



**OFFICE OF THE DPCI JUDGE
REPUBLIC OF SOUTH AFRICA**

and



MEMORANDUM OF UNDERSTANDING

ENTERED INTO BETWEEN

Office of the DPCI Judge

(Hereinafter referred to as "DPCI Judge")

AND

Independent Communications Authority of South Africa

(Hereinafter referred to as "ICASA")

(Both hereafter collectively referred to as "the Parties")

ME
cl *MB* *km*

WHEREAS, the DPCI Judge is mandated to deal with complaints against and from members of the Directorate for Priority Crime Investigation and more commonly known as the "Hawks".

AND WHEREAS, the key functions of ICASA is to regulate the electronic communications, broadcasting and postal services; issue licenses to providers of the aforesaid services; monitor the environment and enforce compliance with licence conditions and regulations; investigate and decide on disputes and complaints brought by industry or members of the public against licensees; plan, control and manage the frequency spectrum and protect consumers;

AND WHEREAS, it is recorded that this Agreement may be reviewed to accommodate developments incidental to matters that require co-operation between the two statutory bodies in the electronic communications, broadcasting and postal industries. The review will take into account prevailing legal precedents, legislative amendments, and promulgation of regulations, policy reviews, and developments in technology and service innovation as the case may be.

ME
A
WR
K.M

THEREFORE, the DPCI Judge and the ICASA agree as follows:

1. PURPOSE OF THIS MEMORANDUM

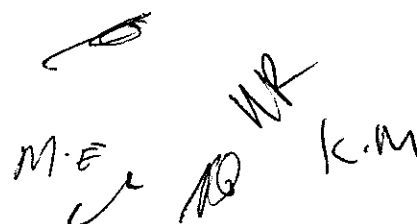
This memorandum seeks to:

- 1.1 Establish a formal relationship between the DPCI Judge and ICASA and/or the statutory mandates of the respective parties to this MOU;
- 1.2 Provide a framework to govern cooperation and mutual assistance on matters of common interest in respect of complaints against and from members of the DPCI who have been appointed in terms of the SAPS Act;
- 1.3 Set out complaints handling mechanisms on the matters of common interest;
- 1.4 Recognise the importance of working collectively and adhere to, and respect the specific working guidelines, principles and policies contained in this MOU, distinct line functions, legal powers and obligations and operating practices.

2. PRINCIPLES OF COOPERATION

In order to achieve the purposes of this Memorandum, the Parties have adopted and will comply with the principles of cooperation set out below.

- 2.1 The Parties will cooperate with each other in mutual trust and good faith.
- 2.2 The Parties will assist and support each other in respect of agreed upon services and commitments between them in terms of this Memorandum.

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2.3 The Parties will inform each other and consult each other on matters of common interest.

2.4 The Parties will avail to each other the necessary support for the success of the tasks and programmes envisaged and agreed to pursuant to this Memorandum.

3. SPECIFIC RESPONSIBILITIES OF PARTIES

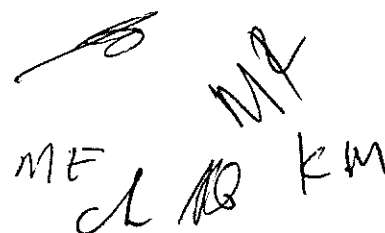
The Parties agree to undertake specific functions as outlined hereunder.

3.1 DPCI Judge and ICASA will initiate and coordinate stakeholder engagements and activities aimed at promoting compliance by industry with the Act as and when required.

3.2 The Parties may undertake joint communication through media and other platforms on the focus areas of this Memorandum and publish this Memorandum on their websites.

3.3 The Parties will support each other in policy matters and where possible undertake joint projects in terms of research and submissions to Parliament in relation of policy and legislative review.

3.4 DPCI Judge and ICASA may jointly announce their partnership to the public at a date to be determined once this Memorandum has been signed by the Parties.

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3.5 The Parties may, in agreement, look at other areas of cooperation within the realm of the purpose of this Memorandum during the course of the Memorandum and within the set commitments.

4. DURATION

This Memorandum will commence on the date of signature of the last signing party and will remain in force until it is terminated by either party in terms of clause 18.

5. REVIEW

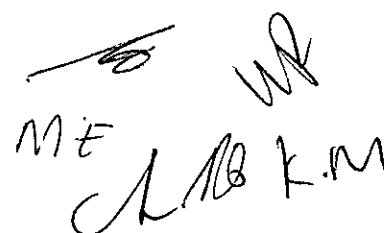
The terms of this Memorandum and the performance of the Parties in terms thereof will be reviewed from time to time between the Parties.

