

REMUNERATION AGREEMENT

between

NAUTIC AFRICA (PTY) LTD

and

SIPHO ERIC SONO

CONTENTS

	<u>Page No</u>
Interpretation	3
Definitions.....	4
Introduction.....	7
Practitioner’s Remuneration	7
Payment	8
Indemnity and exclusion of liability	8
Breach	9
Dispute Resolution	10
Notices and Domicilia	11
General.....	13
Counterparts.....	14

1.

Interpretation

1.1 In this Agreement:

- (a) headings are included for the purpose of convenience only and will not be used in its interpretation;
- (b) unless the context indicates otherwise, a reference to the singular includes the plural and vice versa, a reference to a natural person includes a corporate entity and vice versa and a reference to any gender includes the other genders;
- (c) when any number of days is prescribed, such number will be reckoned exclusively of the first and inclusively of the last day unless the last day falls on a day which is not a Business Day, in which case the last day will be the immediately preceding day which is a Business Day;
- (d) if a definition is substantive, conferring rights and/or imposing obligations on any Party, effect will be given to it as if it were a substantive term in the body of this Agreement;
- (e) any reference to any statute, regulation or other legislation will be a reference to that statute, regulation or other legislation as at the Signature Date, and as amended or substituted from time to time;
- (f) the use of the word “including” followed by specific example/s will not be construed as limiting the meaning of the general wording preceding it and the *ejusdem generis* rule will not be

applied in the interpretation of such general wording or such specific examples.

- 1.2 The termination of this Agreement will not affect those terms of this Agreement which expressly provide that they will operate after any such termination or which of necessity must continue to have effect after such termination, notwithstanding the fact that the clauses themselves do not expressly provide this.
- 1.3 Each of the terms of this Agreement has been negotiated by the Parties and drafted for the benefit of the Parties, and accordingly the rule of construction that the contract will be interpreted against or to the disadvantage of the party responsible for the drafting or preparation of the contract (i.e. the *contra proferentem* rule), will not apply.

2.

Definitions

In this Agreement, the following words and expressions will have the following meanings, and related words and expressions will have corresponding meanings:

- 2.1 “Act” means the Companies Act, 71 of 2008, as amended;

“Adjusted Remuneration” means a fee calculated as a product of the time spent by the Practitioner on the affairs of the Company in connection with the business rescue proceedings, and an hourly rate of R2 800;
- 2.2 “Affected Persons” shall bear the meaning ascribed thereto in section 128(1)(a) of the Act and in relation to the Company mean shareholders, creditors of the Company and any registered trade union representing employees of the Company and if any employees are not represented

by a registered trade union, each of the employees of the Company or their respective representatives;

2.3 “Agreement” means this Remuneration Agreement;

2.4 “Basic Remuneration” shall mean the remuneration and expenses payable by the Company to the Practitioner as contemplated in section 143(1) of the Act in accordance with the tariff prescribed in section 143(6), it being recorded that:

(a) The applicable tariff is the tariff contemplated in Regulation 128(1)(c) of the Act’s Regulations;

(b) As at the Signature Date: -

(i) The hourly tariff amount for the Practitioner is R1 754 excluding VAT;

(ii) The maximum daily tariff amounts to R21 930, exclusive of VAT

(c) The Practitioner’s expenses incurred in fulfilling his duties as Practitioner shall be paid by the Company and shall include, but not be limited to travel charges, relevant disbursements and those charges by the Advisors as appointed by the Practitioner in his sole and absolute discretion to assist him in the execution of his duties;

2.5 “Business Day” means any day other than a Saturday, Sunday or public holiday in South Africa;

2.6 “Commencement Date” means 9 February 2018, being the date on which the business rescue proceedings of Nautic Africa commenced;

- 2.7 “Commission” or CIPC means the Companies and Intellectual Property Commission;
- 2.8 "Nautic Africa or Company" means Nautic Africa (Pty) Ltd, registration number 2009/007037/07, in business rescue;
- 2.9 “OPIS Advisory” means OPIS Advisory (Pty) Ltd, a private company with registration number 2007/012055/07, registered in accordance with the company laws of South Africa, an employer company of the Practitioner, which renders corporate finance and business rescue advisory services;
- 2.10 “Parties” means Nautic Africa and the Practitioner and “Party” means any one of them as the context may require;
- 2.11 “Plan” means the business rescue plan of the Company;
- 2.12 "Practitioner" means Siphon Eric Sono, the duly appointed business rescue practitioner of Nautic Africa, who is a senior business rescue practitioner licenced as such by the Commission in terms of s138(1)(b), as read with s138(2) of the Act;
- 2.13 “Regulations” means the regulations of the Act;
- 2.14 “Signature Date” means the date of signature of this Agreement by the Party last signing;
- 2.15 “VAT” means value-added tax imposed by the Value-Added Tax Act, No 89 of 1991;
- 2.16 “R” means South African Rand,

3.

