

MEMORANDUM OF UNDERSTANDING

Entered into by and between

Namibia Airports Company Ltd

("NAC")

and

City of Windhoek

("CoW")

and

Gondwana Collection

("GC")

and

Namibia Tourism Board

("NTB")

and

Walvis Bay Corridor Group

("WCG")

and

Namibia Chamber of Commerce and Industry

("NCCI")

and

Namibia Investment Promotion and Development Board

("NIPDB")

(Collectively referred to as "**the Parties**")

1. Introduction

- 1.1 In line with the mandate and mission of the NAC to ensure enhanced connectivity to Namibia, the Air Connect Namibia project ("**the Project**") has been initiated.
- 1.2 The purpose of the Project is to increase direct air access in and out of Namibia to the rest of the world, particularly via its international airports, with an initial focus on Hosea Kutako International Airport. The Project aims to improve the country's competitiveness and support growth sectors, making it a stronger tourism and business location for foreign direct investment, stimulating economic growth and job creation. It aims to do this by increasing direct air access between the region and international markets through the establishment of new international routes at the airport.
- 1.3 The Project has the following implementation processes:
 - 1.3.1 The Project has been derived from the Namibia Aviation and Connectivity Forum held in 2022. The Forum was held to re-imagine the Namibian Aviation sector as one that contributes to the country's economic development and growth. Air Service Development was identified as one of the topics identified by the Forum as playing a significant role in development and re-imagining of the sector.
 - 1.3.2 Target markets and carriers were identified in 2022, with initial carrier engagements taking place at Routes World 2022. This was followed-up by the NAC partaking in a European Carrier Tour where carriers were engaged with at their operation headquarters. During Routes World 2022, data-led business cases were developed for engagement with carriers to service the United Arab Emirates, Germany, the United Kingdom, the Netherlands, Switzerland, Qatar, Ethiopia and Turkey.
- 1.4 The Parties have all recognized the need for a coordinated approach when implementing the Project and to this end have committed themselves to concluding this MOU as a written embodiment of their commitment to the Project.

2. Purpose and legal status

- 2.1 The purpose of this MoU is to record the commitment of the Parties to the implementation and completion of the Project and to regulate the way in which they will work together in the implementation of the Project.

3. Duration and Review

- 3.1 The provisions of the MoU shall be effective from the Signature Date and shall be effective until the earliest of either of the following dates:

- 3.1.1 the date on which all the Parties choose to terminate this MoU by written agreement;
- 3.1.2 the date on which this MoU is superseded and replaced by a more definitive agreement.
- 3.2 Any Party may withdraw from the Steering Committee and cease being bound by the terms of this MoU on one calendar month's written notice to the other Parties and the Project Managers.
- 3.3 In view of the potential long-term nature of this MoU, the Parties will undertake a full and comprehensive review of the Project within two (2) months of the Signature Date. Any changes to this MoU pursuant to the review must be agreed by all the Parties to this MoU at the relevant time.

4. The Steering Committee

4.1 Membership

- 4.1.1 The Steering Committee is made up of representatives of the Parties (collectively "members"), whose appointment to serve on the Steering Committee must be confirmed by email to the Project Managers.
- 4.1.2 Each Party may appoint one representative to serve on the Steering Committee. In addition, each Party may have one alternative representative and may replace its representative and alternate representative at any time by written notice to the other members and the Project Managers.
- 4.1.3 Each Party must ensure that its representative is a suitably mandated project or program manager who also has the necessary designated authority for the purposes of decision making and funding approvals.
- 4.1.4 The Project Committee is made up of representatives of the Parties whose appointment to serve on the Project Committee must be confirmed by email to the Project Managers. The elected representatives within the Steering Committee cannot be represented in the Project Committee.
- 4.1.5 The Project Managers and other members of the Project Committee may attend all meetings of the Steering Committee, but do not have a vote.
- 4.1.6 The co-chairpersons of the Steering Committee may, in consultation with the Program Managers, invite any other person to attend meetings of the Steering Committee.

