

CAPACITY ALLOCATION MECHANISM FOR LICENSED PETROLEUM STORAGE FACILITIES



AIRPORTS COMPANY
SOUTH AFRICA

No.	Facility Address	Licence Number	Licence Anniversary
1.	Cape Town International Airport, Cape Town, Western Cape Province	PPL.sf.F3/100/1/2011	16 May 2011
2.	King Shaka International Airport, Durban, KwaZulu-Natal	PPL.sf.F3/100/1/2011	16 May 2011
3.	OR Tambo International Airport, Johannesburg, Gauteng	PPL.sf.F3/100/1/2011	16 May 2011

1 Introduction

1.1 ACSA's aviation fuel tank farms ("**Storage Facilities**") at Cape Town International Airport ("**CTIA**"), King Shaka International Airport ("**KSIA**") and OR Tambo International Airport ("**ORTIA**") are currently leased by ACSA to the following third parties ("**the Lessee**") -

1.1.1 a consortium comprising BP Southern Africa Proprietary Limited ("**BP**"), Shell South Africa Proprietary Limited ("**Shell**") and Total South Africa Proprietary Limited ("**Total**") in respect of CTIA;

1.1.2 a consortium comprising BP, Shell, Engen Petroleum Limited, Exel Petroleum Proprietary Limited and Total in respect of ORTIA;

1.1.3 Skytanking Calulo Proprietary Limited ("**Skytanking**") in respect of KSIA.

In terms of ACSA's agreements with the Lessees, the Storage Facilities at the relevant airport are leased to the relevant Lessee/s and the Lessees are granted the non-exclusive right to use the hydrant system and perform fuelling services at the relevant airport. The Storage Facility at the relevant airport is occupied, managed and administered by the relevant Lessee/s. The Lessees at ORTIA and CTIA have agreements to supply aviation fuels to various airlines using ORTIA and CTIA.

1.2 In terms of its agreement with the Lessees at ORTIA and CTIA, ACSA has the right to allow a third party aviation fuel supplier to –

1.2.1 store its aviation fuels at the Storage Facility at the airport, use the hydrant system at the airport and perform fuelling services to aircraft at the airport ("**Throughputter**"); or

1.2.2 become party (as a new Lessee) to the existing lease agreement between ACSA and the existing Lessees ("**New Participant**")

ACSA may however only grant such right if certain criteria (set out in the agreement between ACSA and the relevant Lessees) are met by the prospective Throughputter or New Participant including that –

1.2.3 the prospective Throughputter is able to supply aviation fuels of the required quality and is financially capable of providing fuelling services and performing its obligations at the relevant airport;

1.2.4 the prospective New Participant has an adequate number of suitably qualified employees, is financially capable of performing its obligations, is technically and operationally capable of performing fuelling services at the relevant airport and is able to supply aviation fuels of the required quality and comply with the Joint Inspection Guidelines issued by the Joint Inspection Group (JIG).

1.3 At KSIA, Skytanking's customers are third party suppliers of aviation fuels to whom and on whose behalf Skytanking provides fuelling services at KSIA from time to time ("**ST Customers**"). ST Customers have agreements to supply aviation fuels to various airlines using KSIA. In terms of ACSA's agreement with Skytanking, ST Customers are required to comply with certain requirements including to supply aviation fuels of a quality complying with the agreed specifications, maintaining certain insurance and complying with storage, handling and intoplane and indemnification agreements with Skytanking as well as undertakings in favour of ACSA. ST Customers pay Skytanking an operating fee agreed with ACSA on an annual basis.

1.4 As the Storage Facilities at ORTIA, CTIA and KSIA are leased by ACSA to the Lessees, the use of the Storage Facilities by a third party aviation fuel supplier involves concluding various

agreements between such third party supplier (on the one hand) and ACSA and the existing Lessee(s)(on the other hand). At ORTIA and CTIA, the Lessees are represented by a Managing Participant appointed in terms of the agreement between ACSA and the Lessees ("**Managing Participant**").

2 Process to request access to the Storage Facilities at ORTIA, CTIA AND KSIA

2.1 The process for third party aviation fuel suppliers to request access to the Storage Facilities at ORTIA and CTIA is as follows –

2.1.1 the prospective Throughputter or New Participant (as the case may be) will express an interest to ACSA to have access to the Storage Facilities;

2.1.2 ACSA will then send the prospective Throughputter or New Participant a list of ACSA's requirements for the application to ACSA for such access to be granted (including a list of all required information and documents);

2.1.3 the prospective Throughputter or New Participant will then submit a formal application to ACSA containing all required information and documentation. Such application should be addressed to –

Group Executive, Operations
The Maples
Riverwoods
24 Johnson Road
Bedfordview
2008

