



MEMORANDUM OF UNDERSTANDING
BETWEEN THE
FAIR TRADING COMMISSION
AND THE
BUREAU OF STANDARDS JAMAICA

MEMORANDUM OF UNDERSTANDING

THIS MEMORANDUM OF UNDERSTANDING (hereinafter referred to as “**MOU**”) is made and entered into between the **FAIR TRADING COMMISSION** (hereinafter referred to as “**FTC**”), a statutory agency whose offices and place of business is located at 52-60 Grenada Crescent, Kingston 5 in the parish of St. Andrew and the **BUREAU OF STANDARDS JAMAICA** (hereinafter referred to as “**BSJ**”), a statutory body whose offices and place of business is located at 6 Winchester Road, Kingston 10.

1. PURPOSE

The purpose of this MOU is to facilitate the mutual exchange and sharing of information concerning co-operation in matters of mutual interest.

2. BACKGROUND

Fair Trading Commission

2.1 The FTC was established in 1993 is the administrative body responsible for enforcing the Fair Competition Act (FCA). The FTC falls under the Ministry of Industry, Commerce, Agriculture and Fisheries. The mission of the FTC is to provide for the maintenance and encouragement of competition in the conduct of trade, business and in the supply of services in Jamaica, with a view to providing consumers with competitive prices and product choices.

2.2 The functions of the FTC include the following:

- To carry out, on its own initiative or at the request of the Minister or any other person, investigations in relation to the conduct of business in Jamaica in connection with matters falling within the provisions of the FCA;
- To advise the Minister on matters relating to the operation of the FCA;
- To make available to businesses and consumers, general information with respect to their rights and obligations under the FCA;
- To undertake studies and publicize reports and information regarding matters affecting the interests of consumers; and
- To co-operate with and assist any association in developing and promoting the observance of standards of conduct for the purpose of ensuring compliance with the FCA.

Bureau of Standards Jamaica

2.3 The BSJ, an agency of the Ministry of Industry, Commerce, Agriculture and Fisheries, was established by the Standards Act of 1969 to promote and encourage standardization in relation to commodities, processes and practices. The BSJ also provides services in relation to conformity assessment (certification, testing and calibration) and metrology.

2.4 The functions of the BSJ include the following:

- Promoting and encouraging the implementation and maintenance of standardization for commodities, processes and practices.
- Facilitating the development of standards and other requirements to which particular commodities, services, practices and processes must comply.
- Monitoring for compliance
- Provision of services in the areas of metrology, standardization and conformity assessment (conducting tests and calibrating instruments, certifying products and management systems)
- Providing industrial training
- Promoting research and education in standardization

3. AGREEMENTS BETWEEN THE PARTIES

Establishment of Framework

3.1 The FTC and BSJ seek to use their respective powers to achieve more competitive outcomes for the benefit of consumers so as to make markets work well for consumers, businesses and the economy.

3.2 This MOU serves the purpose of establishing the manner in which the agencies will interact and cooperate with each other with the understanding that the laws applicable to each agency although different, may be complimentary. Accordingly, it establishes a framework whereby the FTC and the BSJ will seek to:

- Consult on investigations or actions that implicate the jurisdiction of the other agency.
- Coordinate on agency initiatives where one agency's action will have a significant effect on the other agency's authority or programs.

- Have regular coordination meetings to review current marketplace practices.
- Improve understanding of their respective roles and ensure transparency of operations.

4. SCOPE OF COOPERATION

The FTC and the BSJ under the terms of the MOU will seek to:

- Conduct research to ensure that standards relating to commodities, services, practices and processes are consistent with competition law and policy.
- Collaborate to ensure that all market participants in a particular industry/sector are monitored in a similar manner and timeframe for compliance.
- Promote public education as it relates to competition and standards.
- Conduct appropriate tests and calibration of instruments on a regular basis to ensure that the interests of consumers are protected.
- Publicize market participants who are compliant with the relevant standards.

5. GUIDING POLICY

This MOU may be used in varying circumstances, including but not limited to the following:

- At an early stage, consult on the creation and implementation of policy, monitoring mechanisms, undertaking investigations, research or actions that implicate the jurisdiction of the other agency.
- Sharing of relevant data, investigative techniques, intelligence, technical and legal expertise, and best practices in response to reasonable requests for such assistance.
- Sharing of knowledge-based and/or capacity-building activities where appropriate.

