

# **MEMORANDUM OF UNDERSTANDING (MoU)**

**Entered into between**

**INDEPENDENT COMMUNICATIONS AUTHORITY OF SOUTH AFRICA**

duly represented by **Mr Willington Ngwepe** in his capacity as  
Chief Executive Officer

(Hereinafter referred to as "**ICASA**")

and

**NATIONAL METROLOGY INSTITUTE OF SOUTH AFRICA**

duly represented by **Mr Ndwakhulu Mukhufhi**, in his capacity as  
Chief Executive Officer

(Hereinafter referred to as "**NMISA**")

(Hereinafter individually referred to as "**Party**" and collectively as "**Parties**")

For

**THE MEASUREMENT AND VERIFICATION OF DATA CONSUMPTION**

**WHEREAS**, ICASA is established in terms of section 192 of the Constitution of the Republic of South Africa, 1996 and section 3 of the Independent Communications Authority of South Africa Act, 2000 (Act No. 13 of 2000), and is responsible for regulating electronic communications, broadcasting and postal services in the Republic 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 (Act No. 36 of 2005) ("ECA");

Handwritten signatures of the representatives of ICASA and NMISA. There are three distinct signatures in black ink, located in the bottom right corner of the document.

**AND WHEREAS** ICASA is required by section 8 of the ECA to prescribe standard terms and conditions to be applied to individual licences and class licences. The terms and conditions may vary according to the different types of individual licences and according to different types of class licences;

**AND WHEREAS** the End-User and Subscriber Service Charter Regulations, 2016 ensures the protection of the interests of end-users, and includes, but are not limited to: the transparency of information about services, tariffs and minimum standards for electronic communications services to an end-user;

**AND WHEREAS** NMISA is a juristic person established in terms of section 8 of the Measurement Units and Measurement Standards Act, 2006 (Act No. 18 of 2006), ("Measurement Act") and NMISA realises, maintains and disseminates the National Measurement Standards ("NMS") and measurement units for South Africa in accordance with the Measurement Act;

**AND WHEREAS** NMISA provides for international equivalence of local measurements which are traceable to the NMS. In cases of disputes about the true value of a measurement, the value provided by the NMISA is legally accepted in terms of section 6 of the Measurement Act, as the most correct value;

**RECOGNISING**, that NMISA is the custodian of the NMS providing for accurate measurements in South Africa, NMISA is well positioned to assist ICASA in resolving consumer disputes relating to the accurate measurement of the consumption of mobile data.

## **1. PREAMBLE**

This MoU seeks to:

- 1.1 establish a formal relationship between NMISA and ICASA on the measurement of data consumption by the end-user and other projects related to measurement science.
- 1.2 establish a joint project to investigate and develop a verifiable mobile data measurement solution to enable independent end-user verification of the accuracy of mobile data usage statements;

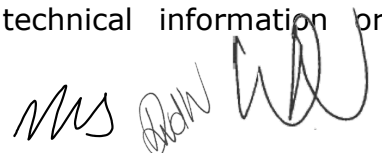


- 1.3 enhance the role of NMISA as the provider of measurement solutions in terms of the Measurement Act and the role of ICASA in the protection of the end-user when consuming mobile data in terms of the End-User and Subscriber Service Charter Regulations, 2016;
- 1.4 promote information sharing and research between the Parties on matters of mutual interest in the realm of data regulation;
- 1.5 strengthen cooperation between the Parties; and
- 1.6 define the basis for collaboration between the Parties in areas of research and consulting concerning data regulation and measurement and related matters.

