

**TONGAAT HULETT LIMITED (in business Rescue)**

**BUSINESS RESCUE PRACTITIONERS' REMUNERATION AGREEMENT AS CONTEMPLATED IN SECTION 143 OF THE COMPANIES ACT 71 OF 2008, AS AMENDED**

**SUMMARY OF AGREEMENT**

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December 2022

**1. BACKGROUND**

- 1.1. On 27 October 2022 ("**Commencement Date**") the board resolved that Tongaat Hulett Limited (in business rescue) ("**Company**") voluntarily commence business rescue proceedings, and appointed Trevor Murgatroyd ("**Murgatroyd**"), Peter van den Steen ("**van den Steen**") and Gerhard Albertyn ("**Albertyn**") as the joint Business Rescue Practitioners ("**BRPs**") of the Company.
- 1.2. The BRPs and the Company subsequently negotiated and settled a remuneration agreement, as contemplated in section 143(2) of the Companies Act 71 of 2008, as amended ("**Companies Act**").
- 1.3. The regulations to the Companies Act prescribe an hourly tariff (inclusive of VAT), for the payment of the fees of a business rescue practitioner.
- 1.4. The Company is classified, in terms of regulation 26(2) read with regulation 127(2)(b)(i) of the Companies Act, as a large company, in that it has a public interest score greater than 500 points.

**2. BRPs REMUNERATION**

- 2.1. In terms of section 143(2) of the Companies Act, the BRPs are entitled to propose an agreement with the Company providing for further remuneration. The BRPs have reached agreement with the Company, which agreement now requires the approval of creditors and of shareholders.
- 2.2. The remuneration payable by the Company to the BRPs in terms of the remuneration agreement shall comprise:
  - 2.2.1. the tariff as specified in the Companies Regulations; and
  - 2.2.2. the further remuneration as contemplated in the remuneration agreement.

2.3. In addition to the BRPs' remuneration, the Company shall reimburse the BRPs for any reasonable costs, expenses and disbursements incurred by either of them in the discharge of their duties and responsibilities such as:

2.3.1. travelling costs and expenses;

2.3.2. accommodation costs and expenses; and

2.3.3. any other costs and expenses reasonably incurred by the BRPs to the extent required in order for the BRPs to discharge their duties and responsibilities.

### **3. BASIC REMUNERATION**

3.1. In terms regulation 128(1)(c) of the Companies Act, a senior business rescue practitioner appointed for a large company is entitled to charge an amount of R2 000.00 an hour inclusive of VAT (R1 739.13 excluding VAT).

3.2. In accordance with section 143 of the Companies Act, the BRPs will charge the following hourly rates ("**Tariff Fees**"):

3.2.1. Murgatroyd an amount of R1 739.13 excluding VAT (R2 000 including VAT);

3.2.2. van den Steen an amount of R1 739.13 excluding VAT (R2 000 including VAT); and

3.2.3. Albertyn an amount of R1 739.13 excluding VAT (R2 000 including VAT).

3.3. The Company recognizes that the hourly rate prescribed by the tariff in the regulations (as determined during the drafting of the Companies Act in 2008) is not market related and does not cater for annual escalations. Accordingly, the Company concluded a remuneration agreement with the BRPs in terms of which the Company agreed that the following additional remuneration will be paid to the BRPs effective from the business rescue Commencement Date ("**Further Remuneration**"):

3.3.1. Murgatroyd an additional amount of R2 660.87 (excluding VAT) per hour;

3.3.2. van den Steen an additional amount of R2 660.87 (excluding VAT) per hour; and

3.3.3. Albertyn an additional amount of R1 210.87 (excluding VAT) per hour.

3.4. The aggregate of the Tariff Fees and the Further Remuneration is thus contemplated as the BRPs basic remuneration (“**Basic Remuneration**”), as set out below:

