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**MEMORANDUM OF UNDERSTANDING**

**BETWEEN**

**THE MINISTER OF COMMUNICATIONS**

**AND**

**THE MINISTER OF TELECOMMUNICATIONS AND POSTAL SERVICES**

**ON THE IMPLEMENTATION OF CERTAIN MATTERS RELATING TO THE  
TRANSFER OF POWERS AND FUNCTIONS UNDER THE INDEPENDENT  
COMMUNICATIONS AUTHORITY OF SOUTH AFRICA ACT, 2000  
(ACT NO. 13 OF 2000), AND THE ELECTRONIC COMMUNICATIONS ACT, 2005  
(ACT NO. 36 OF 2005)**



PREAMBLE

CONSIDERING the statement made by the President on 25 May 2014 in which he referred to the fast growing telecommunications sector of our country and to the developmental value of the Post Office and that a new department will ensure that the Republic derives more value out of the booming information communications and technology industry and the postal services sector; and

CONSIDERING that the President further stated that a new Communications Ministry has been established which will be responsible for overarching communication policy and strategy, information dissemination and publicity as well as the branding of the country abroad and that improved communication and marketing will promote an informed citizenry and also assist the country to promote investments, economic growth and job creation; and

SINCE the Minister of Telecommunications and Postal Services is entrusted with the administration of the Electronic Communications Authority Act, 2005 (Act No. 36 of 2005), and the Postal Services Act, 1998 (Act No. 124 of 1998), amongst others, and the Minister of Communications is entrusted with the administration of the Independent Communications Authority Act (Act No. 19 of 2000), and the Broadcasting Act, 1998 (Act No. 4 of 1998), amongst others, and since the said Acts are interrelated and interdependent, and

SINCE section 41 of the Constitution of the Republic of South Africa calls upon all spheres of government and all organs of state within each sphere to co-operate with one another in mutual trust and good faith by—

- (a) fostering friendly relations;
- (b) assisting and supporting one another;
- (c) informing one another of, and consulting one another on, matters of common interest;
- (d) co-ordinating their actions and legislation with one another;
- (e) adhering to agreed procedures; and
- (f) avoiding legal proceedings against one another.

the Minister of Telecommunications and Postal Services and the Minister of Communications agree as follows:—

**CLAUSE 1**

**Parties to MOU**

- 1. The Parties to this Memorandum of Understanding (MOU) are:
  - (a) The Minister of Communications (MoC); and
  - (b) The Minister of Telecommunications and Postal Services (MOTPS).

**CLAUSE 2**

**Objectives**

- 2. The MOU is concluded with the aim of creating a framework:
  - (a) within which the Parties can co-operate on the implementation of certain matters relating to the assignment of powers and functions under the Independent Communications Authority of South Africa Act, 2000 (Act No. 13

of 2000) (ICASA Act), and the Electronic Communications Act, 2005 (Act No 36 of 2005) (ECA);

- (b) to regulate their relationship and mutual co-operation regarding the laws assigned to them; and
- (c) to assist the Parties in giving effect to the constitutional obligation of implementing national legislation; developing and implementing national policy, and coordinating functions entrusted to them.

**CLAUSE 3**

**Duration**

3. The MoU shall commence on the date of signature, and unless otherwise provided herein shall terminate on the date as agreed in writing between the Parties

**CLAUSE 4**

**Undertakings and responsibilities**

4. (1) The Parties hereby undertake to administer the powers and functions assigned to the Parties by Proclamation in accordance with the terms of this MoU

(2) Part A of this MoU deals with the following provisions of the

ICASA Act:

- (a) Section 4(3)(c);
- (b) section 4(3A)(a);
- (c) section 5(1B);
- (d) section 5(3)(b)(ii).

- (d) section 6A(2)(a) and (b);
- (f) section 7(1)(b);
- (g) section 8(3),
- (h) section 9(2)(b);
- (i) section 10,
- (j) section 15(1A); and
- (k) section 16(1) and (2).

(3) Part B of this MoU deals with the following provisions of the

ECA:

- (a) Section 3;
- (b) section 34(2), (7)(c) and (10) and
- (c) Chapter 9.

**PART A**

**(Independent Communications Authority of South Africa Act, 2000 (Act No. 13 of 2000))**

**CLAUSE 6**

**Section 4(3)(a)**

6. (1) (a) The function of the Minister referred to in section 4(3)(a) of the ICASA Act is allocated to the MoC in so far as the Independent Communications Authority (ICASA) may make recommendations to that Minister on policy matters and amendments to the ICASA Act and the Broadcasting Act 1999 (Act No. 4 of 1999), which accord with the objects of these Acts to promote development in the communications sectors

*[Handwritten signature]*

(b) The function of the Minister referred to in section 4(3)(a) of the ICASA Act is allocated to the MoTPS, in so far as ICASA may make recommendations to that Minister on policy matters and amendments to the ECA and the Postal Services Act, 1998 (Act No. 124 of 1998), which accord with the objects of these Acts to promote development in the postal and communications sectors

(c) The Parties undertake to align their respective policies in order to avoid any possible conflict and to cooperate in order to achieve the objectives of this MoU

**Section 4(3A)(a)**

(2) (a) The MoC undertakes to make policy and issue policy directives in terms of the Broadcasting Act, 1999 (Act No. 4 of 1999), the ICASA Act and any other applicable law and to refer such policy and policy directions to ICASA for consideration

(b) The MoTPS undertakes to make policy and issue policy directives in terms of the Postal Services Act, 1998 (Act No. 124 of 1998), the ECA and any other applicable law and to refer such policy and policy directions to ICASA for consideration

(c) The Parties undertake to align their respective policies and policy directions in order to avoid any possible conflict and to cooperate in order to achieve the objectives of this MoU

CLAUSE 6

Section 5(1B)

6. (1) The MoC undertakes to consult the MoTPS before making a recommendation to the National Assembly contemplated in section 5(1B) of the ICASA Act

Section 5(3)(b)(ii)

(2) The MoC undertakes to consult the MoTPS in determining the qualifications, expertise and experience required of persons to be appointed to the Council of ICASA in terms of section 5(3)(b)(ii) of the ICASA Act.

