



MEMORANDUM OF UNDERSTANDING

entered into between

THE FINANCIAL SECTOR CONDUCT AUTHORITY

(established in terms of section 56 of the Financial Sector Regulation Act, 2017 (Act No. 9 of 2017) herein represented by Mr. Unathi Kamlana in his capacity as Commissioner of the Financial Sector Conduct Authority and he being duly authorised thereto through a resolution attached herein and marked Annexure A.

(Hereinafter, referred to as the FSCA)

and

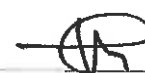
THE BROAD-BASED BLACK ECONOMIC EMPOWERMENT COMMISSION

(established in terms of section 13B of the Broad-Based Black Economic Empowerment Act, 2003 (Act No. 53 of 2003), as amended by Act No. 46 of 2013) as an entity within the administration of the Department of Trade, Industry and Competition, herein represented by Mr. Tshediso Matona in his capacity as Commissioner of the Broad-Based Black Economic Empowerment Commission and he being duly authorised thereto.

(Hereinafter, referred to as the B-BBEE Commission)

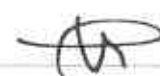
Table of Contents

1. INTRODUCTION	3
2. PURPOSE AND SCOPE	4
3. DEFINITIONS AND INTERPRETATION	4
4. GENERAL PROVISIONS	6
5. PRINCIPLES GOVERNING COOPERATION BETWEEN THE PARTIES	7
6. EXCHANGE OF INFORMATION.....	7
7. THE FINANCIAL SECTOR CONDUCT AUTHORITY'S OBLIGATIONS.....	8
8. THE BROAD-BASED BLACK ECONOMIC EMPOWERMENT COMMISSION'S OBLIGATIONS	8
9. AREAS OF COLLABORATION	8
10. CONFIDENTIALITY AND ONWARD SHARING OF INFORMATION	9
11. INTELLECTUAL PROPERTY RIGHTS AND OWNERSHIP OF MATERIAL	10
12. LIABILITY	10
13. REVIEW AND AMENDMENT	10
14. DISPUTE RESOLUTION	11
15. COMMUNICATION	11
16. COMMENCEMENT AND DURATION OF THE MoU	11
17. AMENDMENTS.....	11
18. ANTI-CORRUPTION AND GOOD FAITH.....	12
ANNEXURE B	14



1. INTRODUCTION

- 1.1. The Financial Sector Regulation Act, 2017 (Act No. 9 of 2017) hereinafter referred to as “FSR Act”, aims to achieve a stable financial system that works in the interests of financial customers and supports balanced and sustainable economic growth in South Africa, by establishing, in conjunction with the specific financial sector laws, a regulatory and supervisory framework that, *inter alia*, promotes the transformation of the financial sector. The FSR Act establishes the FSCA for purposes of, amongst others, to protect financial customers by (i) promoting fair treatment of customers by financial institutions; (ii) providing customers with financial education programs; and (iii) promoting financial literacy and financial inclusion.
- 1.2. The Broad-Based Black Economic Empowerment Act, 2003 (Act No. 53 of 2003) as amended by the Broad-Based Black Economic Empowerment Act, 2013 (Act No.46 of 2013), hereinafter referred to as the “B-BBEE Act”, aims to facilitate broad-based black economic empowerment (B-BBEE) by way of amongst others, promoting economic transformation to enable meaningful participation of black people in the economy. The B-BBEE Act provides for the establishment of the Broad-Based Black Economic Empowerment Commission (B-BBEE Commission), to oversee, supervise and promote adherence with the B-BBEE Act in the interest of the public, and to strengthen and foster collaboration between the public and the private sector in order to promote and safeguard the objectives of broad-based black economic empowerment.
- 1.3. The B-BBEE Act further requires that enterprises operating in the financial sector report to the Financial Sector Transformation Council on their B-BBEE compliance and all public companies listed on the Johannesburg Stock Exchange (JSE), including those operating in the financial sector to submit a report to the B-BBEE Commission on their compliance with B-BBEE Act. The B-BBEE Act also requires the FSCA as a public entity to apply the applicable Code of Good Practice issued in terms of the B-BBEE Act, when determining qualification criteria for the (i) issuing of licenses, (ii) granting concessions or (iii) awarding other authorisations.
- 1.4. The FSCA and the B-BBEE Commission aims to coordinate, cooperate and collaborate in fulfilling their respective responsibilities and mandates, insofar as it relates to their objectives to promote the transformation of the financial sector and advance economic transformation in the South African economy, respectively.



