

PERFORMANCE AGREEMENT

entered into by and between

HON. MINISTER TJEKERO TWEYA
MINISTER 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

MEMBERS OF THE NAMIBIAN STANDARDS COUNCIL (NSC)

Of

The Namibian Standards Institution (NSI)
Channel Life Tower, M1
39 Post Street Mall
P.O. Box 26364
Windhoek

Handwritten signatures and initials:
P.H.
A.V.R.
E.N.
M.Z.

(hereinafter referred to as the "Board Member")

(hereinafter collectively referred to as "the Parties")

Handwritten signatures and initials:
A.V.R.
E.N.
P.H.
C.A.
M.Z.

WHEREAS the Members of the Namibian Standards Council (hereinafter referred to as Board Member) in terms of Section 17(1) of the State-owned Enterprises Governance Act 2006 (Act No. 2 of 2006) as amended (hereinafter referred to as the principal Act, the "SOE Act"), entered into a written Governance Agreement with the portfolio and/or shareholding Minister linked to its five year business plan and strategic plan as from the effective date. The said Governance Agreement is attached as Annexure "A".

WHEREAS the Board Member agrees to be bound by such Governance Agreement and more specifically hereby enters into a Performance Agreement in his/her capacity as a Board Member with the Minister.

WHEREAS Section 18(1) of the SOE Act, as amended, requires a portfolio and/or shareholding Minister, within one month of appointing a Board Member of a Public Enterprise, to enter into a written Performance Agreement with such a Board Member;

AND WHEREAS Section 18(2) 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 in terms of Section 4(1)(d)(ii) of the SOE Act of 2006, as amended, in relation to a written Performance Agreement with a Board Member of a Public Enterprise;

AND WHEREAS the directives by the Minister responsible for Public Enterprises have not yet been finalised;

AND WHEREAS the directives by the Minister, once finalised will be incorporated into the written Performance Agreement between the portfolio and/or shareholding Minister and the Board Member 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 Performance Agreement specifying their principal common ambitions, expectations, commitments and understanding with respect to the Public Enterprise's performance for the period of this agreement.

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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 **“Minister”** means the Minister responsible for Public Enterprises as established in terms of the Public Enterprises Governance Amendment Act, 2015 (Act No. 8 of 2015);

1.1.2 **“day”** means any day of the week, excluding Saturdays, Sundays, and public holidays;

1.1.3 **“Effective Date”** means the date on which this contract is signed by both parties;

1.1.4 **“Governance Agreement”** means the agreement and its Annexures entered into between the NSC and the Minister as attached as Annexure “A”;

1.1.5 **“month”** means a calendar month, and more specifically:

1.1.5.1 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

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

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and “monthly” has the corresponding meaning;

1.1.6 “PEGA” means Public Enterprises Governance Amendment Act, 2015 (Act No. 8 of 2015);

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

1.1.8 “SOE Act” means the State Owned Enterprises Governance Act 2006 (Act No. 2 of 2006) as amended in 2015;

1.1.9 “the Period” means the period for which the Board Member is appointed as such, including any period for which it is renewed;

1.1.10 “the Ministry” means the Ministry of Industrialisation, Trade and SME development has a corresponding meaning;

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

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

1.1.13 “year” means a period of 12 consecutive months commencing on the

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3. RESTRICTION OF LIABILITY

3.1 The Board Member shall not be personally liable for any loss or damage arising out of or in connection with, the performance of his or her duties, unless the loss or damage is due to his or her wilful misconduct, gross negligence or failure to comply with any provision of the PEGA or the Companies Act 1973 (Act No. 28 of 2004), as amended; or a directive or decision given thereunder.

4. DUTIES OF THE BOARD MEMBER

4.1 In addition to the duties of a Director as laid down in Companies Act 1973 (Act No. 28 of 2004), as amended; and as described in the King III report on corporate governance, the Board Member shall have the following duties:

4.1.1 The Board Member shall comply with Section 18(2), (3), (4) and (5) of the PEGA which sets out the duties of individual Board Members of Public Enterprises, namely:

4.1.1.1 The Board Member shall at all times act honestly in the performance of the functions of his or her office;

4.1.1.2 The Board Member shall at all times exercise a reasonable degree of care and diligence in the performance of his or her functions;

4.1.1.3 The Board Member, including after he or she ceases to be a member of the NSC, shall not make improper use of information acquired by virtue of his or her position as such a member to gain, directly or indirectly, an advantage for himself or herself or for any other person or to cause detriment to the Public Enterprise; and

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The Board Member must not make use of his or her position as a member to gain directly or indirectly, an advantage for himself or herself or for any other person or cause detriment to the Public Enterprise.

4.2 Any contravention of Section 18(3) of the SOE Act as amended, or any other legislation referred to above by the Board Member constitutes a ground for the removal of the Board Member from his/her office by the portfolio and/or shareholding Minister.

