

## DEPARTMENT OF TRADE AND INDUSTRY

NO. 1410

01 NOVEMBER 2019

**MEMORANDUM OF UNDERSTANDING**

ENTERED INTO BY AND BETWEEN

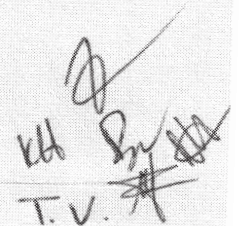
**THE PORTS REGULATOR OF SOUTH AFRICA**

(a Schedule 3A Public Entity established in terms of section 29 of the National Ports Act, 2005 (Act No. 12 of 2005)(as amended) herein represented by Mahesh Fakir in his capacity as the Chief Executive Officer for the Ports Regulator of South Africa duly authorised hereto)

AND THE

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

(an entity within the administration of the Department of Trade and Industry established 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 Zodwa Ntuli in her capacity as Commissioner of the B-BBEE Commission duly authorised hereto)

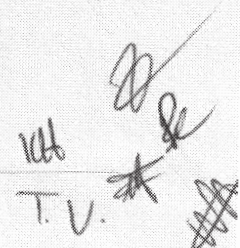


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**PREAMBLE**

**WHEREAS** the Ports Regulator of South Africa (hereinafter referred to as the "Ports Regulator") was established in terms of section 29 of the National Ports Act, 2005 (Act No. 12 of 2005)(as amended) and is responsible for *inter alia* exercising economic regulation of the ports system in line with government's strategic objectives, and promoting equity of access to port facilities and services provided in ports by assessing and monitoring the extent to which the National Ports Authority (hereinafter referred to as the "NPA") is driving transformation in the ports sector through broad-based black economic empowerment as contemplated in section 11 of the National Ports Act and Chapter 1 of the National Ports Regulations, 2007 (as amended);

**AND WHEREAS** the Ports Regulator monitors the National Ports Authority in respect of measures taken to enhance access to and participation in ports services and ports facilities by black people through *inter alia* the assessment of reports and B-BBEE Certificates submitted by the National Ports Authority to ensure that necessary transformation is taking place in the ports sector;

**AND WHEREAS** the B-BBEE Commission (hereinafter referred to as "the B-BBEE Commission") was established in terms of section 13B of the Broad-Based Black Empowerment Act, 2003 (Act No. 53 of 2003 (as amended) (hereinafter referred to as the "B-BBEE Act") and is *inter alia* responsible for overseeing, supervising and promoting compliance with the B-BBEE Act in the interest of the public;

**AND WHEREAS** the Parties have recognised the potential for co-operation and consultation in respect of matters dealing with transformation and B-BBEE participation;

**AND WHEREAS** the Parties respect and acknowledge each other's autonomy and statutory responsibilities and that the Parties shall co-operate in good faith and with integrity and honesty; and

**NOW THEREFORE** the Parties have reached the following understanding:

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## 1. DEFINITIONS

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

**"B-BBEE Act"** means the Broad-Based Black Economic Empowerment Act, 2003 (Act No. 53 of 2003) (as amended);

**"CEO"** means the Chief Executive Officer of the Ports Regulator;

**"Commissioner"** means the Commissioner of the B-BBEE Commission;

**"effective date"** means the date of signature by the Party, doing so last;

**"Memorandum of Understanding"** means the terms and conditions of this agreement together with any annexures thereto between the PRSA and the B-BBEE Commission, and **"MOU"** shall have a corresponding meaning;

**"National Ports Act"** means the National Ports Act, 2005 (Act No. 12 of 2005) (as amended);

**"NPA"** means the National Ports Authority, a division of Transnet SOC Ltd, who own, manage, control and administer ports in South Africa;

**"Parties"** means the PRSA and the B-BBEE Commission, and **"Party"** may refer to either the PRSA or the Commission as the context allows;

**"Ports Regulator"** means the Ports Regulator of South Africa established in terms of section 29 of the National Ports Act, 2005 and **"PRSA"** shall have a corresponding meaning;

**"responsible officials"** means the nominated officials from the PRSA and the B-BBEE Commission who are the official contact persons responsible for the management of communication between the Parties; and

**"the B-BBEE Commission"** means the Broad-Based Black Economic Empowerment Commission established in terms of section 13B of the B-BBEE Act.

