

## DEPARTMENT OF TRADE AND INDUSTRY

NO. 74

02 FEBRUARY 2018

**MEMORANDUM OF UNDERSTANDING  
BETWEEN****BROAD-BASED BLACK ECONOMIC EMPOWERMENT COMMISSION**

An entity within the administration of **the dti** in terms of section 13B (1) of the Broad-Based Black Economic Empowerment Act, 2003 (Act 53 of 2003) as amended and herein represented by **Ms Zodwa Ntuli** in her capacity as the Commissioner and she being duly authorised to enter into this agreement

(Hereinafter referred to as "B-BBEE Commission")

**AND****labour**

Department:  
Labour  
REPUBLIC OF SOUTH AFRICA

**COMMISSION FOR EMPLOYMENT EQUITY**

A statutory body established in terms of section 28 of the Employment Equity Act, 1998 (Act 55 of 1998) as amended and herein represented by **Ms Tabea Kabinde** in her capacity as the Chairperson of the Commission for Employment Equity duly authorised thereto

(Hereinafter referred to as "CEE")

## 1. PURPOSE

1.1 The purpose of this Memorandum of Understanding (MoU) is to:

1.1.1 establish meaningful co-operation and collaboration between the two parties in the fulfillment of the respective responsibilities and obligations under the Employment Equity Act 55 of 1998 as amended and the B-BBEE Act 53 of 2003 as amended in facilitating transformation in South Africa.

1.1.2 provide a framework of collaboration; and

1.1.3 set out the principles underpin the relationship between the B-BBEE COMMISSION and the CEE and the guiding principles thereof.

1.1.4 .

## 2. COMMENCEMENT AND DURATION

2.1 This MOU will come into effect on the date of signature of the Party signing last in time, the **Effective Date**, and shall endure, subject to its terms and conditions, for a period three (3) of years, and may be terminated by either Party by giving thirty (30) days written notice to the other Party

## 3. IMPLEMENTATION

3.1 The parties to this MoU may develop and effect implementation mechanisms and action plans to achieve the objectives and goals thereof

## 4. PRINCIPLES GOVERNING COOPERATION BETWEEN THE PARTIES

4.1 The primary principles that shall govern the MoU are as follows:

4.1.1 each party shall take into consideration the statutory independence, governing structures and internal operational and regulatory processes of the other party;

4.1.2 this MOU is based on mutual respect for each party's governance, mandate, responsibilities.

4.1.3 each party shall be transparent in matter which may impact on the other party's work;  
and

4.1.4 the parties shall cooperate in good faith, with honesty, integrity and professionalism and with due respect and acknowledgement of the other's intellectual property irrespective of any rights reserved, copyrighted or not.

## 5. AREAS OF COLLABORATION

5.1 The areas of collaboration subject of the MOU shall include the following:

5.1.1 Advocacy and education throughout South Africa on the Employment Equity legislation and B-BBEE legislation;

5.1.2 Monitoring and evaluation the progress made in achieving the objectives of the Employment Equity legislation and B-BBEE legislation;

5.1.3 Information sharing on the best practices aimed at facilitating transformation and implementation of Employment Equity legislation and B-BBEE legislation ;

5.1.4 Sharing advisory services aimed at i facilitating interventions in achieving the objectives of the respective statutory obligations of the the Employment Equity legislation and B-BBEE Acts.

5.1.5 Any other matters of common interest as may be identified from time to time.

5.1. Any other matters of common interest as may be identified from time to time.

5.2 The parties anticipate that their collaborative activities may include:

5.2.1 A joint approach to regulation and cooperative and consultative compliance.

5.2.2 Seminars and workshops aimed at building capacity, advocacy, information-sharing and enhancing regulatory capabilities;

- 5.2.3 Information sharing and referrals of matters brought to the attention of each party that fall within the jurisdiction of the other and / or might have an impact on the mandate of either party; and
- 5.2.4 Information sharing of research projects, findings and other material information on matters relevant to the respective interest and common interests to improve evidence based recommendations .

## 6. RELATIONSHIP BETWEEN THE PARTIES

- 6.1 **LIABILITIES FOR ACTS OF THE PARTIES:** Neither party shall be held liable for acts or defaults of the other party or their employees or representatives.
- 6.2 **NO PARTNERSHIP OR AGENCY IS CREATED:** The existence of this MoU shall not be regarded or deemed to be regarded as a partnership or an agency and shall have no power or authority to bind either of the parties or incur liability on behalf of the other or to pledge the credit of the other party.
- 6.3 **GOOD FAITH:** The parties to this MoU shall deal with each other honestly, fairly and in good faith in all their dealings.
- 6.4 These provisions do not preclude any party from fully complying with the obligations of the B-BBEE Act, to enable the B-BBEE Commission to execute its mandate.

## 7. FUNDING

- 7.1 Each party shall bear its own expenses that might be necessary for the implementation of this MoU unless otherwise reduced to writing by both parties to execute a joint funding.

## **8. COPYRIGHT AND INTELLECTUAL PROPERTY RIGHTS**

- 8.1 The parties agree, for the duration of this agreement and for any project as negotiated under this agreement, to share authorship of any publications arising from such projects.
- 8.2 The parties recognise the importance of protecting and respecting each other's copyright and intellectual property rights. This MoU does not grant either party to make use of material belonging to either party outside the framework of collaborative activities set out in this MoU, all reports and material pursuant to collaboration shall be negotiated on a project-specific basis.