5. LIABILITIES OF BOARD MEMBER

5.1 In terms of Section 18(3), (4) and (5) of the SOE Act, as amended, if the Board Member contravenes any condition as set out in Section 18(2) or any other condition of this Performance Agreement, the portfolio and/or shareholding Minister may in the name of the NSI recover from the Board Member as a debt due to the Public Enterprise by action in a competent court:

5.1.1 if the Board Member, made a profit as a result of the contravention, an amount equal to the profit; and

5.1.2 if the Public Enterprise has suffered any loss as a result of the contravention, an amount equal to that damage or loss.

5.2 Section 18(2) and (3) of the SOE Act, as amended, as referred to above, are applicable in addition to, and not in derogation of, any other law relating to criminal or civil liability of the Board Member and do not prevent the institution of any criminal or civil proceedings in respect of such liability.

6. ADHERENCE TO PRINCIPLES OF GOOD GOVERNANCE

6.1 The Board Member shall adhere to the principles of good governance, inclusive of any principles as laid down by the Minister.

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7. ASSESSMENT OF PERFORMANCE

7.1 The Board of Directors, in terms of the Governance Agreement entered into between itself and the portfolio and/or shareholding Minister, shall identify adequate means of assessing the effectiveness of the performance of the Board Members.

7.2 Such an assessment shall be based on the objectives and Key Performance Indicators as contained within the Governance Agreement as well as its Annexures.

7.3 The Board Member shall be assessed on a bi-annual basis.

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8. AGREEMENT BINDING ON THE PARTIES

8.1 The parties to this agreement agree that this Agreement is binding upon them that they shall diligently take necessary action to achieve the objectives of said Agreement.

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

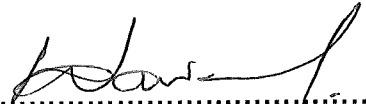
Signature of Tjekero Tweya
**TJEKERO TWEYA, MP
MINISTER**

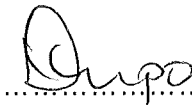
Signature of Witness 1
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WITNESS 1:
Signature of Witness 2
.....
WITNESS 2:

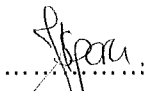
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M, EN, PH, P.H, A, B, J, S

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.

1. 
.....
Prof. Martha Kandawa-Schulz
CHAIRPERSON OF THE BOARD



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WITNESS 1:

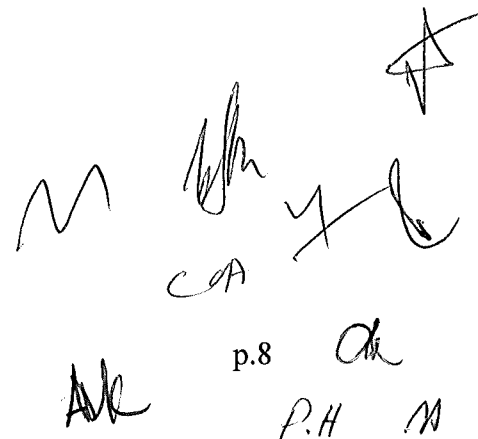

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WITNESS 2:


2. 
.....
Ms. Rosalinda Katjivena
NSC MEMBER

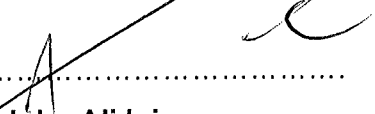
3. 
.....
Mr. Milton Shanika-Louw
NSC MEMBER

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

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

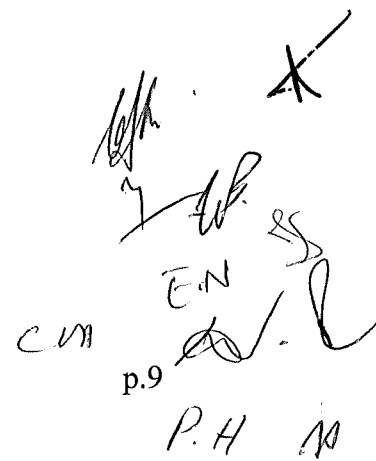

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6. 
.....
Mr. Frederik Willem Botes
NSC MEMBER

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

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

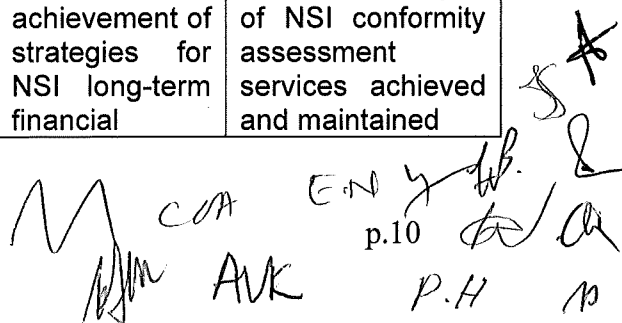
9. 
.....
Ms. Chie Wasserfall
CEO/MEMBER (EX-OFFICIO)


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ANNEXURE "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 the NSI 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	Number of accredited scopes of NSI conformity assessment services achieved and maintained



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- Initials/signatures: *AK*, *AK*, *AK*, *AK*
- Text: *COA*, *EN*, *p.11*, *P.H*
- Other marks: A checkmark, a large stylized signature, and a circled 'A'.