

AGREEMENT BETWEEN

[NAME]

AND

PATERSON SIMONS & CO. (AFRICA) LIMITED



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Registered office as above. Registered in England and Wales Company No. 453843. Established in 1948





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THIS AGREEMENT dated []

BETWEEN:

- (1) [], a company registered in [] with company number [] and having its registered office at [] (the “**Owner**”); and
- (2) **PATERSON SIMONS & CO. (AFRICA) LIMITED**, a company registered in England under company number 00453843 and having its registered office at 4 The Offices, 10 Fleet Street, Brighton, Sussex, UK (the “**Contractor**”).

WHEREAS:

- (A) The Owner [].
- (B) The Contractor is experienced and competent in [].
- (c) The Owner desires to utilise the services of the Contractor in the [].
- (D) The Owner and Contractor now desire to set forth the terms and conditions pursuant to which the Contractor shall provide services to the Owner.

Now, therefore, the Owner and the Contractor, intending to be legally bound, hereby agree as follows:

1. AGREEMENT

- 1.1. The Contractor will provide the services (“**Services**”) as set out in the Project Plan (“**Project Plan**”) in Appendix One in accordance with the terms and conditions of this agreement
- 1.2. The Project Plan shall be agreed in the following manner:
 - 1.2.1. the Owner shall provide the Contractor with a request for a Project Plan, setting out the requirements and specifications of the Services which it is requesting from the Contractor and any such other information as the Contractor may request to allow the Contractor to prepare a draft Project Plan;
 - 1.2.2. the Contractor shall, as soon as reasonably practicable, provide the Owner with a draft Project Plan;
 - 1.2.3. the Contractor and the Owner shall discuss and agree the draft Project Plan and when it has been agreed, they shall both sign a copy of it and it shall become Appendix 1 to and subject to the provisions of this agreement; and
 - 1.2.4. once the Project Plan has been agreed and signed in accordance with 1.2.3 above, no variation or amendment shall be made to it except with the written consent of both parties.

- 1.3. The Contractor will provide the Services under this agreement from the date specified in the Project Plan.
- 1.4. The Services supplied under this agreement shall continue to be supplied for the term set out in the Project Plan unless terminated earlier in accordance with clause 15.
- 1.5. This agreement (including the Project Plan) constitutes the entire agreement between the parties. The Owner acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of the Contractor which is not set out in this agreement.
- 1.6. This agreement applies to the exclusion of any other terms that the Owner seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.

2. SAFETY, HEALTH & ENVIRONMENT

- 2.1. The Owner shall arrange for any safety measures required by local health and safety legislation to be implemented and complied with so that the Services may be carried out safely and shall provide evidence of such implementation and compliance to the Contractor.
- 2.2. The Owner will keep the Contractor's site employees informed as to the site safety instructions and the risks associated with the site and the Owner's tools and equipment.
- 2.3. The Contractor and his employees shall comply with the Owner's safety, health and environmental policies and procedures, copies of which will be made available to the Contractor.
- 2.4. The Contractor may refuse to carry out the Services without any liability if in its reasonable opinion the performance of such Services could affect the safety of its site employees or third parties.

3. SECURITY

- 3.1. The Contractor and its site employees shall abide by all the security requirements in force on the Owner's site as notified to the Contractor and its site employees.
- 3.2. The Owner shall ensure the reasonable security of the Contractor's site employees and property while they are on its site and in its care during the term of this agreement.

4. SOCIAL

- 4.1. Unless otherwise agreed in writing by the parties it shall be the responsibility of the Contractor to provide for payment of salaries, wages, gratuities, airfares and such other amounts to its site employees as agreed between itself and its site employees and also for food, medical, communication and such other amenities as are required for the efficient discharge of its contractual obligations.
- 4.2. The Owner shall give site employees of the Contractor access to the Owner's first aid and medical emergency facilities.
- 4.3. It shall be the Contractor's responsibility to ensure that its site employees conduct themselves in an appropriate and responsible manner while on the Owner's site and to extend the proper courtesy and respect to the members of the local community.