Introduction

- 3.1 The Proceedings commenced on 9 February 2018.
- 3.2 The Business Rescue Practitioner was appointed on 15 February 2018.
- 3.3 This Agreement intends to regulate the remuneration to be paid to the Practitioner and proposes payment of further Remuneration to the Practitioner in accordance with section 143 (2) of the Act.
- 3.4 Notwithstanding the Signature Date, on adoption of the Plan as contemplated in section 152 of the Act, this Agreement is deemed effective as from the date of appointment of the Practitioner.

4.

Practitioner's Remuneration

- 4.1 Practitioners' remuneration is at the hourly tariff for a large company based on the Company's public interest score at the Commencement Date. The public interest score calculated in terms of Regulation 26(2) of the Act as at the Commencement Date is 568 points.
- 4.2 A company is regarded as a large company if its public interest score is over 500.
- 4.3 To date, the BR Practitioner has charged out his time at the prescribed tariff rates set out in regulation 128 of the Act.
- 4.4 As Regulation 26(2) came into operation in April 2011, and has remained unchanged, the current tariffs have thus not been adjusted for inflation and are therefore no longer appropriate in 2018. Had the tariffs

been adjusted for inflation at approximately 8% per annum, the hourly tariff for large companies would be R3 007, up from R1 754.

- 4.5 In terms of section 143(2) of the Act, the BR Practitioner hereby proposes an agreement for further remuneration, additional to the prescribed tariff, resulting in an increase in the hourly charge out rate of the BR Practitioner to R2 800 per hour (excluding VAT), retrospectively from the date of his appointment. The adjustment to the BR Practitioner, which will be based on the difference between the proposed charge out rate and the tariff rates, will only be payable on Substantial Implementation Date.

5.

Payment

- 5.1 All invoices by the Practitioner to the Company are due and payable (without deduction or set off) on presentation of the respective invoice.
- 5.2 The Company shall pay interest on any late payments by the Company to the Practitioner at the rate of 2% (two percent) above prime rate of First National Bank.

6.

Indemnity and exclusion of liability

- 6.1 The Company shall advance all expenses to the Practitioner as may be required to defend litigation proceedings arising from the performance by the Practitioner of his duties as Practitioner of the Company.

- 6.2 The Company indemnifies the Practitioner for any of those expenses contemplated in clause 6.1 irrespective of whether the Company has advanced those expenses to the Practitioner.
- 6.3 The Practitioner has taken a professional indemnity insurance, the cost of which shall be passed on to the Company as re-imbursible costs of business rescue.
- 6.4 Other than as contemplated in section 140(3)(c) of the Act, the Practitioner is not liable for any act or omission in good faith in the course of the exercise of his powers and performance of the functions of a business rescue practitioner, except for those acts and omissions amounting to gross negligence in the exercise of the powers and performance and performance of the functions of the business rescue practitioner.
- 6.5 In the event that the business rescue proceedings are set aside for any reason or deemed to be a nullity, the Company shall be liable to pay the Practitioner's Basic Remuneration as if the business rescue proceedings had not been set aside or deemed a nullity, as the case may be. In such an event, payment of the Practitioner's Basic Remuneration shall be made within 5 (five) business days of the Practitioner accounting to the Company.

7.

Breach

- 7.1 If either Party ("**Defaulting Party**") commits a breach of any of its obligations in terms of this Agreement and fails to remedy that breach within a period of 10 (ten) days of being called upon to do so in writing by the other Party, then the other Party may, at its option and without prejudice to any other rights which it may have at law:

- (a) sue for specific performance of the Defaulting Party's obligation under this Agreement and any damages which it may have suffered as a result of that breach;
- (b) sue for damages in lieu of specific performance; or
- (c) cancel this Agreement and claim damages if the breach is material and goes to the root of the Agreement.

