

DEPARTMENT OF TRADE AND INDUSTRY

NO. 1411

01 NOVEMBER 2019

MEMORANDUM OF UNDERSTANDING

BETWEEN:



BROAD-BASED BLACK ECONOMIC EMPOWERMENT COMMISSION

An entity within the administration of **the dti** established 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 thereto;

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

AND



THE NATIONAL LIQUOR AUTHORITY

An entity established in terms of the Liquor Act, 2003, (Act 59 of 2003) within the Consumer and Corporate Regulation Division (CCRD) of **the dti** and herein represented by **Dr Evelyn Masotja** in her capacity as the Deputy Director-General duly authorised thereto.

(Hereinafter referred to as "NLA")

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1. PURPOSE

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

- 1.1 to create co-operation and collaboration between the two (2) parties regarding the fulfilment of responsibilities and obligations under the National Liquor Act, 2003 (Act No. 59 of 2003) and the Broad Based Black Economic Empowerment Act, 2003 (Act No. 53 of 2003) as amended, (hereinafter referred to as the B-BBEE Act) in facilitating transformation in the Liquor industry;
- 1.2 to further provide a framework of collaboration on matters of mutual interest; and
- 1.3 to set out the principles that underpin the relationship between the B-BBEE Commission and the NLA.

2. COMMENCEMENT AND DURATION

- 2.1 This MoU shall come into force upon signature by both parties and shall continue in force indefinitely unless terminated by either party giving the other party fourteen (14) days' written notice or be renewed by mutual written agreement between the parties.

3. IMPLEMENTATION

- 3.1 The parties to this MoU will develop and effect implementation techniques and time bound action plans in order to meet the desired objectives and goals.

4. PRINCIPLES GOVERNING COOPERATION BETWEEN THE PARTIES

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

- 4.1 each party shall take into consideration the independence, governing structures and internal processes of the other party;
- 4.2 the main aim of this MoU is based on the understanding of and respect for each party's mandate, responsibilities and processes;
- 4.3 each party shall be transparent with the activities that might have an impact on the other party's work; and

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4.4 the parties shall cooperate in the utmost good faith and with honesty, integrity and professionalism and each party shall respect the other's intellectual property (whether copyrighted or not).

5. AREAS OF COLLABORATION

5.1 The areas of collaboration shall include the following:

5.1.1 B-BBEE Advocacy and Education for Liquor Licensing Authorities and industry representatives;

5.1.2 monitoring and Evaluation of transformation as per the Codes of Good Practice and compliance of Liquor entities with the B-BBEE Act through Compliance and Enforcement oversight visits to the National Liquor Authority;

5.1.3 information sharing on best practices aimed at the transformation of the liquor industry through regulatory interventions;

5.1.4 identification of opportunities to increase black ownership in the liquor sector particularly the manufacturing and distribution of liquor;

5.1.5 providing advisory services to the NLA on any matter relating to BBEE compliance; and setting higher criteria for ownership and other elements of transformation in terms of the B-BBEE Act;

5.1.6 development of norms and standards in the liquor industry to ensure alignment to the Broad-Based Black Economic Empowerment Codes of Good Practice; and

5.1.7 any other matters of common interest as may be identified from time to time.

5.2 The parties anticipate that their collaborative activities on the transformation of the Liquor Industry will include:

5.2.1 a joint approach to regulation, compliance and enforcement;

5.2.2 seminars, workshops, training aimed at building capacity, advocacy, information sharing with regard to Rules and Regulations aimed at enhancing regulatory capabilities; and

5.2.3 information sharing and referral of matters brought to the attention of each party that fall within the jurisdiction of the other and / or might have an impact

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on the mandate of either party, such as but not limited to the referral of a matter for investigation.

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.

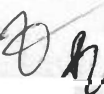
7. FUNDING

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 the right to make use of a 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.

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9. WARRANTIES

9.1 The Parties warrant that:

- 9.1.1 they shall not do anything that will be defamatory, injurious or in any way bring the reputation of the other Parties, or any third party into disrepute or expose the Parties to any action, claim or demand by any third party arising out of any intentional or negligent act or omission on the part of any of the Parties or their employees, or any other person(s) acting under its authority with regard to the provisions of this MoU;
- 9.1.2 in the exercise of their rights and obligations under this MoU, they shall ensure that all relevant laws, regulations, license authorisation, permits and delegations are complied with; and
- 9.1.3 Confidential all representations and warranties made by them, shall remain true and in force during the term of this MoU.

10. CONFLICT OF INTEREST

- 10.1 Unless agreed in writing between the Parties neither the B-BBEE Commission nor its personnel and employees shall have interest or receive remuneration in connection with this MoU except as provided in this MoU and agreed to upon by the Parties.
- 10.2 Neither Party shall engage in any activity, which may conflict with the interests of the other Party during the term of this MoU.