5. RESPONSIBILITY OF CONTRACTOR

- 5.1. It shall be the responsibility of the Contractor to use reasonable endeavours:
 - 5.1.1. to provide the Services in accordance with the Project Plan;
 - 5.1.2. to meet any performance dates or project milestones as specified in the Project Plan, but such dates shall be estimates only and time of performance shall not be of the essence of this agreement;
 - 5.1.3. to observe all health and safety rules and regulations and any other reasonable security requirements that apply at any of the Owner's site and that have been communicated to it under clause 6.1.5, provided that it shall not be liable under this agreement if, as a result of such observation, it is in breach of any of its obligations under this agreement.

6. RESPONSIBILITY OF OWNER

- 6.1. It shall be the responsibility of the Owner:
 - 6.1.1. to comply with all Owner obligations as set out in the Project Plan;
 - 6.1.2. to co-operate with the Contractor and its site employees in all matters relating to the Services;
 - 6.1.3. to properly introduce the Contractor's team to the Owner's workforce and to explain the purpose of their job;

- 6.1.4. to prepare and maintain a safe site for the supply of the Services, including identifying, monitoring, removing and disposing of any hazardous materials during the supply of the Services at the site;
 - 6.1.5. to inform the Contractor and its site employees of all health and safety rules and regulations and any other reasonable security requirements that apply at the Owner's site;
 - 6.1.6. to inform and keep the Contractor informed of all relevant and applicable licencing and consent requirements and other rules and/or regulations in place in relation to the supply of the Services;
 - 6.1.7. to ensure that all its equipment and tools are in good working order and suitable for the purposes for which they are to be used in relation to the Services and conform to all relevant United Kingdom or local law requirements;
 - 6.1.8. to obtain and maintain all licences and consents and comply with all relevant legislation necessary to enable the Contractor to properly provide the Services;
 - 6.1.9. to provide for the Contractor, its agents, subcontractors, consultants and employees, at no charge, access to the Owner's premises, office accommodation, data and other facilities as reasonably required by them to include water, electricity and sewerage;
 - 6.1.10. unless otherwise agreed in writing by the parties to provide all necessary good quality working tools, equipment and materials needed to carry out the Services.
- 6.2. If the Contractor's performance of its obligations under this agreement is prevented or delayed by any act or omission of the Owner, its agent, subcontractors, consultants or employees, the Contractor shall not be liable for any costs, charges or losses sustained or incurred by the Owner that arise directly or indirectly from such prevention or delay.
- 6.3. The Owner shall be liable to pay to the Contractor, on demand, all reasonable costs and charges or losses sustained or incurred by the Contractor (including any direct, indirect or consequential losses, loss of profit and loss of reputation, loss or damage to property and those arising from injury to or death of any person and loss of opportunity to deploy resources elsewhere) that arise directly or indirectly from the Owner's fraud, negligence, failure to perform or delay in the performance of any of its obligations under this agreement, subject to the Contractor confirming such costs, charges and losses to the Owner in writing.

