

DEPARTMENT OF TRADE AND INDUSTRY
NOTICE 374 OF 2018



MEMORANDUM OF UNDERSTANDING

ENTERED INTO BY AND BETWEEN

THE B-BBEE 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 No. 53 of 2003) as amended and herein represented by Ms Zodwa Ntuli in her capacity as the Commissioner and she being duly authorized to enter into this agreement)

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

AND

THE SOUTH AFRICAN REVENUE SERVICE

(a statutory entity established in terms of section 2 of the South African Revenue Service Act, 1997 (Act No. 34 of 1997) as amended and herein represented by Mr Mark Kingon in his capacity as the Acting Commissioner for SARS and duly authorised to enter into this Memorandum of Understanding)

(Hereinafter referred to as "SARS")

Two handwritten signatures in black ink, one above the other, positioned to the right of the text "(Hereinafter referred to as 'SARS')".

MEMORANDUM OF UNDERSTANDING BETWEEN SARS AND THE B-BBEE COMMISSION**PREAMBLE**

WHEREAS SARS is the nation's tax collecting authority responsible for administering the South African tax system and Customs and Excise service;



AND WHEREAS the mission of SARS is to optimise revenue yield, to facilitate trade and to enlist new tax contributors by promoting awareness of the obligation to comply with Tax and customs laws, and to provide a quality and responsive service to the public;

AND WHEREAS SARS' mandate is to collect all revenues due, ensure optimal compliance with Tax, Customs and Excise legislation and provide a customs and excise service that will facilitate trade as well as protect our economy and society;

AND WHEREAS the B-BBEE Commission is an entity within the administration of the Department of Trade and Industry established in terms of section 13B of the B-BBEE Act, as amended, entrusted with powers to oversee the implementation of the B-BBEE Act, promote compliance with the Act in the interest of the public, strengthen and foster collaboration between the public and the private sector to achieve the objectives of the B-BBEE Act;

AND WHEREAS the B-BBEE Commission has jurisdiction throughout the Republic of South Africa and its functions are, as set out in section 13F of the B-BBEE Act as follows:

- (a) To oversee, supervise and promote adherence to the B-BBEE Act in the interest of the public;
- (b) To strengthen and foster collaboration between the public and private sector in order to promote and safeguard the objectives of broad-based black economic empowerment;
- (c) To receive complaints relating to broad-based black economic empowerment in accordance with the B-BBEE Act;
- (d) To investigate, either on its own initiative or in response to complaints received, any matters concerning broad-based black economic empowerment;

 2-13 | Page 

MEMORANDUM OF UNDERSTANDING BETWEEN SARS AND THE B-BBEE COMMISSION




- (e) To promote advocacy, access to opportunities and educational programmes and initiatives of broad-based black economic empowerment;
- (f) To maintain a register of major broad-based black economic empowerment transactions, above a threshold determined by the Minister of Trade and Industry in the Gazette;
- (g) To receive and analyse such reports as may be prescribed concerning broad-based black economic empowerment compliance from organs of state, public entities and private sector enterprises;
- (h) To promote good governance and accountability by creating an effective environment for the promotion and implementation of broad-based black economic empowerment;
- (i) To exercise such other powers which are not in conflict with the B-BBEE Act as may be conferred on the B-BBEE Commission in writing by the Minister; and
- (j) Increase knowledge of the nature and dynamics and promote public awareness of matters relating to broad-based black economic empowerment by implementing education and awareness measures, providing guidance to the public and conducting research on matters relating to its mandate and activities.

AND WHEREAS SARS and the B-BBEE Commission are desirous to co-operate on issues of mutual interest and in reaching the desired collective goals as outlined below, the Parties undertake to co-operate on mutually beneficial terms as set out hereunder.

1. DEFINITION

In this Agreement, unless inconsistent with the context, the following terms shall have the meanings assigned to them:

- 1.1 **“Memorandum of Understanding”** means this MOU between SARS and the B-BBEE Commission;

 3-13 | Page  

MEMORANDUM OF UNDERSTANDING BETWEEN SARS AND THE B-BBEE COMMISSION

- 1.2 **“Effective Date”** means the date of signature by the authorised representative of the Party signing last in time;
- 1.3 **“Parties”** means SARS and the B-BBEE Commission jointly, and the word “Party” shall refer to either SARS or the B-BBEE Commission as the case may be;
- 1.4 **“Projects and/or Programmes”** means initiatives agreed to by the Parties in pursuance of any of the purposes of this Agreement;
- 1.5 **“B-BBEE Commission”** means a statutory entity established in terms of section 13B of B-BBEE Act, Act No. 53 of 2003, as amended, with its principal place of business at 420 Witch-Hazel Avenue, Eco Glades 2 Office Park, Block C, Eco Park, Centurion; and
- 1.6 **“SARS”** means a statutory body established in terms of section 2 of the South African Revenue Service Act, Act No. 34 of 1997, with its principal place of business at 299 Bronkhorst Street, Nieuw Muckleneuk, Brooklyn, Pretoria.

