

MEMORANDUM OF UNDERSTANDING

BETWEEN



BOTSWANA BUREAU OF STANDARDS (BOBS)

AND



THE COMPETITION AND CONSUMER AUTHORITY

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THIS MEMORANDUM OF UNDERSTANDING is made this ...23... day of SEPTEMBER 2020 and is intended to reflect the position reached by BOTSWANA BUREAU OF STANDARDS (hereinafter referred to as "BOBS") and COMPETITION AND CONSUMER AUTHORITY (hereinafter referred to as "CCA"), and collectively referred to, in context, as "the Parties").

WHEREAS COMPETITION & CONSUMER AUTHORITY is established under section 4 of the Competition Act No. 4 of 2018 with the principal objective of the prevention of, and redress for anti-competitive practices in the economy as well as the removal of constraints on the free play of competition in the market. Further, CCA is mandated to protect the rights of consumers against unfair business practices and to implement the Consumer Protection Act No 5 of 2018. The Competition Act and Consumer Protection Act empowers CCA to:

- a. Undertake general studies, whether by way of a market inquiry in terms of the Competition Act.
- b. Conduct surveys on consumer behaviour, consumption patterns, market prices, size and quality of products and business practices.
- c. Cause the testing of products on the market to ensure that specifications, performance, quality and safety standards are met.
- d. Collect information for the performance of its functions.

WHEREAS BOTSWANA BUREAU OF STANDARDS is established under Section 3 of the Standards Act cap 43:07 with the mandate of promoting standardisation and quality assurance in industry and commerce, with the aim of improving product quality, industrial efficiency and productivity, and the promotion of trade, so as to achieve optimum benefits for the public generally, particularly in the interests of health, safety, welfare, and protection of the consumer.

WHEREAS the specific functions of BOBS are explicitly set out in section 3(2) of the Standards Act.

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AND WHEREAS under Section 43 of the Consumer Protection Act, there is a general expectation for CCA to establish a mechanism through which it can maintain regular contact with other regulators regarding the exercise of its mandate. Under section 3(2) (h) of the Standards Act, BOBS is expected to co-operate with the Government or any local authority or public body, or with the representatives of any industry or any person, with the aim of securing the adoption and practical application of standards. BOBS is charged with responsibilities of providing for the testing, of locally manufactured or imported commodities, to determine whether such commodities comply with the provisions of the Standards Act, or any other written law dealing with standards of quality or description.

To this end the parties have found it necessary and prudent to enter into a Memorandum of Understanding for purposes of discharging their respective functions.

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

1. BASIS OF THIS UNDERSTANDING

- 1.1. The examination and testing of commodities and other materials for the determination of compliance with quality and safety standards is key in ensuring the protection of consumers.
- 1.2. The provision of testing, of locally manufactured or imported commodities, to determine whether such commodities comply with the set standards or any other written law dealing with standards of quality.
- 1.3. The collection of information by CCA for its functions in terms of section 3(2)(e) of the Consumer Protection Act is a source of valuable information for BOBs.

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- 1.4. The dissemination of information on standards and technical Regulations by BOBS in relation to the WTO TBT National Enquiry Point to facilitate exportation/importation of goods as well as Consumer Protection.
- 1.5. The creation of awareness in connection with standardization and quality assurance is highly beneficial to stakeholders such as regulators, consumers, etc.
- 1.6. The MoU does not limit BOBS or CCA from taking any steps to establish other MoUs with any other institutions that may be relevant to their functions.

