



2nd Floor, North Block  
Thrupps Illovo Centre  
204 Oxford Road Illovo 2196

PO Box 78662 Sandton 2146  
Docex 264 Randburg

e-mail: [law@elawnet.co.za](mailto:law@elawnet.co.za)  
website : [www.gji.co.za](http://www.gji.co.za)  
tel : (+27 11) 268 0287  
fax : (+27 11) 268 0282

## ENGAGEMENT LETTER

### FEES

#### 1 (One) Per Hour Fee Arrangement

Our professional services have been rendered to you in accordance with the following fee arrangement:

- Our fees are paid on a per hour basis for work necessarily done, in accordance with our standard hourly charge out rates. This includes advising, consulting you and others, considering documentation, correspondence, research, telephone calls, travelling and waiting time. The level of charge will reflect the complexity and value of the matter, the level of responsibility and the degree of urgency.
- Our fees exclude VAT and disbursements. VAT will be added at the appropriate rate, where applicable. All major disbursements will be agreed upon prior to any expense being incurred.
- Disbursements incurred by us will be charged at cost.
- All payments are to be rendered electronically to the account reflected in our statement of account.
- Our invoices are payable within 7 (seven) days of presentation, failing which interest will be charged on overdue amounts at a rate equal to the published prime overdraft rate of the First National Bank of Southern Africa Limited, determined on the first day of each and every month and debited monthly in arrears. In the event of a dispute as to such rate, a certificate by any branch manager of the said bank, whose appointment need not be proved, shall be final and binding on us.

## **GENERAL**

### **Information**

All information regarding your business and affairs is privileged and will be kept confidential by the firm at all times, save for the purpose of instructing and dealing with other advisers acting on your behalf, or if it is already in the public domain, or you instruct the firm to disclose information, specifically or by implication, to a third party. In certain circumstances, however, the firm may be obliged to give evidence and produce such information to courts or authorities in connection with your affairs.

### **Copyright and Copies**

Unless agreed to the contrary in writing, the copyright in all work prepared by GJ (below "GJ") for you will be owned by GJ who hereby grant you a non-exclusive right to use the work prepared for you by GJ.

All information and data held by GJ belongs to it and it has the right to retain ownership and keep copies of information and data.

### **Legal Proceedings**

In the event of GJ instituting legal proceedings against you, you agree to pay all legal fees incurred by GJ on the attorney and own client scale, including tracing agents fees and collection commission.

### **Limitation of liability**

Notwithstanding any express, implied or tacit term to the contrary in this letter, the maximum aggregate liability of GJ, its employees, consultants and agents for any loss or damage, whether direct, indirect, consequential or otherwise, which may be suffered by you arising from any cause in connection with this letter (including, without limitation, any cause in connection with anything done or not done pursuant to this letter), whether such loss or damage results from breach of contract (whether material, fundamental or otherwise), delict, negligence or any other cause without limitation and whether this letter is cancelled or not, will in no circumstances exceed the fees actually paid to us for the services or work contemplated in any particular instruction, unless it is finally determined that the loss or damage was caused by fraud or wilful misconduct on the part of GJ, GJ will not be liable to the Client or any cessionary or third party claiming through or on behalf of the Client for any punitive damages whatsoever or for any consequential or other loss or damages beyond the maximum liability specified.

Any assignment performed for the Client is governed by South African law and any claims will be (subject to clause 8 hereof) subject to the exclusive jurisdiction of the Courts of South Africa.

Any claims, howsoever arising, must be commenced formally in accordance with clause 8 hereof within 2 (two) years after the party bringing the claim becomes aware (or ought reasonably to have become aware) of the facts which give rise to the claim and, in any event regardless of the knowledge of the claimant, by no later than 3 (three) years after the date of any alleged breach of contract, delictual act or other act or omission giving rise to a cause of action. This expressly overrides any statutory provision that would otherwise apply.

### **Indemnification against liability**

In the event of any third party making any claim against GJ for any loss or damage, whether direct, indirect, consequential or otherwise, arising from any cause in connection with this letter (including without limitation, any cause in connection with anything done or not done pursuant to this letter), whether such loss or damage results from breach of contract (whether material, fundamental or otherwise), delict, negligence or any other cause without limitation, and whether this letter is cancelled or not, you hereby indemnify GJ against any such claim, unless it is finally determined that the loss or damage was caused by fraud or wilful misconduct on the part of GJ or any of its employees or agents.

### **Exclusion of liability**

#### **Misrepresentation:**

Because of the importance to our work of relevant, accurate and complete information being furnished to us by you (whether requested or not), and because we have to be reliant on the information for the purposes of discharging our obligations in terms of this letter, GJ shall not be liable for any loss, damage, costs or expenses whatsoever and howsoever caused, incurred, sustained or arising from a failure to disclose such information to us or from incorrect and/or incomplete information furnished to us or from misrepresentations (whether such failure, furnishing and/or misrepresentation is innocent, negligent, reckless or wilful).