CLAUSE 7

Section 6A(2)(a) and (b)

7. (1) The MoC undertakes to consult with the MoTPS on the performance management system with reference to appropriate key performance indicators and measurable performance targets for councillors of ICASA

(2) The MoTPS must provide appropriate key performance indicators and measurable performance targets in respect of the legislation administered by that Minister and the MoC must likewise provide appropriate key performance indicators and measurable performance targets in respect of the legislation administered by that Minister

*[Handwritten signature]*

CLAUSE 8

Section 7(1)(b)

8. The MoC undertakes to consult the MoTPS before making a recommendation for the reappointment of the chairperson of the Council of ICASA in terms of section 5 of the ICASA Act

CLAUSE 9

Section 8(3)

9. The MoC undertakes to consult the MoTPS if the MoC contemplates recommending to the National Assembly that a councillor be removed from office in terms of section 8(2) or if the MoC contemplates suspending a councillor in terms of section 8(3)(a) of the ICASA Act.

CLAUSE 10

Section 9(2)(a)

10. The MoC undertakes to consult the MoTPS before filling a vacancy in the Council of ICASA or before extending the term of office of a councillor who is filling a vacancy.



CLAUSE 11

Section 10

11. The MoC undertakes to consult the MoTPS before determining the remuneration, allowances and benefits of the chairperson and other councillors with the concurrence of the Minister of Finance.

CLAUSE 12

Section 15(1A)

12. The Parties undertake to apply section 15(1A) with due consideration of the relevant laws they administer.

CLAUSE 13

Section 16(1) and (2)

13. (1) The Parties undertake to share the information and particulars supplied by the Council in relation to the activities of the Authority

(2) The Parties undertake to share information supplied by the Council for incorporation in the annual report before the report is tabled in Parliament by the MoC

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PART B

(Electronic Communications Act, 2005 (Act No. 36 of 2005))

CLAUSE 14

Section 3

14. (1) The function of the Minister referred to in section 3 of the ECA is allocated to the MoC in so far as policies contemplated in that section relate to the Broadcasting Act, 1999 (Act No. 4 of 1999), and the ICASA Act

(2) The function of the Minister referred to in section 3 of the ECA is allocated to the MOTPS in so far as policies contemplated in that section relate to the ECA

(3) The Parties undertake to align their respective policies in order to avoid any possible conflict and to cooperate in order to achieve the objectives of this MoU.

(4) The parties specifically undertake to guard against any unbundling of the converged information, communications and technology sector.

CLAUSE 15

Section 34(2)

15. (1) The MOTPS undertakes to consult the MoC before approving the national radio frequency plan contemplated in section 34(2), in so far as the plan relates to broadcasting radio frequency bands

Section 34(7)(c) and (10)

(2) The MoTSPS undertakes to consult the MoC when administering section 34(7)(c) in so far as it relates to broadcasting radio frequency bands or the migration of broadcasting users

CLAUSE 16

Chapter 9 (sections 48 to 66)

16. The MoC undertakes to consult the MoTSPS where the administration of Chapter 9 may affect the functions of the MoTSPS and in order to give effect to the objectives this MoU

CLAUSE 17

Institution of legal proceedings

17. Each Party undertakes, in so far as any legal proceedings may be instituted by or against that Party in relation to functions performed under the laws administered by that Party, to inform and to cooperate with the other Party in so far as the legal proceedings may relate to or affect functions performed under the laws administered by the other Party.

CLAUSE 18

Amendment of MoU

18. The Parties may amend the MoU by written agreement and such amendment shall take effect on the date of the last signature

CLAUSE 19

Undertaking by Parties

19. Both Parties undertake, in the national interest, to at all times exercise good faith in all dealings with one another, to cooperate fully and to take all necessary and reasonable steps in order to comply with the spirit and letter of this MoU at all times, in order to--

- (a) achieve the objectives of the National Development Plan
- (b) comply with the policies developed by the Cabinet and
- (c) implement smoothly and efficiently the legislation administered by the Parties

CLAUSE 20


Settlement of disputes

20. (1) Any dispute between the Parties must be settled in an amicable manner by way of consultations or by mediation through <sup>a person appointed by the President</sup> ~~a mutually-agreed person~~

*[Handwritten signature]*

(2) In the event of a dispute which cannot be resolved as contemplated in subclause (1) the matter must be referred to the <sup>President</sup> Cabinet for a decision

Signed at \_\_\_\_\_ on 12th January 2012  
  
MINISTER OF COMMUNICATIONS  
WITNESS

Signed at \_\_\_\_\_ on 12th January 2012  
  
MINISTER OF TELECOMMUNICATIONS AND POSTAL SERVICES  
WITNESS

