



**GILLAN & VELDHUIZEN** INC  
LAW FIRM | CORPORATE & COMMERCIAL SPECIALISTS

## APPENDIX 2

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# GILLAN & VELDHUIZEN INC

## TERMS OF BUSINESS

### Contact Gillan & Veldhuizen Inc

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Cape Town Office Address Suite 2 Lutomborg Building, Cnr Keerom and Leeuwen Streets, Cape Town



## **1. GENERAL**

These Terms of Business apply to the services which Gillan & Veldhuizen Inc supplies to you as a client of the firm. In these Terms of Business references to “we”, “us” or “our” are references to Gillan & Veldhuizen Inc and its affiliates and consultants, and any successors or assignees.

Gillan & Veldhuizen Inc is an incorporated practice registered in terms of the Company Laws of South Africa. Gillan & Veldhuizen Inc is registered with the Legal Practice Council.

When you instruct us we will send you a letter to record the scope of our work for you and the terms on which we will act (an “Engagement Letter”). The terms of any Engagement Letter and these Terms of Business will together form the contract between us in relation to your instructions. We may involve other colleagues of appropriate experience as we consider necessary or appropriate from time to time, including affiliates or consultants, to which involvement you hereby give your consent and agreement.

These Terms of Business supersede any earlier terms of business we may have provided to you.

Your contract is a contract with Gillan & Veldhuizen Inc, which is solely responsible for the advice given to you and other work done for you.

## **2. OUR ADVICE**

Our advice on any matter is confidential and is provided to you solely for the purpose of the instructions set out in the Engagement Letter. Save with our prior written consent, our advice may not be relied upon for any other purpose or by any person other than you.

We are not responsible for advising on matters outside the scope of the Engagement Letter; nor for advising on changes in the law after we have delivered our advice; nor if you act or refrain from acting on the basis of any draft advice before it has been finalised.

We are not responsible for any losses caused by changes made to our work without our approval or for use of our work beyond the purposes for which it was provided.

Please take reasonable care at all times to protect your own interests, including satisfying yourself as to the commercial wisdom of any transaction or litigation which is the subject of your instructions to us. We provide legal services but not financial advice.

## **3. OUR CHARGES**

Unless we agree otherwise, our charges will be based on the time spent on your matter, applying hourly charging rates as applicable from time to time.

We reserve the right to charge separately for non-legal services provided to you including data rooms, photocopying, printing, telephone calls, faxes, electronic funds transfers, catering and other support services provided outside normal business hours. We may also, subject to your prior approval, incur expenses on your behalf including: fees for external

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lawyers, counsel, experts, sheriffs, and other third parties, travel expenses, couriers and searches. You will reimburse us for such expenses and, if they are likely to be significant, we may ask for payment in advance.

Where applicable, we will charge VAT on our charges and expenses.

If possible we will give you an estimate in the Engagement Letter of the likely level of our fees and expenses. Any estimate will be based on a number of assumptions and will therefore be a guide and not a quotation.

#### **4. BILLING**

Unless we agree otherwise, we will invoice you on a monthly basis in arrears for the work which we perform for you. We will invoice you promptly at month-end for the work done by us in respect of that month.

If you are arranging for any other person to pay our fees and expenses on a matter you will remain liable for any amounts unpaid.

Fees, expenses and VAT (where applicable) are payable on presentation and, in any event, within 21 days after the date of the invoice.

If you do not pay within 30 days of the date of the invoice we reserve the right to charge interest on the amount outstanding from the due date until payment at two percentage points above the Prime rate from time to time or at such other maximum rate as is permitted by law or any professional, regulatory or other rules and regulations applicable to South Africa ("Applicable Law and Regulations").

If you do not pay within 21 days of the date of the invoice we reserve the right to suspend the provision of work to you.

#### **5. CLIENT MONEY**

If we are holding monies for you (whether on account of our fees or otherwise), these will be placed in our trust account which is operated in accordance with Applicable Law and Regulations.