2. PURPOSE**The purpose of the MOU is:**

- 2.1 To establish cooperation between SARS and the B-BBEE Commission regarding programs that may directly complement or supplement one another.
- 2.2 To refer matters of deemed contraventions that impact on each party’s duties and mandate for consideration and resolution.
- 2.3 To identify, discuss and recommend common strategies and areas of cooperation.
- 2.4 To leverage resources by sharing resources, information and expertise for common beneficial purposes that will enhance both Parties’ organisational strategies and mandates, subject to compliance with applicable legislation, in particular compliance with Chapter 6 of the Tax Administration Act, Act No. 28 of 2011, the Protection of Personal Information Act, Act No.4 of 2013, and other related legislation.

MEMORANDUM OF UNDERSTANDING BETWEEN SARS AND THE B-BBEE COMMISSION**3. ROLES & RESPONSIBILITIES**

3.1 Each Party agrees to conduct its respective activities in a coordinated and mutually beneficial manner:

3.1.1 SARS agrees to:

- a) Share such information as may be necessary with the B-BBEE Commission insofar as this would be consistent with the confidentiality requirements of legislation administered by the Commissioner for SARS.
- b) Collaborate with the B-BBEE Commission on such other matters as may be agreed to between the B-BBEE Commission and SARS from time-to-time.
- c) Share with the B-BBEE Commission information relating to possible fronting practices or non-compliance with the B-BBEE Act.

3.1.2 B-BBEE Commission agrees to, where applicable:

- a) Provide SARS with information, upon request, in so far as this would be consistent with confidentiality requirements in the B-BBEE Act, in relation to:
 - (i) Major broad-based black economic empowerment transactions concluded;
 - (ii) Ownership and management control details relating to broad-based black economic empowerment transactions entities;
 - (iii) Complaints received by the B-BBEE Commission concerning broad-based black economic empowerment transactions; and
 - (iv) Any other relevant information that will enable SARS to conduct checks on the service provider's tax compliance; and
- b) Share information with SARS on suspicious illegal activities that may potentially impact revenue collection.

MEMORANDUM OF UNDERSTANDING BETWEEN SARS AND THE B-BBEE COMMISSION**4. DURATION AND TERMINATION**

- 4.1 This MOU shall commence on the **Effective Date** and shall endure, subject to its terms and conditions, for a period three (3) of years, until terminated by the Parties.
- 4.2 Either Party may terminate this MOU by furnishing a thirty (30) days written notice to the other Party.
- 4.3 The termination of this MOU will not relieve the Parties hereto of any undertakings accruing up to date of such termination.

5. AMENDMENT

This MOU may only be amended by written agreement between the Parties.

6. IDENTIFICATION OF AREAS OF COLLABORATION

- 6.1 The detailed contents and contributions of the Parties towards any projects and/or programmes shall be agreed upon through discussion and negotiations between the Parties.
- 6.2 The Parties record that they will enter into separate substantive agreements, where applicable, to govern their roles and obligations with regards to various areas where the Parties have agreed to collaborate.

7. NATURE OF THE RELATIONSHIP

- 7.1 Both SARS and the B-BBEE Commission are public entities as stipulated in the Public Finance Management Act, Act No. 1 of 1999, and also organs of state as stipulated in section 239 of the Constitution of the Republic of South Africa, 1996 (Constitution). Accordingly, the Parties shall observe the principles and values of co-operative government as enjoined in section 41 (1) of the Constitution.
- 7.2 No Party shall present itself as the representative or agent of the other Party for any business, legal or any other reason, nor shall it have the power of authority to