2. PURPOSE AND SCOPE

- 2.1. The purpose of this Memorandum of Understanding (MoU) is to formalise and strengthen a relationship on issues of common interest, cooperation, collaboration, assistance and exchange of information between Parties in the fulfilment of their concomitant responsibilities and obligations insofar as it relates to promoting the transformation of the financial sector.
- 2.2. The MoU also provides a framework for collaboration on matters of mutual interest and sets out the principles that underpin the relationship between the Parties.

3. DEFINITIONS AND INTERPRETATION

In this MoU -

- 3.1. unless the context indicates a contrary intention, the following expressions shall bear the meanings set opposite them below and cognate expressions shall bear corresponding meanings:

“Agreement” means this Memorandum of Understanding, also referred as MoU as amended from time to time, including any annexures hereto;

“B-BBEE Act” means the Broad-Based Black Economic Empowerment Act, 2003 (Act No. 53 of 2003) as amended by Broad-Based Black Economic Empowerment Act, 2013 (Act No.46 of 2013);

“B-BBEE Commission” means the Broad-Based Black Economic Empowerment Commission established in terms of section 13B of the Broad-Based Black Economic Empowerment Act, 2003 (Act No. 53 of 2003), as amended by Act No. 46 of 2013;

“Business Day” means any day other than Saturday, Sunday or official public holiday in the Republic of South Africa;

“Effective Date” means the date of signature by the last party signing the MoU;

“FS Code” means the Amended Financial Sector Code, 2017 published in terms of *Government Gazette* No. 41287 and enacted in terms of section 9(1) of the B-BBEE Act, as amended from time to time;

“**FSCA**” means the Financial Sector Conduct Authority, an entity established in terms of section 56 of the FSR Act;

“**FSCA Regulated Entities**” means entities that fall within the regulatory and supervisory scope of the FSCA in terms of the FSR Act;

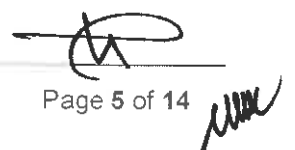
“**FSR Act**” means the Financial Sector Regulation Act, 2017 (Act No. 9 of 2017);

“**MoU**” means this Memorandum of Understanding and its annexures, if any and which includes any document expressly incorporated into it by reference;

“**Parties**” means the parties to this MoU, namely the FSCA and the B-BBEE Commission and “**Party**” shall mean any one of them, as the context may indicate; and

“**POPIA**” means the Protection of Personal Information Act, 2013 (Act No. 4 of 2013).

- 3.2. the clause headings are for convenience and shall be disregarded in construing this MoU;
- 3.3. unless the context indicates a contrary intention, the singular shall include the plural *and vice versa*;
- 3.4. a natural person includes an artificial or juristic person and vice versa;
- 3.5. If any provision in a definition is a substantive provision conferring a right or imposing an obligation on any party, notwithstanding that it is in a definition, effect shall be given to that provision as if it were a substantive provision in the body of this MoU.
- 3.6. Where any term is defined within a particular clause other than this Clause 3, the term so defined shall bear the meaning ascribed to it in that clause wherever it is used in this MoU, unless it is clear from the clause in question that such a defined term has limited application to the relevant clause.
- 3.7. Any reference to any statute, regulation or other legislation shall be a reference to that statute, regulation or other legislation as -
 - 3.7.1. at the Signature Date; and
 - 3.7.2. amended or substituted from time to time.



- 3.8. Where figures are referred to in numerals and words, where there is conflict between the two, the words shall prevail, unless the context indicates a contrary intention.
- 3.9. The rule of construction that this MoU shall be interpreted against the party responsible for the drafting of this MoU shall not apply.
- 3.10. The use of any expression in this MoU which refers to a South African legal concept or processes such as winding-up or curatorship shall be deemed to include a reference to the equivalent or analogous concept or process in any other jurisdiction in which this MoU may apply or to the laws of which a party may be or become subject.
- 3.11. The words “include” and “including” followed by a specific example or examples shall not be construed as limiting the meaning of the general word preceding it.
- 3.12. When any particular number of days is prescribed for doing any act, or for any other purpose, the same shall be reckoned exclusively of the first and inclusively of the last day, unless the last day happens to fall on a Sunday or on any public holiday, the last day shall be deemed to be the next succeeding day which is a Business Day.

