

**MEMORANDUM OF UNDERSTANDING**

(hereinafter referred to as "MoU")

Entered by and between

**THE INDEPENDENT COMMUNICATIONS AUTHORITY OF SOUTH AFRICA**

(hereinafter referred to as "ICASA")

**AND**

**THE SOUTH AFRICAN MARITIME SAFETY AUTHORITY**

(hereinafter referred to as "SAMSA")

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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;

**AND WHEREAS** ICASA controls, plans, administers and manages the use and licensing of the radio frequency spectrum in terms of section 30(1) of the Electronic Communications Act, 2005 (ECA);

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

**AND WHEREAS** SAMSA is established in terms of the South African Maritime Safety Authority Act, 1998 (Act No. 5 of 1998) ("SAMSA Act") to ensure the safety of life and property at sea, to prevent and combat pollution of the maritime environment by ships and to promote the Republic's maritime interests;

**AND WHEREAS** SAMSA is required by Chapter 3 of the Merchant Shipping Act, 1951 (Act No. 57 of 1951) to issue certificates of competence for seafarers in their appropriate capacity;

**AND WHEREAS** the certification of seafarers entails the examination of seafarers to show proof of their technical and professional knowledge and qualification for the issuing of the relevant radio operator's certificates for use on SOLAS convention ships and non-convention ships.

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**AND WHEREAS THE PARTIES ARE DESIROUS** to conclude this MoU to give effect to section 30 (2) (a) of the ECA, with regard to matters covered in this MoU, read with section 41 (1) of the Constitution of the Republic of South Africa, 1996, which provides for cooperative governance and intergovernmental relations amongst the organs of state.

## **2. DEFINITIONS**

- 2.1. **"DSC"** means Digital Selective Calling utilising the techniques of Chapter VII of the ITU Radio Regulations.
- 2.2. **"Flag State"** means the state under whose laws a commercial vessel is registered or licensed;
- 2.3. **"GMDSS"** means Global Maritime Distress and Safety System;
- 2.4. **"GMDSS First Class Radio Electronic Certificate"** means the certificate recognised in accordance with Article 47, of the ITU Radio Regulations;
- 2.5. **"GMDSS GOC"** means GMDSS General Operator's Certificate recognised in accordance with Article 47 of the ITU Radio regulations;
- 2.6. **"GMDSS Second-class Radio Electronic Certificate"** means the certificate recognised in accordance with Article 47 of the ITU Radio Regulations;
- 2.7. **"ITU"** means International Telecommunications Union;
- 2.8. **"IMO"** means the International Maritime Organization.
- 2.9. **"LRC"** means Long Range Certificate as recognised in accordance with Article 47 of the ITU Radio Regulations;
- 2.10. **"Marine Notice"** means a notice which is utilised to amplify or interpret aspects of legislation administered by SAMSA and publish information about accredited training institutions and approved training courses;
- 2.11. **"MoU"** means the agreement as set out herein together with any annexure or amendments hereto;
- 2.12. **"MMSI"** means the maritime mobile service identity as specified by ITU;
- 2.13. **"MRGC"** means Maritime Radio-communication General Certificate;
- 2.14. **"Parties"** means ICASA and SAMSA and "a Party" means either of them;
- 2.15. **"PMG"** means Postmaster General Certificate of Competency;

*[Handwritten signatures and initials]*

- 2.16. **"RTC (VHF only)"** means Restricted Radiotelephone Operator's Certificate (marine) by which the operator is authorised to utilise the radio telephony frequencies on the VHF bands as specified in Appendix 18 of the ITU Radio Regulations, with the exclusion of Channel 70;
- 2.17. **"RTC (Marine)"** means Restricted Radiotelephone Operator's Certificate by which the operator is authorised to utilise all the Radio Telephony frequency bands as specified by the ITU Radio Regulations excluding DSC;
- 2.18. **"Ship Station"** means a mobile station, other than a survival craft station, in the maritime mobile service located on board a ship that is not permanently moored;
- 2.19. **"SRC"** means Short Range Certificate as recognised in accordance with Article 47 of the ITU Radio Regulations;
- 2.20. **"SOLAS"** means IMO International Convention for the Safety of Life at Sea 1974 as amended;
- 2.21. **"VHF"** means Very High Frequency referring to the radio frequency spectrum range from 156 to 174 Mhz;
- 2.22. **"WRC"** means the World Radiocommunication Conference conducted by ITU.

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**NOW THEREFORE THE PARTIES AGREE AS FOLLOWS:**

**3. APPOINTMENT**

- 3.1 ICASA hereby appoints SAMSA to assist ICASA to carry out the functions as envisaged in section 30 (2) (a) of the ECA with respect to matters provided for in this MoU.
- 3.2 SAMSA shall make available officials employed by SAMSA to be appointed as inspectors in terms of section 17F of the ICASA Act, to carry out the functions set out in this MoU.

**4. OBLIGATIONS OF SAMSA**

- 4.1. SAMSA shall perform the following functions for and on behalf of ICASA:
- 4.1.1. Issue a Marine Radio Operator Certificate as defined under clause 2 specifically clauses 2.4 2.5 2.6 2.9 2.16 2.17 2.20 on behalf of ICASA. The said certificate will contain an ICASA logo;
  - 4.1.2. amend the Marine Radio Operator's Certification regime to ensure compliance with IMO and ITU requirements or resolutions as required;
  - 4.1.3. provide authentications of existing MRGC, PMG, RTC (Marine), RTC (VHF only), GMDSS First Class Radio Electronic Certificate, GMDSS Second Class Radio Electronic Certificate, GMDSS GOC, SRC, LRC, plus provide validations of GMDSS certificates; and
  - 4.1.4. inspect ships to confirm compliance with ITU regulations and ICASA regulations and licence terms and conditions as per Annexure "A".
- 4.2. SAMSA shall also:
- 4.2.1. provide ICASA with a quarterly report detailing the number and type of certificates issued as well as any follow-up action completed; and

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- 4.2.2. attend quarterly meetings with ICASA to monitor the progress and effectiveness of this MoU.