MEMORANDUM OF UNDERSTANDING BETWEEN SARS AND THE B-BBEE COMMISSION

- 8.4.6 To promote the sharing of information, subject to the laws governing the Parties (the exchange of information will have its own governance process to be agreed upon by the Parties);
- 8.4.7 To facilitate high-level meetings where appropriate; and
- 8.4.8 To resolve any contentious matters between the Parties.
- 8.5 The Parties shall, for purposes of this MOU, appoint official contact persons for the management of this MOU as a single point of contact for the requests to exchange information and/or assistance between Parties hereto.
- 8.6 The Parties appoint the following individuals as "Official Contact Persons" to whom the Parties assign the management of communication:
- 8.6.1. **B-BBEE Commission:**
- Name: Madidimalo Ramare
Tel: (012) 649 0918
E-mail: MRamare@beecommission.gov.za
- 8.6.2. **SARS:**
- Name: Minee Hendricks
Tel: (012) 483 1729
E-mail: mhendricks@sars.gov.za
- 8.7 The Steering Committee shall meet quarterly or on such dates as may be agreed upon by the Parties.
- 8.8 The Steering Committee shall be governed in accordance with the Terms of Reference to be agreed upon between the Parties.
- 9. INTELLECTUAL PROPERTY RIGHTS**
- 9.1 The Parties acknowledge and agree that all the rights, title and interest in and to any intellectual property, including but not limited to trademarks and copy works,

MEMORANDUM OF UNDERSTANDING BETWEEN SARS AND THE B-BBEE COMMISSION

regardless of whether it is registered or not, which is designed, produced or made available to one Party by the other Party from time to time, as a result of this MOU, shall remain exclusively the property of that Party.

- 9.2 Neither Party shall in any manner alter or effect the display of the Party's respective rights in intellectual Property (and disclaimers) of the other Party without the prior written approval of the Party.

10. BUDGET

- 10.1 Neither Party is under any obligation to commit funds or other resources under this MOU.
- 10.2 In the event of the Parties identifying and agreeing on a specific form of co-operation that requires funding or other resources, the Parties will formalise the specifics, rights and obligations in a separate legally binding contract.
- 10.3 Where procurement of services and goods may be required, the Parties will adhere to their respective, applicable supply chain management policies and procedures.
- 10.4 Each of the Parties remains responsible for their own expenses, except as may be agreed in a contract contemplated in clause 10.2.
- 10.5 No legally binding obligations shall arise from a contract contemplated in clause 10.2 where the Parties applicable policies and procedures relating to the commitment of funding or other resources, has not been complied with.

11. VARIATION

No variation or modification of any provision of this MOU or consent to deviate therefrom will be valid, unless such variation or modification is in writing and has been signed by both Parties, and such variation, modification or consent will be valid only for a specific case and only for the purpose for which and extent to which it was made or given.

MEMORANDUM OF UNDERSTANDING BETWEEN SARS AND THE B-BBEE COMMISSION**12. CONFIDENTIALITY**

- 12.1 The Parties will hold, in confidence, all Confidential Information received from each other and not divulge the Confidential Information to any third parties, including any of their employees, agents, consultants and sub-contractors directly, unless the parties are involved with the execution of this MOU and then only on a need to know basis.
- 12.2 The Parties will prevent disclosure of the Confidential Information, except as may be required by law.
- 12.3 The Parties agree that they shall protect each other's Confidential Information using the same standard of care that each Party applies to safeguard its own Confidential Information and that the information shall be stored and handled in such a way as to prevent any unauthorised disclosure thereof.
- 12.4 Within thirty (30) days after the termination of this Agreement, for whatever reason, the receiving Party of Confidential Information shall return same or at the discretion of the disclosing Party of such Confidential Information, destroy such Confidential Information, and shall not retain copies, samples or excerpts thereof.
- 12.5 The disclosing Party of Confidential Information may at any time request the receiving Party of such Confidential Information to return any material containing, pertaining to or relating to Confidential Information disclosed pursuant to the terms of this Agreement, and may in addition request the receiving Party to furnish a written statement to the effect, that upon such return, the receiving Party has not retained in its possession or under its control either directly or indirectly any such material.
- 12.6 As an alternative to the return of the material contemplated in 12.4 above, the receiving Party shall at the instance of the disclosing Party, destroy such material and furnish the disclosing Party with a written statement to the effect that all such material has been destroyed.