4. GENERAL PROVISIONS

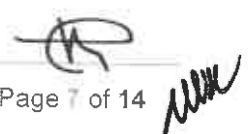
- 4.1. This MoU does not –
- 4.1.1. create any legally binding obligations, confer any rights, or supersede the laws governing the Parties;
 - 4.1.2. confer upon any person the right or ability directly or indirectly to obtain, suppress, or exclude any information or to challenge the execution of a request for assistance under this MoU;
 - 4.1.3. intend to create any agency relationship between the Parties and neither Party may bind the other in any way; and
 - 4.1.4. limit the Parties to take solely those measures described herein in fulfilment of their functions or responsibilities.

5. PRINCIPLES GOVERNING COOPERATION BETWEEN THE PARTIES

- 5.1. The primary principles that shall govern the MoU are as follows:
- 5.1.1. each party shall take into consideration the independence, governing structures and internal processes of the other party;
 - 5.1.2. the main aim of this MoU is based on the understanding of and respect for each party's mandate, responsibilities and processes;
 - 5.1.3. each party shall be transparent with the activities that might have an impact on the other party's work; and
 - 5.1.4. 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).

6. EXCHANGE OF INFORMATION

- 6.1. Subject to any restrictions on the disclosure of information, the Parties record and agree to exchange information of mutual interest and any information necessary for the performance of their respective functions.
- 6.2. The Parties will proactively identify types of information which, if shared, would enhance the effectiveness of the cooperation and collaboration arrangements.
- 6.3. The Parties agree to comply with all applicable legislation in relation to the subject matter of this MoU, with particular reference to requirements for the processing of personal information as set out in the Promotion of Personal Information Act, 2013 (Act No. 4 of 2013) hereinafter referred to as "POPIA".
- 6.4. To facilitate an appropriate and timely response, any request for information made in terms of this MoU shall be made in writing covering at least the following elements:
- 6.4.1. the purpose for which the information is sought; and
 - 6.4.2. whether the information requested is in connection with the performance of obligations and duties of the requesting Party.



7. THE FINANCIAL SECTOR CONDUCT AUTHORITY'S OBLIGATIONS

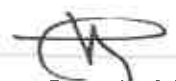
- 7.1. Without limiting the generality of sub-clause 6.1 above and subject to the information being in the possession of the FSCA, the FSCA undertakes to provide the B-BBEE Commission with:
- 7.1.1. information relating to FSCA Regulated Entities' compliance with the B-BBEE Act and the FS Code; and
 - 7.1.2. information relating to engagements with regulated entities on matters of transformation.

8. THE BROAD-BASED BLACK ECONOMIC EMPOWERMENT COMMISSION'S OBLIGATIONS

- 8.1. Without limiting the generality of sub-clause 6.1 above, the B-BBEE Commission undertakes to -
- 8.1.1. share with the FSCA any trends and insights regarding the transformation of the financial sector;
 - 8.1.2. provide the FSCA with a report on B-BBEE compliance by entities listed on JSE, and operating in the financial sector; and
 - 8.1.3. provide the FSCA with a registry of major broad-based black economic empowerment transactions in the financial sector, above a threshold determined by the Minister of Trade, Industry and Competition.

9. AREAS OF COLLABORATION

- 9.1. The Parties agree to co-operate, co-ordinate and collaborate in respect of the following areas:
- 9.1.1. Engagements on the regulatory framework applicable to FSCA Regulated Entities insofar as it relates to aspects that promote transformation;
 - 9.1.2. Exchange of relevant transformation data held by the B-BBEE Commission and FSCA respectively;
 - 9.1.3. Information sharing sessions on interpretation of the provisions of the B-BBEE Act;
 - 9.1.4. Joint awareness programmes or campaigns aimed at advancing transformation in the financial sector; and
- 9.2. The Parties will co-operate, co-ordinate and collaborate on any other matter relevant to the achievement of the Parties' objectives and mandates from time to time, provided that such exchanges are in accordance with applicable laws.



