

DEPARTMENT OF MINERAL RESOURCES AND ENERGY

GENERAL NOTICE 436 OF 2021

SOUTH AFRICAN



*CIVIL AVIATION
AUTHORITY*



CO-OPERATIVE AGREEMENT

**IN RESPECT OF THE MONITORING AND CONTROL OF
RADIOACTIVE MATERIAL OR EXPOSURE TO IONISING RADIATION**

ENTERED INTO BY AND BETWEEN

THE NATIONAL NUCLEAR REGULATOR

(hereinafter referred to as “the NNR”)

AND

THE SOUTH AFRICAN CIVIL AVIATION AUTHORITY

(hereinafter referred to as “the SACAA”)

Jointly referred to as “the Parties”

PREAMBLE

The Parties:

- (a) **Having regard to** the provisions of section 6 of the National Nuclear Regulator Act, 1999 (Act No. 47 of 1999) (“National Nuclear Regulator Act”) read together with the provisions of the National Nuclear Regulator Act: Regulations (“the Regulations”) in terms of section 6(3) of the National Nuclear Regulator Act on Co-operative Governance in respect of the Monitoring and Control of Radioactive Material or Exposure to Ionising Radiation published under Government Notice No. 709 of 24 May 2002;
- (b) **And having regard** to the Co-operative Agreement in respect of the Monitoring and Control of Radioactive Material or Exposure to Ionising Radiation entered into between the Parties in August 2007 pursuant to the provisions of section 6 of the National Nuclear Regulator Act;
- (c) **And having regard to** the provisions of section 35 and 40 of the Intergovernmental Relations Framework Act, 2005 (Act No. 13 of 2005);
- (d) **Desiring to** revise the Co-operative Agreement entered into between the Parties in August 2007 and to conclude a revised Co-operative Agreement to foster stronger co-operation between the Parties;
- (e) **Recognising that** the National Nuclear Regulator (“the NNR”) has responsibilities with regard to the regulation of any action, which is capable of causing nuclear damage, in terms of the National Nuclear Regulator Act;
- (f) **Recognising that** the South African Civil Aviation Authority (“the SACAA”) also has responsibilities with regard to the regulation of transportation of radioactive materials by air in terms of the Civil Aviation Act, 2009 (Act No. 13 of 2009) (“the Civil Aviation Act”) read together with the Civil Aviation Regulations, 2011 (“CARs, 2011”);
- (g) **Recognising that** the Parties have overlapping statutory responsibilities with regard to the regulation of radioactive materials transported by air, in terms of their respective legislations;
- (h) **Recognising and respecting** each other’s autonomy and statutory responsibilities whilst recognising the NNR as the lead authority in the regulation of any actions, which is capable of causing nuclear damage, with a view to protecting persons, property and the environment against nuclear damage.

Now therefore the Parties agree as follows–**1. Definitions**

For the purpose of this Co-operative Agreement, unless the context indicates otherwise:

- 1.1. **“Agreement”** means this Co-operative Agreement including all attachments and appendices hereto and all documents incorporated by reference herein;
- 1.2 **“Chief Executive Officer”** means the National Nuclear Regulator CEO and the Director of Civil Aviation;
- 1.3 **“Confidential information”** shall mean any information which is prohibited to be disclosed in terms of section 51 of the National Nuclear Regulator Act, 1999 (Act No. 47 of 1999), and the Parties’ respective technologies or businesses made available by the disclosing party to the receiving party, including without limitation, information data, know how, formulas, concepts ,tests, drawings, information and data relating to business operations, plans, financial situation, authorisation holders and employees;
- 1.4 **“Day”** means any calendar day, excluding Saturdays, Sundays and public holidays within the Republic of South Africa;
- 1.5. **“Lead responsibility”** refers to the overall primary responsibility, both administratively and financially for an activity;
- 1.6 **“National Executive Authority”** means a cabinet member who is accountable to Parliament for a public entity or, in whose portfolio it falls. In this Agreement, it means the Minister of Energy and/ or Minister of Transport;
- 1.7. **“Reasonably sufficient time”** means–
 - (a) in the case of development of legislation, regulations, standards or policy matters, sixty (60) days;
 - (b) in the case of other documents, thirty (30) days;
 - (c) in the case of participation in urgent investigations, at least ten (10) days before the date of the activity;
 - (d) in the case of press releases, at least two (2) days and where urgent at least three (3) hours before the release of the press statement; and
 - (e) in the case of a normal exemption from the Civil Aviation Regulations, 2011 15 (fifteen) working days and in the case of an urgent exemption, 3 (three) working days.

