

**IN THE HIGH COURT OF SOUTH AFRICA
(WESTERN CAPE DIVISION, CAPE TOWN)**

Case No: 17327 / 2020

In the application between:

TREVO CAPITAL LTD Applicant / Intervening Party

and

HAMILTON BV First Respondent

HAMILTON 2 BV Second Respondent

STEINHOFF INTERNATIONAL HOLDINGS (PTY) LTD Third Respondent

In re the matter between:

HAMILTON BV First Applicant

HAMILTON 2 BV Second Applicant

and

STEINHOFF INTERNATIONAL HOLDINGS (PTY) LTD Third Respondent



NOTICE OF MOTION



PLEASE TAKE NOTICE THAT application will be made on behalf of the above-named applicant, Trevo Capital Limited (**Trevo**), at the commencement of the hearing

in case number 17327 / 2020 (**‘the declaratory application’**), for orders in the following terms:

1. Dispensing with the forms, time periods and service requirements in the Uniform Rules of Court and directing that the matter be heard as one of urgency in terms of Rule 6(12).
2. Granting Trevo leave to intervene as a respondent in the declaratory application.
3. Directing that the hearing of the declaratory application be postponed to such date as the Honourable Court deems fit, alternatively *sine die*.
4. Directing that Steinhoff International Holdings (Pty) Ltd (**‘SIHPL’**) is to give notice of the declaratory application and this intervention application, on or before a date to be determined by the Honourable Court (but no later than ten (10) days after the date of the order), directly to all creditors and potential creditors of SIHPL to which notice of the proposal in terms of section 155(2) of the Companies Act 71 of 2008 (**‘the proposal’**) was, or shall be, given in terms of the order of this Honourable Court *per* Saldanha J of 25 January 2021 under case number 16377/2020, and in the same manner.
5. Directing that Trevo is to file its answering affidavit in the declaratory application, if any, within ten (10) days of the date of the order or such other date as the above Honourable Court deems fit.

6. Directing that if any other creditor or potential creditor of SIHPL to which notice of the declaratory application is to be given in terms of this order intends to apply to intervene in the declaratory application, such creditor or potential creditor is to file its intervention application together with any supporting affidavit on or before such date as the above Honourable Court deems fit (but no later than ten (10) days after receiving notice of the declaratory application).
7. Costs only in the event of opposition by such parties as may oppose the relief sought, jointly and severally, and otherwise that costs stand over for determination in the declaratory application.
8. Further and/or alternative relief.

TAKE NOTICE FURTHER THAT the affidavits of **JOHANN-DIRK ENSLIN** and **JULIETTE MARION DE HUTTON** together with annexures will be used in support of this application.

TAKE NOTICE FURTHER THAT the Applicant has appointed the office of its attorneys of record as set out below as the place at which it will accept notice and service of all process in these proceedings.

The Applicant agrees to service via email directed to deon.deklerk@bowmanslaw.com and Juliette.dehutton@bowmanslaw.com.

TAKE NOTICE FURTHER that, if you intend opposing the application for the relief set out herein, you are required to:

- (a) deliver written notice of your intention to oppose on or before **TUESDAY, 9 FEBRUARY 2021**; and
- (b) deliver your answering affidavit, if any, together with any relevant documents on or before **THURSDAY, 11 FEBRUARY 2021**.

KINDLY PLACE THE MATTER ON THE ROLL ACCORDINGLY.

Dated at **CAPE TOWN** on this 4th day of **FEBRUARY 2021**.

BOWMAN GILFILLAN

Per: 
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Handwritten signatures:
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**IN THE HIGH COURT OF SOUTH AFRICA
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TREVO CAPITAL LTD

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HAMILTON BV

First Respondent

HAMILTON 2 BV

Second Respondent

STEINHOFF INTERNATIONAL HOLDINGS (PTY) LTD

Third Respondent

In re the matter between:

HAMILTON BV

First Applicant

HAMILTON 2 BV

Second Applicant

and

STEINHOFF INTERNATIONAL HOLDINGS (PTY) LTD

Respondent

FOUNDING AFFIDAVIT

I, the undersigned,

JOHANN-DIRK ENSLIN



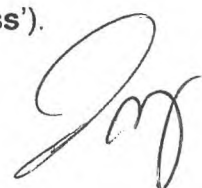
do hereby make oath and say that:

1. I am an adult male chartered accountant residing at 1 Rustic Road, Gardens, Western Cape Province. I am also presently a director of Vista Equity Proprietary Limited ('Vista').
2. In addition to having the same ultimate beneficial ownership as the Applicant ('Trevo'), Vista entered into a service level agreement with Trevo on 10 April 2017 in terms of which Vista is mandated by Trevo to, amongst other things, conduct research and analysis in respect of any proposed investments and assist with the preparation and review of financial information. Furthermore, I was one of the corporate advisors on the transaction between Trevo and Treemo Proprietary Limited ('Treemo'), referred to further below, in terms of which Trevo acquired its Steinhoff shares. As a result of the aforesaid, I am intimately familiar with Trevo's affairs.
3. In view of the foregoing, and the fact that all of Trevo's directors reside in Mauritius, Trevo's board of directors mandated me during November 2018 to oversee and manage the action proceedings which Trevo intended to institute against the Third Respondent ('SIHPL'). Therefore, I am duly authorised by Trevo to bring this application on its behalf and to depose to this affidavit.
4. The facts contained herein fall within my personal knowledge, unless otherwise stated or appears from the context, and to the best of my belief are true and correct. Where I make legal submissions, I do so on the advice of Trevo's legal representatives, which advice I believe to be true and correct.



A. INTRODUCTION

5. This is an urgent application to intervene in the application instituted by the First and Second Respondents (herein referred to jointly as '**Hamilton**') against SIHPL in this Court under case number 17327 / 2020 for declaratory relief ('**the declaratory application**').
6. Briefly, and as I explain in greater detail below:
- 6.1. SIHPL intends to propose a compromise of its financial obligations with three classes of its creditors in terms of section 155 of the Companies Act 71 of 2008 ('**the Act**'). The broad terms of this proposal ('**the proposal**') are set out in a term sheet that has been available on the website of Steinhoff International Holdings NV ('**Steinhoff NV**') since 27 July 2020. The terms were slightly updated and re-published on Steinhoff NV's website on 9 October 2020 (as referenced briefly in a letter from Hamilton's attorneys to SIHPL's attorneys dated 26 October 2020, annexed to Hamilton's founding affidavit in the declaratory application as FA7). I shall herein after refer to this term sheet (as updated on 9 October 2020) as '**the Term Sheet**'. A copy of the Term Sheet is annexed hereto marked '**JE1**'. It does not differ materially from the term sheet published on 27 July 2020 annexed as FA2.3 to Hamilton's founding affidavit in the declaratory application.
- 6.2. The three classes of creditor are referred to in the Term Sheet as the SIHPL CPU Creditors ('**FC class**'), SIHPL Contractual Claimants ('**CC class**'), and SIHPL Market Purchase (or MPC) Claimants ('**MPC class**').



- 6.3. SIHPL plans imminently to publish to creditors a formal proposal in terms of section 155. It has approached this Honourable Court (Saldanha J) on an *ex parte* basis for directions as regards publication of the proposal, a copy of which was provided to Saldanha J but has not yet been made public. An order to that effect was made on 25 January 2021, a copy of which is annexed hereto marked 'JE2'. Paragraph 4.2 of Annexure A to that order confirms that the proposal will involve the aforesaid three classes of creditor. Trevo believes that the details of the published proposal will materially reflect the approach proposed in the Term Sheet. If Trevo is wrong in this, SIHPL will no doubt point this out to the Court in the present application.
- 6.4. Hamilton has allegedly taken assignment of multiple claims falling within the MPC class and has instituted action proceedings against SIHPL asserting those claims.
- 6.5. In its declaratory application, Hamilton seeks declarators (i) that the CC class and MPC class both fail to constitute a '*class of creditors*' in terms of section 155 (declaratory application Notice of Motion, para 1.1) and (ii) that an adopted compromise proposal made to the CC class in terms of section 155 made by SIHPL on terms as envisaged in the Steinhoff Settlement Term Sheet, which is annexure FA2.3 to Hamilton's Founding Affidavit) '*would be unfair and inequitable and not sanctionable by court under section 155(7)(b)*' of the Act (declaratory application Notice of Motion, para 1.2).



- 6.6. Hamilton neither cited nor notified any other member of the three purported classes of creditor prior to instituting the declaratory application.
- 6.7. In this regard, Trevo – like Hamilton – has instituted action against SIHPL and has been classified in the MPC class in the Term Sheet.
7. In a nutshell, Trevo contends that:
- 7.1. Trevo – and indeed every other member of the purported FC class, CC class, and MPC class – has a direct and substantial interest in the success or failure of the proposal contemplated in the Term Sheet, and especially in whether each of the three classes of creditor constitutes a lawful '*class of creditor*' in terms of section 155 and in whether the proposal will be sanctionable by court.
- 7.2. On that basis, Trevo applies to intervene in the declaratory application as a respondent.
- 7.3. If granted leave to intervene, Trevo seeks leave to file an answering affidavit by a date to be determined by the Court (Trevo's proposal in this regard being a period of ten days from the date of the order granting the intervention ('**the order**')) in which it will demonstrate that the declaratory relief as set out in Hamilton's notice of motion should be granted, albeit for reasons summarised below, which are materially different to those advanced by Hamilton.



- 7.4. Furthermore, all other members of the three classes of creditor, which have an equally direct and substantial interest in the declaratory application, should be afforded a similar opportunity to apply to intervene in the declaratory application and, if they elect to do so, to advance submissions concerning the relief sought by Hamilton in the declaratory application.
- 7.5. For that reason, Trevo seeks an order that SIHPL give notice of the declaratory application and this intervention application to all members of the three classes of creditor by a date to be set by the Court (Trevo's proposal in this regard being a period of ten days from the date of the order). Only SIHPL is in a position to do so; Hamilton is not, nor is Trevo.
- 7.6. Finally, in order to afford Trevo and other potential intervening parties a fair opportunity to participate in the declaratory application, Trevo requests that the hearing of the declaratory application be postponed to a date determined by this Honourable Court, alternatively *sine die*. Other parties who intend to apply to intervene should, in Trevo's submission, be required to file their intervention applications together with any supporting affidavits by no later than ten days after receiving notice of the declaratory application.
8. The remainder of this affidavit is structured as follows:
- 8.1. First, I identify the parties.

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- 8.2. Second, I set out the relevant factual background, including the origin of the liabilities that SIHPL is attempting to compromise by way of the proposal.
- 8.3. Third, I explain Trevo's direct and substantial interest in the subject matter of the declaratory application, and the similar interest of other members of the three classes of creditor.
- 8.4. Fourth, I set out *prima facie* the submissions Trevo intends to make by way of answering affidavit in the declaratory application if it is granted leave to intervene.
- 8.5. Fifth, I justify (i) the need for SIHPL to notify other members of the FC class, CC class and MPC class, in order that they be afforded the opportunity to apply to intervene and to participate in the declaratory application, as well as (ii) the need for the declaratory application to be postponed accordingly.
- 8.6. Sixth, I justify the urgency of this application and explain why – as Hamilton has correctly submitted – the declaratory application is not premature.

B. THE PARTIES

9. The Applicant, **Trevo Capital Ltd** (defined above as 'Trevo') is a company with limited liability incorporated in the Republic of Mauritius, registration number 091521C1/GBL, having its registered address and principal place of business at



Rogers House, 5 President John Kennedy Street, Port Louis, Mauritius. Trevo has instituted action against SIHPL for a loss of R2 157 791 106 suffered as a result of SIHPL's intentional, alternatively negligent misstatements. In the proposal, Trevo is classified in the MPC class.

10. The First Respondent is **Hamilton BV**, a private limited company incorporated in the Netherlands with its registered office and principal place of business at Hamilton House, 28 Fitzwilliam Place, Dublin, Ireland.
11. The Second Respondent is **Hamilton 2 BV**, a private limited company incorporated in the Netherlands with its registered office and principal place of business at Hamilton House, 28 Fitzwilliam Place, Dublin, Ireland.
12. The Third Respondent, **Steinhoff International Holdings (Pty) Ltd** (defined above as '**SIHPL**'), previously known as Steinhoff International Holdings Ltd, is a private company duly incorporated under the company laws of the Republic of South Africa, with its principal place of business at Building B2 Vineyard Office Park, corner Adam Tas and Devon Valley Road, Stellenbosch, Western Cape.
13. SIHPL was previously listed on the Johannesburg Securities Exchange ('**JSE**') as Steinhoff International Holdings Ltd and used to be the holding company of the Steinhoff group of companies ('**the Steinhoff Group**'). Pursuant to a scheme of arrangement in terms of section 114 of the Act in December 2015, the entire issued share capital of SIHPL was swapped for shares in Steinhoff NV, a company listed on both the JSE and the Frankfurt Stock Exchange. Investors who previously held shares in SIHPL became shareholders in Steinhoff NV, the new holding company of the Steinhoff group of companies.



C. FACTUAL BACKGROUND

(i) The origin of SIHPL's liabilities that it is attempting to compromise

14. The origin of SIHPL's liabilities that it is attempting to compromise is summarised, from Hamilton's perspective, in paragraphs 8 to 12 of Hamilton's founding affidavit in the declaratory application.

15. The nature of the extraordinary Steinhoff fraud appears clearly from the eleven-page summary of an independent report by PwC ('**the PwC report**'), released by Steinhoff NV on 15 March 2019, which revealed that profits had been overstated over several years in a €6.45 billion accounting fraud involving a small group of top executives and outsiders. Key findings of the PwC report, as those appear from the summary, include the following:

3.1.1 A small group of Steinhoff Group former executives and other non Steinhoff executives, led by a senior management executive, structured and implemented various transactions over a number of years which had the result of substantially inflating the profit and asset values of the Steinhoff Group over an extended period.

3.1.2 The PwC investigation found a pattern of communication which shows the senior management executive instructing a small number of other Steinhoff executives to execute those instructions, often with the assistance of a small number of persons not employed by the Steinhoff Group.

3.1.3 Fictitious and/or irregular transactions were entered into with parties said to be, and made to appear to be, third party entities independent of the Steinhoff Group and its executives but which now appear to be closely related to and/or have strong indications



of control by the same small group of people referred to in 3. 1.1 and/or 3.1.2 above.

3.1.4 Fictitious and/or irregular income was, in many cases, created at an intermediary Steinhoff Group holding company level and then allocated to underperforming Steinhoff operating entities as so called 'contributions ' that took many different forms and either increased income or reduced expenses in those operating entities. In most cases, the operating entities received cash for the contributions from another Steinhoff Group or from non Steinhoff companies (funded by Steinhoff), resulting in intercompany loans and receivables.

3.1.5 The transactions identified as being irregular are complex, involved many entities over a number of years and were supported by documents including legal documents and other professional opinions that, in many instances, were created after the fact and backdated. ...

4.2 Nature of Relevant Transactions

The PwC Report refers, in the main, to the inflation of profits and asset values as being effected through a cycle of income creation (section 4.2.1 below), resulting in further measures being taken to address the related non-recoverable receivables and inflated asset values (section 4.2.2 below). Various transactions were entered into to obscure the extent of the overstatement of the assets (section 4.2.3 below). These included the allocation as contributions by the Steinhoff Group to operating entities within the Steinhoff Group (section 4.2.4 below).

The major relevant transactions identified in the PwC Report are categorized by them as follows:

(1) Profit and asset creation;



(2) Asset overstatement and reclassification;

(3) Asset and entity support; and

(4) Contributions.

16. A copy of the summary of the PwC report is attached marked 'JE3'.
17. Following these revelations, the Financial Sector Conduct Authority has imposed on Steinhoff NV a record R53 million fine for making false, misleading or deceptive statements to the market.
18. Furthermore, Steinhoff NV and SIHPL instituted action against former executives, Messrs Markus Jooste and Ben le Grange, seeking to claw back the salaries paid, and bonuses and share incentive scheme payments made to them. The basis of the claim is their responsibility for accounting irregularities and fictitious transactions which resulted in material overstatements in SIHPL's financial position during the period 2009 to 2015 and in Steinhoff NV's financial position during the period 2015 to 2017.
19. Accordingly, over and above the clear findings of the PwC report, the regulatory authorities have found, and Steinhoff NV has publicly acknowledged, that there were non-disclosures and misstatements in the relevant annual financial statements, which non-disclosures and misstatements commenced as early as 2009.
20. The description of the relevant non-disclosures and misstatements in Steinhoff NV's own overview of the PwC report and in Steinhoff NV and SIHPL's particulars



of claim in their action against Jooste and Le Grange are clear and unambiguous public statements.

21. Multiple claimants have instituted claims against SIHPL and/or Steinhoff NV for losses allegedly suffered as a result of these non-disclosures and misstatements.
22. Trevo instituted action against SIHPL on 20 March 2019 for a loss of R2 157 791 106 suffered as a result of Trevo's reliance on (*inter alia*) SIHPL's intentional, alternatively negligent misstatements in its 2015 annual financial statements ('**the false statements**'). But for the false statements, Trevo would not have purchased shares in SIHPL by way of a forward sale that Trevo concluded on or about 29 October 2015 with Treemo at an agreed price of R81.59 per SIHPL share ('**the forward sale**'). In terms of the forward sale, if – prior to the date when Trevo was obliged to pay the purchase price – Treemo exchanged its SIHPL shares for '*exchange securities*', then Treemo was instead obliged to deliver to Trevo the securities so exchanged. Thus after Treemo's SIHPL shares were exchanged for shares in Steinhoff NV pursuant to the scheme of arrangement of December 2015 described above, Treemo delivered those Steinhoff NV shares to Trevo. In turn, Trevo suffered loss when the value of the Steinhoff NV shares acquired from Treemo declined massively following the revelation of SIHPL and Steinhoff NV's misstatements. But for SIHPL's misstatements, Trevo would never have suffered its loss. I attach Trevo's particulars of claim marked '**JE4**'.

- (ii) SIHPL's proposal in terms of section 155 of the Act



23. Hamilton seeks declarators that the CC class and MPC class fail to constitute a *'class of creditors'* as envisaged by section 155 of the Act and that *'an adopted compromise proposal in terms of section 155(2) read with section 155(6) of the Companies Act, made by [SIHPL] to the [CC class], and on terms as envisaged in the Steinhoff Global Settlement Term Sheet, would be unfair and inequitable and not sanctionable by court under section 155(7)(b)'*.
24. Hamilton describes the terms of the proposal, as envisaged by the Term Sheet, in detail at paragraphs 28 to 40 of its founding affidavit in the declaratory application.
25. At paragraph 32 of its founding affidavit, Hamilton incorrectly stated that Trevo would fall within the CC class. In fact, the Term Sheet makes clear that Trevo is envisaged to fall within the MPC class, like Hamilton: see JE1 pages 18-19 and 26).
26. Hamilton focuses on the distinction in the Term Sheet between *'SIHPL MPC Claimants'* and *'SIHPL Contractual Claimants'*. In fact the Term Sheet distinguishes between three categories or classes of creditors of SIHPL, namely the CC class (*'SIHPL Contractual claimants'*), the MPC class (*'SIHPL MPC Claimants'*), and the FC class (*'SIHPL CPU Creditors'*).
27. The FC class is defined as *'the financial creditors of SIHPL pursuant to the Contingent Payment Undertaking created by SIHPL in favour of Global Loan Agency Services Limited dated 12 August 2019'* (JE1 page 19). (The Contingent Payment Undertaking is a debt instrument in terms of which SIHPL amended or replaced a guarantee it provided in respect of convertible bonds issued by



Steinhoff Finance Holding GMBH to its financial creditors. In essence, the financial creditors advanced loan finance to the Steinhoff Group in 2019 following the revelations of the PwC report). The Term Sheet does not propose that claims by the FC Class be compromised. The FC Class is only required to provide various consents and waivers.

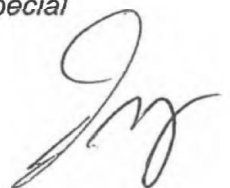
28. The class nomenclature is misleading. That is because included in members of both the CC class and MPC class are persons relying only on delictual and statutory claims against SIHPL, as opposed to contractual claims. (See, for example, the particulars of claim of Business Venture Investments No 1499 RF (Pty) Ltd ('BVI'), which are annexure FA8 to Hamilton's founding affidavit in the declaratory application.)
29. As is explained below, the proposal as contemplated in the Term Sheet offers not only different terms of settlement to each class, but also – in certain instances – different terms of settlement to members within a given class.
30. When the Steinhoff Global Settlement Term Sheet was placed on the Steinhoff NV website in July 2020, it was accompanied by a document providing answers to 'frequently answered questions' ('FAQs'). The FAQs appear at annexure FA2.4 to Hamilton's founding affidavit in the declaratory application. It appears from the FAQs that the essential differences between the CC and MPC classes, according to SIHPL, are:
 - 30.1. Members of the CC class *'assert claims based on direct dealings with Steinhoff culminating in a contract for the acquisition of shares by exchange, subscription or purchase'*, whereas members of the MPC



class *'did not deal directly or contract with Steinhoff when they acquired shares. Such claims face material legal complexity relative to contractual claims'*.

30.2. The FAQs also make reference to the recent judgment by Unterhalter J in the *De Bruyn* case and assert that the judgment states that *'there are higher legal hurdles for market purchase claimants in establishing that SIHPL owed them legal liability in respect of their share purchases. Such claimants may also face obstacles with respect to evidencing reliance on the alleged misrepresentations at the time they transacted and establishing or quantifying recoverable loss'*. The FAQs conclude that the *'differentiation in proposed recoveries ... between market purchase claimants and contractual claimants reflects these material legal uncertainties and the material litigation risk affecting the market purchase claims'*.

30.3. In SIHPL's answering affidavit in the declaratory application, SIHPL reiterates that *'an alleged market purchase claim is far weaker than those claims asserted by financial creditors (the liability to which is admitted by SIHPL) and even contractual claimants'* (SIHPL's answering affidavit in the declaratory application, para 76) and that *'based on the Unterhalter Judgment, market purchase claimants, under South African law, have no common law/delictual, or statutory claims against SIHPL'* (SIHPL's answering affidavit in the declaratory application, para 77). SIHPL also states that *'The Unterhalter Judgment specifically singled out and distinguished alleged claims by shareholders, who have no special*



relationship' with the company and/or its directors' and that this applies to claimants in the MPC Class (SIHPL's answering affidavit in the declaratory application, para 78). On this basis SIHPL asserts that it distinguishes between the MPC Class and the remaining two classes (SIHPL's answering affidavit in the declaratory application, para 79).

31. As set out in Hamilton's founding affidavit, the Term Sheet envisages substantially different settlements for the CC class and MPC class (not to mention the FC Class, who will not be required to compromise their claims).
32. Moreover, the precise settlement terms of members of the CC class vary, in effect creating sub-classes. Thus, for example:
 - 32.1. the claims of Wiesfam and Thibault are distinguished from the other CC class members (JE1, pages 22 - 24);
 - 32.2. the claim of Titan is also subject to further *sui generis* arrangements, including the acquisition by SIHPL of the '*Titan Loan*', namely an amount of €200 000 000 that Titan is said to owe to Steinhoff Finance Holding GmbH, a company registered in Austria (JE1, page 23).
 - 32.3. whereas the default proposal to CC class members is an offer of 50% cash and 50% in shares in Pepkor Holdings Limited ('PPH') valued at R15 a share, the claim of BVI will be settled entirely by delivery of PPH shares valued at R13.50 a share and subject to a lock-up restriction (JE1 page 25);



32.4. in relation to the claims of 'Cronje and Others' some will also be settled entirely by delivery of PPH shares, although now quantified at R13.50 a share and subject to a three year lock-up arrangement, but others can elect to have the settlement consideration paid as to 50 percent in cash and 50 percent in PPH shares at a price of R15 per share with a 180-day lock up condition. Whether a person has this election or not depends on whether or not the claimant in question is a current manager of PPH (JE1 page 24).

(iii) The position of Trevo under the proposal envisaged by the Term Sheet

33. The action instituted against SIHPL by Trevo is summarised above at paragraph 22.
34. The Term Sheet envisages that Trevo will fall within the MPC class in terms of the proposal by virtue of the fact that it did not receive SIHPL shares directly from SIHPL by way of issuance or transfer, but instead purchased the shares from Treemo.
35. However, unlike other members of the MPC class, Trevo did not purchase the SIHPL shares on the open market. Trevo purchased SIHPL shares from Treemo in circumstances where both Treemo and Trevo (with the full knowledge of SIHPL) held the shares for the economic benefit of Mr Pieter Erasmus ('Erasmus') and his family. The SIHPL shares in question have their origin in contractual exchanges of shares in PPH, which had been accumulated by Erasmus while he was CEO of PPH via Treemo, a company of which he was the ultimate beneficial owner. More particularly, Treemo had exchanged its PPH



shares for SIHPL shares pursuant to direct contractual arrangements with SIHPL. The forward sale of SIHPL shares from Treemo to Trevo, both companies ultimately owned by or benefiting Erasmus, amounted, to the knowledge of SIHPL, to no more than a restructuring of Erasmus's affairs. Thus the SIHPL shares forming the basis of Trevo's claim were, as a matter of economic substance, acquired from exchanges of PPH shares exactly as was the case with most of the claimants currently classified in the CC class.

D. DIRECT AND SUBSTANTIAL INTEREST

36. I am advised that an applicant for leave to intervene in legal proceedings must show that she has a '*direct and substantial interest*' in the subject matter of those proceedings. This must be a legal interest that may be affected by the judgment of the court, for example a right that may be prejudicially affected.
37. For example, I am advised that it is a well-established practice with regard to liquidation applications that third-party creditors may intervene *inter alia* to oppose a liquidation or, conversely, to obtain a fresh liquidation order in their own right and name.
38. Trevo's direct and substantial interest in the declaratory application arises from the following:
- 38.1. For the reasons pleaded in its particulars of claim against SIHPL (annexure JE4 hereto), Trevo has a claim against SIHPL in the amount of approximately R2.15 billion. The pre-trial procedures for this claim are



at an advanced stage and it is on the cusp of being certified as 'trial-ready'.

- 38.2. Trevo's claim as dictated by SIHPL in the proposal envisaged by the Term Sheet falls within the proposed MPC class.
- 38.3. By way of the proposal, SIHPL will seek to compromise its obligation to Trevo, as well as its obligations (such as exist) to other members of the MPC class, CC class, and FC class (although in the latter case the claims of the members of this class are not disputed and will not be compromised).
- 38.4. By way of the declaratory application, Hamilton seeks relief that would prevent the proposal, as it is currently envisaged in the Term Sheet, from being adopted by SIHPL's creditors or from being sanctioned by a court. In particular, Hamilton argues (*inter alia*) that the CC class and MPC class cannot constitute a 'class of creditor' in terms of section 155 of the Act, because both classes comprise concurrent creditors, whereas such classes must instead comprise either concurrent creditors, or secured creditors, or statutory preferent creditors (all as viewed from the perspective of insolvency law). Moreover, Hamilton argues – in effect – that the proposed settlement with the CC class is unfair and inequitable and thus is not sanctionable.
- 38.5. The success or failure of any of Hamilton's arguments, and indeed the declaratory application as a whole, therefore has the potential to affect Trevo's rights directly and substantially.

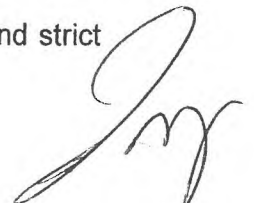


- 38.6. Trevo is in a position analogous to that of a third-party creditor which is entitled to intervene in liquidation proceedings. Just as creditors have a direct and substantial interest in liquidation proceedings, so too creditors have a direct and substantial interest in proceedings relating to the potential compromise of their rights in terms of section 155 of the Act.
39. I am advised that the same is true of all creditors and potential creditors of SIHPL falling within the FC class, CC class, and MPC class.
40. The substance of Hamilton's submissions literally concerns the categories of rights held by all such parties, including Trevo, as well as how they are regulated by section 155 and whether they are capable of being compromised by way of the proposal envisaged in the Term Sheet.
41. Moreover, if Hamilton's declaratory application were to succeed and a section 155 proposal were to be proposed, adopted and sanctioned, comprising only a single class of concurrent creditors which – as Hamilton suggests – ought to include the existing members of the FC class, CC class, and MPC class, then the anticipated dividend received by SIHPL creditors (including Trevo, which ought at least to be included in the CC class rather than the MPC class, given the similar origin of the SIHPL shares which it acquired) would be materially affected.
42. It should be noted, finally, that SIHPL correctly states in its answering affidavit in the declaratory application that *'other affected parties and creditors of SIHPL as envisaged in the Scheme have a direct and substantial interest in the relief claimed in this application'* (para 12).



E. PRIMA FACIE SUBMISSIONS

43. I am further advised that an applicant for intervention as a respondent must show that she has a *prima facie* case (that is, she must make allegations which, if they can be sustained, would entitle her to succeed) as well as show that her application is made seriously and is not frivolous.
44. Trevo's seriousness in applying to intervene arises plainly from the fact that the declaratory application has the potential directly and materially to affect its R2.15 billion claim against SIHPL.
45. Trevo seeks leave to intervene in order to be afforded the opportunity to file an answering affidavit addressing the issues raised in the declaratory application.
46. In particular, neither the position of Hamilton as articulated in its founding and replying Affidavits in the declaratory application nor the position of SIHPL as articulated in its answering affidavit in the declaratory application is tenable.
47. On the one hand, Hamilton's submissions ought to be rejected for at least the following reasons:
- 47.1. The notion that a '*class of creditors*' in terms of section 155 must be restricted either to concurrent creditors, or secured creditors, or statutory preferent creditors is unsustainable, notwithstanding that these categories are referred to in section 155(3)(a)(ii) of the Act.
- 47.2. The purpose of a compromise or arrangement in terms of section 155 is specifically to *avoid* liquidation and the particular procedures and strict



requirements thereof. The policy underlying section 155 is to afford a company and its creditors sufficient flexibility to prevent a liquidation, to save jobs, and so forth. The company and its creditors must be afforded the freedom to agree – by way of a majority of creditors in number, representing at least 75% in value – to an arrangement that sustains the legal personality of the company and, if sanctioned by the court, binds all creditors to a transparently-debated plan.

- 47.3. The greater degree of flexibility inherent in the section 155 procedure is beneficial to both the company and its creditors. The company is afforded more room to accommodate diverse groups of creditors and therefore has a greater chance of survival. Creditors are afforded the benefit of more bespoke classes, where their rights (and also interests) may be more accurately grouped together, as opposed to the three generic insolvency classes of concurrent, secured, and statutory preferent creditor.
- 47.4. That the section 155 procedure eschews the rigidity of liquidation and its inflexible classification of creditors is underlined by the statutory and common-law criteria the court must apply when deciding whether to sanction a section 155 proposal adopted by the requisite creditor majority, namely justice, equity, and commercial morality.
- 47.5. In the circumstances, section 155 does envisage the possibility of lawfully distinguishing between different classes of concurrent creditor. In fact, I am advised by Trevo's legal advisers that there is significant

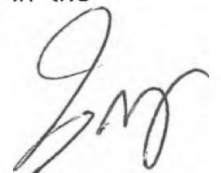


South African and international authority for such a distinction, which authority will be fully traversed during argument.

48. On the other hand, however, Steinhoff's classification (in the proposal) of creditors into the FC class, CC class, and MPC class suffers from fundamental flaws that render the proposal unsanctionable by a court. These include the following:

48.1. The CC class is in fact a conglomerate of sub-classes, by virtue of the proposal of different terms of settlement for the Titan claimants, current PPH-employees, ex-PPH employees, BVI and others, each of which are to receive a different dividend. If the proposed settlements vary among members of a given class – with some offered one thing and others offered something quite different – then it is inevitable that their rights and entitlements are not sufficiently similar so as to make it possible for them to consult together with a view to their common interest.

48.2. Even if, *pace* Hamilton, class design may be influenced, in part, by the prospects of success of given claims, the proposal differentiates between claims whose legal merits or prospects of success are identical. SIHPL arbitrarily and inconsistently places different parties in the CC class or MPC class for what appears to be its own tactical ends. For example, the Term Sheet also deals with 'Non-Qualifying Claims (pages 1 and 26). Even though SIHPL in essence argues that both the claims of the MPC claimants and those of the Non-Qualifying Claimants have no legal basis (see paragraph 71 of SIHPL's answering affidavit in the



declaratory application in relation to Hamilton's claim in particular), nonetheless:

48.2.1. the Non-Qualifying Claimants do not appear to participate in the settlement at all and therefore would get no vote, and are offered no dividend; and

48.2.2. the SIHPL MPC Claimants may participate, vote and are offered a tiny dividend.

48.3. In carefully designing the classes and differentiating the proposed dividends to members of both those classes and of certain sub-classes therein, SIHPL has assumed a unilateral, quasi-judicial role that it has abused to serve its own agenda of a tactical classification of claims to ensure the success of the proposal as contemplated in the Term Sheet, to the patent detriment of Trevo and other claimants. For example:

48.3.1. the Trevo claim is indistinguishable, both as a matter of law and in its prospects of success, from those of BVI and the Cronje plaintiffs/claimants, as all are delictual and statutory claims based on the plaintiffs' reliance on intentional misrepresentations attributable to SIHPL, and yet Trevo is placed in the MPC class whereas BVI and the Cronje plaintiffs are placed in the CC class, evidencing a transparent '*divide and rule*' strategy;

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48.3.2. the MPC class appears to include claimants who purchased SIHPL shares on the open market, which claimants include thousands of claims which (i) were rejected in the *De Bruyn* judgment and (ii) have never been instituted and which therefore have prescribed; and yet by including such claims in the MPC class, other claimants such as Trevo are again highly likely to be outvoted in that class; and

48.3.3. Thibault, Wiesfam and Titan are classed together as 'the Titan Claimants' and included in the CC class (JE1 pages 18 and 19) despite the fact that some of these claims fall into the CC class and others into the MPC class, but then Titan claims that are MPC claims '*will be settled for nil value*' (JE1 page 23) and SIHPL is to acquire the '*Titan Loan*', namely an amount of €200 000 000 that Titan is said to owe to Steinhoff Finance Holding GmbH, a company registered in Austria (JE1 Page 23) – none of which circumstances bears any resemblance to other members of the CC class, including – for example – BVI and the Cronje plaintiffs.