- 2.1.4 The method of correspondence between the prospective Throughputter or New Participant and ACSA shall be by written correspondence;
- 2.1.5 ACSA will then assess the application by the prospective Throughputter or New Participant;
- 2.1.6 if ACSA decides not to approve the application, it will use its best endeavours to advise the prospective Throughputter or New Participant accordingly within a period of thirty calendar days after receipt by ACSA of a properly completed application (including all required information and documents);
- 2.1.7 if ACSA decides to approve the application, the prospective Throughputter or New Participant, ACSA will use its best endeavours to advise the prospective Throughputter or New Participant accordingly within the thirty day period referred to in 2.1.6 above and the prospective Throughputter or New Participant will then have to comply with all the requirements in ACSA's agreement with the Lessees for the relevant airport (as summarised in 1.2 above) and conclude agreements with ACSA and the Managing Participant of the relevant airport;
- 2.1.8 once the prospective Throughputter or New Participant has complied with all such requirements, ACSA will give written notice to the Lessees appointing the Throughputter or New Participant in terms of ACSA's agreement with the Lessees.
- 2.2 The process for third party aviation fuel suppliers to request access to the Storage Facility at KSIA is as follows –

- 2.2.1 the third party will express an interest to Skytanking (or Skytanking will approach the third party) to have access to the Storage Facilities. The method of correspondence may be by letter, telephone or fax and applications may be directed to Skytanking at fax number - 011 996 0645;
- 2.2.2 Skytanking will advise the third party of its requirements (including that the third party be a member of the Joint Inspection Group and have a contract to supply aviation fuel to an airline using KSIA) as well as the requirements for ST Customers in Skytanking's agreement with ACSA (summarised in 1.3 above);
- 2.2.3 Skytanking will assess the prospective third party supplier to check that the third party complies with Skytanking's requirements and the requirements for ST Customers in Skytanking's agreement with ACSA;
- 2.2.4 if Skytanking decides not to perform fuelling services to and/or on behalf of such third party, it will use its best endeavours to advise the third party accordingly within 30 calendar days after its decision;
- 2.2.5 if Skytanking decides to perform fuelling services for and/or on behalf of such third party, it will use its best endeavours to advise the third party accordingly within 30 calendar days after its decision. A storage, handling and into plane agreement and a separate indemnification agreement will then be negotiated and concluded between Skytanking and such third party. ACSA may also require the third party to –
- 2.2.5.1 conclude an agreement with ACSA with regard to the third party's business and activities at KSIA; and

2.2.5.2 provide a suretyship to ACSA as security for the performance of its obligations to ACSA in terms of such agreement.

3 Technical Requirements for Third Party Access to the Petroleum Storage Facilities at ORTIA CTIA and KSIA:

3.1 All aviation fuels stored in the Storage Facilities must comply with the following requirements-

3.1.1 the technical requirements and criteria for "Joint Airport Depot Operations" and "Joint Into Plane Fuelling Services" as issued by the Joint Inspection Group (JIG);

3.1.2 ASTM Standard Specification;

3.1.3 D 1655-11b for aviation turbine fuel Jet A1 Issue 26, 04 May 2012.

The JET A1 fuel is sampled, tested and analyzed by South African National Accreditation System (SANAS) approved laboratories and samples are retained by the refineries.

3.2 At CTIA and KSIA, aviation fuels are only delivered by road tanker vehicles ("RTVs") and the following technical requirements will apply between the transporter companies and their respective clients at the loading points before the delivery of aviation fuel to the Storage Facilities at the relevant airport -.

3.2.1 the transporter must be in possession of:

- Safe Loading Pass
- Transport Permit – Storage, Use and Handling of Flammable Liquids and Substances, issued by Local Municipality

- Pressure Test Certificate
- Motor Vehicle License and Roadworthy Certificate;

3.2.2 Road tanker vehicles (RTV's) delivering aviation fuels to the Storage Facility must comply with the legal requirements prescribed in SANS1518: *Transport of dangerous goods: Design, construction, testing, approval and maintenance of road vehicles and portable tanks* / European Agreement Concerning the International Carriage of Dangerous Goods by Road (ADR) and the design and construction of the RTVs must fall within the parameters applicable to the UN Number i.e. the four-digit numbers that identify hazardous substances, and articles (such as explosives, flammable liquids, toxic substances, etc.) in the framework of international transport, which in the case of Jet-A1 is the same as petrol / Avgas;

3.2.3 the RTVs must also comply with all other legal requirements including electrical wiring, side under run protection, fire extinguishers, mudguards with spray suppression, overflow protection, valves and fittings etc. The required coupling is the aviation dry break selector, either 65mm or 100mm;

3.2.4 the RTVs are required to be registered, licensed and certified fit as a Dangerous Goods vehicle;

3.2.5 the RTV driver must comply with the following requirements:

- be over the age of 25;
- be medically fit and undergo an initial full medical examination and thereafter an annual medical examination;
- have a valid driving licence with a Public Driving Permit with a Dangerous Goods notation;

