

**MEMORANDUM OF UNDERSTANDING (“MOU”)
ENTERED INTO BETWEEN**



**COMPETITION AUTHORITY
(CA)**

AND



**GAMBLING AUTHORITY
(GA)**

THIS MEMORANDUM OF UNDERSTANDING is made this.....
Day of Two Thousand and Sixteen and is intended to reflect the position reached by the **GAMBLING AUTHORITY** (hereinafter referred to as GA), and the **COMPETITION AUTHORITY** (herein after referred to as the CA) - and collectively hereinafter referred to, in context, as “the parties”).

WHEREAS-

The Gambling Authority is established under Section 3 of the Gambling Act of 2012 with the responsibility to regulate and control the development of gambling establishments in Botswana.

WHEREAS-

Section 5 (b) to (h) sets out all the powers and functions of the GA.

WHEREAS-

The Competition Authority is established under Section 4 of the Competition Act of 2009 with the responsibility of prevention of, and redress for, anti-competitive practices in the economy, and the removal of constraints on the free play of competition in the market.

WHEREAS-

Sections 25, 26(1), 27(1), 30(1), 32(1) and 52(1) describe and define all economic or commercial activities that may be entered into through arrangements or agreements by enterprises or businesses in any commercial sector and are deemed anti-competitive practices under the Competition Act;

AND WHEREAS-

Under Section 73 of the Competition Act, there is a general expectation for regulators to establish a mechanism through which they can maintain regular contact regarding the exercise of their respective responsibilities;

NOW THEREFORE, the parties agree to conclude this Understanding as follows:

1. BASIS OF THIS MoU

1.1. Gambling is an economic activity that affects the buying power of each and every individual or citizen who takes part in it. Gambling on its own is an industry that generates large sums of money through competition. Gambling establishments compete with one another for customers and to that extent certain marketing strategies, for example gambling incentives are used to lure customers to the business. Competitors may enter into certain arrangements in order to maximize on their profits and some, due to acquisitions may become concentrated and abuse their dominant position. Some may not adhere to the license requirements of the regulatory authority for the sole purpose of gaining an advantage over their rivals and end up offending both gambling and competition laws. There is therefore a need for both parties to this MOU to join efforts in order to make sure that the enterprises regulated under the Gambling Act are compliant with both the gambling and competition laws.

- 1.2. There is no one institution that has unilateral capacity to efficiently and effectively investigate, analyse and successfully prosecute cases of abuse of dominance, deception, collusion, etc there is thus need to cooperate and share information successfully.
- 1.3. This MoU does not limit the GA or CA from taking any steps to establish other MoUs with any other relevant institutions that may be relevant to their functions as well as to specifically deal with abuse of dominance, deception, collusion, etc. as may be consistent with the legislations that establish their existence.

2. SCOPE OF COOPERATION AND INFORMATION SHARING

- 2.1. The Parties shall endeavour to inform each other in advance of regulatory changes or other material events that may have a significant impact on their joint operations or activities as herein described.
- 2.2. Areas of coordination, cooperation or information sharing shall include, but not limited to:
 - a. providing each other with useful non-confidential information on an investigation when requested by the other party or proactively by any party without a request being made;
 - b. avail to each other non-confidential parts of an investigation and results thereof;
 - c. assisting each other with investigation, research and analysis of cases that one party may be engaged in;

- d. joint training sessions for officers dealing directly with matters pertinent to this MoU;
 - e. consulting each other on a regular basis on matters of mutual interest;
 - f. to seek clarification from each other on any media reports that may be related to matters connected with or incidental to the MoU;
 - g. appear in Court or other judicial and quasi-judicial bodies as expert witness or to provide evidence in relation to their specific competency; and
 - h. each party shall be assumed to bear their own costs and factor the aspects of this MoU in their respective budget
- 2.3. To the extent possible, all requests for information shall be in writing and signed by the Chief Executives of the Parties or their designated officers, of which the request shall specify:
- a. the information sought by a member party
 - b. a general description of the matter which is the subject of the request and the purpose for which the information is sought; and

- c. the desired time period for reply and, where appropriate, the urgency thereof
- 2.4. In urgent situations, the Parties will endeavor to notify each other of the urgency and communicate information to the other as would be appropriate in the particular circumstances, taking into account all relevant factors, including the status of the efforts to address the situation. During situations, requests for information may be made in any form, including orally by designated officers, provided such communication is confirmed in writing at an opportune time.
 - 2.5. Where an action by any party to this MoU requires the policy guidance or other governing body, the usual extra-ordinary processes to arrange for *ad hoc* or special decisions shall be followed with the urgency the matter would deserve.
 - 2.6. Where joint investigations are carried out, the Parties involved shall consult each other before either of them issues a media release concerning a transaction covered by this Agreement.