10. CONFIDENTIALITY AND ONWARD SHARING OF INFORMATION

- 10.1. The Parties acknowledge that all information exchanged in terms of this MoU is confidential and, subject to sub-clause 10.2 below, may only be used for the purpose for which it was exchanged.
- 10.2. The Parties undertake to only use the information within the scope of their powers and duties and within the prescripts of laws applicable to the Parties.
- 10.3. If a Party intends to use the information furnished under this MoU for any purpose other than the purpose referred to in sub-clause 10.1 above, it must obtain written consent from the Party from which the information originates.
- 10.4. The Parties, subject to sub-clause 10.5 below, may not disclose any information obtained under this MoU to a third party and must where compelled by law, use all reasonable means to oppose the compulsion to disclose, and must otherwise protect the information.
- 10.5. The Parties agree that information will only be disclosed to a third party if –
- 10.5.1. such disclosure is required by law and after the disclosing Party has informed the originating Party of the event and the circumstances in which the information shall be made available; or
 - 10.5.2. the prior written consent of the originating Party has been obtained.
- 10.6. The Parties further undertake that –
- 10.6.1. they have, and at all times will have, proper and effective safeguards in place to protect information shared between the Parties;
 - 10.6.2. those safeguards comply and, at all times, will comply with the provisions of POPIA;
 - 10.6.3. information requested will be in connection with the performance of their obligations and duties; and
 - 10.6.4. information shared shall retain its integrity and confidentiality and the Parties will take appropriate, reasonable technical and organisational measures to prevent loss of, damage to, or unauthorised destruction of the information, and unlawful access to or processing of the information.
- 10.7. A Party shall immediately notify the other Party if any of the undertakings referred to in sub-clauses 10.1 to 10.6 above, cannot be complied with.



11. INTELLECTUAL PROPERTY RIGHTS AND OWNERSHIP OF MATERIAL

11.1. All intellectual property rights relating to any work produced by a Party in relation to this MoU shall remain the sole property of that Party. The Parties will provide assistance in protecting such intellectual property rights, free of charge and or without burdening the fiscus of either Party.

11.2. Neither party shall, without the prior written consent of the other Party, make use of the other Party's intellectual property.

11.3. Neither Party shall acquire any rights, title or interest of any kind in any intellectual property of the other Party, unless agreed otherwise in writing by the other Party.

11.4. Each Party warrants that no aspect of its Intellectual Property rightfully utilized by the other Party in terms of this MoU will infringe upon any patent, design, copyright, trade secret or other proprietary right of any third party.

12. LIABILITY

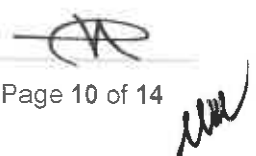
12.1. Neither Party shall be liable to the other Party for any direct, indirect, or consequential costs, losses, damages, liability, claims or proceedings of whatever nature arising out of this MoU howsoever caused.

12.2. Each Party bears its own liability arising out of its own negligence, wrongful act or omission, and its own breach of this MoU.

13. REVIEW AND AMENDMENT

13.1. The operation and implementation of this MoU will be subject to a periodical review to assess the functioning and effectiveness of the arrangements between the Parties.

13.2. Any amendment agreed to by the Parties must be reduced to writing and be signed by the Parties through their duly authorised representatives and shall form part of this MoU. Any such amendment shall come into effect on a date as agreed upon between the Parties.



14. DISPUTE RESOLUTION

- 14.1. The Parties will maintain open communication with one another in accordance with the purpose of this MoU and strive to ensure early resolution of any points of disagreement arising out of the interpretation, operation and implementation of this MoU.
- 14.2. The Parties understand and acknowledge that they have a mutual interest in resolving disagreements in a timely and efficient manner.
- 14.3. In the event of disputes arising from the interpretation, operation or implementation of this MoU, the Parties agree to make every reasonable effort to settle the dispute amicably. If a disagreement cannot be resolved through the principles provided for in this MoU, the Parties will each ensure that appropriate escalation mechanisms are in place within their respective organizations, with the Executive Committee of the FSCA and the Commissioner of the B-BBEE Commission respectively, being the highest levels to which resolution of a disagreement are to be escalated.

