date upon which HoldCo Shares in HoldCo are first admitted to listing on the JSE;

2.1.9. "**Companies Act**" means the Companies Act 71 of 2008, as amended from time to time;

2.1.10. "**Condition Precedent**" means the condition precedent set out in clause 4;

- 2.1.11. "**Daily Market Capitalisation**" shall bear the meaning ascribed thereto in clause 6 of **Annexure A** hereto;
- 2.1.12. "**Debt Balance**" means the total debt balance due for the relevant Quarter;
- 2.1.13. "**Enterprise Value**" shall bear the meaning ascribed thereto in clause 4 of **Annexure A** hereto;
- 2.1.14. "**Fee Schedule**" means the schedule of fees to be paid by OpCo to Manco as detailed in the Fee Schedule attached as **Annexure A** hereto;
- 2.1.15. "**Group**" means, collectively or individually (as the context may require), HoldCo, OpCo and any one or more of OpCo's Subsidiaries from time to time;
- 2.1.16. "**HoldCo**" means RH Bophelo Limited (Registration No. 2016/533398/07) a limited liability private company incorporated in accordance with the laws of South Africa;
- 2.1.17. "**HoldCo MOI**" means the memorandum of incorporation of HoldCo, as amended from time to time;
- 2.1.18. "**HoldCo Share**" means any ordinary share in the share capital of HoldCo, and "**HoldCo Shares**" shall be construed accordingly;
- 2.1.19. "**In Force Period**" means the period commencing on the day immediately following the last day of the Interim Period and terminating on the Termination Date;
- 2.1.20. "**Indemnified Person**" shall have the meaning ascribed thereto in clause 16.3;
- 2.1.21. "**Independent Auditor**" means an independent auditor, agreed to between the Parties, or, failing such agreement, independent auditors nominated by the Chairman, (or if this title has changed, or if this office no longer exists, the equivalent office no matter what it may be titled) for the time being, of the South African Institute of Chartered Accountants (or any successor body), whereupon the Parties shall forthwith appoint such person/s as the independent auditor. If that person fails or refuses to make the nomination or if any such office does not exist, either Party may approach the High Court of South Africa to make such an appointment. To the extent necessary, the court is expressly empowered to do so;
- 2.1.22. "**Interim Period**" means the period commencing on the Commencement Date and terminating on the date upon which the Group has utilised at least

R251,000,000 (two hundred and fifty one million Rand) of the Total Subscription Value;

- 2.1.23. **"Interim Period Quarter"** shall mean each period of 3 (three) months during the Interim Period commencing on (and including) a Quarterly Date and ending on the day immediately preceding the next succeeding Quarterly Date provided that:
- 2.1.23.1. the first Interim Period Quarter shall commence on the Commencement Date and end on the earlier between the day immediately preceding the first Quarterly Date thereafter or the last day of the Interim Period; and
- 2.1.23.2. the last Interim Period Quarter shall end on the last day of the Interim Period;
- 2.1.24. **"Investment"** means an investment acquired or made by OpCo, including but not limited to: (i) Securities, debentures, warrants, options and/or other securities, interest, debt and/or equity instruments of, in or relating to, any body corporate, unincorporated association or any other entity or organisation; (ii) loans to a Portfolio Company; and/or (iii) interests in or commitments to a limited partnership or trust; and/or (iv) acquisition of all or the greater part of the assets or undertakings of any other entity as an income earning activity and going concern or otherwise;
- 2.1.25. **"Invoice Dispute Notice"** shall bear the meaning ascribed thereto in clause 12.2;
- 2.1.26. **"JSE"** means the exchange operated by JSE Limited (Registration No. 2005/022939/06) or any other name by which it may be known in the future) or its successor body;
- 2.1.27. **"Management Fee"** shall bear the meaning ascribed thereto in clause 1 of **Annexure A** hereto;
- 2.1.28. **"Manco"** means RH Bophelo Management Company Proprietary Limited (Registration No 2016/533552/07) a limited liability, private company incorporated in accordance with the laws of South Africa;
- 2.1.29. **"Nominated Director"** shall have the meaning ascribed thereto in clause 16.4;
- 2.1.30. **"OpCo"** means RH Bophelo Operating Company Proprietary Limited (Registration No 2016/533529/07), a limited liability, private company incorporated in accordance with the laws of South Africa;

- 2.1.31. "**Ordinary Resolution**" shall bear the meaning ascribed thereto in the Companies Act, read with the HoldCo MOI;
- 2.1.32. "**Parties**" means Manco, Opco and Holdco.
- 2.1.33. "**Portfolio Company**" means a company (or a Subsidiary thereof), body corporate or other entity, whose Securities are beneficially owned by the Group;
- 2.1.34. "**Prime Rate**" means the Bank's prime overdraft rate charged from time to time to its corporate customers in the ordinary course on an unsecured basis, calculated compounded monthly in arrears on the basis of a 365 (three hundred and sixty five) day year, as certified by any authorised person of the Bank or its delegee, whose appointment and authority need not be proved;
- 2.1.35. "**Quarter**" means each period of three months commencing on (and including) a Quarterly Date and ending on the day immediately preceding the next succeeding Quarterly Date provided that –
- 2.1.35.1. the first Quarter shall commence on the first day of the In Force Period and end on the day immediately preceding the first Quarterly Date thereafter; and
- 2.1.35.2. the last Quarter shall end on the Termination Date;
- 2.1.36. "**Quarterly Date**" means 1 March, 1 June, 1 September and 1 December;
- 2.1.37. "**Shareholder**" means any person who holds HoldCo Shares in HoldCo from time to time;
- 2.1.38. "**Securities**" shall bear the meaning ascribed thereto in the Companies Act;
- 2.1.39. "**Services**" means the corporate finance services to be rendered by Manco to the Group in terms of this Agreement, as detailed in **Annexure B** hereto;
- 2.1.40. "**Services Schedule**" means the list of Services to be rendered by Manco to the Group, as detailed in **Annexure B** hereto;
- 2.1.41. "**Signature Date**" means the date of signature of this Agreement by the Party signing last in time;
- 2.1.42. "**Special Resolution**" shall bear the meaning ascribed thereto in the Companies Act, read with the HoldCo MOI;
- 2.1.43. "**South Africa**" means the Republic of South Africa;

- 2.1.44. "**Subsidiary**" means a subsidiary as defined in terms of section 1, read with section 3, of the Companies Act;
- 2.1.45. "**Total Subscription Value**" means the aggregate amount received by HoldCo from Shareholders in respect of the subscription price for HoldCo Shares (excluding fees to enable such subscription), on listing of such HoldCo Shares from time to time;
- 2.1.46. "**Trading Day**" means a day upon which the JSE is open for trade;
- 2.1.47. "**VAT**" shall bear the meaning ascribed thereto in clause 12.2; and

2.2. In this Agreement -

- 2.2.1. clause headings and the heading of the Agreement are for convenience only and are not to be used in its interpretation; and
- 2.2.2. an expression which denotes -
  - 2.2.2.1. any gender includes the other genders;
  - 2.2.2.2. a natural person includes a juristic person and *vice versa*;
  - 2.2.2.3. the singular includes the plural and *vice versa*; and
  - 2.2.2.4. a Party includes a reference to that Party's successors in title and assigns allowed at law; and
- 2.2.3. a reference to a consecutive series of two or more clauses is deemed to be inclusive of both the first and last mentioned clauses.