## **9. CONFIDENTIALITY**

- 9.1 Both parties shall at all material time observe and maintain confidentiality for all information exchanged and received by each other, including but not limited to underwriting and administration of policies, as strictly confidential and secret. The information relates to proprietary information, technical knowledge, experience, specimens and data of secret and confidential nature.
- 9.2 Parties shall keep all such information obtained confidential from a third party and only use it in co-operation with each other for the purpose expressly agreed upon and to disclose same only on the basis of need to know.
- 9.3 Parties shall ensure that all employees who directly or indirectly have access to the said proprietary and confidentiality information are not at liberty to disclose such information to the third party for the purpose of this MoU and to fully cooperate in the enforcement of such confidential undertakings.

## **10. PUBLICITY**

- 10.1 The CEE shall be prohibited from including the name of the B-BBEE Commission or its members, in any publicity, advertising or news release without the prior written approval of an authorized representative of the B-BBEE Commission.

- 10.2 Both parties shall be prohibited from including each other's name or that of its members, in any publicity, advertising or news release without the prior written approval of an authorised representative of the parties.

## 11. DOMICILIA AND NOTICES

- 11.1 For all notices, correspondence and court processes the parties hereby choose as their *domicilia citandi et executandi* for all purposes under this MoU to be served under the addresses as set out below.

- 11.2 All notices to CEE shall be served or addressed to:

**Ms Tabea Kabinde**

Designation: Chairperson

Street Address: The Commission for Employment Equity  
Department of Labour  
Room 103 Laboria House  
215 Francis Baard, Pretoria, 0001

Telephone number: (+27) 12 309 4040 / 4034

Email: [ntsoaki.mamashela@labour.gov.za](mailto:ntsoaki.mamashela@labour.gov.za)

- 11.3 All notices to B-BBEE Commission shall be served or addressed to:

**Ms Zodwa Ntuli**

Designation: Commissioner

Street Address: The B-BBEE Commission  
420 Witch-Hazel Avenue  
Eco-Glades 2  
Block C  
Eco-Park, Centurion, 0144

Telephone: (+27) 12 649 0910

Email: [MRamare@beecommission.gov.za](mailto:MRamare@beecommission.gov.za)

11.4 Notice of any change of address stated may be given by either party with 14 (fourteen) days of such change.

11.5 Any notice in terms of this MoU:

11.5.1 in case of hand delivery at a physical address, an acknowledgment of receipt shall be endorsed by the respective party.

11.5.2 may be sent by registered post upon which proof of postage issued by the relevant authority shall be vanished or provided to serve as proof of service.

## 12. GOVERNING LAW

12.1 This MoU shall be governed by and interpreted or construed in accordance with the laws of oh the Republic of South Africa without regard to its principles regarding conflict of laws. Any and all disputes arising out of it or in connection with this MoU shall be governed by Intergovernmental Relations Framework Act, 2005 (Act 13 of 2005) for a dispute resolution considering the fact that they are both organs of the state.

12.2. The parties shall at all material times use all reasonable effort to resolve any dispute arising from this MoU through good faith negotiations.

12.3 In the event of failure to reach an agreement or settlement, such dispute shall be referred to the Chairperson of the CEE and the Commissioner of the B-BBEE Commission, and they shall endeavor to settle the matter of such referral.

12.4 Should the endeavors also fail in attempting to solve the dispute, then it shall be referred to the Director-General of the Department of Trade and Industry and the Director General of Labour or officials delegated by them for such purpose, to attempt to solve such matter.

12.5 In the event that the dispute remains unresolved, then it shall be dealt with in terms of section 41(3) of the Constitution read with chapter 4 of the Intergovernmental Relations Framework Act.

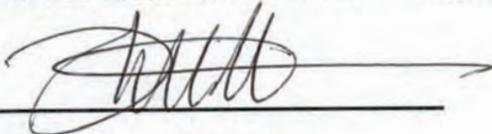
**13. GENERAL**

- 13.1 This MoU constitutes the cooperative and collaborative framework through which parties will manage the working relationship and acknowledge that they have entered into this Agreement, not relying on any representations, statements, warranties or guarantees not recorded in this MoU;
- 13.2 No amendments of, or additions to variation or cancellation of this Agreement shall be of any force or effect unless reduced to writing and signed by both parties hereto;
- 13.3 No party shall be entitled to cede, delegate or transfer any of its rights in terms of this Agreement to any of its authorized representatives, unless written consent has been obtained from the other party.

**IN WITNESS WHEREOF** the undersigned party approves the terms and conditions of this MoU.

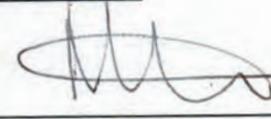
**For BROAD-BASED BLACK ECONOMIC EMPOWERMENT COMMISSION**

SIGNED AT CENTURION ON THIS 14 DAY OF AUGUST 2017



**Ms Zodwa Ntuli**  
**Commissioner**

**WITNESSES:**

1. 

2. 

**For COMMISSION FOR EMPLOYMENT EQUITY**

**IN WITNESS WHEREOF** the undersigned party approves the terms and conditions of this MoU.

