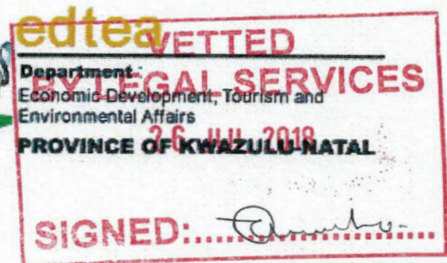


## GOVERNMENT NOTICES • GOEWERMENTSKENNISGEWINGS

## DEPARTMENT OF TRADE AND INDUSTRY

NO. 5

11 JANUARY 2019



## MEMORANDUM OF UNDERSTANDING

Between

**BROAD-BASED BLACK ECONOMIC EMPOWERMENT  
COMMISSION**

(hereinafter referred as 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 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.

And

**THE DEPARTMENT OF ECONOMIC DEVELOPMENT,  
TOURISM AND ENVIRONMENTAL AFFAIRS**

(Hereinafter referred to as the “EDTEA”)

(A Provincial Department of Economic Development, Tourism and Environmental Affairs, represented herein by **Ms Pumla Ncapayi** in her capacity as Head of Department duly authorised hereto).

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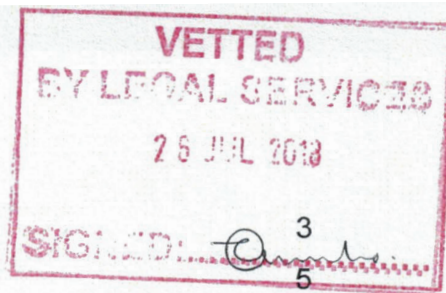


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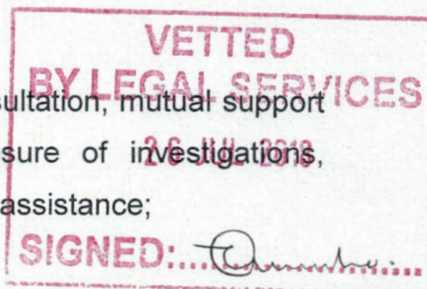
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## 1. PREAMBLE

**WHEREAS** the Parties acknowledge the importance of consultation, mutual support and co-operation regarding aspects such as the disclosure of investigations, information, training and in general, mutual co-operation and assistance;



**AND WHEREAS** the EDTEA is a Provincial Department of Economic Development, Tourism and Environmental Affairs

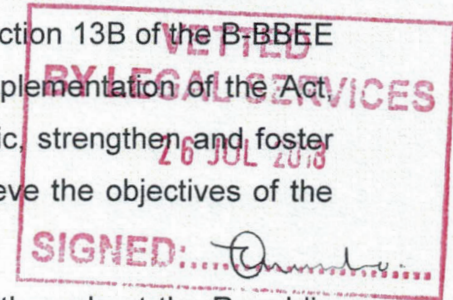
**AND WHEREAS** the functions of EDTEA are to ensure transformation, strengthen and increase meaningful participation of black people in the mainstream economy. The department is relentless in developing and maintaining an efficient regulatory and governance framework whilst playing a pivotal role in influencing policy direction aimed at economic development.

The department established the economic empowerment sub programme which focuses on, inter alia:

- (a) Mediation between businesses where a fronting case has been reported.
- (b) Investigate and collect evidence regarding acts or omissions which are relevant to any fronting case that has been lodged.
- (c) Provide B-BBEE training and create awareness of the B-BBEE legislation.
- (d) Facilitate compliance by large companies and qualifying small enterprises focussing mainly on priority elements.
- (e) Facilitate partnerships with stakeholders who have been established by the state to provide recourse in proven fronting or maladministration cases.
- (f) Refer evidence/information regarding any case of fronting to the B-BBEE Commission which points to the commission of an offence to the relevant prosecuting authority;
- (g) Regularly or at least on quarterly basis share information with the B-BBEE Commission on progress or outstanding cases which require the intervention of the B-BBEE Commission.