15. COMMUNICATION

- 15.1 To facilitate cooperation under this MoU, the Parties hereby designate contact persons as set forth in Annexure "B" to this MoU.

16. COMMENCEMENT AND DURATION OF THE MoU

- 16.1 This MoU will come into effect on the date of signature by the last Party thereto, and shall endure, subject to its terms and conditions for a period of three (3) years and may be terminated earlier by either Party, by giving thirty (30) days written notice to the other Party.
- 16.2 The termination of this MoU will not prejudice the completion of the aims of this MoU, in accordance with their terms, of any ongoing projects or activities under this MoU unless otherwise agreed to by the Parties at or after termination of this MoU.

17. AMENDMENTS

- 17.1 No amendments to or variation of this MoU will be binding on the Parties unless such amendment or variation is reduced to writing and signed by the Parties respectively.



18. ANTI-CORRUPTION AND GOOD FAITH



- 18.1 The Parties undertake to act in good faith at all times, give effect to the intend and purpose of this MoU and also undertake to do all such things, perform all such actions and take all such steps to procure all such things, as may be open to them and necessary for or incidental to putting into effect or maintain the terms and conditions and/or import of MoU.
- 18.2 Neither Party shall make or cause to be made any offer, gift or payment or consideration or benefit of any kind, which would or could be construed as an illegal or corrupt practice, either directly or indirectly to the other Party, as an inducement or reward in relation to relaxation of any provision in the execution of this MoU. Any such practice will constitute a ground for termination of this MoU.

19. APPLICABLE LAW

- 19.1 The interpretation, performance and implementation of this MoU shall be governed by and construed in accordance with the laws of the Republic of South Africa.

20. FORCE MAJEURE

- 20.1 Notwithstanding any provision contained herein, neither Party shall be liable to the other to the extent of fulfilment or performance if any terms or provisions of the MoU is delayed or prevented by revolution or other civil disorders, wars, acts of enemies, strikes, lack of resources from persons other than the parties hereto, labour disputes, electrical equipment or availability failure, fires, floods, riots, acts of terrorism, acts of God or any other causes not within the control of the parties, and which by the exercise of reasonable diligence it is unable to prevent.
- 20.2 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 has ceased to exist. Except as otherwise provided in sub clause 20.3 below, 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.

20.3 If any event(s) of *force majeure* continues for a period in excess of 10 (ten) 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.

21. ATTESTATION

21.1 The Parties hereby acknowledge having read and signed this MoU, the contents of which are understood and accepted by both the undersigned parties, in witness thereof.

22. SIGNATURES AND EXECUTION

For the FSCA

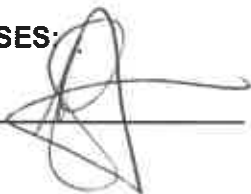
SIGNED AT PRETORIA ON THIS 5TH DAY OF MARCH 2024.



MR. UNATHI KAMLANA
COMMISSIONER

WITNESSES:

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For the B-BEE COMMISSION

SIGNED AT PRETORIA ON THIS 5TH DAY OF MARCH 2024.



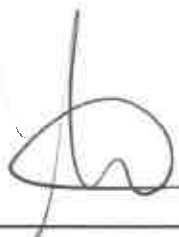
MR. TSHEDISO MATONA
COMMISSIONER

WITNESSES:

1



2



ANNEXURE B

Designate Contact Persons

THE FINANCIAL SECTOR CONDUCT AUTHORITY

Name: Kershia Singh
Title: Departmental Head: Policy Support
Address: Financial Sector Conduct Authority
Riverwalk Office Park, Block B
41 Matroosberg Road (Corner Garsfontein and Matroosberg Roads)
Ashlea Gardens, Extension 6
Menlo Park
Pretoria
South Africa
0081
Tel: 012 367 7263
Email: Kershia.singh@fsca.co.za
CC: RegL@fsca.co.za
Website: www.fsca.co.za

THE BROAD-BASED BLACK ECONOMIC EMPOWERMENT COMMISSION

Name: Mr Mofihli Teleki
Title: Senior Manager: Communications and Stakeholders Relations
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0002
Tel: 012 394 1535
Email: MTeleki@beecommission.gov.za
CC: MRamare@beecommission.gov.za
Website: www.bbbeeecommission.co.za

