

MEMORANDUM OF UNDERSTANDING

BETWEEN

BOTSWANA NATIONAL LIBRARY SERVICES (BNLS)



AND

COMPETITION AND CONSUMER AUTHORITY (CCA)



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THIS MEMORANDUM OF UNDERSTANDING BETWEEN BOTSWANA NATIONAL LIBRARY SERVICE AND COMPETITION AND CONSUMER AUTHORITY is made this **12th** day of **April 2023** and is intended to reflect the position reached by the BOTSWANA NATIONAL LIBRARY SERVICE (hereinafter referred to as "BNLS") and the COMPETITION AND CONSUMER AUTHORITY (hereinafter referred to as "CCA"), and collectively referred to, in context, as "the Participants").

WHEREAS the COMPETITION AND 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 advocate for and 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 and compile reports.
- 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. Educate consumers and suppliers about their rights and responsibilities with an objective to have a fair market.
- e. Provide consumers with timely information about products and services in the market.

- f. Receive and investigate complaints from consumers and consumer organisations on breaches of the provisions of the Act.

WHEREAS the BOTSWANA NATIONAL LIBRARY SERVICE is established under Section 3 of the National Library Service Act cap 58:02 with the mandate to preserve the national literary heritage for posterity and provide public access to information and knowledge with information services for education, research and recreational purposes through lending and reference services.

WHEREAS the BNLS key strategic objectives are set out as follows:

- a. Provide access to information for national development.
- b. Collect, document and preserve literary heritage.
- c. Provide customer based quality library and information service.
- d. Mobilise resources for the effective library and information services.
- e. Provide information and communication technologies (ICTs) for the efficient delivery of library services.
- f. Provide good governance and legal framework.
- g. Market and advocate for effective library services.

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 7(2) of the National Library Service Act, the BNSL Board may enter into mutual arrangements with authorities or organisations concerned with the provision of library services in Botswana.

BNLS is responsible for collecting, storing and providing public access to knowledge and information for social development and recreational purposes, which is achieved through the network of their widespread public libraries. Currently, the CCA operates from its head office based in Gaborone, and a branch office in Francistown. Whereas BNLS has over forty-five (45) libraries across the country which could be utilised to extend some of CCA's services. BNLS's wide reach and accessibility will be beneficial to the CCA in its quest to have access to consumers and address complaints country wide.

To this end, CCA has found it necessary and prudent to enter into a Memorandum of Understanding (herein referred to as the MOU) with BNLS for discharging their respective functions.

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

1. BASIS OF THIS UNDERSTANDING

- 1.1. The collection of information and receipt of complaints by CCA for its functions in terms of Section 3(2)(d)(e) and (f) of the Consumer Protection Act is a source of valuable information for BNLS.
- 1.2. The undertaking of consumer education programmes is highly beneficial for national development.

- 1.3. The MoU does not limit BNLS or CCA from taking any steps to establish other MoUs with any other institutions that may be relevant to their functions.

2. SCOPE OF COOPERATION AND INFORMATION SHARING

- 2.1. The participants 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 coordination, cooperation or information sharing shall include, but are not limited to:
 - 2.2.1 BNLS providing CCA access to collect consumer complaints at their facilities throughout the country by allowing consumers to fill out consumer complaint forms at their premises.
 - 2.2.2 Forwarding of consumer complaints received at BNLS to CCA head office and Francistown whichever is closer at the CCA's cost.
 - 2.2.3 The CCA having a register of all complaints received at the BNLS premises across the country.

- 2.2.4 The CCA placing public education materials such as brochures at the BNLS premises.
- 2.2.5 Providing each other with valuable and useful information pertaining to data collection by each participant.
- 2.2.6 Assisting each other with data collection and analysis.
- 2.2.7 Consulting each other on a regular basis on matters of mutual interest.
- 2.2.8 Seeking clarification from each of them on any media reports that may be related to matters connected with or incidental to the MoU.
- 2.2.9 Availing to each other any useful findings that may assist the other Participant.
- 2.2.10 Appearing¹ 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 Participant.

¹ It should be noted that, BNLS in terms of Clause 2.2 (a) and (b) of the MoU will interact with consumers, facilitate them to fill up the complaint form and forward it to the CCA. If an issue arises the CCA may need the BNLS officer to testify on issues surrounding the filling up of the complaint form, and interactions with consumer at the time of registering the complaint

3. REQUEST FOR INFORMATION

3.1 All requests for information shall be in writing and signed by the Heads of the Participants or their designated officers.

3.2 The request for information shall specify the following:

3.2.1 A general description of the information sought by a Participant;

3.2.2 A general description of the matter which is the subject of the request and the purpose for which the information is sought.

3.2.3 The desired time period for reply and, where appropriate, the reasons for the urgency thereof. In such urgent situations, the Participants 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.

3.2.4 The requested Participant may, where necessary, seek clarity on the information sought by the requesting participant.

4. OPERATIONAL PROCEDURE FOR REQUESTS

- 4.1 Each request for information or assistance will be assessed on a case-by-case basis by the requested Participant to determine whether assistance can be provided under the terms of this MoU.
- 4.2 In deciding whether and to what extent to fulfil a request, the requested Participant may take into account the following:
 - 4.2.1 Whether the request conforms to this MoU.
 - 4.2.2 Whether the provision of assistance would be so burdensome as to disrupt the proper performance of the requested Participant's other functions.
 - 4.2.3 Whether it would be contrary to public interest to give the assistance sought.
 - 4.2.4 Whether it would be contrary to the laws, regulations and internal procedures and policies of the requested Participant to give assistance sought.
 - 4.2.5 Where necessary the requested Participant may assemble a team to work with a team from the requesting Participant during the assignment/ request period.
 - 4.2.6 Where the Participant to whom a request is made considers that it is unable to provide some or all of the information

requested, that participant will provide the requesting participant with reasons for that position.

