

GOVERNANCE AGREEMENT

entered into by and between

HON MINISTER TJEKERO TWEYA
THE MINISTER RESPONSIBLE FOR THE MINISTRY OF INDUSTRIALISATION,
TRADE AND SME DEVELOPMENT

of

Brendan Simbwaye, Block B, C/o Dr Kenneth David Kaunda and Goethe Street,
Private Bag 13340, Windhoek, Namibia.

(hereinafter referred to as the "Portfolio Minister")

AND

THE NAMIBIAN STANDARDS COUNCIL

of

the Namibian Standards Council (NSC)
Channel Life Tower, M1
39 Post Street Mall
P.O. Box 26364
Windhoek

(hereinafter referred to as the "NSC")

(hereinafter collectively referred to as the "Parties")

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WHEREAS Section 17(1) of the State-owned Enterprises Governance Act 2006 (Act No. 2 of 2006) (hereinafter referred to as the "SOE Act"), requires a portfolio and/or shareholding Minister, within one month of a Board of a Public Enterprise being constituted, to enter into a written Governance Agreement with such a Board;

AND WHEREAS Section 17(1) further requires the portfolio and/or shareholding Minister to have due regard to the directives to be laid down by the Minister responsible for Public Enterprises (hereinafter referred to as the "Minister") in terms of Section 4(1)(d)(i) of the SOE Act of 2006, as amended in relation to a written Governance Agreement with a Board of a Public Enterprise;

AND WHEREAS the directives by the Minister have not yet been finalised;

AND WHEREAS the directives by the Minister, once finalised will be incorporated into the written Governance Agreement between the portfolio and/or shareholding Minister and the NSC within a period of three (3) months after finalisation so as to form an integral part thereof;

AND WHEREAS THE PARTIES HEREBY ENTER into a Governance Agreement specifying their principle common ambitions, expectations, commitments and understanding with respect to the Public Enterprise's performance for the duration of this agreement, as prescribed by the SOE Act, as amended.

WHEREFORE IT IS AGREED AS FOLLOWS:

1. INTERPRETATION

1.1 Unless otherwise determined by the context, the following words and phrases shall have the meanings set out below:

1.1.1 "day" means any day of the week, excluding Saturdays, Sundays, and public holidays;

1.1.2 "effective date" means the date on which this agreement is signed by both parties;

1.1.3 "month" means a calendar month, and more specifically:

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1.1.3.1 in reference to a number of months from a specific date, a calendar month commencing on that date or the same date of any subsequent month; and

1.1.3.2 in any other context, a month of the calendar, that is, one of the 12 months of the calendar,

and “monthly” has the corresponding meaning;

1.1.4 “PEGA” means Public Enterprises Governance Amendment Act, 2015;

1.1.5 “Public Enterprise” means the Namibian Standards Institution as established by Section 2 of the Standards Act, 2005 (Act No. 18 of 2005);

1.1.6 “SOE Act” means the principal Act, the State Owned Enterprises Governance Act 2006 (Act No. 2 of 2006) (as amended);

1.1.7 “the Period” means a period for which this agreement subsists, which is a period of 3 (three) years, including any period for which it is renewed;

1.1.8 “the Ministry” means the Ministry of Industrialisation, Trade and SME development;

1.1.9 “the Minister’s Agent” means the person who has been duly authorised by the Minister to provide services on behalf of the Minister;

1.1.10 “the Minister” The portfolio and/or shareholding Minister for the time being of the Ministry;

1.1.11 “year” means a period of 12 consecutive months commencing on the date on which this

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agreement comes into operation or any anniversary of that date;

1.1.12 “the Minister of Public Enterprises” means the Minister responsible for Public Enterprises as stipulated in section 2(b) of the Public Enterprises Governance Amendment Act, (Act No. 8 of 2015);

1.1.13 references to notices, statements and other communications by or from the Ministry include notices by or from the Minister’s agent;

1.1.14 expressions in the singular also denote the plural, and vice versa;

1.1.15 Words and phrases denoting natural persons refer also to juristic persons and trusts, and vice versa;

1.1.16 Pronouns of any gender include the corresponding pronouns of the other genders; and

1.1.17 Clause headings appear in this agreement for purposes of reference only and shall not influence the proper interpretation of the subject matter.

2. ROLES AND RESPONSIBILITIES

2.1 The goals of the Ministry encompass high quality service delivery and sustainable, affordable public systems and infrastructure. To achieve these goals, the Ministry’s primary stewardship functions are to set direction, develop legislation, policy and standards, allocate funding, monitor the Public Enterprise, and act to improve performance where necessary.