2. OPERATIONAL PROCEEDURE

- 2.1. The parties shall endeavour to inform each other in advance of regulatory changes or other materials that may have a significant impact on their joint operations or activities as herein described.
- 2.2. Areas of cooperation or information sharing shall include, but are not limited to:
 - a. Assist each other in the inspection of business premises, goods or products to ensure that products received by consumers are of good quality and comply with Botswana standards (BOS).
 - b. Assist each other with data collection and analysis;
 - c. Assist each other in the examination and testing of goods to check compliance with Botswana Standards (BOS) and consumer laws.
 - d. Consult each other on a regular basis on matters of mutual interest;
 - e. Seek clarification from each other on any media reports that may be related to matters connected with or incidental to the MoU;
 - f. Avail to each other any useful findings that may assist the other Party;
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- g. Appearing in Court or other judicial and quasi-judicial bodies as expert witness or to provide evidence in relation to their specific competency provided that there is no conflict with the governing laws and internal procedures of either Party.
- 2.3. All requests for information shall be in writing and signed by the Heads of the Parties or their designated officers.
- 2.4. The request for information shall specify the following:
 - a. A general description of the information sought by a Party;
 - b. A general description of the matter which is the subject of the request and the purpose for which the information is sought;
 - c. The desired time period for reply and, where appropriate, the reasons for the urgency thereof. In such urgent situations, the Parties will notify each other of the urgency of the matter 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; and
 - d. The requested Party may, where necessary, seek clarity on the information sought by the requesting party.

3. IMPLEMENTATION PROCEDURE

- 3.1. Each request for information or assistance will be assessed on a case by case basis by the requested Party to determine whether assistance can be provided under the terms of this MoU.
- 3.2. In deciding whether and to what extent to fulfil a request, the requested Party may take into account the following:

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- a. Whether the request conforms to this MoU.
- b. Whether the provision of assistance would be so burdensome as to disrupt the proper performance of the requested Party's other functions.
- c. Whether it would be contrary to public interest to give the assistance sought.
- d. Whether it would be contrary to the laws, regulations and internal procedures and policies of the requested Party to give assistance sought.
- e. Where necessary the requested Party may assemble a team to work with a team from the requesting Party during the assignment/ request period.
- f. Where the Party to whom a request is made considers that it is unable to provide some or all of the information requested, that party will provide the requesting party with reasons for that position.
- g. In any case where the request cannot be fulfilled in part or whole, the requested Party will consider whether there may be other assistance that can be provided to the requesting Party.

4. HANDLING OF CONFIDENTIAL INFORMATION

- 4.1. Any information communicated in any form under this MoU shall be treated as confidential and shall be accorded protection and confidentiality similar to that accorded to the same kind of information under the governing laws and regulations of the Party supplying the information. Any restriction in the use of the information shall be notified in writing to the Party receiving that information.

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- 4.2. The provisions of clause 5.1 above shall not apply in respect of information that becomes public knowledge without the involvement of either Party.
- 4.3. Each Party or its employees shall keep confidential all information which comes to it relating to the performance of the service or business function of either Party even where it is not relevant for the performance of the services. Each Party will disclose information to its employees, officers, approved valuers/sub-contractors and agents who either need to know it for the purpose of exercising or performing its rights and obligations under this MoU, and are informed of the confidential nature of the information divulged; and agree to act in compliance with this MoU.
- 4.4. Neither Party shall disclose information to any third party (other than its employees, officers, approved sub-contractors/valuators and agents in accordance with this clause) except for information that is already in the public domain at the time of disclosure, or becomes publicly known through no fault of its own employees, or is acquired by that third party without any breach of any obligation of confidence.
- 4.5. Notwithstanding any other provision of this MoU, it shall not be breach of this MoU by either Party to disclose information given to it in connection with this MoU pursuant to a court order or a binding request from a regulatory body or other analogous authority with jurisdiction or from any other third party with statutory power to require the disclosure of such information, provided that the affected Party with statutory power to require the disclosure of such information gives a reasonable notice of such disclosure to the other Party.
- 4.6. This MoU may be quoted by any Party to it.

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4.7. Unless otherwise expressly stated herein, all information sought or exchanged shall be deemed to be usable by the receiving Party according to the legal framework/s governing them.

5. **MARKETING AND PUBLICITY**

Neither of the parties to this MOU shall use the name, symbols, branding or marks of another party in any marketing and publicity without the written consent of the other party.

6. **ESTABLISHMENT OF A JOINT WORKING COMMITTEE**

6.1 A Joint Working Committee ("the JWC") constituted by representatives of the Parties as nominated by the Parties shall be established pursuant to this MoU and shall function on an ongoing basis.

6.2 The JWC shall comprise of Manager Trade Metrology, and Manager Marketing and Communications, at BOBS and Manager Legal Services, Manager Consumer Protection, Manager Communication and Advocacy, and Manager Investigations at CCA.