If we receive your written instructions to invest your funds, we shall do so in accordance with Applicable Law and Regulations. We will credit you with any interest earned on your account balances, less any amount dealt with in accordance with Applicable Law and Regulations and / or deducted in terms of bank charges. You agree that we will be permitted to use any such balances to pay outstanding invoices we have delivered to you.

#### **6. CONFIDENTIALITY**

We will keep confidential all information we receive regarding your business and affairs unless you instruct us, if permitted under any Applicable Law and Regulations, to disclose that information or it is already in the public domain or if we, in good faith, consider disclosure to be required by any applicable regulations and law.

Gillan & Veldhuizen Inc or its affiliates or consultants may refer publicly to our involvement on your behalf, in accordance with Applicable Law and Regulations, and we will seek your prior approval to advertise our involvement with any of your matters.

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Ordinarily our advice is subject to legal professional privilege protecting it from production in civil or criminal proceedings. To maintain such privilege, it is important that our advice is kept confidential and is not disclosed to third parties. If you are in any doubt about this please ask us for advice.

Gillan & Veldhuizen Inc may disclose information about existing or past matters that we have handled, but only (a) to assist with identification of and access to relevant expertise within Gillan & Veldhuizen Inc and affiliates or consultants and/or (b) to the extent necessary to check that no conflict of interest exists with any such matter handled by Gillan & Veldhuizen Inc or its affiliates or consultants.

We may disclose information on a confidential basis to third party services providers including sheriffs.

We are generally obliged to disclose to you everything we know that is relevant to the work we do for you in accordance with the Engagement Letter. You agree that this duty does not extend to:

- (a) confidential information belonging to another client or a third party even if it would be relevant to our work for you; or
- (b) information that the team working on your matter is not aware of.

## **7. PROVISION OF INFORMATION**

You agree to provide us with all information that is reasonably required for us to advise you and to ensure that such information is, and remains, true and accurate in all material respects and is not misleading. Unless we agree otherwise, we will not check the accuracy or completeness of such information.

You should not assume that information or documents which have previously been given to us or matters on which we have previously advised will be known to those instructed on a new matter.

You are responsible for ensuring that you have all necessary rights to supply us with the information you provide and that our use of that information will not infringe the rights of any third party or result in a breach of any law, rule or regulation.

## **8. DATA PROTECTION**

Where you ask us to carry out work involving personal data that you control we, as a data processor, shall keep that data appropriately secure and use it only as required for the work that we are instructed to do. We may be required by Applicable Law and Regulations to declare to the appropriate regulatory authority the existence of files containing personal data.

## **9. ELECTRONIC COMMUNICATIONS**

Unless agreed with you, we will not encrypt electronic communications. You acknowledge that the electronic transmission of information by email or otherwise (in particular when unencrypted) may be delayed, intercepted, corrupted or otherwise fail to be delivered. We shall use our reasonable endeavours to ensure that electronic communications that we send are free from viruses and any other material which may cause harm to any computer system. You undertake to act likewise with any electronic communications you send to us. We reserve the right to monitor all email communications through our network.

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Neither you nor we shall have any liability to each other in respect of any claim or loss arising in connection with an electronic communication other than where such claim or loss arises from bad faith or wilful default.

## **10. DOCUMENT STORAGE AND DESTRUCTION**

Save for documents in respect of which we have specific instructions from you and subject to Applicable Law and Regulations, we will store documents relating to the work we do for you for a minimum of 5 years. Thereafter we may destroy them without further reference to you.

## **11. MONEY LAUNDERING**

We are required to comply with all Applicable Law and Regulations relating to money laundering, including being satisfied as to the identity of any client.

There are also circumstances under money laundering legislation where we can be required to make a confidential report to a designated authority where we know or suspect that a criminal offence has been or may have been committed.

We shall have no liability whatsoever arising out of any action that we, in good faith, consider is necessary for us to comply with money laundering legislation.