#### **Electronic communication:**

GJ may correspond, convey documentation and generally communicate with you electronically (unless you expressly request otherwise on specific matters) and receive such communications from you. GJ may also, with your agreement, use electronic means of communication to send and receive information requests to and from designated third parties in connection with the assignment.

You understand and acknowledge that the electronic transmission of information by electronic mail on the Internet or otherwise has inherent risks and that such communications may become lost, delayed, intercepted, corrupted or be otherwise altered, rendered incomplete or fail to be delivered. GJ shall use its reasonable endeavours to ensure that electronic communications that it sends are free from viruses and any other material that may cause inconvenience or harm to any other computer system and you undertake to do likewise with any electronic communications that you send to us. However, because the electronic transmission of information cannot be guaranteed to be secure or error free

and its confidentiality may be vulnerable to access by unauthorised third parties, GJ shall have no responsibility or liability to you on any basis other than our bad faith or wilful default in respect of any error, omission, claim or loss arising from or in connection with the electronic communication of information to you (or your reliance on such information) or electronic communications entered into with your agreement with designated third parties in connection with the transmission.

Regardless of whether or not this contract is for any reason terminated or cancelled, or held to be void or voidable, and is thereafter voided, the terms set out in the clauses under the heading "GENERAL" will remain binding on GJ and you.

**Reliance on advice:**

Any advice (including but not limited to any report/information) given by GJ to the Client - whether verbally or in writing - shall be based on the information supplied by the Client to GJ. GJ shall not be liable to the Client or to any third party for any damages suffered as a result of the Client failing to disclose any relevant information to GJ.

Any advice given by GJ to the Client is based on the facts and circumstances of the Client. Therefore such advice shall be given for the sole use of the Client to whom it is addressed and may be relied on only by the Client. No party other than the Client to whom it is addressed shall be entitled to rely on advice given by GJ to the Client for any purpose whatsoever.

The Client shall be solely responsible for (a) making all management decisions and performing all management functions; (b) designating a competent management member to oversee the services; (c) evaluating the adequacy and results of the services; (d) accepting responsibility for the results of the services; and (e) establishing and maintaining internal controls, including, without limitation, monitoring ongoing activities.

The Client indemnifies GJ against any claim by any third party arising from advice given by GJ to the Client.

**Dispute Resolution**

If any dispute arises out of or in connection with this agreement, or related thereto, whether directly or indirectly, the Parties must refer the dispute for resolution firstly by way of negotiation and in the event of that failing, by way of mediation and in the event of that failing, by way of Arbitration. The reference to negotiation and mediation is a pre-condition to the parties having the dispute resolved by arbitration.

A dispute shall arise if the dispute and particularity thereof is communicated by one party to the other in writing. Each party agrees to continue performing its obligations under the Agreement while any dispute is being resolved except to the extent that the issue in dispute precludes performance.

Within 21 (twenty one) days of the dispute arising, the Parties shall seek an amicable resolution to such dispute by referring such dispute to representatives of each of the Parties concerned for their negotiation and resolution of the dispute. The representatives shall be authorised to resolve the dispute.

In the event of the negotiation envisaged in 8.3 failing for whatsoever reason or cause, the Parties must, within 21 (twenty one) days of such failure refer the dispute for resolution by way of mediation in accordance with the then current rules of the Institute of Directors in Southern Africa ("IoD"). The negotiation shall, inter alia, be deemed to have failed if one of the parties declares in writing that it has failed.

In the event of the mediation envisaged in 8.3 failing in terms of the rules of the IoD, the matter must, within 21 (twenty one) days thereafter, be referred to arbitration as envisaged in the clauses below.

The period of 21 (twenty one) days aforesaid for negotiation or mediation may be shortened or lengthened by written agreement between the parties.

Each party agrees that the Arbitration will be held as an expedited arbitration in Sandton in accordance with the then current rules for expedited arbitration of the Arbitration Foundation of Southern Africa (below "AFSA") by 1 (one) arbitrator appointed by agreement between the Parties. If the parties cannot agree on the arbitrator within a period of 10 (ten) Business Days after the referral of the dispute to arbitration, the arbitrator shall be appointed by the Secretariat of AFSA. The decision of the arbitrator shall be binding on the Parties after the expiry of the period of 20 (twenty) days from the date of the arbitrator's ruling if no appeal has been lodged by either party.

The Parties irrevocably agree that the submission to arbitration is subject to the parties' rights of appeal. Any Party may appeal the decision of the arbitrator within a period of 20 (twenty) days after the arbitrator's ruling has been handed down by giving written notice to that effect to the other. The appeal shall be dealt with in accordance with the laws of AFSA by a panel of 3 (three) arbitrators appointed by AFSA. The arbitration shall be held in the English language. The decision of the majority of the arbitrators shall be binding on the Parties.