7. PAYMENTS

- 7.1. In consideration of the provision of the Services by the Contractor, the Owner shall pay the charges as set out in Appendix Two, which shall specify whether they shall be on a time and materials basis, a fixed price basis or a combination of both. Clause 7.2 shall apply if the Contractor provides Services on a time and materials basis and clause 7.3 shall apply if the Contractor provides Services for a fixed price. The remainder of this clause 7 shall apply in either case.
- 7.2. Where Services are provided on a time and materials basis:
- 7.2.1. the charges payable for the Services shall be calculated in accordance with the Contractor's standard daily fee rates as set out in Appendix Two as amended from time to time in accordance with clause 7.5;
 - 7.2.2. the Contractor's standard daily fee rates for each individual person are calculated on the basis of an [eight-hour day], worked between [8.00 am] and [5.00 pm] on weekdays (excluding public holidays);
 - 7.2.3. the Contractor shall be entitled to charge an overtime rate as set out in Appendix Two for any time worked by individuals whom it engages on the Services outside the hours referred to in clause 7.2.2;
 - 7.2.4. all charges quoted to the Owner shall be exclusive of VAT, which if appropriate the Contractor shall add to its invoices at the appropriate rate;
 - 7.2.5. the Contractor shall ensure that every individual whom it engages on the Services completes time sheets recording time spent on the Services, and the Contractor shall use such time sheets to calculate the charges covered by each invoice referred to in clause 7.2.6; and
 - 7.2.6. unless otherwise agreed in writing by the parties the Contractor shall invoice the Owner monthly in arrears for its charges for time, expenses and materials (together with VAT where appropriate) for the month concerned, calculated as provided in this clause 7.2 and clause 7.4. Each invoice shall set out the time spent by each individual whom it engages on the Services and provide a detailed breakdown of any expenses and materials, accompanied by the relevant receipts.
- 7.3. Where Services are provided for a fixed price, the total price for the Services shall be the amount set out in the Project Plan as amended from time to time in accordance with clause 7.5. The Owner shall pay the total price to the Contractor (without deduction or set-off) in installments, as set out in the Project Plan **OR** on the Contract achieving a Project Milestone, as set out in the Project Plan.

- 7.4. Any fixed price and/or daily rate contained in the Project Plan excludes:
 - 7.4.1. the cost of hotel, subsistence, traveling and any other ancillary expenses reasonably incurred by the individuals whom the Contractor engages in connection with the Services, the cost of any materials and the cost of services reasonably and properly provided by third parties and required by the Contractor for the supply of the Services. Such expenses, materials and third party services shall be invoiced by the Contractor at cost; and
 - 7.4.2. VAT, which the Contractor shall add (if appropriate) to its invoices at the appropriate rate.
- 7.5. The parties agree that the Contractor may review and increase the charges set out in the Project Plan, provided that such charges cannot be increased more than once in any 12 month period. The Contractor shall give the Owner written notice of any such increase two months before the proposed date of that increase. If such increase is not acceptable to the Owner, it may, within one month of such notice being received or deemed to have been received in accordance with clause 21, terminate the agreement by giving one month's written notice to the Contractor.
- 7.6. The Owner shall pay each invoice submitted to it by the Contractor, in full and in cleared funds, within 30 days of receipt to a bank account nominated in writing by the Contractor.
- 7.7. Any disputes to an issued invoice shall be communicated in writing. Items on a disputed invoice will be resolved through good faith discussions between the Owner and the Contractor. In the event that resolution of a disputed item is not completed within 14 days, the undisputed items on the invoice will be paid whilst discussions continue between the parties to resolve the disputed issues.
- 7.8. Without prejudice to any other right or remedy that it may have, if the Owner fails to pay the Contractor on the due date, the Contractor may:
 - 7.8.1. charge interest on such sum from the due date for payment at the annual rate of 4% above the base lending rate from time to time of Barclays Bank plc, accruing on a daily basis whether before or after any judgment or at the Contractor's discretion claim interest under the Late Payment of Commercial Debts (Interest) Act 1998 and the Owner shall pay the interest immediately on demand; and
 - 7.8.2. suspend all Services until payment has been made in full.
- 7.9. Time for payment shall be of the essence of this agreement.

7.10. All sums payable to the Owner under this agreement shall become due immediately on its termination, despite any other provision. This clause 7.10 is without prejudice to any right to claim for interest under the law, or any such right under this agreement.

7.11. The Contractor may, without prejudice to any other rights it may have, set off any liability of the Owner to the Contractor against any liability of the Contractor to the Owner.

8. RESTRICTION

8.1. The Owner shall not without the written consent of the Contractor, at any date from the date of this agreement to the expiry of 12 months after its termination solicit or entice away from the Contractor or employ or attempt to employ any person who is or has been engaged as an employee of the Contractor in the provision of the Services.