- 1.8. **“Support responsibility”** means to provide input into an activity;
- 1.9 **“Transportation by air”** means transporting, or causing to be transported, by air and includes all operations and conditions associated with and involved in the movement of nuclear or other radioactive material by air such as the preparation, consigning, loading, carriage, including in-transit storage, unloading and receipt at the final destination of loads of such material and packages.
- 1.10 **“Work-plan”** means a document to be used to measure the effective implementation of this Agreement.

2. Purpose of this Agreement

- 2.1 The aim of this Agreement is to promote co-operation, good conduct, participation, integration and co-ordination between the Parties in the monitoring and control of nuclear hazards transportation by air and includes, but is not limited, to –
 - 2.1.1 policy development and implementation;
 - 2.1.2 the exercise of statutory powers;
 - 2.1.3 the performance of a statutory function;
 - 2.1.4 the development and provision of a service or product;
 - 2.1.5 provision of information and guidance;
 - 2.1.6 the implementation of a government programme; or
 - 2.1.7 managing a joint programme or projects.
- 2.2 The objectives and priorities of this Agreement are to–
 - 2.2.1 ensure the effective monitoring and control of any action, which is capable of causing nuclear damage during transportation by air;
 - 2.2.2 co-ordinate the exercise of such functions;
 - 2.2.3 minimise the duplication of such functions and procedures regarding the exercise of such functions, comment of draft regulations, sharing knowledge; and
 - 2.2.4 promote consistency in the exercise of such functions.
- 2.3 The Parties agree to act jointly in pursuit of the aims and objectives of this Agreement, to act in good faith and reasonably and warrant that they shall not do anything or refrain from doing anything that might prejudice or detract from the powers or functions of each other.

3. Roles and responsibilities

- 3.1 In terms of the National Nuclear Regulator Act, the role and responsibilities of the NNR are to, but not limited to—
 - 3.1.1 develop legislation, safety and security standards and regulatory practices, regulations, conditions of authorisation and guidelines;
 - 3.1.2 issue nuclear authorisations;
 - 3.1.3 investigate accidents and incidents and other occurrences;
 - 3.1.4 conduct inspections and audits;
 - 3.1.5 enforce applicable legislation; and
 - 3.1.6 conduct research and development on radiation hazards.
- 3.2 In accordance with the Civil Aviation Act, the role and responsibilities of the SACAA are, but not limited to –
 - 3.2.1 develop legislation, safety and security standards and regulatory practices, regulations, conditions of authorisation and guidelines;
 - 3.2.2 consider and process applications for exemptions and consider input from the NNR, when necessary, in doing so;
 - 3.2.3 investigate aviation accidents and incidents and other occurrences;
 - 3.2.4 conduct inspections and audits;
 - 3.2.5 enforce applicable legislation; and
 - 3.2.6 issue press releases.

4. Co-ordination of functions

- 4.1 The Parties agree to co-ordinate their respective functions with respect to –
 - 4.1.1 the monitoring, control and enforcement of actions, which are capable of causing nuclear damage;
- 4.2 The NNR shall have the lead responsibility in all the activities listed in clause 3.1 and any other activities provided for in terms of the National Nuclear Regulator Act and the SACAA shall, when necessary, provide support to the NNR.

