

AGREEMENT

between

SOUTH AFRICAN AIRWAYS (SOC) LIMITED

and

AVIATION UNION OF SOUTH AFRICA (AUSA)

and

NATIONAL TRANSPORT MOVEMENT (NTM)

and

NATIONAL UNION OF METAL WORKERS OF SOUTH AFRICA (NUMSA)

and

SOUTH AFRICAN CABIN CREW ASSOCIATION (SACCA)

and

SOUTH AFRICAN AIRWAYS PILOTS' ASSOCIATION (SAAPA)

and

SOUTH AFRICAN TRANSPORT AND ALLIED WORKERS UNION

and

SOLIDARITY

and

REPRESENTATIVES OF NON-UNIONISED EMPLOYEES

1. DEFINITIONS

- 1.1. **"Agreement"** means this Agreement concluded between the parties;
- 1.2. **"AUSA"** means the Aviation Union of South Africa, a trade union registered in terms of the LRA;
- 1.3. **"BRPs"** means the Company's joint business rescue practitioners, being Mr Leslie Matuson and Mr Siviwe Dongwana;
- 1.4. **"Company"** means South African Airways (SOC) Ltd, a state-owned entity with registration number 1997/022444/30, which is currently in business rescue in terms of the Companies Act;
- 1.5. **"Companies Act"** means the Companies Act 71 of 2008;
- 1.6. **"Employees"** means all employees of the Company, including fixed-term and permanent employees;
- 1.7. **"Lockdown"** shall mean the period from the 27 of March 2020 to 30 April 2020 declared in terms of the Disaster Management Act 57 of 2002 in which employees were absent without pay unless placed on annual leave by the Company or by agreement.
- 1.8. **"LRA"** means the Labour Relations Act 66 of 1995;
- 1.9. **"NUMSA"** means the National Union of Metalworkers of South Africa, a trade union registered in terms of the LRA;
- 1.10. **"NTM"** means the National Transport Movement, a trade union registered in terms of the LRA;
- 1.11. **"Parties"** mean the Company, the Unions and the Representatives;
- 1.12. **"Representatives"** mean the duly elected representatives of the non-unionised employees at both management and non-management level;
- 1.13. **"SAAPA"** means the South African Airways' Pilots Association, a trade union registered in terms of the LRA;
- 1.14. **"SACCA"** means the South African Cabin Crew Association, a trade union registered in terms of the LRA;
- 1.15. **"SATAWU"** means the South African Transport and Allied Workers Union, a trade union registered in terms of the LRA;
- 1.16. **"Solidarity"** means Solidariteit/Solidarity, a trade union registered in terms of the LRA;
- 1.17. **"Termination Date"** means 30 April 2020, notwithstanding the Signature Date;

1.18. “**Unions**” mean AUSA, SACCA, SAAPA, NUMSA, SATAWU and NTM; and

1.19. “**Signature Date**” means the date of the last signature of this Agreement.

2. **RECORDAL**

2.1. On 9 March 2020, the Company issued a notice in terms of section 189(3) of the LRA to the Unions and non-unionised employees to this Agreement and Employees, in terms of which the Company invited the Unions and non-unionised employees to consult on the possible dismissals of Employees as a result of the Company’s operational requirements.

2.2. Prior to the conclusion of that consultation process, on 13 April 2020 the Company’s sole shareholder unequivocally confirmed that it would not be providing any further funding to the Company in order to assist with the business rescue of the Company.

2.3. In circumstances where it seems unlikely that the Company will be successfully rescued as a result of the business rescue process, the Parties have agreed to conclude this Agreement.

3. **TERMINATION OF EMPLOYMENT**

3.1. The Parties agree that the employment of Employees will terminate by mutual agreement, due to the Company’s operational requirements on the Termination Date.

3.2. The employment of those Employees who are represented by the Representatives will terminate by mutual agreement, due to the Company’s operational requirements on 30 April 2020, on condition that such employees individually confirm in writing that they are bound by this Agreement by no later than 24 April 2020.

3.3. The termination of the Employees’ employment as recorded in paragraphs 3.1 and 3.2 above shall include the termination of all employment contractual obligations, save for those which expressly or by necessary implication, survive the termination of the employment relationship between the Company and the Employees, such as confidentiality obligations, intellectual property and any restraint of trade provisions.