2.3. Any reference in this Agreement to –

- 2.3.1. "**business hours**" shall be construed as being the hours between 08h00 and 17h00 on any business day. Any reference to time shall be based upon South African Standard Time;
- 2.3.2. "**days**" shall be construed as calendar days unless qualified by the word "business", in which instance a "business day" will be any day other than a Saturday, Sunday or public holiday as gazetted by the government of South Africa from time to time;
- 2.3.3. "**laws**" means all constitutions; statutes; regulations; by-laws; codes; ordinances; decrees; rules; judicial, arbitral, administrative, ministerial, departmental or regulatory judgments, orders, decisions, rulings, or awards; policies; voluntary restraints; guidelines; directives; compliance notices; abatement notices;

agreements with, requirements of, or instructions by any Governmental Body; and the common law, and "**law**" shall have a similar meaning; and

- 2.3.4. "**person**" means any natural person, company, close corporation, trust, partnership, joint venture, association, unincorporated association, Governmental Body, or other entity whether or not having separate legal personality.
- 2.4. The words "**include**" and "**including**" mean "include without limitation" and "including without limitation". The use of the words "**include**" and "**including**" followed by a specific example or examples shall not be construed as limiting the meaning of the general wording preceding it.
- 2.5. Any substantive provision, conferring rights or imposing obligations on a Party and appearing in any of the definitions in this clause 2 or elsewhere in this Agreement, shall be given effect to as if it were a substantive provision in the body of the Agreement.
- 2.6. Unless otherwise provided, defined terms appearing in this Agreement in title case shall be given their meaning as defined, while the same terms appearing in lower case shall be interpreted in accordance with their plain English meaning.
- 2.7. A reference to any statutory enactment shall be construed as a reference to that enactment as at the Signature Date and as amended or substituted from time to time.
- 2.8. Unless specifically otherwise provided, any number of days prescribed shall be determined by excluding the day on which the event triggering the calculation of the time period arises and including the last day of the prescribed period or, where the last day falls on a day that is not a business day, the next succeeding business day.
- 2.9. If the due date for performance of any obligation in terms of this Agreement is a day which is not a business day then (unless otherwise stipulated) the due date for performance of the relevant obligation shall be the next succeeding business day.
- 2.10. Where figures are referred to in numerals and in words, and there is any conflict between the two, the figures referred to in words shall prevail, unless the context indicates a contrary intention.
- 2.11. The rule of construction that this Agreement shall be interpreted against the Party responsible for the drafting of this Agreement, shall not apply.
- 2.12. Expressions defined in this Agreement shall bear the same meanings in schedules or annexures to this Agreement which do not themselves contain their own conflicting definitions.
- 2.13. The expiration or termination of this Agreement shall not affect such of the provisions of this Agreement as expressly provide that they will operate after any such expiration or termination

or which of necessity must continue to have effect after such expiration or termination, notwithstanding that the clauses themselves do not expressly provide for this.

2.14. Whenever any person is required to act "**as an expert and not as an arbitrator**" in terms of this Agreement, then –

2.14.1. the determination of the expert shall (in the absence of manifest error) be final and binding, and be delivered as expeditiously as reasonably possible in the circumstances;

2.14.2. subject to any express provision to the contrary, the expert shall determine the liability for his or its charges, which shall be paid accordingly;

2.14.3. the expert shall be entitled to determine such methods and processes as he or it may, in his or its sole discretion, deem appropriate in the circumstances provided that the expert may not adopt any process which is manifestly biased, unfair or unreasonable;

2.14.4. the expert shall consult with the relevant Parties (provided that the extent of the expert's consultation shall be in his or its sole discretion) prior to rendering a determination; and

2.14.5. having regard to the sensitivity of any confidential information, the expert shall be entitled to take advice from any person considered by him or it to have expert knowledge with reference to the matter in question.

2.15. The use of any expression in this Agreement covering a process available under South African law, such as winding-up, shall, if any of the Parties to this Agreement is subject to the law of any other jurisdiction, be construed as including any equivalent or analogous proceedings under the law of such other jurisdiction.

2.16. Any reference in this Agreement to "**this Agreement**" or any other agreement or document shall be construed as a reference to this Agreement or, as the case may be, such other agreement or document, as amended, varied, novated or supplemented from time to time.

### 3. **INTRODUCTION**

3.1. OpCo wishes to appoint Manco to render the Services detailed in this Agreement to it and, where applicable, to the Group.

3.2. Manco is willing to accept this appointment on the terms and conditions set out below.

3.3. The Parties wish to record in writing their agreement in respect of the above and matters ancillary thereto.

#### 4. **CONDITION PRECEDENT**

- 4.1. Save for clauses 1 to 3, this clause 4, 11.1(b) and clauses 19 to **Error! Reference source not found.** all of which will become effective immediately, this Agreement is subject to the fulfilment of the Condition Precedent that by no later than 23h59 on 31 December 2017, the HoldCo Shares are admitted to listing on the JSE.
- 4.2. The Parties shall use all their respective commercially reasonable endeavours, to the extent it is within their power to do so and at their respective cost, to procure the fulfilment of the Condition Precedent as soon as reasonably possible on or after the Signature Date.
- 4.3. The Condition Precedent is not capable of waiver.
- 4.4. Unless the Condition Precedent has been fulfilled by the date set out in clause 4.1 (or such later date as may be agreed in writing between the Parties before the aforesaid date), the provisions of this Agreement, save for clauses 1 to 4, 11.1(b) and clauses 19 to **Error! Reference source not found.** which will remain of full force and effect, will never become of any force or effect and the *status quo ante* will be restored as near as may be possible and none of the Parties will have any claim against the others in terms hereof or arising from the failure of the Condition Precedent, save where such failure is a result of any Party failing to comply with the provisions of clause 4.2 to the extent it is within their power to do so.

#### 5. **APPOINTMENT AND RELATIONSHIP**

- 5.1. OpCo hereby appoints Manco to provide the Services to it and (where applicable) to the Group in accordance with the provisions of this Agreement, and Manco hereby accepts such appointment.
- 5.2. The appointment contemplated in clause 5.1 shall be sole and exclusive in that Manco shall, during the term of this Agreement, render the Services to OpCo and, where applicable, the Group to the exclusion of any third parties or any member of the Group and as such OpCo shall not during the term of this Agreement, appoint any third party to render (nor itself render) services similar to or which compete with the Services.
- 5.3. The relationship between the Parties shall be one of an independent contractor and client and shall not be construed as a partnership and no relationship of partners shall be created by virtue of the conclusion of this Agreement.

## 6. DURATION

The duration of this Agreement shall commence on the commencement Date and shall endure and remain in full force and effect indefinitely until such time as it is terminated:

- 6.1. by agreement in writing between the Parties, but subject always to the provisions of clauses 15.2;
- 6.2. by reason of the occurrence of a *vis major* or *force majeure* or *causus fortuitous*; or
- 6.3. by the unilateral cancellation or termination of this Agreement by either Manco or OpCo in accordance with the provisions of clause 15.

## 7. SERVICES

Manco shall provide the Services to OpCo and/or the Group on a continuous and ongoing basis throughout the terms of this Agreement in accordance with the provisions of **Annexure A** hereto and all other relevant provisions of this Agreement.

## 8. UNDERTAKINGS OF OPCO AND HOLDCO

HoldCo and/or OpCo hereby undertake to:

- 8.1. provide Manco with all such information which, in the view of Manco, is necessary for Manco to properly discharge its obligations under this Agreement or which Manco may request for such purpose; and
- 8.2. act in good faith and not do anything which has as its sole or main purpose the causing of negative financial impact on Manco or which is designed to engineer a material default of this Agreement.