6. INFORMATION SHARING

The FTC and the BSJ acknowledge the benefits of sharing information that will assist each organization in performing its functions and exercising its powers. The following shall guide the information sharing by the Agencies:

- Where appropriate, the FTC and the BSJ will share information relevant to efficiency and competition as well as policy development.
- Where the situation necessitates close cooperation and information sharing between the agencies, the situation shall be managed in such a way that each agency shall endeavor to assist the other to the extent possible.
- The FTC and the BSJ acknowledge the confidentiality requirements of the laws under which they each operate and that commercially sensitive data may be supplied to them by market participants subject to confidentiality conditions.
- Where there is a legal constraint on the sharing of information, such as where the consent of a third party is required, the organization that holds the information will, where appropriate, make reasonable efforts to overcome these constraints so that the information can be shared with the other organization.
- Each organization may specify confidentiality conditions for information shared with the other.
- All information provided pursuant to the MOU shall remain the property of the agency providing such information.

7. OVERSIGHT AND COORDINATION MEETINGS

7.1 The FTC and the BSJ acknowledge the benefits of oversight, coordination and sharing perspectives and expertise relevant to competition and policy development.

7.2 Executives of the FTC and the BSJ will meet at least every twelve months and/or where necessary to discuss relevant issues.

7.3 Issues affecting the output of the agencies as it relates to the purpose of this MOU will be decided upon by the Executives of both agencies.

7.4 There will be contact between officers of the two organizations on routine matters; and the FTC and the BSJ will consider other opportunities to share perspectives and expertise on relevant issues.

8. ROLES AND RESPONSIBILITIES OF THE SIGNATORIES

In an effort to meet the stated Agreements, the Parties shall:

- Adopt reasonable measures and honesty of purpose to establish and maintain a relationship of mutual benefit based on goodwill, cooperation and partnership;
- Embrace a respectful culture of communication that facilitates open dialogue, within the confines of this MOU; and
- Recognize that the MOU is a “living” document and may be reviewed from time to time at the request of any Party and consequently changed by mutual agreement. This MOU may only be altered with the written consent of both Parties.
- Recognize that the MOU is geared at fostering cooperation between the Agencies.

9. WARRANTIES AND LIMITATION OF LIABILITY

Each Party warrants its capacity to enter into this MOU and to participate in the activities contemplated herein. No Party shall be held responsible for any cost or expense incurred by the other Party, except in keeping with the terms of this MOU, or any policies and procedures established between the Parties for the purpose of giving effect to this MOU.

10. LANGUAGE

This MOU has been executed in the English Language, which shall be the binding and controlling language for all matters relating to the meaning or interpretation of this MOU.

11. HEADINGS

The headings in this MOU are for reference purposes only and shall not limit, alter or otherwise affect the meaning of the Clauses in this MOU.

12. NOTICES

12.1 Any notice, request, or consent required or permitted to be given or made pursuant to this MOU shall be in writing. Any such notice, request or consent shall be deemed to have been made when delivered in person to an authorized representative of the Party to whom the communication is addressed, or when sent by registered mail, to the registered business address of the Party to whom it is being sent, or such other addresses as may be notified by the Party from time to time in accordance with this Clause; or when sent by electronic mail or facsimile, to the correct electronic mail address or facsimile number of the Party to whom it is being sent as may be notified by that Party from time to time in accordance with this Clause.

12.2 In the case of personal delivery, notice will be deemed to have been received at the time of delivery to the registered address of the Party to whom the notice is being sent or to such other address as is notified by that Party to the sending Party.

12.3 In the case of a notice being sent by registered mail, notice will be deemed to have been received three (3) days after the date of posting that notice. In the case of a notice being sent by electronic mail or facsimile, notice will be deemed to have been received one working day after the date and time of the sending of the notice to the correct electronic address or correct facsimile.

13. AUTHORIZED REPRESENTATIVE

Any action required or permitted to be taken, and any document required or permitted to be executed, under this MOU by either Party may be taken or executed by the official signatory to this MOU, or their authorized representative.

14. NO ASSIGNMENT

Each of the Parties hereto shall not assign its rights and obligations under this MOU to any Third Party, without the prior written consent of the other Party.