11. FORCE MAJEURE

- 11.1 Neither Party shall be responsible for or liable due to any failure to observe its obligations in terms of this MoU where such failure or liability is due to any event of *force majeure*.
- 11.2 A Party claiming *force majeure* hereunder shall notify the other Party within three (3) working days of the circumstances of such *force majeure* event arising and, when known, of the likely duration of the force majeure event and shall use all reasonable diligence to remedy the *force majeure* event, or to avoid or minimise the consequences of suspending performance of the obligation affected by the *force majeure* event, provided that nothing herein shall require such Party to settle strikes or other labour disputes contrary to its interest, and shall continue with its obligations after the *force majeure* event

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has ceased to exist. Except as otherwise provided in sub clause 11.3, performance of the obligations affected by the *force majeure* event shall be deemed suspended for as long as such *force majeure* event continues to prevent or delay performance.

- 11.3 If any event(s) of *force majeure* continues for a period in excess of ten (10) days, a Party not claiming *force majeure* may elect, at its sole discretion and upon written notice to the other Party, to terminate this MoU.

12. CONFIDENTIALITY

- 12.1 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.
- 12.2 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.
- 12.3 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.

13. PUBLICITY

- 13.1 Each Party is prohibited from including the name of the other Party, its members, in any publicity, advertising or news release without the prior written approval of an authorised representative of the latter Party.

14. DOMICILIA AND NOTICES

- 14.1 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.

- 14.2 All notices to NLA shall be served or addressed to:

Dr Evelyn Masotja

Designation: Deputy Director General

Street Address: The National Liquor Authority

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77 Meintjies Street
Pretoria
Republic of South Africa

Telephone number: (+27) 12 394 5901

Facsimile: (+27) 12 394 4901

Email:

Mmaxhetha@thedti.gov.za
Ellahaswane@thedti.gov.za

S.E. 

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

Ms Zodwa Ntuli

Designation: Commissioner

Street Address: **the dti**

77 Meintjies Street

Sunnyside

Pretoria, South Africa, 0002

Telephone: (+27) 12 649 0910


Email: MRamare@beecommission.gov.za

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

14.5 Any notice in terms of this MoU shall:

14.5.1 in case of hand delivery, it shall be sent to a physical address of a party. An acknowledgment of receipt shall be endorsed by the receiving party; and

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

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15. GOVERNING LAW

15.1 This MoU shall be governed by and interpreted or construed in accordance with the laws of the Republic of South Africa. _

16 DISPUTE RESOLUTION

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

16.2 In the event of failure to reach an agreement or settlement, such dispute shall be referred to the Deputy Director General of CCRD and the Commissioner of the B-BBEE Commission, and they shall endeavor to settle the matter of such referral.

16.3 Should the party's endeavors also fail in attempting to solve the dispute, then it shall be referred to the Director-General of the **the dti** or an official delegated by him for such purpose, to attempt to solve such matter.

16.4 If the Parties fail to reach an amicable resolution as envisaged in sub clause 16.3, such dispute shall then be referred to the Minister for resolution. The decision of the Minister shall be in full and final settlement of the dispute binding on all Parties.

17. GENERAL

17.1 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.

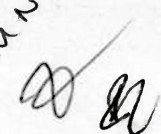
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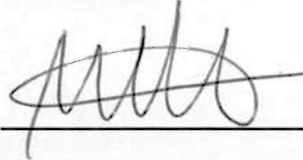

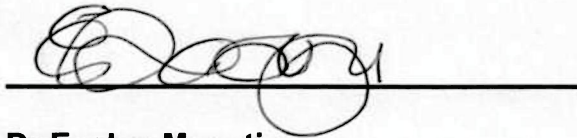
- 17.2 No amendments of, or additions to variation or termination of this MoU shall be of any force or effect unless reduced to writing and signed by both parties hereto.
- 17.3 No party shall be entitled to cede, delegate or transfer any of its rights in terms of this Agreement to any of its authorized representatives, unless written consent has been obtained from the other party.
- 17.4 Each Party shall bear its own costs in the negotiation, preparation and finalisation of this MoU.
- 17.5 The provisions of clauses 7, 8, 9, 10, 12, 13, and 15 shall survive the termination of this MoU.

18 ATTESTATION

- 18.1 The Parties hereby acknowledge having read and signed this MoU the contents of which are understood and accepted by both the undersigned Parties.

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For BROAD-BASED BLACK ECONOMIC EMPOWERMENT COMMISSIONSIGNED AT... CENTURION ... ON THIS... 4th ... DAY OF... MARCH ... 2019**Ms Zodwa Ntuli**
Commissioner**WITNESSES:**1. 2. **For NATIONAL LIQUOR AUTHORITY**SIGNED AT... Pretoria ... ON THIS... 01 ... DAY OF... February ... 2019**Dr Evelyn Masotja**
Deputy Director General: CCRD**WITNESSES:**1. 2. 