48.4. Regrettably, the proposal as envisaged in the Term Sheet bears the hallmarks of an uneven, inequitable arrangement ineluctably shaped by undisclosed, pre-existing deals with some parties and not others. The proposal does not treat all like cases alike, but instead favours certain creditors at the expense of others, contrary to justice, equity and commercial morality.



48.5. For these reasons, Trevo will submit, if it is granted leave to intervene, that the proposed classes fail to constitute a legitimate “class of creditors” as envisaged in section 155, and that an adopted proposal on those lines is not sanctionable by a court. In other words, Trevo will submit that the relief sought by Hamilton in the declaratory application should be granted, albeit for entirely different reasons from those put up by Hamilton in its papers in that application.

F. NOTICE TO OTHER CLASS MEMBERS AND POSTPONEMENT

49. It is not only Trevo but rather all creditors of SIHPL falling within the FC class, CC class, and MPC class that have a direct and substantial interest in the declaratory application.
50. It follows that all such creditors ought, in fairness, to be notified of the declaratory application and this intervention application so that they are afforded an opportunity to apply to intervene and to participate.
51. The only practical way to afford this opportunity is for this Court to order SIHPL to give the appropriate notice. That is so for two reasons. First, neither Hamilton nor Trevo is in a position to notify all of SIHPL’s creditors and potential creditors. Second, SIHPL is in such a position. That is so because, in terms of the order of this Court per Saldanha J on 25 January 2021 (JE2), SIHPL was authorised and directed to notify all creditors and potential creditors of the proposal in the manner there specified. Equivalent notice should therefore be given by SIHPL of the declaratory application and this intervention application.



52. It also follows that the hearing of the declaratory application should be postponed to such date as this Court deems fit, alternatively *sine die*. That is necessary in order (i) to allow other SIHPL creditors to be notified of the declaratory application and this application, (ii) to afford Trevo a fair opportunity to file its answering affidavit, and (iii) to afford any other creditor which, having received notice of the declaratory application, intends to apply to intervene therein, a fair opportunity to file its intervention application together with any supporting affidavit.
53. If a postponement were not granted, then neither Trevo nor any other SIHPL creditor that would wish to intervene in the declaratory application would be afforded a fair opportunity to participate in proceedings in which they undoubtedly have a direct and substantial interest. Moreover, both SIHPL and all its creditors would be prejudiced because SIHPL would be denied the opportunity to correct the flaws in its proposal as envisaged in the Term Sheet prior to the publication of the proposal and the discussion and vote on whether it should be adopted. If SIHPL presses ahead with such a flawed proposal, it will inevitably fail to be sanctioned by a court. And if the proposal fails at that late stage, Steinhoff states repeatedly that it will become overwhelmingly likely that SIHPL will be liquidated. The only way to avoid such an outcome is for SIHPL to remove the flaws in its proposal before it is discussed and voted upon (and ideally before it is even sent to creditors).
54. For the same reasons, Hamilton is correct to assert that the declaratory application is not premature.

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55. That the declaratory application is not premature is also apparent from the following. In terms of section 311 of the repealed Companies Act 61 of 1973, a company that wished to propose a compromise with its creditors was obliged first to apply to court for an order that a meeting of its creditors be summoned to consider a proposal. Section 155 of the current Act differs in no longer requiring the company to apply to court at the outset. That being the case, a creditor no longer has the opportunity that the erstwhile section 311 provided to address the court in relation to a meeting being convened on the basis of unlawful and inequitable class distinctions. A creditor in such a position, such as Hamilton and Trevo, now has no alternative remedy at the present stage other than a declaratory application.
56. Moreover, there is considerable merit in this Honourable Court determining the issues raised at this stage rather than after creditors have been provided with the proposal and voting has taken place at the sanction stage. If this Honourable Court were to rule that the manner in which SIHPL intends to delineate the classes of creditors in the proposal is inappropriate, this would afford SIHPL the opportunity to amend the proposal to remove such difficulties and thereby to avoid a considerable waste of time and expense.
57. For these additional reasons, the court should exercise its discretion to allow the declaratory application to progress and to postpone the hearing thereof.

G. URGENCY

58. This application is brought urgently. I am advised that Trevo must show that the application is urgent in the sense that it would not obtain substantial redress at a



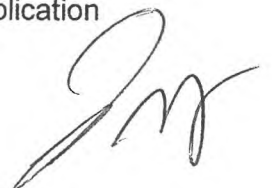
hearing held in due course, and must justify the degree of deviation sought from the Rules and show that the urgency is not self-created.

59. The declaratory application was first brought to my attention on 14 January 2021, when Steinhoff NV published a SENS announcement detailing developments in the Steinhoff Group's global settlement process. The announcement referred to a High Court application filed by Hamilton '*contesting SIHPL's approach to the proposed class composition under the S155 Proposal*' and stated that the hearing date was yet to be determined. I attach the announcement marked 'JE5'.
60. On 15 January 2021, one of Trevo's legal representatives, Ms Juliette de Hutton of Bowmans, emailed Mr Jac Marais of Adams & Adams, which firm represents Hamilton, requesting a copy of the declaratory application. A copy of the correspondence is annexed marked 'JE6'. On the same day, Ms de Hutton also made telephonic enquires with Mr Brendan Olivier of Werksmans, SIHPL's legal representatives, requesting a copy of the declaratory application. Mr Olivier undertook to seek instructions from SIHPL regarding the distribution of the declaratory application to Bowmans.
61. Despite repeated attempts, it was not possible to obtain a copy of the declaratory application at the Cape High Court given the Covid-related restrictions regulating access to and upliftment of court files.
62. Although Ms de Hutton followed up with SIHPL's representatives on more than one occasion, SIHPL's representatives failed to share the declaratory application as requested. In a telecon on 18 January 2021, Mr Olivier finally declined to provide the declaratory application on the grounds that SIHPL is the respondent



in the matter and it had not yet been called in open court. Instead, Mr Olivier provided contact details of another attorney at Adams & Adams, Ms Mia de Jager. An email from Ms de Hutton to Ms de Jager on 18 January 2021 requesting the papers received no response.

63. Finally, on 19 January 2021 Mr Marais of Adams & Adams contacted Ms de Hutton and indicated that he would take instructions as to whether a copy of the declaratory application could be provided to Bowmans.
64. SIHPL's *ex parte* application in the Western Cape High Court under case number 16377/20, in which it *inter alia* sought declaratory relief from the court relating to the giving of notice of the section 155 proposal to its creditors, was heard on 21 January 2021 ('the *ex parte* application'). Hamilton applied to intervene in the *ex parte* application, requesting that it be postponed until the declaratory application had been heard.
65. Trevo's legal representatives, including Ms de Hutton and Mr Deon de Klerk, were present at the hearing of the *ex parte* application, which took place virtually.
66. At the hearing of the *ex parte* application, the Honourable Mr Justice Saldanha raised the fact that notice of the declaratory application had not been given to any members of the MPC class. Mr de Klerk of Bowmans further pointed out to Judge Saldanha that SIHPL's representatives had refused to provide Bowmans with a copy of the declaratory application despite numerous requests.
67. These observations resulted in SIHPL's counsel confirming that in their view all of the classes would be affected by the outcome of the declaratory application

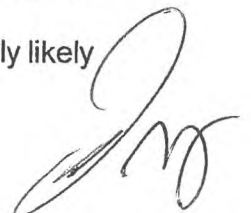


and should on that basis be notified of the application. SIHPL's representatives accordingly undertook before Judge Saldanha to provide Bowmans with a copy of the declaratory application and to give notice of it to all classes.

68. Despite this undertaking, SIHPL failed to share the declaratory application with Trevo's legal representatives.
69. Ms de Hutton finally received a copy of the declaratory application from Mr Marais of Adams & Adams only on 25 January 2021. I annex hereto marked 'JE7' a copy of the email correspondence sent to Ms de Hutton which included a link to the application.
70. I note further that Ms de Hutton wrote to Mr Olivier on 27 January 2021, placing on record that despite the undertaking made by SIHPL's representatives at the *ex parte* hearing of 21 January 2021, Werksmans was yet to provide Bowmans with a copy of the declaratory application. A copy of the correspondence is annexed hereto marked 'JE8'.
71. To date, SIHPL's representatives still have not provided Bowmans with a copy of the declaratory application despite undertaking to do so.
72. Accordingly, although Trevo's attention was first drawn to the declaratory application on 14 January 2021, Trevo's legal representatives were only able to obtain a copy some 11 days later, on 25 January 2021. This is wholly due to the unwillingness of SIHPL's representatives to provide a copy and the delay by Hamilton's representatives to do so.



73. In the circumstances, Trevo's legal representatives and I have had insufficient time to consider the declaratory application, which runs to some 764 pages, in order to prepare an answering affidavit which will fully engage with the many issues raised by Hamilton.
74. In light of the above, I submit that there are clear grounds justifying the urgency of this intervention application as well as a postponement of the hearing of the declaratory application:
- 74.1. First, the urgency is in no way self-created, but instead has arisen because Hamilton did not notify Trevo and other class members of the application in the first place, and thereafter because of the difficulty of obtaining a copy of the application from Hamilton and SIHPL's representatives following the SENS announcement of 14 January 2021.
- 74.2. Second, the deviation from the rules has been unavoidable given that the declaratory application was originally set down for hearing on 8 February 2021. Although I am advised that the matter will not proceed on that date, the final hearing date is not yet confirmed, and I anticipate that that date will be sooner than a date on the ordinary court roll.
- 74.3. Third, for the same reasons canvassed above as to why the declaratory application is not premature, it follows that Trevo could not obtain substantial redress at a hearing in due course. In particular, if Trevo were constrained to raise its objections before a court considering whether to sanction the proposal after it had been adopted, and Trevo did so successfully, it is according to the Steinhoff Group overwhelmingly likely



that SIHPL would be liquidated. Moreover there is considerable merit in this Honourable Court determining the issues raised at this stage rather than after voting has taken place at the sanction stage.

H. CONCLUSION

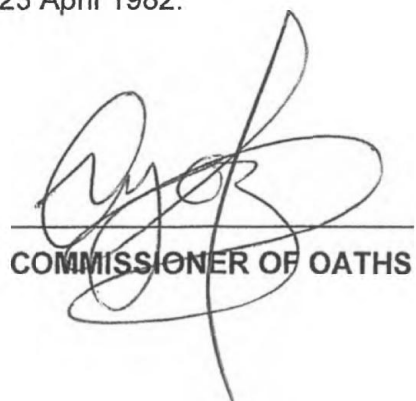
75. I therefore respectfully pray that the relief sought in the Notice of Motion be granted.



JOHANN-DIRK ENSLIN

I certify that the above signature is the true signature of the deponent and that he has acknowledged that he knows and understands the contents of this affidavit which affidavit was signed and sworn to before me in my presence at **CAPE TOWN** on this ^{4TH} day of **February 2021**, in accordance with Government Notice No R1258 dated 21 July 1972, as amended by Government Notice No R1648 dated 19 August 1977, as further amended by Government Notice No R1428 dated 11 July 1980, and by Government Notice No R774 of 23 April 1982.

Vuyolwethu Yozo
 Commissioner of Oaths
 Practising Attorney SA
 ENSafrica
 1 North Wharf Square
 Loop Street Cape Town 8001

COMMISSIONER OF OATHS

STEINHOFF SETTLEMENT TERM SHEET (October 2020)

" JE1 "

Item	Terms
Steinhoff Overview Settlement	<p>Steinhoff International Holdings N.V. ("SIHNV") and the former holding company Steinhoff International Holdings Proprietary Limited ("SIHPL") are the subject of various claims and legal proceedings in the Netherlands, Germany and South Africa.</p> <p>This term sheet sets out the terms of settlement being proposed by SIHNV (in Part 1) and SIHPL (in Part 2).</p> <p>The objective of the proposed global settlement is to settle all or substantially all of the claims so as to provide finality for the SIHNV and SIHPL, and each other member of the Steinhoff group of companies (together "Steinhoff" or the "Group") in relation to the claims on terms acceptable to SIHNV, SIHPL and the large majority of the claimants.</p> <p><i>The terms proposed in this term sheet are made on the basis of there being no admission of liability or wrongdoing on the part of SIHNV, SIHPL or any other Group entity. This term sheet does not constitute an offer capable of acceptance. The settlement terms capable of acceptance will be subject to further settlement documentation to be provided by SIHNV and/or SIHPL. Therefore, these settlement terms are subject to contract and final approvals.</i></p> <p>In broad terms, the claims instituted in legal proceedings against SIHNV and SIHPL fall into three categories:</p> <ol style="list-style-type: none"> 1. market purchase claims ("MPCs") in respect of shares and securities acquired on markets; 2. contractual claims ("Contractual Claims") by those claimants who, in accordance with the terms of contractual arrangements involving Steinhoff, sold businesses, shares or otherwise received consideration directly from Steinhoff by way of issuance, or transfer, of Steinhoff shares; and 3. other claims that are neither MPCs nor Contractual Claims against SIHNV or SIHPL ("Non-Qualifying Claims"). <p>It is proposed that all MPCs are settled by consideration provided by SIHNV irrespective of whether the MPC is against SIHNV or SIHPL. The substantive terms of the MPCs settlement are therefore set out in Part 1.</p> <p>Any settlement consideration paid or delivered by SIHNV or SIHPL will be in full and final settlement of any and all MPCs or Contractual Claims of the claimant or counterparty against any member of the Group (unless otherwise specified).</p>



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Part 1 – SIHNV: Summary of Proposed Settlement and Distribution Plan
("SIHNV Summary")

Item	Terms
SIHNV Settlement Overview	<p>The SIHNV settlement proposal includes the claimants set out below being those with MPCs and Contractual Claims, financial creditors of SIHNV and intra group creditors.</p> <p>SIHNV will settle both agreed and accepted MPC claims against itself and MPC claims against SIHPL. The terms of the MPC settlement are summarised below. As part of the settlement arrangements and in consideration of SIHNV settling the SIHPL MPC claims, SIHPL will issue a loan note in favour of SIHNV as described below.</p> <p>SIHNV will also settle agreed and accepted contractual or delictual damages claims against it at the same recovery rate as for the MPC claims and minimum nominal amounts specified below may be adjusted accordingly. Both eligible MPC claimants and eligible SIHNV Contractual Claimants will be offered settlement consideration in the form of 50 per cent cash and 50 per cent in the shares of the South African listed entity Pepkor Holdings Limited ("PPH"), subject in all cases to SIHNV's option to settle the settlement consideration in a greater proportion, or in the full amount, in cash.</p> <p>As described further below, SIHNV's financial creditors will be asked to consent to the proposed settlement, including the Hemisphere payment described below, as a permitted settlement under the SIHNV Umbrella Agreement, to provide certain releases and waivers, and to extend the maturity or final repayment dates of the current SIHNV CPU Claims (defined below) and underlying Finance Documents (defined below).</p> <p>Note: estimated nominal settlement amounts referred to in this Settlement Term Sheet are rounded to the nearest million.</p>
SIHNV Settlement Participants	<p>(1) SIHNV, together with its subsidiaries (the "Steinhoff Group");</p> <p>(2) claimants with a valid MPC against SIHNV or SIHPL ("MPC Claimants");</p> <p>(3) Lancaster 101 (RF) (Proprietary) Limited ("Lancaster 101"), Lancaster 102 (Proprietary) Limited ("Lancaster 102"), Lancaster Group (Proprietary) Limited, the Lancaster Non-Profit Company, and the Public Investment Corporation ("PIC") on behalf of the Government Employees Pension Fund ("GEPF") and any other parties that may be entitled to bring claims on their behalf or in their place (including by way of security rights) (together the "Lancaster Related Parties");</p> <p>(4) Upington Investment Holdings B.V. (or any legal successor thereof) and any other parties that may be entitled to bring claims on its behalf or in its place (including by way of security rights) ("Upington"), Thibault Square Financial Services (Proprietary) Limited ("Thibault") and Titan Premier Investment Proprietary Limited ("Titan");</p>



Item	Terms
	<p>(5) AJVH Holdings (Proprietary) Limited, Full Team Sure Trade (Proprietary) Limited, Aquilam Holdings (Proprietary) Limited, Libel Decimus (Proprietary) Limited, Xanado Trade and Invest 327 (Proprietary) Limited (together the "Tekkie Town Claimants");</p> <p>(6) the financial creditors of SIHNV pursuant to the 21/22 CPU, 23 CPU, SEAG CPU and Hemisphere CPU, each as defined below (the "SIHNV CPU Creditors"); and</p> <p>(7) Steinhoff Africa Holdings (Proprietary) Limited ("SAHPL"), Steenbok Newco 2A Limited ("Newco 2A"), Steenbok Lux Finco 1 S.à r.l. and Steinhoff International Share Trust and Steinhoff Acquisition Holdings, being the intra-group intercompany claimants which are creditors of SIHNV (together the "IGCs"), each a "Participant" and together the "Participants".</p> <p>The Tekkie Town Claimants, Lancaster 101, the PIC, on behalf of the GEPPF and Titan, standing in the place of Upington, are together the "SIHNV Contractual Claimants".</p> <p>For the purposes of this SIHNV Summary, "SIHNV CPU Claims" means claims of a financial creditor against SIHNV arising under, pursuant to or in relation to the 21/22 CPU, 23 CPU, SEAG CPU and the Hemisphere CPU (together, the "SIHNV CPUs") or any of the "Finance Documents" as that term is respectively defined in each of the 21/22 CPU, 23 CPU, SEAG CPU and the Hemisphere CPU.</p> <p>Reference to "Settlement Effective Date" is to the date on which the settlement becomes effective in accordance with its terms.</p>
MPC Settlement	<ul style="list-style-type: none"> • The total settlement consideration to be paid by SIHNV in respect of all MPCs is capped at EUR 266m. • The total settlement consideration will be paid 50 per cent in cash and 50 per cent in shares currently held by the Steinhoff Group in PPH, subject to SIHNV's right, at its option, to settle the settlement consideration in a greater proportion, or the full amount, in cash. The settlement consideration payable in PPH shares shall be settled at a deemed price per share of ZAR 15. MPC claimants will not be subject to any lock up agreement or terms in respect of those PPH shares leaving those claimants free to sell (or to hold) PPH shares following Settlement Effective Date. • A claimant is deemed to have a valid MPC if they have a claim against SIHNV or SIHPL in relation to the events that are alleged to have occurred in relation to alleged mismanagement, accounting irregularities, market manipulation, misstatements, misrepresentation of and otherwise misleading annual accounts and other financial reporting, including in prospectuses published by and/or other public statements made by Steinhoff Group companies together with allegations of improper fulfilment of duties and statutory obligations by any managing or supervisory director, officer and/or employee of



Item	Terms
	<p>the Steinhoff Group arising as a result of purchasing or acquiring either SIHPL or SIHNV securities and shares (excluding Contractual Claims against the Steinhoff Group and claims of certain excluded shareholders, such as former directors and officers):</p> <ul style="list-style-type: none"> - prior to 6 December 2015 (c.o.b) (in the case of SIHPL) or prior to the c.o.b. on 5 December 2017 (in the case of SIHNV); and - continued to hold SIHNV shares at the c.o.b. on 5 December 2017, including in the event such shares had not yet been delivered to the purchaser's securities account by 5 December 2017 c.o.b.. <p>The MPCs are valued according to a methodology based on the extent to which the relevant Steinhoff shares were inflated in the period from 1 March 2009, which is calculated by reference to the share price decline as a result of announcements in the first week of December 2017 (the "Inflation Methodology"). The calculation is in essence as follows:</p> <ul style="list-style-type: none"> - the total amount of each MPC claimant's overpayments during the relevant period due to inflation in the price of the SIHPL or SIHNV shares on the date of each purchase thereof, less - the total amount of each MPC claimant's overcompensation during the relevant period due to inflation in the price of the SIHPL or SIHNV shares on the date of any and each sale thereof. <p>For the purposes of the settlement of MPCs, shareholders who purchased SIHPL shares prior to 1 March 2009 and continued to hold equivalent SIHNV shares at the c.o.b. on 5 December 2017 have been allocated a claim of EUR 0.01 per share.</p> <p>The settlement of the MPCs and the Inflation Methodology and the treatment of any unclaimed portion of total MPC settlement consideration will be more fully described in the SIHNV settlement documentation and the SRF and claims administration settlement conditions.</p> <p>In addition, in order to facilitate recoveries to MPC Claimants, the Group is considering making available an additional amount of up to EUR 30m to pay in respect of certain fees, costs and work undertaken by representatives of the "Active Claimant Groups" on the terms to be set out in settlement documentation. The specific terms of the proposal remain under consideration.</p> <ul style="list-style-type: none"> • SIHNV will also provide up to EUR 15m to cover the costs of the SRF (as defined below). Any costs of the SRF that exceed that amount will be deducted from the settlement payment, and any surplus amount will revert to SIHNV. • SIHNV will establish a new Dutch <i>stichting</i> foundation called the Steinhoff Recovery Foundation ("SRF NL") with additional appropriate arrangements within South Africa in respect of South African claimants ("SRF SA"), (SRF NL and SRF SA,



Item	Terms
	<p>together "SRF"). The SRF will be the claim administration and distribution vehicle, set up as an independent entity governed by a board of newly appointed directors with majority independence from the Steinhoff Group. The SRF will appoint Computershare to assist with claims administration and to validate claims. Any claims submitted to the SRF which are disputed by the SRF will be subject to the dispute resolution mechanism on terms set out in the settlement arrangements.</p> <ul style="list-style-type: none"> On the Settlement Effective Date, the written undertakings provided by SIHPL to Adams & Adams (on behalf of Hamilton) dated 8 August 2019 and to LHL Attorneys Inc. dated 23 September 2019 will terminate and SIHPL shall be unconditionally and irrevocably released from such undertakings.
SIHNV rescissionary Contractual Claim valuation	<ul style="list-style-type: none"> The SIHNV rescissionary Contractual Claims will be valued using the following method: Nominal Amount less the Floor Amount. The Contractual Claims of the Tekkie Town Claimants and Lancaster 101 will be valued using this valuation methodology. For the purposes of this valuation: <ul style="list-style-type: none"> "Floor Amount" means the Floor Price multiplied by the number of Relevant Shares held at the Holding Time; "Floor Price" means: <ul style="list-style-type: none"> for the shares held on the Johannesburg Stock Exchange, ZAR 2.43, being the SIHNV volume weighted average price ("SIHNV VWAP") for the SIHNV shares listed on the Johannesburg Stock Exchange for the 30 days starting on the first trading day post the Publication Date; and for the shares held on the Frankfurt Stock Exchange, EUR 0.157, being the SIHNV VWAP for the SIHNV shares listed on the Frankfurt Stock Exchange for the 30 days starting on the first trading day post the Publication Date; "Holding Time" means the moment of the end of trading on the Johannesburg Stock Exchange or Frankfurt Stock Exchange (as applicable) on 5 December 2017; "Nominal Amount" means the aggregate amount of the Transaction Amount, less: <ul style="list-style-type: none"> the value of any cash dividends received prior to the Holding Time; and


Item	Terms
	<ul style="list-style-type: none"> • the value received from all sales of any Relevant Shares prior to the Holding Time; - "Original Shares" means the SIHNV shares originally subscribed for or received as part of an exchange with Steinhoff; - "Publication Date" means 29 June 2018, being the date on which SIHNV's 2018 half-year results for the 2018 financial year were released; - "Relevant Shares" means the SIHNV shares originally subscribed for or received as part of an exchange with Steinhoff and any dividends which the claimant elected to receive as SIHNV shares <i>in lieu</i> of cash; and - "Transaction Amount" means the Original Shares multiplied by the transaction price attributed to those shares (as specified in this SIHNV Summary below).
SIHNV delictual damages/ Contractual Claim valuation	<ul style="list-style-type: none"> • Delictual damages claims in respect of Contractual Claims will be valued using the following methodology: Implied Claim less Benefits. • The claim of Upington will be valued using this valuation methodology. • For the purposes of this valuation: <ul style="list-style-type: none"> - "Benefits" means: <ul style="list-style-type: none"> • the value of any cash dividends received prior to the Holding Time; <i>plus</i> • the number of shares the claimant elected to receive as either SIHPL or SIHNV shares <i>in lieu</i> of a cash dividend multiplied by the Floor Price minus; <i>plus</i> • the proceeds from the sale of any shares prior to the Holding Time; <i>minus</i> • the number of shares sold prior to the Holding Time multiplied by the Floor Price; - "Floor Price" means:



Item	Terms
	<ul style="list-style-type: none"> • for the shares held on the Johannesburg Stock Exchange, ZAR 2.43, being the SIHNV VWAP for the SIHNV shares listed on the Johannesburg Stock Exchange for the 30 days starting on the first trading day post the Publication Date; and • for the shares held on the Frankfurt Stock Exchange, EUR 0.157, being the SIHNV VWAP for the SIHNV shares listed on the Frankfurt Stock Exchange for the 30 days starting on the first trading day post the Publication Date; <p>– “Holding Time” means the moment of the end of trading on the Johannesburg Stock Exchange or Frankfurt Stock Exchange (as applicable) on 5 December 2017;</p> <p>– “Implied Claim” means: the Transaction Amount /ess (the Floor Price multiplied by the Original Shares);</p> <p>– “Original Shares” means the SIHPL shares originally subscribed for or received as part of an exchange with Steinhoff (including to the extent those SIHPL shares were exchanged for SIHNV shares as part of the 2015 scheme of arrangement);</p> <p>– “Publication Date” means 29 June 2018, being the date on which SIHNV’s 2018 half-year results for the 2018 financial year were released; and</p> <p>– “Transaction Amount” means the Original Shares multiplied by the transaction price attributed to those shares (as specified in this SIHNV Summary below).</p>
Contractual Claim settlement: Upington/Titan (Upington 1 Claim)	<ul style="list-style-type: none"> • A Contractual Claim will be recognised in respect of the 162,000,000 SIHNV shares issued to Upington pursuant to the subscription agreement dated 28 September 2016 and the 152,000,000 SIHNV shares acquired by Upington from Sunnyside Investment Partners Limited and Sutherland Investments Partners UK Limited pursuant to the share purchase agreement dated 28 September 2016, with an original transaction value of EUR 5.055 per share (“Upington 1 Claim”). • SIHNV will settle the Upington 1 Claim in full and final settlement for a minimum nominal amount equivalent to EUR 82m (applying the same recovery rate as applied to the MPCs).



Item	Terms
<ul style="list-style-type: none"> • The settlement consideration in respect of the Upington 1 claim will be paid on a pro rata basis to the legal owners of the benefit of the Upington 1 claim following resolution of the dispute between Upington/Titan and Conservatorium Holdings LLC ("Conservatorium") or a binding settlement agreement between the relevant parties and SIHNV. • The settlement consideration will be payable 50 per cent in cash and 50 per cent in PPH shares on or after the Settlement Effective Date at a deemed price per share of ZAR 15, subject to SIHNV's right, at its option, to settle the settlement consideration in a greater proportion, or the full amount, in cash and in accordance with the settlement terms. • SIHNV will continue to dispute any claim made by Upington, or on behalf of Upington, or the lenders under the margin loans which financed or refinanced the purchase of the SIHNV shares (the "Upington Margin Lenders"), or Conservatorium or any of their legal successors, or any assignee of Upington, the Upington Margin Lenders or Conservatorium or or any other member of the Steinhoff Group in respect of the SIHNV shares that were transferred to it by Thibault, Wiesfam Trust (Proprietary) Limited or TotheTop (Proprietary) Limited (any such claim, an "Upington 2 Claim"). • SIHNV will continue to dispute any claim made by Upington, or on behalf of Upington, or the Upington Margin Lenders, Conservatorium or their legal successors or any assignee of Upington or the Upington Margin Lenders or Conservatorium, against SIHPL, SIHNV or any other member of the Steinhoff Group for any costs or damages associated with the financing of the acquisition of the 314,000,000 SIHNV shares ("Upington Lender Claim"). • SIHNV will reserve a recovery amount (applying the same recovery rate as applied to the MPCs) in respect of a portion of the Upington Lender Claim as determined by SIHNV, pending the consensual settlement, or the final unappealable determination, of the Upington Lender Claim. • Titan, on behalf of Upington, and/or Conservatorium and/or any other Upington Margin Lenders (if entitled), will be required to waive Upington's claim against SIHNV for EUR 2,044,433.00 in underwriting commission's associated with the subscription for 314,000,000 SIHNV shares. • On the Settlement Effective Date, the written undertaking provided by SIHPL to Tinus Slabber & Associates, Attorneys dated 15 August 2019 shall terminate and SIHPL shall be unconditionally and irrevocably released from such undertaking. 	
Contractual Claim settlement: PIC/Lancaster 101	Lancaster 101 will be entitled to a Contractual Claim in respect of 51,526,717 SIHNV shares issued to Lancaster 101 for a transaction value of ZAR 75.98 per share (the "Lancaster 101 Claim").



Item	Terms
	<ul style="list-style-type: none"> • The PIC, on behalf of the GEPF, will be entitled to submit a Contractual Claim in respect of 8,473,283 SIHNV shares issued to the GEPF for an original transaction value of ZAR 75.98 per share (the "PIC/GEPF Claim"). • SIHNV will settle the Lancaster 101 Claim in full and final settlement for a minimum nominal amount equivalent to EUR 13m (applying the same recovery rate as applied to the MPCs). • SIHNV will settle the PIC/GEPF Claim in full and final settlement for a minimum nominal amount equivalent to EUR 2m (applying the same recovery rate as applied to the MPCs). • SIHNV will settle the Lancaster 101 Claim and the PIC/GEPF Claim in full and final settlement of all claims by Lancaster 101 and the GEPF applying the same recovery rate as the MPCs. • The settlement consideration will be payable 50 per cent in cash and 50 per cent in PPH shares on or after the Settlement Effective Date at a deemed price per share of ZAR 15, subject to SIHNV's right, at its option, to settle the settlement consideration in a greater proportion or the full amount in cash and in accordance with the settlement terms. Lancaster 101 and the PIC, on behalf of the GEPF, will not be subject to any lock up agreement or terms in respect of those PPH shares leaving those claimants free to sell (or to hold) PPH shares following the Settlement Effective Date.
Lancaster 102	<ul style="list-style-type: none"> • As part of the global settlement, SAHPL and the Lancaster Related Parties agree to unwind the legacy arrangements that were put in place as part of the proposed Shoprite transaction in H2 2017 and to settle for no additional consideration the SAHPL-Lancaster 102-Thibault transaction on or before the Settlement Effective Date as follows: <ul style="list-style-type: none"> - Lancaster 102 will acknowledge that the SAHPL preference shares were wholly invalid <i>ab initio</i> and the Lancaster Related Parties will release and waive any and all claims against SAHPL; and - SAHPL will return the 1,000 Lancaster 102 preference shares to Lancaster 102 and will release and waive all claims against Lancaster 102 in respect of this matter. • Thibault and Titan (as shareholder of Thibault), SAHPL and the Lancaster Related Parties will agree to release and waive any and all claims they may have against each other in respect of, and/or result from, the SAHPL-Lancaster 102-Thibault transaction and any and all security furnished pursuant to the transaction will be cancelled.
Contractual claim settlement: The	<ul style="list-style-type: none"> • To the extent the Tekkie Town Claimants are found not to have an "in rem" claim against SIHNV, or at the election of the Tekkie Town Claimants, the Tekkie Town Claimants will be entitled to a contractual claim in respect of the 25,060,021 SIHNV



Item	Terms
Tekkie Town Claimants	<p>shares issued to the Tekkie Town Claimants, in exchange for shares in Tekkie Town (Proprietary) Limited, with an original transaction value of ZAR 75.75 per share (the "Tekkie Town Claim").</p> <ul style="list-style-type: none"> • SIHNV will settle the Tekkie Town Claim in full and final settlement of all claims by the Tekkie Town Claimants for a minimum nominal amount equivalent to EUR 6m (applying the same recovery rate as the MPCs). • The settlement consideration will be payable 50 per cent in cash and 50 per cent in PPH shares on or after the Settlement Effective Date at a deemed price per share of ZAR 15, subject to SIHNV's right, at its option, to settle the settlement consideration in a greater proportion or the full amount in cash and in accordance with the settlement terms. The Tekkie Town Claimants will not be subject to any lock up agreement or terms in respect of those PPH shares leaving those claimants free to sell (or to hold) PPH shares following the Settlement Effective Date.
Upington Margin Lender Tort/Delictual Claims	<ul style="list-style-type: none"> • As referenced above, SIHNV will continue to dispute any and all claims made by Conservatorium or any of the Upington Margin Lenders or their respective legal successors (as applicable) against SIHNV or any other member of the Steinhoff Group arising out of the Upington Lender Claim and any other claim relating to the financing of Upington acquiring 314,000,000 SIHNV shares.
Disputed claims	<ul style="list-style-type: none"> • To the extent any claims are asserted which are disputed by SIHNV, those claims will be proposed by SIHNV to count for voting purposes in a provisional nominal value of EUR 1.00. • Following implementation of the settlement, any disputed claims will be subject to the ordinary course litigation process or the dispute resolution process set out by SIHNV in the settlement documentation, unless an alternative dispute resolution process is agreed by SIHNV and such disputed claimant. • In respect of any disputes as to the legal ownership, value or amount of a claim against SIHNV, the SRF will wait for the final unappealable determination of any such dispute, or its consensual resolution, before paying any compensation to the owner of the claim. The SRF will consider paying any compensation attributable to a claim in which ownership is disputed into escrow or other arrangements subject to terms acceptable to the SRF. • To the extent a claim, or part of a claim, is disputed by SIHNV, a recovery in respect of the disputed claim will be reserved to the extent considered appropriate by SIHNV. The amount of the reserve will be proposed by SIHNV.