3. HANDLING OF CONFIDENTIAL INFORMATION

- 3.1. Each party shall endeavour to maintain the public confidence in terms of whistle-blowers and other sources of information, which shall not be unnecessarily disclosed to any party and cooperation in any way shall not be expected to be dependent on knowledge of the source of the information.
- 3.2. Where confidential information is required by a judicial or quasi-judicial organ, the disclosure shall be made in conformity with

the direction given by the presiding decision maker/adjudicator and the rules that generally govern their sittings.

- 3.3. While information exchanged may be used by any party in their enforcement activities, such information must protect the relevant confidential clauses and avoid unnecessary clouding of statutory impropriety by the party that provided the information.
- 3.4. This MoU shall be a public document and thus may be quoted generously by any party to the MoU.
- 3.5. Unless otherwise expressly stated, all information sought or exchanged shall be deemed to be usable by the receiving party according to the legal framework establishing them.

4. ESTABLISHMENT OF JOINT WORKING COMMITTEE

- 4.1 A Joint Working Committee ("the Committee") constituted by representatives of the parties as nominated by the parties shall be established pursuant to this MoU and shall function on an on-going basis. Functions of the Committee shall include:
 - a. to manage and facilitate cooperation and consultative meetings between the parties;
 - b. to propose and advise both parties of any necessary amendments or changes to the operation or governance of this MoU from time to time at a senior level and;
 - c. to ensure that the objectives of this MoU are fulfilled;

- d. to identify priority areas of co-operation and draft annual plans to that effect, where necessary;
- e. to coordinate the implementation, monitoring and evaluation of the activities to be carried out under this MoU and the annual plans;
- f. to manage and facilitate cooperation and consultative meetings between the parties;
- g. to record and keep details of any activity carried out for submission to the parties on the progress of the implementation of this MoU and its annual plans;
- h. to promote the exchange of information so as to further the development of the co-operation;
- i. to review progress regarding the implementation of the MoU;
- j. to propose and advise the parties of any necessary amendments or changes to the operation or governance of this MoU from time to time;
- k. to propose or recommend any relevant matter connected with or incidental to this MoU; and
- l. The Joint Working Committee will meet on such dates as will be agreed by the Participants.

5. SHARING RESOURCES

The parties may, under certain circumstances, share each other's available resources in order to bring the provisions of this MoU into full effect; provided such a process is reasonable, shall not compromise the respective security of the parties and does not contravene any statute with which the two parties must conform.

6. STATUTORY LIMITATIONS

- 6.1 The provision of, or request for, information under this MoU may be denied:
- a. Where compliance would require a party to act in a manner that would violate the applicable law;
 - b. Under circumstances where there is an imminent risk to national security or other overriding public interest; or
 - c. When 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.
- 6.2 No provision of this MoU shall give rise to the right on the part of any person, entity or government authority other than the parties herein, directly or indirectly, to obtain any information or to challenge the execution of a request for information under this MoU.

7. VARIATION OF THE MoU

Any variation of this MoU shall have no legal effect and shall not be binding on the parties unless reduced to writing and signed by persons authorized to act on behalf of the parties.

8. COMMENCEMENT

This MOU shall come into force on the date on which it is signed by persons authorized to act on behalf of both the parties.

9. DURATION

This MoU will remain in operation for a period of five (5) years where after it will be reviewed and renewed for a further period of five (5) years.

10. IMPLEMENTATION AND ENFORCEMENT

It shall be incumbent upon the Chief Executive Officer of GA and the Chief Executive Officer of CA to ensure that each Party carries out its obligations as agreed, and commits to undertaking to implement where reasonably possible the commitments under this MoU.

11. SETTLEMENT OF DISPUTES

Any dispute arising from the interpretation or application of this MoU will be resolved amicably in good faith through consultations between the parties and will not be referred to any tribunal, court of law or third party for settlement.

12. TERMINATION

12.1 This MoU may be terminated by either party giving thirty (30) days written notice in advance to the other party of its intention to terminate.

12.2 The termination of this MoU will not affect the execution of any cooperative activity that has not been fully executed at the time of termination, unless otherwise agreed upon in writing by the parties.

13. DOMICILIUM CITANDI ET EXECUTANDI

The parties choose as their *domicilium citandi et executandi*, their respective addresses for all purposes arising out of or in connection with this MoU, or other such address of service as may be communicated in writing and at which addresses all the queries, instructions or correspondence shall be addressed or delivered to the parties, as follows:

The Chief Executive Officer

The Gambling Authority

Fairscape Precinct
Building 3
Fairgrounds Office Park
Private Bag BR 161
Gaborone
Tel: (+267) 395 7672
Fax: (+267) 318 2585

The Chief Executive Officer

Competition Authority

Plot 28, Matsitama Road
P/Bag 00101
Gaborone
Tel: (+267) 3934278
Fax: (+267) 3121013

We, the undersigned, hereby agree to the terms and conditions contained in this Memorandum of Understanding.

Signed on behalf of the Gambling Authority

..... **Date**.....

Thulisizwe Johnson
Chief Executive Officer

..... **Date**.....

Witness

Signed on behalf of the Competition Authority

..... **Date**.....

Tebelelo Pule
Acting Chief Executive Officer

..... **Date**.....

Witness