Now therefore the Parties wish to record their understanding in writing as follows:

## **2. SCOPE OF THIS MoU**

- 2.1 The Parties enter into this MoU as independent Parties and nothing herein contained shall be construed as establishing a partnership or joint venture between the Parties, nor may any Party profess to represent the other Party, without the written consent of the other Party.
- 2.2 The Parties retain the right to enter into contractual arrangements with third parties for the execution of other projects. Nothing in this MoU shall be prejudicial to such arrangements.
- 2.3 Except as expressly set out in this MoU, neither Party shall have any obligation to the other unless and until such obligations are set out in a Project Agreement signed by both Parties. It is understood that while this MoU constitutes a statement of mutual intentions between the Parties, it does not constitute a legally binding obligation, and except for each Party's responsibility for costs incurred arising from this MoU, any confidentiality obligations and dispute resolution provisions, this MoU creates no rights in favour of either Party. A legally binding commitment for the proposed provision of services will result only from the signature by both Parties of a Project Agreement and such agreement will supersede this MoU.
- 2.4 Both parties shall appoint a person responsible for the coordination of the activities. Whenever more than the exchange of technical information or

Handwritten signatures of the parties, including 'MS', 'Daw', and a stylized signature.

exchange visits of individuals are planned, such activities shall be described in the Project Agreement which shall form an Annexure to this MoU that shall set forth as appropriate to the activity, a work plan, staffing requirements, cost estimates, funding sources, intellectual property rights, publications and other undertakings, obligations, or conditions not included in this MoU. In the case there is any inconsistency between the terms of this MoU and the terms of an Annexure hereto, the terms of this MoU shall prevail.

### **3. INTERPRETATION**

In this MoU and the Annexures hereto:

- 3.1 Clause headings are for reference purposes only and shall not govern or affect the interpretation of the particular clause;
- 3.2 Unless the context clearly indicates otherwise, words imparting:
  - 3.2.1 natural persons include juristic persons (incorporated or unincorporated), including any sphere of government, and vice versa;
  - 3.2.2 any one gender includes the other gender;
  - 3.2.3 the singular includes the plural, and vice versa;
- 3.3 If any provision in a definition is a substantive provision conferring rights or imposing obligations on any Party, notwithstanding that it is only in the definition clause, effect will be given to it as if it were a substantive provision in the body of this MoU;
- 3.4 Any reference to an enactment, regulation, rule or by-law is that enactment, regulation, rule or by-law as at the effective date hereof, and as amended or substituted from time to time;
- 3.5 All Annexures to this MoU shall be deemed to have been expressly incorporated into and form an integral part of this MoU;
- 3.6 Words and expressions defined in this MoU shall bear the same meaning in such Annexures to this MoU;



- 3.7 In the event of any conflict or ambiguity between the expressions and/or provisions of the MoU and Annexures, the provisions of the MoU shall prevail;
- 3.8 Where a number of days is prescribed in the MoU, such number will exclude the first day and include the last day, unless the last day is not a Business Day in the RSA, in which case the last day will be the next succeeding Business Day in the RSA;
- 3.9 If any amount is required to be paid in terms of this MoU to any party by the other party on a day which is not a business day then such payment will be effected on the next Business Day;
- 3.10 The use of the word "including" followed by a specific example/s will not be construed as limiting the meaning of the general wording preceding it;
- 3.11 The expiration or termination of this MoU will not affect those provisions of this MoU which expressly provide that they will continue to operate after any such expiration or termination or which of necessity must continue to have effect after such expiration or termination, notwithstanding the fact that the clauses themselves do not expressly provide this;
- 3.12 In its interpretation (this MoU being the product of negotiations between the Parties), this MoU will not be construed in favour of or against a party by reason of the extent to which that party or its professional advisors participated in the preparation of this MoU;
- 3.13 Words and expressions defined in any sub-clause will, for the purposes of the clause of which that sub-clause forms part, bear the meaning assigned to such words and expression in that sub-clause, notwithstanding that words and expressions have not been defined in the definitions and interpretation clause;
- 3.14 Where figures are referred to in numerals and in words, if there is any conflict between the two, the words shall prevail; and

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3.15 Any reference to a Party includes the Party's successors in title and permitted assigns.