## 9. DUTY OF CARE

9.1. Manco shall:

- 9.1.1. render the Services in good faith and generally perform its duties with due and professional care, diligence and skill, in accordance with applicable law; and
- 9.1.2. devote such amount of time, as it may reasonably determine to be appropriate, to fulfil its obligations under this Agreement.

9.2. OpCo and HoldCo each acknowledge that Manco does not warrant, and will not be liable for, the success or failure of any Investment made, whether in accordance with any information provided by Manco to OpCo or HoldCo or not, or for the achievement by any Investment of any particular returns or capital growth or other particular investment performance result.

9.3. For the avoidance of any doubt, the provisions of this clause 9 shall in no way detract from any liability that may be attributable to Manco under clause 15.

10. **SUB-CONTRACTING**

Manco shall be entitled to sub-contract all or any of its obligations in terms of this Agreement to any third party without the prior written consent of HoldCo and/or OpCo, provided that Manco shall at all times remain liable for the due and proper performance of Manco's obligations in terms of this Agreement, and shall be responsible for any fees charged by any such third party.

11. **FEES AND PAYMENT**

11.1. In consideration for the Services to be rendered by Manco to the Group as contemplated in this Agreement: (a) OpCo shall pay and Manco shall be entitled to receive the fees (and within the time-frames) detailed in the Fee Schedule; and (b) HoldCo grants to Manco the right to subscribe from and be issued by HoldCo, at a subscription price equal to R1 (one rand) and in a manner (and within the time-frames) contemplated in **Annexure C** hereto, one unlisted, no par value share in the share capital of HoldCo and bearing the terms and conditions set out in **Annexure A** of the HoldCo MOI (the "**B Share**"), it being understood and agreed by the Parties that as at the Signature Date Manco has subscribed for the B Share.

11.2. All fees and/or other amounts payable by OpCo or HoldCo to Manco in terms of this Agreement shall be paid in cash by way of direct electronic funds transfer (without set-off, withholding or deduction) into the bank account nominated by Manco on written notice to OpCo.

11.3. In the event of termination of this Agreement, Manco shall be entitled to receive, in addition to any other entitlement to fees contemplated in the HoldCo MOI, the fees detailed in the Fee Schedule which have accrued (but not yet been paid) to Manco as at such date of termination.

11.4. It is understood by the Parties that in terms of the rights attaching to the B Share a B Share dividend may be declared by HoldCo in favour of Manco. Manco agrees and acknowledges that any declaration of a B-share Dividend to Manco in accordance with Annexure A of the HoldCo MOI shall be subject to the provisions of the Companies Act.

12. **DISPUTES, INVOICES AND INTEREST**

12.1. Manco shall provide OpCo with invoices in respect of all fees payable in terms of this Agreement by no later than 5 (five) Business Days after such fees accrue to Manco in the manner contemplated in the Fee Schedule. Failure by Manco to provide an invoice as aforesaid shall not relieve OpCo of its obligation to make payment of the amounts due on the due date thereof.

- 12.2. All amounts expressed as being payable in this Agreement (including all charges and penalties) are expressed exclusive of any value-added tax (levied in terms of the Value Added Tax Act No.89 of 1991) (“**VAT**”) which may be payable thereon, which VAT (if any) shall be payable, in addition to the payment to which it related, together with such payment against the delivery of a VAT invoice.
- 12.3. OpCo shall be entitled to dispute any invoice received by it from Manco pursuant to the provisions of this Agreement. If OpCo disputes any aspect of any invoice it shall notify Manco thereof, in writing, within 10 business days of receipt of an invoice together with the details of the dispute (“**Invoice Dispute Notice**”).
- 12.4. If OpCo fails to dispute any of the invoices received by it by it from Manco pursuant to the provisions of this Agreement within the time period provided for in clause 12.2, OpCo shall be deemed to have accepted the relevant invoices.
- 12.5. OpCo and Manco shall use their reasonable commercial endeavours to resolve any such dispute within 10 business days of receipt by Manco of the Invoice Dispute Notice.
- 12.6. If OpCo and Manco have failed to resolve such dispute within the time period provided for in clause 12.5, the said dispute shall within 15 business days of receipt by Manco of the Invoice Dispute Notice, be referred to an Independent Auditor for determination, who shall act as an expert and not as an arbitrator and whose decision, in respect of such dispute, shall be final and binding. The Independent Auditor shall be entitled to make such further or other adjustments as may in the circumstances appear to them to be appropriate. The Independent Auditor’s reasonable and duly-evidenced costs shall be borne by such party to the dispute as the Independent Auditor may, in its discretion, determine.
- 12.7. Any amount falling due for payment by any Party to any other in terms of or pursuant to this Agreement and not paid on the due date, including any amount which may be payable as damages, shall bear interest charged at the Prime Rate and calculated as from the date on which such payment falls due and payable until the date on which the outstanding amount (and the interest payable thereon) is paid in full.

### 13. **EXPENSES**

- 13.1. Subject to clause 13.2 (and in addition to the payment of fees contemplated in clause 11), OpCo and/or HoldCo, as the case may be, shall be responsible for the payment of all expenses related to:
- 13.1.1. the Group’s administrative, bookkeeping, auditing and secretarial functions, which include but are not limited to the fees due to the Auditors, company secretaries, sponsor’s fees (if applicable) and the costs of establishing and effecting the listing of the HoldCo Shares on the JSE;

- 13.1.2. the Investments, which include but are not limited to costs incurred in establishing any vehicle through which an Investment is made;
  - 13.1.3. any borrowings incurred by HoldCo and/or OpCo in connection with Investments;
  - 13.1.4. any professional advisor appointed by the Group, including the fees payable to any auditor, external valuer, legal adviser, accountant or tax adviser; and
  - 13.1.5. travel costs and all other costs associated with carrying on the Group's business.
- 13.2. Notwithstanding anything to the contrary in clause 13.1, Manco shall be solely responsible for any costs and expenses incurred by it in rendering the Services under this Agreement which are not otherwise specifically provided for in clauses 13.1.1 to 13.1.5 (including, but not limited to, expenses relating to developing, investigating, monitoring and disposing of Investments; travel, food and lodging expenses; the costs of the day-to-day running of Manco's offices; and the payment of salaries and other remuneration to employees or sub-contractees of Manco) and such costs and expenses shall not be recoverable from HoldCo or OpCo, except by way of the Fees.
- 13.3. Manco may, to the extent that the relevant expense would reasonably fall within the expenses referred to in clause 13.1, and otherwise with the prior written approval of OpCo, employ or secure the services of experts and incur other expenditure, for or on behalf of the Group and at OpCo or HoldCo's expense, provided that Manco may at no time recover expenses incurred pursuant to the sub-contracting, as contemplated in clause 10, of services which Manco has agreed to provide pursuant to this Agreement.

**14. STAFFING AND PAYMENTS BY MANCO**

Manco shall, at its own cost, have such staff and maintain such capacity as is reasonably necessary and adequate to ensure the efficient discharge of its obligations and responsibilities hereunder.

