

MEMORANDUM OF AGREEMENT

Made as between:-

BOTSWANA EXPORT DEVELOPMENT AND INVESTMENT AUTHORITY

(A statutory corporation established in accordance with the Botswana Export Development and Investment Authority Act (Cap 74:08) and represented herein by [] in her capacity as the [] he being duly authorised hereto (and hereinafter referred to as “**BEDIA**”).

and

_____ (**PROPRIETARY**) LIMITED

(A limited liability company duly incorporated in accordance with the laws of the Republic of Botswana having registration number [] and represented herein by [] in his capacity as a Director he being duly authorised hereto (and hereinafter referred to as “**the Participant**”)

RECITALS:-

- A:-** The Botswana Export Development and Investment Authority has been mandated to, *inter alia*, promote, attract, encourage and facilitate local and foreign investment in Botswana including without limiting the generality of the foregoing to undertake investment and export promotion missions within and outside the Southern African region and in order to partially fulfil such mandate have agreed to assist qualifying entities to attend trade fairs and other exhibition both in Southern Africa and elsewhere.
- B.** The Participant has requested BEDIA to assist it with attending a contact promotion mission, trade fair and/or exhibition to promote its Botswana manufactured goods, products and wares and BEDIA has agreed to do so subject to the terms and conditions hereof.

NOW THEREFORE THESE PRESENTS WITNESSETH:-

1 INTERPRETATION

In this Agreement, unless the context otherwise requires:

- 1.1 “this Agreement” shall mean this Agreement together with any annexures and schedules hereto and any duly authorised amendment hereto and thereto;
- 1.2 “the Exhibits” shall mean the representative examples of the Participant’s Botswana manufactured goods, products and wares to be exhibited by the Participant at the Fair;
- 1.3 “the Fair” shall mean the trade fair, contact promotion mission, buyer/seller missions and/or exhibition to be held at the location listed in Schedule 1 hereto which Fair shall

be participated in by the Participant partially through the assistance of BEDIA through the provision of the Services;

- 1.4 “Participant’s Representative” shall mean the person nominated by the Participant to represent the Participant in all matters in respect of this Agreement, including without limiting the generality of the foregoing, to attend the Fair on behalf of the Participant which person shall be recorded in Schedule 1 hereto;
- 1.5 "the Parties" shall collectively mean BEDIA and the Participant and "Party" shall mean either one of them individually;
- 1.6 “the Reports” shall collectively mean the reports on the Participant’s participation in the Fair and the effect thereof which Reports shall be prepared and delivered by the Participant as further provided for by Schedule 1;
- 1.7 “the Services” shall mean the services to be provided by BEDIA (and at its expense) to the Participant as provided for by in terms of this Agreement and as further provided for by Schedule 1;
- 1.8 words importing the masculine gender shall include the feminine and neuter, words in the singular shall include the plural and words in the plural shall include the singular, and any reference to a natural person shall apply to legal persons where appropriate;
- 1.9 the clause headings are inserted for the purpose of convenience only and shall not be taken into account in the interpretation of the provisions of this Agreement;
- 1.10 should any provision in a definition be a substantive provision conferring rights or imposing obligations on any party, then effect shall be given to such provision as if it were a substantive provision in the body of this Agreement;
- 1.11 any reference to an enactment, regulation or by-law is to that enactment, regulation or by-law as at the Effective Date, and as amended or re-amended from time to time;
- 1.12 when any number of days is prescribed, such number shall exclude the first and include the last day unless the last day falls on a Saturday, Sunday or public holiday, in which case the last day shall be the next succeeding day which is not a Saturday, Sunday or public holiday;
- 1.13 any schedule or annexure to this Agreement shall, save where the context indicates otherwise, form part of this Agreement;

- 1.14 where any term is defined within a particular clause, other than the interpretation clause, the term shall bear the meaning ascribed to it in that clause wherever it is used in this Agreement;
- 1.15 the use of the word "including" followed by a specific example/s shall not be construed as limiting the meaning of the general wording preceding it and the *eiusdem generis* rule shall not be applied in the interpretation of such general wording or such specific example/s;
- 1.16 the expiration or termination of this Agreement shall not affect such of the provisions of this Agreement as expressly provide that they will operate after any such expiration or termination or which of necessity must continue to have effect after such expiration or termination, notwithstanding that the clauses themselves do not expressly provide for this; and
- 1.17 the rule of construction that the agreement shall be interpreted against the Party responsible for the drafting or preparation of the agreement, shall not apply.

