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**Terms and Conditions of Subscription to  
B – Class Shares in Ondekaremba Nature Estate (Limited)**

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1. **Terms and Conditions**

The terms and conditions contained herein shall be applicable to all subscription of B-Class shares in **Ondekaremba Nature Estate (Limited)** ("the Company").

2. **Interpretation and Preliminary**

The headings of the clauses in this Agreement are for the purpose of convenience and reference only and shall not be used in the interpretation of, nor modify nor amplify the terms of this Agreement, nor any clause of this Agreement. Unless a contrary intention clearly appears -

2.1 words importing –

2.1.1 any gender includes all others;

2.1.2 the singular includes the plural and *vice versa*, and

2.1.3 natural persons include created entities (corporate or unincorporate) and the state and *vice versa*;

2.2 the following terms have the meanings assigned to them in this clause 1.2 and cognate expressions shall have corresponding meanings, namely –

2.2.1 "**Agreement**" means the Subscription Agreement concluded between the Company and the Subscriber for the subscription of ordinary B-Class shares in the Company;

2.2.2 "**Board**" means the board of directors of the Company, as constituted from time to time;

2.2.3 "**Business Day**" means any day excluding Saturday, Sunday and a public holiday in Namibia;

2.2.4 "**Company**" means Ondekaremba Nature Estate (Limited), a company duly established in terms of the company laws of Namibia, with its registered address Portion 123 of Farm Ondekaremba, Windhoek, Namibia.

2.2.5 "**Companies Act**" means the Companies Act, No. 28 of 2004 (as amended);

2.2.6 "**Effective Date**" means the date when the Subscription Price has been received by the Company;

2.2.7 "**Memorandum and Articles of Association**" means the Memorandum of Incorporation and the Articles of Association of the Company from time to time, and which sets out the rights, duties and responsibilities of shareholders, directors and others within the **Company**, and by which the **Company** was incorporated;

2.2.8 "**Parties**" means the parties to this Agreement, in their capacity as Parties;

2.2.9 "**Payment Date**" means the date for payment of the Subscription Price, which shall occur as soon as possible after the Signature Date of the Subscription Agreement between the Company and the Subscriber;

- 2.2.10 "**Shares**" means the ordinary par value / no par value shares in the issued share capital of the Company, having the rights and privileges set out in the Memorandum and Articles of Association, and the special resolutions of the Company;
- 2.2.11 "**Signature Date**" means the date on which the Party that is last to sign the Subscription Agreement, does so, and includes an electronic signature as contemplated in the *Electronic Transaction Act, 2019*;
- 2.2.12 "**Subscriber**" means the Party subscribing to ordinary the B-Class shares in the Company in terms of the Subscription Agreement;
- 2.2.13 "**Subscription Price**" means the subscription price payable by the Subscriber for the Subscription Shares;
- 2.2.14 "**Subscription Shares**" means the ordinary B-Class shares expressed as a number and as a percentage in the Subscription Agreement;
- 2.3 Clause headings are for reference purposes only and shall not be used in the interpretation thereof.
- 2.4. If any provision in a definition is a substantive provision conferring rights or imposing obligations on any party, notwithstanding that it is only in the definition clause, effect shall be given to it as if it were a substantive provision in the body of the agreement.
- 2.5. When any numbers of days are prescribed, same shall be calculated exclusive of the first day and inclusive of the last day unless the last day falls on a Public Holiday or Sunday, in which case the last day shall be the next succeeding day which is not a Public Holiday or Sunday.
- 2.6. Expressions defined in this agreement shall bear the same meanings in the annexes and schedules to this agreement which do not themselves contain their own definitions.
- 2.7 An expression which denotes any gender includes the other genders, a natural person includes an artificial person and *vice versa* and the singular includes the plural and *vice versa*.
- 2.8 The rule of construction that the contract shall be interpreted against the party responsible for the drafting or preparation of this agreement, shall not apply.
- 2.9. Any reference to an enactment shall be deemed to mean that enactment as at the date of signature hereof or as amended or re-enacted from time to time.
- 2.10. This agreement shall be binding on and enforceable by the estates, heirs, executors, administrators, trustees, permitted assigns or liquidators of the parties, as fully and effectually as if they had signed this agreement in the first instance and reference to any party shall be deemed to include such party's estate, heirs, executors, administrators, trustees, permitted assigns or liquidators, as the case may be.
- 2.11 The use of the word "*including*" followed by a specific example/s shall not be construed as limiting the meaning of the general wording preceding it and the *eiusdem generis* rule shall not be applied in the interpretation of such general wording or such specific example/s.
- 2.12 Words importing the singular shall include the plural and *vice versa* and words importing the masculine or feminine gender shall include the neuter and *vice versa*.