Item	Terms
SIHNV CPU Creditors (including Hemisphere CPU): Consents & Amendments	<ul style="list-style-type: none"> • The SIHNV CPU Creditors (as applicable) will be requested to consent (and to waive all and any related restrictions or requirements) to the proposed Steinhoff settlement set out in this Term Sheet and the transactions, payments and the agreements, formal implementation processes contemplated by them as being a permitted global settlement pursuant to: <ul style="list-style-type: none"> - the Umbrella Agreement entered into between SIHNV, Lucid Agency Services Limited (as Umbrella Agent) dated 12 August 2019 and certain other agents (the "Umbrella Agreement"); - the (2021/2022 Convertible Bonds) Contingent Payment Undertaking created by SIHNV in favour of Global Loan Agency Services Limited dated 12 August 2019 (the "21/22 CPU"); - the (2023 Convertible Bonds) Contingent Payment Undertaking created by SIHNV in favour of Global Loan Agency Services Limited dated 12 August 2019 (the "23 CPU"); - the (SEAG) Contingent Payment Undertaking created by SIHNV in favour of Lucid Trustee Services Limited and Lucid Agency Services Limited dated 12 August 2019 (the "SEAG CPU"); - the Contingent Payment Undertaking created by SIHNV in favour of Lucid Agency Services Limited dated 5 September 2018 (the "Hemisphere CPU"); - the SEAG First Lien Facility Agreement between, among others, Steenbok Lux Finco 2 Sarl as borrower, Lucid Agency Services Limited as agent and Lucid Trustee Services Limited as security agent dated 12 August 2019 (the "SEAG First Lien Facility"); - the SEAG Second Lien Facility Agreement between, among others, Steenbok Lux Finco 2 Sarl as borrower, Lucid Agency Services Limited as agent and Lucid Trustee Services Limited as security agent dated 12 August 2019 (the "SEAG Second Lien Facility"); - the SEAG Intercreditor Agreement between, among others, Steenbok Lux Finco 2 Sarl, Lucid Agency Services Limited and Lucid Trustee Services Limited dated 12 August 2019 (the "SEAG ICA"); - the SFH 21/22 Facility Agreement between, among others, Steenbok Lux Finco 1 Sarl as borrower, Global Loan Agency Services Limited as agent and GLAS Trust Corporation Limited as security agent dated 12 August 2019 (the "SFH 21/22 Facility");



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-	<p>the SFH 23 Facility Agreement between, among others, Steenbok Lux Finco 1 Sarl as borrower, Global Loan Agency Services Limited as agent and GLAS Trust Corporation Limited as security agent dated 12 August 2019 (the "SFH 23 Facility");</p>
-	<p>the SFH Intercreditor Agreement between, among others, Steenbok Lux Finco 1 Sarl, Global Loan Agency Services Limited and GLAS Trust Corporation Limited dated 12 August 2019 (the "SFH ICA"); and</p>
-	<p>the Hemisphere Facility Agreement between, among others, Hemisphere International Properties B.V. ("Hemisphere") as borrower, Lucid Agency Services Limited as agent and Lucid Trustee Services Limited as security agent dated 5 September 2018 (the "Hemisphere Facility");</p>
•	<p>the SEAG First Lien Facility, the SEAG Second Lien Facility, the SEAG ICA, the SFH 21/22 Facility, the SFH 23 Facility, the SFH ICA, and the Hemisphere Facility being together, the "Underlying Finance Documents".</p>
•	<p>The SIHNV CPU Creditors will be requested to approve the proposed payment to the Hemisphere CPU as set out below without requiring an equivalent payment to be made to the other SIHNV (or SIHPL) CPU creditors.</p>
•	<p>CPU Amendments: SIHNV will request consent under the SIHNV CPUs to amend the 21/22 CPU, 23 CPU, SEAG CPU and the Hemisphere CPU and the Underlying Finance Documents to extend the "Maturity Date" under each SIHNV CPU and the final repayment date (however described) in the Underlying Finance Documents to 30 June 2023, with the ability of SIHNV to seek a further 6 months' extension on the approval of 50 per cent by value of the total SIHNV CPU Creditors.</p>
•	<p>Umbrella Agreement Amendments: Following occurrence of the Settlement Effective Date, the requirements for and provisions relating to the Litigation Working Group will cease to have effect with the ongoing management of litigation and disputes being left to the applicable Steinhoff Boards.</p>
•	<p>The SIHNV CPU Creditors will release and waive:</p>
a.	<p>any and all actual or potential direct and indirect tort/delictual and other non-Contractual Claims they may have against SIHNV, SIHPL or any other member of the Steinhoff Group in respect of all matters relating (directly or indirectly) to the pre-December 2017 legacy accounting issues;</p>
b.	<p>any and all actual or potential claims against Steinhoff directors or officers, or auditors and/or any external valuation professional and/or any third parties that undertook a materially similar role on behalf of a Steinhoff Group company,</p>



Item

Terms

- in respect of all matters relating (directly or indirectly) to the pre-December 2017 legacy accounting issues and will not require that SIHNV or any members of the Group pursue such claims against those parties; and
- c. any and all actual or potential direct or indirect claims against directors, officers and advisers in relation to post-December 2017 announcements matters save for fraud and gross misconduct; provided that
 - d. the releases and waivers of non-Contractual Claims or any indirect tort/delictual claims referred to in (a) above shall not extend to any SIHNV CPU Creditors who are Upington Margin Lenders in respect of any ongoing and disputed Upington Lender Claim or ownership dispute in respect of a Contractual Claim.
- In exchange for the consents, extensions, releases and waivers, with effect from the Settlement Effective Date SIHNV will offer to the SIHNV CPU Creditors first ranking security over its shares in Steinhoff Investment Holdings Limited ("SIHL") and any loan claim payable by SIHL to SIHNV, subject to arrangements to maintain the entitlements to settlement consideration in respect of any Non-Qualifying Claims which are determined by a relevant court or agreed by SIHNV to be payable by SIHNV.
 - In addition, SIHNV proposes the following additional governance provisions:
 - a. with effect from the Settlement Effective Date, one of either David Pauker or Paul Copley (both current Supervisory Board members and members of the Litigation Working Group) will be appointed by Steinhoff as a non-executive director of SIHL (which will comprise a total of 4 non-executive directors and 2 executive directors) and one of Paul Copley or David Pauker will be appointed by Steinhoff as a non-executive director to the Board of SAHPL (which following the appointment will comprise a total of 2 executive directors and one non-executive director);
 - b. provided that the Settlement Effective Date has occurred, with effect from 1 January 2022, Steinhoff will appoint to the Board of SAHPL one additional non-executive director in place of an existing executive director either Paul Copley, David Pauker or, if nominated by the Relevant Creditors (see below), the "Independent Nominee";
 - c. if Paul Copley and David Pauker are for whatever reason not available or cease to be able to take any initial appointment described in (a) above, the procedure set out in (d) below will apply to identify their replacement ("Replacement Nominee"). The same process will apply to identify the Independent Nominee for the purpose of (b) above;
 - d. a Replacement Nominee or an Independent Nominee will be appointed from a list of not less than 3 of eligible candidate nominees approved by "Relevant Creditors". "Relevant Creditors" for this purpose means, until the date on which the intercompany loans between SIHPL (as lender) and SAHPL and SIHL (each as borrowers) are repaid



Item	Terms
	<p>in full, the 4 largest creditors by commitments in LuxFinco 1, and thereafter creditors representing more than 50 per cent in total commitments under all SIHNV CPUs. Eligibility criteria will be set by Steinhoff (in accordance with its nomination procedures) in consultation with the Relevant Creditors; and</p> <p>e. these governance arrangements will be supported by an undertaking not to increase the overall number of directors on the SIHL and SAHPL Boards and that non-compliance with these governance arrangements will be an event of default under the SIHNV CPUs.</p>
<p>Hemisphere CPU Payments and Amendments</p>	<ul style="list-style-type: none"> • Under the Hemisphere CPU, based on the proposed global settlement by SIHNV set out in this Settlement Term Sheet, the Hemisphere lenders are entitled to a payment of EUR 40m. • Each of the 21/22 CPU, 23 CPU and SEAG CPU include an equivalent provision. SIHNV will request that these provisions will be waived to allow SIHNV to make the payment under the Hemisphere CPU without an equivalent payment being made under the other SIHNV CPUs. • The Hemisphere payment will be payable 50 per cent in cash and 50 per cent in PPH shares on or after the Settlement Effective Date at a deemed price per share of ZAR 15. • In consideration for the payment, the Hemisphere lenders will be required to accede to the Umbrella Agreement and to approve amendments to the Hemisphere CPU to conform the Hemisphere CPU to the other SIHNV CPUs, including the extension to the "Maturity Date" and the final repayment date (however described) in the Hemisphere Facility in exchange for the settlement payment.
<p>IGC Settlement: Intra-Group waiver and support</p>	<ul style="list-style-type: none"> • The IGCs will waive any and all tort/delictual claims and other non-Contractual Claims they may have against SIHNV, SIHPL or any other member of the Steinhoff Group. • The IGCs agree to consent to the proposed SIHNV settlement (and the SIHPL settlement) and the transactions and payments contemplated by them. • The IGCs will be requested to extend the maturities under the intercompanies to be consistent with the extension to the 21/22 CPU, 23 CPU, SEAG CPU and Hemisphere CPU and, if owned by an IGC as at the Settlement Effective Date, will share pari passu in the first ranking security also granted in favour of the SIHNV CPU Creditors with effect from the Settlement Effective Date.



Item	Terms
Contingent Assets	<ul style="list-style-type: none"> The settlement consideration provided by the Steinhoff Group will be independent of any recoveries made by claimants from third parties. Any such recoveries will be incremental to the Steinhoff settlement consideration.
Release of claims against Steinhoff & others: post-December 2017	<ul style="list-style-type: none"> From the Settlement Effective Date, the Participants (together the "Releasing Parties" and each a "Releasing Party") will provide a full, final and irrevocable release of any and all claims they have or assert (or in the future may have or assert) against SIHNV, SIHPL and all other subsidiaries of the Steinhoff Group, and any advisers to, and directors and officers of, the Steinhoff Group arising after the December 2017 announcements including, but not limited to: <ul style="list-style-type: none"> – in relation to the 2019 financial restructuring; and – in relation to the negotiation and implementation of a global settlement by SIHPL and SIHNV. For the avoidance of doubt, the waiver set out above is not intended in any way to waive the contractual debt claims the SIHNV CPU Creditors have against SIHNV or any member of the Steinhoff Group.
Steinhoff protection from counterclaims etc.	<ul style="list-style-type: none"> Each Releasing Party undertakes: <ul style="list-style-type: none"> – prior to bringing a claim of any nature against a third party in respect of the events leading to the announcements in December 2017, to inform SIHNV of its intention to pursue such a claim; and – that it will use best endeavours to minimise any loss to Steinhoff and co-operate in all respects to allow Steinhoff to minimise any losses or costs arising out of such claim.
Implementation & Timetable	<ul style="list-style-type: none"> The competing stakeholder interests, the financial position of Steinhoff and the complex multi-jurisdictional nature of the litigation make implementation of the proposed settlement uniquely challenging. SIHNV has therefore been considering a number of options to achieve the necessary certainty and finality required by SIHNV and stakeholders. One of the options currently available to Steinhoff is to implement the global settlement by an inter-conditional composition plan which will be submitted in draft form (<i>ontwerp van akkoord</i>) immediately with the filing of the request for a Suspension of Payments (<i>surseance van betaling</i>) procedure in the Netherlands by SIHNV and a pre-prepared compromise plan pursuant to section 155 of the Companies Act 71 of 2008 in South Africa by SIHPL, in addition to any UK scheme of arrangement in respect of any of the CPUs and/or Underlying Finance Documents.



Item	Terms
	<ul style="list-style-type: none"> SIHNV and SIHPL continue to consider whether there may be appropriate settlement mechanisms to supplement and/or replace such implementation procedures. SIHNV is seeking to implement the proposed transaction with the objective of making first distributions of the settlement consideration in Q1 2021.
Sources and Uses of Funding	<ul style="list-style-type: none"> The MPC Claimants will be paid in accordance with the terms of the final settlement documentation and following the claim verification process with final payments after the bar date. The SIHNV Contractual Claimants with accepted and agreed claims will be paid and delivered the settlement consideration shortly following the Settlement Effective Date in accordance with the terms of the final settlement documentation. SIHNV will pay the cash portion of the settlement amount in ZAR to the extent this is consistent with the denomination of the Participant's underlying transaction and in euros to the extent this is consistent with the denomination of the Participant's underlying transaction. The funding arrangements contemplated in respect of the settlement consideration will be subject to regulatory approval, including the requisite approval of the South African Reserve Bank.



Part 2 - SIHPL: Summary of Proposed Settlement and Distribution Plan
 ("SIHPL Summary")

Item	Terms
SIHPL Settlement Overview	This SIHPL Summary sets out the proposed settlement terms for SIHPL. The principal creditors of SIHPL are: SIHPL MPC Claimants, SIHPL Contractual Claimants and the SIHPL CPU Creditors (each as defined below). Note: estimated nominal settlement amounts referred to in this Settlement Term Sheet are rounded to the nearest million.
Participants	(1) SIHPL; (2) Steinhoff Africa Holdings (Proprietary) Limited (" SAHPL "); (3) Steinhoff Investment Holdings Limited (" SIHL "); (4) claimants with valid market purchase claims (" MPCs ") in respect of SIHPL (" SIHPL MPC Claimants "); (5) Thibault Square Financial Services (Proprietary) Limited (" Thibault "), Titan Premier Investment Proprietary Limited (" Titan ") and Wiesfam Trust (Proprietary) Limited (" Wiesfam ") (together the " Titan Claimants "); (6) Charl André Cronjé, Jacobus Hauptfleisch du Toit, Annamie Hansen, Leon Marius Lourens, Estelle Ann Morkel, Jacobus Francois Pienaar, Johan Samuel Van Rooyen and Johan Daniël Wasserfall (together " Cronje and Others "); (7) Business Venture Investments No 1499 (RF) (Proprietary) Limited (" BVI "); (8) Enrico De Villiers Greyling (" Greyling "); (9) Gerrit Thomas Ferreira and Gerrit Thomas Ferreira, N.O., Geralt Simon Fortuin, N.O. and Sharon Geraldine October N.O. as trustees of the Tokara BEE Trust and the Tokara Employees Trust (together the " GT Ferreira Claimants "); (10) Jacob de Vos du Toit N.O., Theo Werner Biesenbach N.O. and Magda de Wet N.O. as trustees of the Le Toit Trust (together " Le Toit Trust "); (11) Trevo Capital Limited (" Trevo "); and



Item	Terms
	<p>(12) the financial creditors of SIHPL pursuant to the Contingent Payment Undertaking created by SIHPL in favour of Global Loan Agency Services Limited dated 12 August 2019 (the "SIHPL CPU"), (the "SIHPL CPU Creditors"), each a "Participant" and together the "Participants".</p> <p>The Titan Claimants, Cronje and Others, BVI, Greyling, GT Ferreira and the Le Toit Trust are together the "SIHPL Contractual Claimants".</p> <p>For the purposes of this SIHPL Summary:</p> <p>"Settlement Effective Date" means the date on which the settlement becomes effective in accordance with its terms.</p>
Settlement of SIHPL MPCs	<ul style="list-style-type: none"> The MPCs against SIHPL will be settled as part of the global settlement terms and the compensation available under the proposed implementation process(es) will be funded from sources other than SIHPL. As part of the settlement arrangements and in consideration of SIHNV settling the SIHPL MPC claims, SIHPL will issue a loan note in favour of SIHNV as described below. SIHPL MPCs will be subject to substantially the same verification process as will be set out in the SRF and claims administration conditions.
SIHPL: Rescissionary Contractual Claim valuation	<ul style="list-style-type: none"> Rescissionary Contractual Claims will be valued using the following methodology: Nominal Amount less the Floor Amount. The claims of Thibault, Wiesfam, Greyling, GT Ferreira and the Le Toit Trust will be valued using this methodology. For the purposes of this valuation: <ul style="list-style-type: none"> "Floor Amount" means the applicable Floor Price multiplied by the number of Relevant Shares held at the Holding Time; "Floor Price" means: <ul style="list-style-type: none"> for the shares held on the Johannesburg Stock Exchange, ZAR 2.43, being the SIHNV VWAP for the SIHNV shares listed on the Johannesburg Stock Exchange for the 30 days starting on the first trading day post the Publication Date; and



Item	Terms
	<ul style="list-style-type: none"> • for the shares held on the Frankfurt Stock Exchange, EUR 0.157, being the SIHNV VWAP for the SIHNV shares listed on the Frankfurt Stock Exchange for the 30 days starting on the first trading day post the Publication Date; - "Holding Time" means the moment of the end of trading on the Johannesburg Stock Exchange or Frankfurt Stock Exchange (as applicable) on 5 December 2017; - "Nominal Amount" means the aggregate amount of the Transaction Amount, less: <ul style="list-style-type: none"> • the value of any cash dividends received prior to the Holding Time; and • the value received from all sales of any Relevant Shares prior to the Holding Time. - "Original Shares" means the SIHPL shares originally subscribed for or received as part of an exchange with Steinhoff (including to the extent those SIHPL shares were exchanged for SIHNV shares as part of the 2015 scheme of arrangement); - "Publication Date" means 29 June 2018, being the date on which SIHNV's 2018 half-year results for the 2018 financial year were released; and - "Relevant Shares" means: the SIHPL shares originally subscribed for or received as part of an exchange with Steinhoff (including to the extent those SIHPL shares were exchanged for SIHNV shares as part of the 2015 scheme of arrangement) and any dividends which the claimant elected to receive as either SIHPL or SIHNV shares <i>in lieu</i> of cash; and - "Transaction Amount" means the Original Shares multiplied by the transaction price attributed to those shares (as specified in this SIHPL Summary below).
SIHPL: Contractual damages/ Contractual Claim valuation	<ul style="list-style-type: none"> • Delictual damages claims in respect of Contractual Claims will be valued using the following methodology: Implied Claim /less Benefits. • The claims of BVI and Cronje and Others will be valued using this valuation methodology. • For the purposes of this valuation:



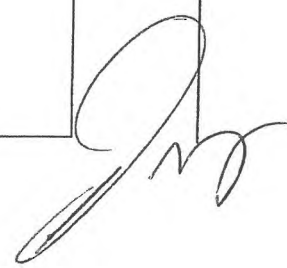
Item	Terms
-	<p>"Benefits" means:</p> <ul style="list-style-type: none"> • the value of any cash dividends received prior to the Holding Time; <i>plus</i> • the number of shares the claimant elected to receive as either SIHPL or SIHNV shares in lieu of a cash dividend multiplied by the Floor Price; <i>plus</i> • the proceeds from the sale of any shares prior to the Holding Time; <i>minus</i> • the number of shares sold prior to the Holding Time multiplied by the Floor Price; <p>"Floor Price" means:</p> <ul style="list-style-type: none"> • for the shares held on the Johannesburg Stock Exchange, ZAR 2.43, being the SIHNV VWAP for the SIHNV shares listed on the Johannesburg Stock Exchange for the 30 days starting on the first trading day post the Publication Date; and • for the shares held on the Frankfurt Stock Exchange, EUR 0.157, being the SIHNV VWAP for the SIHNV shares listed on the Frankfurt Stock Exchange for the 30 days starting on the first trading day post the Publication Date; <p>"Holding Time" means the moment of the end of trading on the Johannesburg Stock Exchange or Frankfurt Stock Exchange (as applicable) on 5 December 2017;</p> <p>"Implied Claim" means: the Transaction Amount <i>less</i> (the Floor Price multiplied by the Original Shares);</p> <p>"Original Shares" means the SIHPL shares originally subscribed for or received as part of an exchange with Steinhoff (including to the extent those SIHPL shares were exchanged for SIHNV shares as part of the 2015 scheme of arrangement);</p> <p>"Publication Date" means 29 June 2018, being the date on which SIHNV's 2018 half-year results for the 2018 financial year were released; and</p>



Item	Terms
Titan Claimants Settlement and Related Arrangements	<p>- "Transaction Amount" means the Original Shares multiplied by the transaction price attributed to those shares (as specified in this SIHPL Summary below).</p> <p>• Thibault will have the following claims recognised against SIHPL:</p> <ul style="list-style-type: none"> - a Contractual Claim in respect of the 609,145,624 SIHPL shares issued to Thibault at an original transaction price of ZAR 57.00 per share ("Thibault Contractual Claim"); and - a MPC in respect of the 2,019,800 SIHPL shares it purchased at an original transaction value of ZAR 80.07 per share. <p>• Wiesfam will have the following claims recognised against SIHPL:</p> <ul style="list-style-type: none"> - a Contractual Claim in respect of the 29,718,557 SIHPL shares issued to Wiesfam at an original transaction value of ZAR 22.74 per share; and - a MPC in respect of the 3,990,300 SIHPL shares it purchased at an original transaction value of ZAR 50.18 per share. <p>• Titan will have the following claims recognised:</p> <ul style="list-style-type: none"> - a MPC in respect of the 100,000 SIHNV shares it purchased at an original transaction value of ZAR 75.64 per share; - a MPC in respect of the 50,000 SIHNV shares it purchased at an original transaction value of ZAR 75.39 per share; and - a MPC in respect of the 2,000,000 SIHNV shares it purchased at an original transaction value of ZAR 62.34 per share, <p>the Thibault, Wiesfam and Titan claims being together, the "Titan Claims".</p> <p>• The total pleaded Titan Claims (excluding MPCs) equals approximately ZAR 38,152mas at 5 December 2017.</p> <p>• In respect of the Titan Claims, SIHPL will agree as follows:</p> <ul style="list-style-type: none"> - On or after the Settlement Effective Date, SIHPL will pay, or procure the payment, of ZAR 7,904m to (the South African resident entity) Titan in full and final settlement of all of the Titan Claims and any other claims that any



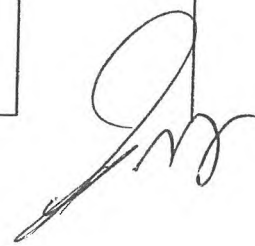
Item	Terms
	<p>Titan Claimants or any of their affiliates have against any member of the Steinhoff Group (other than in respect of the Upington 1 Claim, as defined in the SIHNV Summary) except for the Titan Excluded Claims.</p> <ul style="list-style-type: none"> - The settlement consideration will be payable 50 per cent in cash and 50 per cent in PPH shares on the Settlement Effective Date at a deemed price per share of ZAR 15 subject, at SIHNV and SIHPL's option, to settle the settlement consideration in a greater proportion, or the full amount, in cash. The PPH shares issued to Titan Claimants will be subject to a 180-day lock up condition. - The Titan Claims which are SIHNV MPCs or SIHPL MPCs will be settled for nil value. • Acquisition by SIHPL of the Titan Loan: <ul style="list-style-type: none"> - Subsequent to the aborted Shoprite transaction following the events of December 2017, a settlement was concluded in early 2018, pursuant to which Titan owed Steinhoff Finance Holding GmbH ("SFHG") an amount of EUR 200m plus interest ("Titan Loan"). In accordance with the 2019 financial restructuring arrangements, the Titan Loan was transferred from SFHG to Newco 2A. - Immediately prior to, or immediately following, the purchase of the Titan Loan, the Titan Loan will be amended to include the following terms: <ul style="list-style-type: none"> • ZAR 3.4 billion principal outstanding; • coupon payable of 5.04 per cent PIK per annum; • repayment date of 5 years plus one day from the Settlement Effective Date and voluntarily repayable without penalty at any time; and • secured in favour of SIHPL on terms satisfactory to SIHPL. - Conditional upon and subject to the occurrence of the Settlement Effective Date, SIHPL will acquire the Titan Loan from Newco 2A for an amount to be determined subject to an agreed mechanism linked to the prevailing EUR-ZAR exchange rate upon Settlement Effective Date. Payment of the consideration will be deferred resulting in an amount owed by SIHPL to Newco 2A ("Newco 2A Loan Note"), including the following terms:



Item	Terms
	<ul style="list-style-type: none"> • zero coupon; • repayment date: final maturity date of 6 months after the date of the Titan Loan final maturity; • quarterly cash sweep at SIHPL and across the South African sub-group; • first ranking security over SIHPL's assets, subject to arrangements in respect of Non-Qualifying Claims finally determined or agreed by SIHPL; and • limited recourse to the available assets of SIHPL and a solvent winding up of SIHPL. <p>• "Titan Excluded Claims" means the claims against the Steinhoff Group or third parties, as mutually agreed between Steinhoff and Titan in writing.</p>
Cronje and Others	<ul style="list-style-type: none"> • Cronje and Others will be entitled to a Contractual Claim of the 8,1 Cronje and Others (Contractual Claim) with an original transaction value of ZAR 57.00 per share "Non-Retired PPH Manager" shall mean Mr Jacobus H Du Toit and Mr Jacobus F Cronje and Others claimants other than the Retired PPH Managers. • SIHPL will settle the Cronje and Others Claims in full and final settlement of all claims by Cronje and Others against the Steinhoff Group for a nominal amount equivalent to ZAR 159m. • In respect of the Non-Retired PPH Managers, the settlement consideration will be payable 100 per cent in PPH shares on or after the Settlement Effective Date at a deemed price of ZAR 13.5. The PPH shares to be issued will be subject to a three-year lock up condition. • The Retired PPH Managers will have the option to elect the settlement consideration to be paid in accordance with the offer to the Non-Retired PPH Managers as specified above, or the settlement consideration to be paid 50 per cent in cash and 50 per cent in PPH shares on or after the Settlement Effective Date at a deemed price per share of ZAR 15. In the event that a Retired PPH Manager elects the latter option, the PPH shares issued to that Retired PPH Manager will be subject to a 180-day lock up condition. • In each case the offer of shares is subject to SIHPL's right, at its option, to settle the settlement consideration in a greater proportion, or the full amount, in cash.



Item	Terms
BVI	<ul style="list-style-type: none"> • BVI will be entitled to a Contractual Claim in respect of the 51,703,157 shares issued to BVI with an original transaction value of ZAR 57.00 per share (the "BVI Claim"). • SIHPL will settle the BVI Claim in full and final settlement of all claims by BVI and its affiliates against the Steinhoff Group for a nominal amount equivalent to ZAR 643m. • The settlement consideration will be payable 100 per cent in PPH shares on or after the Settlement Effective Date at a deemed price per share of ZAR 13.5 subject to SIHPL's right, at its option, to settle the settlement consideration in a greater proportion, or the full amount, in cash. The PPH shares issued to BVI will be subject to a three-year lock up condition.
Greyling	<ul style="list-style-type: none"> • Greyling will be entitled to a Contractual Claim in respect of the 1,325,000 shares issued to Greyling with an original transaction value of ZAR 74.03 per share ("Greyling Claim"). • SIHPL will settle the Greyling Claim in full and final settlement of all claims by Greyling and his affiliates against the Steinhoff Group for a nominal amount equivalent to ZAR 34m. • The settlement consideration will be payable 50 per cent in cash and 50 per cent in PPH shares on or after the Settlement Effective Date at a deemed price per share of ZAR 15 subject to SIHPL's right, at its option, to settle the settlement consideration in a greater proportion, or the full amount, in cash. The PPH shares issued to Greyling will be subject to a 180-day lock up condition.
GT Ferreira	<ul style="list-style-type: none"> • The GT Ferreira Claimants will be entitled to Contractual Claims in respect of the 15,811,729 shares issued to the GT Ferreira Claimants with an original transaction value of ZAR 74.03 per share ("GT Ferreira Claims"). • SIHPL will settle the GT Ferreira Claims in full and final settlement of all claims by the GT Ferreira Claimants and their affiliates against the Steinhoff Group for a nominal amount equivalent to ZAR 421m. • The settlement consideration will be payable 50 per cent in cash and 50 per cent in PPH shares on or after the Settlement Effective Date at a deemed price per share of ZAR 15 subject to SIHPL's right, at its option, to settle the settlement consideration in a greater proportion, or the full amount, in cash. The PPH shares issued to the GT Ferreira Claimants will be subject to a 180-day lock up condition.



Item	Terms
Le Toit Trust	<ul style="list-style-type: none"> • Subject to SIHPL being provided with satisfactory evidence that the Le Toit Trust held the full benefit of such shares as at 5 December 2017, the Le Toit Trust will be entitled to a Contractual Claim in respect of the 10,176,000 shares issued to the Le Toit Trust with an original transaction value of ZAR 74.03 per share ("Le Toit Claim"). • SIHPL will settle the Le Toit Claim in full and final settlement of all claims by the Le Toit Trust and its affiliates against the Steinhoff Group for a nominal amount equivalent to ZAR 227m. • The settlement consideration will be payable 50 per cent in cash and 50 per cent in PPH shares on or after the Settlement Effective Date at a deemed price per share of ZAR 15 subject to SIHPL's right, at its option, to settle the settlement consideration in a greater proportion, or the full amount, in cash. The PPH shares issued to the Le Toit Trust will be subject to a 180-day lock up condition.
Trevø	<ul style="list-style-type: none"> • Trevø will be entitled to a MPC for shares held on 5 December 2017 purchased from Treemo (Proprietary) Limited in cash and preference shares ("Trevø Claim"). • Trevø will recover on its claim at the same rate as the other MPCs and its claim will be valued in accordance with the MPC valuation methodology. • In full and final settlement of all claims by Trevø and its affiliates against the Steinhoff Group, the Trevø Claim will be settled as part of the global settlement terms and the compensation available under the proposed implementation process in respect of the Trevø Claim will be funded from sources other than SIHPL. • The settlement consideration will be payable 50 per cent in cash (payable by SIHNV) and 50 per cent in PPH shares on or after the Settlement Effective Date at a deemed price per share of ZAR 15 subject, at SIHNV's option, to settle the settlement consideration in a greater proportion, or the full amount, in cash. The PPH shares issued to the Trevø claimants will not be subject to a lock up condition consistent with the approach to MPCs.
Non-Qualifying Claims	<ul style="list-style-type: none"> • SIHPL will dispute, on the basis of remoteness, any and all claims made by Potter, Morris, Berry, Botha, Steyn and Malan against SIHPL or any other member of the Steinhoff Group in respect of the BVI shares issued to them. • SIHPL will dispute, on the basis that there is no case to answer, any and all claims made by the South African Competition Commission against SIHPL, KAP Diversified Industrial Proprietary Limited or any other member of the Steinhoff Group in respect of the alleged price fixing.