- 4.3 The SACAA shall take the lead responsibility in all aviation activities listed in clause 3.2 and any other activities provided for in terms of the Civil Aviation Act and the CARs, 2011 and the NNR shall, when necessary, provide support to the SACAA.
- 4.4 The party with the lead responsibility shall consult with the party with support responsibility on identified activities, or any other activity not identified in this Co-operative Agreement in which a party may have the lead responsibility, to enable the party with support responsibility to participate, make inputs and recommendations in the activity consulted upon.
- 4.5 The party with the lead responsibility shall provide to the party with support responsibility all necessary and relevant information, and reasonably sufficient time to enable the party with support responsibility to have a meaningful participation and make informed inputs and recommendations.
- 4.6 The party with the lead responsibility shall duly consider the inputs and recommendations made by the party with support responsibility prior to the party with the lead responsibility concluding its processes and making its findings, decisions, or recommendations public. As and when the circumstances require, the Parties agree to make joint findings, decisions or recommendations.
- 4.7 The Parties shall ensure that during consultations the following principles are upheld:
 - 4.7.1 co-ordination of the exercise of functions;
 - 4.7.2 elimination, and where impossible, minimisation of unnecessary duplication of administrative and safety requirements;
 - 4.7.3 compliance with applicable safety requirements;
 - 4.7.4 elimination and prevention of conflicting administrative and safety requirements; and
 - 4.7.5 avoidance of issuing conflicting instructions.
- 4.8 The Parties agree to communicate to each other and provide each other with written reports on anomalies identified by a party during the performance of its functions, that may have a bearing on the responsibilities of the other party and both Parties shall co-ordinate the resolution of the identified anomalies.

5. Mechanisms and procedures for co-operation between the Parties

- 5.1 The Parties agree to establish the following institutional mechanisms, including their composition and functions, for the effective management and implementation of this Agreement:

- 5.1.1 A Co-ordinating Committee comprising of the Chief Executive Officers of the Parties or his/her delegate and two more persons from each party, nominated by the Chief Executive Officers;
- 5.1.2 A Working Group Committee comprising of an adequate number of representatives from each party and a person designated by the Chief Executive Officers shall head the representatives of each party.

5.2 The Co-ordinating Committee shall–

- 5.2.1 meet as and when it is considered necessary;
- 5.2.2 be chaired by the Chief Executive Officers, alternating;
- 5.2.3 consider and approve the work-plan to implement this Agreement;
- 5.2.4 convene to resolve disputes referred to it by the Working Group Committee;
- 5.2.5 review the implementation of this Agreement; and
- 5.2.6 maintain records of the committee meetings/or interactions

5.3 The Working Group shall–

- 5.3.1 meet as and when required but not less than once a year;
- 5.3.2 ensure co-operation between the Parties and identify the tasks to be performed to give effect to this Agreement;
- 5.3.3 establish working groups, where the need arises, to conduct the tasks identified to be performed to give effect to this Agreement;
- 5.3.4 as and when a dispute arises, convene to consult and negotiate in an attempt to settle any such dispute. In the event that the dispute remains unresolved, the dispute will be escalated to the Co-ordinating Committee;
- 5.3.5 submit reports to the Co-ordinating Committee; and
- 5.3.6 maintain records of the Committee meetings/or interactions.

5.4 The Working Group shall develop and agree on a work-plan to implement this Agreement. The work plan shall state the following minimum information–

- 5.4.1 objectives;
- 5.4.2 measurable indicators;
- 5.4.3 outcomes and/or outputs;
- 5.4.4 timelines; and

5.4.5 budget.

6. Expert assistance and support

The Parties agree, as and when required, to provide the following expert assistance and support to each other–

- 6.1 The NNR shall provide radiation expert assistance and support to the SACAA; and
- 6.2 The SACAA shall provide expert assistance and support to the NNR in respect of transportation of radioactive materials by air.

7. Information sharing and communication

The Parties agree to share relevant information as soon as practically possible and the means of communication shall be in accordance with the established communication protocol annexed to the Agreement marked “A”.

8. The use of safety and security standards

The Parties agree to use and apply the following standards for the regulation, monitoring and control of radiation falling within their respective responsibilities–

- 8.1. Regulation on Safety Standards and Regulatory Practices promulgated in terms of section 36 of the National Nuclear Regulator Act, as amended;
- 8.2. The Civil Aviation Regulations, 2011 made in terms of section 155(1) of the Civil Aviation Act, 2009 and ICAO Doc 9284, the Technical Instructions for the Safe Transport of Dangerous Goods by Air, as amended; and
- 8.3 Any other act, regulations, standards, guidelines, procedures that may be promulgated or developed from time to time in terms of each Party's legislative framework.