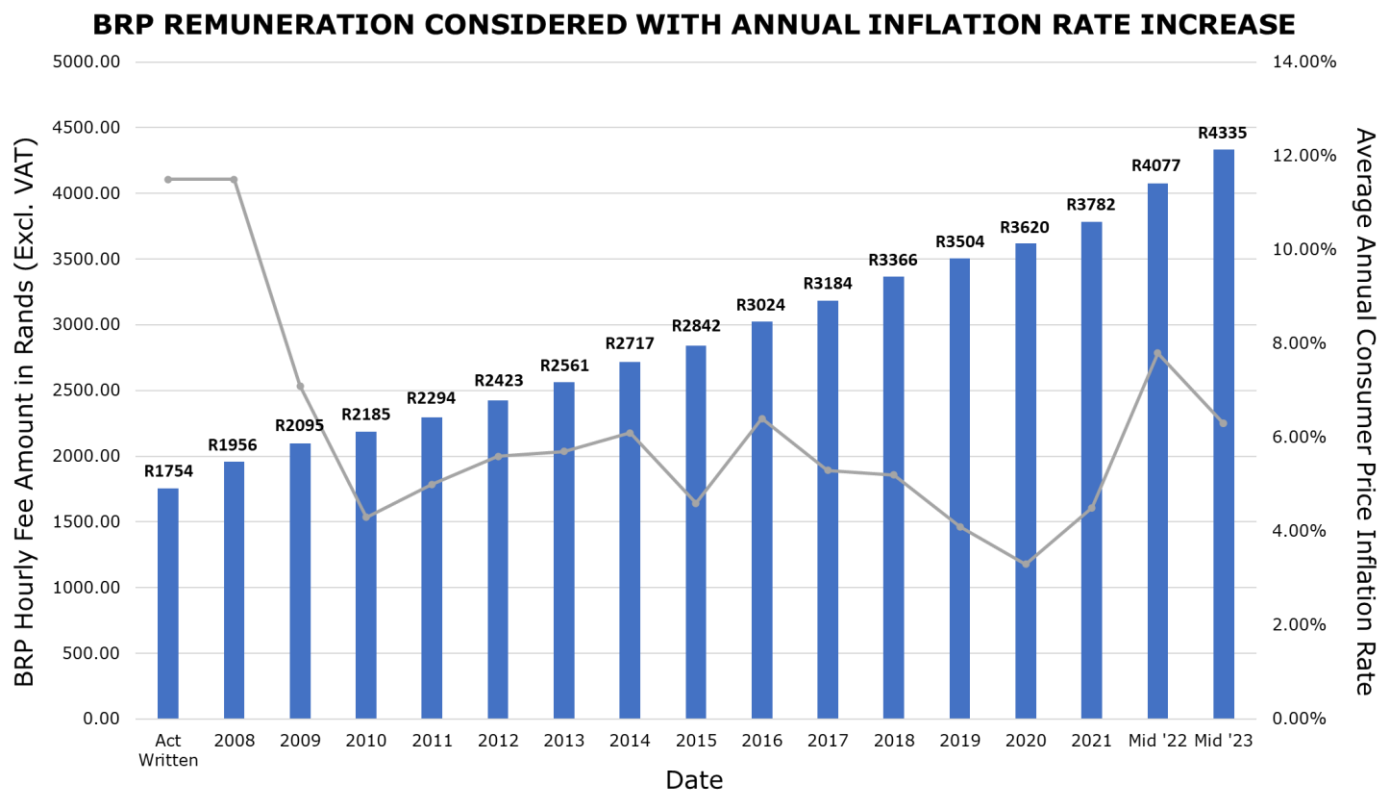
3.4.1. Murgatroyd a Basic Remuneration of R4 400.00 (excluding VAT) per hour;

3.4.2. van den Steen a Basic Remuneration of R4 400.00 (excluding VAT) per hour; and

3.4.3. Albertyn a Basic Remuneration of R2 950.00 (excluding VAT) per hour.

#### 4. INFLATIONARY ESCALATIONS

4.1. The graph below illustrates how the regulated fee of R1 754.39 per hour exclusive VAT– which equated to R2 000.00 per hour inclusive of VAT in 2008 (14% VAT from 2008 – March 2018 and 15% VAT from April 2018 onwards), would have increased, year on year, based on the average annual consumer price inflation rate\*.



\*Average annual consumer price inflation rate data sourced from the statistical releases published by Stats SA and available to view and download on the Stats SA website. The mid-2023 rate is based on analysts’ current econometric models and forecast expectations for the mid-2022 to mid-2023 period.

4.2. The Graph above demonstrates that the equivalent of the 2008 fee of R1 754.36 (excl. VAT) per hour, was R4 077.00 per hour in mid-2022 and is forecast to be c. R4 335.00 per hour in mid-2023 (values based on annual consumer price inflation escalations).

## **5. CONCLUSION**

- 5.1. In order for the remuneration agreement to be final and binding on the Company it requires the support of:
- 5.1.1. The holders of a majority of the creditors' voting interests present and voting at a meeting called for the purpose of considering the proposed remuneration agreement; and
  - 5.1.2. The holders of a majority of the voting rights attached to any shares of the Company that entitle the shareholder/s to a portion of the residual value of the company on winding-up, present and voting at a meeting called for the purpose of considering the proposed agreement.
- 5.2. It is the opinion of the Company and the BRPs that the remuneration agreement concluded between the parties is fair and reasonable and should be considered favourably by the creditors and shareholders of the Company.