9. LIMITATION OF LIABILITY - THE OWNER'S ATTENTION IS PARTICULARLY DRAWN TO THIS CLAUSE

9.1. This clause 9 sets out the entire financial liability of the Contractor (including any liability for the acts or omissions of its site employees, agents, consultants and subcontractors) to the Owner in respect of:

9.1.1. any breach of this agreement;

9.1.2. any use made by the Owner of the Services; and

9.1.3. any representation, statement or tortious act or omission (including negligence) arising under or in connection with this agreement.

9.2. All warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from this agreement.

9.3. Nothing in this agreement limits or excludes the liability of the Contractor:

9.3.1. for death or personal injury resulting from negligence; or

9.3.2. for any damage or liability incurred by the Owner as a result of fraud or fraudulent misrepresentation by the Contractor.

9.4. Subject to clauses 9.2 and 9.3 the Contractor shall not be liable for loss of profits, loss of business, depletion of goodwill and/or similar losses, loss of anticipated savings, loss of goods, loss of contract, loss of use or any special, indirect, consequential or pure economic loss, costs, damages, charges or expenses and the Contractor's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation,

restitution or otherwise arising in connection with the performance or contemplated performance of this agreement shall be limited to the total price paid for the Services during the term of the agreement.

- 9.5. Subject to clauses 9.2, 9.3 and 9.4, the Contractor's total liability to the Owner, whether in contract, tort (including negligence), for breach of statutory duty, or otherwise, arising under or in connection with this agreement shall be limited to, in respect of all claims (connected or unconnected) in any consecutive 12 (twelve) month period, the equivalent of the total charges paid by the Owner to the Contractor in that period (less the cost price of the materials, parts and consumables provided in connection with the Services).

10. NOTICES

- 10.1. All notices required to be given by each party in this agreement shall be deemed properly given if delivered by DHL or similar courier to the registered office of each party or when delivered by hand to the nominated contact person of each party or his representative. Delivery by DHL or similar courier shall be deemed effected after the expiration of Ten (10) clear days (inclusive of Sundays and Public Holidays).

- 10.2. Nominated Owner Contact:

[name]

[title]

[address]

Mobile : []

Email : []

Nominated Contractor Contact:

[NAME]

[Position]

Paterson Simons & Co. (Africa) Limited, 4 The Offices, 10 Fleet Street, Brighton,
BN1 4ZE

Tel: []

Fax: []

Email: []

11. CONFIDENTIALITY

- 11.1. The Owner undertakes that it shall not at any time disclose to any person technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the

Owner by the Contractor, its employees, agents, consultants or subcontractors or of any member of the group of companies to which the Contractor belongs and any other confidential information concerning the Contractor's business or its products which the Customer may obtain, except as permitted by [clause 11.2](#).

11.2. The Owner may disclose the Contractor's confidential information:

11.2.1. to its employees, officers, representatives or advisers who need to know such information for the purposes of carrying out the Owner's obligations under this agreement. The Owner shall ensure that its employees, officers, representatives or advisers to whom it discloses the Contractor's confidential information comply with this clause 11; and

11.2.2. as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.

11.3. The Owner shall not use the Contractor's confidential information for any purpose other than to perform its obligations under this agreement.

12. INTELLECTUAL PROPERTY

12.1. As between the Owner and the Contractor, all Intellectual Property Rights (including patents, rights to inventions, copyright and related rights, trade marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off, rights in designs, database rights, rights to use, and protect the confidentiality of confidential information (including know-how), and all other intellectual property rights in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such and all similar rights or forms of protection which subsist or will subsist now or in the future in any part of the world, together "**Intellectual Property Rights**") and all other rights in all documents, products and materials developed by the Contractor or its agents, subcontractors, consultants and employees in relation to the Services shall be owned by the Contractor. The Contractor licenses all such rights to the Owner free of charge and on a non-exclusive, worldwide basis to such extent as is necessary to enable the Owner to make reasonable use of the Services. If this agreement is terminated, this licence will automatically terminate.

