

**NOTICE 594 OF 2014****MEMORANDUM OF AGREEMENT**

Entered into between

**THE COMPETITION COMMISSION**

(Hereinafter referred to as "the Commission")

a juristic person established in terms of the provisions of section 19 of the Competition Act, 1998 (Act No. 89 of 1998), as amended, herein duly represented by Mr. Tembinkosi Bonakele, in his capacity as the Commissioner of the Commission

And

**THE NORTH WEST GAMBLING BOARD**

(Hereinafter referred to as "the Board")

a statutory body established in terms of section 3 of the North West Gambling Act, 2001 (Act No 2 of 2001) as amended, herein duly represented by Mr. Fortune Sekgaphane in his capacity as the Chief Executive Officer of the Board. (Hereinafter jointly referred to as "the Parties")

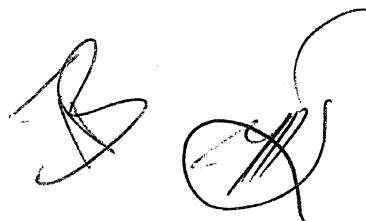
Whereas the Commission, in terms of section 21 of the Competition Act, 1998, is responsible for, *inter alia*:

- investigating and evaluating alleged contraventions of Chapter 2;
- granting or refusing applications for exemptions in terms of Chapter 2; and
- authorizing, with or without conditions, prohibit or refer mergers of which it receives notice in terms of Chapter 3.

Whereas in terms of section 4 of the North West Gambling Act, 2001 the Board may exercise powers, perform functions and carry out duties assigned to it in terms of that Act or any other law;

The parties recognise the need for the Commission to conclude similar agreements with the National Gambling Board as well as with other provincial gambling boards in view of the fact that casinos, racing, gambling and wagering are matters of concurrent national and provincial legislative competence in terms of the Constitution;

Whereas the parties recognise that the Board is required by sections 26 and 27 of the North West Gambling Act, 2001, as amended, read with section 54 of the National Gambling Act, 2004, to consider competition issues when considering an application for a licence or an application for the transfer of a licence;



Whereas concurrent jurisdiction between the parties with regard to certain conduct has been established by section 3 (1A) (a) of the Competition Act, 1998;

Whereas the Competition Act in section 21(1)(h), read with sections 3(1A)(b) and 82(1) and (3) of that Act, requires the parties to enter into an agreement in order to –

- identify and establish procedures for the management of areas of concurrent jurisdiction; and
- co-ordinate and harmonise the exercise of jurisdiction over competition matters within the gambling industry;

Whereas the Commission and the Board intend to establish and maintain a co-operative relationship for the provision of mutual assistance and advice in order to ensure the consistent application of the relevant legislation;

Therefore the parties agree to regulate their relationship in accordance with the terms of this Agreement as set out hereunder.

## 1. Objective and Scope

The objective of this Agreement is to establish a formal basis for –

- 1.1. co-operation in the exercise of concurrent jurisdiction over competition matters within the gambling industry;
- 1.2. managing areas of concurrent jurisdiction;
- 1.3. promoting co-operation between the parties in general, including in respect of the setting of standards or conditions that affect competition in the gambling industry, cooperation during investigations, taking into account the provisions of Clause 6 herein below, market inquiries and/or research studies that the parties may agree to undertake; and
- 1.4. providing for the exchange of information and the protection of confidential information.

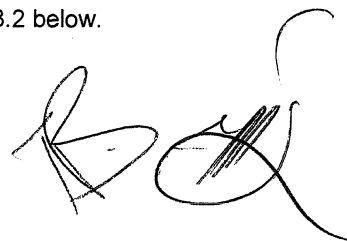
## 2. Commencement and duration

This Agreement will commence on the date of signature thereof by the party last to sign it and shall endure until termination thereof in accordance with clause 7.

## 3. Approval of merger transactions

### (A) Application for merger approval: Concurrent Jurisdiction

- 3.1. Where a transaction appears to the Board or the Commission to require the approval of both parties, the parties may consult each other in terms of clause 3.2 below.



3.2. The parties may consult each other for purposes of evaluating the manner in which the transaction may be managed. In doing this, the parties must have regard to the principle that:

- 3.2.1. the Commission is to exercise primary authority in the review of mergers within the gambling industry in order to give effect to the Competition Act; and
- 3.2.2. the Board has primary authority to exercise powers and perform duties assigned to it in terms of the North West Gambling Act, 2001, as amended, in order to give effect to its relevant legislation, including but not limited to the consideration of applications for transfers of licences and or acquisitions of businesses of licensees.