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## 2. PURPOSE

### 2.1 The purpose of this MOU is to:

- 2.1.1 establish a relationship of mutual support and co-operation between the PRSA and the B-BBEE Commission in order to share relevant information as it relates to broad-based black economic empowerment and transformation;
- 2.1.2 establish an agreed framework of consultation and create an opportunity for the PRSA and the B-BBEE Commission to make inputs into each other's relevant functional areas;
- 2.1.3 assist, support, co-operate, inform and consult each other on matters of mutual interest; and
- 2.1.4 exchange information with regards to strategies, resources, expertise, information and reports as they relate to transformation generally, and transformation in the ports sector.

## 3. PRINCIPLES OF CO-OPERATION

### 3.1 The following principles shall govern this MOU, including but not limited to-

- 3.1.1 that each Party must recognise and respect the independence, governance processes and internal processes of the other Party;
- 3.1.2 that each Party must be transparent in their engagements with each other;
- 3.1.3 that each Party must co-operate in the utmost good faith, and with honesty, integrity and professionalism, and at all times respect the other Party's intellectual property;
- 3.1.4 that any communication between the Parties must be responded to in a timeous and efficient manner;
- 3.1.5 that each Party must provide mutual assistance to each other, subject to their applicable governing laws and any other applicable legislation; and
- 3.1.6 that neither Party shall have the power to enter into any agreement/s or to otherwise bind or incur liability on behalf of the other Party.

## 4. COMMENCEMENT AND DURATION

- 4.1 This MOU shall commence on the effective date. Should it not be signed by both Parties on the same date, the date of the signature by the last Party signing the agreement shall be deemed to be the effective date of this MOU.

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- 4.2 The MOU shall remain in force for a period of three (3) years from the effective date after which the Parties shall review it with a view to extending it for a further period.
- 4.3 Either Party may terminate the agreement by furnishing a thirty (30) business days' written notice to the other Party.
- 4.4 Notwithstanding clause 4.3 above, the Parties may agree to renew or extend this MOU upon such terms and conditions as may be negotiated between the Parties, which renewal or extension must be reduced to writing and signed by the Parties.
- 4.5 The provisions of clause 7 shall survive any expiry or termination of this MOU.

## 5. AREAS OF CO-OPERATION BETWEEN THE PRSA AND THE COMMISSION

- 5.1 The Parties undertake to share information, consult and/or collaborate with each other where necessary in respect of the following areas, including but not limited to-
  - 5.1.1 sharing of information as it relates generally to B-BBEE matters, including validity of B-BBEE Certificates and access to the B-BBEE Certificate Portal System (once live) subject to the laws governing the Parties;
  - 5.1.2 the application and understanding of sector codes/scorecards in measuring B-BBEE compliance as it relates to the ports sector;
  - 5.1.3 collaboration on such matters of mutual interest as may be agreed to between the Parties from time-to-time;
  - 5.1.4 monitoring and evaluation in respect of compliance and enforcement on the implementation of employment equity legislation and B-BBEE legislation;
  - 5.1.5 provision of advisory services aimed at implementing redress interventions to achieve equality and equity required for transformation under the employment equity legislation and B-BBEE legislation;
  - 5.1.6 where appropriate, the provision of support to each other insofar as training, education and awareness is concerned on matters of mutual interest; and
  - 5.1.7 any other relevant information relevant to the assessment, monitoring and promotion of transformation in the ports sector.

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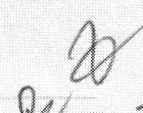



## 6. REPRESENTATIVES AND MEETINGS

- 6.1 The CEO of PRSA or his/her designate or successor-in-title and the Commissioner of the B-BBEE Commission or his/her designate or successor-in-title must be responsible for the management and monitoring of this MOU.
- 6.2 The Parties must for the purposes of this MOU appoint responsible officials who shall be *inter alia* responsible for communication between the Parties, including requests for sharing/exchanging of information, assistance and performing secretarial functions for purposes of meetings.
- 6.3 The Parties must meet at least once annually or as often as agreed to between the Parties to discuss matters of mutual interest in the implementation of this MOU. The Parties shall meet for the purpose of, including but not limited to-
- 6.3.1 to provide feedback in respect of areas of co-operation and matters of mutual interest as contemplated in clause 5 above;
  - 6.3.2 to review, assess and report on the effectiveness of the co-operation of the Parties;
  - 6.3.3 to propose where necessary, any amendment to the MOU; and
  - 6.3.4 to consider any other matter relevant to this MOU.