6. ENGAGEMENT AND EXCHANGE OF INFORMATION

6.1 Subject to clause 7, the parties will endeavor to exchange information necessary to give effect to this Memorandum.

6.2 The preferred procedure for the exchange of information between the DPCI Judge and ICASA is as follows:

6.2.1 Where DPCI Judge requires information from ICASA, the Liaison Officer will address a written request for information to the Liaison Officer of ICASA and also copy the point of contact identified in terms of clause 6.3

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6.2.2 Where ICASA requires information from DPCI Judge, ICASA will address the written request for information to the Liaison Officer of DPCI Judge and also copy the point of contact identified in terms of clause 6.3.

6.3 For purposes of this Memorandum:

6.3.1 The Deputy Director will be the contact person at DPCI Judge; and

6.3.2 The Chief Executive Officer or his/her nominee will be the contact person at ICASA.

6.4 DPCI Judge and ICASA will keep records of the information exchanged between them.

7. CONFIDENTIALITY

Both Parties warrant that all information made available to them by the other party, including but not limited to any contracts signed, materials developed, trade secrets, financial and other details, assistance or advice given or requested, operating methods and costs, must be kept as strictly confidential and must not be divulged to any third parties without prior written consent of the other party. Each party and their employees, contractors or service providers, must maintain the utmost secrecy in respect of all such information.

8. FORCE MAJEURE

8.1 If any party is unable to perform any obligation under this Memorandum due to circumstances beyond its control, then the party concerned will be excused from the timeous performance of the obligation(s) for the duration that the circumstances rendering the performance impossible still prevail.

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8.2 Any party unable to perform its obligations due to circumstances in terms of clause 8.1, must inform the other party in writing of the circumstances within 10 (ten) days of the occurrence thereof.

8.3 The Parties will do everything reasonably possible to prevent, avoid or limit the duration or effects of any circumstance in terms of clause 8.1. Upon removal of the circumstances giving rise to impossibility of performance, the party so prevented or delayed will forthwith give written notice to the other party.


8.4 For the purpose of this Memorandum "*Force Majeure*" means any circumstances beyond the reasonable control of the party concerned and includes but not be limited to war, revolution, riot, mob violence, sabotage, epidemic, accident, breakdown of machinery or facilities where such are not part of equipment or under control of either party.

8.5 The mere shortage of labour, materials or utilities will not constitute Force Majeure unless caused by circumstances which may be deemed to constitute Force Majeure.

9. ARBITRATION

9.1 In the event of a dispute or difference between the Parties with regard to interpretation and/or implementation of any one or more of the provisions of this Memorandum, the dispute or difference must be resolved in a manner other than resort to judicial proceedings.

9.2 In the event the Parties fail to resolve a dispute within 14 (fourteen) business days of their first meeting or such longer period as the Parties may agree in writing, the Parties shall refer the matter for mediation failing such mediation to arbitration any party may refer such dispute or

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difference to arbitration in accordance with the provisions of the Arbitration Act 42 of 1965, as amended and as amplified or limited by this clause.

9.3 Any party may demand that a dispute be referred to arbitration by giving a written notice to that effect to the other party.

9.4 The arbitration must be held:

9.4.1 In Pretoria and conducted in the English language;

9.4.2 Immediately in an informal manner on such basis as the arbitrator may determine with a view to it being completed within 90 (ninety) days after it is demanded.

9.5 The Parties irrevocably agree that the decision in arbitration proceedings:

9.5.1 Will be final and binding upon the parties;

9.5.2 Will be carried into effect; and

9.6 This clause is severable from the rest of the Memorandum and remains valid and binding on the Parties notwithstanding any termination thereof.

10. DOMICILUM CITANDI ET EXECUTANDI

10.1 The Parties choose as their *domicilium citandi et executandi* for all purposes under this Memorandum, whether in respect of court processes, notices or other documents or communication of whatsoever nature (including the exercise of any option) the following addresses:

~~ME~~
ME
MP
K.M
CL AB

Independent Communications Authority of South Africa

Physical address: Block B
164 Katherine Street
Pinmill Farm Block B
Sandton 2146

Postal address: Private Bag x 10002
Sandton
2146

Telephone: (011) 566 3000/1

Email: ceomailbox@icasa.org.za

Office of the DPCI Judge

Physical address: 246 Paul Kruger Street 1st floor Pretoria Towers Building

Postal address: Private Bag X 102 Pretoria 0001

Telephone: 012 324 8417/7435

Email: RasiwelaE@dpcijudge.gov.za

10.2 Any notice or communication required or permitted to be given in terms of this Memorandum will be valid and effective only in writing. It will be competent to give such notice by facsimile.

