
STEP 2
SHARE REPURCHASE AGREEMENT

between

THORNBIRD TRADE AND INVEST 33 PROPRIETARY LIMITED
Seller

and

ADCORP HOLDINGS LIMITED
Company

**Baker
McKenzie.**

Baker & McKenzie
1 Commerce Square
39 Rivonia Road
Sandhurst, Sandton
Johannesburg, 2196
South Africa
www.bakermckenzie.com

Table of contents

1.	INTERPRETATION	2
2.	CONDITIONS PRECEDENT	3
3.	REPURCHASE	4
4.	CLOSING	4
5.	SELLER'S WARRANTIES	5
6.	GENERAL WARRANTIES	5
7.	DOMICILIUM AND NOTICES	6
8.	DISPUTE RESOLUTION.....	7
9.	BREACH	7
10.	CONFIDENTIALITY	8
11.	GENERAL.....	8

SHARE REPURCHASE AGREEMENT

between:

ADCORP HOLDINGS LIMITED, registration number 1974/001804/06, a limited liability public company incorporated in South Africa (**Company**); and

THORNBIRD TRADE AND INVEST 33 PROPRIETARY LIMITED, registration number 2007/005509/07, a limited liability private company incorporated in South Africa (**Seller**).

Recitals

- A. In 2013, as part of a broad-based black economic empowerment (**B-BBEE**) transaction (**2013 B-BBEE Transaction**) the Company issued class "B" ordinary shares (**Adcorp B Shares**) to (i) the trustees for the time being of the Adcorp Employee Benefit Trust 2 (**AEBT 2**), (ii) Wiphold Financial Services Number Two Proprietary Limited (**Wip Two**), and (iii) the Seller, as follows:

B-BBEE shareholder	Adcorp B Share shareholding
AEBT 2	40%
Seller	25%
WIP Two	35%

- B. The Adcorp B Shares represent 13.27% of the Company's total shares in issue.
- C. The Company now wishes to partially unwind the 2013 B-BBEE Transaction structure. Accordingly, the Company will, *inter alia*, repurchase the Repurchase Shares in accordance with the terms and conditions of this Agreement.
- D. Following completion of the Repurchase, *inter alia*:
- a. SA HoldCo will acquire the South African subsidiaries of the Company in terms of an asset for share transaction as contemplated in section 42 of the Income Tax Act, 1962; and
 - b. the Company will implement a new B-BBEE scheme in terms of which, *inter alia*, the Seller and Quest Strategic Partners Proprietary Limited (**QSP**) will subscribe for ordinary shares in the Company in accordance with the Subscription Agreement,
- resulting in SA HoldCo holding the Company's South African subsidiaries and each of the Seller and QSP, among others, holding an interest in SA HoldCo.
- E. The Seller is the beneficial holder of the Repurchase Shares.
- F. To give effect to the above, the Company wishes to repurchase the Repurchase Shares for the Repurchase Price and the Seller is willing to sell the Repurchase Shares to the Company in return for such consideration.
- G. The Parties wish to record in writing their agreement in respect of the above and matters ancillary thereto.

1. INTERPRETATION

1.1 Definitions

In this Agreement the following expressions shall bear the meanings assigned to them below and cognate expressions bear corresponding meanings:

Agreement means this share repurchase agreement.

Business Day means any day other than a Saturday, Sunday or official public holiday in South Africa.

Companies Act means the Companies Act, No. 71 of 2008.

Conditions Precedent means the suspensive conditions set out in clause 2(a) below.

Parties means collectively, the Seller and the Company, and **Party** shall mean either one of the Parties, as the context may require.

Repurchase means the repurchase by the Company of the Repurchase Shares from the Seller in accordance with this Agreement.

Repurchase Date means the first Business Day after the date on which the last Condition Precedent has been fulfilled or such other date as the Parties may agree in writing.

Repurchase Price means an amount of ZAR 42,057.12.

Repurchase Shares means 4 205 712 of the issued class B shares in the Company as held by the Seller, constituting, as at the Signature Date, 25% of the issued class B shares of the Company.