15. DURATION

15.1 The terms and conditions set forth in this MOU shall become effective on the date of its signing and shall remain in force for five (5) years unless terminated in writing by either Party by giving six (6) months written notice of termination to the

other Party or by mutual agreement by the Parties, after a period of three (3) years. The MOU shall be subject to review at five (5) year intervals.

15.2 Upon termination of this MOU by notice of either Party to the other, pursuant to this Clause, both parties shall, immediately upon dispatch and on receipt of such notice, cooperate and take all necessary steps to bring the services to a close in a prompt and orderly manner, and shall make every reasonable effort to keep expenditures for this purpose to a minimum.

16. AMENDMENTS AND MODIFICATIONS

16.1 This MOU sets forth the entire understanding between the Parties as to the subject matter herein and will supersede all prior oral or written understandings.

16.2 Either Party may propose, when circumstances warrant, amendments or modifications to this MOU. Such a proposal shall be submitted for negotiation as the nature of the proposal demands. Any amendments to the MOU shall be by mutual consent, executed by both Parties and attached as an Addendum to this MOU. Any activity already in progress will continue until completion as originally planned provided resources are available.

17. RELATIONSHIP OF THE PARTIES

Nothing in this MOU constitutes any Party as the agent, employee or partner of the other Parties. No Party has the right or authority to bind the other Party, including without limitation the power to incur any liability or expense on behalf of the other Party without its prior written consent, except as expressly set forth in this MOU.

18. CONFIDENTIALITY

18.1 In addition to the confidentiality provisions of Clause 6, no Party will comment publicly on any matter that relates directly or indirectly to policies, practices or procedures of the other Party with respect to this MOU without first advising and/or obtaining the consent of the other Party.

18.2 With the exception of information that is already available in the public domain, the Parties agree that information – to include client information and/or trade secrets – communicated to one Party in any manner in connection with this MOU shall be classified as “Confidential Information”, whether before or after the date of this MOU.

18.3 **Confidential Information** means all information that is by its nature confidential and which:

- is designated or marked by a Party as confidential;
- a Party knows or ought to know is confidential but does not include information which is or becomes public knowledge other than by breach of this MOU or any other confidentiality obligation or is otherwise required to be disclosed by law.

19. DISCLOSURE

If one Party is required by law to disclose any confidential information, then that Party shall immediately inform the other Party in writing and at a time reasonably sufficient for the other Party to take whatever action they consider necessary to protect their rights regarding Confidentiality.

20. FAIRNESS AND GOOD FAITH

20.1 This MOU does not create any rights and obligations on the part of either Party. The Parties undertake to act in good faith under this MOU and to adopt all reasonable measures to ensure that the purpose of this MOU is met.

20.2 The Parties recognize that it is impractical in this MOU to provide for every contingency which may arise during the life of this MOU, and the Parties hereby agree that it is their intention that this MOU shall operate fairly between them, and without detriment to the interest of either of them and that if during the term of this MOU either Party believes that this MOU is operating unfairly, the Parties will use their best efforts to agree on such actions as may be necessary to remove the cause or causes of such unfairness.

21. PROCESS FOR RESOLVING CONFLICT

Disputes shall be resolved by amicable settlement. Any differences that may arise in the application of this MOU will be addressed through consultations between the Parties.

22. GOVERNING LAW

This MOU is governed by the Laws of Jamaica in respect of the interpretation of any of the Clauses herein.

23. SIGNATURES

To certify the acceptance of the contents of this MOU, the signature of the competent and responsible authority of each Party is affixed below.

IN WITNESS WHEREOF the undersigned parties, duly authorized by their respective Agencies, have signed this MOU on this 11th day of DECEMBER, 2019.

SIGNED for and on behalf of the)
FAIR TRADING COMMISSION)
by: **DAVID MILLER, EXECUTIVE**)
DIRECTOR)

Signature: _____



in the presence of:



WITNESS

SIGNED for and on behalf of the)
BUREAU OF STANDARDS)
JAMAICA by: **HOPETON HERON,**)
EXECUTIVE DIRECTOR)

Signature: _____



in the presence of:



Sharian M. Hanson
Attorney-at-Law
No. 4366

WITNESS