**15. TERMINATION**

**15.1. Termination by Manco or OpCo for Cause**

15.1.1. Without derogating from any other rights that Manco or OpCo has under this Agreement, the innocent Party between Manco or OpCo shall be entitled, by written notice to the other of them (with a copy to HoldCo), to terminate this Agreement in its entirety, as of a date specified in the aforesaid notice of termination, in the event that the other of them (being the defaulting Party)–

15.1.1.1. commits a non-remediable breach of any material provision of this Agreement;

- 15.1.1.2. fails to remedy a breach of any material provision or term of this Agreement within 10 (ten) Business Days of receipt of written notice from the innocent Party requiring it to do so;
- 15.1.1.3. or any of its senior personnel commits any theft, fraud or other dishonest behaviour (including, without limitation, acting recklessly or in bad faith or is wilfully maleficent in the discharge of its obligations under this Agreement;
- 15.1.1.4. becomes subject to any judgement, consent, decree or interdict of a court of competent jurisdiction precluding it from discharging its obligations under this Agreement for a period in excess of 3 (three) months; or
- 15.1.1.5. or HoldCo is subject to any of the following events or circumstances:
  - 15.1.1.5.1. a final order or declaration is made or a resolution is passed for the administration, custodianship, curatorship, bankruptcy, liquidation, winding up or dissolution (and whether provisional or final) of such Party;
  - 15.1.1.5.2. such Party is unable (or admits inability) to pay its debts generally as they fall due or is (or admits to being) otherwise insolvent or stops payment of all or a material part of its debts or proposes or seeks to make or makes a general assignment or any arrangement or composition with or for the benefit of its creditors of a moratorium is agreed or declared in respect of or affecting all of a material part of its indebtedness;
  - 15.1.1.5.3. such Party takes any proceedings or other step with a view to the general readjustment, rescheduling or deferral of its indebtedness (or any part thereof which it would otherwise be unable to pay when due);
  - 15.1.1.5.4. any receiver, administrative receiver, judicial receiver, administrator, compulsory manager, judicial custodian, curator, trustee in bankruptcy, liquidator or the like is appointed in respect of such

Party or any material part of its assets or such Party requests any such appointment;

15.1.1.5.5. as contemplated in Chapter 6 of the Companies Act: (i) the board of directors of such Party resolves that such Party voluntarily begin business rescue proceedings and place such Party under supervision; (ii) a court grant an order placing such Party under supervision and commence business rescue proceedings; or (iii) the board of directors of such Party proposes an arrangement or a compromise of its financial obligations to the creditors of such Party, or to all of the members of any class of its creditors; or

15.1.1.5.6. any act which, if such act was committed by an individual, would be an act of insolvency within the meaning of section 8 of the Insolvency Act No.24 of 1936 or any equivalent legislation in any jurisdiction to which such Party may be subject.

15.1.2. Subject to clause 16.1, the right of any innocent Party to terminate this Agreement (as contemplated in clause 15.1.1 above), shall be without prejudice to any other remedy available to such innocent Party under applicable law or under this Agreement, including obtaining an interdict or to claim specific performance of any obligation, in either event without prejudice to such innocent Party's right to claim damages.

15.1.3. The Parties agree that any costs awarded will be recoverable on an attorney-and-own-client scale unless the Court specifically determines that such scale shall not apply, in which event the costs will be recoverable in accordance with the High Court tariff, determined on an attorney-and-client scale.

## 15.2. **Termination by Manco or OpCo for Convenience**

15.2.1. Without derogating from any other rights that Manco and OpCo may have under this Agreement (but subject to clause 15.2.2), Manco or OpCo may each at any time and by giving notice to the other of them (with a copy to HoldCo) terminate this Agreement forthwith on and as from the date specified in such notice of termination (which date, it is agreed, shall not be earlier than a period of 12 (twelve) calendar months from the date of delivery of such notice), for convenience and without cause. For the avoidance of doubt, after such

termination and for the duration of the notice period, each Party shall continue to fully and diligently discharge their obligations under this Agreement.

15.2.2. Notwithstanding clause 15.2.1 above, neither Manco nor OpCo shall be entitled (under any circumstances whatsoever) to terminate this Agreement for convenience and without cause:

15.2.2.1. prior to the 5th (fifth) anniversary of the Commencement Date; and

15.2.2.2. unless they have first procured (and delivered to the other of them) a Special Resolution from their shareholders approving such termination.

## 16. **LIABILITY OF MANCO**

16.1. Notwithstanding any other provision of this Agreement Manco shall not be liable for any loss to the Group arising in connection with the Services to be performed hereunder, save in respect of any matter resulting from Manco's fraud, wilful misconduct, bad faith, recklessness, gross negligence or a material breach of its obligations under this Agreement.

16.2. Notwithstanding any other provision of this Agreement Manco, its officers, directors, employees and affiliates shall not be liable to the Group or any Shareholder for any mistake in judgement or otherwise, except by reason of wilful misconduct, fraud, bad faith or gross negligence by Manco of its duties hereunder.

16.3. Manco, and any officer, director, shareholder, employee, associate and agent of Manco (each an "**Indemnified Person**") is hereby indemnified by OpCo and Holdco against any liabilities, actions, proceedings, claims, costs, demands or expenses (including reasonable legal fees) incurred by reason of the performance of its obligations or duties under or pursuant to this Agreement, provided however that such Indemnified Person is not so indemnified with respect to any matter resulting from its fraud, wilful misconduct, bad faith, recklessness, negligence or a material breach of its obligations under this Agreement.

16.4. No person nominated by Manco to be a director of any Portfolio Company (each a "**Nominated Director**"), shall be liable for any loss to the Group howsoever arising in connection with the Services to be performed hereunder, or the services as a Nominated Director, save in respect of any loss resulting from his fraud, bad faith, gross negligence, recklessness or wilful misconduct. HoldCo and OpCo hereby indemnify and agree to keep indemnified such Nominated Director against any liabilities, actions, proceedings, claims, costs, demands or expenses (including reasonable legal fees) incurred by reason of him being or having been a Nominated Director, provided however that such person shall not be so indemnified with respect to any matter resulting from his fraud, bad faith, negligence, recklessness or wilful misconduct.

- 16.5. Clauses 19.2, 16.3 and 16.4 constitute *stipulatio alteri* for the benefit of the persons referred to in such clauses but who are not parties to this Agreement, which shall be capable of acceptance by any such persons within 4 months of such benefit coming to the knowledge of such persons.
- 16.6. Nothing in this Agreement (and especially this clause 16) will exclude or restrict Manco's liability for any liability which by law it cannot exclude or restrict.

17. **GENERAL WARRANTIES**

- 17.1. Each of the Parties hereby warrants to and in favour of the others that –
- 17.1.1. it has the legal capacity and has taken all necessary corporate action required to empower and authorise it to enter into this Agreement;
  - 17.1.2. this Agreement constitutes an agreement valid and binding on it and enforceable against it in accordance with its terms;
  - 17.1.3. the execution of this Agreement and the performance of its obligations hereunder does not and shall not –
    - 17.1.3.1. contravene any law or regulation to which that Party is subject;
    - 17.1.3.2. contravene any provision of that Party's constitutional documents; or
    - 17.1.3.3. conflict with, or constitute a breach of any of the provisions of any other agreement, obligation, restriction or undertaking which is binding on it.
- 17.2. Each of the representations and warranties given by the Parties in terms of clause 17.1, shall –
- 17.2.1. be a separate warranty and will in no way be limited or restricted by inference from the terms of any other warranty or by any other words in this Agreement;
  - 17.2.2. continue and remain in force notwithstanding the completion of any or all the transactions contemplated in this Agreement; and
  - 17.2.3. *prima facie* be deemed to be material and to be a material representation inducing the other Parties to enter into this Agreement.

18. **REPRESENTATIONS AND WARRANTIES OF MANCO**

Manco represents and warrants to HoldCo that:

- 18.1. it has the requisite power and authority to conduct its activities as contemplated by this Agreement with effect from the Signature Date;
- 18.2. it has the skills and expertise required in order to perform its obligations as contemplated under this Agreement; and
- 18.3. there is no action, suit, arbitration, governmental investigation, inquiry or proceeding (including, without limitation, proceedings under any applicable bankruptcy, insolvency or other similar law) by or before any court, arbitration panel, agency or other governmental authority pending or threatened against it.