**(B) Application for merger approval: No concurrent jurisdiction**

3.3. Where an application to the Commission or the Board requires the approval of either party, but not both, the following shall apply -

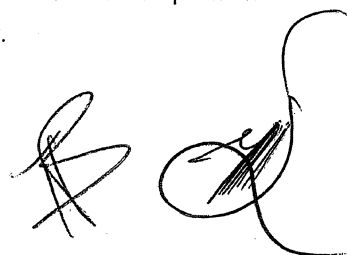
- 3.3.1. if the Board is the party whose approval is required, it may, when considering competition issues as required by sections 24(5) and 34(1) of the North West Gambling Act, read with section 54 of the National Gambling Act, consult with and obtain input from the Commission so as to ensure the consistent application of competition principles to the transaction in question;
- 3.3.2. if the Commission is the party whose approval is required, it may, if it deems it necessary to take into account regulatory aspects that affect or relate to the gambling industry regulated by the Board, consult with and obtain input from the Board so as to ensure the consistent application of the gambling legislation to the transaction in question;

**4. Investigation of complaints into prohibited practices**

4.1. Where a complaint is lodged about a practice in respect of which the parties have concurrent jurisdiction, the following process shall be followed –

- 4.1.1. the party that receives the complaint ("the recipient regulator") shall ensure that the said complaint is made available to the other party within seven (7) days after a formal decision to investigate the complaint has been taken;
- 4.1.2. where the recipient regulator deems it appropriate, the recipient regulator may inform the complainant(s) that the matter will be discussed jointly by the Commission and the Board in terms of this Agreement;
- 4.1.3. the parties may consult with each other in order to establish how the matter may be managed and/or resolved; and

- 4.1.4. In evaluating how the complaint may be managed, the parties must have regard to the principle that –
- 4.1.4.1. the Commission is to exercise primary authority to detect and investigate alleged prohibited practices in order to give effect to the Competition Act; and
  - 4.1.4.2. taking into account the powers and roles of the National Gambling Board and other provincial gambling boards, the Board has primary authority to exercise powers and perform duties assigned to it in terms of the North West Gambling Act, read with the National Gambling Act;
  - 4.1.4. In the event that the matter is dealt with by the Commission, representatives from the Board may participate in the matter through, inter alia, attending meetings when required, providing inputs during the case investigation, and making representations at the Competition Tribunal hearing if necessary; and
  - 4.1.5. In the event that the matter is dealt with by the Board, representatives from the Commission may participate in the matter through, inter alia, attending meetings when required, providing inputs during the case investigation, and making representations at the Board's proceedings if necessary.
- 4.2. If the complaint relates to a matter where either the Commission or the Board has jurisdiction, but there is no concurrent jurisdiction, the following shall apply –
- 4.2.1. the recipient regulator or the complainant must lodge the complaint with the party that has jurisdiction;
  - 4.2.2. if upon receiving a complaint, the recipient regulator is of the view that it does not have jurisdiction over the matter; the recipient regulator shall advise the complainant(s) accordingly and recommend that the complainant(s) refer the matter to the relevant regulator;
  - 4.2.3. if the Board is the party that has jurisdiction, if it deems it necessary to take into account considerations of competition, it may consult with and obtain input from the Commission so as to ensure the consistent application of competition principles to the matter in question; and
  - 4.2.4. If the Commission is the party that has jurisdiction, it may if it deems it necessary to take into account regulatory aspects that are subject to the jurisdiction of the Board, consult with and obtain input from the Board so as to ensure the consistent application of the regulation principles to the matter in question.
- 4.3. The decision by the regulatory authority that has jurisdiction over the complaint to consult the other regulatory authority shall be discretionary and voluntary.

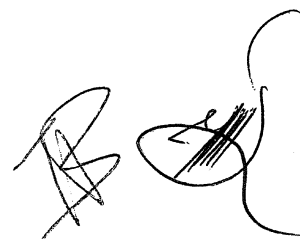


## 5. Exchange of Information

- 5.1. Subject to paragraph 6 below, the parties shall endeavour to exchange information necessary to give effect to this Agreement.
- 5.2. To facilitate an appropriate and timely response, any request for information made under this Agreement shall be made in writing or electronic format covering at least the following elements:
  - 5.2.1 the purpose for which the information is sought;
  - 5.2.2 details of the request comprising information on the person or entity concerned, such as a description of the facts underlying the request, specific questions to be asked and an indication of any sensitivity about the request; and
  - 5.2.3 a statement on whether, to whom and for what reasons Confidential Information is likely to be passed on.
- 5.3. All requests will be considered seriously and be replied to without undue delay;
- 5.4. The party from whom information is requested will assess each request on a case-by-case basis. In deciding whether and to what extent to fulfil a request, the party may take into account whether compliance with the request would be so burdensome as to disrupt the proper performance of the party's functions;
- 5.4. Where a request for information cannot entirely be fulfilled the request will be fulfilled to the extent possible;
- 5.5. For urgent cases in which a written request is not appropriate, a request can be presented orally subject to written confirmation within 10 business days;
- 5.6. Parties must keep records of information exchanged at all times; and
- 5.7. If the costs of fulfilling a request are likely to be substantial, the party from whom the information is requested may, as a condition of agreeing to provide assistance under this Agreement, require the requesting party to make a contribution to costs.