2 AGREEMENT TO EFFECT SERVICES

- 2.1 Subject to the terms and conditions hereof, BEDIA undertakes and agrees to provide at its own cost and expense the Services as described in Schedule 1 it being specifically recorded that BEDIA shall be entitled to cancel the provision of Services on 14 days written notice to the Participant of their intention to do so, which cancellation shall be subject to the exclusion of liability recorded in clause 2.3 hereof.
- 2.2 This Agreement shall endure from the date of signature hereof until the earlier of:-
- 2.2.1 the Participant delivers the last of the Reports in accordance with Schedule 1 or BEDIA provides written notice to the Participant that it no longer requires such Report and or reports; or
- 2.2.2 this Agreement has been terminated in accordance with the provisions of clause 2.1, this clause 2.2 or clause 10.4.
- 2.3 To the extent permitted by law, except in the case of death or personal injury caused by BEDIA's negligence, BEDIA's shall bear no liability to the Participant or the Participant's Representative under or in connection with this Agreement, whether arising in contract, delict, negligence, breach of statutory duty or otherwise.
- 2.4 Neither Party shall be liable to the other Party in contract, delict, negligence, breach of statutory duty or otherwise for any loss, damage, costs or expenses of any nature whatsoever incurred or suffered by that other Party:-

2.4.1 of an indirect or consequential nature; nor

2.4.2 for any economic loss or other loss of turnover, profits, business or goodwill.

3 OBLIGATIONS AND LIABILITY OF THE PARTICIPANT

3.1 In consideration for the provision of the Services by BEDIA in terms hereof, the Participant undertakes and agrees to:-

3.1.1 ensure that all times the Exhibits are of Botswana origin;

3.1.2 bear the cost of transport of the Exhibits to a mutually agreed location for review thereof by BEDIA prior to transport of the Exhibits to the Fair;

3.1.3 nominate the Participant's Representative in terms of Schedule 1 hereto and further where such Participant's Representative is not an officer or employee of the Participant's to provide such written proof as BEDIA may reasonably require confirming that the Participant's Representative may act in such capacity for and on behalf of the Participant throughout the term of this Agreement;

3.1.4 ensure that at all material times the Participant's Representative:-

3.1.4.1 shall attend the Fair throughout the duration thereof;

3.1.4.2 be entitled to contract for and on behalf of the Participant;
and

3.1.4.3 be obligated to attend such functions and briefings as BEDIA may reasonably require;

3.1.4.4 shall maintain within it's possession and at its own risk the Exhibits and, in the event that it disposes of the Exhibits or any portion thereof, to be solely liable for the profits and loss in respect of such disposals;

3.1.5 to provide the Reports in accordance with Schedule 1 hereto it being recorded that the contents of the Reports shall be in such format and in such detail as BEDIA in its sole determination shall require;

- 3.1.6 to ensure, and at its cost, that the Participant has a full set of promotional material and company profiles, which promotional material and company profile shall be subject to the written approval of BEDIA; and
 - 3.1.7 to ensure that the Exhibits do not pose an unacceptable threat to life, property, or the environment such as explosives, flammable liquids and solids, poisons, poisonous gases, and or radioactive materials.
- 3.2 The Participant hereby indemnifies and hold harmless BEDIA and its officers, employees, consultants, agents and representatives (“the Indemnified Parties”) against all third-party Claims which may be asserted against or suffered by any of the Indemnified Parties and which relate to:
- 3.2.1 the transport and use of the Exhibits, or
 - 3.2.2 the distribution, sale, supply or use of any the Exhibits; or
 - 3.2.3 the participation at the Fair;
- by or on behalf of the Participant or the Participant’s Representative or subsequently by any third party it being recorded that for the purposes hereof “Claims” shall mean all demands, claims and liability (whether criminal or civil, in contract, delict or otherwise) for losses, damages, legal costs and other expenses of any nature whatsoever and all costs and expenses (including without limitation legal costs) incurred in connection therewith.
- 3.3 The Participant shall furnish to BEDIA all pertinent data and information available to it without delay and shall give such assistance as shall be reasonably required by BEDIA for carrying out the Services.

4 INTELLECTUAL PROPERTY

The Participant agrees to indemnify, defend and hold harmless BEDIA from all claims, actions, damages, liabilities, costs and expenses, including reasonable attorneys’ fees and expenses, arising out of any claims of infringement of any patent, trade secret, copyright, trademark, service mark, trade name or similar proprietary right of any third party conferred by contract or applicable law alleged to have occurred because of design, specifications, materials, presentation of any of the Exhibits in terms of this Agreement.