A decision which becomes final and binding in terms of either clauses 8.7 or 8.8 may be made an order of court at the instance of any Party.

The provisions of this clause 1 shall not preclude any Party from access to an appropriate court of law for interim relief in respect of urgent matters by way of an interdict, or mandamus pending the outcome of the arbitration for which purpose the Parties irrevocably submit to the jurisdiction of a division of the High Court of the Republic of South Africa.

The references to the IoD or AFSA shall include their successors or bodies nominated in writing by them in their stead.

This clause is a separate, divisible agreement from the rest of this Agreement and shall remain in effect even if the Agreement terminates, is nullified or cancelled for whatsoever reason or cause.

This clause 18 shall survive the cancellation or termination of this Agreement for whatsoever reason or cause.

The Parties agree that (a) this arbitration clause favours the result that all disputes between the Parties to the Agreement must fall within the scope of this clause, forming part of it and be determined in accordance with it and (b) that all disputes arising between them will be regarded as being of a contractual nature and (c) all disputes will be regarded as being contemplated by and within the terms of this clause and that (d) no breach of natural justice will occur in connection with the making of an award in terms of this clause and no Party's rights will be deemed to have been prejudiced as a result thereof.

The Parties record that this agreement to mediate and then, if necessary, arbitrate was not entered into as a result of duress, undue influence or mistake. The Parties confirm that in their opinion there are no onerous or unusual terms that should have been brought to the attention of the parties, but were not. Furthermore, the Parties acknowledge that this clause entitles them to a fair hearing within a reasonable time by an independent and impartial tribunal agreed to by them.

The Parties record that they are aware of the provisions of Section 34 of the Constitution of the Republic (below "the Section") which provides that everyone has the right to have "any dispute that can be resolved by the application of law decided in a fair public hearing before a Court or, where appropriate, another independent and impartial tribunal forum"; and they are satisfied that the submission to negotiation, mediation and arbitration as herein provided for complies with the Section and is not void as it is not an ouster clause which precludes the right of access to the Courts; and you waive irrevocably your right to have our fees and disbursements determined by means of taxation before the Taxing Master and/or the Law Society of the Northern Provinces (below "Law Society") and you acknowledge that it is not an implied, alternatively a tacit term, of this agreement that GJ would prepare bills of costs and submit same for taxation upon being requested to do so by you, and you further agree to any dispute being resolved as herein set out notwithstanding any sections of the Attorneys Act, 53 of 1969, as amended and/or any rules of the Law Society.

If, pending the outcome of any negotiation, mediation and arbitration, and in the interim period, the resolution of the dispute prevents the provisions of this Agreement being given effect, to the prejudice of either party, GJ's auditors shall determine, in their sole and absolute discretion (acting as experts and not as arbitrators, their being decision being final and binding on the Parties) how the dispute should be dealt with for and during the interim period. If any such determination is manifestly unjust,

and the Court exercises its general power, if any, to correct such determination, the Parties shall be bound thereby.

### **Amendment**

Any amendment to the terms regulating our relationship, or cancellation / termination of our mandate by mutual agreement, as well as any indulgence or accommodation to be granted by us to you, must be in writing and signed by you and one of GJ's partners, in order to be valid, enforceable and binding (this avoids any misunderstanding or uncertainty).

### **Payment**

Where a dispute relates to GJ's charges, you shall be obliged to make payment to GJ of all the disbursements and interest, and an amount equivalent to 80% (eighty per centum) of the fees charged (including VAT thereon) by way on an interim payment, which payment shall be made by you, and received by us, without prejudice to your rights or our rights. Once the matter is resolved, whether by way of mediation (hopefully) or by way of arbitration (finally), an adjustment will be effective and if there is an amount for which you are liable to GJ, you will pay GJ that amount together with mora interest from inception; if, however, your payment to us as hereinbefore set out represents an overpayment, we shall immediately refund to you such overpayment, together with mora interest, from the date of such payment until date of refund.

### **Acknowledgement**

Should we not hear from you to the contrary in writing by 17h00 on the third calendar day following the date of this letter, we shall assume and accept that you are satisfied with the matters referred to herein as read with the Engagement Letter and agree to the basis upon which GJ is to represent you in this and in any other matter in which we may be instructed. The matters referred to in this document constitute the basis and terms upon which GJ is prepared to represent you and we cannot over emphasise the importance of both the Engagement Letter and this Annexure. We urge you to please familiarise yourself with its contents which comprise the only contractual terms regulating our contractual relationship in addition to such terms (if any) as may be implied at law; the importance hereof must please not be underestimated and if there is anything that you are not certain of and which is herein contained, please do not hesitate to discuss such issue with us.

### **Interpretation**

This document is an annexure to the engagement letter which is e-mailed, faxed, posted or delivered by hand to you. It is deemed to be incorporated and to form an integral part of the engagement letter. In the event of a conflict between the engagement letter and this annexure, the terms and conditions of the annexure shall apply.