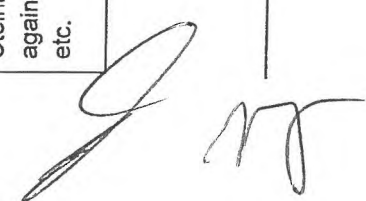
Item	Terms
Conservatorium	<ul style="list-style-type: none"> SIHPL will dispute any and all claims made by Conservatorium Holdings LLC, any of the lenders who financed the acquisition of 314,000,000 SIHNV shares by Upington Investment Holdings B.V. ("Upington") or their respective legal successors (as applicable) against SIHPL or any other member of the Steinhoff Group arising out of the financing of Upington acquiring 314,000,000 SIHNV shares.
Disputed claims	<ul style="list-style-type: none"> Save in relation to the Titan Claims, in respect of any disputes as to the legal ownership, amount or value of a claim against SIHPL, SIHPL will wait for the final unappealable determination, or consensual resolution, of those disputes before paying any compensation to the owner of the claim. SIHPL will consider paying any compensation attributable to a claim in which the ownership is disputed into escrow or other arrangements subject to terms acceptable to SIHPL. In relation to the Titan Claims against SIHPL, including the Thibault Contractual Claim, SIHPL will pay to the Titan entities the respective settlement amounts notwithstanding any continuing ownership dispute. Unless SIHPL agrees otherwise, SIHPL will not make a payment to a Participant if that Participant (or any affiliate of that Participant) has a continuing disputed claim against SIHPL, SIHNV or any member of the Steinhoff Group.
SIHNV Loan Note	<ul style="list-style-type: none"> In consideration of the settlement by SIHNV of SIHPL MPC claims, SIHPL will issue a loan Note to SIHNV ("SIHNV Loan Note") of not more than EUR 100m, including the following terms: <ul style="list-style-type: none"> - zero coupon; - repayment date: final maturity date of 6 months after the date of the Titan Loan final maturity; - quarterly cash sweep at SIHPL and across the South African sub-group; - second ranking security over SIHPL assets, subject to arrangements in respect of Non-Qualifying Claims finally determined or agreed by SIHPL; and - limited recourse to the available assets of SIHPL.
Amendments to SIHL and SAHPL receivables	<ul style="list-style-type: none"> SIHL and SAHPL receivables to be amended to include quarterly cash sweep in favour of SIHPL on cash balances subject to SIHL and its subsidiaries (excluding PPH) retaining aggregate balances of at least EUR 50m equivalent at



Item	Terms
<p>SIHPL CPU Settlement and Amendments to the SIHPL CPU</p>	<p>prevailing spot rate plus cash provision for payment of the next dividend payment on SIHL ZAR 1.5bn preference shares.</p> <ul style="list-style-type: none"> • The SIHPL CPU Creditors will agree to consent to the proposed SIHNV settlement and the SIHPL settlement and the transactions, payments, agreements and formal processes contemplated by them as being permitted settlement pursuant to the SIHPL CPU, the Umbrella Agreement and the LuxFinco 1 21/22 Facility Agreement. • The SIHPL CPU Creditors will agree to the amendments to the SIHPL CPU as set out below: <ul style="list-style-type: none"> - repayment date: final maturity date of 6 months after the date of the Titan Loan final maturity; - quarterly cash sweep at SIHPL and across the South African sub-group and delete Clause 6.9 (<i>SIHPL Cash Pay Outs</i>); - third ranking security over SIHPL assets, subject to arrangements in respect of Non-Qualifying Claims finally determined by a relevant court or agreed by SIHPL; - limited recourse: the recourse of the SIHPL CPU Creditors against SIHPL will be limited to the net proceeds recovered by SIHPL under the Titan Loan, the Newco 2A/SIHPL intercompany loan (the "Newco 2A Receivable"), the SIHL receivable and the SAHPL receivable (together the "SIHPL Intercompanies"); - disposals: with majority lender consent (more than 50 per cent by value of the SIHPL CPU Creditors), SIHPL may sell the Titan Loan, the Newco 2A Receivable and/or the SIHPL Intercompanies and the SIHPL CPU Creditors agree that in such circumstances recourse under the SIHPL CPU will be limited to the proceeds of such sale(s), and subject to the structural priority of the Newco 2A Loan Note and SIHNV Loan Note; - provisions to permit and facilitate the solvent winding up of SIHPL; and - quarterly reporting by the Board of SAHPL to the SIHPL CPU creditors in relation to its ongoing asset realisation strategy. • The SIHPL CPU Creditors will release and waive:



Item	Terms
	<ul style="list-style-type: none"> a. any and all actual or potential direct and indirect tort/delictual and other non-Contractual Claims they may have against SIHNV, SIHPL or any other member of the Steinhoff Group in respect of all matters relating (directly or indirectly) to the pre-December 2017 legacy accounting issues; b. any and all actual or potential claims against Steinhoff directors or officers, or auditors and/or any external valuation professional and/or any third parties that undertook a materially similar role on behalf of a Steinhoff group company, in respect of all matters relating (directly or indirectly) to the pre-December 2017 legacy accounting issues and will not require that SIHNV, SIHPL or any members of the Group pursue such claims against those parties; and c. any and all actual or potential direct or indirect claims against directors, officers and advisers in relation to post-December 2017 announcement matters save for fraud and gross misconduct; provided that d. the releases and waivers of contractual claims or any indirect tort/delictual claims referred to in (a) above will not extend to any SIHPL CPU Creditors who are Upington Margin disputers of any ongoing and disputed Upington Lender Claim or ownership dispute in respect of a Contractual Claim.
Steinhoff releases – post-December 2017	<ul style="list-style-type: none"> • From the Settlement Effective Date, the Participants (together the “Releasing Parties” and each a “Releasing Party”) agree to provide a full, final and irrevocable release of any and all claims they have or assert (or in the future may have or assert) against SIHNV, SIHPL and all other members of the Steinhoff group arising after the December 2017 announcements including, but not limited to: <ul style="list-style-type: none"> – in relation to the 2019 financial restructuring; and – in relation to the negotiation and implementation of a global settlement by SIHPL and SIHNV. • For the avoidance of doubt, the waiver set out above is not intended in any way to waive the contractual debt claims the SIHPL CPU Creditors have against any member of the Steinhoff Group.
Steinhoff Protection against counterclaims etc.	<p>Each Releasing Party undertakes:</p> <ul style="list-style-type: none"> • prior to any bringing a claim of any nature against a third party in respect of the events leading to the announcements in December 2017, to inform SIHPL of its intention to pursue such a claim; and



Item	Terms
Implementation	<ul style="list-style-type: none"> • that it will use best endeavours to minimise any loss to Steinhoff and co-operate in all respects to allow Steinhoff to minimise any losses or costs arising out of such claim. • The competing stakeholder interests, the financial position of Steinhoff and the complex multi-jurisdictional nature of the litigation make implementation of the proposed settlement uniquely challenging. SIHPL has therefore been considering a number of options to achieve the necessary certainty and finality required by SIHPL and stakeholders. • One of the options currently available to Steinhoff is to implement the global settlement by an inter-conditional composition plan which will be submitted in draft form ("<i>ontwerp van akkoord</i>") immediately with the filing of the request for a Suspension of Payments ("<i>surseance van betaling</i>") procedure in the Netherlands by SIHNV and a pre-prepared compromise plan pursuant to section 155 of the Companies Act 71 of 2008 in South Africa by SIHPL, in addition to any UK scheme of arrangement in respect of any of the CPUs and/or Underlying Finance Documents. • SIHNV and SIHPL continue to consider appropriate settlement mechanisms to supplement and/or replace such implementation procedures. The intention is to implement the global settlement as soon as possible with the objective of making first distributions in Q1 2021.
Sources and uses of Funding	<ul style="list-style-type: none"> • The SIHPL MPC Claimants will be paid in accordance with the terms of the SIHNV final settlement documentation. • The SIHPL Contractual Claimants with accepted and agreed claims will be paid and delivered the settlement consideration shortly following the Settlement Effective Date in accordance with the terms of the final settlement documentation. • SIHPL will elect to pay settlement amounts in ZAR. • The funding contemplated in respect of the settlement consideration and the other arrangements contemplated in relation to SIHPL will be subject to regulatory approval, including the requisite approval of the South African Reserve Bank.



IN THE HIGH COURT OF SOUTH AFRICA
(WESTERN CAPE DIVISION, CAPE TOWN)

CJ
25/1/2021
"JE2"

CASE NO.: 16337 / 2020

CJ

On: 25th January 2021

Before: His Lordship Mr Justice Saldanha

In the *ex parte* application of:-

STEINHOFF INTERNATIONAL HOLDINGS

Applicant

PROPRIETARY LIMITED

(REGISTRATION NUMBER: 1998/003951/07)

Ex parte application in terms of Regulation 7 of the Companies Regulations, 2011 read with Table CR 3 as contained in Annexure 3 to the Companies Regulations, 2011

CJ
DRAFT ORDER

HAVING read the papers filed of record, and having heard counsel for the applicant, an Order is issued in the following terms:-

1 It is declared that:-

1.1 the notice of the meeting to be held in terms of section 155(6) of the Companies Act 71 of 2008, as amended ("the Companies Act"); and

J. M.

1.2 the notice of the availability of the proposal envisaged in terms of section 155(2) of the Companies Act ("**the Proposal**"), providing that the Proposal is to be made available to the intended recipients by way of an internet link / hyperlink, which shall be provided in that notice, as well as a summary of the Proposal, along with and contact details of corporate websites, and the like,

(collectively, "**the Notices**"),

shall fulfil all prescribed delivery requirements envisaged in terms of the Companies Act, and shall be deemed, in each instance, to constitute delivery (on the deemed delivery date referred to below) to all intended recipients as envisaged in terms of section 155(2) of the Companies Act, if delivered in terms of the "*other means*" as provided for in this Order.

2 Leave is granted to the applicant to effect delivery of the Notices, whether as a joint or separate delivery, to the intended recipients, by "*other means*" as envisaged in terms of Table CR3 in Annexure 3 to the Companies Regulations of the Companies Act, namely by way of announcements, comprising the Notices, which shall be published as follows:-

2.1 on the website of Steinhoff International Holdings N.V. ("**SIHNV**");

A handwritten signature, possibly 'J. M.', followed by the number '2' and another set of initials, possibly 'M. J.', written in black ink.

- 2.2 at least twice, no less than a week apart, on the Stock Exchange News Service ("SENS");
- 2.3 on the equivalent service of the Frankfurt Stock Exchange ("FSE"). In doing so, SIHPL / SIHNV will:-
- 2.3.1 automatically procure what is referred to in the affidavits filed in support of the relief sought in this application ("the affidavits") as the Basic Distribution Network ("BDN");
- 2.3.2 ensure that what is referred to in the affidavits as the 'TUG-guarantee' option, is utilised, in addition to the BDN;
- 2.3.3 ensure that what is referred to in the affidavits as 'global circuits' will be utilised, in addition to the BDN, for each of:-
- 2.3.3.1 the United States of America;
- 2.3.3.2 Australia;
- 2.3.3.3 Brazil;
- 2.3.3.4 China;
- 2.3.3.5 Canada;

3 

2.3.3.6 the Middle East and North Africa

2.4 by ensuring the publication of the Notices on the online version of a newspaper or media house that is nationally available throughout each of what is referred to in the affidavits as 'the 9 African nations', alternatively by ensuring the publication of the Notices in hard / physical copies of newspapers, with a national distribution, in each of what is referred to in the affidavits as 'the 9 African nations', in the event that online publication is not possible in any of the 9 African nations concerned;

2.5 by e-mail or physical delivery, to each of the following:-

2.5.1 the chairpersons of the following Parliamentary "**portfolio committees**":-

2.5.1.1 the Standing Committees on Finance;

2.5.1.2 the Standing Committee on Public Accounts;

2.5.1.3 the Portfolio Committees on Trade and Industry;

2.5.1.4 the Portfolio Committee on Public Service and Administration;



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- 2.5.2 the Companies and Intellectual Property Commission;
- 2.5.3 the chairperson / head of the following bodies:-
- 2.5.3.1 the Legal Practices Council ("the LPC");
- 2.5.3.2 the Financial Sector Conduct Authority ("FSCA");
- 2.5.3.3 the South African Institute of Chartered Accountants ("SAICA"),
- with a request that the LPC and SAICA publish to their members a copy of the Notices, or inform their members of the existence of the Notices;
- 2.5.4 the South African Reserve Bank ("SARB");
- 2.5.5 National Treasury;
- 2.5.6 the South African Revenue Services ("SARS");
- 2.6 by publishing at least one (1) advertisement, informing the recipient of the existence of the Notices, and directing them to the SIHNV website, on the online platforms of each of the following:-

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2.6.1 News24 / Sake24 / Business24;

2.6.2 The Financial Mail;

2.6.3 Moneyweb

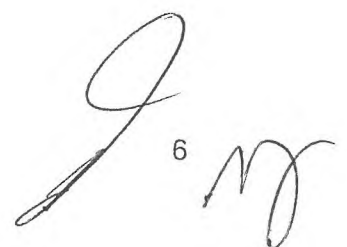
2.6.4 IOL / Business Report;

2.6.5 the Sunday Times

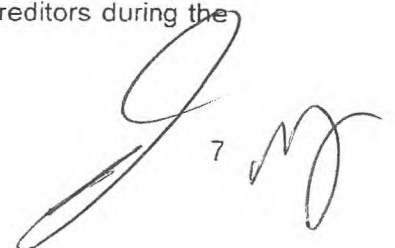
3 SIHPL is directed:-

3.1 when dispatching the Notices to the portfolio committees, the LPC, FSCA, SAICA, SIHPL, SARB, National Treasury and SARS, to ensure that a scanned copy of the Proposal can be sent to any of those recipients, upon request; and

3.2 to provide, within 48 hours after receipt of a duly and fully completed form, a copy of which is annexed marked "A", and copies of which shall be handed to the Chief Registrar of this Court to make available to the general public attending at this Court, an electronic copy of the Proposal to any person who has requested a copy of the Proposal by way of completing and submitting the aforementioned form.

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- 4 SIHPL is directed, in addition to the "other means" as described above, to effect delivery of the Notices, by way of e-mail, directly to the following:-
- 4.1 the legal representatives of what is referred to in the affidavits as the active claimant groups, alternatively to the active claimant groups directly;
- 4.2 the legal representatives of what is referred to in the affidavits as the Financial Creditors, alternatively to the Financial Creditors directly;
- 4.3 the legal representatives of what is referred to in the affidavits as the Contractual Claimants, alternatively to the Contractual Claimants directly; and
- 4.4 direct e-mail delivery to what is referred to in the affidavits as Scheme Creditors, whose e-mail addresses are known to SIHPL.
- 5 It is declared that delivery to all of the aforementioned recipients as envisaged in terms of this Order, shall be deemed to have been effected, on the seventh day following the aforementioned second SENS announcement.
- 6 Leave is granted to the applicant to effect future delivery / publication (other than, and in addition to, the Notices) to intended recipients / Scheme Creditors, of any subsequent notifications, communications or information that may be required to be sent to the intended recipients / Scheme Creditors during the



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course of, or related to, or incidental to, the process in terms of section 155 of the Companies Act, in the means described in paragraphs 2 and 4 above, and that such delivery to all of the intended recipients / Scheme Creditors shall be deemed to have been effected, on the fifth day following the relevant second SENS announcement.

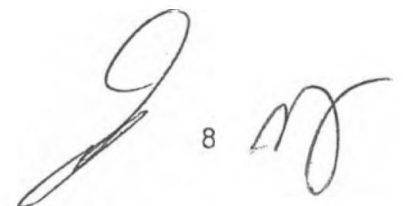
7 In the event that the Proposal is adopted, leave is granted to the applicant to effect delivery, to all of the intended recipients / Scheme Creditors, of a notification of the adoption of the Proposal, by way of announcements published on SIHNV's website, on SENS, and on the equivalent service of the FSE (utilising those additional means recorded in paragraph 2.3 above), and that such delivery to all of the intended recipients / Scheme Creditors shall be deemed to have been effected, on the fifth day following the SENS announcement.

8 The granting of this Order does not constitute the approval and / or the endorsement, by this Court, of the contents of the Proposal.

9 The Notices will be prepared in English, but will incorporate a notification, in each of the languages recorded below, informing persons that a translated version of the Notices, will be made available on request in any of the following languages:-

9.1 Arabic;

9.2 Bulgarian;

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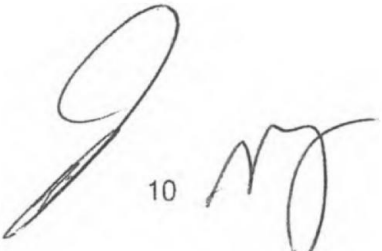
- 9.3 Croatian;
- 9.4 Czech;
- 9.5 Danish;
- 9.6 Dutch
- 9.7 Estonian;
- 9.8 French
- 9.9 German;
- 9.10 Greek;
- 9.11 Hebrew;
- 9.12 Hungarian;
- 9.13 Icelandic;
- 9.14 Italian;
- 9.15 Latvian;
- 9.16 Lithuanian;
- 9.17 Mandarin;
- 9.18 Norwegian;
- 9.19 Polish;
- 9.20 Portuguese;
- 9.21 Romanian;
- 9.22 Slovak;
- 9.23 Slovene;
- 9.24 Swahili;
- 9.25 Swedish;
- 9.26 Spanish;
- 9.27 Turkish; and

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9.28 any other language which has been used previously as the language of communication between the applicant and a shareholder / alleged claimant.

BY ORDER

COURT REGISTRAR

10 

C/ | 25/1/21

STEINHOFF INTERNATIONAL HOLDINGS PROPRIETARY LIMITED ("THE COMPANY")
NOTICE OF THE AVAILABILITY OF A s155 PROPOSAL

Notice is hereby given to *inter alia* certain creditors ("Scheme Creditors") of the Company, of a proposed scheme of arrangement and compromise (the "Scheme"), and of the availability of the proposal / Scheme document (the "Proposal").


1 ACCESSING THE PROPOSAL AND ITS ANNEXURES

The Proposal and its annexures are available at www.SteinhoffSettlement.com, and by completing a request form from the Registrar of the High Court of South Africa, Western Cape Division, Cape Town

2 FURTHER COMMUNICATIONS

If the Company communicate further with Scheme Creditors, it shall do so

- 2.1 on Steinhoff International Holdings N.V.'s website (www.steinhoffinternational.com);
- 2.2 at www.SteinhoffSettlement.com;
- 2.3 on the Stock Exchange News Service and the equivalent service of the Frankfurt Stock Exchange;
- 2.4 by email to the legal representatives of the active claimant groups, alternatively by email directly to the active claimant groups;
- 2.5 by email to the known legal representatives of Scheme Creditors, alternatively by email directly to the known e-mail addresses of known Scheme Creditors; and
- 2.6 otherwise in accordance with any publication requirements as may be directed by the Western Cape High Court.;


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3 ACTION REQUIRED

- 3.1 A Scheme Meeting will in due course be convened by notice to Scheme Creditors eligible to attend and vote at the Scheme Meeting.
- 3.2 If eligible Scheme Creditors wish to attend and vote at the Scheme Meeting, they should take note of the Important Dates and Times posted on www.SteinhoffSettlement.com, provide the Claims Administrator with the necessary supporting documentation evidencing their status as a Scheme Creditor and, subject to the dispute resolution process contained in the Proposal, provide substantiation of the value of the claim they assert, and follow the process set out in the Proposal

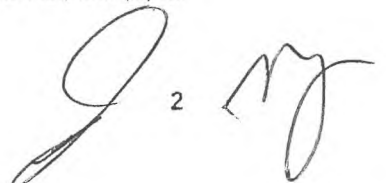
4 SUMMARY OF THE PROPOSAL

The Proposal contemplates a compromise between the Company and Scheme Creditors, defined in the Proposal, and who are envisaged to be settled in accordance with the terms of the Proposal

- 4.1 The Proposal shall become effective if (i) it is adopted by the statutory required majorities of the Scheme Creditors, (ii) it is thereafter approved and sanctioned on a final and non-appealable basis by the High Court and (iii) all of the Suspensive Conditions are satisfied. Following the Proposal becoming effective, compromises will become effective and distributions will be made to the Scheme Creditors who are entitled thereto.
- 4.2 Scheme Creditors comprise what are defined in Annexure A to the Proposal as –
- 4.2.1 the Contractual Claimants;
- 4.2.2 the Financial Creditors; and
- 4.2.3 the SIHPL Market Purchase Claimants.

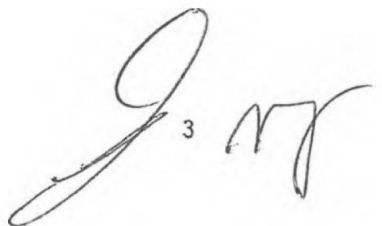
who are envisaged to be settled in accordance with the terms of the Proposal.

- 4.3 The Proposal shall become effective if (i) it is adopted by the statutory required majorities of the Scheme Creditors of the Company that participate in the filing and voting procedures; (ii) it is thereafter approved and sanctioned on a final and non-appealable basis by the High Court of South Africa as contemplated in section 155(7) of the Companies Act, and (iii) all

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of the Suspensive Conditions (as defined in Annexure A to the Proposal) applicable to the Proposal are satisfied. Following the Proposal becoming effective, compromises will become effective and distributions will be made to the Scheme Creditors who are entitled thereto in accordance with the provisions of the Proposal. If the Proposal does not become effective, it shall be of no legal force or effect, shall not constitute a compromise of any claims of Scheme Creditors, and shall not constitute an offer of any kind on the part of the Company capable of acceptance by Scheme Creditors.

- 4.4 If you are a Scheme Creditor of SIHPL you are invited, in accordance with the terms of the Proposal, to file a claim and participate in the voting procedures set out therein, as you may be eligible to receive a payment based on the Proposal.
- 4.5 The Proposal shall be put to a vote at a virtual meeting or meetings, convened for such purpose.
- 4.6 The Proposal does not constitute, on any basis whatsoever, an admission of any liability on the part of SIHPL towards any party that has instituted legal proceedings against SIHPL, or intends to institute such legal proceedings or has threatened to institute such legal proceedings or who may assert a claim of whatsoever nature and howsoever arising, in legal proceedings.
- 4.7 The Scheme Creditors are encouraged to contact their respective advisers regarding the filing and voting procedures set out in the Proposal and, in addition, to consult www.SteinhoffSettlement.com for further information.
- 4.8 As a number of the matters set out in the Proposal are complex and technical in nature, all interested persons are encouraged to consult with an independent legal advisor, accountant, financial advisor or any other professional advisor who may be of assistance to interested persons in respect to the contents of the Proposal.

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"JE3"

15 March 2019

OVERVIEW OF FORENSIC INVESTIGATION

A handwritten signature in black ink, consisting of a large, stylized initial 'J' followed by a smaller, cursive signature.

1 Introduction

The Supervisory Board and the Management Board (together, the "**Boards**") of Steinhoff International Holdings N.V. ("**SIHNV**") have now received a report prepared by PricewaterhouseCoopers Advisory Service Proprietary Limited ("**PwC**") setting out their findings following the investigation initiated at the request of the Supervisory Board in December 2017 on the instructions of Werksmans Attorneys ("**PwC Report**" or "**Report**").

PwC's findings are the product of a wide ranging review over fourteen months' work during which time a large team of PwC professionals was engaged in investigations in South Africa and other relevant jurisdictions. In the course of its investigation PwC has collected, reviewed and processed an enormous amount of information and data. The PwC Report itself is in excess of three thousand pages with over four thousand documents as annexures.

The content of the PwC Report is being considered by SIHNV and its advisers and is being used to assist production of the Group's financial statements for FY2017 and FY2018 and to assist decision making on areas for further investigation and remedial work. The PwC Report is also confidential and subject to legal privilege and other restrictions. For these reasons SIHNV does not currently intend to publish the Report and by publishing this overview does not waive the confidentiality and legal privilege which inheres in the PwC Report.

However, the Group is able at this stage to provide this overview on its understanding of the Report's key findings together with the Board's preliminary views on the additional remedial measures required and the next steps to be taken by the Group.

2 Scope of the PwC Investigation

PwC was asked to assist with an investigation into the occurrence of potential accounting irregularities, or potential non-compliance with laws and regulations impacting on Steinhoff's financial statements.

The scope of PwC's work was to analyse and investigate:

- allegations of potential accounting irregularities and/or potential non-compliance with laws and regulations, made against various Steinhoff entities and its former executives;
- concerns raised by Steinhoff's external auditor, Deloitte; and
- any other issues brought to PwC's attention requiring investigation in relation to the Steinhoff Group.

PwC's investigation to date has been performed in two phases:

- The **Initial Phase** – A period of information-gathering and understanding of the allegations, and then;
- **Phase 1** – A period of detailed investigation.

It is envisaged that a further phase of investigative work (Phase 2) will be requested in respect of certain issues identified that Steinhoff envisages will not be material to Steinhoff's financial statements but which may be significant for other reasons and will require further investigation, conclusion and resolution.

The PwC investigation team's principal interaction with SIHNV was through a special committee of the Boards being Louis du Preez, Peter Wakkie and Moira Moses assisted by Alexandra Watson and the Supervisory Board nominee director Paul Copley following his nomination in August 2018.

PwC has confirmed that it considers itself to be independent of the Group and that it has not been influenced or restricted by the Group in terms of access to information to undertake its investigation or in the writing of the report. The scope of the PwC Report is consistent with the investigation plans discussed with and approved by the Supervisory Board.

PwC's findings are the result of work performed up to 28 February 2019 and are subject to their engagement terms agreed with Werksmans and certain important limitations, including the following:

- The PwC Report (and the related information gathering and investigation) is subject to legal privilege and is confidential.
- The PwC Report does not constitute an audit, a review or examination of Steinhoff's financial statements. Deloitte, in its capacity as the external auditor, has had full and unrestricted access to the PwC Report, on terms agreed between the two firms, to facilitate the ongoing audit process.
- The work performed by PwC was focused on accounting irregularities and non-compliance with laws and regulations but PwC's work does not constitute legal advice or legal opinion.

In the course of its work, PwC has interviewed or submitted questions to twenty two current and former directors and officers. As part of that process, PwC has interviewed or received responses to questionnaires from all those current members of the Supervisory Board and current Management Board members who were serving and/or employed prior to 6th December 2017. Mr Markus Jooste, the former CEO and certain other individuals have not yet made themselves available for an interview with PwC and discussions are ongoing regarding the basis on which any such interviews may take place.

3 Key Findings and Observations

3.1 Key Findings

The Boards' current assessment of PwC's key findings is set out below and is subject to the observations in paragraph 3.2 below:

- 3.1.1** A small group of Steinhoff Group former executives and other non Steinhoff executives, led by a senior management executive, structured and implemented various transactions over a number of years which had the

result of substantially inflating the profit and asset values of the Steinhoff Group over an extended period.

- 3.1.2** The PwC investigation found a pattern of communication which shows the senior management executive instructing a small number of other Steinhoff executives to execute those instructions, often with the assistance of a small number of persons not employed by the Steinhoff Group.
- 3.1.3** Fictitious and/or irregular transactions were entered into with parties said to be, and made to appear to be, third party entities independent of the Steinhoff Group and its executives but which now appear to be closely related to and/or have strong indications of control by the same small group of people referred to in 3.1.1 and/or 3.1.2 above.
- 3.1.4** Fictitious and/or irregular income was, in many cases, created at an intermediary Steinhoff Group holding company level and then allocated to underperforming Steinhoff operating entities as so called "contributions" that took many different forms and either increased income or reduced expenses in those operating entities. In most cases, the operating entities received cash for the contributions from another Steinhoff Group or from non Steinhoff companies (funded by Steinhoff), resulting in intercompany loans and receivables.
- 3.1.5** The transactions identified as being irregular are complex, involved many entities over a number of years and were supported by documents including legal documents and other professional opinions that, in many instances, were created after the fact and backdated.

3.2 Observations by the Boards

- 3.2.1** None of those Steinhoff Group executives identified in the PwC Report is currently employed by the Group. However, one individual, contracted by the Group, is co-operating to assist the ongoing investigations and related matters.
- 3.2.2** The Boards believe that the facts identified in the PwC Report raise serious allegations, against the senior executive in particular. As a next step the relevant former Steinhoff executives and other non Steinhoff Group individuals identified in the PwC Report will be invited to comment on its findings. (See remediation plan and next steps below)
- 3.2.3** The quantum of the various relevant transactions has been identified by PwC. The Steinhoff finance team are in the process of preparing financial statements, including restated financial statements for 2016, which take the findings of the PwC Report into consideration.
- 3.2.4** The PwC Report contains details of the contributions made to underlying Steinhoff Group operating entities over time. The findings indicate that such transactions occurred over a number of years. However, the level of financial contribution and the recipients of contributions varied from year to year. Neither Pepkor Europe, including Pepco and Poundland, Pepkor Holdings nor

any of the other South African operating entities were identified as having received such contributions.

3.2.5 Despite the extensive investigative work done by PwC and Steinhoff, there are still a number of unanswered questions, particularly in relation to the identification of the true nature of the counter-parties or the ultimate beneficiaries to various transactions. These matters will be the subject of further investigation in order to assist potential recoveries for the Group.

4 Identification of Third Parties and the Nature of the Relevant Transactions

The key findings of the PwC Report result from a significant amount of work undertaken to identify the third party entities and the nature of the transactions used to create the irregularities. In general terms the PwC Report finds that the fictitious and/or irregular transactions had the effect of inflating the profits and/or asset values of the Steinhoff Group.

4.1 Key Third Party Entities Identified

The PwC Report finds that it appears that the Steinhoff Group entered into a number of transactions (some of which were fictitious or irregular) with allegedly independent third party entities which resulted in the inflation of profits and asset values.

The PwC Report identifies three principal groups of corporate entities that were counterparties to the Steinhoff Group in respect of the transactions that have been investigated. Other corporate entities have also been identified together with a finding that there was a practice of using similar entity names and changing company names resulting in confusion between entities.

The three principal groups identified are as follows – the legal and/or beneficial ownership of these groups are in some cases currently unknown to the Steinhoff Group:

- The Campion / Fulcrum Group
- The Talgarth Group
- The TG Group

4.2 Nature of Relevant Transactions

The PwC Report refers, in the main, to the inflation of profits and asset values as being effected through a cycle of income creation (section 4.2.1 below), resulting in further measures being taken to address the related non-recoverable receivables and inflated asset values (section 4.2.2 below). Various transactions were entered into to obscure the extent of the overstatement of the assets (section 4.2.3 below). These included the allocation as contributions by the Steinhoff Group to operating entities within the Steinhoff Group (section 4.2.4 below).

The major relevant transactions identified in the PwC Report are categorised by them as follows:

- (1) Profit and asset creation;
- (2) Asset overstatement and reclassification;
- (3) Asset and entity support; and
- (4) Contributions.

4.2.1 Profit and asset creation

The PwC Report finds that certain Steinhoff Group entities recorded sales to, or received benefits or income from, entities that were purportedly independent of the Steinhoff Group but which now appear to be either closely related to and/or have strong indications of control by the Steinhoff Group or certain of its former employees and/or third parties or former management.

The PwC Report details the income from fictitious and/or irregular transactions identified during the PwC investigation that was recorded by the Steinhoff Group for FY 2009 to FY 2017 from the purportedly independent third parties and shown in Table 1 below. (See paragraph 5 below for commentary on the financial impact of the amounts referred to in Table 1.)

Table 1.

#	A FY	B Talgarth Group (excl Triton) EUR	C TG Group EUR	D Triton EUR	E GT Global Trademarks EUR	F Tulett Holdings EUR	G Group Adj** EUR	H SVF SA EUR	Koenig EUR	I Total EUR
1	2009	326,350,588	-	-	-	-	-	-	-	326,350,588
2	2010	545,067,601	-	-	-	-	-	-	-	545,067,601
3	2011	661,291,101	-	-	-	-	-	-	3,526,529	664,817,629
4	2012	586,481,494	-	-	-	-	-	-	-	586,481,494
5	2013	615,343,245	-	-	-	-	-	-	-	615,343,245
6	2014	45,511,907	230,961,882	120,715,281	-	-	-	-	-	397,189,070
7	2015	383,786,237	288,217,613	285,892,049	35,987,207*	-	29,863,164	-	-	1,023,746,271
8	2016	992,804,078	279,633,334	9,364,469	41,393,587*	-	27,001,490	372,993	-	1,350,569,951
9	2017	3,453,733	221,448,162	-	583,060,000*	169,405,387	12,397,358	7,265,939	-	997,030,579
10	Total	4,160,089,983	1,020,260,991	415,971,799	660,440,795	169,405,387	69,262,012	7,638,932	3,526,529	6,506,596,428

*In these periods GT Global Trademarks was not recorded as a Steinhoff Group entity and as such amounts from GT Global Trademarks were not eliminated on consolidation. Further income from the sale of brands and/ or entities in relation to GT Global Trademarks and GT Branding Holding have not been included.

** Depreciation reversals

The PwC investigation identifies transactions that result in profit and asset creation involving brands, intellectual property and know-how. The entities associated with these assets include the Talgarth Group (Talgarth and Triton) and Campion/Fulcrum Group (TG Group, GT Global Trademarks and SVF SA) and Tulett Holdings.

The income from these transactions was in many instances not paid by the so-called independent entities to the Steinhoff Group, resulting in loans or other receivables owed to the Steinhoff Group that had little or no economic substance and, which, as such were never settled.

4.2.2 Asset overstatement and reclassification

The non-recoverable receivables resulting from the fictitious or irregular income created by the transactions described in 4.2.1 above were subsequently either settled in set-off arrangements or reclassified into different assets.

In a number of instances, the non-recoverable receivables were set-off using intergroup payments and by the assignment of debts. This had the effect that loans were moved between entities both in the Steinhoff Group and around the purportedly independent entities. These set-off arrangements and/or assignments of debt resulted in movement of the loans, which were accounted for as being repayments by the original party.

In other instances, often through purportedly independent entities, the non-recoverable receivables were reclassified into different classes of assets, for example, cash equivalents, increases in the value of fixed properties, increases in the value of trademarks or increases in the value of acquired goodwill. These reclassifications created the impression that the non-recoverable receivable had been settled and resulted in other asset values being inflated.

The PwC Report also identifies further asset reclassifications in connection with the property portfolios within the Kika Leiner business and the Hemisphere property portfolio.

4.2.3 Asset and entity support

The resulting inflated asset values were then supported by, for example:

- (a) increasing the rental to be paid in terms of intergroup rental contracts for properties based on valuations that may have not been reliable;
- (b) increasing the royalties to be paid under intergroup royalty agreements for trademarks; and/or
- (c) orchestrating intergroup payments and assignments of debt to demonstrate the settlement of the cash equivalents.

These inflated costs were included in the operating companies' results, increasing the cost bases, and in some cases, adding to the losses made by these entities. This had the following knock-on effects:

- (a) the losses made by operating entities could not support the acquired goodwill; and
- (b) operating entities did not positively contribute to the Steinhoff Group results.

4.2.4 Contributions

The losses in the operating entities were mitigated by the Steinhoff Group then making an onward distribution of the fictitious or irregular income (Section 4.2.1) that had, in some instances, been created at intermediary holding companies in the Steinhoff Group to the various Steinhoff operating entities via contributions. In many cases, these contributions to operating companies were settled in cash by other

Steinhoff Group companies, creating the impression (internally and externally) that they had substance.

These contributions had the effect of:

- (a) the operating entities potentially appearing more profitable than they actually were (in circumstances where the contributions were greater than the inflated costs allocated to that entity);
- (b) enabling forecasts made to support the price paid for acquired entities to be met; and
- (c) enabling operating entity budgets to be met (although budgets often included contributions).