### 3. **Commencement and Duration**

The Subscription Agreement shall commence on the Effective Date.

### 4. **Subscription for the Subscription Shares**

- 4.1 With effect from the Effective Date, the Subscriber shall subscribe for, and the Company shall issue, the Subscription Shares.

- 4.2 In consideration for the Subscription Shares, the Subscriber shall pay that Subscribers' Subscription Price to the Company on the Effective Date.
- 4.3 As from the Effective Date, the Subscriber shall, subject to any limitations imposed in the Memorandum and Articles of Association, and any special resolutions taken by the Company, be eligible to make use of the rights and privileges afforded to all Class – B shareholders and as more specifically published on the Company's website from time to time.

5. **Implementation**

- 5.1 With effect from the Effective Date, the Company shall, in accordance with the provisions of its Memorandum and Articles of Association:
- 5.1.1 issue the Subscription Shares to the Subscriber;
- 5.1.2 update its securities register to reflect the Subscriber as the registered holder of the Subscription Shares, and furnish proof to the Subscriber of same; and
- 5.1.3 send a copy of the share certificates in respect of the Subscription Shares to the Subscriber and retain the original share certificate at the offices of the auditors of the Company, on the Subscribers behalf.
- 5.1.4 All rights of ownership in-, obligations- and corresponding risk, benefit and liability shall pass to the Subscriber in respect of the Subscription Shares on the Effective Date.
- 5.1.5 All costs of the creation and issue of the Subscription Shares shall be paid by the Subscriber and shall be paid together with the Subscription Price.

6. **Transferability of Subscription Shares**

The Subscription Shares are freely transferable to third parties, provided that any fees and disbursements to be incurred in connection therewith shall be for the account of the transferor.

7. **Right of Company to issue further Shares**

The directors of the Company shall be entitled to issue further shares in different classes with additional and/or different rights and privileges than those attaching to the Subscription Shares, i.e. ordinary B-Class shares, provided the directors obtain the prior approval of the Company in general meeting. Any right or restriction attaching to the Subscription Shares shall be deemed not to be directly or indirectly adversely affected a) by the creation or issue of any other shares ranking *pari passu* with (but not in priority to) any such Subscription Shares, and b) the cancellation in terms of the Act of any shares of any class in the capital.

8. **Limited Voting Rights**

The Subscription Shares shall not confer to the Subscriber the right to vote at any general meeting of the Company, unless the meeting is convened a) with the object of passing any resolution which directly affects any of the rights attached to such shares or the interest of the holders thereof, and b) for the winding up of the Company, and c) for the reduction of capital of the Company.

9. **Warranties**

- 9.1 The Company unconditionally and irrevocably warrants that:
- 9.1.1 the Company will be regularly incorporated and validly existing as a limited company according to the laws of the Republic of Namibia; and
- 9.1.2 the Company will be entitled and able to give free and unencumbered title of the Subscription Shares to the Subscriber;

9.1.3 The Subscriber has entered into this agreement on the strength of the warranties given to it by the Warrantor in this Agreement and on the basis that such warranties will be correct as at the date of signing of this Agreement, and the various dates specified in the Warranties.

9.2 The Subscriber shall be entitled, after the expiry of a period of 3(three) years from the Effective Date, to offer for sale the Subscription Shares to the Company, and the Company warrants that it will buy back these Subscription Shares against payment of the initial Subscription Price.

9.3 The Company warrants it has not offered any Subscription Shares to the public, and therefore the Company is not required to issue a prospectus.