## **12. LIMITATION/EXCLUSION OF LIABILITY**

Save as expressly set out in these Terms of Business or as agreed with you in writing, Gillan & Veldhuizen Inc (including directors, employees, affiliates and consultants, where involved in the giving of advice to you) does not limit or exclude any liability which a court of competent jurisdiction finds that it has to you for the provision of advice within the scope of work described in the Engagement Letter.

You agree that our total aggregate liability to you (whether for breach of contract, [including negligence or misrepresentation]), breach of statutory duty or otherwise arising out of or in connection with our engagement will be limited to R 10 million or our fees charged in this matter, whichever is the lesser.

Nothing in this Term 12 or the Engagement Letter shall exclude or limit the liability to you for (i) wilful default, fraud or fraudulent concealment for which Gillan & Veldhuizen Inc (including directors, employees, affiliates and consultants, where involved in the giving of advice to you) is responsible or (ii) to the extent that liability may not be excluded or limited by any Applicable Law or Regulation.

Gillan & Veldhuizen Inc (including directors, employees, affiliates and consultants, where involved in the giving of advice to you) shall have no liability for any services, information or advice given by any third party including, without limitation, legal and other professional advisers, government agencies and registers.

If, notwithstanding the preceding sentence, a court of competent jurisdiction finds that a duty of care or any other duty, liability or obligation would otherwise be owed to you by Gillan & Veldhuizen Inc (including directors, employees, affiliates and consultants, where involved in the giving of advice to you) in respect of the retainer of any third party, such duty and any liability arising from

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it is hereby excluded and you agree that you will not bring any claim – whether on the basis of breach of contract, (including, without limitation, negligence), breach of statutory duty or otherwise howsoever – against Gillan & Veldhuizen Inc (including directors, employees, affiliates and consultants, where involved in the giving of advice to you) in respect of any loss or damage that you or any person or company associated with you suffer or incur, directly or indirectly, in connection in any way with the retainer of, or any information or advice given to you or us or other work done for you by such third party.

Gillan & Veldhuizen Inc (including directors, employees, affiliates and consultants, where involved in the giving of advice to you) shall not be liable to you for any indirect or consequential loss.

In addition to the other limitations in this Term 12, where Gillan & Veldhuizen Inc (including directors, employees, affiliates and consultants, where involved in the giving of advice to you) and/or third parties are responsible for any loss suffered by you, the liability of Gillan & Veldhuizen Inc (including directors, employees, affiliates and consultants, where involved in the giving of advice to you) for that loss will be limited to a just and equitable proportion of your total loss calculated by reference to the extent of our responsibility and Applicable Law and Regulations. If you have engaged other professional advisers to represent or advise you on a matter in which Gillan & Veldhuizen Inc (including directors, employees, affiliates and consultants, where involved in the giving of advice to you) are involved and you agree with any of them that their liability to you will be limited, the liability of Gillan & Veldhuizen Inc (including directors, employees, affiliates and consultants, where involved in the giving of advice to you) to you will not exceed the amount which would have applied in the absence of that limitation.

### **13. REGULATION**

Gillan & Veldhuizen Inc is not authorised by the Financial Sector Conduct Authority (“FSCA”).

The scope of our engagement does not and will not include giving you advice on the merits of entering into any transaction in investments. When providing our services, we will assume that you have decided, or will decide, to negotiate and enter into any such transaction solely on the basis of your own evaluation of it. We will not communicate, either to you or on your behalf to any other person, any invitation or inducement to engage in investment activity, and nothing we write or say should be construed as any such invitation or inducement.

### **14. CONCERNS OR COMPLAINTS**

If at any time you have any concerns or complaints about the services which we provide to you, or about our charges, please contact either the relevant matter director or your relationship attorney.

### **15. CONFLICTS**

In accordance with Applicable Laws and Regulations, we have procedures in place to identify and avoid potential conflicts of interest between clients of Gillan & Veldhuizen Inc and its directors, employees, affiliates and consultants. In some circumstances, we may be precluded from accepting instructions on conflict grounds. However, where we are not prevented from doing so by duties of confidentiality, our normal practice is to discuss conflict issues with you.