5 CONFIDENTIALITY

- 5.1 Subject to clause 5.2, the Parties shall treat as confidential and not disclose or use any information received or obtained which relates to:-

- 5.1.1 any document or other information in any format whatsoever which either Party has provided to the other whether such information was provided for the purposes of the Fair or otherwise;
 - 5.1.2 the provisions of this Agreement and any agreement entered into pursuant to this Agreement; or
 - 5.1.3 the negotiations relating to this Agreement (and such other agreements).
- 5.2 Nothing in this clause 5.2 shall prohibit disclosure or use of any information if and to the extent:-
- 5.2.1 the disclosure or use is required by law, any competent judicial authority or regulatory body or the rules and regulations of any recognised stock exchange;
 - 5.2.2 the disclosure or use is required for the purpose of any judicial or arbitration proceedings arising out of this Agreement or any other agreement entered into under or pursuant to this Agreement;
 - 5.2.3 the disclosure is made to professional advisers of either of the Parties on terms that such professional advisers undertake in writing to comply with the provisions of this clause 6 in respect of such information as if they were a party to this Agreement;
 - 5.2.4 the information becomes publicly available (other than by breach of this Agreement); or
 - 5.2.5 the other Party has given prior written approval to the disclosure or use; and

provided that prior to disclosure or use of any information pursuant to this clause 5.2, the Party concerned shall promptly notify the other Party of such requirement with a view to providing the other Party with the opportunity to contest such disclosure or use or otherwise to agree the timing and content of such disclosure or use.

6 ASSIGNMENT

The Participant shall not, without the prior written consent of BEDIA assign, cede or sub-contract the benefits under this Agreement or in any way transfer the obligations to be performed under this Agreement.

7 GOVERNING LAWS

This Agreement shall be interpreted in accordance with, and be subject to, the laws of the Republic of Botswana.

8 DOMICILIA AND NOTICES

8.1 As their addresses to which all notices and any processes may be served under this Agreement;

8.1.1 BEDIA chooses:-

P O Box 3122,

Gaborone – BOTSWANA

Plot 28 Matsitama Road

Tel:- +267 3181 931

Fax:- +267 3181 941

e-mail: kanaimbae@bedia.bw

8.1.2 The Participant chooses:-

[insert details]

8.2 Any Party shall be entitled to change that Party's domicilium by giving written notice of such fact to the other Party as the case may be.

8.3 Any notice or communication hereunder or in connection herewith shall:

8.3.1 be in writing and shall be delivered personally, by facsimile, e-mail or by pre-paid registered post to the address given in clause 8.1 above or at such other address as the recipient may have notified to the other Party in writing; and

8.3.2 in the case of notice by post, be deemed to have been received five (5) days after posting, and in the case of facsimile or e-mail the day of despatch and in the case of personal delivery on the day when delivered, unless the contrary is proved.

9 ARBITRATION

- 9.1 Should any dispute, difference, impasse or deadlock (“the dispute”) arise out of or in connection with this agreement, any Party as the case may be shall be entitled to require by written notice to the other that the dispute be submitted to arbitration in terms of this clause 9.
- 9.2 Upon receipt of the written notice referred to in clause 9.1, the Parties shall meet and endeavour in good faith to resolve the dispute amicably and expeditiously.
- 9.3 If the Parties are unable to resolve the dispute within a period of 14 (fourteen) days from the date of receipt of the written notice referred to in clause 9.1, despite compliance with clause 9.2, then the dispute shall be referred to an arbitrator in accordance with the remaining provisions of this clause 9.
- 9.4 Subject to the foregoing provisions of this clause 9, provided that the arbitrator shall be, if the question in issue is:-
- 9.4.1 primarily an accounting matter, the senior partner for the time being of an international accountancy practice with offices in Gaborone and whom is resident in Botswana;
- 9.4.2 primarily a legal matter, an attorney or advocate with at least 10 years post-call experience and whom is resident in Botswana;
- 9.4.3 any other matter, a person with the appropriate qualifications and experience;
- the identity of which person shall be agreed upon by the Parties in writing or failing such agreement within 14 (fourteen) days, appointed by the Chairman of the Botswana Institute of Arbitrators (“the BIA”) who may be requested by any party to make nomination at any time after the expiry of that 14 (fourteen) day period.
- 9.5 The arbitration shall be held at a venue in Gaborone and in English, and in accordance with formalities and/or procedures of the BIA.
- 9.6 In the event that this Agreement should terminate, for any reason whatsoever, then the provisions of this clause 9 shall survive such termination.
- 9.7 This clause 9 constitutes an irrevocable consent by the Parties as the case may be to any proceedings in terms hereof and no Party shall be entitled to withdraw therefrom or to claim any such proceedings that it is not bound by this clause 9.

- 9.8 This clause 9 shall not preclude any Party as the case may be from obtaining relief by way of motion proceedings on an urgent basis from a court of competent jurisdiction, pending the decision of the arbitrator.
- 9.9 For the purpose of clause 9.8, the Parties consent and submit to the non-exclusive jurisdiction of the High Court of the Republic of Botswana at Lobatse.