4.2.7 In any case where the request cannot be fulfilled in part or whole, the requested Participant will consider whether there may be other assistance that can be provided to the requesting Participant.

5. HANDLING OF CONFIDENTIAL INFORMATION

5.1 Any information communicated in any form under this MoU will be treated as confidential and will be accorded protection and confidentiality similar to that accorded to the same kind of information under the governing laws and regulations of the Participant supplying the information. Any restriction in the use of the information will be notified (in writing) to the Participant receiving that information.

5.2 The provisions of clause 5.1 above shall not apply in respect of information that becomes public knowledge without the involvement of either Participant.

5.3 Each Participant or its employees shall keep confidential all information which comes to it relating to the performance of the service or business function of either Participant even where it is not relevant for the performance of the services. Each Participant will disclose information to its employees, officers, approved

valuators/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.

5.4 Neither Participant will 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.

5.5 Notwithstanding any other provision of this MoU, it will not be breach of this MoU by either Participant 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 Participant with statutory power to require the disclosure of such information gives a reasonable notice of such disclosure to the other Participant.

5.6 This MoU may be quoted by any Participant to it.

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

6. ESTABLISHMENT OF A JOINT WORKING COMMITTEE

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

6.2 The JWC shall comprise of Principal Librarian I - Head of Division - Public Libraries, Principal Librarian II - Public Libraries at the Botswana National Library Service and Manager Legal Services, Manager Consumer Protection, Manager Communications and Stakeholder Relations at the Competition and Consumer Authority.

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

7. FUNCTIONS OF THE JOINT WORKING COMMITTEE

7.1 The functions of the JWC will include:

7.1.1 Management and facilitation of meetings, cooperation and consultation in respect of matters dealt with by each regulator in terms of this MoU.

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

7.1.3 Advisory services to the senior management of the Participants on issues affecting efficient and effective cooperation and implementation of the MoU and solutions thereto.

7.1.4 Any matter connected to or incidental to the MoU.

8. CONTACT PERSONS

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

9. SHARING RESOURCES

9.1 The Participants 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, will not compromise the respective security of the Participants and does not contravene any statute with which the two Participants must conform.

10. STATUTORY LIMITATIONS

10.1 The provision of, or request for, information under this MoU may be denied:

10.1.1 Where compliance would require a Participant to act in a manner that would violate any law in Botswana.

10.1.2 Under circumstances where there is an imminent risk to national security or other overriding public interest.

10.1.3 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.

10.1.4 No provision of this MoU will give rise to the right on the part of any person, entity or government authority other

than the Participants 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 Participant 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.

The financing of cooperation projects will be decided by mutual consultation and agreement, according to the specific nature of each project.

- 11.2 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 the BNLS or the CCA. Any such commitment may be reflected in a separate arrangement as mutually decided by the Participants.

12. VARIATION OF THE MEMORANDUM OF UNDERSTANDING

- 12.1 Any variation of this MoU will have no legal effect and will not be binding on the Participants unless reduced to writing and signed by Heads of the Participants or their designated officers to act on behalf of the Participants.

- 12.2 The participants may review and vary the MoU after every three years, to align it with changes that may have arisen.

13. COMMENCEMENT

- 13.1 This MoU will come into effect on the date on which it is signed by persons authorised to act on behalf of both the Participants.

14. DURATION AND TERMINATION

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

15. DOMICILIUM CITANDI ET EXECUTANDI

15.1 The Participants choose the following addresses as their respective *domicilium citandi e.t. executandi* for purposes of this MoU:

BOTSWANA NATIONAL LIBRARY SERVICE

Ministry of Youth, Gender, Sport and Culture

Y2K Building – Central Business District

Plot 54372

Gaborone

TEL : (+267) 370 4400

FAX : (+267) 368 2600

COMPETITION AND CONSUMER AUTHORITY

Private bag 00101

Gaborone

Plot 28, Matsitama Road

TEL: +267 393 4278

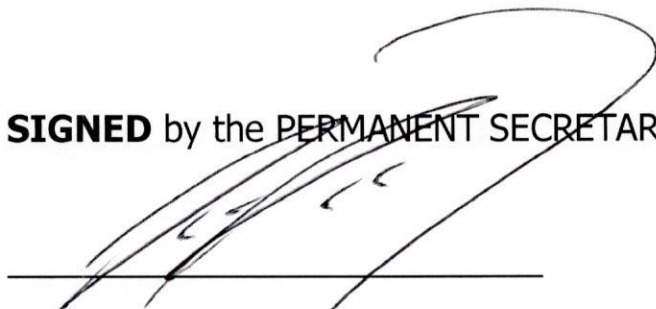
FAX: +267 312 1013

AS WITNESS the hands of the duly authorised representatives of the Participants the day and year first before written



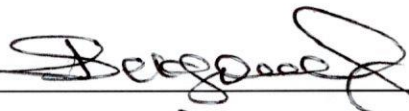
Handwritten signature and initials, including the letters 'km' and 'STAG'.

SIGNED by the PERMANENT SECRETARY:



For and on behalf of MINISTRY OF YOUTH, GENDER, SPORT AND CULTURE
(BOTSWANA NATIONAL LIBRARY SERVICE)

In the presence of:

WITNESS: 

Name: JACOB NEWAIKO SELEWNI


Address: P/1 BAGA BOSE, GABORONE

Designation: DIRECTOR - BNLS

SIGNED by the CHIEF EXECUTIVE OFFICER: 

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

In the presence of :

WITNESS: 

Name: KEENE MOJANG

Address: PLOT 28 MATITAMA ROAD

Designation: DIRECTOR LEGAL SERVICES