- 3.2.6 be trained in terms of Occupational Health and Safety Act 85 of 1993 and Transport Education and Training Authority (TETA) / Department of Transport (DoT) through an approved / accredited training provider.
- 3.2.7 compliance with the safety procedures and requirements under the National Traffic Act and SANS-10231 loading, transport and delivery of dangerous goods;
- 3.2.8 compliance with permitting requirements which include induction and vehicle pre-entry inspections before access to the Storage Facility is granted.
- 3.3 At ORTIA, delivery of aviation fuels to the Storage Facility is only through the coastal jet pipeline, the inland jet pipeline and the rail siding pipeline from rail tank cars. These facilities are operated by Sapref and Enref (DJP – Transnet Pipelines), Natref (Transnet pipelines) and rail pipeline operated by AirBP respectively. Road tankage is not possible as the Storage Facility at ORTIA is not designed to receive aviation fuel by RTVs.
- 3.4 Third party suppliers of aviation fuels are expected to comply with all procedures and legislation applicable to ACSA's license to operate the Storage Facilities (as contained in annexure C of the licences issued to ACSA by NERSA for ORTIA, CTIA and KSIA), a copy of which is available to such third parties on request. Such third parties must also comply with the procedures of –
 - 3.4.1 the Managing Participant of the Storage Facilities at ORTIA and CTIA (appointed in terms of ACSA's agreement with the Lessees at ORTIA and CTIA);
 - 3.4.2 Skytanking with regard to KSIA.

3.5 As each airport is configured differently, further technical requirements relating to the off-loading areas, fuel meters, fuel hydrant line capacities, fuel storage capacity and other matters apply and are available to third party suppliers at each of the airports.

4 Allocation Mechanism

4.1 First Come First Served Scenario: Any bona fide third party aviation fuel supplier that inquires about storage capacity at ORTIA and CTIA will be placed on an inquiry list. The inquiry list will be used for allocations on a first come first served basis provided however note that suppliers wishing to store higher volumes of aviation fuels will be preferred over suppliers with smaller volumes and the Storage Facilities may only be used to store aviation fuels for commercial purposes.

At KSIA, storage capacity is allocated based on the volume requirements set out in the agreement/s between the third party supplier and the airline/s using KSIA.

4.2 Use it or Lose it Principles: Third party suppliers at ORTIA, CTIA and KSIA are required to use the allocated capacity at the Storage Facilities as agreed in the agreement between them and –

4.2.1 the Managing Participant (appointed by the Lessees) in respect of ORTIA and CTIA;

4.2.2 Skytanking in respect of KSIA.

4.3 In order to have smooth and continuous operations at the Storage Facilities, the third party supplier is required to strictly adhere to allocated timelines for the use of the Storage Facility

in terms of the relevant agreement referred to in 4.2.1 or 4.2.2 (as the case may be).

5. **Tariff Structure**

The table below lists the current NERSA approved tariffs for the ACSA Storage Facilities:

Tariffs as Approved by NERSA for the ACSA Storage Facilities			
	OR Tambo International Airport	Cape Town International Airport	King Shaka International Airport
For every week or part of a week	As published by NERSA	As published by NERSA	As published by NERSA

All tariffs exclude VAT

ACSA will review these tariffs from time to time and apply the revised tariffs from the National Energy Regulator, according to the process prescribed by NERSA.

On approval of a revised tariff structure all relevant documents will be updated.

ANNEXURE A:

DRAFT AGREEMENT BETWEEN ACSA AND PROSPECTIVE THROUGHPUTTER

- **DOCUMENT ATTACHED SEPERATELY**

ANNEXURE B: DRAFT

DRAFT DEED OF SURETYSHIP

We, the undersigned, [] (registration number []) acting in our personal capacity, ("**surety**"),

1 hereby -

1.1 record that we are familiar with the terms of the written agreement concluded between Airports Company South Africa SOC Limited (registration number 1993/04149/06), its successors in title and assigns ("**creditor**") and, inter alia, [] (registration number []) ("**principal debtor**") on [] relating to the bulk fuel site and hydrant system (as defined in such agreement) at OR Tambo International Airport ("**agreement**"); and

1.2 bind ourselves jointly and severally with any other surety, as surety and co-principal debtor in solidum with the principal debtor in favour of the creditor for -

1.2.1 the due and punctual payment on demand of all amounts now owing or which may hereafter become owing by the principal debtor to the creditor pursuant to the agreement or from whatever other cause arising, including any amounts which may be or become owing by the principal debtor to the creditor by way of damages; and

1.2.2 the due and punctual performance of all the principal debtor's present and future obligations which the principal debtor may now or may hereafter become obliged to perform in favour of the creditor pursuant to the agreement or from whatever other cause arising,

(collectively "**principal debt**"); and

- 1.3 agree that should the principal debtor fail to discharge the principal debt (or any part thereof) on the due date therefor, then the creditor shall be entitled to demand from us immediate performance of the principal debt or any part thereof then due and owing by the principal debtor to the creditor, and we will perform all obligations and pay all amounts due by the principal debtor in terms of the agreement if the principal debtor fails to do so, as if we were the principal debtor for purposes of the agreement.