#### 4. DEFINITIONS

In this MoU, unless clearly inconsistent with or otherwise indicated by the context, the following terms will have the meanings assigned to them hereunder and cognate expressions will have correspondent meanings, namely:

- 4.1 "**Annexure**" means the annexures, schedules and appendices to this MoU;
- 4.2 "**Business Day**" means any day other than a Saturday, Sunday or public holiday, officially proclaimed as such in South Africa;
- 4.3 "**Confidential Information**" means all information relevant and necessary to the execution of this MoU and its subsequent projects where the confidentiality of the information is protected in terms of legislation, and any information of whatever nature in any form or medium that is the property of ICASA or NMISA, including without limitation, scientific, business or financial data, Intellectual Property, specifications, drawings, design methodology, studies and findings;
- 4.4 "**Effective Date**" means the date of signature of the last signing Party and will remain in force until terminated by either Party in terms of clause 14;
- 4.5 "*MoU*" means the *Memorandum of Understanding*;
- 4.6 "**Project Agreement**" means a legal binding document naturally flowing from this MoU regulating a specific project that Parties will agree on pursuant to the adherence of each party's applicable supply chain management processes and procedures.
- 4.7 "**Project Reports**" means any document that details the procedures, methods, systems, information of any technical nature about the process and outcome of the Project Agreement.



## 5. DURATION

This MoU shall commence on the Effective Date and shall continue to remain in effect for a period of five (5) years and on such additional terms and conditions as may be negotiated between the Parties and agreed to in writing, unless terminated earlier by either Party in terms of clause 13.

## 6. COSTS

Each Party will bear its own expenses and costs incurred in connection with the negotiation, preparation and execution of this MoU and the Annexures thereto.

## 7. CONFIDENTIALITY

7.1 The Parties hereto recognise that information, agreed or noted by the Parties to be confidential, may be passed from one Party to another for the purpose of the collaboration and that Confidential Information may arise from the collaboration.

7.2 Any request made by either of the parties for Confidential Information in possession of the other shall be dealt with in accordance with the procedures set out in the Parties' respective enabling legislation, policies or procedures.

7.3 Both Parties undertake to:

7.3.1 treat the Confidential Information as strictly confidential;

7.3.2 not divulge Confidential Information to any third party;

7.3.3 sell, trade, publish, reproduce or reverse engineer any of the Confidential Information; and

7.3.4 not to put in use for any purpose unrelated to the collaboration, in any manner, any Confidential Information without the disclosing Party's prior written consent, except as provided by the exclusions specified in Clause 7.4 below.

7.4 The obligation of confidentiality in clause 7.3 shall not apply to information which:

- i. becomes known by third parties through no fault of the Parties hereto;
- ii. is or becomes published otherwise than by unauthorised publication in breach of this MoU;



- iii. is independently developed by an employee of the recipient who has not had access to any of the Confidential Information disclosed to the recipient by the other Party;
- iv. is in the public domain;
- v. can reasonably be demonstrated to be known to the Parties prior to disclosure under this MoU;
- vi. is disclosed to the Party or Parties by another party entitled to disclose the information;
- vii. the Parties hereto agree to release; or
- viii. is required to be disclosed by law.

7.5 The Parties hereto shall take due precautions to ensure that their staff, students and contractors, who have a need to know the Confidential Information, undertake the above obligations of confidentiality.

7.6 Each Party may not divulge, and will ensure that any of its employees or agents do not divulge, to any person, other than the duly authorised representatives of the other Party and its own staff.

## **8. PUBLICATION**

8.1 In order to protect the Confidential Information and any proprietary rights, neither Party may publish or publicly disclose the results of the research or any confidential information without the prior written consent of the other Party.

8.2 The Party that wishes to publish as described in clause 8.1 shall submit to the other Party a copy of the proposed publication at least thirty (30) days in advance of the submission of the publication to a third party. If the non-publishing Party determines that the proposed publication discloses confidential or proprietary information that requires protection, the non-publishing Party shall notify the disclosing Party of this determination within thirty (30) days of receipt of the proposed publication.

8.3 The non-publishing Party may request a delay of the publication, which delay shall not exceed ninety (90) days, or editing of the proposed publication, such editing not being deemed unreasonable by the Parties hereto.

*MS* *AdW* *WJ*



- 8.4 If the non-publishing Party, to whom a proposed publication has been submitted according to clause 8.2 fails to notify the submitting Party within thirty (30) days of receipt of the publication, then the submitting Party is free to submit or present the publication.