**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 Act, promote compliance with the Act in the interest of the public, strengthen and foster collaboration between the public and private sector to achieve the objectives of the Act;



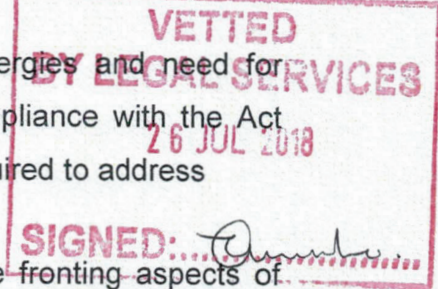
**AND WHEREAS** the B-BBEE Commission has jurisdiction throughout the Republic of South and its functions are, as set out in section 13F of the Act as follows:

- (a) To oversee, supervise and promote adherence to the 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 Act;
- (d) To investigate, either on its own initiative or in response to complaints received, any matter concerning broad-based black economic empowerment;
- (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 in the Gazette;
- (g) To receive and analyse such reports as may be prescribed concerning broad-based 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 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.

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**AND WHEREAS** the B-BBEE Commission has identified synergies and need for cooperation to effectively execute its mandate given non-compliance with the Act and the scourge of fronting that the B-BBEE Commission is required to address



**Both** Parties acknowledge the importance of investigating the fronting aspects of Broad-Based Black Economic Empowerment (B-BBEE) transactions as well as fraudulent verification processes and the relationship between corruption, derailment of economic transformation, lack of protection to minority rights, fraudulent attainment of high level B-BBEE status and flouting of corporate governance, further acknowledging that each Party may have specialised skills and specialist knowledge that assist in conducting fraudulent investigations;

**AND WHEREAS** the Parties are concerned about the threats posed by crime in general and commercial crime in particular with regard to fronting and fraudulent B-BBEE transactions and levels of B-BBEE status;

**AND WHEREAS** the Parties acknowledge that everything dealt with and agreed to herein is in the context of and to subject to all legislation, as amended from time to time, applicable to a Party.

**NOW THEREFORE** the Parties agree to enter into this Memorandum of Understanding and record the terms of their agreement as follows:

## 2. DEFINITIONS

In this MOU, unless the context indicates a contrary intention, the following words and expressions bear the meanings assigned to them and cognate expressions bear corresponding meanings—

“**MOU**” means this Memorandum of Understanding;

“**the Parties/ Party**” means the B-BBEE Commission and the Department of Economic Development Tourism and Environmental Affairs (EDTEA).



**“Requested Party”** means a Party from whom a request under this MOU is addressed;

**“Requesting Party”** means a Party making a request under this MOU;

**“EDTEA”** means the Department of Economic Development Tourism and Environmental Affairs;

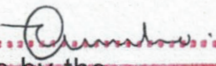


### 3. PURPOSE

- 3.1 The Parties recognise that requests in terms of this MOU will not be denied solely on the grounds of differences in the definitions used by or applicable to the Requesting and Requested parties.
- 3.2 This MOU embodies the understanding of the Parties with regard to a relationship of consultation, mutual support and co-operation between them, and serves to strengthen and formalise a relationship between the Parties with reference to forensic investigation, assignment of staff and training within the parameters of the BEE Act and legislation and policies regulating the B-BBEE Commission.
- 3.3 The Parties agree to provide mutual assistance, subject to their relevant governing laws and any other applicable legislation.
- 3.4 The Parties acknowledge that this MOU does not modify or supersede any laws and that it does not create legally binding obligations or enforceable rights between them.
- 3.5 Anything performed under this MOU will be subject to applicable legislation. It will furthermore be subject to applicable policies and standard operating procedures of the Parties and/or any other terms and conditions as may be agreed upon between the EDTEA and the B-BBEE Commission.
- 3.6 Neither Party may cede, assign or transfer its rights and obligations in respect of this MOU, or any part thereof, either directly or indirectly, to any third party.