13. ASSIGNMENT

13.1. This agreement is personal to the Owner and the Owner shall not assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any of its rights and obligations under this agreement..

- 13.2. The Contractor may at any time assign, transfer, mortgage, charge or deal in any other manner with any or all of its rights and obligations under this agreement, provided that the Contractor gives prior written notice to the Owner.

14. FORCE MAJEURE

- 14.1. A party, provided that it has complied with the provisions of clause 14.2, shall not be in breach of this agreement, nor liable for any failure or delay in performance of any obligations under this agreement arising from or attributable to acts, events, omissions or accidents beyond its reasonable control (**Force Majeure Event**), including but not limited to any of the following:
- 14.1.1. acts of God, including but not limited to fire, flood, earthquake, windstorm or other natural disaster;
 - 14.1.2. war, hostilities (whether war be declared or not), invasion, act of foreign enemies;
 - 14.1.3. rebellion, revolution, insurrection, usurped power or civil war;
 - 14.1.4. riot, commotion or disorder, unless solely restricted to employees of either party and arising from the conduct of the agreement;
 - 14.1.5. adverse physical conditions, other than weather conditions, or artificial obstruction which could not have been reasonably foreseen by the party relying on force majeure;
 - 14.1.6. mandatory compliance with any law (including a failure to grant any licence or consent needed or any change in the law or interpretation of the law);
 - 14.1.7. adverse weather conditions including volcanic ash;
 - 14.1.8. loss or damage to spare parts, consumable items, items of equipment or other property in use or occupation in support of the Services caused by fire or otherwise not caused by the default or lack of care by the party relying on force majeure;
 - 14.1.9. any other circumstances entirely beyond the control of the party relying on force majeure;
 - 14.1.10. interruption or failure of utility service, including but not limited to electric power, gas or water.

14.2. If either party shall rely on the occurrence of an event of Force Majeure as a basis for being excused from performance of its obligations under this agreement, then the party relying on the event or condition shall:

- provide prompt notice to the other party of the occurrence of the event or condition giving an estimation of its expected duration and the probable impact on the performance of its obligations;
- exercise all reasonable efforts to continue to perform its obligations;
- expeditiously take action to correct or cure the event or condition excusing performance;
- exercise all reasonable efforts to mitigate or limit damages to the other party to the extent such action will not adversely affect its own interest; and
- provide prompt notice to the other party of the cessation of the event or condition giving rise to its excused performance.

14.3. In the event that the Contractor by reason of Force Majeure is unable to provide the Services for a period of more than 1 month, the Owner shall be free to terminate this agreement by giving 30 days written notice to the Contractor and to then purchase Services from any other source.

15. TERMINATION

15.1. This agreement may be terminated [at any time after expiry on the initial fixed term (as set out in the Project Plan) for any reason by either party by giving [six (6)] months' written notice.]

15.2. Without prejudice to any other rights or remedies which the parties may have, either party may terminate this agreement without liability to the other immediately on giving notice to the other if:

- 15.2.1. the other party fails to pay any amount due under this agreement on the due date for payment and remains in default not less than 14 days after being notified in writing to make such payment; or
- 15.2.2. the other party commits a breach of any of the terms of this agreement and (if such a breach is remediable) fails to remedy that breach within 30 days of that party being notified in writing of the breach; or
- 15.2.3. the other party repeatedly breaches any of the terms of this agreement in such a manner as to reasonably justify the opinion that its conduct is

inconsistent with it having the intention or ability to give effect to the terms of this agreement; or