- 2 We agree and declare that the rights of the creditor under this deed shall in no way be affected or diminished if the creditor at any time obtains additional suretyships, guarantees, securities, undertakings or indemnities in connection with the obligations of the principal debtor, and that none of the creditor's rights under the agreement shall in any way be prejudiced, affected, diminished, amended, cancelled or terminated by the suretyship granted by us in favour of the creditor in this deed. Our liability under this deed is not subject to any other security being provided or any other person being bound (whether as surety, guarantor or otherwise) in favour of the creditor on behalf of the principal debtor.

- 3 The creditor shall be entitled, without prejudice to its rights and without detracting from our liability under this deed, to –
 - 3.1 release (or omit to perfect) any securities or other sureties given to it; and/or

 - 3.2 without reference or notification to the surety, to grant the principal debtor extensions of time for payment and/or performance;

- 3.3 without reference or notification to the surety, give to or compound with or make any arrangements with the principal debtor in regard to the fulfilment of the principal debtor's obligations as the creditor in its absolute discretion may deem fit.
- 4 Should the principal debtor be wound-up, placed in liquidation or under judicial management, sequestrated, surrender its estate or submit an offer of compromise or composition, or a scheme of arrangement in terms of any company or insolvency law, or in terms of the common law then -
- 4.1 we undertake not to prove a claim against the principal debtor's estate until all amounts (including interest and costs) due by the principal debtor to the creditor have been paid in full;
- 4.2 no dividends or payments which the creditor may receive from the principal debtor, ourselves or any other entity shall prejudice the rights of the creditor to recover from us to the full extent of this deed, any sum which after such receipt may remain owing by the principal debtor, so that our liabilities in terms of this deed shall not be discharged or reduced and the principal debt as it exists immediately prior to such event shall be deemed to be unaffected by such event; and
- 4.3 any dividend received by the creditor in respect of its claim against the principal debtor shall be appropriated in the first instance to the payment of the part of the principal debtor's indebtedness to the creditor which is not covered by this deed and the creditor shall be entitled to accept any other securities, guarantees or suretyships arising out of any such event.
- 5 This deed shall remain in full force and effect as a continuing covering security notwithstanding, and the rights of the creditor under this deed shall in no way be affected or diminished by -

- 5.1 any amendment, alteration or variation to this deed, the agreement and/or any other agreement for the time being subsisting between the creditor and the principal debtor;
- 5.2 any partial or intermediate settlement of, fluctuation in or temporary extinction of the principal debt (or any part thereof);
- 5.3 any additional suretyships, guarantees, securities, undertakings or indemnities obtained by the creditor in connection with the obligations of the principal debtor under the agreement;
- 5.4 the whole or partial release or abandonment of, or failure by the creditor to acquire, enforce or perfect any other security, rights and/or remedies (including the release of any surety or other guarantor or of any mortgage, pledge, cession, lien or hypothec or other security);
- 5.5 the receipt by the creditor of any dividend, payment or other benefit in any liquidation or judicial management, compromise, composition or other arrangement in terms of which the principal debtor's obligations to the creditor are reduced or discharged;
- 5.6 the winding up or suffering of a legal disability of the principal debtor, or any changes in the membership and/or effective control of the principal debtor; or
- 5.7 any compromise or other arrangement in terms of which the principal debtor's obligations to the creditor are reduced or discharged;
- 5.8 any variation or extension of the date for performance of the principal debt (or any part thereof) or any increase, reduction, exchange, acceleration, renewal, surrender, release or loss or failure to perfect any obligation referred to in the agreement,

it being agreed that our liability in terms of this deed may not be terminated by us for any reason whatever and shall only terminate after full and final payment and performance in full of the whole principal debt.