19. **NEGOTIATION AND MEDIATION**

- 19.1. If any dispute arises between any of the Parties which is not subject to determination by an expert in regard to the carrying into effect of any of the Parties' rights and obligations arising from this Agreement, or the termination or purported termination of this Agreement, such Parties agree to negotiate with each other in good faith in an effort to resolve such dispute.
- 19.2. If such negotiations fail or do not occur within 3 business days after the dispute arises, the dispute shall not become the subject of litigation or arbitration until it has been heard by a mediator unless such action is critical to avoid the prescription of a cause of action or right at law or in order to obtain an interdict, or otherwise to limit any material damage to such party's interests. Such dispute shall be referred to mediation before a mediator within 3 business days after the dispute arises if the good faith negotiations have not resulted in the resolution of the dispute.
- 19.3. The mediator shall be appointed by the Parties or failing agreement by them as to the mediator, shall be nominated by the chairperson for the time being of Alternative Dispute Resolution Association of South Africa.
- 19.4. The mediation shall terminate upon any one of the disputants withdrawing or the mediator informing the disputants that in the mediator's opinion, no useful purpose will be achieved in continuing the mediation.
- 19.5. All communications made by the disputants to the mediator or to each other during or in connection with the mediation are made without prejudice to any rights which they may have and form part of *bona fide* settlement negotiations. The Parties shall keep the mediation proceedings and any order made by the mediator confidential save to the extent otherwise contemplated herein.

- 19.6. The mediator shall not be compelled by any disputant to disclose any fact learnt in the course of the mediation in any subsequent legal proceedings which may take place and the Parties waive their right to require the mediator to testify regarding what transpired in the mediation. The mediator shall –
- 19.6.1. be entitled to communicate and meet with any disputant either in the presence of the other disputant/s or in private;
  - 19.6.2. not disclose any information furnished in confidence by any one disputant to the mediator, to any other disputant without the prior consent of the disputant who furnished the information;
  - 19.6.3. act impartially and disclose to the disputants any relationship or dealings which the mediator may have had with any of the disputants; and
  - 19.6.4. not make any decision which is binding upon the disputants, the resolution of the dispute depending entirely upon the disputants achieving agreement in respect thereof.
- 19.7. If a dispute is not resolved in terms of this clause 19, then such dispute shall be referred to arbitration pursuant to clause 20.

20. **ARBITRATION**

- 20.1. Prior to the initiation of formal dispute resolution procedures (as contemplated in this clause 20), the Parties shall first attempt to resolve their dispute informally in accordance with clause 19.
- 20.2. Save in respect of those provisions of the agreement which provide for their own remedies which would be incompatible with arbitration, a dispute which arises in regard to –
- 20.2.1. the interpretation of;
  - 20.2.2. the validity and/or carrying into effect of;
  - 20.2.3. any of the Parties' rights and obligations arising from;
  - 20.2.4. the termination or purported termination of or arising from the termination of; or
  - 20.2.5. the rectification or proposed rectification of,
- this Agreement or out of or pursuant to this Agreement (other than where an interdict is sought or urgent relief may be obtained from a court of competent jurisdiction), shall be submitted to and decided by arbitration.
- 20.3. That arbitration shall be held –

20.3.1. with only the Parties and their representatives, present thereat; and

20.3.2. at Sandton.

20.4. The arbitration shall be held and concluded within 90 business days after it has been demanded, unless the arbitrator when accepting the appointment determines that a longer period is required due to the particular circumstances of the dispute. The Parties shall use their reasonable commercial endeavours to procure the expeditious completion of the arbitration within that period. Accordingly, the parties shall, if they choose to appoint legal representatives, only appoint legal representatives who are available to complete the arbitration within the 90 business day period or the longer period determined by the arbitrator. The arbitrator shall be entitled during the course of the arbitration to extend the aforesaid time limit if there are exceptional circumstances, provided that the arbitrator gives reasons for such extension. If any legal representative has been appointed, and due to such extension any such legal representative is not available during that extended period, then any further extension shall only be granted by the arbitrator to accommodate the unavailability of such legal representative if:

20.4.1. the arbitration has already commenced;

20.4.2. the legal representative concerned has submitted a written statement to the arbitrator as to his/her unavailability; and

20.4.3. the arbitrator considers that the prejudice to be suffered by the Party whose legal representative is unavailable materially outweighs the prejudice to be suffered by the other Party by reason of the delay.

20.5. For the purposes of section 15(2) of the Arbitration Act, the arbitrator shall not take as good and sufficient cause for the absence of any Party at the arbitration proceedings, the unavailability of that Party's legal representative.

20.6. Save as expressly provided in this Agreement to the contrary, the arbitration shall be subject to the rules of the Arbitration Foundation of Southern Africa in force at the time the arbitration takes place, unless the Parties and the arbitrator agree in writing to any departure therefrom. If any provision of this clause 20 is inconsistent with the rules of the Arbitration Foundation of Southern Africa in force at that time, the provisions of this clause shall prevail. If there is any dispute in relation to such inconsistency or alleged inconsistency and/or as to which rules prevail, the arbitrator shall determine such dispute (which determination shall be final and binding on the Parties) applying such rules and procedures as the arbitrator considers appropriate.

20.7. The arbitrator shall be, if the matter in dispute is principally:

- 20.7.1. a legal matter, an impartial practising advocate of not less than 15 years' standing, or an impartial admitted attorney of not less than 15 years' standing or retired judge;
  - 20.7.2. an accounting matter, an impartial practising chartered accountant of not less than 15 years' standing; or
  - 20.7.3. any other matter, an independent person with not less than 15 years' appropriate expertise.
- 20.8. If the Parties fail to agree on an arbitrator within 7 business days after the arbitration has been demanded, the arbitrator shall be nominated, at the request of either of the Parties by the President (or if this title has changed, or if this office no longer exists, the equivalent office no matter what it may be titled) for the time being of the Law Society of the Northern Provinces who shall take the provisions of clauses 20.7.1 to 20.7.3 into account in nominating the arbitrator, whereupon the Parties shall forthwith appoint such person as the Arbitrator. If that person fails or refuses to make the nomination or if any such office does not exist, either Party may approach the High Court of South Africa to make such an appointment. To the extent necessary, the court is expressly empowered to do so.
- 20.9. If the Parties fail to agree whether the dispute is of a legal, accounting or other nature within 7 business days after the arbitration has been demanded, it shall be considered a matter referred to in clause 20.7.3.
- 20.10. The arbitrator shall, subject to the provisions of this clause, have the fullest and freest discretion with regard to the proceedings save that he shall be obliged to give his award in writing fully supported by reasons and shall adopt procedures suitable to the circumstances of the particular case, avoiding unnecessary delay or expense, so as to provide a fair means for the resolution of the matters falling to be determined.
- 20.11. Furthermore the arbitrator:
- 20.11.1. may by notice to the Parties within 10 business days after his appointment, dispense wholly or in part with formal submissions or pleadings provided that the Parties are given the opportunity to make submissions;
  - 20.11.2. shall not be bound by strict rules of evidence;
  - 20.11.3. shall allow any Party to the arbitration to call any witnesses he determines and shall permit cross examination of witnesses;
  - 20.11.4. shall be entitled to take equity into account and shall not be bound to decide the dispute according to the legal rights of the Parties;
  - 20.11.5. may, in addition to any other award he may be able to make:

- 20.11.5.1. require specific performance, with an award of damages, but may not award cancellation of this Agreement or determine that the agreement was lawfully cancelled or that a Party is lawfully entitled to cancel this Agreement unless the breach complained of is found by him to be a material one going to the root of the contract which cannot be compensated for by an award of damages or recoupment under any indemnity given in terms of this Agreement;
  - 20.11.5.2. take into account the practicality or otherwise of ordering the continuance of any legal relationship between disputants; or
  - 20.11.5.3. award interest with effect from any date, and on any other basis, he considers appropriate in the circumstances; and
- 20.11.6. shall make such order as to costs as he deems just.
- 20.12. Either Party shall be entitled to have the award made an order of court of competent jurisdiction.
- 20.13. Any dispute shall be deemed to have been referred or subjected to arbitration hereunder when either Party gives written notice to the other of the dispute, demands an arbitration and requests agreement on an arbitrator.
- 20.14. The Parties shall keep the evidence in the arbitration proceedings and any order made by any arbitrator confidential.
- 20.15. The arbitrator shall have the power to give default judgment if any Party fails to make submissions on due date and/or fails to appear at the arbitration.
- 20.16. Any Party may appeal the decision of the arbitrator in terms of the Arbitration Foundation of Southern Africa rules for commercial arbitration.
- 20.17. The costs of any venue, arbitrator's remuneration, recording, transcription and other costs and expenses ancillary to the hearing shall be borne by the Parties, equally and shall be recoverable, as costs in the cause under the provisions of any award. The Parties, together with the arbitrator will agree from time to time on the arbitrator's remuneration, which will be paid by the Parties in equal shares, upon receipt of invoices therefor.
- 20.18. The provisions of this clause shall remain in effect even if this Agreement is terminated for any reason.
- 20.19. If it is alleged that this Agreement was induced by a fraudulent misrepresentation or if this agreement is void or voidable on any other ground, then notwithstanding that the remainder of this Agreement may be void or voidable the Parties agree that the provisions of this clause are severable from the rest of this Agreement and shall remain in effect. In such

circumstances any dispute relating to any such fraudulent misrepresentation or relating to whether this Agreement is void or voidable shall be submitted to and decided by arbitration in accordance with this clause.

20.20. The Parties shall continue to perform all undisputed obligations where possible whilst any dispute is being resolved.

## 21. **DOMICILIUM CITANDI ET EXECUTANDI**

21.1. The Parties choose as their *domicilia citandi et executandi* for all purposes under this agreement, whether in respect of court process, notices or other documents or communications of whatsoever nature (including the exercise of any option), the following addresses :

### 21.1.1. **OpCo:**

Physical: 3rd floor, 18 Melrose Boulevard, Melrose Arch, Melrose North,  
Johannesburg, 2076, South Africa

E-mail: dion@rhmanagers.co.za

Attention: Dion Mhlaba

### 21.1.2. **HoldCo**

Physical: 3rd floor, 18 Melrose Boulevard, Melrose Arch, Melrose North,  
Johannesburg, 2076, South Africa

E-mail: quinton@rhmanagers.co.za

Attention: Quinton Zunga

### 21.1.3. **Manco**

Physical: 3rd floor, 18 Melrose Boulevard, Melrose Arch, Melrose North,  
Johannesburg, 2076, South Africa

E-mail: john.oliphant@twip.co.za

Attention: John Oliphant

21.2. Any notice or communication required or permitted to be given in terms of this agreement shall be valid and effective only if in writing, but it shall be competent to give notice by fax or e-mail.

21.3. Either Party may by notice to the other Party change the physical address chosen as its *domicilium citandi et executandi* to another physical address where postal delivery occurs in South Africa or its fax number or e-mail address, provided that the change shall become effective on the 5<sup>th</sup> (fifth) business day from the deemed receipt of the notice by the other Party.

21.4. Any notice to a Party:

- 21.4.1. delivered by hand to a responsible person during ordinary business hours at the physical address chosen as its *domicilium citandi et executandi* shall be deemed to have been received on the day of delivery;
  - 21.4.2. sent by fax to its chosen fax number stipulated in clause 21.1, shall be deemed to have been received on the date of despatch (unless the contrary is proved); or
  - 21.4.3. sent by e-mail to its chosen e-mail address stipulated in clause 21.1, shall be deemed to have been received on the date of despatch (unless the contrary is proved).
- 21.5. Notwithstanding anything to the contrary herein contained, a written notice or communication actually received by a Party shall be an adequate written notice or communication to it notwithstanding that it was not sent to or delivered at its chosen *domicilium citandi et executandi*.

## 22. CONFIDENTIALITY AND PUBLICITY

- 22.1. Any information obtained by either Party to this Agreement in terms, or arising from the implementation, of this Agreement shall be treated as confidential by the Party and shall not be used, divulged or permitted to be divulged to any person not being a party to this agreement, without the prior written consent of the other Party save that:
- 22.1.1. each Party shall be entitled to disclose such information to such of its employees (which shall include any of its directors) and/or contractors who need to know for the purposes of this Agreement. Before revealing such information to any such employees and/or contractors, it undertakes to procure that the employees and/or contractors are aware of the confidential nature of the information being made available to them;
  - 22.1.2. any information which is required to be furnished by law, by existing contract, by the rules of any stock exchange on which the shares of either Party (or its holding company) are listed may be so furnished;
  - 22.1.3. either Party shall be entitled (after consultation with the other Party so as to avoid embarrassment or prejudice, to the extent possible) to make such information available to its shareholders as may be necessary to enable such shareholders to consider the value and prospects of their shareholdings;
  - 22.1.4. neither Party shall be precluded from divulging any information to any person who is negotiating with such Party for the acquisition of an interest in such Party, provided that the person to whom any disclosure is made in the aforesaid circumstances shall first have undertaken in writing not to divulge such

information to any other person and to use it only for the purpose of evaluating the business; and

22.1.5. no Party shall be precluded from using or divulging such information in order to pursue any legal remedy available to it.

22.2. The provisions of clause 22.1 shall not apply to any information –

22.2.1. which is publicly available or becomes publicly available through no act or default of any Party; or

22.2.2. which was in the possession of a Party prior to its disclosure otherwise than as a result of any breach by that Party of any obligation of confidentiality owed to any other person whether pursuant to this Agreement or otherwise; or

22.2.3. which is disclosed to a Party by a person which person did not acquire the information under an obligation of confidentiality; or

22.2.4. which is independently acquired by a Party as a result of work carried out by a person to whom no disclosure of such information has been made.

## 23. **SUPPORT**

The Parties undertake at all times to do all such things, perform all such actions and take all such steps and to procure the doing of all such things, the performance of all such actions and the taking of all such steps as may be open to them and necessary for or incidental to the putting into effect or maintenance of the terms, conditions and/or import of this Agreement.

## 24. **GENERAL**

### 24.1. **whole agreement, no amendment**

24.1.1. This Agreement constitutes the whole agreement between the Parties relating to the subject matter hereof and supersedes any other discussions, agreements and/or understandings regarding the subject matter hereof.

24.1.2. No amendment or consensual cancellation of this Agreement or any provision or term hereof or of any agreement, bill of exchange or other document issued or executed pursuant to or in terms of this Agreement and no settlement of any disputes arising under this Agreement and no extension of time, waiver or relaxation or suspension of or agreement not to enforce or to suspend or postpone the enforcement of any of the provisions or terms of this Agreement or of any agreement, bill of exchange or other document issued pursuant to or in terms of this Agreement shall be binding unless recorded in a document signed by the Parties (or in the case of an extension of time, waiver or relaxation or suspension, a document signed by the Party granting such extension, waiver or

relaxation), provided that if there is a material amendment to this Agreement, then the material amendment must be (i) approved by the Shareholders by way of an Ordinary Resolution, (ii) set out in writing and (iii) signed on behalf of each of the Parties. Any such extension, waiver or relaxation or suspension which is so given or made shall be strictly construed as relating strictly to the matter in respect whereof it was made or given. For the purposes of this clause, "**signed**" shall mean a signature executed by hand on paper containing the document, applied to the document by the signatory.