- 15.2.4. the other party suspends, or threatens to suspend, payment of its debts, is unable to pay its debts as they fall due, admits inability to pay its debts or being a company is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or being a natural person is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986 or being a partnership has any partner to whom any of the foregoing apply; or
- 15.2.5. the other party commences negotiations with all, or any class of, its creditors with a view to rescheduling any of its debts, or makes a proposal for, or enters into any compromise or arrangement with, its creditors; or
- 15.2.6. a petition is filed, a notice is given, a resolution is passed, or an order is made, for or on connection with the winding up of that other party; or
- 15.2.7. an application is made to court, or an order is made, for the appointment of an administrator, a notice of intention to appoint an administrator is given, or an administrator is appointed over the other party; or
- 15.2.8. a floating charge holder over the assets of that other party has become entitled to appoint, or has appointed, an administrative receiver; or
- 15.2.9. a person becomes entitled to appoint a receiver over the assets of the other party, or a receiver is appointed over the assets of the other party; or
- 15.2.10. a creditor or encumbrancer of the other party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within 14 days; or
- 15.2.11. any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 15.2.4 to clause 15.2.10 (inclusive); or
- 15.2.12. the other party suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of its business; or
- 15.2.13. there is a change of control of the other party (as defined in section 574 of the Capital Allowances Act 2001).

15.3. On termination of this agreement for any reason the Owner shall immediately pay to the Contractor all of the Contractor's outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has been submitted, the Contractor may submit an invoice, which shall be payable immediately on receipt and the accrued rights and liabilities of the parties as at termination and the continuation of any provision expressly stated to survive or implicitly surviving termination, shall not be affected.

15.4. On termination of this agreement (however arising) the clauses 7,8,9,13 and 16 shall survive and continue in full force and effect.

16.DISPUTES

16.1. All parties to this agreement shall endeavour to resolve all disagreements between them. In the event that this is impossible, a mutually acceptable third party may be appointed in the UK to act as a UK arbitrator.

17. VARIATIONS

17.1. The Contractor may by giving two weeks written notice to the Owner vary any of the terms of this agreement, the Owner will be deemed to accept such changes unless within the two weeks the Owner gives two months notice terminating the agreement.

18.WAIVER

No failure or delay by a party to exercise any right or remedy provided under this agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

19.NO PARTNERSHIP OR AGENCY

Nothing in this agreement is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, constitute any party the agent of another party, or authorise any party to make or enter into any commitments for or on behalf of any other part.

20.THIRD PARTY RIGHTS

No-one other than a party to this agreement, their successors and permitted assignees, shall have any right to enforce any of its terms.

21. GOVERNING LAW

- 21.1. This agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by, and construed in accordance with, the law of England and Wales.
- 21.2. The parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this agreement or its subject matter or formation (including non-contractual disputes or claims).

This agreement has been entered into on the date stated at the beginning of it.

Signature for Owner

.....
Signed for and on behalf of [NAME]

Signature for Contractor

.....
Signed for and on behalf of Paterson Simons & Co. (Africa) Limited

APPENDIX ONE

PROJECT PLAN

Commencement Date: []

Term: [].

Services to be provided:

[].

as further detailed under 'Scope of Service' below.

Obligations of the parties:

[]

Performance dates/project milestone/details of service:

[]

SCOPE OF SERVICE

[]

APPENDIX TWO

CHARGES

Pricing & Invoice Plan

[]

Pricing

[]

Invoicing Plan

[]

Additional Charges

[The following shall be invoiced separately by the Contractor:

- Services not included in the Agreement scope
- Extraordinary charges related to work within the agreement scope (Agreed overtime, use of temporary subcontractors etc.)]

[Additional work and overtime prices shall be in accordance with the following:

Type	Description	Rate (Euro/hour)
		Plus VAT & applicable
	Regular Overtime Rate	97.50
	Sunday & Public Holiday Overtime Rate	130.00
Technician	Normal Hours (7.30 to 4.30pm Mon to	47.00
	Regular Overtime Rate	70.50
	Sunday & Public Holiday Overtime Rate	94.00

]

[The pricing excludes VAT and any other applicable local taxes. The Contractor will submit any extra work to the monthly Contract invoice as an additional itemised cost.]