Contributions from Steinhoff Group entities to the Steinhoff operating entities would typically eliminate on consolidation; but before elimination these contributions supported the profitability, liquidity, solvency and value of acquired goodwill of the operating company. By contrast, the fictitious or irregular income described in Section 4.2.1 and recorded at intermediary holding companies did not eliminate on consolidation, as it was recorded as originating from purportedly independent entities, thus inflating the Steinhoff Group profits.

Table 1 in Section 4.2.1 identified the "independent" counterparty from which the Steinhoff Group had supposedly received income. The PwC Report details how the fictitious and/or irregular income recorded in Table 1 was initially accounted for among the Steinhoff entities from financial years FY2009 to FY2017. The entries for 2017 were reversed out in December 2017 but were included in the Group's reporting prior to December 2017.

5 Financial Impact of Key Findings

The full financial impact of the findings in the PwC Report is still being determined by the Steinhoff Group. The financial effect will be reflected to the extent possible in the restated closing balances for FY 2015 which forms part of the restated FY 2016 accounts as well as the, to be published, FY 2017 and FY 2018 accounts. The financial statement approval process by the Boards will take the PwC findings into consideration.

The Management Board consider that the most meaningful disclosure in the financial restatements of the various relevant elements of the investigation will be categorised as follows:

- (a) Intangible asset transactions;
- (b) Accounting for group or related entities;
- (c) Contributions and 'cash equivalents';
- (d) Property transactions; and
- (e) Share transactions and consequential effects of accounting irregularities.

The Group is in the process of finalising the impact on the financial statements of the findings in the PwC Report and any consequential effects of the accounting irregularities on the Steinhoff Group's financial results. The share transactions and consequential effects include goodwill and brand impairments as a result of lower profitability, employee share-based payment scheme reversals and share based payment expenses relating to shares issued to purported third parties and funded with non-recourse loans.

If the Group, having considered the findings in the PwC Report, including any consequential impacts, believes that the restatements to the total equity position of the Group as reflected in the unaudited half year results published on 29 June 2018 are materially out of line, the Group will inform the market as soon as it becomes aware of such material difference.

Despite the considerable work done by PwC as well as Steinhoff employees in the course of the investigation, there is still a degree of uncertainty relating to the nature of relationships with various counterparties and their ultimate beneficiaries, and therefore the appropriate reporting of financial transactions. The Group financial statements to be published will also seek to clearly identify the areas where management's judgment has been exercised.

6 Remedial Measures

In light of the emerging facts from the investigation work undertaken by Steinhoff and PwC, the Group is documenting and developing a remediation plan under the auspices of the Supervisory Board. A number of remediation measures have already been put in place, and others will follow in due course. These steps are additional to steps that will be taken to join individuals in proceedings or to initiate recovery proceedings.

An initial project plan has been produced and a newly created position of Chief Compliance and Risk Officer will be filled shortly. The Chief Compliance and Risk Officer will report monthly to the Boards, with a dual reporting line to the CEO and Audit and Risk Committee.

The remediation plan focuses on:

- Governance: the continued change and improvement to all aspects of governance and controls throughout the Steinhoff Group supported by a clear plan and support for the required further changes;
- Remediation of the accounting irregularities, non-compliance with laws and regulations and misappropriations: the assessment of the investigation, interpretation of the findings and the next steps in relation to those findings and any further investigations that may be required including an assessment and implementation of measures to recover losses incurred by the Group; and
- Analysis and assessment of the investigation: to ensure, among other things, that all material aspects have been identified and evaluated including those allegations that have been raised by the auditors and other sources. This will

inform the identification of matters to be dealt within a Phase 2 scope of the investigation.

The remediation plan is in the process of being finalised (and will be continuously reviewed and updated as the Group progresses) and advanced versions have been reviewed and commented on by the Management Board and the Supervisory Board.

In addition, following the key findings in the PwC Report, the Boards' have resolved to pursue claims against certain individuals that appear responsible for the unlawful conduct identified. Those claims will be multifaceted and will be pursued in the various jurisdictions where the unlawful conduct has taken place. There are pre-requisites in certain jurisdictions which require that the individuals be given an opportunity to address the allegations made against them prior to the institution of proceedings against them. This is in process.

If required and immediately following expiry of any necessary process, proceedings will be instituted against the individuals and orders will be sought that, among other things, in the event that any allegations against the Steinhoff Group by third party claimants are sustained, the individuals reimburse or pay a contribution to the Steinhoff Group in an amount equal to the amount which the Steinhoff Group is ordered to pay the third party claimants in any such proceedings or in any further proceedings. In addition, the Group intends to seek recovery of the bonuses paid to certain individuals.

The Amsterdam Court has recently granted Dutch leave against Mr Markus Jooste, the Group's former CEO, at the Group's request.

7 Next Steps

The Boards continue to consider the contents of the PwC Report. Actions now being progressed include the following:

- Consideration of the findings in the PwC Report to ensure that they are treated appropriately in the preparation of the Group's financial statements for the 2017 and 2018 financial years.
- Pursuit of recovery of losses incurred and damages suffered by the Group.
- Full assistance and co-operation with any criminal investigations against those who perpetrated the unlawful actions and with other regulatory authorities.
- Finalisation and implementation of the remediation plan.
- Consideration of the Group's options to address the various litigation action initiated against the Group.
- Further detailed review of the findings of the PwC Report and finalisation of the scope of work for Phase 2 of the investigation.

Updates on these actions will be provided when appropriate. These steps are in addition to the continued focus on the Group's stability, liquidity and support for the operating companies.

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"JE4"

COMBINED

SUMMONS

CASE NO:

4669/19



IN THE HIGH COURT OF SOUTH AFRICA
WESTERN CAPE DIVISION, CAPE TOWN

In the matter between:

TREVO CAPITAL LTD

Plaintiff

and

STEINHOFF INTERNATIONAL HOLDINGS (PTY) LIMITED

Defendant

(Registration Number: 1998/003951/07)

To the sheriff or his deputy:

INFORM

STEINHOFF INTERNATIONAL HOLDINGS (PROPRIETARY) LIMITED, (formerly "Steinhoff International Holdings Ltd"), a company duly incorporated in accordance with the laws of the Republic of South Africa, bearing registration number: 1998/003951/07 and having its registered address

A handwritten signature in black ink, appearing to be 'J. M.' or similar, located at the bottom right of the page.

at. Block D De Wagenweg Office Park, Stellantia Road, Stellenbosch, Western Cape, 7600.

(hereinafter called the Defendant)

THAT

TREVO CAPITAL LIMITED, a company with limited liability incorporated in the Republic of Mauritius, registration number: 091521C1/GBL having its registered address and principal place of business at Rogers House, 5 President John Kennedy Street, Port Louis, Mauritius.

(hereinafter called the Plaintiff),

hereby institutes action against the Defendant in which action the Plaintiff claims the relief and on the grounds set out in the particulars annexed hereto.

INFORM the Defendant further that if the Defendant disputes the claim and wishes to defend the action, the Defendant shall –

- (i) within TEN (10) days of service upon the Defendant of this Summons, file with the Registrar of this Court at Keerom Street, Cape Town, Notice of Defendant's intention to defend and serve a copy thereof on the Attorneys of the Plaintiff, which notice shall give an address (not being a post office or



poste restante) referred to in rule 19(3) for the service upon the Defendant of all notices and documents in this action.

- (ii) Thereafter and within twenty days after filing and serving notice of intention to defend as aforesaid, file with the Registrar and serve upon the Plaintiff a Plea, Exception, Notice to strike out, with or without a Counter-claim.

INFORM the Defendant further that if the Defendant fails to file and serve notice as aforesaid, Judgment as claimed may be given against the Defendant without further notice to the Defendant or having filed and served such notice, the Defendant fails to plead, except, make application to strike out or counter-claim, Judgment may be given against the Defendant.

AND immediately thereafter serve on the Defendant a copy of this summons and return the same to the Registrar with whatsoever you have done thereupon.

DATED at CAPE TOWN this 20th day of MARCH 2019.


A. P. Reddy
OFFICE OF THE CLERK OF THE COURT
138-710
CAPE TOWN
CAPE HIGH COURT



BOWMAN GILFILLAN

Per:



Plaintiff's Attorneys

22 Bree Street

CAPE TOWN

REF: D de Klerk/6186596

Tel: 021 480 7934

Fax: 021 480 3280

Email: deon.deklerk@bowmanslaw.com



IN THE HIGH COURT OF SOUTH AFRICA
(WESTERN CAPE DIVISION, CAPE TOWN)

Case No. 4669/19

In the matter between:

TREVO CAPITAL LTD

Plaintiff

and

STEINHOFF INTERNATIONAL HOLDINGS (PTY) LTD

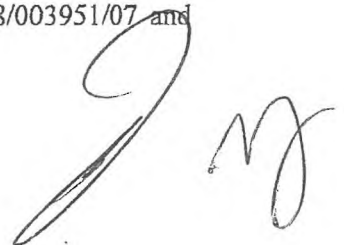
Defendant

(Registration Number: 1998/003951/07)

PARTICULARS OF CLAIM

THE PARTIES

1. The plaintiff is **Trevo Capital Ltd**, a company with limited liability incorporated in the Republic of Mauritius, registration number: 091521C1/GBL having its registered address and principal place of business at Rogers House, 5 President John Kennedy Street, Port Louis, Mauritius.
2. The defendant is **Steinhoff International Holdings (Pty) Ltd**, (formerly "Steinhoff International Holdings Ltd"), a company duly incorporated in accordance with the laws of the Republic of South Africa, bearing registration number: 1998/003951/07 and



having its registered address at. Block D, De Wagenweg Office Park, Stellantia Road, Stellenbosch, Western Cape, 7600.

THE STEINHOFF SHARE PURCHASE TRANSACTION

3. On or about 29 October 2015, Treemo (Pty) Ltd ("Treemo") and the plaintiff concluded a forward sale confirmation ("the forward sale") under an International Swaps and Derivatives Association ("ISDA") master agreement entered into between the same parties on or about 7 October 2015. The forward sale was amended on 27 November 2015. A copy of the ISDA master agreement is attached hereto as "A", a copy of the forward sale is attached hereto as "B", and a copy of the amendment is attached hereto as "C".

4. In terms of the forward sale:-
 - 4.1. Treemo sold 56,578,213 shares in the first defendant ("Steinhoff shares") to the plaintiff at a forward price of R 81,59 per Steinhoff share, with delivery and payment to take place on future dates determined by the plaintiff;

 - 4.2. The plaintiff was entitled to elect to discharge payment of any portion of the forward price by way of issuing and delivering to Treemo non-voting, redeemable preference shares denominated in Rand with a 7% yield issued by the plaintiff and listed on the Namibian Stock Exchange ("the Trevo prefs");
and



- 4.3. In the event that, prior to the forward date (being the date the plaintiff would pay or discharge the obligation to pay some or all of the forward price), the Steinhoff shares were exchanged for "exchange securities", then for the purposes of the forward sale the number of Steinhoff shares to be delivered would be the number of exchange securities received by Treemo in exchange for the applicable Steinhoff shares.
5. During December 2015 and prior to delivery of its Steinhoff shares to the plaintiff in terms of the forward sale, Treemo, as a shareholder of the defendant, became entitled to, and did, exchange its Steinhoff shares for an equal number of shares in Steinhoff International Holdings NV ("Steinhoff NV") ("Steinhoff NV shares") in terms of a scheme of arrangement approved by the defendant's shareholders and implemented with effect from 7 December 2015 ("the scheme of arrangement").
6. Relevant steps in terms of the scheme of arrangement were as follows:-
- 6.1. Steinhoff NV acquired all of the issued ordinary shares in the defendant from the holders thereof, in exchange for an equivalent number of ordinary shares in Steinhoff NV that were issued to the former holders of ordinary shares in the defendant (including Treemo);
- 6.2. The listing of the defendant on the Johannesburg Stock Exchange ("the JSE") was terminated;

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- 6.3. The ordinary shares in Steinhoff NV were listed on the Frankfurt Stock Exchange as a primary listing and on the JSE as a secondary listing; and
- 6.4. The defendant became a wholly owned subsidiary of Steinhoff NV.
7. In compliance with their respective obligations under the forward sale:
- 7.1. The plaintiff discharged the forward price by paying Treemo an amount of R 510,001,669 in cash and the balance of R 4,106,214,736 by way of the Trevo prefs; and
- 7.2. Treemo delivered the 56,578,213 Steinhoff NV shares to the plaintiff.

THE VALUATION OF THE STEINHOFF SHARES

8. The plaintiff agreed to pay the purchase price of R 81.59 per Steinhoff share in terms of the forward sale because it, and the independent professionals engaged by it to value the Steinhoff shares at the time of the forward sale ("the independent professionals"), believed this to represent the true market value of the Steinhoff shares at the time the forward sale was concluded.
9. In valuing the Steinhoff shares, the plaintiff and the independent professionals placed reliance on the defendant's 2015 annual financial statements, which were published on 8 September 2015.



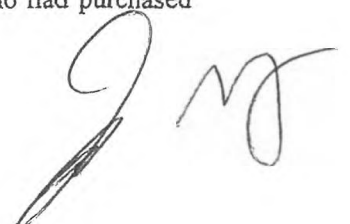
10. The plaintiff and Treemo agreed the purchase price on the basis of the value conclusions reached by the independent professionals, in reliance upon the aforesaid financial statements.

NEGLIGENT / INTENTIONAL MISSTATEMENT

11. At all material times prior to the implementation of the scheme of arrangement, the defendant owed a legal duty to those members of the public interested in purchasing Steinhoff shares, including the plaintiff, to ensure that its annual financial statements contained true, accurate and reliable statements and did not contain false or misleading statements with regard to the defendant's financial position (including that of its subsidiaries).
12. The said duty arose *inter alia* by virtue of the following facts and circumstances, all of which were known to the defendant at all relevant times:
 - 12.1. The defendant was a public company listed on the JSE;
 - 12.2. The defendant was subject to the provisions of the Companies Act 71 of 2008 ("the Companies Act") applicable to public companies, including the provisions set out in paragraph 17 below;
 - 12.3. There was an active market in Steinhoff shares, both on the market and by way of private transactions;

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- 12.4. Information in relation to the defendant's financial position, other than that contained in its annual financial statements and financial information published by it, was within its exclusive possession and not publicly available;
- 12.5. Members of the public interested in purchasing and/or selling Steinhoff shares (including the plaintiff) relied upon the statements and information contained in the defendant's annual financial statements in determining the value of the Steinhoff shares and/or in deciding whether to purchase or sell such shares and at what price, and to determine the trading price of its shares;
- 12.6. Should its annual financial statements contain false or materially misleading statements which overstated its assets and/or net income or that of its subsidiaries, and/or understated its liabilities or that of its subsidiaries, this would:-
- 12.6.1. result in an artificial inflation of the trading price of its shares and cause members of the public interested in purchasing its shares (including the plaintiff) to purchase its shares and/or to do so at a purchase price higher than what they would otherwise pay for the shares; and
- 12.6.2. have a materially adverse impact on the trading price and value of its shares, should the true financial position later become known, which would occasion loss to its shareholders who had purchased

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the shares on the basis of publicly available information provided by the defendant.

13. In breach of its legal duty and intentionally, alternatively negligently, the defendant failed to ensure that its published 2015 annual financial statements contained true, accurate and reliable statements with regard to the defendant's financial position, and published its 2015 annual financial statements which materially overstated the first defendant's or its subsidiaries' assets and/or net income, and/or materially understated its liabilities or that of its subsidiaries ("the false statements").
14. But for the false statements, and had the 2015 annual financial statements reflected the true financial position of the defendant (including its subsidiaries), the plaintiff would not have purchased the Steinhoff shares in terms of the forward sale.
15. The defendant's conduct has caused the plaintiff loss, as pleaded further below.
16. In the circumstances, the defendant is liable to the plaintiff for the loss suffered by it.

STATUTORY LIABILITY UNDER THE COMPANIES ACT

In the alternative to what is pleaded in paragraphs 11 to 16 above, and in any event, the plaintiff pleads as follows:

17. At all material times hereto, the defendant was subject to the following provisions of the Companies Act (collectively 'the statutory provisions'):-



- 17.1. Section 22(1) which provides that: "*The company must not carry on its business recklessly, with gross negligence, with intent to defraud any person or for any fraudulent purpose*";
- 17.2. Section 28(1) which provides that: "*A company must keep accurate and complete accounting records*";
- 17.3. Section 28(3)(a)(i)(aa) which provides that: "*It is an offence for a company with an intention to deceive or mislead any person to fail to keep accurate or complete accounting records*";
- 17.4. Section 29(1)(b) which provides that: "*If a company provides any financial statements, including any annual financial statements, to any person for any reason, those statements must ... (b) present fairly the state of affairs and business of the company, and explain the transactions and financial position of the business of the company*"; and
- 17.5. Section 29(2)(a) and (b) which provides that: "*Any financial statements prepared by a company, including any annual financial statements of a company as contemplated in section 30, must not be (a) false or misleading in any material respect; or (b) incomplete in any material particular, subject only to sub-section (3)*" [Sub-section 3 concerns summaries of financial statements and is not applicable].

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18. The defendant's conduct in compiling and publishing its 2015 annual financial statements containing the false statements in the circumstances set out above is in contravention of one or more of the statutory provisions in that the defendant thereby:-
- 18.1. carried on its business recklessly and/or with gross negligence and/or with intent to defraud *inter alia* members of the public interested in purchasing Steinhoff shares, including the plaintiff, and/or for a fraudulent purpose; and/or
 - 18.2. failed to keep accurate and complete accounting records; and/or
 - 18.3. failed to keep accurate and complete accounting records, with the intention to deceive or mislead its shareholders, investors and members of the public interested in purchasing its shares, including the plaintiff; and/or
 - 18.4. misrepresented the state of affairs and business of the company; and/or
 - 18.5. failed properly to explain the transactions and financial position of the business of the defendant; and/or
 - 18.6. prepared financial statements that were false and misleading in a material respect or respects; and/or
 - 18.7. failed to provide complete material information in its annual financial statements.

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19. The defendant's conduct has caused the plaintiff loss, as pleaded further below.
20. In the circumstances, the defendant is liable to the plaintiff in terms of section 20(6)(a) and/or section 218(2) of the Companies Act for any damage and or loss suffered by the plaintiff as a result of the defendant's contraventions of the above provisions of the Companies Act.

THE PLAINTIFF'S LOSS

21. On or about 5 December 2017 Steinhoff NV publicly admitted to accounting irregularities relating to the financial statements of the defendant, and on or about 2 January 2018, Steinhoff NV made a public announcement advising that the 2016 and 2015 annual financial statements of the defendant could not be relied upon.
22. These announcements caused a massive decline in the share price of Steinhoff NV shares, which currently have no more than nominal value.
23. In any event, at the time of the forward sale, the Steinhoff shares in truth had no more than nominal value.
24. The plaintiff has accordingly suffered a loss, being the amount it paid for the Steinhoff NV shares in terms of the forward sale, less any amounts received from the sale of its Steinhoff NV shares in mitigation of its loss.

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25. The plaintiff's loss was occasioned as a result of the first defendant's intentional, alternatively negligent misstatements, further alternatively contraventions of the statutory provisions set out above.

26. The amount of the plaintiff's loss, for which the defendant is liable, is the sum of R 2,157,791,106, calculated as follows:-

Calculation of the claim				
Purchase price in terms of the forward sale	81.59			
Number of Steinhoff NV shares held on 5 Dec 2017	28 671 808			
Original purchase price of these shares	2 339 332 815	a		
Mitigation of losses				
			From 1st	From 2nd
Date of sale	Number of shares	EUR	RZ	ZAR
11 Jan 18	7 322 480	3 466 242	14.99	51 970 474
12 Jan 18	6 313 487	2 625 710	15.07	39 575 304
15 Jan 18	3 662 667	1 422 603	15.14	21 541 281
16 Jan 18	2 050 674	833 445	15.03	12 524 593
16 Jan 18	4 681 250	1 834 114	15.03	27 562 134
17 Jan 18	4 681 250	1 890 078	15.01	28 367 921
	28 671 808	12 072 192		181 541 709
				b
Loss				2 157 791 106
				a-b

27. In and during November 2017, the plaintiff entered into a derivative transaction with a third party international bank ('the bank') in terms of which the plaintiff would be entitled to receive a payment from the bank, should the Steinhoff NV share price decline below certain parameters ('the hedge').

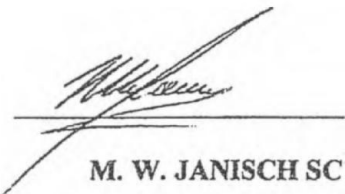
28. In the event, such decline eventuated and the plaintiff received a payment from the bank of €16,804,000 (or R 251,325,017, at the applicable exchange rate of R 14,96 per Euro) ('the hedge payment') in terms of the hedge.

29. The hedge payment is however a collateral benefit that does not fall to be taken into account in the calculation of the plaintiff's damages as set out above.

WHEREFORE plaintiff prays for judgment against the defendant as follows:-

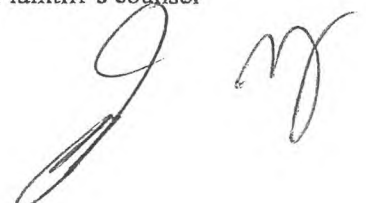
- a. Payment in the amount of R 2 157 791 106.
- b. Interest thereon at the prescribed rate *a tempora morae* to date of payment.
- c. Costs of suit, including the costs of two counsel.
- d. Further and/or alternative relief.

DATED at CAPE TOWN this the 20th day of MARCH 2019.


M. W. JANISCH SC


B. J. VAUGHAN


G. SAMKANGE
Plaintiff's counsel



BOWMANS INC

Per: 

Deon de Klerk

Plaintiff's attorneys

22 Bree Street

Cape Town

Ref: D de Klerk/



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ISDA[®]

International Swaps and Derivatives Association, Inc.

2002 MASTER AGREEMENT

Dated as of 07 October 2015

Treco (Proprietary) Limited
Registration Number 2014/023549/07

and

Trevo Capital Limited
Registration Number 21521 C1/GBL

have entered and/or anticipate entering into one or more transactions (each a "Transaction") that are or will be governed by this 2002 Master Agreement, which includes the schedule (the "Schedule"), and the documents and other confirming evidence (each a "Confirmation") exchanged between the parties or otherwise effective for the purpose of confirming or evidencing those Transactions. This 2002 Master Agreement and the Schedule are together referred to as this "Master Agreement".

Accordingly, the parties agree as follows:—

1. Interpretation

(a) *Definitions.* The terms defined in Section 14 and elsewhere in this Master Agreement will have the meanings therein specified for the purpose of this Master Agreement.

(b) *Inconsistency.* In the event of any inconsistency between the provisions of the Schedule and the other provisions of this Master Agreement, the Schedule will prevail. In the event of any inconsistency between the provisions of any Confirmation and this Master Agreement, such Confirmation will prevail for the purpose of the relevant Transaction.

(c) *Single Agreement.* All Transactions we entered into in reliance on the fact that this Master Agreement and all Confirmations form a single agreement between the parties (collectively referred to as this "Agreement"), and the parties would not otherwise enter into any Transactions.

2. Obligations

(a) General Conditions.

(i) Each party will make each payment or delivery specified in each Confirmation to be made by it, subject to the other provisions of this Agreement.

(ii) Payments under this Agreement will be made on the due date for value on that date in the place of the account specified in the relevant Confirmation or otherwise pursuant to this Agreement, in freely transferable funds and in the manner customary for payments in the required currency. Where settlement is by delivery (that is, other than by payment), such delivery will be made for receipt on the due date in the manner customary for the relevant obligation unless otherwise specified in the relevant Confirmation or elsewhere in this Agreement.

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(iii) Each obligation of each party under Section 2(a)(i) is subject to (1) the condition precedent that no Event of Default or Potential Event of Default with respect to the other party has occurred and is continuing, (2) the condition precedent that no Early Termination Date in respect of the relevant Transaction has occurred or been effectively designated and (3) each other condition specified in this Agreement to be a condition precedent for the purpose of this Section 2(a)(iii).

(b) *Change of Account.* Either party may change its account for receiving a payment or delivery by giving notice to the other party at least five Local Business Days prior to the Scheduled Settlement Date for the payment or delivery to which such change applies unless such other party gives timely notice of a reasonable objection to such change.

(c) *Netting of Payments.* If on any date amounts would otherwise be payable:—

- (i) in the same currency; and
- (ii) in respect of the same Transaction,

by each party to the other, then, on such date, each party's obligation to make payment of any such amount will be automatically satisfied and discharged and, if the aggregate amount that would otherwise have been payable by one party exceeds the aggregate amount that would otherwise have been payable by the other party, replaced by an obligation upon the party by which the larger aggregate amount would have been payable to pay to the other party the excess of the larger aggregate amount over the smaller aggregate amount.

The parties may elect in respect of two or more Transactions that a net amount and payment obligation will be determined in respect of all amounts payable on the same date in the same currency in respect of those Transactions, regardless of whether such amounts are payable in respect of the same Transaction. The election may be made in the Schedule or any Confirmation by specifying that "Multiple Transaction Payment Netting" applies to the Transactions identified as being subject to the election (in which case clause (ii) above will not apply to such Transactions). If Multiple Transaction Payment Netting is applicable to Transactions, it will apply to those Transactions with effect from the starting date specified in the Schedule or such Confirmation, or, if a starting date is not specified in the Schedule or such Confirmation, the starting date otherwise agreed by the parties in writing. This election may be made separately for different groups of Transactions and will apply separately to each pairing of Offices through which the parties make and receive payments or deliveries.

(d) *Deduction or Withholding for Tax.*

(i) *Gross-Up.* All payments under this Agreement will be made without any deduction or withholding for or on account of any Tax unless such deduction or withholding is required by any applicable law, as modified by the practice of any relevant governmental revenue authority, then in effect. If a party is so required to deduct or withhold, then that party ("X") will:—

- (1) promptly notify the other party ("Y") of such requirement;
- (2) pay to the relevant authorities the full amount required to be deducted or withheld (including the full amount required to be deducted or withheld from any additional amount paid by X to Y under this Section 2(d)) promptly upon the earlier of determining that such deduction or withholding is required or receiving notice that such amount has been assessed against Y;
- (3) promptly forward to Y an official receipt (or a certified copy), or other documentation reasonably acceptable to Y, evidencing such payment to such authorities; and

(4) if such Tax is an Indemnifiable Tax, pay to Y, in addition to the payment to which Y is otherwise entitled under this Agreement, such additional amount as is necessary to ensure that the net amount actually received by Y (free and clear of Indemnifiable Taxes, whether assessed against X or Y) will equal the full amount Y would have received had no such deduction or withholding been required. However, X will not be required to pay any additional amount to Y to the extent that it would not be required to be paid but for:—

(A) the failure by Y to comply with or perform any agreement contained in Section 4(a)(i), 4(a)(iii) or 4(d); or

(B) the failure of a representation made by Y pursuant to Section 3(f) to be accurate and true unless such failure would not have occurred but for (I) any action taken by a taxing authority, or brought in a court of competent jurisdiction, after a Transaction is entered into (regardless of whether such action is taken or brought with respect to a party to this Agreement) or (II) a Change in Tax Law.

(ii) *Liability.* If:—

(1) X is required by any applicable law, as modified by the practice of any relevant governmental revenue authority, to make any deduction or withholding in respect of which X would not be required to pay an additional amount to Y under Section 2(d)(i)(4);

(2) X does not so deduct or withhold; and

(3) a liability resulting from such Tax is assessed directly against X,

then, except to the extent Y has satisfied or then satisfies the liability resulting from such Tax, Y will promptly pay to X the amount of such liability (including any related liability for interest, but including any related liability for penalties only if Y has failed to comply with or perform any agreement contained in Section 4(a)(i), 4(a)(iii) or 4(d)).

3. *Representations*

Each party makes the representations contained in Sections 3(a), 3(b), 3(c), 3(d), 3(e) and 3(f) and, if specified in the Schedule as applying, 3(g) to the other party (which representations will be deemed to be repeated by each party on each date on which a Transaction is entered into and, in the case of the representations in Section 3(f), at all times until the termination of this Agreement). If any "Additional Representation" is specified in the Schedule or any Confirmation as applying, the party or parties specified for such Additional Representation will make and, if applicable, be deemed to repeat such Additional Representation at the time or times specified for such Additional Representation.

(a) *Basic Representations.*

(i) *Status.* It is duly organised and validly existing under the laws of the jurisdiction of its organisation or incorporation and, if relevant under such laws, in good standing;

(ii) *Powers.* It has the power to execute this Agreement and any other documentation relating to this Agreement to which it is a party, to deliver this Agreement and any other documentation relating to this Agreement that it is required by this Agreement to deliver and to perform its obligations under this Agreement and any obligations it has under any Credit Support Document to which it is a party and has taken all necessary action to authorise such execution, delivery and performance;

(iii) *No Violation or Conflict.* Such execution, delivery and performance do not violate or conflict with any law applicable to it, any provision of its constitutional documents, any order or judgment of any court or other agency of government applicable to it or any of its assets or any contractual restriction binding on or affecting it or any of its assets;

(iv) *Consents.* All governmental and other consents that are required to have been obtained by it with respect to this Agreement or any Credit Support Document to which it is a party have been obtained and are in full force and effect and all conditions of any such consents have been complied with; and

(v) *Obligations Binding.* Its obligations under this Agreement and any Credit Support Document to which it is a party constitute its legal, valid and binding obligations, enforceable in accordance with their respective terms (subject to applicable bankruptcy, reorganisation, insolvency, moratorium or similar laws affecting creditors' rights generally and subject, as to enforceability, to equitable principles of general application (regardless of whether enforcement is sought in a proceeding in equity or at law)).

(b) *Absence of Certain Events.* No Event of Default or Potential Event of Default or, to its knowledge, Termination Event with respect to it has occurred and is continuing and no such event or circumstance would occur as a result of its entering into or performing its obligations under this Agreement or any Credit Support Document to which it is a party.

(c) *Absence of Litigation.* There is not pending or, to its knowledge, threatened against it, any of its Credit Support Providers or any of its applicable Specified Entities any action, suit or proceeding at law or in equity or before any court, tribunal, governmental body, agency or official or any arbitrator that is likely to affect the legality, validity or enforceability against it of this Agreement or any Credit Support Document to which it is a party or its ability to perform its obligations under this Agreement or such Credit Support Document.

(d) *Accuracy of Specified Information.* All applicable information that is furnished in writing by or on behalf of it to the other party and is identified for the purpose of this Section 3(d) in the Schedule is, as of the date of the information, true, accurate and complete in every material respect.

(e) *Payer Tax Representation.* Each representation specified in the Schedule as being made by it for the purpose of this Section 3(e) is accurate and true.

(f) *Payee Tax Representations.* Each representation specified in the Schedule as being made by it for the purpose of this Section 3(f) is accurate and true.

(g) *No Agency.* It is entering into this Agreement, including each Transaction, as principal and not as agent of any person or entity.

4. Agreements

Each party agrees with the other that, so long as either party has or may have any obligation under this Agreement or under any Credit Support Document to which it is a party:—

(a) *Furnish Specified Information.* It will deliver to the other party or, in certain cases under clause (iii) below, to such government or taxing authority as the other party reasonably directs:—

(i) any forms, documents or certificates relating to taxation specified in the Schedule or any Confirmation;

(ii) any other documents specified in the Schedule or any Confirmation; and

(iii) upon reasonable demand by such other party, any form or document that may be required or reasonably requested in writing in order to allow such other party or its Credit Support Provider to make a payment under this Agreement or any applicable Credit Support Document without any deduction or withholding for or on account of any Tax or with such deduction or withholding at a reduced rate (so long as the completion, execution or submission of such form or document would not materially prejudice the legal or commercial position of the party in receipt of such demand), with any such form or document to be accurate and completed in a manner reasonably satisfactory to such other party and to be executed and to be delivered with any reasonably required certification,

in each case by the date specified in the Schedule or such Confirmation or, if none is specified, as soon as reasonably practicable.

(b) *Maintain Authorisations.* It will use all reasonable efforts to maintain in full force and effect all consents of any governmental or other authority that are required to be obtained by it with respect to this Agreement or any Credit Support Document to which it is a party and will use all reasonable efforts to obtain any that may become necessary in the future.

(c) *Comply With Laws.* It will comply in all material respects with all applicable laws and orders to which it may be subject if failure so to comply would materially impair its ability to perform its obligations under this Agreement or any Credit Support Document to which it is a party.

(d) *Tax Agreement.* It will give notice of any failure of a representation made by it under Section 3(f) to be accurate and true promptly upon learning of such failure.

(e) *Payment of Stamp Tax.* Subject to Section 11, it will pay any Stamp Tax levied or imposed upon it or in respect of its execution or performance of this Agreement by a jurisdiction in which it is incorporated, organised, managed and controlled or considered to have its seat, or where an Office through which it is acting for the purpose of this Agreement is located ("Stamp Tax Jurisdiction"), and will indemnify the other party against any Stamp Tax levied or imposed upon the other party or in respect of the other party's execution or performance of this Agreement by any such Stamp Tax Jurisdiction which is not also a Stamp Tax Jurisdiction with respect to the other party.