SA Holdco means a limited liability private company to be incorporated in South Africa.

Signature Date means the date of signature of this Agreement by the last of its signatories.

South Africa means the Republic of South Africa.

Subscription Agreement means the subscription agreement entered into or to be entered into between, among others, the Seller and SA Holdco contemporaneously with this Agreement.

Takeover Regulation Panel means the Takeover Regulation Panel established in terms of section 196 of the Companies Act.

ZAR means South Africa Rand, being the lawful currency of South Africa.

1.2 Construction

In this Agreement:

- (a) clause headings and the heading of the Agreement are for convenience only and are not to be used in its interpretation;
- (b) an expression which denotes:
 - (i) either gender includes the other;
 - (ii) a natural person includes a juristic person and *vice versa*;
 - (iii) the singular includes the plural and *vice versa*;

- (iv) a Party includes a reference to that Party's successors in title and assigns allowed at law; and
- (v) a reference to a consecutive series of two or more clauses is deemed to be inclusive of both the first and last mentioned clauses.
- (c) the words "**include**" and "**including**" mean "**include without limitation**" and "**including without limitation**". The use of the words "**include**" and "**including**" followed by a specific example/s shall not be construed as limiting the meaning of the general wording preceding it;
- (d) any substantive provision, conferring rights or imposing obligations on a Party and appearing in any of the definitions in clause 1.1 or elsewhere in this Agreement, shall be given effect to as if it were a substantive provision in the body of the Agreement;
- (e) words and expressions defined in any clause shall, unless the application of any such word or expression is specifically limited to that clause, bear the meaning assigned to such word or expression throughout this Agreement;
- (f) a reference to any statutory enactment shall be construed as a reference to that enactment as at the Signature Date and as amended or substituted from time to time;
- (g) except to the extent that any provision of this Agreement expressly provides otherwise, if the only day or the last day for the exercise of any right, performance of any obligation or taking (or procuring the taking of) any action in terms of this Agreement falls on a day which is not a Business Day, such right shall be capable of being exercised, or such obligation performed or action taken on the immediately succeeding Business Day;
- (h) the rule of construction that this Agreement shall be interpreted against the Party responsible for the drafting of this Agreement, shall not apply;
- (i) any reference in this Agreement to this Agreement or any other agreement or document shall be construed as a reference to this Agreement or, as the case may be, such other agreement or document, as amended, varied, novated or supplemented from time to time; and
- (j) in this Agreement the words "**clause**" or "**clauses**" refer to clauses of this Agreement.

2. **CONDITIONS PRECEDENT**

- (a) This Agreement, other than the provisions of clause 1, this clause 2 and clauses 7 to 11 (inclusive) (**Surviving Provisions**) all of which will become effective immediately on the Signature Date, is subject to the fulfilment of the following Conditions Precedent that on or before 20 December 2020 (**Deadline Date**):
 - (i) all the shareholders of the Company have approved the Repurchase in accordance with sections 48(8)(b), 114(1)(e) and 115(2)(a) of the Companies Act;
 - (ii) the Takeover Regulation Panel has granted an exemption to the Company in terms of section 119(6) of the Companies Act in respect of the Repurchase; and
 - (iii) the board of directors of the Company has approved and authorised the entering into of this Agreement and the transactions contemplated herein, including:
 - (A) authorising the Company to repurchase the Repurchase Shares from the Seller in terms of section 48(2)(a), as read with section 46, of the

Companies Act, subject to the requirements of section 48(8)(b) of the Companies Act; and

- (B) acknowledge that the board of the Company has applied the solvency and liquidity test, as set out in section 4 of the Companies Act, and reasonably conclude that the Company will satisfy the solvency and liquidity test immediately after completing the Repurchase
 - (C) retaining an independent expert in terms of section 114(2) of the Companies Act, who shall prepare and deliver to the board of the Company and the holders of the Adcorp B Shares an independent expert report in terms of section 114(3) of the Companies Act.
- (b) The Conditions Precedent are required by law and are not capable of waiver.
 - (c) The Parties shall use their reasonable endeavours and shall cooperate in good faith to procure the fulfilment of the Conditions Precedent as soon as is reasonably possible after the Signature Date.
 - (d) If the Conditions Precedent are not fulfilled on or before the Deadline Date, then this Agreement, save for the Surviving Provisions which will remain in full force and effect, shall be of no force or effect, the Parties shall be restored as near as possible to the positions in which they would have been had this Agreement not been entered into (*status quo ante*) and neither Party shall have any claim against the other in terms of this Agreement, save for a breach of clause 2(b).