6 We hereby agree that –

6.1 a certificate signed by any director or manager of the creditor, its successors in title and assigns, as to the amount of our indebtedness under this deed or that of the principal debtor to the creditor at the date of that certificate shall be –

6.1.1 prima facie evidence of the amount of indebtedness shown in the certificate;

6.1.2 binding on us (unless we prove the incorrectness thereof) in any proceedings instituted by the creditor in any competent court for the purpose of attaining judgment or provisional sentence against us;

6.2 as part of our liability in terms hereof, we shall pay the amount for all costs, charges and expenses of whatever nature including, but without derogating from the generality of the foregoing, legal costs and collection commission as between attorney and own client, incurred by the creditor in securing or endeavouring to secure payment by the principal debtor or performance by the principal debtor of the principal debt (or any component thereof), or of any of our obligations under this deed;

6.3 we shall not be entitled to cede, delegate or assign all or any of our rights and/or obligations in terms of this deed for any reason whatever;

6.4 the creditor (or any person to whom its rights and/or obligations are ceded, delegated or assigned in terms of this clause) shall be entitled, on written notice to the surety, to cede, delegate or assign all or any of its rights and/or obligations under this deed to any

other person or persons (notwithstanding that a cession or assignment to more than one person may result in a splitting of claims against the surety) and on any such cession or assignment taking place, the surety shall, if so required by any cessionary, make all payments (the right to receive which have been ceded to such cessionary) directly to such cessionary;

6.5 should the creditor cede the whole of its rights of action against the principal debtor to any third party, then the creditor's rights under this deed shall be deemed to have been simultaneously transferred to the cessionary in question;

6.6 prescription shall -

6.6.1 in respect of any claim under this deed, only commence to run from the date upon which a formal written demand is made by the creditor for the satisfaction of any claim arising under this deed, provided that such written demand is made within three years from the date when prescription would otherwise, but for the provisions of this clause, have commenced to run; and

6.6.2 any interruption of prescription (whether by the principal debtor or by process of law) shall constitute an interruption of prescription against the creditor;

6.7 any amount falling due for payment by the surety to the creditor shall bear interest at a rate equal to 2% above the prime rate (as defined below) calculated from the due date for payment thereof to the date of actual receipt thereof by the creditor. Where such amount is payable by way of damages, it shall be deemed to have been due on the date upon which the cause of action giving rise to the claim for those damages arises. For the purposes of this deed, the term "**prime rate**" shall mean the prime bank overdraft rate NACM (nominal annual compounded monthly in arrears) as charged and calculated from time to time by Nedbank, a division of Nedcor Bank Limited (or such other bank as

the creditor may from time to time stipulate by written notice to the surety) to its corporate customers in respect of overdraft facilities from time to time (as certified by any manager of such bank, whose appointment it shall not be necessary to prove);

- 6.8 this deed constitutes the entire agreement between ourselves and the creditor, and no variation, alteration or amendment thereof shall be of any force or effect unless in writing and signed by the creditor and ourselves;
- 6.9 we shall be bound by all admissions and acknowledgements of indebtedness made or given at any time by the principal debtor to the creditor in the future in regard to any obligation for which this deed is given;
- 6.10 each provision in this deed is severable the one from the other and if any provision is found by any competent court to be defective or unenforceable for any reason whatsoever, then the remaining provisions of this deed shall continue to be of full force and effect;
- 6.11 in this deed, unless the context clearly indicates a contrary intention, an expression which denotes the singular includes the plural and vice versa. Neither we nor the creditor shall be bound by any express or implied term, representation, warranty, promise or the like not recorded in this deed. No act of indulgence, relaxation, grace, concession, leniency or extension of time which may be shown or given by the creditor to the principal debtor (or ourselves or any amendment, variation or alteration of the obligations existing between the principal debtor and the creditor) shall prejudice or affect all or any of the creditor's rights in terms of this deed; and
- 6.12 this deed shall be governed in all respects by South African law. We hereby irrevocably and unconditionally consent and submit to the non-exclusive jurisdiction of the South

Gauteng High Court Johannesburg (or its successor in title) in respect of any dispute or claim arising out of or in connection with this deed.

- 7 We hereby renounce any benefits to which we, as surety, may be entitled in law (including, without limiting the generality of the foregoing, the benefits of excursion, division, and cession of actions, and the defences of no value received, revision of accounts, an error in calculation, that the principal debt does not exist, and that our liability is joint only and not several), the full force, meaning and effect whereof we are fully acquainted, know and understand.
- 8 We hereby choose as our domicilium citandi et executandi ("**domicilium**") for the giving of any notice, the payment of any sum, the serving of any process and for any other purpose under and/or arising out of this deed at **[SOUTH AFRICAN PHYSICAL ADDRESS REQUIRED]**–

Physical address: []
 []
 []

Facsimile: []

or at such other physical address (not being a post office box or poste restante) and/or facsimile number in the Republic of South Africa as we may notify the creditor in writing from time to time; provided that any such change shall take effect ten days after receipt by the creditor of such notice.

- 9 All notices, process and other communications addressed to us at our domicilium and despatched by –

- 9.1 prepaid registered post shall be rebuttably presumed to have been received by us seven days after the date of posting thereof;
- 9.2 facsimile shall be rebuttably presumed to have been received by us on the date of successful transmission thereof.
- 10 This deed may be executed in one or more counterparts, each of which shall be deemed to be an original and all of which shall be taken together and deemed to be one instrument.
- 11 The surety hereby warrants to the creditor that it has a material interest in binding itself in terms of this deed, which is entered into for its benefit.