10. **Address for Service**

10.1 The Parties choose as their address for service for all purposes under this Agreement, whether in respect of court process, notices or other documents or communications of whatsoever nature, the addresses described for such Party in the Subscription Agreement.

10.2 Any notice or communication required or permitted to be given in terms of these Terms and Conditions shall be valid and effective only if sent by e-mail.

10.3 Any Party may by notice to any other Party, change the physical address chosen as its address for service to another physical address, provided that the change shall become effective on the 7<sup>th</sup> (seventh) Business Day from the receipt of the notice by the addressee.

10.4 Any notice to a Party sent by e-mail to its chosen e-mail address stipulated in clause 7.1 shall be deemed to have been received on the date of sending (unless the contrary is proved).

11. **Good Faith**

The parties shall in their dealings with each other display good faith.

12. **Assignment**

No Party will be entitled to cede their rights or delegate their obligations in terms of this Agreement without the express prior written consent of the other Party.

13. **Relationship between the Parties**

The Parties agree that they are not the agents, representatives of each other, or partners. None of them may represent the other in any legal actions other than as expressly stated in this Agreement (if appropriate).

14. **Breach**

14.1 This Agreement may not be cancelled or terminated by any Party and will endure with respect to each Shareholder (for so long as that person or entity is a Shareholder) and the Company indefinitely or until terminated by the unanimous written consent of all the Parties.

14.2 Subject always to clause 0, if any Party breaches any material provision or term of this Agreement (other than those which contain their own remedies or limit the remedies in the event of a breach thereof) and fails to remedy such breach within 14 days of receipt of written notice requiring it to do so then the aggrieved Party shall be entitled without notice, in addition to any other remedy available to it at law (except for cancellation or termination) or under this Agreement, including obtaining an interdict or to claim specific performance of any obligation whether or not the due date for performance has arrived, in either event without prejudice to the aggrieved Party's right to claim damages.

15. **Governing Law and Submission to Jurisdiction**

- 15.1 This Agreement and any matter arising from this Agreement shall be governed by and interpreted in accordance with the laws of the Republic of Namibia.
- 15.2 The Parties hereby consent and submit to the exclusive jurisdiction of Namibia in respect of any litigation arising in terms of this Agreement, subject to the provisions of clause **Error! Reference source not found.**

16. **Dispute Resolution**

- 16.1 If a dispute of any nature arises between the Parties, then upon written request of either Party, each of the Parties will appoint a senior representative to meet and negotiate in good faith for the purposes of resolving such dispute on amicable terms within 14 (fourteen) days.
- 16.2 Should the representatives of the Parties be unable to resolve a dispute in accordance with the foregoing, such dispute will be submitted to and decided by a court of competent jurisdiction or, upon agreement between the Parties, by arbitration in accordance with the provisions of the *Arbitration Act 42 of 1965*.
- 16.3 This clause will not preclude any Party from obtaining interim relief on an urgent basis from a court of competent jurisdiction pending the decision of the arbitrator.
- 16.4 The Parties hereby consent to the non-exclusive jurisdiction of the High Court of Namibia in respect of the proceedings in this clause, where applicable, and the above court will have jurisdiction to enforce any award made by an arbitrator.

17. **Whole Agreement, No Amendment**

- 17.1 This Agreement constitutes the whole agreement between the Parties relating to the subject matter of this Agreement and supersedes any other discussions, agreements and/or understandings regarding the subject matter of this Agreement.
- 17.2 No amendment or consensual cancellation 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 shall be binding unless recorded in a written document signed by the Parties (or in the case of an extension of time, waiver or relaxation or suspension, signed by the Parties granting such extension, waiver or relaxation).

18. **General**

- 18.1 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.
- 18.2 Any provision in this Agreement which is or may become illegal, invalid or unenforceable shall be ineffective to the extent of such prohibition or unenforceability and shall be severed from the balance of this Agreement, without invalidating the remaining provisions of this Agreement.
- 18.3 This Agreement may be executed in several counterparts, each of which shall together constitute one and the same instrument.
- 18.4 No part of this Agreement shall constitute a stipulation in favour of any person who is not a party to the Agreement unless the provision in question expressly provides that it does constitute such a stipulation.