5. Events of Default and Termination Events

(a) *Events of Default.* The occurrence at any time with respect to a party or, if applicable, any Credit Support Provider of such party or any Specified Entity of such party of any of the following events constitutes (subject to Sections 5(c) and 6(e)(iv)) an event of default (an "Event of Default") with respect to such party:—

(i) *Failure to Pay or Deliver.* Failure by the party to make, when due, any payment under this Agreement or delivery under Section 2(a)(i) or 9(h)(i)(2) or (4) required to be made by it if such failure is not remedied on or before the first Local Business Day in the case of any such payment or the first Local Delivery Day in the case of any such delivery after, in each case, notice of such failure is given to the party;

(ii) *Breach of Agreement; Repudiation of Agreement.*

(1) Failure by the party to comply with or perform any agreement or obligation (other than an obligation to make any payment under this Agreement or delivery under Section 2(a)(i) or 9(h)(i)(2) or (4) or to give notice of a Termination Event or any agreement or obligation under Section 4(a)(i), 4(a)(iii) or 4(d)) to be complied with or performed by the party in accordance with this Agreement if such failure is not remedied within 30 days after notice of such failure is given to the party; or

(2) the party disaffirms, disclaims, repudiates or rejects, in whole or in part, or challenges the validity of, this Master Agreement, any Confirmation executed and delivered by that party or any



Transaction evidenced by such a Confirmation (or such action is taken by any person or entity appointed or empowered to operate it or act on its behalf);

(iii) *Credit Support Default.*

(1) Failure by the party or any Credit Support Provider of such party to comply with or perform any agreement or obligation to be complied with or performed by it in accordance with any Credit Support Document if such failure is continuing after any applicable grace period has elapsed;

(2) the expiration or termination of such Credit Support Document or the failing or ceasing of such Credit Support Document, or any security interest granted by such party or such Credit Support Provider to the other party pursuant to any such Credit Support Document, to be in full force and effect for the purpose of this Agreement (in each case other than in accordance with its terms) prior to the satisfaction of all obligations of such party under each Transaction to which such Credit Support Document relates without the written consent of the other party; or

(3) the party or such Credit Support Provider disaffirms, disclaims, repudiates or rejects, in whole or in part, or challenges the validity of, such Credit Support Document (or such action is taken by any person or entity appointed or empowered to operate it or act on its behalf);

(iv) *Misrepresentation.* A representation (other than a representation under Section 3(e) or 3(f)) made or repeated or deemed to have been made or repeated by the party or any Credit Support Provider of such party in this Agreement or any Credit Support Document proves to have been incorrect or misleading in any material respect when made or repeated or deemed to have been made or repeated;

(v) *Default Under Specified Transaction.* The party, any Credit Support Provider of such party or any applicable Specified Entity of such party:—

(1) defaults (other than by failing to make a delivery) under a Specified Transaction or any credit support arrangement relating to a Specified Transaction and, after giving effect to any applicable notice requirement or grace period, such default results in a liquidation of, an acceleration of obligations under, or an early termination of, that Specified Transaction;

(2) defaults, after giving effect to any applicable notice requirement or grace period, in making any payment due on the last payment or exchange date of, or any payment on early termination of, a Specified Transaction (or, if there is no applicable notice requirement or grace period, such default continues for at least one Local Business Day);

(3) defaults in making any delivery due under (including any delivery due on the last delivery or exchange date of) a Specified Transaction or any credit support arrangement relating to a Specified Transaction and, after giving effect to any applicable notice requirement or grace period, such default results in a liquidation of, an acceleration of obligations under, or an early termination of, all transactions outstanding under the documentation applicable to that Specified Transaction; or

(4) disaffirms, disclaims, repudiates or rejects, in whole or in part, or challenges the validity of, a Specified Transaction or any credit support arrangement relating to a Specified Transaction that is, in either case, confirmed or evidenced by a document or other confirming evidence executed and delivered by that party, Credit Support Provider or Specified Entity (or such action is taken by any person or entity appointed or empowered to operate it or act on its behalf);

(vi) *Cross-Default.* If "Cross-Default" is specified in the Schedule as applying to the party, the occurrence or existence of:—

(1) a default, event of default or other similar condition or event (however described) in respect of such party, any Credit Support Provider of such party or any applicable Specified Entity of such party under one or more agreements or instruments relating to Specified Indebtedness of any of them (individually or collectively) where the aggregate principal amount of such agreements or instruments, either alone or together with the amount, if any, referred to in clause (2) below, is not less than the applicable Threshold Amount (as specified in the Schedule) which has resulted in such Specified Indebtedness becoming, or becoming capable at such time of being declared, due and payable under such agreements or instruments before it would otherwise have been due and payable; or

(2) a default by such party, such Credit Support Provider or such Specified Entity (individually or collectively) in making one or more payments under such agreements or instruments on the due date for payment (after giving effect to any applicable notice requirement or grace period) in an aggregate amount, either alone or together with the amount, if any, referred to in clause (1) above, of not less than the applicable Threshold Amount;

(vii) *Bankruptcy.* The party, any Credit Support Provider of such party or any applicable Specified Entity of such party:—

(1) is dissolved (other than pursuant to a consolidation, amalgamation or merger); (2) becomes insolvent or is unable to pay its debts or fails or admits in writing its inability generally to pay its debts as they become due; (3) makes a general assignment, arrangement or composition with or for the benefit of its creditors; (4)(A) institutes or has instituted against it, by a regulator, supervisor or any similar official with primary insolvency, rehabilitative or regulatory jurisdiction over it in the jurisdiction of its incorporation or organisation or the jurisdiction of its head or home office, a proceeding seeking a judgment of insolvency or bankruptcy or any other relief under any bankruptcy or insolvency law or other similar law affecting creditors' rights, or a petition is presented for its winding-up or liquidation by it or such regulator, supervisor or similar official, or (B) has instituted against it a proceeding seeking a judgment of insolvency or bankruptcy or any other relief under any bankruptcy or insolvency law or other similar law affecting creditors' rights, or a petition is presented for its winding-up or liquidation, and such proceeding or petition is instituted or presented by a person or entity not described in clause (A) above and either (1) results in a judgment of insolvency or bankruptcy or the entry of an order for relief or the making of an order for its winding-up or liquidation or (1) is not dismissed, discharged, stayed or restrained in each case within 15 days of the institution or presentation thereof; (5) has a resolution passed for its winding-up, official management or liquidation (other than pursuant to a consolidation, amalgamation or merger); (6) seeks or becomes subject to the appointment of an administrator, provisional liquidator, conservator, receiver, trustee, custodian or other similar official for it or for all or substantially all its assets; (7) has a secured party take possession of all or substantially all its assets or has a distress, execution, attachment, sequestration or other legal process levied, enforced or sued on or against all or substantially all its assets and such secured party maintains possession, or any such process is not dismissed, discharged, stayed or restrained, in each case within 15 days thereafter; (8) causes or is subject to any event with respect to it which, under the applicable laws of any jurisdiction, has an analogous effect to any of the events specified in clauses (1) to (7) above (inclusive); or (9) takes any action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any of the foregoing acts; or



(viii) *Merger Without Assumption.* The party or any Credit Support Provider of such party consolidates or amalgamates with, or merges with or into, or transfers all or substantially all its assets to, or reorganises, reincorporates or reconstitutes into or as, another entity and, at the time of such consolidation, amalgamation, merger, transfer, reorganisation, reincorporation or reconstitution:—

(1) the resulting, surviving or transferee entity fails to assume all the obligations of such party or such Credit Support Provider under this Agreement or any Credit Support Document to which it or its predecessor was a party; or

(2) the benefits of any Credit Support Document fail to extend (without the consent of the other party) to the performance by such resulting, surviving or transferee entity of its obligations under this Agreement.

(b) *Termination Events.* The occurrence at any time with respect to a party or, if applicable, any Credit Support Provider of such party or any Specified Entity of such party of any event specified below constitutes (subject to Section 5(c)) an Illegality if the event is specified in clause (i) below, a Force Majeure Event if the event is specified in clause (ii) below, a Tax Event if the event is specified in clause (iii) below, a Tax Event Upon Merger if the event is specified in clause (iv) below, and, if specified to be applicable, a Credit Event Upon Merger if the event is specified pursuant to clause (v) below or an Additional Termination Event if the event is specified pursuant to clause (vi) below:—

(i) *Illegality.* After giving effect to any applicable provision, disruption fallback or remedy specified in, or pursuant to, the relevant Confirmation or elsewhere in this Agreement, due to an event or circumstance (other than any action taken by a party or, if applicable, any Credit Support Provider of such party) occurring after a Transaction is entered into, it becomes unlawful under any applicable law (including without limitation the laws of any country in which payment, delivery or compliance is required by either party or any Credit Support Provider, as the case may be), on any day, or it would be unlawful if the relevant payment, delivery or compliance were required on that day (in each case, other than as a result of a breach by the party of Section 4(b)):—

(1) for the Office through which such party (which will be the Affected Party) makes and receives payments or deliveries with respect to such Transaction to perform any absolute or contingent obligation to make a payment or delivery in respect of such Transaction, to receive a payment or delivery in respect of such Transaction or to comply with any other material provision of this Agreement relating to such Transaction; or

(2) for such party or any Credit Support Provider of such party (which will be the Affected Party) to perform any absolute or contingent obligation to make a payment or delivery which such party or Credit Support Provider has under any Credit Support Document relating to such Transaction, to receive a payment or delivery under such Credit Support Document or to comply with any other material provision of such Credit Support Document;

(ii) *Force Majeure Event.* After giving effect to any applicable provision, disruption fallback or remedy specified in, or pursuant to, the relevant Confirmation or elsewhere in this Agreement, by reason of force majeure or act of state occurring after a Transaction is entered into, on any day:—

(1) the Office through which such party (which will be the Affected Party) makes and receives payments or deliveries with respect to such Transaction is prevented from performing any absolute or contingent obligation to make a payment or delivery in respect of such Transaction, from receiving a payment or delivery in respect of such Transaction or from complying with any other material provision of this Agreement relating to such Transaction (or would be so prevented if such payment, delivery or compliance were required on that day), or it becomes impossible or



impracticable for such Office so to perform, receive or comply (or it would be impossible or impracticable for such Office so to perform, receive or comply if such payment, delivery or compliance were required on that day); or

(2) such party or any Credit Support Provider of such party (which will be the Affected Party) is prevented from performing any absolute or contingent obligation to make a payment or delivery which such party or Credit Support Provider has under any Credit Support Document relating to such Transaction, from receiving a payment or delivery under such Credit Support Document or from complying with any other material provision of such Credit Support Document (or would be so prevented if such payment, delivery or compliance were required on that day), or it becomes impossible or impracticable for such party or Credit Support Provider so to perform, receive or comply (or it would be impossible or impracticable for such party or Credit Support Provider so to perform, receive or comply if such payment, delivery or compliance were required on that day).

so long as the force majeure or act of state is beyond the control of such Office, such party or such Credit Support Provider, as appropriate, and such Office, party or Credit Support Provider could not, after using all reasonable efforts (which will not require such party or Credit Support Provider to incur a loss, other than immaterial, incidental expenses), overcome such prevention, impossibility or impracticability;

(iii) *Tax Event.* Due to (1) any action taken by a taxing authority, or brought in a court of competent jurisdiction, after a Transaction is entered into (regardless of whether such action is taken or brought with respect to a party to this Agreement) or (2) a Change in Tax Law, the party (which will be the Affected Party) will, or there is a substantial likelihood that it will, on the next succeeding Scheduled Settlement Date (A) be required to pay to the other party an additional amount in respect of an Indemnifiable Tax under Section 2(d)(i)(4) (except in respect of interest under Section 9(h)) or (B) receive a payment from which an amount is required to be deducted or withheld for or on account of a Tax (except in respect of interest under Section 9(h)) and no additional amount is required to be paid in respect of such Tax under Section 2(d)(i)(4) (other than by reason of Section 2(d)(i)(4)(A) or (B));

(iv) *Tax Event Upon Merger.* The party (the "Burdened Party") on the next succeeding Scheduled Settlement Date will either (1) be required to pay an additional amount in respect of an Indemnifiable Tax under Section 2(d)(i)(4) (except in respect of interest under Section 9(h)) or (2) receive a payment from which an amount has been deducted or withheld for or on account of any Tax in respect of which the other party is not required to pay an additional amount (other than by reason of Section 2(d)(i)(4)(A) or (B)), in either case as a result of a party consolidating or amalgamating with, or merging with or into, or transferring all or substantially all its assets (or any substantial part of the assets comprising the business conducted by it as of the date of this Master Agreement) to, or reorganising, reincorporating or reconstituting into or as, another entity (which will be the Affected Party) where such action does not constitute a Merger Without Assumption;

(v) *Credit Event Upon Merger.* If "Credit Event Upon Merger" is specified in the Schedule as applying to the party, a Designated Event (as defined below) occurs with respect to such party, any Credit Support Provider of such party or any applicable Specified Entity of such party (in each case, "X") and such Designated Event does not constitute a Merger Without Assumption, and the creditworthiness of X or, if applicable, the successor, surviving or transferee entity of X, after taking into account any applicable Credit Support Document, is materially weaker immediately after the occurrence of such Designated Event than that of X immediately prior to the occurrence of such Designated Event (and, in any such event, such party or its successor, surviving or transferee entity, as appropriate, will be the Affected Party). A "Designated Event" with respect to X means that:—

(1) X consolidates or amalgamates with, or merges with or into, or transfers all or substantially all its assets (or any substantial part of the assets comprising the business conducted by X) as of the

date of this Master Agreement) to, or reorganises, reincorporates or reconstitutes into or as, another entity;

(2) any person, related group of persons or entity acquires directly or indirectly the beneficial ownership of (A) equity securities having the power to elect a majority of the board of directors (or its equivalent) of X or (B) any other ownership interest enabling it to exercise control of X; or

(3) X effects any substantial change in its capital structure by means of the issuance, incurrence or guarantee of debt or the issuance of (A) preferred stock or other securities convertible into or exchangeable for debt or preferred stock or (B) in the case of entities other than corporations, any other form of ownership interest; or

(vi) *Additional Termination Event.* If any "Additional Termination Event" is specified in the Schedule or any Confirmation as applying, the occurrence of such event (and, in such event, the Affected Party or Affected Parties) will be as specified for such Additional Termination Event in the Schedule or such Confirmation).

(c) *Hierarchy of Events.*

(i) An event or circumstance that constitutes or gives rise to an Illegality or a Force Majeure Event will not, for so long as that is the case, also constitute or give rise to an Event of Default under Section 5(a)(1), 5(a)(ii)(1) or 5(a)(iii)(1) insofar as such event or circumstance relates to the failure to make any payment or delivery or a failure to comply with any other material provision of this Agreement or a Credit Support Document, as the case may be.

(ii) Except in circumstances contemplated by clause (i) above, if an event or circumstance which would otherwise constitute or give rise to an Illegality or a Force Majeure Event also constitutes an Event of Default or any other Termination Event, it will be treated as an Event of Default or such other Termination Event, as the case may be, and will not constitute or give rise to an Illegality or a Force Majeure Event.

(iii) If an event or circumstance which would otherwise constitute or give rise to a Force Majeure Event also constitutes an Illegality, it will be treated as an Illegality, except as described in clause (ii) above, and not a Force Majeure Event.

(d) *Deferral of Payments and Deliveries During Waiting Period.* If an Illegality or a Force Majeure Event has occurred and is continuing with respect to a Transaction, each payment or delivery which would otherwise be required to be made under that Transaction will be deferred to, and will not be due until:—

(i) the first Local Business Day or, in the case of a delivery, the first Local Delivery Day (or the first day that would have been a Local Business Day or Local Delivery Day, as appropriate, but for the occurrence of the event or circumstance constituting or giving rise to that Illegality or Force Majeure Event) following the end of any applicable Waiting Period in respect of that Illegality or Force Majeure Event, as the case may be; or

(ii) if earlier, the date on which the event or circumstance constituting or giving rise to that Illegality or Force Majeure Event ceases to exist or, if such date is not a Local Business Day or, in the case of a delivery, a Local Delivery Day, the first following day that is a Local Business Day or Local Delivery Day, as appropriate.

(e) *Inability of Head or Home Office to Perform Obligations of Branch.* If (i) an Illegality or a Force Majeure Event occurs under Section 5(b)(i)(1) or 5(b)(ii)(1) and the relevant Office is not the Affected Party's head or home office, (ii) Section 10(a) applies, (iii) the other party seeks performance of the relevant obligation or



compliance with the relevant provision by the Affected Party's head or home office and (iv) the Affected Party's head or home office fails so to perform or comply due to the occurrence of an event or circumstance which would, if that head or home office were the Office through which the Affected Party makes and receives payments and deliveries with respect to the relevant Transaction, constitute or give rise to an Illegality or a Force Majeure Event, and such failure would otherwise constitute an Event of Default under Section 5(a)(i) or 5(a)(iii)(1) with respect to such party, then, for so long as the relevant event or circumstance continues to exist with respect to both the Office referred to in Section 5(b)(i)(1) or 5(b)(ii)(1), as the case may be, and the Affected Party's head or home office, such failure will not constitute an Event of Default under Section 5(a)(i) or 5(a)(iii)(1).

6. Early Termination; Close-Out Netting

(a) *Right to Terminate Following Event of Default.* If at any time an Event of Default with respect to a party (the "Defaulting Party") has occurred and is then continuing, the other party (the "Non-defaulting Party") may, by not more than 20 days notice to the Defaulting Party specifying the relevant Event of Default, designate a day not earlier than the day such notice is effective as an Early Termination Date in respect of all outstanding Transactions. If, however, "Automatic Early Termination" is specified in the Schedule as applying to a party, then an Early Termination Date in respect of all outstanding Transactions will occur immediately upon the occurrence with respect to such party of an Event of Default specified in Section 5(a)(vii)(1), (3), (5), (6) or, to the extent analogous thereto, (8), and as of the time immediately preceding the institution of the relevant proceeding or the presentation of the relevant petition upon the occurrence with respect to such party of an Event of Default specified in Section 5(a)(vii)(4) or, to the extent analogous thereto, (8).

(b) *Right to Terminate Following Termination Event.*

(i) *Notice.* If a Termination Event other than a Force Majeure Event occurs, an Affected Party will, promptly upon becoming aware of it, notify the other party, specifying the nature of that Termination Event and each Affected Transaction, and will also give the other party such other information about that Termination Event as the other party may reasonably require. If a Force Majeure Event occurs, each party will, promptly upon becoming aware of it, use all reasonable efforts to notify the other party, specifying the nature of that Force Majeure Event, and will also give the other party such other information about that Force Majeure Event as the other party may reasonably require.

(ii) *Transfer to Avoid Termination Event.* If a Tax Event occurs and there is only one Affected Party, or if a Tax Event Upon Merger occurs and the Burdened Party is the Affected Party, the Affected Party will, as a condition to its right to designate an Early Termination Date under Section 6(b)(iv), use all reasonable efforts (which will not require such party to incur a loss, other than immaterial, incidental expenses) to transfer within 20 days after it gives notice under Section 6(b)(i) all its rights and obligations under this Agreement in respect of the Affected Transactions to another of its Offices or Affiliates so that such Termination Event ceases to exist.

If the Affected Party is not able to make such a transfer it will give notice to the other party to that effect within such 20 day period, whereupon the other party may effect such a transfer within 30 days after the notice is given under Section 6(b)(i).

Any such transfer by a party under this Section 6(b)(ii) will be subject to and conditional upon the prior written consent of the other party, which consent will not be withheld if such other party's policies in effect at such time would permit it to enter into transactions with the transferee on the terms proposed.

(iii) *Two Affected Parties.* If a Tax Event occurs and there are two Affected Parties, each party will use all reasonable efforts to reach agreement within 30 days after notice of such occurrence is given under Section 6(b)(i) to avoid that Termination Event.

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(iv) *Right to Terminate.*

(1) If:—

(A) a transfer under Section 6(b)(ii) or an agreement under Section 6(b)(iii), as the case may be, has not been effected with respect to all Affected Transactions within 30 days after an Affected Party gives notice under Section 6(b)(i); or

(B) a Credit Event Upon Merger or an Additional Termination Event occurs, or a Tax Event Upon Merger occurs and the Burdened Party is not the Affected Party,

the Burdened Party in the case of a Tax Event Upon Merger, any Affected Party in the case of a Tax Event or an Additional Termination Event if there are two Affected Parties, or the Non-affected Party in the case of a Credit Event Upon Merger or an Additional Termination Event if there is only one Affected Party may, if the relevant Termination Event is then continuing, by not more than 20 days notice to the other party, designate a day not earlier than the day such notice is effective as an Early Termination Date in respect of all Affected Transactions.

(2) If at any time an Illegality or a Force Majeure Event has occurred and is then continuing and any applicable Waiting Period has expired:—

(A) Subject to clause (B) below, either party may, by not more than 20 days notice to the other party, designate (I) a day not earlier than the day on which such notice becomes effective as an Early Termination Date in respect of all Affected Transactions or (II) by specifying in that notice the Affected Transactions in respect of which it is designating the relevant day as an Early Termination Date, a day not earlier than two Local Business Days following the day on which such notice becomes effective as an Early Termination Date in respect of less than all Affected Transactions. Upon receipt of a notice designating an Early Termination Date in respect of less than all Affected Transactions, the other party may, by notice to the designating party, if such notice is effective on or before the day so designated, designate that same day as an Early Termination Date in respect of any or all other Affected Transactions.

(B) An Affected Party (if the Illegality or Force Majeure Event relates to performance by such party or any Credit Support Provider of such party of an obligation to make any payment or delivery under, or to compliance with any other material provision of, the relevant Credit Support Document) will only have the right to designate an Early Termination Date under Section 6(b)(iv)(2)(A) as a result of an Illegality under Section 5(b)(i)(2) or a Force Majeure Event under Section 5(b)(ii)(2) following the prior designation by the other party of an Early Termination Date, pursuant to Section 6(b)(iv)(2)(A), in respect of less than all Affected Transactions.

(c) *Effect of Designation.*

(i) If notice designating an Early Termination Date is given under Section 6(a) or 6(b), the Early Termination Date will occur on the date so designated, whether or not the relevant Event of Default or Termination Event is then continuing.

(ii) Upon the occurrence or effective designation of an Early Termination Date, no further payments or deliveries under Section 2(a)(i) or 9(h)(i) in respect of the Terminated Transactions will be required to be made, but without prejudice to the other provisions of this Agreement. The amount, if any, payable in respect of an Early Termination Date will be determined pursuant to Sections 6(e) and 9(h)(ii).



(d) *Calculations; Payment Date.*

(i) *Statement.* On or as soon as reasonably practicable following the occurrence of an Early Termination Date, each party will make the calculations on its part, if any, contemplated by Section 6(e) and will provide to the other party a statement (1) showing, in reasonable detail, such calculations (including any quotations, market data or information from internal sources used in making such calculations), (2) specifying (except where there are two Affected Parties) any Early Termination Amount payable and (3) giving details of the relevant account to which any amount payable to it is to be paid. In the absence of written confirmation from the source of a quotation or market data obtained in determining a Close-out Amount, the records of the party obtaining such quotation or market data will be conclusive evidence of the existence and accuracy of such quotation or market data.

(ii) *Payment Date.* An Early Termination Amount due in respect of any Early Termination Date will, together with any amount of interest payable pursuant to Section 9(h)(ii)(2), be payable (1) on the day on which notice of the amount payable is effective in the case of an Early Termination Date which is designated or occurs as a result of an Event of Default and (2) on the day which is two Local Business Days after the day on which notice of the amount payable is effective (or, if there are two Affected Parties, after the day on which the statement provided pursuant to clause (i) above by the second party to provide such a statement is effective) in the case of an Early Termination Date which is designated as a result of a Termination Event.

(e) *Payments on Early Termination.* If an Early Termination Date occurs, the amount, if any, payable in respect of that Early Termination Date (the "Early Termination Amount") will be determined pursuant to this Section 6(e) and will be subject to Section 6(f).

(i) *Events of Default.* If the Early Termination Date results from an Event of Default, the Early Termination Amount will be an amount equal to (1) the sum of (A) the Termination Currency Equivalent of the Close-out Amount or Close-out Amounts (whether positive or negative) determined by the Non-defaulting Party for each Terminated Transaction or group of Terminated Transactions, as the case may be, and (B) the Termination Currency Equivalent of the Unpaid Amounts owing to the Non-defaulting Party less (2) the Termination Currency Equivalent of the Unpaid Amounts owing to the Defaulting Party. If the Early Termination Amount is a positive number, the Defaulting Party will pay it to the Non-defaulting Party; if it is a negative number, the Non-defaulting Party will pay the absolute value of the Early Termination Amount to the Defaulting Party.

(ii) *Termination Events.* If the Early Termination Date results from a Termination Event:—

(1) *One Affected Party.* Subject to clause (3) below, if there is one Affected Party, the Early Termination Amount will be determined in accordance with Section 6(e)(i), except that references to the Defaulting Party and to the Non-defaulting Party will be deemed to be references to the Affected Party and to the Non-affected Party, respectively.

(2) *Two Affected Parties.* Subject to clause (3) below, if there are two Affected Parties, each party will determine an amount equal to the Termination Currency Equivalent of the sum of the Close-out Amount or Close-out Amounts (whether positive or negative) for each Terminated Transaction or group of Terminated Transactions, as the case may be, and the Early Termination Amount will be an amount equal to (A) the sum of (I) one-half of the difference between the higher amount so determined (by party "X") and the lower amount so determined (by party "Y") and (II) the Termination Currency Equivalent of the Unpaid Amounts owing to X less (B) the Termination Currency Equivalent of the Unpaid Amounts owing to Y. If the Early Termination Amount is a positive number, Y will pay it to X; if it is a negative number, X will pay the absolute value of the Early Termination Amount to Y.

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(3) *Mid-Market Events.* If that Termination Event is an Illegality or a Force Majeure Event, then the Early Termination Amount will be determined in accordance with clause (1) or (2) above, as appropriate, except that, for the purpose of determining a Close-out Amount or Close-out Amounts, the Determining Party will:—

(A) if obtaining quotations from one or more third parties (or from any of the Determining Party's Affiliates), ask each third party or Affiliate (i) not to take account of the current creditworthiness of the Determining Party or any existing Credit Support Document and (ii) to provide mid-market quotations; and

(B) in any other case, use mid-market values without regard to the creditworthiness of the Determining Party.

(iii) *Adjustment for Bankruptcy.* In circumstances where an Early Termination Date occurs because Automatic Early Termination applies in respect of a party, the Early Termination Amount will be subject to such adjustments as are appropriate and permitted by applicable law to reflect any payments or deliveries made by one party to the other under this Agreement (and retained by such other party) during the period from the relevant Early Termination Date to the date for payment determined under Section 6(d)(ii).

(iv) *Adjustment for Illegality or Force Majeure Event.* The failure by a party or any Credit Support Provider of such party to pay, when due, any Early Termination Amount will not constitute an Event of Default under Section 5(a)(i) or 5(a)(ii)(1) if such failure is due to the occurrence of an event or circumstance which would, if it occurred with respect to payment, delivery or compliance related to a Transaction, constitute or give rise to an Illegality or a Force Majeure Event. Such amount will (1) accrue interest and otherwise be treated as an Unpaid Amount owing to the other party if subsequently an Early Termination Date results from an Event of Default, a Credit Event Upon Merger or an Additional Termination Event in respect of which all outstanding Transactions are Affected Transactions and (2) otherwise accrue interest in accordance with Section 9(h)(ii)(2).

(v) *Pre-Estimate.* The parties agree that an amount recoverable under this Section 6(e) is a reasonable pre-estimate of loss and not a penalty. Such amount is payable for the loss of bargain and the loss of protection against future risks, and, except as otherwise provided in this Agreement, neither party will be entitled to recover any additional damages as a consequence of the termination of the Terminated Transactions.

(f) *Set-Off.* Any Early Termination Amount payable to one party (the "Payee") by the other party (the "Payer"), in circumstances where there is a Defaulting Party or where there is one Affected Party in the case where either a Credit Event Upon Merger has occurred or any other Termination Event in respect of which all outstanding Transactions are Affected Transactions has occurred, will, at the option of the Non-defaulting Party or the Non-affected Party, as the case may be ("X") (and without prior notice to the Defaulting Party or the Affected Party, as the case may be), be reduced by its set-off against any other amounts ("Other Amounts") payable by the Payee to the Payer (whether or not arising under this Agreement, matured or contingent and irrespective of the currency, place of payment or place of booking of the obligation). To the extent that any Other Amounts are so set off, those Other Amounts will be discharged promptly and in all respects. X will give notice to the other party of any set-off effected under this Section 6(f).

For this purpose, either the Early Termination Amount or the Other Amounts (or the relevant portion of such amounts) may be converted by X into the currency in which the other is denominated at the rate of exchange at which such party would be able, in good faith and using commercially reasonable procedures, to purchase the relevant amount of such currency.

If an obligation is unascertained, X may in good faith estimate that obligation and set off in respect of the estimate, subject to the relevant party accounting to the other when the obligation is ascertained.

Nothing in this Section 6(f) will be effective to create a charge or other security interest. This Section 6(f) will be without prejudice and in addition to any right of set-off, offset, combination of accounts, lien, right of retention or withholding or similar right or requirement to which any party is at any time otherwise entitled or subject (whether by operation of law, contract or otherwise).

7. Transfer

Subject to Section 6(b)(ii) and to the extent permitted by applicable law, neither this Agreement nor any interest or obligation in or under this Agreement may be transferred (whether by way of security or otherwise) by either party without the prior written consent of the other party, except that:—

(a) a party may make such a transfer of this Agreement pursuant to a consolidation or amalgamation with, or merger with or into, or transfer of all or substantially all its assets to, another entity (but without prejudice to any other right or remedy under this Agreement); and

(b) a party may make such a transfer of all or any part of its interest in any Early Termination Amount payable to it by a Defaulting Party, together with any amounts payable on or with respect to that interest and any other rights associated with that interest pursuant to Sections 8, 9(h) and 11.

Any purported transfer that is not in compliance with this Section 7 will be void.

8. Contractual Currency

(a) *Payment in the Contractual Currency.* Each payment under this Agreement will be made in the relevant currency specified in this Agreement for that payment (the "Contractual Currency"). To the extent permitted by applicable law, any obligation to make payments under this Agreement in the Contractual Currency will not be discharged or satisfied by any tender in any currency other than the Contractual Currency, except to the extent such tender results in the actual receipt by the party to which payment is owed, acting in good faith and using commercially reasonable procedures in converting the currency so tendered into the Contractual Currency, of the full amount in the Contractual Currency of all amounts payable in respect of this Agreement. If for any reason the amount in the Contractual Currency so received falls short of the amount in the Contractual Currency payable in respect of this Agreement, the party required to make the payment will, to the extent permitted by applicable law, immediately pay such additional amount in the Contractual Currency as may be necessary to compensate for the shortfall. If for any reason the amount in the Contractual Currency so received exceeds the amount in the Contractual Currency payable in respect of this Agreement, the party receiving the payment will refund promptly the amount of such excess.

(b) *Judgments.* To the extent permitted by applicable law, if any judgment or order expressed in a currency other than the Contractual Currency is rendered (i) for the payment of any amount owing in respect of this Agreement, (ii) for the payment of any amount relating to any early termination in respect of this Agreement or (iii) in respect of a judgment or order of another court for the payment of any amount described in clause (i) or (ii) above, the party seeking recovery, after recovery in full of the aggregate amount to which such party is entitled pursuant to the judgment or order, will be entitled to receive immediately from the other party the amount of any shortfall of the Contractual Currency received by such party as a consequence of sums paid in such other currency and will refund promptly to the other party any excess of the Contractual Currency received by such party as a consequence of sums paid in such other currency if such shortfall or such excess arises or results from any variation between the rate of exchange at which the Contractual Currency is converted into the currency of the judgment or order for the purpose of such judgment or order and the rate of exchange at which such party is able, acting in good faith and using



commercially reasonable procedures in converting the currency received into the Contractual Currency, to purchase the Contractual Currency with the amount of the currency of the judgment or order actually received by such party.

(c) *Separate Indemnities.* To the extent permitted by applicable law, the indemnities in this Section 8 constitute separate and independent obligations from the other obligations in this Agreement, will be enforceable as separate and independent causes of action, will apply notwithstanding any indulgence granted by the party to which any payment is owed and will not be affected by judgment being obtained or claim or proof being made for any other sums payable in respect of this Agreement.

(d) *Evidence of Loss.* For the purpose of this Section 8, it will be sufficient for a party to demonstrate that it would have suffered a loss had an actual exchange or purchase been made.

9. Miscellaneous

(a) *Entire Agreement.* This Agreement constitutes the entire agreement and understanding of the parties with respect to its subject matter. Each of the parties acknowledges that in entering into this Agreement it has not relied on any oral or written representation, warranty or other assurance (except as provided for or referred to in this Agreement) and waives all rights and remedies which might otherwise be available to it in respect thereof, except that nothing in this Agreement will limit or exclude any liability of a party for fraud.

(b) *Amendments.* An amendment, modification or waiver in respect of this Agreement will only be effective if in writing (including a writing evidenced by a facsimile transmission) and executed by each of the parties or confirmed by an exchange of telexes or by an exchange of electronic messages on an electronic messaging system.

(c) *Survival of Obligations.* Without prejudice to Sections 2(a)(iii) and 6(c)(ii), the obligations of the parties under this Agreement will survive the termination of any Transaction.

(d) *Remedies Cumulative.* Except as provided in this Agreement, the rights, powers, remedies and privileges provided in this Agreement are cumulative and not exclusive of any rights, powers, remedies and privileges provided by law.

(e) *Counterparts and Confirmations.*


(i) This Agreement (and each amendment, modification and waiver in respect of it) may be executed and delivered in counterparts (including by facsimile transmission and by electronic messaging system), each of which will be deemed an original.