## **5. OBLIGATIONS OF ICASA**

- 5.1. ICASA shall appoint SAMSA Radio Surveyors as Inspectors in terms of sections 17F (1), (3) and (4) of the ICASA Act, to perform the functions provided for in the ICASA Act and ITU Article 49 (Inspection of stations) of the Radio Regulations.
- 5.2. ICASA shall provide to SAMSA an updated MMSI database.
- 5.3. MMSI is required for the programming of maritime communications and emergency radio equipment.

## **6. CHARGES**

Examination and certification administrative charges shall be determined by SAMSA in terms of section 44 of the SAMSA Act (Determination of Charges).

## **7. AUDITS**

ICASA shall reserve the right to carry out annual audits of the functions listed in clause 4.1 above after providing SAMSA with a month's notice of the intended date of such audit, unless otherwise agreed upon by the parties.

## **8. DURATION OF THE MoU**

This MoU shall commence on the date of signature of the party last signing and shall remain valid until terminated in terms of clause 9 or such time as superseded by relevant legislation.

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## 9. TERMINATION

Either party may terminate this MoU by giving the other party written notice of same within no less than sixty (60) working days prior to the date of such termination.

## 10. GENERAL CONDITIONS

- 10.1. Should any clause or provision of this MoU be found to be invalid or unenforceable in any way, such clause or provision shall be deemed to be separate and divisible from the remaining provisions of this MoU and the validity and enforceability of the remaining terms and conditions shall not be affected;
- 10.2. The parties undertake to attempt to resolve any dispute that may arise regarding any application or interpretation of this MoU;
- 10.3. In the event that 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, any party may refer such dispute or difference to mediation, in the event mediation fails, either party may elect to terminate this agreement in terms of clause 9 of this MOU;
- 10.4. This document constitutes the sole record of this MoU between the parties;
- 10.5. No addition or variation of this MoU shall be of any force or effect unless agreed to by the parties in writing;
- 10.6. No indulgence, which any of the parties may grant another, shall constitute a waiver of any of such party's rights hereunder;
- 10.7. SAMSA shall not cede or transfer any of its obligations under and in terms of this MoU unless agreed to in writing by ICASA;

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10.8. SAMSA indemnifies ICASA against any legal claim that may be instituted against SAMSA because of any negligent act or omission on the part of SAMSA, or from any other matter in carrying out its functions in terms of this MoU;

10.9. Each Party shall execute all documents promptly and discharge its obligations to the other Party.

10.10. The parties hereby select their *domicilia citandi et executandi* for all purposes under this MoU as follows:

(a) ICASA Block B  
350 Witch-Hazel Avenue  
Eco Point Office Park  
Centurion, Gauteng

(b) SAMSA 161 Lynnwood Road,  
Cnr. Duncan and Lynnwood Road,  
Brooklyn,  
0181

#### 10. EXISTING MoU

This MoU replaces the MoU signed by the parties on 06 December 2011. SIGNED for and on behalf of ICASA by ICASA's duly authorised officer at CENTURION, GAUTENG on this 13 day of December 2018.

WILLINGTON NOWEPE  
Name in Print  
Capacity: CEO

MDGwepe  
Signature

Witnesses:

PRAVEEL LUPAL  
Name in Print:

[Signature]  
Signature

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Firdosia Subrayen  
Name in Print:

[Signature]  
Signature

Barnel MakoA  
Name in Print:

[Signature]  
Signature

SIGNED for and on behalf of SAMSA by SAMSA's duly authorised officer at BROOKLYN,  
PRETORIA on this 28.....day of NOVEMBER.....2018.

SARODR ALI  
Name in Print  
Capacity: DEPUTY CHIEF OPERATIONS OFFICER

[Signature]  
Signature

**Witnesses:**

HILTON JONES  
Name in Print:  
SENIOR RADIO SURVEYOR

[Signature]  
Signature

SIFISO KATULA  
Name in Print:  
RADIO SURVEYOR

[Signature]  
Signature

Deborah Petzer  
Name in Print:  
Office Administrator

[Signature]  
Signature

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#### **ANNEXURE A: ICASA - Appointed Inspectors**

1. The certificates of appointment as Inspectors issued to SAMSA Radio Surveyors shall be limited to the functions listed in section 17F (5) (a) and (b) of the ICASA Act and ITU Article 49 of the Radio Regulations.
2. In cases where non-compliance requires further investigation and evaluation as per sections 17F (5) (c) to (g) and 17G of the ICASA Act, the Inspector must notify the nearest ICASA Regional Office Manager in writing or other electronic means available to take appropriate action in that regard.
3. After an inspector has communicated with the ICASA Regional office in terms of clause 2 above, ICASA shall endeavour to advise SAMSA within fifteen (15) working days of its findings and the course of action to be taken in order to address the non-compliance.
4. ICASA indemnifies SAMSA against any legal claim that may be instituted because of any matter in carrying out its functions in terms of Annexure A.

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