

SOUTH AFRICAN



**CIVIL AVIATION
AUTHORITY**



MEMORANDUM OF UNDERSTANDING

Entered into by and between:

THE INDEPENDENT COMMUNICATIONS AUTHORITY OF SOUTH AFRICA
(hereinafter referred to as "ICASA")

AND

THE SOUTH AFRICAN CIVIL AVIATION AUTHORITY
(hereinafter referred to as "the SACAA")

(Hereinafter jointly referred to as "the Parties")

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1. PREAMBLE

WHEREAS ICASA is established in terms of the Independent Communications Authority of South Africa Act, 2000 (Act No. 13 of 2000) ("ICASA Act") to regulate broadcasting, electronic communications and postal services in the public interest;

WHEREAS ICASA controls, plans, administers and manages the use and licensing of the radio frequency spectrum in terms of the Electronic Communications Act, 2005 (Act No. 36 of 2005) ("ECA");

WHEREAS ICASA is required by section 30(2) (a) of the ECA to comply with applicable standards and requirements of the International Telecommunications Union ("ITU") and its Radio Regulations which includes conditions for the issuance of Radio Operator Certificates;

WHEREAS the SACAA, in terms of the Civil Aviation Act, 2009 (Act No. 13 of 2009) ("Civil Aviation Act") *inter alia* controls and regulates the civil aviation industry, oversees its functioning and development, regulates and promotes aviation safety and security;

WHEREAS the SACAA is vested with the powers to issue control examinations and issue pilot licences in terms of the Civil Aviation Regulations, 2011;

WHEREAS the licensing of pilots entails *inter alia*, the examination of pilots on their proficiency relating to use of radio apparatus on board aircraft;

AND WHEREAS the Parties desire to enter into an agreement in terms of which ICASA designates to the SACAA the function to conduct the examinations of proficiency envisaged herein and to issue the Radiotelephony Operator's Certificates on behalf of the ICASA or in lieu of such certificates, endorse pilot licences to authorise the use of radio apparatus on board aircraft.

NOW THEREFORE THE PARTIES AGREE AS FOLLOWS:

2. DEFINITIONS

- 2.1. **“Agreement”** means this Memorandum of Understanding and all its annexure(s);
- 2.2. **“Aviation Training Organisation”** means a body or institution approved/certified by the Director of Civil Aviation in terms of Part 141 of the Civil Aviation Regulations, 2011;
- 2.3. **“Aeronautical Information Circular”** means a circular containing information which does not qualify for the origination of a NOTAM (Notice of Airmen) or for inclusion in the AIP (Aeronautical Information Publication) but “which relates to flight safety, air navigation, technical, administrative or legislative matters, issued by the Director of Civil Aviation;
- 2.4. **“Party(ies)”** means ICASA or SACAA or a reference to any one of them, as the context may require;
- 2.5. **“Radiotelephony Operator’s Certificate”** (General or Restricted), means a radio competency certificate as required in terms of the Civil Aviation Regulations, 2011 (“CARs”) read with the relevant South African Civil Aviation Technical Standards, which forms an integral part of each pilot licence issued by the Director of Civil Aviation.

3. DESIGNATION

ICASA hereby designates the SACAA to carry out the functions set out in clause 5 hereof.

4. DURATION

This Agreement shall commence on the date of the Party last signing the Agreement and shall remain valid until terminated by mutual agreement between the Parties or in terms of clause 10, or until such time it is superseded by relevant legislation.