## **9. COOPERATIVE ACTIVITIES**

In order to achieve the purposes of this MoU, the Parties have adopted the following forms of cooperative activities of mutual interest set out below:

- 9.1 The Parties will advise each other on research in areas of mutual interest;
- 9.2 NMISA may appoint students to contribute to the research and development project, if feasible, to contribute to skills development in the measurement field in South Africa;
- 9.3 The Parties will cooperate with each other in the assignment of students appointed by NMISA for periods to be agreed upon;
- 9.4 The Parties will assist and support each other in the exchange of technical and scientific information including reference data, equipment and instrumentation;
- 9.5 The Parties will inform each other of research projects relevant to the other Party;
- 9.6 The Parties will avail to each other the necessary support to conduct a bi-lateral comparison of research output;
- 9.7 The Parties will participate in seminars, workshops and training courses of the other Party;
- 9.8 The Parties will avail to each other the necessary support for programmes supporting institutes from developing economies; and
- 9.9 any other activities as may be agreed upon between the Parties.

## **10. PROJECT REPORTS**

- 10.1 Nothing in this MoU shall prevent a registered student or staff member attached to either Party from submitting a thesis, dissertation or project report based on the results from the research emanating from this collaboration, for the purposes of obtaining a degree subject to the requirements of clause 7.

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- 10.2 The Parties hereto may consider the draft material during the writing up period of Project Reports and may, within thirty (30) days of receipt, request the exclusion of Confidential Information and may correct any errors of fact.
- 10.3 If required, examiners shall be appointed under an MoU of confidentiality between the specific tertiary institute and the examiners to adjudicate students referred to in clause 9.2 above that may need to be examined on their research or thesis pursuant to the successful completion of this Project. Either Party may request that access to a thesis, dissertation or project report be restricted for a period up to two (2) years. Such a request will not be unreasonably denied.

## **11. INTELLECTUAL PROPERTY**

- 11.1 The ownership of background intellectual property of the Parties existing prior to the commencement of the MoU will be and remains unaffected hereby.
- 11.2 All proprietary business information of NMISA including any and all formulations, recipes, inventions, discoveries, developments, innovations or any other intellectual property rights conceived and arising out of the scope of this MoU including but not limited to any ideas, patents, design, copyright, trade secrets or other proprietary rights will remain the property of the NMISA.
- 11.3 All proprietary business information of ICASA including any and all formulations, recipes, inventions, discoveries, developments, innovations or any other intellectual property rights conceived and arising out of the scope of this MoU including but not limited to any ideas, patents, design, copyright, trade secrets or other proprietary rights will remain the property of the ICASA.
- 11.4 All use and exchange of material (including software) will observe the intellectual property rights attaching to that material according to the relevant laws, regulations and practice of the Republic of South Africa.
- 11.5 In the event of a Party wishing to exploit, on a commercial basis, the intellectual property which has been jointly invented, the Parties hereby undertake to enter into a commercialisation MoU in respect of the intellectual property in question,

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which MoU shall be concluded to any commercial use and shall amongst others provide for payment of royalties.

## **12. DISPUTE RESOLUTION**

12.1 A dispute shall be deemed to have arisen when either Party notifies the other Party in writing to that effect.

12.2 The Parties shall use all reasonable efforts to resolve any dispute that may arise under this MoU through good faith negotiations. Each Party shall nominate a senior representative of its management to meet at any mutually agreed location to resolve the dispute. In the event that negotiations do not result in a mutually acceptable resolution, the dispute shall be handled in accordance with clause 12.3.

12.3 In the event that the Parties fail to resolve a dispute within fourteen (14) 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 accordance with the rules and regulations of the Independent Mediation Service of South Africa (IMSSA).

12.4 Any Party may demand that a dispute be referred to mediation by giving a written notice to that effect to the other Party.

12.5 The mediation must be held:

12.5.1 in Centurion, unless both Parties agree to another venue, and conducted in the English language;

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

12.6 In the event that mediation fails, either Party may elect either to terminate this MoU in terms of clause 144 or approach the arbitrator. Such arbitration shall be held in Pretoria, unless both Parties agree to another venue.

12.7 The arbitration shall be conducted in the English language before one (1) arbitrator appointed in accordance with the then in effect rules of the Arbitration

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Foundation of Southern Africa. These provisions shall not prevent either Party to approach any court or other judicial forum having appropriate jurisdiction to obtain timely injunctive or other relief in cases of urgency.