2.2 As one of the key service partners of the Ministry, the role of the Public Enterprise is to identify the needs of the local populations, plan and to provide services to the public in accordance with legislation and the Minister’s directives.

2.3 In achieving its goals and objectives, the portfolio and/or shareholder Minister constitutes the NSC which has as its core function the duty to implement and

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execute a performance management system based on Key Performance Indicators in terms of Section 17(1)(e) of the PEGA, as amended.

3. MINISTER'S OBLIGATIONS

3.1 The Minister agrees to the following responsibilities:

3.1.1 Exercise his stewardship functions to support the Public Enterprise in attainment of the Ministry's Master Plan and objectives;

3.1.2 Include and define the role of the Public Enterprise in the development of the Ministry's service plan and achievement of Government's National goals in terms of the National Development Plan ("NDP"), the Medium Term Expenditure Framework ("MTEF"), and the Performance and Effectiveness Management Plan ("PEMP");

3.1.3 Provide direction in strategic matters and policy clarification where needed, respecting the relative roles and responsibilities of the Ministry and Public Enterprise;

3.1.4 Provide, in an agreed-upon time, data needed by the Public Enterprise for planning and management of programs and services;

3.1.5 Provide, in writing, to the Public Enterprise the amount and details of preliminary operating and capital funding allocated for each fiscal year, along with an estimate of future funding levels for each fiscal year, within two weeks of the budget being tabled in the legislature; and

3.1.6 Provide, on an annual basis to the Public Enterprise reports containing data used by the Minister to monitor and improve the Public Enterprise's performance and analysis of such data, which may include commentary and an action plan, if necessary.

4. STATE-OWNED ENTERPRISE OBLIGATIONS

4.1 The NSC agrees to the following responsibilities:

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4.1.1 Develop and deliver to the Minister, at least 90 calendar days before the commencement of each financial year, a revised 1-year Business Plan, which is aligned with the National Development Plans, Medium Term Expenditure Framework as well as Vision 2030;

4.1.2 Develop and deliver to the Minister, at least 90 calendar days before the commencement of the financial year a 5-year Business Plan, which will be revised yearly, to be aligned to the Strategic Plan of the Ministry, with a timetable, that:

4.1.2.1 is consistent with existing ministerial policy and standards;

4.1.2.2 contribute to the Public Enterprise's strategy and objectives; and

4.1.2.3 approve associated performance indicators and targets aligned to the Performance and Effectiveness Management Plan ("PEMP") Framework of the Medium Term Expenditure Framework ("MTEF"), or any other approved Performance Management tool, in order to comply with the obligation as set out in Section 21(1) and (2) of the PE Act.

4.1.3 Develop and deliver to the Minister, at least 90 calendar days before the commencement of its next financial year, a Capital Asset Management Plan in accordance with the Minister's directives. This plan will be in accordance with the Public Enterprise's strategic plan, and encompass planning for facilities, equipment and information management / information technology;

4.1.4 Provide to the Minister a comprehensive and accurate Quarterly Performance Report that measures the Public Enterprise's progress towards meeting its annual goals and objectives in respect of financial, statistical, program-related, or person-based results as required by the Minister;

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4.1.5 Operate according to the latest requirements of legislation, policy and standards, subject to amendments made by the Government of the Republic of Namibia; and

4.1.6 Upon having been informed of his/her existence by the Minister, adhere to any agreements signed by the Minister, its agent or the Ministry with agencies that have a relationship with Public Enterprises.

5. OBJECTIVES OF THE STATE-OWNED ENTERPRISE

5.1 Subjected to the provisions of the Public Enterprises Act, the object and general duty of the Public Enterprises is to:

5.1.1 Objective 1;

to promote standardisation and quality assurance in the industry, commerce and the public sector in Namibia, with the aim of improving quality, industrial efficiency and productivity, and to promote trade, so as to achieve optimum benefits for the public of Namibia in general;

5.1.2 Objective 2;

to liaise with, and obtain membership of international and regional standards bodies that have objects similar to those of the NSI, and to achieve compliance with any internationally or regionally agreed instruments or organisations regarding standardisation, of which bodies Namibia is a member or intending to become a member and

5.1.3 Objective 3

To become progressively more self-sufficient and self-supportive.

5.2 Except where otherwise required in the national interest, the Public Enterprise shall conduct its business in such a manner as to ensure that the facilities and services relating to the Namibian Standards Institution will yield a fair and reasonable profit for the Public Enterprise.