## 6. Treatment of Confidential Information

- 6.1. Any confidential information shared pursuant to this Agreement shall be used only for lawful purposes;
- 6.2. Parties shall share confidential information subject to their statutory confidentiality requirements;
- 6.3. The party providing confidential information pursuant to this Agreement shall clearly indicate what information is confidential to the requesting party; and



- 6.4. The party requesting confidential information may be required to submit a written confidentiality undertaking in respect of the confidential information provided by the other party.

## 7. Termination

- 7.1. This Agreement may be terminated by either party on written notice of at least 2 (two) months to the other party or by written agreement between the parties; and
- 7.2. On termination of the Agreement in accordance with clause 7.1, the parties must negotiate and enter into another agreement consistent with sections 3(3), 21 and 82 of the Competition Act.

## 8. Dispute Resolution

Should any dispute or difference arise between the Parties with regard to interpretation and/or implementation of any one or more of the provisions of this Agreement, such dispute or difference must be resolved in a manner other than through judicial proceedings.

## 9. Mutual Cooperation and Good Faith

The parties shall, in their dealings with each other, display the utmost good faith, consult and support each other from time to time with regard to any assistance or advice which they may require in connection with fulfilling any of its commitments or the objectives of this Agreement and undertake to do all such things, perform all necessary acts and procure the taking of all necessary steps that may be necessary or incidental or conducive to give effect to the intention and the terms of this Agreement.

## 10. Points of Contact and Addresses

- 10.1 To facilitate cooperation and information exchange under this Agreement, the parties hereby designate the following principal points of contact. All communications between the parties shall take place between the relevant points of contact unless agreed otherwise in a particular case. The parties will notify each other promptly of changes with regard to the principal point of contact.

### Representatives

- 10.2 The parties designate the following individuals who will have the authority to administer this Agreement on their behalf and who will be responsible for the communication between them:

10.2.1 for the Board: .....

.....  




10.2.2 for the Commission: Mr Mziwodumo Rubushe

HOD: Stakeholder Relations

### Addresses

10.3 The parties elect the following addresses as their respective address for purposes of this Agreement. Any notice, request, consent, or other communication made between the parties pursuant to this Agreement shall be in writing and shall be deemed to have been made when delivered in person to a representative of the party referred to in cause 10.2, or when sent by registered post, telex, telegram or facsimile to such representative:

10.3.1 The Board:

Physical: 131 University Drive, Mmabatho 2735

Postal: Privatebag X34

Mmabatho

2735

Facsimile: 018 384 2290

10.3.2 The Commission:

Physical: DTI Campus, 77 Meintjies Street, Sunnyside, Pretoria

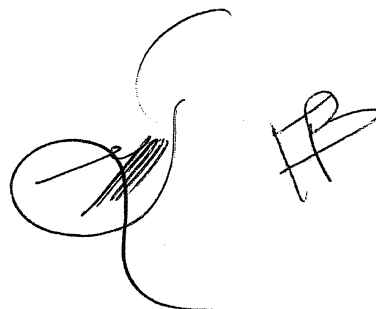
Postal: Private Bag X23

Lynwood Ridge


PRETORIA

0040

Facsimile: 012 3940166

Two handwritten signatures are present. The one on the left is a large, stylized signature with a circular loop and a diagonal slash. The one on the right is a smaller, more compact signature with a vertical line and a horizontal bar.

THUS SIGNED AT MNABATHO ON THIS THE 25<sup>th</sup> DAY OF JUNE 2014

  
for the NORTH WEST GAMBLING BOARD  
F.S SEKGAPHANE  
CHIEF EXECUTIVE OFFICER

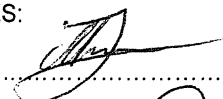
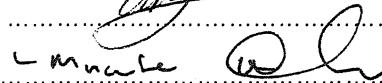
AS WITNESSES:

1. ....
2. ....

THUS SIGNED AT ..... ON THIS THE ..... DAY OF ..... 2014

  
for the COMPETITION COMMISSION  
MR TEMBINKOSI BONAKELE  
COMMISSIONER

AS WITNESSES:

1.  .....
2.  .....