3. REPURCHASE

- (a) On the Repurchase Date, the Seller will sell the Repurchase Shares to the Company, which will purchase the Repurchase Shares from the Seller as one indivisible transaction and as a repurchase of shares in terms of section 48 of the Companies Act, in exchange for the Repurchase Price.
- (b) Against compliance by the Seller with its obligations in terms of clause 4(a), on the Repurchase Date, the Company shall pay the Repurchase Price to the Seller by electronic transfer of freely available funds into the South African bank account nominated for this purpose by the Seller no later than five Business Days prior to the Repurchase Date.
- (c) Upon completion of the Repurchase, the Repurchase Shares will be cancelled and will revert to being authorised shares in the Company.

4. CLOSING

- (a) On the Repurchase Date, representatives of the Parties shall meet at the offices of the Company or such other place as the Parties may agree, at which meeting, the Seller shall, against payment by the Company of the Repurchase Price in terms of clause 3(b), deliver to the Company:
 - (i) a securities transfer form in respect of the Repurchase Shares duly dated, completed and signed by the Seller in favour of the Company as the transferee;
 - (ii) the original share certificates in respect of the Repurchase Shares;
 - (iii) a copy of the resolutions of its board of directors approving and authorising the entering into of this Agreement and the transactions contemplated herein; and

- (iv) a copy of the resolutions of its shareholders approving and authorising the entering into of this Agreement and the transactions contemplated herein in accordance with section 112, as read with section 115, of the Companies Act.
- (b) The Parties may, by agreement, dispense with a meeting on the Repurchase Date and may instead ensure delivery of the documents referred to in clause 4(a) and payment of the Repurchase Price, in such other manner as they may deem appropriate in the circumstances.

5. SELLER'S WARRANTIES

The Seller warrants, undertakes and represents to and in favour of the Company that, as at the Signature Date, the Repurchase Date and the dates in between those dates (all inclusive):

- (a) it is and will be the sole beneficial holder of the Repurchase Shares and is reflected as the sole registered holder thereof in the securities register of the Company;
- (b) it is entitled and able to give free, unrestricted and unencumbered title in the Repurchase Shares to the Company and that none of the Repurchase Shares are subject to any pledge or cession or other right of security or encumbrance in favour of any third party;
- (c) no person has any right to obtain an order for the rectification of the securities register of the Company;
- (d) no person has any right, including any option or right of first refusal or similar right, to purchase (or otherwise acquire) the Repurchase Shares (or any portion thereof) or any interest therein; and
- (e) the Seller has no claims of whatsoever nature and howsoever arising (including any shareholder loan claims) against the Company.

6. GENERAL WARRANTIES

- (a) Each of the Parties hereby warrants to and in favour of the other that:
 - (i) it has the legal capacity and has taken all necessary corporate action required to empower and authorise it to enter into this Agreement;
 - (ii) this Agreement constitutes an agreement valid and binding on it and enforceable against it in accordance with its terms;
 - (iii) the execution of this Agreement and the performance of its obligations hereunder does not and shall not:
 - (A) contravene any law or regulation to which that Party is subject;
 - (B) contravene any provision of that Party's constitutional documents; or
 - (C) conflict with or constitute a breach of any of the provisions of any other agreement, obligation, restriction or undertaking which is binding on it;
 - (D) to the best of its knowledge and belief, it is not aware of the existence of any fact or circumstance that may impair its ability to comply with all of its obligations in terms of this Agreement;
 - (E) it is entering into this Agreement as principal (and not as agent or in any other capacity);

