

MEMORANDUM OF UNDERSTANDING (“MOU”)

ENTERED INTO BETWEEN



**COMPANIES AND INTELLECTUAL PROPERTY
AUTHORITY (“CIPA”)**

AND



**COMPETITION AUTHORITY
 (“CA”)**

(Hereinafter referred to as “the parties”)

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This Memorandum of Understanding (MoU) will enter into force on the.....day of.....2016 and thereafter remains renewable annually by both parties and remains so in force until it is changed or repealed by both parties acting jointly or by each party giving a prior written notice to the other party.

1. Statutory responsibilities

1.1. **Whereas** CIPA was established by the Companies and Intellectual Property Authority Act No. 14 of 2011, under Section 3 with the principal object of promoting and enabling the full protection of the rights of investors and rights holders, obtained under the Companies Act, Registration of Business Names Act, Industrial Property Act and Copyrights and Neighbouring Rights Act;

1.2. **Whereas** Section 5 of the CIPA Act has laid down the following functions of CIPA:

- a) To advise Government and its agencies on all matters pertaining to companies, business names and intellectual property;
- b) Be responsible for the overall implementation and administration of:
 - i) the registration of companies under the Companies Act,
 - ii) the registration of business names under the Business Names Act,

iii) the registration of industrial property rights under the Industrial Property Act, and

iv) copyright and neighbouring rights under the Copyright and Neighbouring Rights Act;

- c) Provide advanced information systems;
- d) Organise outreach and awareness creation programmes to inform, educate and sensitise the public on matters relating to companies, business names, and intellectual property; and
- e) Advise the Minister on matters relating to the administration and registration of companies, business names, industrial property rights, and copyright and neighbouring rights.

1.3. **Whereas** section 8 (f) of the CIPA Act gives CIPA authorisation to do such other things as are provided for in its Act or as may be necessary for the proper implementation of the Act.

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

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1.5. **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.

1.6. **Now therefore**, the parties agree to conclude this Memorandum of Understanding as follows:

2. Purpose of the Memorandum of Understanding

2.1 This MoU provides a framework for the parties to cooperate and communicate constructively in order to carry out their independent statutory responsibilities as stipulated above.

2.2 The cooperation and communication benefits both parties by contributing to smooth communication channels.

2.3 This MoU provides a platform for dialogue, and information exchange, between the parties in matters of mutual interest.

3. Scope of cooperation and information sharing

The parties to this MoU agree that they shall:

3.1 Meet and communicate regularly to discuss matters of common interest to enable ease of doing business in Botswana; and

3.2 Share relevant information and discuss strategies to contribute to the ease of doing business, in so far as it is consistent with their independent responsibilities.

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4. Operability and governance of this MoU

4.1 The parties to this MoU agree to set up a Joint Working Committee, which will meet as and when necessary, with the following main functions:

- a) to ensure that the main objectives of this MoU are fulfilled;
- b) to manage and facilitate cooperation and consultative meetings between the parties;
- c) 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
- d) to propose or recommend any relevant matter connected with or incidental to this MoU.

4.2 The Joint Working Committee shall be constituted by representatives as nominated by both parties.

4.3 The parties to this MoU agree to share each other's available resources, specifically to conduct joint trainings and workshops for awareness creation, in order to bring the provisions of this MoU into full effect and operability without compromising the security of each party or contravening the statute with which each party must conform.

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5. The Operational procedure for this MoU

5.1 Where CIPA or CA requires advice on any area of the other's operations, either party will inform the other in advance about the assignment to be undertaken either in writing or where communication is made verbally in an urgent situation; such communication will be confirmed in writing at an opportune time.

5.2 Either party may seek clarity where necessary.

5.3 Either party will then assemble a team to work with a team from the other during the assignment/ request period.

6. Variation of the Memorandum of Understanding

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 authorised to act on behalf of the parties.

7. Commencement of the Memorandum of Understanding

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

8. Duration of the MOU

This MoU shall remain in force until it is changed or terminated by both parties hereto acting jointly or by either of the parties by giving 30 days prior notice to the other party.

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9. Implementation and Enforcement

It shall be incumbent upon the Registrar General of CIPA 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.

10. Requests for Information

10.1 To the extent possible, all requests for information shall be in writing and signed by the Heads of Organisations or their designated officers, and shall specify:

- a) the information sought by the requesting party;
- b) a general description of the matter which is the subject matter of the request and purpose for which the information is sought;
- c) the desired time period for reply and where possible, the urgency thereof.

10.2 In urgent situations, the parties will endeavour to notify each other of the urgent situation and communicate information to the other as would be appropriate in the circumstances, taking into account all relevant factors, including the status of the efforts to address the current situation. During urgent situations, requests for information may be made in any form including orally by designated officers provided such information is confirmed in writing at the next opportune time.

10.3 By mutual agreement, and to the extent possible, the parties agree that the desired course of action will be to issue joint press releases on all matters of mutual interest.

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11. Conditions of this MoU

The parties to this MoU agree to abide by the following conditions:

- 11.1 any information sharing between the parties is subject to relevant restrictions on disclosure of confidential information to third parties;
- 11.2 Each party shall endeavour to maintain public confidence in terms of protection of whistle-blowers and other sources of information;
- 11.3 This MoU shall be a public document and thus may be quoted by either party to this MoU;
- 11.4 This MoU does not restrict either party to enter into any other MoUs each party may deem necessary in order to fulfil its mandate.

12. 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:

FOR CIPA:

The Registrar General
Companies & Intellectual Property Authority
Plot 181, Kgale Mews
P.O. Box 102,
Gaborone
Tel: (+267) 3673700
Fax: (+267) 3188130

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FOR CA:

**The Chief Executive Officer
Competition Authority**

Plot 28, Matsitama Road

P/Bag 00101

Gaborone

Tel: (+267) 3934278

Fax: (+267) 3121013

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

Signed on behalf of the Companies and Intellectual Property Authority

.....Date: 16/06/2016.....

C. P. MASENA

REGISTRAR GENERAL

.....Date: 16/06/2016.....

Witness

Signed on behalf of the Competition Authority

.....Date: 16/06/2016.....

T. PULE

ACTING CHIEF EXECUTIVE OFFICER

.....Date: 16/06/2016.....

Witness