24.1.3. No oral *pactum de non petendo* (agreement not to sue) shall be of any force or effect.

24.1.4. No extension of time or waiver or relaxation of any of the provisions or terms of this agreement or any agreement, bill of exchange or other document issued or executed pursuant to or in terms of this agreement, shall operate as an estoppel against either Party in respect of its rights under this agreement, nor shall it operate so as to preclude such Party (save as to any extension, waiver or relaxation actually given) thereafter from exercising its rights strictly in accordance with this agreement.

24.1.5. To the extent permissible by law no Party shall be bound by any express or implied or tacit term, representation, warranty, promise or the like not recorded herein, whether it induced the contract and/or whether it was negligent or not.

## 24.2. **severability**

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

## 24.3. **no cession or assignment**

No Party shall be entitled to cede, delegate and/or assign all or any of their rights, obligations and/or interests in, under or in terms of this Agreement to any third party without the prior written consent of the other Parties, which consent shall not be unreasonably withheld.

24.4. **stipulatio alteri**

Save as contemplated in clause 16.5, no part of this Agreement shall constitute a contract in favour of any person who is not a Party to the Agreement (*stipulatio alteri*) unless the provision in question expressly provides that it does constitute a *stipulatio alteri*.

25. **GOVERNING LAW AND SUBMISSION TO JURISDICTION**

This Agreement and any non-contractual obligations arising out of or in connection with it shall be governed in all respects by and shall be interpreted in accordance with the laws of South Africa and the Parties hereby consent and submit to the non-exclusive jurisdiction of the High Court of South Africa, Gauteng Local Division, Johannesburg for all purposes of and in connection with this Agreement.

26. **LEGAL COSTS**

HoldCo will bear and pay the legal costs and expenses of and incidental to the negotiation, drafting, preparation and implementation of this Agreement.

27. **EXECUTION IN COUNTERPARTS**

This Agreement may be executed in counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same agreement as at the date of signature of the Party that last signs its counterpart last in time.

**FOR RH BOPHELO MANAGEMENT COMPANY PROPRIETARY LIMITED**

Signature: \_\_\_\_\_  
who warrants that he / she is duly authorised thereto

Name: \_\_\_\_\_

Date: \_\_\_\_\_

Place: \_\_\_\_\_

Witness: \_\_\_\_\_

**FOR RH BOPHELO OPERATING COMPANY PROPRIETARY LIMITED**

Signature: \_\_\_\_\_  
who warrants that he / she is duly authorised thereto

Name: \_\_\_\_\_

Date: \_\_\_\_\_

Place: \_\_\_\_\_

Witness: \_\_\_\_\_

**FOR RH BOPHELO LIMITED**

Signature: \_\_\_\_\_  
who warrants that he / she is duly authorised thereto

Name: \_\_\_\_\_

Date: \_\_\_\_\_

Place: \_\_\_\_\_

Witness: \_\_\_\_\_

### Fee Schedule

In consideration for the Services to be rendered by Manco to the Group as contemplated in this Agreement, Manco shall be entitled to receive Management Fees, as detailed in this Fee Schedule.

1. Manco shall be entitled to receive, for each Accounting Period, an annual fee payable in arrears in 4 quarterly instalments in Rand ("**Management Fee**"). The Management Fee shall constitute an expense of HoldCo.
2. For each Interim Period Quarter, the Management Fee shall be calculated in accordance with the following formula –

$$MF = TSV \times R \times \frac{n}{365}$$

Where –

MF = Management Fee;

TSV = Total Subscription Value;

R = a nominal annual rate of 0.7%; and

n = the number of days in each Interim Period Quarter

3. During the In Force Period, the Management Fee shall be calculated in accordance with the following formula –

$$MF = EV \times R \times \frac{n}{365}$$

where –

MF = Management Fee;

EV = the Enterprise Value for the relevant Quarter determined in accordance with clause 4 below;

R = a nominal annual rate of 1%; and

n = the number of days in each Quarter.

4. The Enterprise Value shall be calculated in accordance with the following formula –

$$EV = AMC + D - C$$

where –

EV = the weighted Enterprise Value of HoldCo for the relevant Quarter

AMC = is the Average Market Capitalisation for the relevant Quarter determined in accordance with clause 5;

D = Debt Balance; and

C = Cash Balance.

5. The Average Market Capitalisation shall be calculated in accordance with the following formula –

$$AMC = \frac{DMC}{n}$$

where –

AMC = the Average Market Capitalisation of HoldCo for the relevant Quarter;

DMC = aggregate of the Daily Market Capitalisations for each Trading Day in the relevant Quarter determined in accordance with clause 6; and

n = the number of Trading Days in the relevant Quarter.

6. The Daily Market Capitalisation shall be calculated in accordance with the following formula –

$$DMC = \frac{X}{Y} \times Z$$

where –

DMC = Daily Market Capitalisation for each Trading Day in the Quarter;

X = the total aggregate Rand value of all on-market trades of HoldCo Shares on the JSE on the relevant Trading Day;

Y = the total number of HoldCo Shares traded on-market on the JSE on the relevant Trading Day; and

Z = the number of HoldCo Shares in issue at the end of the relevant Trading Day.

*Please refer to Schedule 1 hereto for a worked example of the Management Fee.*

7. Manco shall calculate the Management Fee for each Quarter or Interim Period Quarter (as the case may be) and shall deliver an invoice for the Management Fee, together with a copy of such calculation to OpCo within 10 business days of the end of the relevant Quarter or Interim Period Quarter. OpCo shall accept or dispute the calculation in writing within 5 business days of receipt thereof.
8. Any dispute regarding Manco's calculation and/or the Management Fee shall be resolved in accordance with the provisions of clauses 12.2 to 12.7, *mutatis mutandis*.
9. HoldCo shall pay the Management Fee within 10 business days of the date of receipt of the invoice or the date upon which any dispute regarding calculation of the Management Fee is resolved, whichever is later.

## Schedule 1

### WORKED EXAMPLE OF THE MANAGEMENT FEE

#### 1 Interim Period Quarter - Management Fee Calculation

For each Interim Period Quarter, the Management Fee shall be calculated in accordance with the following formula -

$$MF = TSV \times R \times (n/365)$$

**MF = Management Fee (per Quarter)**

**TSV = Total Subscription Value**

**R = a nominal annual rate of 0.7%**

**n = the number of days in each Interim Period Quarter**

|               |
|---------------|
| R 747,945     |
| R 500,000,000 |
| 0.87%         |
| 78            |

#### 2 In Force Period - Management Fee Calculation

During the In Force Period, the Management Fee shall be calculated in accordance with the following formula –

$$MF = EV \times R \times (n/365)$$

**MF = Management Fee (per Quarter)**

**EV = the Enterprise Value for the relevant Quarter**

**R = a nominal annual rate of 1.0%**

**n = the number of days in each Quarter**

|               |
|---------------|
| R 1,620,548   |
| R 650,000,000 |
| 1.00%         |
| 91            |

#### 3 Enterprise Value

The Enterprise Value shall be calculated in accordance with the following formula –

$$EV = AMC + D - C$$

**EV = the weighted average EV of HoldCo. for Quarter**

**AMC = the Ave. Mkt Cap for Quarter**

**D = Debt Balance due for Quarter**

**C = Cash Balance for Quarter**

|               |
|---------------|
| R 650,000,000 |
| R 500,000,000 |
| R 250,000,000 |
| R 100,000,000 |

#### 4 Average Market Capitalisation

The Average Market Capitalisation shall be calculated in accordance with the following formula –