Signed at

on

2015

for Airports Company South Africa SOC
Limited

(as the creditor)

DRAFT NOT FOR SIGNATURE

who warrants that he is duly
authorised hereto

Signed at

on

2015

for []

(as the surety)

DRAFT NOT FOR SIGNATURE

who warrants that he is duly
authorised hereto



**AIRPORTS COMPANY
SOUTH AFRICA**

THROUGHPUTTER AGREEMENT

between

AIRPORTS COMPANY SOUTH AFRICA SOC LIMITED

and

[]

in relation to

OR TAMBO INTERNATIONAL AIRPORT

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ANNEXURE A – DIAGRAM OF BULK FUEL SITE

THROUGHPUTTER AGREEMENT

between

AIRPORTS COMPANY SOUTH AFRICA SOC LIMITED

and

[]

1 INTERPRETATION

In this agreement, clause headings are for convenience and shall not be used in its interpretation and, unless the context clearly indicates a contrary intention, -

1.1 an expression which denotes -

1.1.1 any gender includes the other genders;

1.1.2 a natural person includes an artificial or juristic person and vice versa;

1.1.3 the singular includes the plural and vice versa;

1.2 the following expressions shall bear the meanings assigned to them below and cognate expressions bear corresponding meanings -

1.2.1 "**this agreement**" - this document together with all of its annexures, as amended from time to time;

1.2.2 "**ACSA**" - Airports Company South Africa SOC Limited (Registration No. 1993/004149/06);

1.2.3 "**aircraft**" - aircraft utilising the airport;

1.2.4 "**aircraft operator**" - any party owning and/or operating an aircraft;

- 1.2.5 "airside" - the runway, taxiway, aprons and parking stands used by aircraft, service vehicles and service personnel;
- 1.2.6 "airport" - O R Tambo International Airport;
- 1.2.7 "aviation fuels" - collectively -
- 1.2.7.1 Jet A-1 aviation fuel; and/or
- 1.2.7.2 Avgas aviation fuel,
complying with the aviation fuel quality requirements for jointly operated systems as set out in JIG;
- 1.2.8 "bank" – Nedbank, a division of Nedcor Bank Limited or such other bank as ACSA may from time to time stipulate by giving written notice thereof to the throughputter;
- 1.2.9 "BP" - BP Southern Africa (Proprietary) Limited (Registration No. 1924/02602/07);
- 1.2.10 "bulk fuel site" - subject to 17, the land, bulk fuel tanks and other improvements on the land situate at the airport and designated on the diagram in annexure A (including without limitation any improvements erected on such land after the commencement date);
- 1.2.11 "business day" - any day other than a Saturday, Sunday or official public holiday in the Republic of South Africa;
- 1.2.12 "carrier agreement" - any agreement between any aircraft operator and the throughputter relating to the performance of fuelling services in respect of the aircraft operator's aircraft;
- 1.2.13 "commencement date" – the date which is [] business days after the date of fulfilment and/or waiver in terms of 3.4 of all the suspensive conditions precedent referred to in 3.1;

1.2.14 **"Engen"** - Engen Petroleum Limited (Registration No. 1989/003754/06);

1.2.15 **"environment"** – the surroundings within which humans exist and that are made up of –

1.2.15.1 the land, water and atmosphere of the earth;

1.2.15.2 micro organisms, plant and animal life;

1.2.15.3 any part or combination of the land, water and/or atmosphere of the earth and/or micro organisms, plant and/or animal life and the inter relationships among and between them;

1.2.15.4 the built environment; and

1.2.15.5 the physical, chemical, aesthetic and cultural properties and conditions of the foregoing that influence human health and wellbeing;

1.2.16 **"environmental pollution"** – any change in the environment caused by –

1.2.16.1 substances;

1.2.16.2 radioactive or other waste; or

1.2.16.3 noise, odours, dust or heat,

emitted from any activity (including without limitation the storage or treatment of waste or substances, construction under the provision of services, whether engaged in by any person including without limitation, any governmental body or organ of state) where that change has an adverse effect on human health or wellbeing or on the composition, reliance and productivity of natural or managed ecosystems or on materials useful to people, or which may have such an effect in the future;