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5. OBLIGATIONS OF THE SACAA

The SACAA shall perform the following functions for and on behalf of ICASA:

- 5.1. set the requirements necessary for individuals to obtain approval as Designated Examiners for the practical examination of candidates for the issuance of Radiotelephony Operator's proficiency certificates;
- 5.2. assess, approve, designate and conduct oversight on examiners responsible for conducting practical proficiency tests to establish proficiency in all required aspects relating to the usage of radiotelephony apparatus in aviation;
- 5.3. design the training and testing curricula for the Radiotelephony Operator's Certificates;
- 5.4. regulate and monitor the training provided towards the Radiotelephony Operator's Certificates;
- 5.5. conduct theoretical knowledge examinations and practical skills tests to verify competence in respect of the Radiotelephony Operator's Certificates;
- 5.6. endorse pilot licences to the effect that the holder is competent and authorised to operate radio apparatus on board aircraft;
- 5.7. review and process applications of initial designation and re-designation of examiners, for consideration and decision by the Director;
- 5.8. provide ICASA with a quarterly report detailing the number and type of Radiotelephony Operator's Certificates issued;
- 5.9. attend quarterly meetings with ICASA to monitor the progress and effectiveness of this Agreement;
- 5.10. revise Aeronautical Information Circular 30.9, to reflect the changes in the administrative and examination procedures and the legislative developments related thereto; and
- 5.11. dedicate and contact person of SACAA for the purposes of implementation of agreement, whose complete contact details will be provided to ICASA.

6. OBLIGATIONS OF ICASA

ICASA shall:



- 6.1. provide the SACAA with technical training material in line with the relevant international and regulatory standards that are applicable;
- 6.2. provide reasonable and timeous technical support to the SACAA as and when the SACAA requires it;
- 6.3. specifically define the minimum required scope of the Restricted and General Radiotelephony Operator's Certificates, including clarifying the distinction between the two certificates;
- 6.4. dedicate a contact person of ICASA for the purposes of implementation of this Agreement, whose complete contact details will be provided to the SACAA;
- 6.5. clarify the meaning and intended scope of the term "automatic communication devices" as referred to in Section 37.3 of the Radio Regulations; and
- 6.6. timeously inform the SACAA of international and domestic developments and events that are relevant for the execution of this designation, as and when they occur.

7. PRINCIPLES OF COOPERATION

- 7.1. In order to achieve the objectives of this Agreement, ICASA and SACAA agree to adopt and comply with the principles of co-operation set out below. Accordingly, the Parties shall:
 - 7.1.1. cooperate with each other in mutual trust and good faith;
 - 7.1.2. assist and support each other in respect of agreed upon services and commitments between them in terms of this Agreement;
 - 7.1.3. inform each other of, and consult each other on matters of common interest related to the implementation and application of this Agreement;
 - 7.1.4. avail to each other the necessary technical and personnel support for the successful performance of the tasks and deliverables set out in this Agreement; and
 - 7.1.5. share information relevant for the implementation and execution of the obligations set out in this Agreement.

8. CHARGES

Examination, certification, and designation administrative charges shall be determined by and payable to the SACAA in terms of Part 187 of the CARs, 2011.

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9. DISPUTE RESOLUTION

- 9.1. Any dispute related to the application or interpretation of this Agreement shall be deemed to be have arisen when either Party notifies the other Party in writing to that effect, within seven (7) days of such dispute arising.
- 9.2. The written notice must clearly detail the nature of the dispute.
- 9.3. Any dispute arising from this Agreement shall be dealt with in the following manner:

9.3.1. Amicable settlement

Once the other Party is in receipt of the written notice, the Parties shall use their best efforts, through their nominated representatives, to amicably and in good faith, settle the dispute within 14 days, or within such longer period as the Parties may agree, at a mutually agreed location.

9.3.2. Mediation

- (i) In the event that negotiations envisaged in clause 9.3.1 do not result in a mutually acceptable resolution within 14 days or longer period as agreed to by the Parties, then either Party may refer the dispute to mediation in accordance with the rules of the Arbitration Foundation of Southern Africa.
- (ii) The Party submitting the dispute to mediation shall give written notice to the other Party to that effect.
- (iii) The mediation proceedings shall be held at a location to be agreed upon between the Parties, within the jurisdiction of Johannesburg and shall be conducted in English.
- (iv) The mediation and its outcomes must be finalised within 90 (ninety) days from the date of referral.