$$AMC = (DMC / n)$$

**AMC = the Ave Mkt Cap of HoldCo. for the Quarter**

**DMC = aggregate of the Daily Market Capitalisations for each Trading Day in the relevant Quarter**

**n = the number of Trading Days in each Quarter**

|                  |
|------------------|
| R 500,000,000    |
| R 45,500,000,000 |
| 91               |

#### 5 Daily Market Capitalisation

The Daily Market Capitalisation shall be calculated in accordance with the following formula –

$$DMC = (X/Y) \times Z$$

**DMC = Daily Market Capitalisations for HoldCo. for each Trading Day in the Quarter**

|               |
|---------------|
| R 500,000,000 |
|---------------|

X = the total aggregate Rand value of all on-market trades of Shares on the JSE on the relevant Trading Day  
Y = the total number of Shares traded on-market on the JSE on the relevant Trading Day  
Z = the number of Shares in issue at the end of the relevant Trading Day

R 91,000,000

R 9,100,000

50,000,000

## Annexure B

### Services

The corporate finance services to be rendered by Manco to the Group in terms of this Agreement are:

1. identifying, screening and investigating (including the conduct of due diligence investigations) Investment opportunities (including the products, services, markets, management, financial situation and competitive position of prospective Portfolio Companies) and possible exit strategies in respect of Investments, and objectively presenting the outcome of such investigation to the boards of OpCo and/or HoldCo for their review;
2. structuring the Investments and Disposals and reporting to the board of OpCo and/or HoldCo in relation to same
3. assuming responsibility for managing and conducting due diligence investigations in respect of proposed Investments, including the appointment, management of, and overseeing of, reputable financial, legal and/or technical advisors appointed to assist with the completion of such due diligence investigations;
4. reporting to the boards of OpCo and HoldCo on the outcome of all due diligence investigations undertaken;
5. supervising the negotiation, preparation and review of all documents required to be executed by OpCo or HoldCo in connection with any Investment or Disposal and reporting to the Group in this regard without providing any recommendation in relation to the Investment or Disposal;
6. monitoring Investments, reinvestments and divestments and reporting to the Group regarding same without providing any recommendation in relation to any Investment or Disposal;
7. investigating and considering potential realisation opportunities, including the identification of potential acquirers and the evaluation of offers made by potential acquirers, and reporting to the Group in respect thereof, without providing any recommendation in relation to the Investment or Disposal;
8. obtaining valuations of any of the Investments as the Group may from time to time require;
9. preparing factual material and analyses of information for inclusion in annual or other reports of the Group, whenever the Group may reasonably require;
10. reporting on Investments which OpCo has made (and advising on operational interventions) and, where appropriate, providing general business management advice to the board of

directors of Portfolio Companies for the duration of OpCo's investment in such Portfolio Companies, provided that such general business management does not amount to any recommendation, guidance, proposal or advice;

11. appoint, on behalf of the Group, any professional consultants required in order to render professional services required by the Group from time to time, if and when requested to do so by the Group;
12. from time to time, and as may be reasonably required by HoldCo's board, report to HoldCo's board in relation to the business of OpCo and the status and performance of its Portfolio Companies;
13. calculate an appropriate subscription price payable by any person wishing to subscribe for shares in HoldCo and submit such calculations to the board of HoldCo; and
14. consult with and assist the Auditors in accounting matters affecting the Group.

**Subscription Provisions for the B Share**

**1. Subscription for the B Share**

- 1.1. Notwithstanding the Commencement Date, Manco hereby subscribes, with effect on and as from the Signature Date, for the B Share at a subscription price equal to R 1.00 (one Rand) (and subject to the terms and conditions set out in this **Annexure C**), against the allotment and issue by HoldCo of the B Share to them.
- 1.2. HoldCo hereby agrees to, on the Signature Date and against receipt of the subscription price for the B Share contemplated in paragraph 1.1 of this **Annexure C**, to allot and issue to Manco the B Share, credited as fully paid up. Accordingly, ownership, risk and benefit in and to the B Share shall pass to Manco with effect on and as from the Signature Date against the full and final discharge by Manco of its obligation to pay the aforesaid subscription price for the B Share to HoldCo.
- 1.3. Manco shall pay the subscription price for the B Share to HoldCo directly in cash, without any set-off, withholding or deduction.
- 1.4. Manco agrees that the B Share shall be issued to them by HoldCo *voetstoots* (i.e. on an "as is" basis) and without any warranties or representations of any nature whatsoever attaching thereto.

**2. Delivery of the B Share**

On the Signature Date, HoldCo shall deliver the following documents to Manco, in such a manner as they may agree to be convenient (including, for example, by meeting at such place and at such time as they may agree), against receipt by HoldCo of the subscription price for the B Share -

- 2.1. duly executed share certificate(s) in respect of the B Share, reflecting Manco as the holder thereof;
- 2.2. a copy of the resolution(s), in the form of Schedule 1 to this **Annexure C**, passed by the board of directors of HoldCo –
  - 2.2.1. approving the allotment and issue of the B Share to Manco and confirming that the consideration for the B Share (i.e. the subscription price payable by Manco for the B Share) is adequate consideration (as required in terms of section 40 of the Companies Act);

- 2.2.2. directing HoldCo's company secretary or any one director of HoldCo to issue new share certificates in respect of the B Share in the name of Manco and update HoldCo's securities register to reflect Manco as the registered holder of the B Share; and
- 2.2.3. all such other documents as are necessary in or order to enable Manco to procure the registration of the B Share into their name.

**Schedule 1 – Form of Resolution**

**RH BOPHELO LIMITED**

**(REGISTRATION NO. 2016/533398/07)**

**("Company")**

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**WRITTEN RESOLUTIONS OF THE DIRECTORS OF THE COMPANY IN TERMS OF SECTION 74 OF THE COMPANIES ACT NO. 71 OF 2008 (AS AMENDED) (THE "COMPANIES ACT")**

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**CONSENT TO WAIVE NOTICE OF MEETING**

All of the directors of the Company hereby consent to the resolutions being passed in terms of section 74 of the Companies Act and acknowledge having received notice of the matter to be decided in terms of these resolutions and, accordingly, to the extent required, waive the requirement to be given notice of the meeting.

**NOTED THAT –**

The Company has entered or will enter into a management agreement with RH Bophelo Management Company (Pty) Ltd (Registration No. 2016/533552/07) ("**Manco**") and RH Bophelo Operating Company (Pty) Ltd (Registration No. 2016/533529/07) in terms of which, *inter alia*, Manco will subscribe for 1 (one) B class share (the "**Subscription Share**") in the authorised share capital of the Company for a subscription price equal to R1 (one Rand) (the "**Subscription Price**"), on the further terms and conditions contained therein.

**IT IS RESOLVED THAT –**

1. The Company hereby authorises the issue of the Subscription Share to Manco for the Subscription Price.
2. The Subscription Price constitutes adequate consideration for the Subscription Share in accordance with section 40 of the Companies Act.
3. That any single director of the Company is hereby authorised and empowered for and on behalf of the Company to sign and to do all such things and take all such actions as may be necessary and/or required to give effect to resolution number 1, resolution number 2 and resolution number 3 (including, without limitation, any and all letters, addenda, documents, resolutions, share certificates and company secretarial forms) and any such things and actions as may already have been performed or taken are hereby ratified.

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Name

Date:

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Signature:  
(Identity / passport No.  
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