- 1.2.17 "Exel" – Exel Petroleum (Proprietary) Limited (Registration No. 1996/015405/07);
- 1.2.18 "**fuelling services**" – collectively, the storage, conveyance, supply and distribution of aviation fuels and related products to and from aircraft;
- 1.2.19 "**hydrant system**" - the pipeline and fuel hydrant system (as constituted at the commencement date and as may be reconfigured, extended, shortened or otherwise changed from time to time) at the airport through which the Jet A-1 aviation fuel referred to in 1.2.7.1 may be conveyed from the main isolation valves on the bulk fuel site to the aprons at the airport from which such fuel may be dispensed to aircraft;
- 1.2.20 "**into-plane operator**" - initially O R Tambo Airport Fuelling Services (ORTAFS) (a joint venture between participants) and/or any other party agreed between ACSA and the managing participant in writing;
- 1.2.21 "**JIG**" – the Joint Inspection Guidelines in respect of "Joint Airport Depot Operations" and "Joint Into Plane Fuelling Services" issued by the Joint Inspection Group as amended or substituted from time to time;
- 1.2.22 "**main agreement**" – the agreement between the participants and ACSA in terms of which ACSA lets the bulk fuel site to the participants and grants the participants the non exclusive right to use the hydrant system and perform fuelling services at the airport;
- 1.2.23 "**managing participant**" – the managing participant appointed in terms of the main agreement from time to time, initially being BP;
- 1.2.24 "**operating agreements**" – collectively, the agreements referred to in 3.1.3 and 3.1.4 and any other agreement between the throughputter and any third party pursuant to which the throughputter's aviation fuels and/or related products will be stored at the bulk fuel site and conveyed, supplied and/or distributed to aircraft;
- 1.2.25 "**participants**" - collectively Shell, Exel, Total, Engen, BP and any new participant appointed in terms of the main agreement;

- 1.7 any term which refers to a South African legal concept or process (for example, without limiting the foregoing, winding-up or curatorship) shall be deemed to include a reference to the equivalent or analogous concept or process in any other jurisdiction in which this agreement may apply or to the laws of which a party may be or become subject;
- 1.8 any reference to days (other than a reference to business days), months or years shall be a reference to calendar days, months or years, as the case may be;

The terms of this agreement having been negotiated, the contra proferentem rule shall not be applied in the interpretation of this agreement.

2 INTRODUCTION

It is recorded that –

- 2.1 the bulk fuel site is currently leased to the participants in terms of the main agreement;
- 2.2 in terms of the main agreement, ACSA may appoint a third party supplier of aviation fuels as a "throughputter" and allow it to store its aviation fuels and related products at the bulk fuel site for supply to aircraft by the into-plane operator subject to certain terms and conditions;
- 2.3 the throughputter is a third party supplier of aviation fuels and wishes to be appointed by ACSA as a "throughputter" (as defined in the main agreement);
- 2.4 ACSA is prepared to appoint the throughputter as a "throughputter" (as defined in the main agreement) subject to the terms and conditions of this agreement.

3 SUSPENSIVE CONDITIONS PRECEDENT

- 3.1 The whole of this agreement (other than 1, this 3 and 12, 15, 16, 18, 19 and 20, which shall be binding from the signature date) is subject to the fulfilment of the following suspensive conditions precedent ("**conditions**") within [] days after the signature date (or such later date as extended in

terms of 3.3 and/or as the parties may agree in writing) (collectively "fulfilment date") –

- 3.1.1 the delivery by ACSA of written notice to the throughputter and the managing participant appointing the throughputter as a "throughputter" in terms of the main agreement;
- 3.1.2 the delivery by the throughputter to the managing participant (as security for the fulfilment by the throughputter of its obligations to the managing participant pursuant to the indemnity and agreement referred to in 3.1.3 and 3.1.4) of (as the managing participant may require) either –
 - 3.1.2.1 an irrevocable unconditional bank guarantee or standby letter of credit; or
 - 3.1.2.2 a suretyship by the throughputter's holding company or other person acceptable to the managing participant,

on terms and conditions acceptable to the managing participant;
- 3.1.3 the signature by all the parties thereto of an indemnity agreement in terms of which the throughputter shall indemnify (on terms and conditions acceptable to the managing participant) each of the participants against any loss, damage and/or expense (whether direct, indirect or consequential) suffered by them arising out of or pursuant to any –
 - 3.1.3.1 breach by the throughputter of this agreement and the agreement referred to in 3.1.4;
 - 3.1.3.2 negligent or wilful act by the throughputter at the airport;
 - 3.1.3.3 failure of the throughputter to supply aviation fuels of a quality complying with the standards set in the JIG;
 - 3.1.3.4 fuelling services provided by and/or on behalf of the throughputter at the airport;