3.7 Each Party will provide the fullest possible measure of assistance to the other subject to applicable legislation and policies and any other terms and conditions agreed upon between the EDTEA and the B-BBEE Commission.

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3.8 Each request for assistance will be assessed on a case-by-case basis by the requested Party to determine whether assistance can or may be provided.

3.9 The provisions of this MOU will not give rise to a right on the part of any other person, directly or indirectly, to obtain, suppress or exclude any evidence or to challenge the execution of any conduct under this MOU.

#### 4. GUIDELINES FOR MUTUAL ASSISTANCE

4.1 The Parties may agree to participate in the conduct and review of projects which may be deemed necessary from time to time.

4.2 The Parties agree to endeavour to secure sufficient resources in order to meet their statutory obligations in terms of their respective governing laws and to implement the provisions of this MOU.

4.3 Neither of the *Parties* is under any obligation to commit funds under this MOU.

4.4 In the event of the *Parties* identifying and agreeing on a specific form of **Co-operation** that requires funding, the *Parties* will formalise the specifics, rights and obligations of the *Parties* in a separate legally binding contract.

4.5 Each Party remains responsible for their own expenses, except as may be agreed in a contract contemplated in clause 5.4 above.

4.6 No legally binding obligations shall arise from a contract contemplated in clause 5.4 above, where the B-BBEE Commission's applicable policies and procedures relating to the commitment of funding or other resources has not been complied with.





## 5. PRINCIPLES OF CO-OPERATION

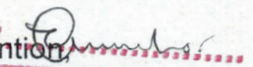
- 5.1 The Parties will endeavour to co-operate with one another on the prevention, detection and investigation of unlawful activities which come to their attention during the execution of their respective legal mandates.
- 5.2 The Parties will facilitate and foster co-operation between them in relation to investigation of matters that fall within their respective legal mandates and disclosure of information as envisaged in 6.3 hereunder.
- 5.3 The principles on which the co-operation contemplated shall be based are:
- (a) Mutual trust, respect and benefit to the Parties;
  - (b) Technical information, knowledge and expertise exchanged between the Parties shall not be passed to a third party without the prior written consent of the other (originating) Party;
  - (c) Commitment to joint training and assignment of staff where applicable to enhance knowledge, skills and an understanding of the functions of the respective Parties; and
  - (d) Adherence to the legislative frameworks governing the Parties, while also giving due consideration to political, economic and social considerations where applicable.

## 6. GUIDELINES FOR THE DISCLOSURE OF INFORMATION

- 6.1 In response to requests for information and assistance subject to any conditions established, a Party will provide the fullest possible measure of mutual assistance, subject to its governing statutes and regulations and overall policy.
- (a) Such assistance may include, *inter alia*, the disclosure of information in pursuance of the respective mandates subject to the limitations of the

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B-BBEE Act, Protection of Personal Information Act (POPI) and any other legislation applicable to the Parties.

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26 JUL 2018

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- (b) The B-BBEE Commission undertakes to create a framework through which requests for disclosure of information from the EDTEA will be processed. Such framework shall, consider requests that may emanate from the Office of the Head of department or duly delegated official.
- (c) Both parties undertake to create a framework through which requests for disclosure of information to the B-BBEE Commission will be processed. Such framework shall, consider requests that may emanate from the duly authorised or delegated official.

6.2 To facilitate an appropriate and timely response to a request for the disclosure of information, the Requesting Party must specify:

- (a) The information or assistance required;
- (b) The purpose for which the information is sought;
- (c) Any particular conduct or suspected conduct which has given rise to the request, and indicate its connection with the jurisdiction/mandate of the respective parties;
- (d) The link between any suspected offence, breach of law or requirement and the investigative or enforcing provisions of the Requesting Party;
- (e) The relevance of the requested information or assistance to any suspected offence, breach of law or investigative or enforcing provisions of the Requesting Party;
- (f) Any information related to the urgency of the request for information or assistance;



- (g) The legal provisions in terms of which the application for disclosure of information is made; and
- (h) A reference number.