- (F) the natural person who signs and executes this Agreement on its behalf is validly and duly authorised to do so;
 - (G) no other party is acting as a fiduciary for it; and
 - (H) it is not relying upon any statement or representation by or on behalf of any other Party, except those expressly set forth in this Agreement.
- (b) Each warranty in clause 5 and this clause 6:
- (i) is a separate Warranty and will in no way be limited or restricted by reference to or inference from the terms of any other Warranty or by any other words in this Agreement;
 - (ii) is given as at the Signature Date and the Repurchase Date unless otherwise stated; and
 - (iii) shall continue and remain in force notwithstanding the completion of the transactions contemplated in this Agreement.
- (c) Save as set out in and clause 5 and this clause 6, neither Party gives any further warranties, representations or undertakings to the other, express or implied.

7. DOMICILIUM AND NOTICES

- (a) The Parties choose as their respective *domicilium citandi et executandi* (**Domicilium**) the following physical addresses, and for the purposes of giving or sending any notice provided for or required under this Agreement, the said physical addresses as well as the following email addresses:

(i) Seller

Physical address: Woodmead Business Park
Building: Simeka House
142 Western Service Road
Woodmead
Gauteng, 2191

Email address: itumeleng@simekacapital.com

Marked for the attention of: Itumeleng Phasa

(ii) Company

Physical address: 102 Western Service Road
Gallo Manor Extension 6
Johannesburg
Gauteng
2191

Email address: lisa.laporte@adcorgroup.com

Marked for the attention of: Lisa Laporte

- (b) Either Party shall be entitled from time to time, by giving written notice to the other, to change its physical Domicilium to any other physical address within South Africa.
- (c) Any notice given or payment made by either Party to the other (**Addressee**) which is:

- (i) delivered by hand between the hours of 09:00 and 17:00 on any Business Day to the Addressee's physical Domicilium for the time being shall be deemed to have been received by the Addressees at the time of delivery; or
- (ii) successfully transmitted by e-mail to the Addressee's e-mail Domicilium for the time being shall be deemed (unless the contrary is proved by the Addressee) to have been received by the Addressee on the day immediately succeeding the date of successful transmission thereof.
- (d) This clause 7 shall not operate so as to invalidate the giving or receipt of any written notice, which is actually received by the Addressee other than by a method referred to in clause 7(a).
- (e) Any notice in terms of or in connection with this Agreement shall be valid and effective only if in writing and if received or deemed to be received by the Addressees.

8. DISPUTE RESOLUTION

- (a) In the event of there being any dispute among any of the Parties relating to this Agreement (including in respect of the interpretation of this Agreement, or any breach of this Agreement, or its termination or any other matter related thereto, both while in force and after its termination), the duly authorised representatives of the Parties to such dispute (**Dispute Parties**) shall be entitled by giving written notice to that effect to the others, to have such dispute resolved by the Arbitration Foundation of Southern Africa (AFSA) in South Africa by an arbitrator or arbitrators appointed by AFSA.
- (b) The arbitrator's findings shall, save for manifest error, be final and binding on the Parties and may be made an order of court. The Parties shall have the right to appeal as provided for in article 22 of the aforesaid rules.
- (c) The arbitration shall be held in Johannesburg, South Africa.
- (d) Each Party:
 - (i) expressly consents to any arbitration in terms of the aforesaid rules being conducted as a matter of urgency; and
 - (ii) irrevocably authorises the other to apply, on behalf of the Parties to such dispute, in writing, to AFSA for any such arbitration to be conducted on an urgent basis.
- (e) Notwithstanding clause 8(a) above, either Party shall be entitled to approach a competent court for urgent interim relief pending finalisation of any arbitration. This clause will continue to be binding on the Parties notwithstanding any termination or cancellation of the Agreement.
- (f) Any costs orders made by the arbitrator or the court shall be permitted to be made on an attorney and client scale.