Subject to any Applicable Law and Regulations, you consent to Gillan & Veldhuizen Inc accepting instructions from other

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clients whose interests may conflict with your interests provided that, at the time we accept those other instructions, Gillan & Veldhuizen Inc (including directors, employees, affiliates and consultants, where involved in the giving of advice to you) are not acting for you in a matter that is related to those other instructions and we take reasonable and appropriate steps to ensure the confidentiality of any confidential information in our possession that belongs to you.

Gillan & Veldhuizen Inc and its directors, employees, affiliates and consultants may have more than one client actually or potentially interested in the same subject matter of a transaction or competing for the same asset (e.g. the acquisition of a company being sold by auction or a tender for a contract). In such cases you agree that Gillan & Veldhuizen Inc and its directors, employees, affiliates and consultants are free to act for more than one client to the extent not precluded by, and in accordance with, Applicable Law and Regulations.

## **16. FORCE MAJEURE AND DISRUPTION TO SERVICES**

Except for obligations to pay any amount due, neither Gillan & Veldhuizen Inc (including directors, employees, affiliates and consultants, where involved in the giving of advice to you) nor you shall be liable in any way for failure to perform our respective obligations under these Terms of Business or the Engagement Letter if the failure is due to causes outside the reasonable control of the party which has failed to perform.

In providing services to you we rely on the availability of a wide range of resources including utilities and electronic and communication systems. You acknowledge that we cannot guarantee the availability or proper functioning of these resources and that (except to the extent required by law) we have no liability to you for any delay, disruption or failure to provide services, due to the unavailability or malfunctioning of these resources for any reason.

## **17. TERMINATION**

You may terminate our engagement on any matter in writing at any time. We may cease acting for you with good reason and on reasonable written notice.

On termination you will pay all outstanding fees and expenses. All accrued rights and liabilities under these Terms of Business and the Engagement Letter shall survive and remain in full force and effect notwithstanding termination.

## **18. SEVERABILITY**

If any provision in these Terms of Business is or becomes invalid, illegal or unenforceable then it shall, to the extent required, be severed and shall be ineffective and the validity of the remaining provisions shall not be affected in any way.

## **19. THIRD PARTY RIGHTS**

You and we irrevocably agree that each director, employee, affiliate and consultant of Gillan & Veldhuizen Inc shall be entitled to the benefit of these Terms of Business under any Applicable Law and Regulations but our contract with you may be varied (except this Term 19) from time to time or terminated without the consent of any director, employee, affiliate or consultant of Gillan & Veldhuizen Inc.

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## **20. DISPUTE RESOLUTION AND GOVERNING LAW**

Unless we agree otherwise with you in the Engagement Letter or to the extent that this is not permitted by any Applicable Law and Regulations and subject to the next paragraph of this Term 20: (i) these Terms of Business, any Engagement Letter, the provision by Gillan & Veldhuizen Inc (including affiliates and consultants, where involved in the giving of advice to you) of services to you and any dispute between us arising out of or in connection with any of them (including any non-contractual disputes or claims) ("Dispute") shall be governed by South African law; (ii) you and we will attempt to settle any Dispute, which is not resolved in accordance with Term 14 above, by mediation in accordance with the CEDR Model Mediation Procedure or such other procedure as we both agree is appropriate; and (iii) if the Dispute is not settled by mediation within a reasonable period, then it shall be referred to, and finally resolved by, arbitration: in Cape Town; by a single arbitrator (agreed between us or, in default of agreement, appointed on the application of either of us, by the Head of the Legal Practice Counsel); and under the Arbitration Foundation of South Africa Rules of Expedited Arbitration, which shall be deemed to be incorporated into this Term.

Nothing in this Term 21 shall prevent either of us, in respect of any dispute which concerns the payment or non-payment of our fees and expenses (including those of any third party) incurred on your behalf, from issuing legal proceedings or taking any steps considered necessary if proceedings are issued against either of us by a third party (such as joining the other as a party to such proceedings). In this respect, we irrevocably agree that the South African courts have non-exclusive jurisdiction to determine any such proceedings.

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