10.3 Either party may give notice to the other party to change the physical address chosen as its *domicilium citandi et executandi* to another physical address in South Africa, provided that such change will become

~~ME~~
ME
Ch
WB
K.M

effective on the 7th(seventh) business day from the deemed date of receipt of the notice by the other party.

10.4 Any notice sent by facsimile to the facsimile number stipulated in the *domicilium citandi et executandi*, will be deemed to have been received on the date of dispatch (unless the contrary is proved).

10.5 Any notice sent by prepaid registered post in a correctly addressed envelope sent to the address stipulated in the *domicilium citandi et executandi* , will be deemed to have been received on the 7th(seventh) business day after posting (unless the contrary is proved).

11. SEVERABILITY

Each of the provisions of this Memorandum will be considered as separate terms and conditions and in the event this Memorandum is affected by legislation or any amendment thereto, or if the provisions herein contained are by virtue of that legislation or otherwise, held to be illegal, invalid, prohibited or unenforceable, then any such provisions may be ineffective only to the extent of the illegality, prohibition or unenforceability and each of the remaining provisions thereof will remain in full force and effect as if the illegal, invalid, prohibited or unenforceable provision was not part thereof.

12. ENTIRE AGREEMENT

This Memorandum constitutes the entire agreement between the parties with regard to the matters dealt with in this Memorandum and no

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representations, terms conditions or warranties not contained in the Memorandum will be binding on the Parties.

13. VARIATION AND CANCELLATION

No agreement varying, adding to, or deleting from or cancelling this Memorandum will be effective unless reduced to writing and signed by or on behalf of the Parties.

14. INDULGENCES

No indulgences granted by the Parties may constitute a waiver of any of its rights under this Memorandum. Accordingly, no party may be precluded as a consequence of having granted such indulgence from exercising any rights against the other which may have arisen in the past or which may arise in the future.

15. GOVERNING LAW

The Memorandum will be construed in accordance with the laws prevailing in the Republic of South Africa.

16. CESSION AND ASSIGNMENT


The parties will not be entitled to cede and assign their rights and obligations in terms of this Agreement without the prior written consent of the other.

17. TERMINATION

~~ME~~ VAK
ME
K.M
CL AB

Notwithstanding the provisions of clause 4 above, either Party has the right to cancel this Memorandum at any time by giving the other party 30 (thirty) business days written notice.

THIS DONE AND ENTERED INTO AT SANDTON ON THIS 17 DAY OF MAY 2016

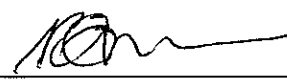


Judge Essa Moosa

HEAD OF OFFICE OF THE DPCI JUDGE

Who warrants that he is duly authorised hereto.

IN THE PRESENCE OF THE UNDERSIGNED WITNESSES:

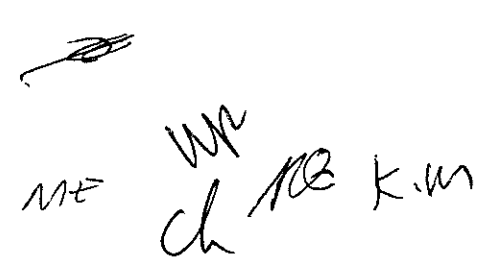
1. 

WITNESS

2. 

WITNESS

THIS DONE AND ENTERED INTO AT SANDTON ON THIS 17th DAY OF May 2016


ME WMP
Ch RB K.M



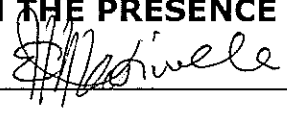
Clir Rubben Mohlaloga

COUNCILLOR AND ACTING CHAIRPERSON

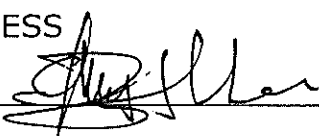
Independent Communications Authority of South Africa

Who warrants that she is duly authorised hereto.


IN THE PRESENCE OF THE UNDERSIGNED WITNESSES:

1. 

WITNESS

2. 

WITNESS

 MZ ^{MB} K.M