(ii) The parties intend that they are legally bound by the terms of each Transaction from the moment they agree to those terms (whether orally or otherwise). A Confirmation will be entered into as soon as practicable and may be executed and delivered in counterparts (including by facsimile transmission) or be created by an exchange of telexes, by an exchange of electronic messages on an electronic messaging system or by an exchange of e-mails, which in each case will be sufficient for all purposes to evidence a binding supplement to this Agreement. The parties will specify therein or through another effective means that any such counterpart, telex, electronic message or e-mail constitutes a Confirmation.

(f) *No Waiver of Rights.* A failure or delay in exercising any right, power or privilege in respect of this Agreement will not be presumed to operate as a waiver, and a single or partial exercise of any right, power or privilege will not be presumed to preclude any subsequent or further exercise, of that right, power or privilege or the exercise of any other right, power or privilege.

(g) *Headings.* The headings used in this Agreement are for convenience of reference only and are not to affect the construction of or to be taken into consideration in interpreting this Agreement.

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(h) *Interest and Compensation.*

(i) *Prior to Early Termination.* Prior to the occurrence or effective designation of an Early Termination Date in respect of the relevant Transaction:—

(1) *Interest on Defaulted Payments.* If a party defaults in the performance of any payment obligation, it will, to the extent permitted by applicable law and subject to Section 6(c), pay interest (before as well as after judgment) on the overdue amount to the other party on demand in the same currency as the overdue amount, for the period from (and including) the original due date for payment to (but excluding) the date of actual payment (and excluding any period in respect of which interest or compensation in respect of the overdue amount is due pursuant to clause (3)(B) or (C) below), at the Default Rate.

(2) *Compensation for Defaulted Deliveries.* If a party defaults in the performance of any obligation required to be settled by delivery, it will on demand (A) compensate the other party to the extent provided for in the relevant Confirmation or elsewhere in this Agreement and (B) unless otherwise provided in the relevant Confirmation or elsewhere in this Agreement, to the extent permitted by applicable law and subject to Section 6(c), pay to the other party interest (before as well as after judgment) on an amount equal to the fair market value of that which was required to be delivered in the same currency as that amount, for the period from (and including) the originally scheduled date for delivery to (but excluding) the date of actual delivery (and excluding any period in respect of which interest or compensation in respect of that amount is due pursuant to clause (4) below), at the Default Rate. The fair market value of any obligation referred to above will be determined as of the originally scheduled date for delivery, in good faith and using commercially reasonable procedures, by the party that was entitled to take delivery.

(3) *Interest on Deferred Payments.* If:—

(A) a party does not pay any amount that, but for Section 2(a)(iii), would have been payable, it will, to the extent permitted by applicable law and subject to Section 6(c) and clauses (B) and (C) below, pay interest (before as well as after judgment) on that amount to the other party on demand (after such amount becomes payable) in the same currency as that amount, for the period from (and including) the date the amount would, but for Section 2(a)(iii), have been payable to (but excluding) the date the amount actually becomes payable, at the Applicable Deferral Rate;

(B) a payment is deferred pursuant to Section 5(d), the party which would otherwise have been required to make that payment will, to the extent permitted by applicable law, subject to Section 6(c) and for so long as no Event of Default or Potential Event of Default with respect to that party has occurred and is continuing, pay interest (before as well as after judgment) on the amount of the deferred payment to the other party on demand (after such amount becomes payable) in the same currency as the deferred payment, for the period from (and including) the date the amount would, but for Section 5(d), have been payable to (but excluding) the earlier of the date the payment is no longer deferred pursuant to Section 5(d) and the date during the deferral period upon which an Event of Default or Potential Event of Default with respect to that party occurs, at the Applicable Deferral Rate; or

(C) a party fails to make any payment due to the occurrence of an Illegality or a Force Majeure Event (after giving effect to any deferral period contemplated by clause (B) above), it will, to the extent permitted by applicable law, subject to Section 6(c) and for so long as the event or circumstance giving rise to that Illegality or Force Majeure Event

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continues and no Event of Default or Potential Event of Default with respect to that party has occurred and is continuing, pay interest (before as well as after judgment) on the overdue amount to the other party on demand in the same currency as the overdue amount, for the period from (and including) the date the party fails to make the payment due to the occurrence of the relevant Illegality or Force Majeure Event (or, if later, the date the payment is no longer deferred pursuant to Section 5(d)) to (but excluding) the earlier of the date the event or circumstance giving rise to that Illegality or Force Majeure Event ceases to exist and the date during the period upon which an Event of Default or Potential Event of Default with respect to that party occurs (and excluding any period in respect of which interest or compensation in respect of the overdue amount is due pursuant to clause (B) above), at the Applicable Deferral Rate.

(4) *Compensation for Deferred Deliveries.* If:—

(A) a party does not perform any obligation that, but for Section 2(a)(iii), would have been required to be settled by delivery;

(B) a delivery is deferred pursuant to Section 5(d); or

(C) a party fails to make a delivery due to the occurrence of an Illegality or a Force Majeure Event at a time when any applicable Waiting Period has expired,


the party required (or that would otherwise have been required) to make the delivery will, to the extent permitted by applicable law and subject to Section 6(c), compensate and pay interest to the other party on demand (after, in the case of clauses (A) and (B) above, such delivery is required) if and to the extent provided for in the relevant Confirmation or elsewhere in this Agreement.

(ii) *Early Termination.* Upon the occurrence or effective designation of an Early Termination Date in respect of a Transaction:—

(1) *Unpaid Amounts.* For the purpose of determining an Unpaid Amount in respect of the relevant Transaction, and to the extent permitted by applicable law, interest will accrue on the amount of any payment obligation or the amount equal to the fair market value of any obligation required to be settled by delivery included in such determination in the same currency as that amount, for the period from (and including) the date the relevant obligation was (or would have been but for Section 2(a)(ii) or 5(d)) required to have been performed to (but excluding) the relevant Early Termination Date, at the Applicable Close-out Rate.

(2) *Interest on Early Termination Amounts.* If an Early Termination Amount is due in respect of such Early Termination Date, that amount will, to the extent permitted by applicable law, be paid together with interest (before as well as after judgment) on that amount in the Termination Currency, for the period from (and including) such Early Termination Date to (but excluding) the date the amount is paid, at the Applicable Close-out Rate.

(iii) *Interest Calculation.* Any interest pursuant to this Section 9(h) will be calculated on the basis of daily compounding and the actual number of days elapsed.

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10. Offices; Multibranch Parties

(a) If Section 10(a) is specified in the Schedule as applying, each party that enters into a Transaction through an Office other than its head or home office represents to and agrees with the other party that, notwithstanding the place of booking or its jurisdiction of incorporation or organisation, its obligations are the same in terms of recourse against it as if it had entered into the Transaction through its head or home office, except that a party will not have recourse to the head or home office of the other party in respect of any payment or delivery deferred pursuant to Section 5(d) for so long as the payment or delivery is so deferred. This representation and agreement will be deemed to be repeated by each party on each date on which the parties enter into a Transaction.

(b) If a party is specified as a Multibranch Party in the Schedule, such party may, subject to clause (c) below, enter into a Transaction through, book a Transaction in and make and receive payments and deliveries with respect to a Transaction through any Office listed in respect of that party in the Schedule (but not any other Office unless otherwise agreed by the parties in writing).

(c) The Office through which a party enters into a Transaction will be the Office specified for that party in the relevant Confirmation or as otherwise agreed by the parties in writing, and, if an Office for that party is not specified in the Confirmation or otherwise agreed by the parties in writing, its head or home office. Unless the parties otherwise agree in writing, the Office through which a party enters into a Transaction will also be the Office in which it books the Transaction and the Office through which it makes and receives payments and deliveries with respect to the Transaction. Subject to Section 6(b)(ii), neither party may change the Office in which it books the Transaction or the Office through which it makes and receives payments or deliveries with respect to a Transaction without the prior written consent of the other party.

11. Expenses

A Defaulting Party will on demand indemnify and hold harmless the other party for and against all reasonable out-of-pocket expenses, including legal fees, execution fees and Stamp Tax, incurred by such other party by reason of the enforcement and protection of its rights under this Agreement or any Credit Support Document to which the Defaulting Party is a party or by reason of the early termination of any Transaction, including, but not limited to, costs of collection.

12. Notices

(a) *Effectiveness.* Any notice or other communication in respect of this Agreement may be given in any manner described below (except that a notice or other communication under Section 5 or 6 may not be given by electronic messaging system or e-mail) to the address or number or in accordance with the electronic messaging system or e-mail details provided (see the Schedule) and will be deemed effective as indicated:—

- (i) if in writing and delivered in person or by courier, on the date it is delivered;
- (ii) if sent by telex, on the date the recipient's answerback is received;
- (iii) if sent by facsimile transmission, on the date it is received by a responsible employee of the recipient in legible form (it being agreed that the burden of proving receipt will be on the sender and will not be met by a transmission report generated by the sender's facsimile machine);
- (iv) if sent by certified or registered mail (airmail, if overseas) or the equivalent (return receipt requested), on the date it is delivered or its delivery is attempted;
- (v) if sent by electronic messaging system, on the date it is received; or



(vi) if sent by e-mail, on the date it is delivered,

unless the date of that delivery (or attempted delivery) or that receipt, as applicable, is not a Local Business Day or that communication is delivered (or attempted) or received, as applicable, after the close of business on a Local Business Day, in which case that communication will be deemed given and effective on the first following day that is a Local Business Day.

(b) *Change of Details.* Either party may by notice to the other change the address, telex or facsimile number or electronic messaging system or e-mail details at which notices or other communications are to be given to it.

13. Governing Law and Jurisdiction

(a) *Governing Law.* This Agreement will be governed by and construed in accordance with the law specified in the Schedule.

(b) *Jurisdiction.* With respect to any suit, action or proceedings relating to any dispute arising out of or in connection with this Agreement ("Proceedings"), each party irrevocably:—

(i) submits:—

(1) if this Agreement is expressed to be governed by English law, to (A) the non-exclusive jurisdiction of the English courts if the Proceedings do not involve a Convention Court and (B) the exclusive jurisdiction of the English courts if the Proceedings do involve a Convention Court; or

(2) if this Agreement is expressed to be governed by the laws of the State of New York, to the non-exclusive jurisdiction of the courts of the State of New York and the United States District Court located in the Borough of Manhattan in New York City;

(ii) waives any objection which it may have at any time to the laying of venue of any Proceedings brought in any such court, waives any claim that such Proceedings have been brought in an inconvenient forum and further waives the right to object, with respect to such Proceedings, that such court does not have any jurisdiction over such party; and

(iii) agrees, to the extent permitted by applicable law, that the bringing of Proceedings in any one or more jurisdictions will not preclude the bringing of Proceedings in any other jurisdiction.

(c) *Service of Process.* Each party irrevocably appoints the Process Agent, if any, specified opposite its name in the Schedule to receive, for it and on its behalf, service of process in any Proceedings. If for any reason any party's Process Agent is unable to act as such, such party will promptly notify the other party and within 30 days appoint a substitute process agent acceptable to the other party. The parties irrevocably consent to service of process given in the manner provided for notices in Section 12(a)(i), 12(a)(iii) or 12(a)(iv). Nothing in this Agreement will affect the right of either party to serve process in any other manner permitted by applicable law.

(d) *Waiver of Immunities.* Each party irrevocably waives, to the extent permitted by applicable law, with respect to itself and its revenues and assets (irrespective of their use or intended use), all immunity on the grounds of sovereignty or other similar grounds from (i) suit, (ii) jurisdiction of any court, (iii) relief by way of injunction or order for specific performance or recovery of property, (iv) attachment of its assets (whether before or after judgment) and (v) execution or enforcement of any judgment to which it or its revenues or assets might otherwise be entitled in any Proceedings in the courts of any jurisdiction and irrevocably agrees, to the extent permitted by applicable law, that it will not claim any such immunity in any Proceedings.

14. Definitions

As used in this Agreement:—

"Additional Representation" has the meaning specified in Section 3.

"Additional Termination Event" has the meaning specified in Section 5(b).

"Affected Party" has the meaning specified in Section 5(b).

"Affected Transactions" means (a) with respect to any Termination Event consisting of an Illegality, Force Majeure Event, Tax Event or Tax Event Upon Merger, all Transactions affected by the occurrence of such Termination Event (which, in the case of an Illegality under Section 5(b)(i)(2) or a Force Majeure Event under Section 5(b)(ii)(2), means all Transactions unless the relevant Credit Support Document references only certain Transactions, in which case those Transactions and, if the relevant Credit Support Document constitutes a Confirmation for a Transaction, that Transaction) and (b) with respect to any other Termination Event, all Transactions.

"Affiliate" means, subject to the Schedule, in relation to any person, any entity controlled, directly or indirectly, by the person, any entity that controls, directly or indirectly, the person or any entity directly or indirectly under common control with the person. For this purpose, "control" of any entity or person means ownership of a majority of the voting power of the entity or person.

"Agreement" has the meaning specified in Section 1(c).

"Applicable Close-out Rate" means:—

(a) in respect of the determination of an Unpaid Amount:—

(i) in respect of obligations payable or deliverable (or which would have been but for Section 2(a)(iii)) by a Defaulting Party, the Default Rate;

(ii) in respect of obligations payable or deliverable (or which would have been but for Section 2(n)(iii)) by a Non-defaulting Party, the Non-default Rate;

(iii) in respect of obligations deferred pursuant to Section 5(d), if there is no Defaulting Party and for so long as the deferral period continues, the Applicable Deferral Rate; and

(iv) in all other cases following the occurrence of a Termination Event (except where interest accrues pursuant to clause (iii) above), the Applicable Deferral Rate; and

(b) in respect of an Early Termination Amount:—

(i) for the period from (and including) the relevant Early Termination Date to (but excluding) the date (determined in accordance with Section 6(d)(ii)) on which that amount is payable:—

(1) if the Early Termination Amount is payable by a Defaulting Party, the Default Rate;

(2) if the Early Termination Amount is payable by a Non-defaulting Party, the Non-default Rate; and

(3) in all other cases, the Applicable Deferral Rate; and

(ii) for the period from (and including) the date (determined in accordance with Section 5(d)(ii)) on which that amount is payable to (but excluding) the date of actual payment:—

(1) if a party fails to pay the Early Termination Amount due to the occurrence of an event or circumstance which would, if it occurred with respect to a payment or delivery under a Transaction, constitute or give rise to an Illegality or a Force Majeure Event, and for so long as the Early Termination Amount remains unpaid due to the continuing existence of such event or circumstance, the Applicable Deferral Rate;

(2) if the Early Termination Amount is payable by a Defaulting Party (but excluding any period in respect of which clause (1) above applies), the Default Rate;

(3) if the Early Termination Amount is payable by a Non-defaulting Party (but excluding any period in respect of which clause (1) above applies), the Non-default Rate; and

(4) in all other cases, the Termination Rate.

"Applicable Deferral Rate" means:—

(a) for the purpose of Section 9(h)(i)(3)(A), the rate certified by the relevant payer to be a rate offered to the payer by a major bank in a relevant interbank market for overnight deposits in the applicable currency, such bank to be selected in good faith by the payer for the purpose of obtaining a representative rate that will reasonably reflect conditions prevailing at the time in that relevant market;

(b) for purposes of Section 9(h)(i)(3)(B) and clause (a)(iii) of the definition of Applicable Close-out Rate, the rate certified by the relevant payer to be a rate offered to prime banks by a major bank in a relevant interbank market for overnight deposits in the applicable currency, such bank to be selected in good faith by the payer after consultation with the other party, if practicable, for the purpose of obtaining a representative rate that will reasonably reflect conditions prevailing at the time in that relevant market; and

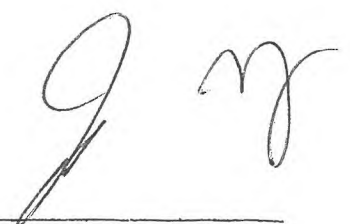
(c) for purposes of Section 9(h)(i)(3)(C) and clauses (a)(iv), (b)(i)(3) and (b)(ii)(1) of the definition of Applicable Close-out Rate, a rate equal to the arithmetic mean of the rate determined pursuant to clause (a) above and a rate per annum equal to the cost (without proof or evidence of any actual cost) to the relevant payee (as certified by it) if it were to fund or of funding the relevant amount.

"Automatic Early Termination" has the meaning specified in Section 6(n).

"Burdened Party" has the meaning specified in Section 5(h)(iv).

"Change in Tax Law" means the enactment, promulgation, execution or ratification of, or any change in or amendment to, any law (or in the application or official interpretation of any law) that occurs after the parties enter into the relevant Transaction.

"Close-out Amount" means, with respect to each Terminated Transaction or each group of Terminated Transactions and a Determining Party, the amount of the losses or costs of the Determining Party that are or would be incurred under then prevailing circumstances (expressed as a positive number) or gains of the Determining Party that are or would be realised under then prevailing circumstances (expressed as a negative number) in replacing, or in providing for the Determining Party the economic equivalent of, (a) the material terms of that Terminated Transaction or group of Terminated Transactions, including the payments and deliveries by the parties under Section 2(a)(i) in respect of that Terminated Transaction or group of Terminated Transactions that would, but for the occurrence of the relevant Early Termination Date, have been required after that date (assuming satisfaction of the conditions precedent in



Section 2(a)(iii) and (b) the option rights of the parties in respect of that Terminated Transaction or group of Terminated Transactions.

Any Close-out Amount will be determined by the Determining Party (or its agent), which will act in good faith and use commercially reasonable procedures in order to produce a commercially reasonable result. The Determining Party may determine a Close-out Amount for any group of Terminated Transactions or any individual Terminated Transaction but, in the aggregate, for not less than all Terminated Transactions. Each Close-out Amount will be determined as of the Early Termination Date or, if that would not be commercially reasonable, as of the date or dates following the Early Termination Date as would be commercially reasonable.

Unpaid Amounts in respect of a Terminated Transaction or group of Terminated Transactions and legal fees and out-of-pocket expenses referred to in Section 11 are to be excluded in all determinations of Close-out Amounts.

In determining a Close-out Amount, the Determining Party may consider any relevant information, including, without limitation, one or more of the following types of information:—

- (i) quotations (either firm or indicative) for replacement transactions supplied by one or more third parties that may take into account the creditworthiness of the Determining Party at the time the quotation is provided and the terms of any relevant documentation, including credit support documentation, between the Determining Party and the third party providing the quotation;
- (ii) information consisting of relevant market data in the relevant market supplied by one or more third parties including, without limitation, relevant rates, prices, yields, yield curves, volatilities, spreads, correlations or other relevant market data in the relevant market; or
- (iii) information of the types described in clause (i) or (ii) above from internal sources (including any of the Determining Party's Affiliates) if that information is of the same type used by the Determining Party in the regular course of its business for the valuation of similar transactions.

The Determining Party will consider, taking into account the standards and procedures described in this definition, quotations pursuant to clause (i) above or relevant market data pursuant to clause (ii) above unless the Determining Party reasonably believes in good faith that such quotations or relevant market data are not readily available or would produce a result that would not satisfy those standards. When considering information described in clause (i), (ii) or (iii) above, the Determining Party may include costs of funding, to the extent costs of funding are not and would not be a component of the other information being utilised. Third parties supplying quotations pursuant to clause (i) above or market data pursuant to clause (ii) above may include, without limitation, dealers in the relevant markets, end-users of the relevant product, information vendors, brokers and other sources of market information.

Without duplication of amounts calculated based on information described in clause (i), (ii) or (iii) above, or other relevant information, and when it is commercially reasonable to do so, the Determining Party may in addition consider in calculating a Close-out Amount any loss or cost incurred in connection with its terminating, liquidating or re-establishing any hedge related to a Terminated Transaction or group of Terminated Transactions (or any gain resulting from any of them).

Commercially reasonable procedures used in determining a Close-out Amount may include the following:—

- (1) application to relevant market data from third parties pursuant to clause (ii) above or information from internal sources pursuant to clause (iii) above of pricing or other valuation models that are, at the time of the determination of the Close-out Amount, used by the Determining Party in the regular course of its business in pricing or valuing transactions between the Determining Party and unrelated third parties that are similar to the Terminated Transaction or group of Terminated Transactions; and

(2) application of different valuation methods to Terminated Transactions or groups of Terminated Transactions depending on the type, complexity, size or number of the Terminated Transactions or group of Terminated Transactions.

"Confirmation" has the meaning specified in the preamble.

"consent" includes a consent, approval, action, authorisation, exemption, notice, filing, registration or exchange control consent.

"Contractual Currency" has the meaning specified in Section 8(a).

"Convention Court" means any court which is bound to apply to the Proceedings either Article 17 of the 1968 Brussels Convention on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters or Article 17 of the 1988 Lugano Convention on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters.

"Credit Event Upon Merger" has the meaning specified in Section 5(b).

"Credit Support Document" means any agreement or instrument that is specified as such in this Agreement.

"Credit Support Provider" has the meaning specified in the Schedule.

"Cross-Default" means the event specified in Section 5(a)(vi).

"Default Rate" means a rate per annum equal to the cost (without proof or evidence of any actual cost) to the relevant payee (as certified by it) if it were to fund or of funding the relevant amount plus 1% per annum.

"Defaulting Party" has the meaning specified in Section 6(a).

"Designated Event" has the meaning specified in Section 5(b)(v).

"Determining Party" means the party determining a Close-out Amount.

"Early Termination Amount" has the meaning specified in Section 6(c).

"Early Termination Date" means the date determined in accordance with Section 6(a) or 6(b)(iv).

"electronic messages" does not include e-mails but does include documents expressed in markup languages, and "electronic messaging system" will be construed accordingly.

"English law" means the law of England and Wales, and "English" will be construed accordingly.

"Event of Default" has the meaning specified in Section 5(u) and, if applicable, in the Schedule.

"Force Majeure Event" has the meaning specified in Section 5(b).

"General Business Day" means a day on which commercial banks are open for general business (including dealings in foreign exchange and foreign currency deposits).

"Illegality" has the meaning specified in Section 5(b).



"*Indemnifiable Tax*" means any Tax other than a Tax that would not be imposed in respect of a payment under this Agreement but for a present or former connection between the jurisdiction of the government or taxation authority imposing such Tax and the recipient of such payment or a person related to such recipient (including, without limitation, a connection arising from such recipient or related person being or having been a citizen or resident of such jurisdiction, or being or having been organised, present or engaged in a trade or business in such jurisdiction, or having or having had a permanent establishment or fixed place of business in such jurisdiction, but excluding a connection arising solely from such recipient or related person having executed, delivered, performed its obligations or received a payment under, or enforced, this Agreement or a Credit Support Document).

"*law*" includes any treaty, law, rule or regulation (as modified, in the case of tax matters, by the practice of any relevant governmental revenue authority), and "*unlawful*" will be construed accordingly.

"*Local Business Day*" means (a) in relation to any obligation under Section 2(a)(i), a General Business Day in the place or places specified in the relevant Confirmation and a day on which a relevant settlement system is open or operating as specified in the relevant Confirmation or, if a place or a settlement system is not so specified, as otherwise agreed by the parties in writing or determined pursuant to provisions contained, or incorporated by reference, in this Agreement, (b) for the purpose of determining when a Waiting Period expires, a General Business Day in the place where the event or circumstance that constitutes or gives rise to the Illegality or Force Majeure Event, as the case may be, occurs, (c) in relation to any other payment, a General Business Day in the place where the relevant account is located and, if different, in the principal financial centre, if any, of the currency of such payment and, if that currency does not have a single recognised principal financial centre, a day on which the settlement system necessary to accomplish such payment is open, (d) in relation to any notice or other communication, including notice contemplated under Section 5(n)(i), a General Business Day (or a day that would have been a General Business Day but for the occurrence of an event or circumstance which would, if it occurred with respect to payment, delivery or compliance related to a Transaction, constitute or give rise to an Illegality or a Force Majeure Event) in the place specified in the address for notice provided by the recipient and, in the case of a notice contemplated by Section 2(b), in the place where the relevant new account is to be located and (e) in relation to Section 5(a)(v)(2), a General Business Day in the relevant locations for performance with respect to such Specified Transaction.

"*Local Delivery Day*" means, for purposes of Sections 5(a)(i) and 5(d), a day on which settlement systems necessary to accomplish the relevant delivery are generally open for business so that the delivery is capable of being accomplished in accordance with customary market practice, in the place specified in the relevant Confirmation or, if not so specified, in a location as determined in accordance with customary market practice for the relevant delivery.

"*Master Agreement*" has the meaning specified in the preamble.

"*Merger Without Assumption*" means the event specified in Section 5(a)(viii).

"*Multiple Transaction Payment Netting*" has the meaning specified in Section 2(c).

"*Non-affected Party*" means, so long as there is only one Affected Party, the other party.

"*Non-default Rate*" means the rate certified by the Non-defaulting Party to be a rate offered to the Non-defaulting Party by a major bank in a relevant interbank market for overnight deposits in the applicable currency, such bank to be selected in good faith by the Non-defaulting Party for the purpose of obtaining a representative rate that will reasonably reflect conditions prevailing at the time in that relevant market.

"*Non-defaulting Party*" has the meaning specified in Section 6(a).

"*Office*" means a branch or office of a party, which may be such party's head or home office.

"*Other Amounts*" has the meaning specified in Section 6(f).

"Payee" has the meaning specified in Section 6(f).

"Payer" has the meaning specified in Section 6(f).

"Potential Event of Default" means any event which, with the giving of notice or the lapse of time or both, would constitute an Event of Default.

"Proceedings" has the meaning specified in Section 13(b).

"Process Agent" has the meaning specified in the Schedule.

"Rate of exchange" includes, without limitation, any premiums and costs of exchange payable in connection with the purchase of or conversion into the Contractual Currency.

"Relevant Jurisdiction" means, with respect to a party, the jurisdictions (a) in which the party is incorporated, organised, managed and controlled or considered to have its seat, (b) where an Office through which the party is acting for purposes of this Agreement is located, (c) in which the party executes this Agreement and (d) in relation to any payment, from or through which such payment is made.

"Schedule" has the meaning specified in the preamble.

"Scheduled Settlement Date" means a date on which a payment or delivery is to be made under Section 2(a)(i) with respect to a Transaction.

"Specified Entity" has the meaning specified in the Schedule.

"Specified Indebtedness" means, subject to the Schedule, any obligation (whether present or future, contingent or otherwise, as principal or surety or otherwise) in respect of borrowed money.

"Specified Transaction" means, subject to the Schedule, (a) any transaction (including an agreement with respect to any such transaction) now existing or hereafter entered into between one party to this Agreement (or any Credit Support Provider of such party or any applicable Specified Entity of such party) and the other party to this Agreement (or any Credit Support Provider of such other party or any applicable Specified Entity of such other party) which is not a Transaction under this Agreement but (i) which is a rate swap transaction, swap option, basis swap, forward rate transaction, commodity swap, commodity option, equity or equity index swap, equity or equity index option, bond option, interest rate option, foreign exchange transaction, cap transaction, floor transaction, collar transaction, currency swap transaction, cross-currency rate swap transaction, currency option, credit protection transaction, credit swap, credit default swap, credit default option, total return swap, credit spread transaction, repurchase transaction, reverse repurchase transaction, buy/sell-back transaction, securities lending transaction, weather index transaction or forward purchase or sale of a security, commodity or other financial instrument or interest (including any option with respect to any of these transactions) or (ii) which is a type of transaction that is similar to any transaction referred to in clause (i) above that is currently, or in the future becomes, recurrently entered into in the financial markets (including terms and conditions incorporated by reference in such agreement) and which is a forward, swap, future, option or other derivative on one or more rates, currencies, commodities, equity securities or other equity instruments, debt securities or other debt instruments, economic indices or measures of economic risk or value, or other benchmarks against which payments or deliveries are to be made, (b) any combination of those transactions and (c) any other transaction identified as a Specified Transaction in this Agreement or the relevant confirmation.

"Stamp Tax" means any stamp, registration, documentation or similar tax.

"Stamp Tax Jurisdiction" has the meaning specified in Section 4(e).



"*Tax*" means any present or future tax, levy, impost, duty, charge, assessment or fee of any nature (including interest, penalties and additions thereto) that is imposed by any government or other taxing authority in respect of any payment under this Agreement other than a stamp, registration, documentation or similar tax.

"*Tax Event*" has the meaning specified in Section 5(b).

"*Tax Event Upon Merger*" has the meaning specified in Section 5(b).

"*Terminated Transactions*" means, with respect to any Early Termination Date, (a) if resulting from an Illegality or a Force Majeure Event, all Affected Transactions specified in the notice given pursuant to Section 6(b)(iv), (b) if resulting from any other Termination Event, all Affected Transactions and (c) if resulting from an Event of Default, all Transactions in effect either immediately before the effectiveness of the notice designating that Early Termination Date or, if Automatic Early Termination applies, immediately before that Early Termination Date.

"*Termination Currency*" means (a) if a Termination Currency is specified in the Schedule and that currency is freely available, that currency, and (b) otherwise, euro if this Agreement is expressed to be governed by English law or United States Dollars if this Agreement is expressed to be governed by the laws of the State of New York.

"*Termination Currency Equivalent*" means, in respect of any amount denominated in the Termination Currency, such Termination Currency amount and, in respect of any amount denominated in a currency other than the Termination Currency (the "Other Currency"), the amount in the Termination Currency determined by the party making the relevant determination as being required to purchase such amount of such Other Currency as at the relevant Early Termination Date, or, if the relevant Close-out Amount is determined as of a later date, that later date, with the Termination Currency at the rate equal to the spot exchange rate of the foreign exchange agent (selected as provided below) for the purchase of such Other Currency with the Termination Currency at or about 11:00 a.m. (in the city in which such foreign exchange agent is located) on such date as would be customary for the determination of such a rate for the purchase of such Other Currency for value on the relevant Early Termination Date or that later date. The foreign exchange agent will, if only one party is obliged to make a determination under Section 6(s), be selected in good faith by that party and otherwise will be agreed by the parties.

"*Termination Event*" means an Illegality, a Force Majeure Event, a Tax Event, a Tax Event Upon Merger or, if specified to be applicable, a Credit Event Upon Merger or an Additional Termination Event.

"*Termination Rate*" means a rate per annum equal to the arithmetic mean of the cost (without proof or evidence of any actual cost) to each party (as certified by such party) if it were to fund or of finding such amounts.

"*Threshold Amount*" means the amount, if any, specified as such in the Schedule.

"*Transaction*" has the meaning specified in the preamble.

"*Unpaid Amounts*" owing to any party means, with respect to an Early Termination Date, the aggregate of (a) in respect of all Terminated Transactions, the amounts that became payable (or that would have become payable but for Section 2(a)(iii) or due but for Section 5(d)) to such party under Section 2(a)(i) or 2(d)(i)(4) on or prior to such Early Termination Date and which remain unpaid as at such Early Termination Date, (b) in respect of each Terminated Transaction, for each obligation under Section 2(a)(i) which was (or would have been but for Section 2(a)(iii) or 5(d)) required to be settled by delivery to such party on or prior to such Early Termination Date and which has not been so settled as at such Early Termination Date, an amount equal to the fair market value of that which was (or would have been) required to be delivered and (c) if the Early Termination Date results from an Event of Default, a Credit Event Upon Merger or an Additional Termination Event in respect of which all outstanding Transactions are Affected Transactions, any Early Termination Amount due prior to such Early Termination Date and which remains unpaid as of such Early Termination Date, in each case together with any amount of interest accrued or other

compensation in respect of that obligation or deferred obligation, as the case may be, pursuant to Section 9(h)(ii)(1) or (2), as appropriate. The fair market value of any obligation referred to in clause (b) above will be determined as of the originally scheduled date for delivery, in good faith and using commercially reasonable procedures, by the party obliged to make the determination under Section 6(e) or, if each party is so obliged, it will be the average of the Termination Currency Equivalents of the fair market values so determined by both parties.

"Waiting Period" means:--

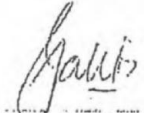
(a) in respect of an event or circumstance under Section 5(b)(i), other than in the case of Section 5(b)(i)(2) where the relevant payment, delivery or compliance is actually required on the relevant day (in which case no Waiting Period will apply), a period of three Local Business Days (or days that would have been Local Business Days but for the occurrence of that event or circumstance) following the occurrence of that event or circumstance; and

(b) in respect of an event or circumstance under Section 5(b)(ii), other than in the case of Section 5(b)(ii)(2) where the relevant payment, delivery or compliance is actually required on the relevant day (in which case no Waiting Period will apply), a period of eight Local Business Days (or days that would have been Local Business Days but for the occurrence of that event or circumstance) following the occurrence of that event or circumstance.

IN WITNESS WHEREOF the parties have executed this document on the respective dates specified below with effect from the date specified on the first page of this document.

TREMO (PROPRIETARY) LIMITED
(Name of Party)

TREVO CAPITAL LIMITED
(Name of Party)

By: 
Name: Jon Calitz
Title: Director
Date: 5/10/2015

By: _____
Name: _____
Title: _____
Date: _____



compensation in respect of that obligation or deferred obligation, as the case may be, pursuant to Section 9(h)(ii)(1) or (2), as appropriate. The fair market value of any obligation referred to in clause (b) above will be determined as of the originally scheduled date for delivery, in good faith and using commercially reasonable procedures, by the party obliged to make the determination under Section 6(c) or, if each party is so obliged, it will be the average of the Termination Currency Equivalents of the fair market values so determined by both parties.

"Waiting Period" means:—

(a) in respect of an event or circumstance under Section 5(b)(i), other than in the case of Section 5(b)(i)(2) where the relevant payment, delivery or compliance is actually required on the relevant day (in which case no Waiting Period will apply), a period of three Local Business Days (or days that would have been Local Business Days but for the occurrence of that event or circumstance) following the occurrence of that event or circumstance; and


(b) in respect of an event or circumstance under Section 5(b)(ii), other than in the case of Section 5(b)(ii)(2) where the relevant payment, delivery or compliance is actually required on the relevant day (in which case no Waiting Period will apply), a period of eight Local Business Days (or days that would have been Local Business Days but for the occurrence of that event or circumstance) following the occurrence of that event or circumstance.