### **13. EXCLUSION OF LIABILITY/INDEMNITY**

13.1 Neither Party excludes or limits liability to the other Party for:

13.1.1 Death or personal injury; or

13.1.2 Fraud.

13.2 Each Party bears the liability arising out of its own negligence, wrongful act or omission, and its own breach of this MoU.

13.3 Accordingly, each Party indemnifies the other Party, its members, employees, agents, consultants and /or sub-contractors from and against all expenses, losses, damages and costs arising out of any wrongful or negligent act or omission by the Party during the duration of this MoU.

13.4 Neither Party shall be liable to the other Party for any indirect or consequential loss nor for damage sustained by the other Party arising out of, or in connection with, this MoU and each Party releases the other from any such liability.

### **14. TERMINATION**

14.1 This MoU will terminate:

14.1.1 Automatically five (5) years from the Effective Date or

14.1.2 Within the duration of the MoU, whereby either Party shall give the other Party 6 (six) month's written notice of its intention to terminate this MoU.

14.2 The termination of this MoU shall not affect the validity or duration of projects under this MoU that are initiated prior to such termination.

14.3 This MoU may be modified or extended by written agreement of the Parties. This MoU can be renewed in writing thereafter.

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## 15. GENERAL

- 15.1 The Parties do not intend that any agency or partnership relationship be created between them by this MoU and neither Party may bind the other in any way.
- 15.2 All additions or modifications to this MoU must be made in writing and must be executed by both Parties.
- 15.3 Neither Party may assign or cede any benefit, obligation or interest they may have in this MoU to any other person without the prior written consent of the other Party.
- 15.4 Neither Party is regarded as having waived, or is precluded in any way from exercising any right under or arising out of this MoU by reason of such Party having at any time granted any extension of time for, or having shown any indulgency to, the other Party with reference to any performance of any obligation under this MoU, or having failed to enforce, or delayed in enforcing any right of action against the other party.

## 16. INSTITUTIONAL CONTACT PERSONS

For purposes of this MoU:

- 16.1 Manager: Customer Complaints and Dispute Resolutions, will be the main contact person at ICASA.
- 16.2 Director: Strategy, Business Development and Governance, will be the main contact person at NMISA.
- 16.3 Should the Parties have to exchange information, as a result of the Project Agreement, the processes set out in such Project Agreement shall be followed.

Mrs. B. W. W.

## 17. DOMICILIA

The Parties choose as their respective *domicilium citandi et executandi* for purposes of this MoU as set out hereunder.

**ICASA**

350 Witch-Hazel Ave,  
Eco-Point Office Park,  
Eco Park  
Centurion,

**Tel:** 012 568 3000

**Contact email address:**

[gmalebusha@icasa.org.za](mailto:gmalebusha@icasa.org.za)

Copy: [info@icasa.org.za](mailto:info@icasa.org.za)

Office: Manager Customer  
Complaints and Dispute Resolution:  
Compliance and Consumer Affairs

**NMISA**

CSIR Campus, Building 5  
Meiring Naude Road  
Brummeria  
Pretoria

**Tel:** 012 841 4152

**Contact email address:**

[nvdwalt@nmisa.org](mailto:nvdwalt@nmisa.org)

Copy: [info@nmisa.org](mailto:info@nmisa.org)

Office: Director: Strategy,  
Business Development and  
Governance

**THUS DONE AND SIGNED IN** Pretoria **ON THIS** 6th **DAY OF** July **2020**

Accepted for and on behalf of

**ICASA**

and duly authorised

**Signature:**



**Name:**

Mr Willington Ngwepe  
ICASA CEO

Accepted for and on behalf of

**NMISA**

and duly authorised

**Signature:**



**Name:**

Mr Ndwakhulu Mukhufhi  
NMISA CEO



**Designation:**

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Natasha van der Walt

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**ANNEXURE 1: The Measurement and Verification of Data Consumption**

**A. Subject**

**B. Partners**

**C. Background & Aim of Proposed Collaboration**

**D. Financial Arrangement for Exchange of Visits for Collaboration under this Project**

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