9. Confidentiality

- 9.1 Each Party shall treat information furnished by the other party for purposes of the execution of this Agreement, as confidential.
- 9.2 A party so furnished with information shall not disclose such information to another person without the prior written consent of the other party and shall take reasonable steps to ensure that such information is not disclosed to another person.
- 9.3 Both Parties shall keep all commercially sensitive information obtained by them in the context of the Agreement confidential and shall not divulge it without the written approval of the other Party.

- 9.4 It is envisaged that pursuant to this Agreement, information, reports or data and related matter, whether of a confidential or proprietary nature or not, belonging to either Party may be disclosed or otherwise become available to the other Party. Each Party agrees to:
- 9.4.1 use such information, reports or data and related matter solely in connection with the performance of its obligations in terms of this Agreement.
 - 9.4.2. restrict the use of such information, reports or data and related matter exclusively to the purpose directed by the other Party.
- 9.5 Without limiting any obligations placed on the Parties, the above provisions relating to disclosure or use of confidential information shall not apply to:
- 9.5.1 information which can be shown by written documentation to be in the public domain at the time of disclosure or later becomes publicly available other than through breach of this Agreement and could be obtained by any person with no more than reasonable diligence.
 - 9.5.2 information that is disclosed with prior written approval of the disclosing party.
 - 9.5.3 information disclosed pursuant to any bona fide subpoena, provided that written notice of such subpoena shall be given to the disclosing party to make such objections or otherwise intervene in the proceedings, as it deems proper.

10. Resolution of disputes

- 10.1 The Parties agree that, any dispute arising between them relating to the implementation, interpretation, application, breach of, or non-compliance with this Agreement shall be resolved as follows:
- 10.1.1 a dispute shall be initiated in writing by an Aggrieved Party;
 - 10.1.2 the Parties shall, within thirty (30) days from the initiation of the dispute, make all reasonable efforts, in good faith to settle any such dispute through consultation and negotiation;
 - 10.1.3 if the dispute remains unresolved, it shall be immediately referred to the Co-ordinating Committee. The Co-ordinating Committee shall, within sixty (60) days from date of referral, convene and make all reasonable efforts to resolve the of dispute;
 - 10.1.4 if the dispute remains unresolved after referral to the Co-ordinating Committee, the details of such dispute shall

immediately be reported to the relevant executive authorities for their determination.

11. Record of delegation

No delegations have been made in terms of section 238 of the Constitution of the Republic of South Africa, 1996.

12. Liaison

12.1 The designated offices by the respective Parties for the coordination and management of this Agreement are as follows:

NNR:

Manager Communications and Stakeholder Relations
Eco Glades 2
Block G, Eco Glades Office Park
420 Witch Hazel Avenue
Highveld Ext 75, Eco Park
Centurion
0157
Email: gmoonsamy@nnr.co.za

SACAA:

Executive Manager: Aviation Security
Ikhaya Lokundiza
Building 16, Treur Close
Waterfall Park
Bekker Street, Midrand
Telephone: 011 545 1144
Email: gqekel@caa.co.za

13. Duration and amendment of this Agreement

13.1 This Agreement shall commence on the date of its signing and shall remain in force indefinitely, unless terminated by mutual Agreement between the parties in writing.

13.2 No amendment, alteration or variation of this Agreement shall be of any force or effect unless reduced to writing and signed by the Parties. Such changes shall be incorporated as an Addendum to this Agreement.

13.3 This Agreement shall be reviewed as and when required but no later than every 5 years.

14. Legal Succession

This Agreement shall be binding on the successors-in-title and permitted assigns of the Parties hereto.

15. Whole Agreement

This Agreement and its annexures constitutes the whole Agreement between the Parties. There are no other conditions, representation, whether oral or written and whether expressed or implied, applicable to this Agreement, save for those contained in this Agreement.