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9.3.3. Arbitration

- (i) In the event that the Parties fail to resolve the dispute by means of mediation, either Party may elect to refer the matter to arbitration in accordance with the rules of the Arbitration Foundation of Southern Africa. No dispute may be submitted for arbitration unless the Parties have exhausted the remedies in clauses 9.3.1 and 9.3.2 first.
- (ii) The Party submitting the dispute to arbitration shall give written notice to the other Party to that effect.
- (iii) The arbitration proceedings shall be held at a location to be agreed upon between the Parties, within the jurisdiction of Johannesburg and shall be conducted in English.
- (iv) The Parties irrevocably agree that decision in the arbitration proceedings shall be final and binding upon the Parties and may be made an order of any court of competent jurisdiction.

9.4. Each Party shall bear its own cost incidental to the preparation and attendance of the arbitration proceedings.

10. TERMINATION

Either party may terminate this Agreement by giving the other written notice of not less than 24 (twenty-four) calendar months.

11. GENERAL CONDITIONS

11.1. Should any clause or provision of this Agreement be found to be invalid or unenforceable in any way, such clause or provision shall be deemed to be separate and severable from the remaining provisions of this Agreement and the validity and enforceability of the remaining terms and conditions shall not be affected.

11.2. This Agreement is made and entered into on the condition that there shall be no harmful interference to international services nor the independence of the Parties.

11.3. This Memorandum of Understanding constitutes the sole record of the agreement between the Parties in regard to the subject matter hereof.





- 11.4. No addition, variation or consensual cancellation of this Agreement shall be of any force or effect unless reduced to writing and signed by both Parties.
- 11.5. No indulgence which any of the Parties may grant another, shall constitute a waiver of any of such Party's rights hereunder.
- 11.6. The SACAA shall not assign or otherwise transfer or cede any of its obligations under and in terms of this Agreement without notifying ICASA, in writing.
- 11.7. The SACAA indemnifies ICASA against any legal claim that may be made against ICASA as a result of any negligent act or omission on the part of the SACAA in carrying out its functions in terms hereof.
- 11.8. This Agreement supersedes all previous agreements or arrangements, whether oral or written, between the Parties. No amendment to this Agreement will be effective unless reduced to writing and signed by both Parties.
- 11.9. The Parties agree that this Agreement is binding on the successors-in-title of both Parties.
- 11.10. The Parties hereby select their *domicilia citandi at executandi* for all notices and correspondence under this Agreement as follows:

(a) ICASA:

Block B
350 Witch-Hazel Avenue
Eco-Park Estate
Centurion
Attention: Leah Maina
Tel: 012 568 3995
Email: LMaina@icasa.org.za

(b) SACAA

Ikhaya Lokundiza
Building No. 16,
Treur Close
Waterfall Park
Bekker Street
Midrand
Attention: Devan Venter
Tel: 011 545 1487
Email: VenterD@caa.co.za

10. EXISTING AGREEMENTS

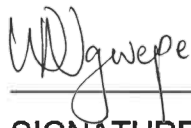
This Agreement supersedes any prior agreement that was signed by the Parties.

SIGNED for and behalf of ICASA by ICASA's duly authorised officer at

FOURWAYS on this 17th day of MAY 2021.

W A NGWEPE

NAME IN PRINT



SIGNATURE

CEO

CAPACITY

WITNESSES:

Resheditse Kgomo

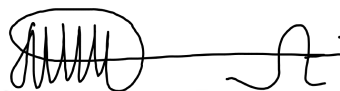
NAME IN PRINT



SIGNATURE

Gidi Nkhetheleni

NAME IN PRINT



SIGNATURE

SIGNED for and on behalf of the SACAA by the SACAA's duly authorised officer at

MIDRAND on this _____ day of 04 MAY 2021 2021

Ms P. Khoza

NAME IN PRINT



SIGNATURE

Director of Civil Aviation

CAPACITY

WITNESSES:

PATIENCE PAWA

NAME IN PRINT



SIGNATURE

Zama Madonsela

NAME IN PRINT



SIGNATURE