10 FORCE MAJEURE

- 10.1 Neither Party to this Agreement shall be considered to have failed to carry out their respective obligations under this Agreement if such failure results from force majeure.
- 10.2 For the purposes of this Agreement the term “force majeure” means any occurrence which the party concerned cannot reasonably prevent or control and which makes the performance of its obligations hereunder impossible or so impracticable as reasonably to be considered impossible under the circumstances. During the period of such force majeure the provisions of this agreement shall be suspended and neither party shall have any claim against the other by virtue of such force majeure.
- 10.3 Where it is not possible for either Party to perform their respective obligations under this Agreement for reasons of force majeure, the affected Party shall promptly notify the other Party in writing of any situation or the occurrence of any event as a result of which it ceases to be practical for BEDIA to carry out in whole or in part its obligations hereunder. Upon acknowledgement in writing by the other Party or expiry of ten (10) days whichever is the sooner, BEDIA shall be relieved of all liability for failure to carry out such obligations and the Services shall be deemed to have been suspended.
- 10.4 If the conditions of force majeure continue for a period of over sixty (60) days from the date of notification, the Parties to this Agreement shall together attempt to resolve how the Agreement may be proceeded with or otherwise arrange for suspension or termination.

11 GENERAL

- 11.1 This document with its annexures contains the entire Agreement between the Parties and none of the Parties shall be bound by any undertaking, representation, warranty, promise or the like not recorded herein.
- 11.2 No addition or variation or agreed cancellation of this Agreement shall be of any force or effect unless in writing and signed by or on behalf of the Parties.
- 11.3 No indulgence, extension of time, relaxation or latitude which one Party("the Grantor") may show, grant or allow to the other Party ("the Grantee") shall constitute a waiver by

the grantor of any of the Grantor's rights, and the Grantor shall not thereby be precluded from exercising its rights against the grantee which may have then already arisen or which may thereafter arise.

- 11.4 No remedy conferred by this Agreement is intended to be exclusive of any other remedy which is otherwise available at law, by statute or otherwise. Each remedy shall be cumulative and in addition to every other remedy given hereunder or now or hereafter existing at law, by statute or otherwise. The election of any one or more remedy by either Party shall not constitute a waiver by such Party of the right to pursue any other remedy.
- 11.5 If any provision of this Agreement is rendered void, illegal or unenforceable in any respect under any law, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby and the Parties shall endeavour in good faith to agree an alternative provision to the void, illegal or unenforceable provision.
- 11.6 Termination of this Agreement for any cause shall not release a Party from any liability which at the time of termination has already accrued to such Party or which thereafter may accrue in respect of any act or omission prior to such termination.
- 11.7 This Agreement shall be binding on and shall inure for the benefit of the successors and permitted assigns of any of the Parties.
- 11.8 Unless otherwise specifically provided in this Agreement, all consents, permissions and authorities which any Party may require of another Party/ies in terms of this Agreement shall not be unreasonably withheld.

DATED AT GABORONE ON THIS
UNDERSIGNED WITNESSES

DAY OF APRIL 2007 IN THE PRESENCE OF THE

AS WITNESSES:

1.

2.

FOR AND ON BEHALF OF BEDIA
HE BEING DULY AUTHORISED HERETO

DATED AT GABORONE ON THIS
UNDERSIGNED WITNESSES

DAY OF APRIL 2007 IN THE PRESENCE OF THE

AS WITNESSES:

1.

2.

FOR AND ON BEHALF OF THE PARTICIPANT
HE BEING DULY AUTHORISED HERETO

SCHEDULE 1

CLAUSE REFERENCE	DESCRIPTION
Clause 1.4 - Name of Fair	INSERT NAME OF FAIR
Clause 1.5 – Name of Participant's Representative	INSERT NAME OF PARTICIPANT'S REPRESENTATIVE
Clause 1.7 - Reports to be Rendered and date for submission of Report	<p>The Participant shall be obligated to supply the following Reports and in accordance with the following schedule:-</p> <p>Initial Fair Questionnaire – on or before the expiry of 7 days from the date that the Fair has ended;</p> <p>Detailed Fair Report – on or before the expiry of 45 days from the date that the Fair has ended; and</p> <p>Quarterly Reports – on or before the expiry of 90 days from the date that the Fair has ended and thereafter on or before the expiry of each 90 day period for a term of [] years being [] Quarterly Reports in total.</p> <p>[THIS IS JUST AN EXAMPLE...THE LIST OF REPORTS WILL VARY DEPENDING ON THE FAIR AT ISSUE]</p>
Clause 1.8 - Services to be rendered to Participant	<p>Rental of exhibition stall at the Fair; transport of Exhibits and cost insurance of such Exhibits for such duration as BEDIA may determine.</p> <p>[THIS IS JUST AN EXAMPLE...THE LIST OF SERVICES WILL VARY DEPENDING ON THE FAIR AT ISSUE]</p>