9. BREACH

Should either Party materially breach any provision of this Agreement and fail to remedy such breach within 14 days after receiving written notice requiring such remedy, then (irrespective of the materiality of such breach or provision) the aggrieved Party (**Aggrieved Party**) shall be entitled without notice, in addition to any other remedy available to it at law or under this Agreement, including obtaining an interdict, to cancel this Agreement or to claim specific performance of any obligation then due, in either event without prejudice to the Aggrieved Party's right to claim damages, provided that none of the Parties shall be entitled to cancel this Agreement for any reason whatsoever after the Repurchase Date.

10. CONFIDENTIALITY

- (a) Notwithstanding the cancellation or termination of this Agreement or any of the Transaction Agreements, neither Party (**Receiving Party**) shall, at any time after the conclusion of this Agreement, disclose to any person or use in any manner whatsoever any information which may be proprietary and/or confidential information belonging to the other Party (**Confidential Information**), or the existence and contents of this Agreement, unless the such Party has first given its written approval thereof, such approval not to be unreasonably withheld.
- (b) The Receiving Party may disclose the other Party's Confidential Information and the existence and contents of this Agreement:
 - (i) to the extent required by law (other than in terms of a contractual obligation of the Receiving Party); and
 - (ii) to, and permit the use thereof by, its employees, representatives and professional advisers to the extent strictly necessary for the purpose of implementing or enforcing this Agreement or obtaining professional advice or conducting its business, it being specifically agreed that any disclosure or use by any such employee, representative or adviser of such confidential or other information for any other purpose shall constitute a breach of this clause 10 by the Receiving Party.
- (c) The provisions of this clause 10 shall cease to apply to any Confidential Information of a Party which:
 - (i) is or becomes generally available to the public other than as a result of a breach by the Receiving Party of its obligations in terms of this clause 10;
 - (ii) is also received by the Receiving Party from a third party who did not acquire such Confidential Information subject to any duty of confidentiality in favour of the other Party; or
 - (iii) was known to the Receiving Party prior to receiving it from the other Party.

11. GENERAL

- (a) This Agreement constitutes the sole record of the agreement between the Parties in relation to the subject matter hereof.
- (b) Neither Party shall be bound by any representation, warranty, promise or the like not recorded in this Agreement.
- (c) No addition to, variation, or agreed cancellation of this Agreement shall be of any force or effect unless in writing and signed by or on behalf of the Parties.
- (d) This Agreement shall be interpreted and governed in all respects by the laws of South Africa.
- (e) Each provision of this Agreement is, notwithstanding the grammatical relationship between that provision and the other provisions of this Agreement, severable from the other provisions of this Agreement. Any provision of this Agreement which is or becomes invalid, unenforceable or unlawful in any jurisdiction shall, in such jurisdiction only, be treated as *pro non scripto* to the extent that it is so invalid, unenforceable or unlawful, without invalidating or affecting the other provisions of this Agreement which shall remain of full force and effect. The Parties declare that it is their intention that this Agreement would be executed without such invalid, unenforceable

or unlawful provision if they were aware of such invalidity, unenforceability or unlawfulness at the time of execution of this Agreement.

- (f) The signature by either Party of a counterpart of this Agreement shall be as effective as if that Party had signed the same document as the other Parties.
- (g) Neither of the Parties shall be entitled to cede any of their rights or delegate any of their obligations pursuant to this Agreement without the prior written consent of the other Party.
- (h) No indulgence which either Party may grant to the other shall constitute a waiver of any of the rights of the grantor.
- (i) Each Party shall bear its own costs relating to the preparation, negotiation and finalisation of this Agreement.

[Remainder of this page intentionally left blank. Signature pages to follow hereafter.]

**THORNBIRD TRADE AND INVEST 33
PROPRIETARY LIMITED**


Signature:

Name:

Capacity:

Date:

Place:


Cecil Maswanganyi
Director
11 November 2020
Woodmead

ADCORP HOLDINGS LIMITED



Signature:

Name: Phil Roux

Capacity: Director

Date: 13 November 2020

Place: Woodmead