4.2 Decision making

- 4.2.1 All decisions of the Steering Committee must in the first instance be made on a consensual basis.
- 4.2.2 Should the chairperson of the meeting, after providing a reasonable opportunity for consensus to be reached, assess that consensus will not be reached, he/she may refer the matter to the vote, in which event the decision shall be carried if supported by a majority of the Parties, with each Party having one vote. Should it not be possible to obtain a majority, the chairperson of the meeting in his/her sole discretion may decide to refer the same item to the following meeting of the Steering Committee.
- 4.2.3 If a Party is unable to attend a meeting of the Steering Committee, it may convey its standpoint in relation to a particular issue by email to the Project Managers.
- 4.2.4 Notwithstanding clause 4.2.2 above, the Steering Committee may not take a decision which impacts directly on one or more of the Parties without the support of the Party or Parties directly affected by the decision.

4.3 Steering Committee meetings

- 4.3.1 Meetings of the Steering Committee are to occur at least once per quarter.
- 4.3.2 Additional meetings may be scheduled as and when necessary to deal with time-sensitive matters, provided that all members agree that such additional meeting is necessary.
- 4.3.3 The housing agency and the Project Managers will be responsible for hosting all meetings, providing the agenda and information packs timely before each meeting of the Steering Committee, and circulating minutes within two weeks after the conclusion of every meeting. Any costs thereof will be covered by the NAC.
- 4.3.4 The chairperson of the Steering Committee will be the NAC representative.

4.4 Roles and Responsibilities

The Steering Committee is responsible for the following:

- 4.4.1 funding the Project to a level decided upon by each Party and assisting in the sourcing of additional funds as may be required, subject to the statutory, budgetary, and compliance procedures applicable to each Party;
- 4.4.2 providing policy and strategic direction;

- 4.4.3 making decisions with regard to any recommendations received from the Project Committee;
- 4.4.4 where possible, resolving issues which may be impeding the implementation of the Project;
- 4.4.5 facilitating access to other public and private bodies where necessary;
- 4.4.6 ensuring that the leadership of the respective Parties is kept up to date on all matters relating to the Project;
- 4.4.7 providing relevant information to other Steering Committee members and the Project Committee to facilitate the implementation of the Project;
- 4.4.8 monitoring the performance of members of the Project Committee and ensuring that they implement the business plan and strategic framework as approved by the Steering Committee from time to time;
- 4.4.9 any additional roles and responsibilities which the Steering Committee may decide upon from time to time.

5. The Project Committee

5.1 Membership

- 5.1.1 The Project Committee consists of the Project Managers and one representative appointed by each Party.
- 5.1.2 To ensure proper governance, Steering Committee members and alternate members are not allowed to serve on the Project Committee.
- 5.1.3 A Party may change its representative by providing written notice to the Project Managers.

5.2 Meetings and Secretariat

- 5.2.1 Project Committee meetings are to be held monthly.
- 5.2.2 Additional meetings may be scheduled as needed to address time-sensitive matters at the Project Managers' discretion.
- 5.2.3 Project Committee meetings are attended by its members and any other individuals the Project Managers consider appropriate for specific topics.
- 5.2.4 The Project Managers are responsible for managing and chairing all Project Committee meetings.

5.2.5 Unless decided otherwise, Project Committee meetings will be held at a predetermined location.

5.3 Roles and Responsibilities

The Project Committee assists the Project Managers in implementing the Project, including:

- 5.3.1 providing data, reports, research, and other materials from their organizations required for the Project's implementation. If confidential information is provided (refer to clause 10), the relevant Project Committee member is responsible for obtaining necessary approval and sign-off from the relevant Party before supplying resources to the Project Managers;
- 5.3.2 assisting the Project Managers in arranging meetings with appropriate individuals within their organizations;
- 5.3.3 carrying out project-related tasks assigned by the Steering Committee;
- 5.3.4 offering input and comments on deliverables and other materials before they are distributed to the Steering Committee;
- 5.3.5 suggesting matters to be presented to the Steering Committee.

6. Project Managers

6.1 Membership

- 6.1.1 The Project Managers may consult with advisors or external service providers and obtain additional resources as directed by the Steering Committee or as required for the Project's implementation.
- 6.1.2 Subcontracted advisors and service providers will be managed by the Project Managers with the support of the overseeing organization.