8.

Dispute Resolution

- 8.1 Any dispute arising from or in connection with this Agreement will be finally resolved by arbitration.
- 8.2 The arbitrator will be such person as may be agreed upon between the Parties or failing agreement such person as may be appointed at the request of either Party by the Arbitration Foundation of Southern Africa.
- 8.3 The arbitration will be conducted in accordance with the Rules of the Arbitration Foundation of Southern Africa for Commercial Arbitrations.
- 8.4 The language to be used in the arbitration proceedings will be English.

9.

Notices and Domicilia

9.1 Notices

(a) Each Party chooses the addresses set out below its name below as the addresses to which any written notice in connection with this Agreement may be addressed.

(i) Nautic Africa:

Physical Address: 3 Hermes Street

Paarden Eiland

Cape Town

7405

Email: james@nauticafrica.com

Attention: James Fisher

(ii) Practitioner:

Physical Address: 43 Montrose Street

1st Floor, South Wing

Birchwood Court

Midrand, 1687

Fax No.: 086 639 8897

Email: sipho.sono@opisadvisory.co.za

Attention: Sipho Sono

(b) Any Party may by written notice to the other Parties change its chosen address and/or fax number and/or email address, provided that the change will become effective on the

10th (tenth) Business Day after the receipt of the notice by the Party last receiving it.

- (c) Any notice given in terms of this Agreement will:
- (i) if delivered by hand be deemed to have been received by the addressee on the date of delivery;
 - (ii) if transmitted by fax be deemed to have been received by the addressee on the 1st (first) Business Day after the date of transmission; or
 - (iii) if transmitted by email be deemed to have been received once the email enters an information system outside the control of the Party sending it,
- unless the contrary is proved.
- (d) Notwithstanding anything to the contrary contained in this clause, a written notice or communication actually received by a Party will be an adequate written notice or communication to it, notwithstanding that it was not sent to or delivered at its chosen address and/or fax number and/or email address.

9.2 Domicilia

Each of the Parties chooses its physical address set out in clause 9.1(a) above, as changed from time to time, as its *domicilium citandi et executandi* at which documents in legal proceedings in connection with this Agreement may be delivered.

10.

General

- 10.1 This Agreement contains the entire agreement between the Parties in regard to its subject matter.
- 10.2 The Parties shall use their best endeavours to give effect to this Agreement.
- 10.3 Neither Party may cede its rights under this Agreement without the prior written consent of the other Party.
- 10.4 Neither Party will be bound by any express or implied term, undertaking, representation, warranty, promise or the like not included or recorded in this Agreement, whether it induced the contract and/or whether it was negligent or not.
- 10.5 No variation, amendment or consensual cancellation of this Agreement or any term hereof will be binding or have any force and effect unless reduced to writing and signed by or on behalf of the Parties.
- 10.6 Any extension of time or waiver or relaxation of any of the terms of this Agreement will be construed as relating strictly to the matter in respect of which it was made or given and will not operate as an *estoppel* against either Party in respect of its rights under this Agreement.
- 10.7 No failure by either Party to enforce any term of this Agreement will constitute a waiver of such term or affect in any way such Party's right to require the performance of such term at any time in the future, nor will a waiver of a subsequent breach nullify the effectiveness of the term itself.

- 10.8 If any term or part of any term of this Agreement is for any reason whatsoever, including a decision by any court, any legislation or any other requirement having the force of law, declared or becomes unenforceable, invalid or illegal, the Parties shall negotiate and effect the amendment of this Agreement such that it is lawful and enforceable, retaining its essential terms.
- 10.9 Each Party confirms that it is acting as principal in its own right and not as agent for any other person or for the other Party.
- 10.10 This Agreement shall be governed by and interpreted in accordance with the laws of the Republic of South Africa.
- 10.11 Neither party may cede or assign its rights and/or obligations hereunder to any person without the prior written consent of the other Party

11.

Counterparts

This Agreement may be executed in any number of counterparts, each of which when executed and delivered will constitute an original, but all of which together will constitute one and the same instrument.

Signed by Nautic Africa at _____ on this the ____ day of _____.

Name: _____

Duly authorised and warranting such authority.

Witnesses:

1. _____

2. _____

Signed by the Practitioner at _____ on this the ____ day of _____.

Name: _____

Duly authorised and warranting such authority.

Witnesses:

1. _____

2. _____