MEMORANDUM OF UNDERSTANDING BETWEEN SARS AND THE B-BBEE COMMISSION

- 12.7 The receiving Party shall comply with the request in terms of clause 12.4 above and within fourteen (14) days of receipt of same.
- 12.8 It is recorded that the following information shall, for the purpose of this MOU, not be considered to be Confidential Information:
- 12.8.1 Information known to either of the Parties prior to the date that it was received by the other Party; or
- 12.8.2 Information known to the public or generally available to the public prior to the date that it was disclosed by either of the Parties to the other; or
- 12.8.3 Information which becomes known to the public or becomes generally available to the public subsequent to the date that it was disclosed by either of the Parties to the other, through no act or failure to act on the part of the recipient of such Information; or
- 12.8.4 Information which either of the Parties, in writing, authorise the other to disclose.
- 12.9 For the avoidance of any doubt, no provision of this MOU should be construed in such a way that the disclosing Party is deemed to have granted its consent to the receiving Party to disclose the whole or any part of the **Confidential Information** in the event that the receiving Party receives the request for the whole or any part of the **Confidential Information** in terms of the provisions of the Promotion of Access to Information Act, Act No. 2 of 2000.

13. COMPLIANCE WITH PROTECTION OF PERSONAL INFORMATION ACT OF 2013


- 13.1 The Parties acknowledge their respective obligations to comply with the substantive provisions of the Protection of Personal Information Act, Act No. 4 of 2013.

MEMORANDUM OF UNDERSTANDING BETWEEN SARS AND THE B-BBEE COMMISSION

- 13.2 Each Party understands and acknowledges that the restrictions and obligations accepted by that other Party pursuant to this "MOU" are reasonable and necessary in order to protect the interests of the other Party and its employees.
- 13.3 Each Party therefore understands and agrees, notwithstanding any contrary provision in any other agreement between the Parties, that each Party retains its full rights to pursue legal or equitable remedies in the event of any breach or threatened breach of this MOU, and may prevent the other Party, any of its agents or subcontractors, or any third party who has received records from that Party from violating this MOU by any legal means available. Each Party further understands that violation of this MOU may subject that Party to applicable legal penalties, including those provided under Protection of Personal Information Act, Act No. 4 of 2013, and termination of any agreements entered into between the B-BBEE Commission and SARS.
- 13.4 Within thirty (30) days after the termination of this MOU, for whatever reason, the receiving Party of either Party's personal information shall, where feasible, return same or at the discretion of the disclosing Party of such personal information, destroy such personal information, and shall not retain copies, samples or excerpts thereof.
- 13.5 In cases where the disclosing Party has elected for the personal information to be destroyed, as provided for in clause 13.4 above, the receiving Party shall, within ten (10) days of receiving the instruction to destroy the personal information, send an affidavit confirming the destruction of personal information.

14. DISPUTE RESOLUTION

- 14.1. All disputes concerning or arising out of this MOU exists once a Party notifies the other Party in writing of the nature of the dispute and requires the dispute to be resolved. The Party giving the notice for dispute must initiate dispute resolution procedure by first, making every reasonable effort to settle the dispute by initiating direct negotiations with the other Party or through an intermediary.



12-13 | Page

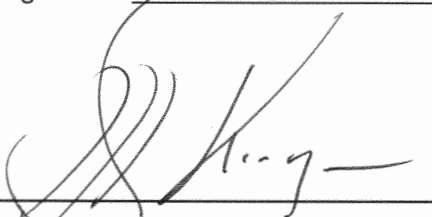
MEMORANDUM OF UNDERSTANDING BETWEEN SARS AND THE B-BBEE COMMISSION

14.2. If the dispute cannot be resolved by negotiations, either party may declare the dispute a formal Intergovernmental Dispute, in terms of the provisions of Chapter 4 (Settlement of Intergovernmental Disputes) of the Intergovernmental Relations Framework Act, Act No. 13 of 2005, and the procedure in accordance with the provisions of the Act shall be adopted in taking effort to resolve the dispute.

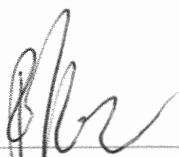
15. DOMICILIA AND NOTICES

All notices or correspondence in terms of this MOU shall be delivered by hand or sent by registered mail to the respective Party's physical address as reflected in clauses 1.5 and 1.6 above.

Thus signed at Pretoria on this the 05 day of May 2018.


Mr Mark Kingon**Acting Commissioner for SARS**

Thus signed at CENTURION on this the 21st day of MAY 2018.


Ms Zodwa Ntuli**B-BBEE Commissioner**

BUSISIWE NGWENYA
WITNESS