4. **SEVERANCE PACKAGE**

4.1. Employees whose employment terminates in terms of this Agreement will be entitled to the following severance package, subject to the terms of this Agreement and the condition precedent set out at clause 5 below:

4.1.1. severance pay calculated at 1 (one) week’s remuneration per completed year of service;

- 4.1.2. payment of one month's remuneration in *lieu* of notice pay, irrespective of any other contractual provisions;
 - 4.1.3. payment for accrued, untaken annual leave (which for the avoidance of any doubt takes into account, but is not limited to, all annual leave taken by and paid to Employees by the Company to offset unpaid absence during the period of the Lockdown, pro-rated up until the Termination Date; and
 - 4.1.4. a pro-rated 13th cheque (if the Employee is entitled to a 13th cheque).
- 4.2. The severance package above shall be the only remuneration and benefits (other than such pension benefits members may be entitled to) paid by the Company and will only be paid subject to the remaining terms of this Agreement once the South African Revenue Service issues an original Income Tax directive in respect of each Employee to the Company.

5. **CONDITION PRECEDENT**

- 5.1. In order to make payment of the severance packages set out in clause 4.1 above, the Company is required to sell and dispose of its assets.

5.2. The Company has the following assets, which will be realized at varying times:

5.2.1. property, which may be realized within 6 to 12 months;

5.2.2. rotables, which may be realized within 12 to 24 months; and

5.2.3. trade debts, which may be collected between 6 to 12 months, depending on the financial position of the debtors.

5.3. The payment of the severance packages as set out in clause 4.1.1 is conditional upon the assets set out in clause 5.2 above being realized at the value capable to cover the severance packages.

5.4. In the event that the condition precedent set out in clause 5.3 above is met, the Company will make payment of the severance packages to Employees on a monthly basis, over a period of 6 months, once the sale of assets have been concluded.

5.5. In the event that the condition precedent set out in clause 5.3 above is not met:

- 5.5.1. the Employees will receive a pro-rated portion of the severance package, proportionate to the value of the assets that may be realised; and/or
- 5.5.2. the Employees will be entitled to lodge a claim for any payments owing after payments made in terms of 5.5.1 with any liquidator/s of the Company.

6. STIPULATIO ALTERI

- 6.1. Insofar as this Agreement is concluded by the Representatives on behalf of non-unionised employees, this Agreement constitutes an agreement for the benefit of a third party, being those non-unionised employees and may be accepted in writing individually by them subject to the remaining terms of this Agreement..
- 6.2. Any non-unionised employee who seeks to be bound by this Agreement is required to confirm their acceptance of this Agreement in writing by no later than 24 April 2020.

7. GENERAL

- 7.1. This Agreement constitutes the whole and sole agreement between the Parties relating to matters dealt with in this Agreement and no undertaking, representation, term or condition relating to the subject matter of this Agreement not incorporated in this Agreement shall be binding on any of the Parties.
- 7.2. No additions to or variations, deletion, or agreed cancellation of all or any clauses or provisions of this Agreement will be of any force or effect unless it is in writing and signed by the Parties.
- 7.3. This Agreement is signed by the Parties on the dates and at the places indicated below.
- 7.4. The persons signing this Agreement in a representative capacity warrant their authority to do so.
- 7.5. The Parties record that it is not required for this Agreement to be valid and enforceable that a party shall initial the pages of this Agreement and/or have its signature of the Agreement verified by a witness.

Signed at _____
on this ____ day of _____ 2020
For and on behalf of **SAA**

Signature

Name of Signatory

Signed at _____
on this ____ day of _____ 2020
For and on behalf of **NTM**

Signature

Name of Signatory

Signed at _____
on this ____ day of _____ 2020
For and on behalf of **AUSA**

Signature

Name of Signatory

Signed at _____
on this ____ day of _____ 2020
For and on behalf of **NTM Wider Management**

Signature

Name of Signatory

Signed at _____
 on this ____ day of _____ 2020
 For and on behalf of **Non-Unionised
 Management Employees**

 Signature

 Name of Signatory

Signed at _____
 on this ____ day of _____ 2020
 For and on behalf of **NUMSA**

 Signature

 Name of Signatory

Signed at _____
 on this ____ day of _____ 2020
 For and on behalf of **SACCA**

 Signature

 Name of Signatory

Signed at _____
 on this ____ day of _____ 2020
 For and on behalf of **SOLIDARITY**

 Signature

 Name of Signatory

Signed at _____
 on this ____ day of _____ 2020
 For and on behalf of **Non-unionised Junior
 Employees**

 Signature

 Name of Signatory

Signed at _____
 on this ____ day of _____ 2020
 For and on behalf of **SAAPA**

 Signature

 Name of Signatory

Signed at _____
 on this ____ day of _____ 2020
 For and on behalf of **SATAWU**

 Signature

 Name of Signatory