6.3 The JWC may hold two (2) meetings per year to discuss issues of common interest and cooperation.

6.4 Meetings of the JWC shall alternate between the parties and the hosting party shall provide the secretarial services to the meeting.

7. **FUNCTIONS OF THE JOINT WORKING COMMITTEE**

7.1. The functions of the JWC shall include;

a. Management and facilitation of meetings, cooperation, coordination, information sharing and consultation in respect of matters dealt with by each party in terms of this MoU;

b. Proposition, when necessary, any amendment of or supplementation to this MoU;

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- c. Advisory services to the senior management of the Parties on issues affecting efficient and effective cooperation and implementation of the MoU and solutions thereto; and
- d. Any matter connected to or incidental to the MoU.
- e. The committee will identify and appoint an individual from each party who will be responsible for coordinating and facilitating meetings of the JWC.

8. CONTACT PERSONS

The Parties shall each elect a contact person and avail their particulars and contact details to the other party. The contact persons shall be responsible for facilitating timeous assistance for requests for information and any matter connected to or incidental to the MoU.

9. SHARING RESOURCES

The Parties may, where necessary and with prior arrangement, 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.

10. STATUTORY LIMITATIONS

- 10.1 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 any law in Botswana;
 - b. Under circumstances where there is an imminent risk to national security or other overriding public interest; or

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- 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.
- d. 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.

11. FINANCIAL MATTERS

- 11.1 Each Party shall bear their own costs incurred in the process of securing information pursuant to the MoU and shall factor the aspects of this MoU in their respective budget unless such costs are voluntarily borne by the other.
- 11.2 The financing of cooperation projects should be decided by mutual consultation and agreement, according to the specific nature of each project.
- 11.3 This MoU, or any annexure that may be developed under this MoU, does not represent any commitment with regard to funding on the part of either BOBS or CCA. Any such commitment may be reflected in a separate arrangement as mutually decided by the Parties.

12. DISPUTE RESOLUTION

Any dispute between the parties arising out of the interpretation or implementation of this MoU shall be resolved amicably and in good faith.

13. 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 Heads of the Parties or their designated officers to act on behalf of the Parties.



14. COMMENCEMENT

This MoU shall come into force on the date on which it is signed by persons authorised to act on behalf of both the Parties.

15. DURATION AND TERMINATION

- 15.1 This MoU shall remain in force until it is terminated by either Party.
- 15.2 Either Party may terminate this MoU without cause upon ninety (90) days' written notice to the other.
- 15.3 Upon receipt of notice of termination of this MoU, the Parties will take all reasonable and necessary measures to conclude any activities already commenced in accordance with MoU.
- 15.4 The provisions of this MoU will survive any termination, to the extent necessary to permit an orderly settlement of accounts between the Parties.

16. REVIEW OF THE MOU

This MoU will be reviewed after every 2 years to ensure continued alignment to current best practices and any policy changes.

17. DOMICILIUM CITANDI ET EXECUTANDI

The Parties choose the following addresses as their respective *domicilium citandi et executandi* for purposes of this MoU:

BOTSWANA BUREAU OF STANDARDS

PRIVATE BAG B0 48

Gaborone

Plot No. 55745, Block 8

Main Airport Road.

Tel : (+267) 3903200

Fax : (+267) 3903120

EMAIL: infoc@hq.bobstandards.bw

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THE COMPETITION AND CONSUMER AUTHORITY

PRIVATE BAG 00101

GABORONE

PLOT 28, MATSITAMA ROAD.

TEL: +267 393 4278

FAX: +267 312 1013

EMAIL: info@competitionauthority.co.bw

AS WITNESS the hands of the duly authorized representatives of the Parties the day and year first before written.

SIGNED by the MANAGING DIRECTOR



For and on behalf of **BOTSWANA BUREAU OF STANDARDS**


In the presence of:

WITNESS:

Name:

Address:

Designation:


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DULHANE DUMANY TAU
PRIVATE BAG 8048
MANAGER TRADE METROLOGY

SIGNED by the CHIEF EXECUTIVE OFFICER



For and on behalf of **COMPETITION AND CONSUMER AUTHORITY**


In the presence of:

WITNESS:

Name:

Address:

Designation:


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KESEGO MODONGU
Phakane GABORONE
DIRECTOR LEGAL SERVICES