6.2 Roles and Responsibilities

The Project Managers are responsible for:

- 6.2.1 engaging with the aviation sector, government stakeholders, and other parties external to the Steering Committee;
- 6.2.2 developing and packaging incentive and support packages according to the Steering Committee's principles;

- 6.2.3 presenting incentive and support package offers to airlines on the Parties' behalf, provided such offers align with the Steering Committee's principles;
- 6.2.4 ensuring all communications follow the guidelines outlined in clause 9;
- 6.2.5 drafting terms of reference for the recruitment and management of sub-contracted advisors and service providers;
- 6.2.6 executing agreed-upon Project deliverables according to their terms of reference.

7. Funding and Other Contributions

- 7.1 Participation of each Party on the Steering Committee is based on the understanding that they will contribute to the Project. Contributions may be financial or work-related.
- 7.2 Recorded contributions as of the Signature Date include:
 - 7.2.1 Funding provided for the Project through an overseeing organization;
 - 7.2.2 The overseeing organization managing the Project's implementation, making its facilities and resources available, and contracting the Project Managers;
 - 7.2.3 Agreement in principle to provide data necessary for route performance evaluation, promising route identification, and refining internal forecasts and demand plans;
 - 7.2.4 A tourism data tool being purchased and shared with the overseeing organization.
- 7.3 Additional contributions made by the Parties will be recorded in the Steering Committee's minutes.
- 7.4 No Party can be forced to make a specific contribution. Each contribution is determined at a Party's discretion.

8. Communications

- 8.1 The CEO of the overseeing organization is the only spokesperson permitted to communicate on behalf of the Steering Committee with the public and the media regarding ongoing negotiations with airlines and/or the private sector. This responsibility may be delegated to the Project Managers or other Steering Committee representatives as needed.

- 8.2 Each Steering Committee representative may communicate with the public about their represented Party's support for the Project.
- 8.3 Representatives of the Parties mentioned in clause 8.2 may not disclose details of ongoing negotiations with airlines or the private sector.
- 8.4 Carefully managed and coordinated communications are critical for the Project's implementation, especially considering the sensitivities when negotiating with airlines. To this end, the Parties agree to adhere to the terms of the Project's Communications Protocol, a copy of which is annexed and marked "A."
- 8.5 The overseeing organization will assist in managing and coordinating communications.

9. Confidentiality

- 9.1 It is noted that during the Project's implementation, confidential information may be provided by a Party or the Project Managers. The Parties agree to maintain confidentiality and not disclose such information without the disclosing Party's written consent.
- 9.2 A Party may request that any reference to confidential information provided by it at a Steering Committee meeting be excluded from the meeting's minutes.

10. Additional Parties

- 10.1 The Parties may decide to admit new parties to the Steering Committee based on the contributions they commit to make, particularly parties representing the private sector.
- 10.2 New parties can only be admitted to the Steering Committee upon signing this MoU. By signing this MoU, they agree to be bound by the terms and conditions outlined herein.

11. Good Faith

The Parties commit to act in good faith in their dealings with each other and not to engage in actions, or refrain from actions, that could harm the Project's implementation.

12. Disputes

If any dispute arises regarding the Project's implementation or this MoU's terms, the dispute will be resolved as follows:

- 12.1 The dispute is first raised at an ad hoc Steering Committee meeting called by the Project Managers. The Parties will make their best efforts to resolve the issue. If they cannot resolve the dispute and it pertains to binding clauses, the dispute will be resolved according to clauses 12.2 and 12.3. If the dispute does not involve a binding clause and cannot be resolved per clause 12.1, the disputed issue will not be pursued any further.
- 12.2 If the Parties fail to resolve a dispute regarding binding clauses during a Steering Committee meeting, the dispute will be resolved in the manner set out below.
- 12.3 The parties undertake to refer their disputes of whatsoever nature and howsoever arising connected to, relating to, arising from, or concerning, this MoU for arbitration to an arbitrator appointed by the Steering Committee. Should the Steering Committee be unable to reach a decision in this regard within a month of the need to do so arising, the arbitrator shall be appointed by the President of the Law Society of Namibia. Any dispute to be determined will be set out in the arbitration pleadings.
- 12.4 The arbitration shall be governed by the Rules for the Conduct of Arbitrations: 2021 Edition (1 November 2021) of the Association of Arbitrators (Southern Africa) NPC (the rules and the Association of Arbitrators, respectively):
- 12.4.1 save to the extent inconsistent with to the Arbitration Act 42 of 1965 (the Arbitration Act);
- and
- 12.4.2 save to the extent otherwise agreed in writing and signed by the parties.
- 12.5 The parties agree that the appeal procedure provided for in article 45 of the rules shall apply to the arbitration.
- 12.6 The Steering Committee shall appoint two members of the appeal tribunal. The two members so appointed shall appoint the third member of the appeal tribunal who shall be the chairperson thereof. Should the Steering Committee fail to appoint a member of the appeal tribunal, or should the first two members fail to appoint a third member thereof, the Association of Arbitrators shall make the appointment, as may be required.
- 12.7 To the extent that the provisions of this arbitration agreement are inconsistent with those of:
- 12.7.1 The rules; and/or
- 12.7.2 Any other existing arbitration, or dispute resolution, agreement between the Parties,

the provisions of the arbitration agreement that shall be entered into by the Parties shall prevail.

- 12.8 The provisions of sections 20 and 23 of the Arbitration Act shall not apply to the arbitration.
- 12.9 The parties agree that the law of evidence as applied by the High Court of Namibia shall be applicable.
- 12.10 The Claimants in arbitration proceedings shall ensure that the proceedings are recorded and, should this be required by the Parties or the arbitrator, be transcribed.
- 12.11 The costs of the Arbitrator, transcription and (insofar as may be applicable) the costs of the venue will be borne by the Parties equally *pro tem* and the Arbitrator will be required to make an award in respect of such costs.
- 12.12 The Arbitrator's award shall be in writing and published to the Parties' email addresses contained in the Pleadings. The Parties shall take all reasonable steps to ensure that the Arbitrator's award remains confidential subject thereto that either party shall be entitled to make the Arbitrator's award an Order of Court.
- 12.13 The arbitration agreement shall not come into force or effect, unless and until duly signed by or on behalf of the parties and the arbitrator.
- 12.14 Namibian law shall apply to all other aspects of disputes and matters ancillary thereto in respect of which no specific rules have been stipulated.
- 12.15 Nothing in this clause prevents any Party from approaching a competent court for urgent relief.
- 12.16 The provisions of this clause shall survive termination of this MoU.
- 12.17 Regard being had to the objectives of this MoU and the national significance of the underlying initiative to which it pertains, the Parties undertake to exhaust all amicable avenues to resolve any disputes that may arise and to resort to arbitration only in the event of being unable to resolve the dispute in a non-adversarial manner.

13. Governing Law

Each Party shall execute its mandate subject to its enabling legislative environment and this MOU shall be governed and construed in accordance with the laws of the Republic of Namibia.

14. General

- 14.1 No agreement modifying, adding to, deleting from, or cancelling this MoU or waiving any right under this MoU is effective unless in writing and signed by or on behalf of the Parties.
- 14.2 A Party cannot cede any or all of its rights or delegate any or all of its obligations under this MoU without the other Parties' prior written consent.
- 14.3 Each Party shall bear its own legal costs related to negotiation and preparation of this MoU.

THUS, DONE AND SIGNED AT _____ ON THE _____ DAY of 2024.

For and on behalf of the undersigned parties, each signatory warranting that he/she is duly authorized to sign this MoU with binding effect on the relevant Party.

Namibia Airports Company Ltd
Name of signatory:

Witness: _____

City of Windhoek
Name of signatory:

Witness: _____

Gondwana Collection
Name of signatory:

Witness: _____

Namibia Tourism Board
Name of signatory:

Witness: _____

Walvis Bay Corridor Group
Name of signatory:

Witness: _____

Namibia Chamber of Commerce and Industry
Name of signatory:

Witness: _____

Namibia Investment Promotion and Development Board
Name of signatory: **Nangula Uaandja**

Witness: _____