- 6.3 Each request will be assessed on its own merits to determine whether assistance can be provided in terms of this MOU and in accordance with the relevant legal provisions pertaining to the disclosure of such information. Where full compliance with the request is not possible, the Requested Party will consider whether there may be other assistance which may be given.
- 6.4 In deciding whether to accept or decline a request, the Requested Party will in particular take account of:
- a) Matters specified by the legislation applicable to the Requested Party;
  - b) Whether it would be contrary to public interest to give the assistance sought; and
  - c) The resources available to the Requested Party to deal with the request.

## 7. TRAINING AND SECONDMENT

- 7.1 The Parties may assist one another to plan and implement training programmes designed to share expertise and skills in common areas and in order to do so, may also when appropriate, make use of, *inter alia*, conferences and seminars.
- 7.2 The Parties may assign staff to share expertise, skills and take part in investigations in matters of common areas or when additional resources are required.
- 7.3 The Parties shall endeavour to stimulate discussion of matters / issues of mutual concern and / or interest.

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7.4 To the extent necessary, the Parties may initiate, develop or improve specific training programmes in respect of, but not limited to forensic methods and techniques (in investigating financial crimes) such as:

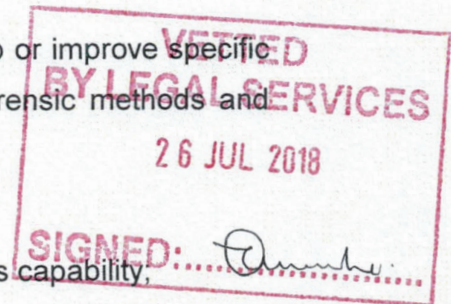
- 7.4.1 Development and enhancement of forensic analysis capability;
- 7.4.2 Analysis of financial, fronting and B-BBEE transactions during investigation to determine the financial aspects of a crime/practice;
- 7.4.3 Investigative methodologies in combatting fraudulent conduct within the mandates of the Parties;
- 7.4.4 Collection of evidence and matters related thereto.

## 8. COMMENCEMENT AND TERMINATION

- 8.1 This Agreement supersedes and replaces all previous oral or written agreements or MOUs between the parties.
- 8.2 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 fourteen (14) days' written notice to the other Party.
- 8.3 The termination of this MOU will not prejudice the completion, in accordance with their terms, of any on-going projects or activities under this MOU unless otherwise agreed to by the Parties at or after termination of this MOU.

## 9. UNSOLICITED INFORMATION

- 9.1 The information acquired in terms of this MOU is subject to any confidentiality requirements in law and in particular any legislation applicable to the B-BBEE Commission.
- 9.2 If one Party comes into possession of information which would be likely to assist the other Party in administrating or enforcing the laws for which it is



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responsible, the first-mentioned Party may notify the other Party of the existence of that information.



## 10. PERMISSIBLE USES AND CONFIDENTIALITY

- 10.1 The Parties and their officials are obliged to treat information under this MOU as confidential, except where compliance with a legal duty or compulsion by law necessitates disclosure. In the event of such disclosure the other Party shall be informed in writing without delay.
- 10.2 Where information may be and is disclosed in terms of this MOU such information will be disclosed by the Requested Party to the Requesting Party as soon as is reasonably possible. In regard to exchanges of confidential information, each Party agrees not to disclose any such information to a third Party except as provided for in applicable legislation and in the event of such disclosure the other Party shall be informed in writing without delay.
- 10.3 Information supplied will be used for the purpose only for which it was requested.