5.3 As contained in Appendix "A" of this agreement, the Public Enterprise is bound to achieve specific and measurable performance objectives. The NSC herewith agree and commit to direct and assess the management of the Public

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Enterprise in order to achieve the performance objectives as set out in Appendix "A" hereto.

6. ANNUAL BUSINESS AND FINANCIAL PLAN

6.1 In terms of Section 19(1) of the Public Enterprises Governance Amendment Act, (Act No. 8 of 2015), the NSC agrees to annually, at least 90 calendar days before the commencement of each financial year, submit a Business and Financial plan to the Minister which is aligned to the prevailing National Development Plan ("NDP"), the Medium Term Expenditure Framework ("MTEF") as well as Vision 2030.

6.2 The Business and Financial plan will include the following:

6.2.1 A statement containing the following objectives:

6.2.1.1 The objectives for which the Public Enterprise is established, as set out in its establishing Act;

6.2.1.2 Public Enterprise objectives for the next five years and for each year in that period a strategy the Public Enterprise intends to employ to achieve the goals and objectives set out therein;

6.2.1.3 The Public Enterprise expected performance for the next financial year as compared to its projected objectives for that year as set out in its last business and financial plan; and

6.2.2 An operating budget and capital budget of the Public Enterprise for each financial year, with a description of the nature and scope of the activities to be undertaken, including commercial strategies, pricing of products or services and personnel requirements. Comprehensive Income, Balance Sheet, and Cash Flow Statements must be provided.

6.2.3 A statement with particulars of any expenditure included in the budget in respect of any project to be funded from any subsidy or grant awarded or given to the Public Enterprise, from whatever source, for that purpose, the conditions attaching to the subsidy or grant and the control

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measures to be applied for monitoring such expenditure and the application of the funds received in respect of the subsidy or grant.

6.2.4 If the Public Enterprise intends to borrow money in the financial year, an indication of the borrowing plans and repayment strategies relating to the said borrowing. These must include cash flow-projections and forecasts in relation to the repayment of the said borrowings.

6.2.5 A list of the composition and content of information to be furnished to the Minister in respect of the operations and activities of the Public Enterprise during the course of the financial year, including information to be included in each annual report.

6.2.6 Any other matters as may be agreed on by the Minister and the NSC.

7. KEY PERFORMANCE INDICATORS

7.1 In terms of Section 21 of the Public Enterprises Governance Amendment Act, (Act No. 8 of 2015), as amended the NSC shall enter into an agreement with the CEO and other senior management of the Public Enterprise regarding performance delivery. Such an agreement shall be based on the criteria indicated in Appendix "A", which contains the Key Performance Indicators.

7.2 The Public Enterprise's progress towards achieving its objectives and strategies will be evaluated utilising key performance indicators as set out in this agreement:

7.2.1 **"Return on Assets"** A rate of return on total assets employed of 27% before tax shall be attained, on average, for the duration of this agreement against the backdrop of revaluation of assets and substantial investment in infrastructure in the recent past. The Public Enterprise shall calculate the rate of return on total revalued assets.

7.2.2 **"Current Ratio"** The Public Enterprise shall maintain a current ratio of 2:1.

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7.2.3 The Public Enterprise shall comply with independent service quality review standards administrated subsequent to the completion of each project.

7.2.4 The Public Enterprise shall maintain a healthy Customer Satisfaction Index of at least 65% per annum.

7.2.5 The Public Enterprise shall enhance productivity and work ethics by implementing and maintaining a performance management system for the Chief Executive Officer and other senior management of the Public Enterprise.

7.2.6 The Public Enterprise shall implement and maintain effective governance processes to create a healthy working environment.

7.2.7 The Public Enterprise shall ensure Business Continuity by having relevant policies and procedures in place, (especially fraud prevention, HIV/Aids prevention and management programs, etc), in order to secure a safe and healthy working environment for all staff.

7.2.8 The Public Enterprise shall ensure that prudent financial practices will be applied throughout its operations, more specifically:

7.2.8.1 Any investment shall be undertaken in accordance with a policy approved by NSC and in accordance with the provisions of the PEGA which includes the approval by the Minister;

7.2.8.2 The Public Enterprise shall maintain an indemnity insurance policy in respect of any significant risk which may be reasonably associated with the provision of the facilities and services referred to in this contract;

7.2.8.3 The NSC shall formulate a policy to contain exchange rate risks with respect to any significant amount of foreign exchange the Public Enterprise may earn or contract to incur;

7.2.8.4 The Public Enterprise must prudently manage the financing of its existing business and new business developments and must furthermore manage its overall

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debt to ensure that it maintains the appropriate capital structure; and

7.2.8.5 The Public Enterprise's risk management framework shall be designed to ensure that all potential general, financial, and external risks are regularly identified, assessed, monitored and reported by the Finance, Risk Management and Audit Committee to the Standing Audit Committee and the NSC along with appropriate risk mitigation and management plans.