IN WITNESS WHEREOF the parties have executed this document on the respective dates specified below with effect from the date specified on the first page of this document.

TREEMO (PROPRIETARY) LIMITED
(Name of Party)

By: _____
Name:
Title:
Date:

TREVO CA ^{LTD}
~~LIMITED~~
(Name of Party)

By: 
Name: Rochin Nethoo
Title: Director
Date: 07-October-2015



EXECUTION

Schedule to the 2002 ISDA Master Agreement

dated as of 07 October 2015

between

Treemo (Proprietary) Limited as Party A and Trevo Capital Ltd as Party B

Part 1. Termination Provisions.

(a) "Specified Entity" means in relation to Party A and Party B for the purpose of:—

Section 5(a)(v), none;

Section 5(a)(vi), none;

Section 5(a)(vii), none; and

Section 5(b)(v), none.

(b) "Specified Transaction" has the meaning specified in Section 14 of the Agreement.

(c) The "Cross-Default" provisions of Section 5(a)(vi) will apply to Party A and Party B, provided, however, that an Event of Default will not occur under Section 5(a)(vi) if: (i) the event or condition referred to in Section 5(a)(vi)(1) or the failure to pay referred to in Section 5(a)(vi)(2) is caused by an error or omission of an administrative or operational nature; (b) funds were available to such party to enable it to make the relevant payment when due; and (c) such relevant payment is made within three Local Business Days after notice of such failure is given by the other party.

"Threshold Amount" means, with respect to any party, an amount equal to ZAR 100,000,000 or its equivalent in any other currency, currencies or currency unit.

(d) The "Credit Event Upon Merger" provisions of Section 5(b)(v) will apply to Party A and Party B, provided that Section 5(b)(v)(1) is replaced with the following:

"X consolidates or amalgamates with, or merges into, or transfers all or substantially all of its assets (or any substantial part of the assets comprising the business conducted by X as of the date of this Agreement) to, or reorganizes, reincorporates or reconstitutes into or as, or receives all the assets or obligations of, another entity;"

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- (e) The "Automatic Early Termination" provision of Section 6(a) will not apply to Party A or Party B.
- (f) "Termination Currency" means South African Rands.
- (g) Additional Termination Event. None.

Part 2. Tax Representations.

- (a) *Payer Representations.* For the purpose of Section 3(a) of this Agreement, Party A and Party B do not make any representations.
- (b) *Payee Representations.* For the purpose of Section 3(f) of this Agreement, Party A and Party B do not make any representations.

Part 3. Agreement to Deliver Documents.

For the purpose of Sections 4(a)(i) and 4(a)(ii) of this Agreement, each party agrees to deliver the following documents, as applicable:—

- (a) Tax forms, documents or certificates to be delivered are: none
- (b) Other documents to be delivered are—

Party required to deliver document	Form/Document/Certificate	Date by which to be delivered	Covered by Section 3(d) Representation
Party A and Party B	Signatory authority (satisfactory to the other party, acting reasonably) for the person(s) signing the Agreement	Upon signature of Agreement	Yes
Party A and Party B	Signatory authority (satisfactory to the other party, acting reasonably) for the person(s) signing any Confirmation hereunder	Upon signature of such Confirmation	Yes
Party A and Party B	Such other document(s) as may be reasonably requested by the other party from time to time	As soon as reasonably possible following request	Yes

PA

[Handwritten signature]

Part 4. Miscellaneous.

- (a) *Addresses for Notices.* For the purpose of Section 12(a) of this Agreement:—

Address for notices or communications to Party A:—

PKF RademeyerWesson
Tyger Forum B, Ground Floor
53 Wille van Schoor Avenue
Tygervalley, Cape Town, 7530

Address for notices or communications to Party B:—

3RD Floor, La Croisette
Grand Bay, Mauritius

- (b) *Process Agent.* For the purpose of Section 13(c) of this Agreement: neither Party A nor Party B appoints a Process Agent.
- (c) *Offices.* The provisions of Section 10(a) will not apply to this Agreement.
- (d) *Multibranch Party.* For the purpose of Section 10(b) of this Agreement: neither Party A nor Party B is a Multibranch Party.
- (e) *Calculation Agent.* Unless otherwise specified in a Confirmation in relation to the relevant Transaction, Party B.
- (f) *Credit Support Document.* Details of any Credit Support Document: none.
- (g) *Credit Support Provider.* Credit Support Provider means: in relation to Party A and Party B, none.
- (h) *Governing Law.* This Agreement will be governed by and construed in accordance with the laws of the Republic of South Africa. Both parties hereby irrevocably and unconditionally consent to the non-exclusive jurisdiction of the High Court of South Africa, Western Cape Local Division, Cape Town (or any successor to that division) in regard to all matters arising from this Agreement.


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A handwritten signature in black ink, appearing to be 'J. W.', is written over a horizontal line.

-
- (i) *Netting of Payments.* "Multiple Transaction Payment Netting" will apply for the purpose of Section 2(c) of this Agreement to all Transactions, however, failure by any party to the Agreement to effect net settlement shall not constitute a breach of this Agreement.
- (j) *"Affiliate"* will have the meaning specified in Section 14 of this Agreement.
- (k) *Absence of Litigation.* For the purpose of Section 3(c): "*Specified Entity*" means in relation to Party A and to Party B, none.
- (l) *No Agency.* The provisions of Section 3(g) will apply to this Agreement.
- (m) *Additional Representation* will apply. For the purpose of Section 3 of this Agreement, the following will constitute an Additional Representation:—

Relationship Between Parties. Each party will be deemed to represent to the other party on the date on which it enters into a Transaction that (absent a written agreement between the parties that expressly imposes affirmative obligations to the contrary for that Transaction):—

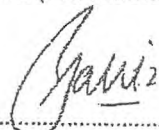
- (1) *Non-Reliance.* It is acting for its own account, and it has made its own independent decisions to enter into that Transaction and as to whether that Transaction is appropriate or proper for it based upon its own judgment and upon advice from such advisers as it has deemed necessary. It is not relying on any communication (written or oral) of the other party as investment advice or as a recommendation to enter into that Transaction, it being understood that information and explanations related to the terms and conditions of a Transaction will not be considered investment advice or a recommendation to enter into that Transaction. No communication (written or oral) received from the other party will be deemed to be an assurance or guarantee as to the expected results of that Transaction.
- (2) *Assessment and Understanding.* It is capable of assessing the merits of and understanding (on its own behalf or through independent professional advice), and understands and accepts, the terms, conditions and risks of that Transaction. It is also capable of assuming, and assumes, the risks of that Transaction.
- (3) *Status of Parties.* The other party is not acting as a fiduciary for or an adviser to it in respect of that Transaction.
- 2
- 

Part 5. Other Provisions.

- (a) **Definitions.** Unless otherwise specified in a Confirmation, any term used in this Agreement which is defined in the ISDA 2006 Definitions, as published by the International Swaps and Derivatives Association, Inc. and as updated or amended from time to time (the "ISDA Definitions") shall bear the meaning ascribed to it in the ISDA Definitions. Unless otherwise stated in a Confirmation of a Transaction, the provisions of the ISDA Definitions are incorporated by reference into this Agreement and each Confirmation. In the event of any inconsistency between the provisions of this Agreement and the ISDA Definitions, this Agreement will prevail.
- (b) **Confirmations.** With respect to each Transaction, Party A shall, promptly after a Trade Date, send Party B a Confirmation. Upon receipt thereof, Party B will review the Confirmation and either (i) notify Party A of any errors or discrepancies in it, or (ii) confirm that the Confirmation correctly sets forth the terms of the transaction to which the Confirmation relates by signing the Confirmation and returning it to Party A. Unless otherwise agreed, all Transactions entered into on or after the date of this Agreement shall constitute "Transactions" for the purposes of this Agreement and all Confirmations howsoever described and whether by means of electronic messaging system, letter, facsimile or otherwise shall constitute "Confirmations" as referred to in this Agreement. Such Confirmations shall supplement, form a part of and be subject to this Agreement.

TREEMO (PROPRIETARY) LIMITED

TREVO CAPITAL LTD

By: 

By:

Name: *Jim Calitz*

Name:

Title: *Director*

Title:

Date: *5/10/2015*

Date:



Part 5. Other Provisions.

- (a) **Definitions.** Unless otherwise specified in a Confirmation, any term used in this Agreement which is defined in the ISDA 2006 Definitions, as published by the International Swaps and Derivatives Association, Inc. and as updated or amended from time to time (the "ISDA Definitions") shall bear the meaning ascribed to it in the ISDA Definitions. Unless otherwise stated in a Confirmation of a Transaction, the provisions of the ISDA Definitions are incorporated by reference into this Agreement and each Confirmation. In the event of any inconsistency between the provisions of this Agreement and the ISDA Definitions, this Agreement will prevail.
- (b) **Confirmations.** With respect to each Transaction, Party A shall, promptly after a Trade Date, send Party B a Confirmation. Upon receipt thereof, Party B will review the Confirmation and either (i) notify Party A of any errors or discrepancies in it, or (ii) confirm that the Confirmation correctly sets forth the terms of the transaction to which the Confirmation relates by signing the Confirmation and returning it to Party A. Unless otherwise agreed, all Transactions entered into on or after the date of this Agreement shall constitute "Transactions" for the purposes of this Agreement and all Confirmations howsoever described and whether by means of electronic messaging system, letter, facsimile or otherwise shall constitute "Confirmations" as referred to in this Agreement. Such Confirmations shall supplement, form a part of and be subject to this Agreement.

TREEMO (PROPRIETARY) LIMITED

TREVO CAPITAL LTD

By:

By: 

Name:

Name: Roshan Nathoo

Title:

Title: Director

Date:

Date: 07 - October - 2015



B

TREEMO (PTY) LIMITED

(Registration No. 2014/023549/07)

P O BOX 6100
PAROW EAST
7501

TEL: 021 929 4802
FAX: 021 929 4811

29 October 2015

Trevo Capital Ltd
3rd Floor
La Croisette
Grand Baie
Mauritius

Re: Physically Settled Share Forward Transaction

Dear Sirs:

The purpose of this letter agreement (this "Confirmation") is to confirm the terms and conditions of the Transaction entered into between us on the Trade Date specified below (the "Transaction"). This Confirmation constitutes a "Confirmation" as referred to in the ISDA Master Agreement specified below.

The definitions and provisions contained in the 2006 ISDA Definitions (the "Swap Definitions") and in the 2002 ISDA Equity Derivatives Definitions (the "Equity Definitions", and together with the Swap Definitions, the "Definitions"), in each case as published by the International Swaps and Derivatives Association, Inc., are incorporated into this Confirmation. In the event of any inconsistency between the Swap Definitions and the Equity Definitions, the Equity Definitions will govern. In the event of any inconsistency between either set of Definitions and this Confirmation, this Confirmation will govern.

1. This Confirmation supplements, forms part of, and is subject to, the ISDA Master Agreement dated as of 7 October 2015, as amended and supplemented from time to time (the "Agreement"), between Treemo (Pty) Ltd ("Party A") and Trevo Capital Ltd ("Party B"). All provisions contained in the Agreement govern this Confirmation except as expressly modified below.

2. The terms of the particular Transaction to which this Confirmation relates are as follows:

General Terms:

Trade Date:	29 October 2015
Seller:	Party A
Buyer:	Party B

DIRECTOR: J M Calliz

Handwritten signature and initials.

Shares: ordinary shares of Steinhoff International Holdings Limited (JSE code SHF)

Number of Shares: 56 578 213

Forward Price: R81.59 per Share, cum dividend

Forward Date: Each date, determined by the Buyer and notified by the Buyer to the Seller in writing, on which the Buyer will pay or discharge the obligation to pay some or all of the Forward Price, provided that the Forward Price shall be paid or discharged in full and the Number of Shares shall be delivered on or before 29 April 2016.

Exchange: The exchange operated by the JSE Limited (the "JSE")

Related Exchange: None

Clearance System: The Clearance System operated by Strate Limited ("Strate")

Settlement Terms:

Physical Settlement: Applicable

Settlement Date: Each date, determined by the Buyer, notified by the Buyer to the Seller in writing on which the Buyer will pay or discharge the obligation to pay some or all of the Forward Price, provided that the Forward Price shall be paid or discharged in full on or before 29 April 2016. Accordingly, on each such Settlement Date the Seller shall only be obliged to deliver to the Buyer a number of Shares equal to the amount paid or discharged by the Buyer divided by the Forward Price.

Settlement Method Election: Not applicable

Settlement Currency: ZAR

Dividends: Not applicable, and Article 10 of the Equity Definitions shall not apply to this Transaction.

Adjustments: Not applicable

Extraordinary Events: Not applicable, and Articles 11 and 12 of the Equity Definitions shall not apply to this Transaction.

3. Other terms:


3.1 Additional Definitions

"Buyer Preference Shares" means non-voting, redeemable preference shares denominated in ZAR with a 7% yield, issued by the Buyer and listed on the NSX.

"Exchange Securities" means any securities exchanged for the Shares prior to the Forward Date.

"NSX" means the Namibian Stock Exchange.

3.2 Consequences of Share exchange:

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In the event that prior to the Forward Date the Shares are exchanged for Exchange Securities, then for purposes of this Confirmation and the Equity Definitions the Number of Shares to be Delivered on the Forward Date shall be such number of Exchange Securities as are received by Party A in exchange for the Number of Shares specified in this Confirmation.

3.3 Discharge of Forward Price:

The Buyer may, at any time prior to the Settlement Date elect, in its sole discretion, to discharge any portion of the Forward Price by issuing the Buyer Preference Shares. The Buyer shall make such election by delivering a written notice to the Seller specifying the number of Buyer Preference Shares that the Buyer will issue to the Seller or the Seller's nominee. In the event that the Buyer makes such an election, the amount of the Forward Price that is payable in Settlement Currency shall be reduced by an amount equal to the aggregate issue and listing price of the Buyer Preference Shares on the NSX. For purposes of determining a Clearance System Business Day in relation to settlement by issuance of Buyer Preference Shares, the relevant Clearance System shall be the clearance system of the NSX.

- 3.4 The delivery and/or payment obligations of Party A on the Forward Date and the delivery and/or payment obligations of Party B on each Settlement Date are reciprocal obligations and are not subject to any suspensive condition. Subject to the immediately preceding sentence, Paragraph 2(a)(iii) of the Agreement shall apply to such obligations.

4. Account Details:

Account for payments to Party A: Standard Bank, Account Number 071862331, Swift Code SBZAZAJJ

Account for payments to Party B: AFRASIA Bank Ltd, Account Number 001600010252016, Swift Code AFBLMUMU

Yours faithfully,

By: 

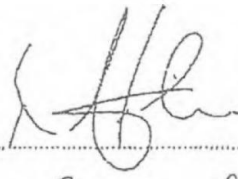
Name:

For Treemo (Pty) Ltd

Date: 29/10/2015

Please confirm that the foregoing correctly sets forth the terms of our agreement by executing a copy of this Confirmation and returning it to us in accordance with the notice provisions of the Agreement.



By: 

Name: ROSHANI NATHOO

For Trevo Capital Ltd

Date: 29 October 2015



Amendment

dated as of 27 November 2015

to the Confirmation of a Transaction under the

2002 ISDA MASTER AGREEMENT

dated as of 7 October 2015

between

TREEMO (PTY) LTD

TREVO CAPITAL LTD

("Party A")

and

("Party B")

(the "Agreement")

The parties have previously entered into the Agreement dated as of 7 October 2015, and thereunder concluded a Transaction with a Trade Date of 29 October 2015 (the "Transaction"), and have now agreed to amend the terms of the Confirmation of the Transaction by the terms of this Amendment (this "Amendment").

Accordingly, the parties agree as follows:—

1. Amendments to the Confirmation

The Confirmation is amended as follows:

- (a) The definition of "Buyer Preference Shares" is hereby deleted and replaced with:

"Buyer Preference Shares" means non-voting, non-redeemable preference shares denominated in ZAR, issued by the Buyer and listed on the NSX, the terms of which are more fully described in clause 4.7.2 of the Constitution of the Buyer."

- (b) The definition of "Exchange Securities" is hereby deleted and replaced with:

"Exchange Securities" means any securities exchanged for the Shares, or the right to receive such securities, prior to or on the Forward Date."

- (c) In the first line of paragraph 3.2 the words "or on" are inserted before the words "the Forward Date".

- (d) A new paragraph 3.5 is added as follows:

"3.5 Buyer Undertaking

The Buyer hereby undertakes, to the Seller (including its successors in title), that the terms of the Buyer Preference Shares will be amended within 6 months from the date of issue to provide that:

- 3.5.1 the Buyer Preference Shares will carry a fixed dividend yield of at least 7% which dividend yield shall be cumulative but shall not bear interest against the Buyer; and*
3.5.2 the Buyer Preference Shares will be redeemable at the election of the holder following the 10-year anniversary of the date of issue."

2. Representations

Each party represents to the other party in respect of the Confirmation, as amended pursuant to this Amendment, that all representations made by it pursuant to the Agreement are true and accurate as of the date of this Amendment.

3. Miscellaneous

- (a) **Entire Agreement; Restatement**

(i) This Amendment constitutes the entire agreement and understanding of the parties with respect to its subject matter and supersedes all oral communication and prior writings (except as otherwise provided herein) with respect thereto.

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(ii) Except for any amendment to the Confirmation made pursuant to this Amendment, all terms and conditions of the Agreement and the Confirmation will continue in full force and effect in accordance with their provisions on the date of this Amendment. References to the Confirmation or the Transaction will be to the Confirmation and the terms of the Transaction, as amended by this Amendment.

(b) *Amendments.* No amendment, modification or waiver in respect of the matters contemplated by this Amendment will be effective unless made in accordance with the terms of the Agreement.

(c) *Counterparts.* This Amendment may be executed and delivered in counterparts (including by facsimile transmission), each of which will be deemed an original.

(d) *Headings.* The headings used in this Amendment are for convenience of reference only and are not to affect the construction of or to be taken into consideration in interpreting this Amendment.

(e) *Governing Law.* This Amendment shall in all respects be governed by South African law and either party shall be entitled to institute all or any proceedings against the other in connection with this Amendment in the High Court of South Africa (Western Cape Local Division, Cape Town) and each party hereby consents and submits to the non-exclusive jurisdiction of that court.

TREEMO (PTY) LTD

(Party A)

By: _____

Name: Peter Todd

Title: Director

Date: 27 November 2015

TREVO CAPITAL LTD

(Party B)

By: _____

Name: Daniel Romburgh

Title: Director

Date: 27 November 2015

"JE5"

Steinhoff International Holdings N.V.
(Incorporated in the Netherlands)
(Registration number: 63570173)
Share Code: SNH
ISIN: NL0011375019

Steinhoff Investment Holdings Limited
(Incorporated in the Republic of South Africa)
(Registration number: 1954/001893/06)
JSE Code: SHFF
ISIN: ZAE000068367

UPDATE ON STEINHOFF GLOBAL SETTLEMENT

Steinhoff International Holdings N.V. ("**SIHNV**") announces the following update on the implementation of its proposal to resolve the various multi-jurisdictional legacy litigation and claims against SIHNV (together with its subsidiaries, "**Steinhoff**") including those against the former South African holding company Steinhoff International Holdings Proprietary Limited ("**SIHPL**").

SIHNV first announced its proposed global settlement in July 2020, at which stage it indicated that prior to launch of any implementation proceedings Steinhoff would, amongst other things, need the approval of its financial creditors.

Following the July announcement SIHNV launched a financial creditor consent process in October 2020 ("**October Consent Request**") and provided further public updates in November and December 2020.

In addition, on 1 December 2020 SIHNV announced that it had satisfied another key condition after it received approval from the South African Reserve Bank ("**Finsurv**") for the cross-border transfers contemplated by the Proposed Settlement. The approval is valid for 12 months from the date of grant.

Next Steps

As previously announced, implementation of the proposed global settlement requires a co-ordinated series of steps to be taken in the relevant jurisdictions. The key short-term next steps are expected to be as follows:

- English Scheme sanction hearing to take place on 26-27 January 2021: Following the approvals given at the creditors meetings on 15 December 2020 the sanction hearing in the English scheme proceedings, to approve the amendments to the SEAG CPU in line with those sought from financial creditors under the October Consent Request, is listed to take place on 26/27 January 2021. If the Scheme is sanctioned SIHNV will have the necessary consents in place to proceed to implement the proposed settlement.



SIHNV has been notified by Conservatorium Holdings LLC (together with its affiliates) that it intends to oppose the request for sanctioning of the scheme at that hearing.

- Approval of the final form finance documents: Under the October Consent Request the final forms of the amendments to the relevant Steinhoff finance documents are required to be approved by the Simple Majority Settlement Creditors (being more than 50 per cent in value of the SIHNV creditors) alongside additional consent rights reserved for certain financial creditor constituencies as provided in the October Consent Request. A consent request to approve the final form relevant documents by the financial creditors is expected to be launched shortly.
- South African directions hearing in respect of SIPHL section 155 scheme: An *ex parte* hearing is scheduled for 21 January 2021 in the Western Cape High Court, at which SIHPL will seek certain procedural directions prior to a decision to launch a scheme of arrangement under s155 of the South African Companies Act to implement the global settlement proposal as it relates to SIHPL ("**S155 Proposal**"). An application to the South African High Court has been filed by Hamilton B.V. and Hamilton 2 B.V. contesting SIHPL's approach to the proposed class composition under the S155 Proposal. No date for a hearing of that application has been set.

By way of further update, a hearing has been scheduled for 8 February 2020 in the Amsterdam District Court following a recent request by Conservatorium Holdings LLC to appoint a restructuring expert to SIHNV pursuant to Article 371 of the Dutch Bankruptcy Act (enacting elements of the recently enacted pre-insolvency proceedings "Wet Homologatie Onderhands Akkoord"). SIHNV will respond to the request in due course.

Steinhoff's view remains that the global settlement, as proposed, provides the means to substantially resolve the historical claims against it and remains firmly in the best interests of all stakeholders.

Further Information

Further information on the Proposed Settlement, including a Frequently Asked Questions document, is available on the following website:
<https://www.steinhoffinternational.com/settlement-litigation-claims.php>.

On this website, claimants may submit their contact and claim details, inform Steinhoff of their intention to support the Proposed Settlement and register for updates. Alternatively, Steinhoff's investor relations team can be contacted by email at settlement@steinhoff.co.za.

Further updates will be provided following the various processes and court hearings identified above.

The Company has a primary listing on the Frankfurt Stock Exchange and a secondary listing on the JSE Limited.

JSE Sponsor: PSG Capital



Stellenbosch, South Africa

14 January 2021

Handwritten signature

"JE6"

Juliette de Hutton

From: Juliette de Hutton
Sent: Friday, 15 January 2021 09:11
To: jac.marais@adams.africa
Cc: Deon de Klerk
Subject: SIHPL section 155 proposal - pending litigation

Importance: High

Dear Mr Marais

We understand that you act for the Hamilton parties in regard to litigation against the Steinhoff group.

We act for various plaintiffs in litigation against SHIPL, including Trevo Capital Limited. We note from a SENS announcement yesterday that:

An application to the South African High Court has been filed by Hamilton B.V. and Hamilton 2 B.V. contesting SIHPL's approach to the proposed class composition under the S155 Proposal. No date for a hearing of that application has been set".

We have not had sight of this application and request that you provide us with a copy as a matter of some urgency. Certain of our clients likewise have concerns regarding the class composition under the s155 proposal.

Kind regards

Juliette de Hutton
Partner



T +27 21 480 7800 | D +27 21 480 7817
M 082 459 9977
E juliette.dehutton@bowmanslaw.com

BOWMAN GILFILLAN
22 Bree Street, Cape Town
P O Box 248, Cape Town, 8000, South Africa
www.bowmanslaw.com

Happy holidays and best wishes for the New Year from all of us at Bowmans.

A handwritten signature in black ink, appearing to be "J. de Hutton".

"JE7"

Lauren Gildenhuis

To: Lauren Gildenhuis
Subject: FW: CASE NUMBER 17327/2020 - HAMILTON B.V AND HAMILTON 2 B.V / STEINHOFF INTERNATIONAL HOLDINGS PROPRIETARY LIMITED
Attachments: Application (17327_20)_compressed_pdf

From: Jac Marais <Jac.Marais@adams.africa>
Sent: Monday, 25 January 2021 07:33
To: Juliette de Hutton <juliette.dehutton@bowmanslaw.com>; 'Jeffrey.Kron@nortonrosefulbright.com' <Jeffrey.Kron@nortonrosefulbright.com>; 'Busisiwe.Nhlapo@nortonrosefulbright.com' <Busisiwe.Nhlapo@nortonrosefulbright.com>; Michael-James Currie <michael@nortonsinc.com>; John Oxenham <john@nortonsinc.com>; 'jaw@caf.co.za' <jaw@caf.co.za>; 'miles@caf.co.za' <miles@caf.co.za>; 'mschaefer@fairbridges.co.za' <mschaefer@fairbridges.co.za>
Cc: Kelly Mzobe <Kelly.Mzobe@adams.africa>; Tshiamo Ntuli <Tshiamo.Ntuli@adams.africa>; Mia de Jager <Mia.deJager@adams.africa>; 'Brendan Olivier' <bolivier@werksmans.com>
Subject: CASE NUMBER 17327/2020 - HAMILTON B.V AND HAMILTON 2 B.V / STEINHOFF INTERNATIONAL HOLDINGS PROPRIETARY LIMITED

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Dear All

We attach a copy of the application for declaratory relief, for your information.

Kind regards
Jac

Jac Marais
Partner

Adams & Adams

DIRECT +27 12 432 6356
PRIMARY +27 12 432 6000
FAX +27 12 432 6550
EMAIL Jac.Marais@adams.africa

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Lynnwood Manor, Pretoria 0081, South Africa
PO BOX 1014, Pretoria 0001, South Africa

ATTORNEYS
Patent Trade Mark Copyright Design Commercial Property Litigation
www.adams.africa





BOWMANS

"JE8"

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Our Reference: D de Klerk/J de Hutton/6186596 Your Reference: B Olivier
Direct Line: 021 480 7934/021 480 7817 Date: 27 January 2021
Email Address: juliette.dehutton@bowmanslaw.com/deon.deklerk@bowmanslaw.com

Werksmans Attorneys
Attention: Brendan Olivier

by email: bolivier@werksmans.com

Dear Sir

TREVO CAPITAL LIMITED / STEINHOFF INTERNATIONAL HOLDINGS PROPRIETARY LIMITED (SIHPL)

1. As you are aware, we act for Trevo Capital Limited.
2. At the hearing of your client's *ex parte* application on 21 December 2021, our Mr de Klerk alerted Judge Saldanha to the fact that to date you had refused to provide us with a copy of the application brought by Hamilton BV and Hamilton 2 BV against SIHPL in relation to the proposed section 155 process.
3. Your counsel gave an undertaking that Werksmans would provide a copy to us.
4. We wish to place on record that you have failed to do so despite the lapse of some 4 business days.
5. We have fortunately, in the interim, obtained a copy from Adams & Adams.
6. All Trevo's rights are reserved.

Yours faithfully

Bowman Gilfillan

per:

Deon de Klerk and Juliette de Hutton

(sent electronically without signature)

Bowman Gilfillan Inc. Reg. No. 1998/021409/21 Attorneys Notaries Conveyancers

Directors RA Losh (Chairman) | PM Maduna (Deputy Chairman) | AJ Keep (Managing Partner) | AG Anderson | DP Anderson | LJ Anderson | JS Andropoulos | M Angumuthoo | J Augustyn | L Avrii | AM Barnes-Webb | TL Bata | JM Ballou | CH Bouwer | IL Brink | RM Carr | PH Carter | CN Cunningham | GH Damon | RA Davey | MEC Davids | JM de Hutton | D de Klerk | TC Dini | CR Douglas | HD Duffley | L Dyer | S Ellery | L Fleiser | KA Fulton | BJ Gavron | TM Gcabashe | DJ Goral | TJ Gordon-Grant | CB Green | S Greenwood-Norley | A Hale | AS Harris | P Hart-Davies | VJ Horholt | PA Hirsch | HPM Irvine | CS Jackson | JR Janks | JR Kaapu | M Keep | CP Kennedy | KM Kern | JD Krizan | JG Kruger | JP Kruger | MR Kyle | R la Grange | R Labuschagne | T Laubscher | DA Letter | L Ludick | J Lurie | LT Mabitikane | KS Makopane | M Makola | HW Mandlana | HL Manson | A McAlistair | TP McDougall | JM McKinnell | MC Mkhiva | PI Modika | TL Mongao | L Mungo | K Naicker | UEBU Naumann | X Nyali | MAJ Oppenheim | DM Phillips | AJ Pkoi | P Pillay | JD Prain | DM Protorus | JL Power | MA Purchase | Y Ram | LV Raphulu | CL Reidy | JB Ripley-Evans | CDS Rodrigues | MS Russ | GI Rushton | S Safy | JW Sahi | U Salasa - Ikhon | MY Sase | CG Schafer | RZ Shein | BT Sibaya | CEC Smith | EC Steyn | ML Swartland | H Taylor | L Thabane | CFN Todd | CE Tucker | CL van Heerden | A van Niekerk | MR van Velden | RJ van Voore | MG Vermaak | DS Webb | DC Wessels | RS Wessels | JW Westgate | EP Wilkins | HJ Wilsonach | SG Wilson | SA Wood | KS Wright | DD Yuti
Senior Consultants REW Burman | RA Cohen | JH Schlosberg | CL Valkin | PE Whelan
Group COO RJ Smith | Group CFO HI Harding | Company Secretary NL van Vuuren

KENYA MALAWI MAURITIUS SOUTH AFRICA TANZANIA UGANDA ZAMBIA

ALLIANCE FIRMS: ETHIOPIA | NIGERIA

**IN THE HIGH COURT OF SOUTH AFRICA
(WESTERN CAPE DIVISION, CAPE TOWN)**

Case No: **17327 / 2020**

In the application between:

TREVO CAPITAL LTD

Applicant / Intervening Party

and

HAMILTON BV

First Respondent

HAMILTON 2 BV

Second Respondent

STEINHOFF INTERNATIONAL HOLDINGS (PTY) LTD

Third Respondent

In re the matter between:

HAMILTON BV

First Applicant

HAMILTON 2 BV

Second Applicant

and

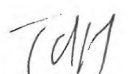
STEINHOFF INTERNATIONAL HOLDINGS (PTY) LTD

Respondent

CONFIRMATORY AFFIDAVIT

I, the undersigned,

JULIETTE MARION DE HUTTON,



do hereby make oath and say that:

1. I am an adult female attorney practicing as a director of Bowman Gilfillan Inc. (**Bowmans**) of 22 Bree Street, Cape Town.
2. The facts deposed to herein are within my own personal knowledge and belief, save where the context indicates the contrary, and are furthermore true and correct. Where I refer to information conveyed to me by others, I verily believe such information to be true.
3. I have read the founding affidavit of Johann-Dirk Enslin (**the Founding Affidavit**) in support of the urgent application by Trevo Capital Ltd (**Trevo**) to intervene in the application for declaratory relief (**the declaratory application**) instituted by the First and Second Respondents (hereinafter collectively referred to as '**Hamilton**') against the Third Respondent (**SIHPL**) under case number 17327/2020.
4. Insofar as the Founding Affidavit makes reference to me in my capacity as Trevo's legal representative, I confirm the contents thereof. In particular, I confirm that:
 - 4.1 on 15 January 2021 I addressed email correspondence to Mr Jac Marais of Adams & Adams, and made telephonic enquires with Mr Brendan Olivier of Werksmans, to request a copy of the declaratory application;
 - 4.2 in a telecon on 18 January 2021, Mr Olivier finally declined to provide me with the declaratory application for the reasons provided in paragraph 62 of the Founding Affidavit;

- 4.3 the email correspondence which I addressed to Ms Mia de Jager of Adams & Adams on 18 January 2021 received no response;
- 4.4 Mr Marais of Adams & Adams indicated to me that he would take instructions as to whether a copy of the declaratory application could be provided to Bowmans on 19 January 2021;
- 4.5 I attended the hearing of SIHPL's *ex parte* application on 21 January 2021 before the Honourable Mr Justice Saldanha, and confirm the contents of paragraphs 64 – 67 of the Founding Affidavit insofar as it relates to developments which took place at the hearing;
- 4.6 I received a copy of the declaratory application from Mr Marais on 25 January 2021; and
- 4.7 I addressed correspondence to Mr Olivier on 27 January 2021 placing on record that Werksmans was yet to provide Bowmans with a copy of the declaratory application despite undertaking to do so.



JULIETTE MARION DE HUTTON

I certify that the abovementioned signature is the true signature of **JULIETTE MARION DE HUTTON** and that she acknowledged to me that she knows and understands the contents of the foregoing Affidavit which was signed and attested to at the undermentioned address on this 4th day of

FEBRUARY 2021 in accordance with the provisions of GN R1258 dated 21 July 1972 as amended by Regulation No. 1648 dated 19 August 1977, by GN R1428 of 11 July 1980 and by GN R744 of 23 April 1982.



COMMISSIONER OF OATHS

ANDREW MARK HEIBERG
COMMISSIONER OF OATHS
PRACTISING ATTORNEY R.S.A.
12th FLOOR
11 BUITENFRACHT STREET
CAPE TOWN