## 11. ANNEXURES TO THIS AGREEMENT

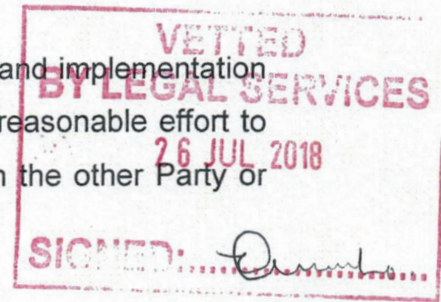
- 11.1 This is a founding general agreement between the Parties. Further details with regard to matters agreed to in terms of this agreement will be dealt with between the applicable business unit of the B-BBEE Commission and the EDTEA. Such other specific additional agreements or procedures and processes as the case may be will be in writing and agreed to by signature thereof by both Parties and will come into effect on the date of signature of the Party signing last in time. Such additional agreements, procedures and processes will form part of this MOU and any such agreement, procedure or process' existence will be conditional upon the existence or continuing existence of this MOU or any amendment or replacement thereof.

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## 12. SETTLEMENT OF DISPUTES

When a dispute arises out of the interpretation, operation and implementation of this MOU, the Parties must in good faith, make every reasonable effort to settle the dispute amicably through direct negotiation with the other Party or negotiations through an intermediary.



## 13. REVIEW AND AMENDMENT

13.1 The operation and implementation of this MOU shall be subject to periodic review by the Parties but not less than once in every twelve (12) month period from the **Effective Date** of this MOU. Notwithstanding the aforesaid, in the event of material changes in legislation affecting the content of this MOU, the Parties shall review and amend this MOU within a period of thirty (30) days from the date of the relevant changes coming into effect, in order to comply with the legislative amendments and with retrospective effect where necessary.

13.2 Any amendment agreed to by the Parties shall be in writing and shall form part of this MOU and such amendment will come into effect on such a date as agreed upon by the Parties.

## 14. GOOD FAITH

The Parties undertake to implement this MOU based on a foundation of mutual trust and good faith.

## 15. COMPLIANCE WITH POPI


15.1 The Parties acknowledge their respective obligations to comply with the substantive provisions of the Protection of Personal Information Act, 4 of 2013, which in essence comprises of both Parties allowing the other Party access to records on the condition that the identifiable person (or his or her guardian or curator) to whom the records relates has furnished prior written consent for the disclosure of the records.

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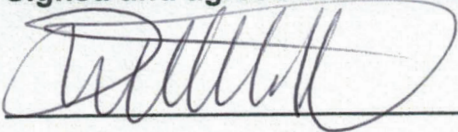
15.2 Each party understands and acknowledges that the restrictions and obligations accepted by that other party pursuant to this Agreement are reasonable and necessary in order to protect the interests of the other party, its employees and stakeholders and that parties' failure to comply with this Agreement in any respect could cause irreparable harm to the B-BBEE Commission, its employees and stakeholders for which there may be no adequate legal remedy.

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BY LEGAL SERVICES  
26 JUL 2018**

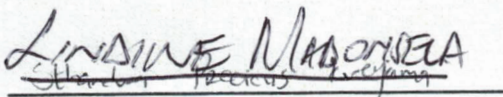
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15.3 Each party therefore understands and agrees, notwithstanding any contrary provision in any other agreement between the parties, that each party retains its full rights to pursue legal or equitable remedies in the event of any breach or threatened breach of this Agreement, 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 Agreement by any legal means available. Each party further understands that violation of this Agreement may subject that party to applicable legal penalties, including those provided under POPI and termination of any agreements entered into between the B-BBEE Commission and EDTEA.

Signed and agreed to at Pretoria on this 24<sup>th</sup> day of October 2018



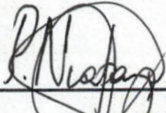
For and on behalf of the Broad-Based Black Economic Empowerment Commission established by section 13B of the B-BBEE Act No 53 of 2003, as amended

  
LINDINE MASONELA  
Witness

  
Date: 24 / 10 / 2018



Signed and agreed to in Pietermaritzburg on this 12 day of SEPTEMBER 2018



For and on behalf of the Department of Economic Development Tourism and Environmental Affairs (EDTEA)

Standa P. Kuyana

Witness



Date: 13 / 09 / 2018

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BY LEGAL SERVICES  
26 JUL 2018  
SIGNED: 