8. REMUNERATION AND BENEFITS

8.1 The remuneration and allowances payable to the members and alternate members of the NSC shall be determined by the Minister with the concurrence of the Minister of Finance and with due regard to any directives laid down by the Minister of Public Enterprises under section 4 of the principal Act, the Public Enterprises Governance Amendment Act, (Act No. 8 of 2015).

8.2 No remuneration is payable to a member of the NSC who is in the full-time service of the State unless exemption has been granted in terms of the Public Service Commission Act, 1990 (Act No. 2 of 1990).

8.3 The remuneration and other service benefits of the CEO and other senior management of the PE shall be determined by the NSC with the concurrence of the Minister.

9. DISTRIBUTION OF PROFITS

9.1 The return on investment to shareholders shall be in the form of a dividend which shall be determined by the NSC and tabled for approval with the Minister of Public Enterprises in accordance with the provisions of section 25(a) and (b) of the PEGA.

9.2 Upon presentation of the audited annual financial statements, the NSC shall determine the distribution of any profit at the end of the financial year, and declare and pay such dividend as agreed to between the NSC and the Minister of Public Enterprises, after taking the following into consideration:

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9.2.1 retention of an amount for purposes of future capital requirements and sustainability;

9.2.2 future loan agreements;

9.2.3 the Public Enterprise's trade facilitator role; and

9.2.4 the desired debt equity ratio.

10. NON-WAIVER

10.1 No concession, indulgence or extension that may at any time be granted by the Minister (or its Agent) to the Public Enterprise, or failure to enforce or delay in the enforcement of any right of action against the Public Enterprise or the NSC, in respect of any performance hereunder, shall be deemed to be a waiver or estoppel of, or affect, prejudice or derogate from the rights of the Minister or preclude the Minister in any way from exercising any rights under or arising from this agreement.

10.2 The failure of either party to comply with any non-material provision of this agreement shall not excuse the other party from performing the latter's obligations hereunder fully and timeously.

11. BREACH

11.1 In terms of Section 17(4) of PEGA, failure by the NSC to comply with the provisions of this governance agreement does not affect the validity or enforceability of any agreement, right, obligation or liability entered into, acquired or incurred by the Public Enterprise.

11.2 In the event of a material breach the Minister shall have the right to follow disciplinary action and impose any penalty he or she may deem fit;

11.3 This agreement will subsist for the period irrespective of change of any or all of the members of the NSC.

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11.4 Any dispute regarding the terms and conditions of this contract shall be referred for arbitration and an arbitrator will be appointed by the President of the Law Society of Namibia.

12. DOMICILIUM

12.1 The Parties choose as their domicilium address for all purposes including the service of court processes the addresses set out in the cover page of this agreement. A party may change its *domicilium* address on 30 (thirty) days' written notice to the other party.

13. NOTICES

13.1 Every notice, consent or other communication required or permitted hereunder from either party shall be in writing. It shall be sufficiently given or transmitted if and when:

13.1.1 hand delivered to the other party at its domicilium address, or at such other address as the party may have designated in writing;

13.1.2 transmitted by means of a telefax to the addressee's telefax number and in respect of which telefax an acknowledgement has been received; or

13.1.3 deposited in the mail, duly registered with postage pre-paid for prompt delivery and addressed to the other party at its domicilium address, or at such other address as the addressee may have designated in writing. A notice deposited in the mail in terms of this clause shall be deemed to have been delivered on the 4th (fourth) business day after the date of posting.

14. GENERAL

14.1 This agreement constitutes the whole and entire agreement between the parties who acknowledge that no warranty, representation, disclosure, expression of opinion, guarantee, term or condition of whatsoever nature, save as contained herein, is relied upon in entering into this agreement or has been made or given in regard to any matter affecting this agreement.

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14.2 No variation of the terms and conditions of this agreement or any purported consensual cancellation thereof shall be of any force or effect unless reduced to writing and signed by the parties.

14.3 The Minister and the NSC acknowledge that they have read and understand the contents of this Agreement.

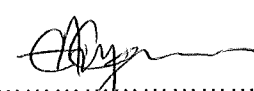
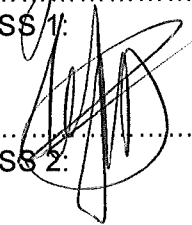
14.4 The validity of this agreement for the period for which this agreement subsists will not be influenced by a change in the constitution of the NSC.