## 7. CONFIDENTIAL INFORMATION

- 7.1 To the extent provided by law, the PRSA and the B-BBEE Commission must hold confidential all information received from each other pursuant to this MOU and may not otherwise disclose such information than is necessary to carry out their regulatory or statutory responsibilities or otherwise in accordance with the law.
- 7.2 For purposes of this section, confidential information means all know-how, information, data, written or unwritten material, unpublished reports or any material which has been identified in writing as being "CONFIDENTIAL" relating to this MOU that may be disclosed by a Party.
- 7.3 Any information shared by the PRSA and the B-BBEE Commission pursuant to this MOU may only be used for lawful or statutory purposes and must be stored and/or handled in a

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manner which prevents any unauthorised disclosure thereof as contemplated in the Protection of Personal Information Act, 2013 (Act No. 4 of 2013).

- 7.4 A Party may not use the name of the other Party to this MOU, either in publicity releases, advertising or for promotional purposes, without the prior written consent of the other Party.

## 8. INTELLECTUAL PROPERTY RIGHTS


- 8.1 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, regardless of whether it is registered or not, which is designed or produced by one Party and made available to the other Party from time to time, as a result of this MOU, shall remain exclusively the property of that Party.
- 8.2 Subject to clause 8.1 above, the Parties may not use the other Party's intellectual property in any manner whatsoever unless the Party to whom the intellectual property belongs, specifically authorises such use in writing and then only to the extent so authorised.

## 9. FINANCIAL ARRANGEMENTS

For the duration of the MOU, each Party shall carry its own costs in the fulfilment of its obligations in terms of this MOU.

## 10. DISPUTE RESOLUTION

- 10.1 Any disagreement or dispute arising between the Parties with regard to the implementation, application, interpretation or breach of this MOU must be initiated and declared in writing.
- 10.2 The Parties must make all reasonable efforts to settle such difference or dispute through consultation and negotiation and the CEO and the Commissioner must first attempt to resolve the dispute amicably.
- 10.3 Disputes must be resolved in terms of the Intergovernmental Relations Framework Act, 2005. (Act No. 13 of 2005).

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**11. AMENDMENTS AND VARIATION**

- 11.1 No variation of, addition to, cancellation or novation of this MOU shall be of any force or effect, unless reduced to writing and signed by the Parties.
- 11.2 Where any legislation, standards or guidance documents are amended in such a way to affect this MOU, this MOU shall be considered as having been amended accordingly.

**12. GENERAL PROVISIONS**

- 12.1 The provision of, or request for, information under this MOU may be denied:
- 12.1.1 where compliance would require the PRSA or the Commission to act in a manner that would violate the applicable law;
  - 12.1.2 under circumstances where there is an imminent risk to national security; or
  - 12.1.3 where compliance with a request or provision of information would interfere with an ongoing investigation, in circumstances where prejudice to the investigation is likely to outweigh the adverse effects of denying the information.
- 12.2 No provision of this MOU shall give rise to any person, entity or government authority other than the PRSA or the Commission, directly or indirectly, to obtain any information or to challenge the execution of a request for information.

**13. DOMICILIUM CITANDI ET EXECUTANDI**

All notices or correspondence in terms of this MOU shall be delivered by hand or sent by registered mail to the following addresses:

13.1 *Address of the PRSA:*

22 Dorothy Nyembe Street  
11<sup>th</sup> Floor, Marine Building  
Durban, 4001  
E-mail: [info@portsregulator.org](mailto:info@portsregulator.org)

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**13.2 Address of the B-BBEE Commission:**

420 Witch Hazel Avenue

Eco Glades 2, Block C

Eco Park

Centurion

0144

E-mail:

13.3 Any notice or change of address must be given by either Party in writing and delivered by hand or sent by registered mail to the other Party.

**14. LEGAL EFFECT**

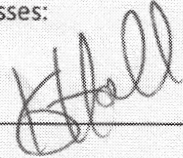
The MOU is not intended to be a legally binding document and intends to describe the nature and co-operative intentions of the Parties involved and to suggest guidelines for co-operation. Nothing therefore shall diminish the full autonomy of either Party nor may any constraints be imposed by either Party upon another.

Dated at DURBAN this 28<sup>th</sup> day of MARCH 2019

**MAHESH FAKIR**

duly authorised hereto, in his capacity as Chief Executive Officer of the Ports Regulator of South Africa

As Witnesses:

1. 



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2.

ated at CENTURION this 1st day of APRIL 2019

  
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**ODWA NTULI**

uly authorised hereto, in her capacity as the Commissioner of the B-BBEE Commission

is Witnesses:

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