15. APPLICABLE LAW

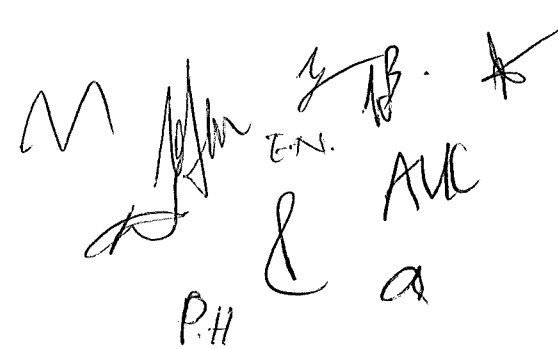
15.1 This agreement shall be governed by and construed in all respects in accordance with the laws applicable in the Republic of Namibia and the parties submit to the exclusive jurisdiction of the courts of the Republic of Namibia in respect of any dispute that arises in connection herewith.


THUS DONE AND SIGNED by the Minister at WINDHOEK
this 4TH day of OCTOBER 2019 in the presence of the undersigned witnesses.

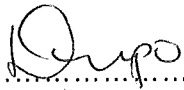

**TJEKERO TWEYA, MP
MINISTER**


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WITNESS 1:

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WITNESS 2:


THUS DONE AND SIGNED by the Members of Namibian Standards Council (NSC) at WINDHOEK this 16TH day of OCTOBER 2019 in the presence of the undersigned witnesses.


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Prof. Martha Kandawa-Schulz
CHAIRPERSON OF THE BOARD


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WITNESS 1:

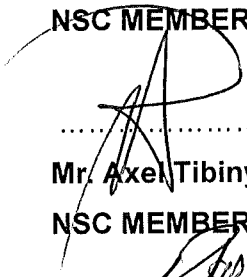

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WITNESS 2:

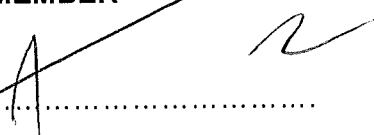
2. 
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Ms. Rosalinda Katjivena
NSC MEMBER

3. 
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Mr. Milton Shanika-Louw
NSC MEMBER

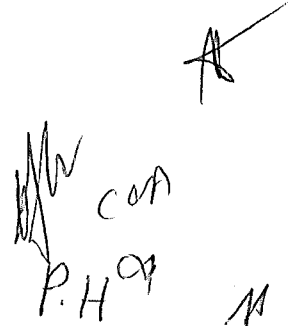
4. 
.....
Dr. Penny Hiwilepo-Van Hal
NSC MEMBER

5. 
.....
Mr. Axel Tibinyane
NSC MEMBER

6. 
.....
Mr. Frederik Willem Botes
NSC MEMBER

7. 
.....
Mr. John Ali Ipinge
NSC MEMBER

8. 
.....
Ms. Ainna Vilengi Kaundu
NSC MEMBER


COA
P.H
M

9.

Chie Wasserfall
 Ms. Chie Wasserfall
 CEO/MEMBER (EX-OFFICIO)

APPENDIX "A"

APPENDIX A: PERFORMANCE OBJECTIVES

No	STRATEGIC THEMES	KEY ACCOUNTABILITY	STRATEGY	PERFORMANCE MEASURES
1.	Meeting or exceeding Stakeholder expectations	Strengthen relationship with the shareholder	Formulate policies that ensure compliance with legislation and Good Corporate Governance Monitor the implementation of enterprise risk management process	Number of milestones set by government for Public Enterprise achieved
				All the risks on the Risk Register managed
				Financial Targets met
				Clean audits achieved
			Adopt Namibian standards as required	Number of Namibian standards adopted annually
				% implementation of the National Quality Policy (NQP)
2.	Creating an enabling environment for innovation and learning	Ensuring capacity building	Provide strategic leadership to the NSI ensuring performance of its functions	Number of NSI technical and administrative staff trained
		Build a high performance culture		
3.	Developing and maintaining operational capability and efficiency	Streamline business process and optimise NSI assets and resources	Streamline and map business processes and reduce maintenance costs of NSI assets	Formulate asset replacement policy
4.	Ensuring long-term financial stability	Develop certification as major business stream	Formulate and oversee achievement of strategies for NSI long-term financial sustainability	Number of accredited scopes of NSI conformity assessment services achieved and maintained

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