- 3.1.4 the signature by all the parties thereto of an agreement between the throughputter and the managing participant in terms of which, inter alia, the throughputter will inter alia agree that –
- 3.1.4.1 the managing participant and/or the into plane operator shall be solely responsible for –
- 3.1.4.1.1 storing the throughputter's aviation fuels and related products at the bulk fuel site; and
- 3.1.4.1.2 conveying, supply and distributing the throughputter's aviation fuels and related products to aircraft;
- 3.1.4.2 all such storage, conveyance, supply and distribution shall be in accordance with the managing participant's normal and reasonable scheduling of aviation fuel supplies so as to fit into the managing participant's normal and reasonable system regarding the supply and distribution of aviation fuels to aircraft;
- 3.1.4.3 thirty days (or such shorter period as may be reasonably practicable having regard to supply and logistical factors or as may be agreed between the throughputter and the managing participant in writing from time to time) prior written notice will be given, on each occasion, by the throughputter to the managing participant with regard to its intention to deliver aviation fuels for storage in the bulk fuel site and/or for the purposes of performing fuelling services at the airport, which notice shall set out the estimated volume of the aviation fuels the throughputter intends to deliver to and store at the bulk fuel site and written confirmation from the throughputter's customer of the volume and delivery date of the aviation fuels ordered by such customer from the throughputter;
- 3.1.4.4 fees and charges (which will be set out in the agreement) will be payable by the throughputter to the managing participant (on behalf of the existing participants) in consideration for storage and into-plane services provided to the throughputter;

- 3.1.4.5 the throughputter will (in addition to the fees and charges referred to in 3.1.4.4) pay to the managing participant (on behalf of the existing participants) a reasonable non-schedule call out and fuelling fee for any non-scheduled work performed by the into-plane operator at the throughputter's request provided that such fee shall be notified to the throughputter by the managing participant in writing from time to time and shall not be any less favourable to the throughputter than that charged by the into-plane operator to participants and/or other third parties;
- 3.1.5 the delivery to ACSA of a suretyship in favour of ACSA by the throughputter's holding company (or other person acceptable to ACSA in its discretion) on terms and conditions acceptable to ACSA in its discretion;
- 3.1.6 the documents and agreements referred to in 3.1.2 to 3.1.5 becoming unconditional in accordance with their respective terms (save for any conditions relating to this agreement).
- 3.2 Notwithstanding 3.1, the throughputter shall use its best endeavours to procure the fulfilment of the conditions as soon as possible after the signature date.
- 3.3 ACSA shall have the right to extend the date by which all or any of the conditions are to be fulfilled by delivering written notice to that effect to the throughputter; provided that the aggregate of all such extensions shall not exceed ninety days unless otherwise agreed by the parties in writing.
- 3.4 None of the conditions may be waived.
- 3.5 If any of the conditions is not fulfilled on or before the fulfilment date –
- 3.5.1 this agreement (save for 1, this 3.5 and 12, 15, 16, 18, 19 and 20, which shall remain binding on the parties) shall immediately cease to be of any further force and effect and the parties shall (subject to 3.5.2) be

restored as near as may be possible to the positions in which they would have been in had this agreement not been entered into;

- 3.5.2 no party shall have any claim against any other party as a result of the failure of any of the conditions except in terms of the provisions by which they remain bound and/or where the throughputter has breached 3.2.

4 APPOINTMENT AS THROUGHPUTTER

- 4.1 ACSA hereby appoints the throughputter as a "throughputter" (as defined in the main agreement) for the period from the commencement date to [] and subject to 12.3, 12 and compliance by the throughputter with all the terms and conditions of this agreement and the operating agreements.

- 4.2 The throughputter shall at all times comply with all its obligations under the operating agreements. A breach by the throughputter of all or any of its obligations under all or any of the operating agreements shall be deemed to be a material breach of this agreement.

5 SPECIFIC USE OF THE BULK FUEL SITE AND HYDRANT SYSTEM BY THE THROUGHPUTTER, THROUGHPUTTER'S BOOKS AND RECORDS AND INSURANCE

- 5.1 The bulk fuel site and hydrant system shall only be used by the throughputter for the purposes of receiving, storing, supplying, distributing and conveying aviation fuel and related products for aircraft and for purposes necessarily ancillary thereto, and for no other purpose whatever. Notwithstanding anything to the contrary in this agreement, the throughputter shall not be entitled to have any right of use, possession, occupation and/or access for any reason whatever in respect of –

- 5.1.1 the bulk fuel site save in terms of the agreement referred to in 3.1.4;

- 5.1.2 the hydrant system, airside area and any other restricted area at the airport.

- 5.2 ACSA does not warrant that the bulk fuel site and/or the hydrant system is fit for any purpose and/or that the throughputter will be granted any licence,

permit, consent or the like to carry on its business or that any such licence, permit, consent or the like will be renewed.

5.3 The throughputter shall keep all its books and records (including without limitation all fuel receipts, flight receipts, fuel meter readings, reports by independent inspectors with regard to the bulk fuel site, hydrant system and performance of fuelling services at the airport and all records of the volume of aviation fuel supplied and sold by the throughputter at the Airport during each calendar month of this agreement) up to date and in accordance with generally accepted accounting practices. ACSA, its representatives and/or its auditors shall be entitled, at all reasonable times and on reasonable notice to the throughputter, to inspect all such books and records and to take copies and/or extracts thereof.

5.4 The throughputter shall (subject to 5.5 and 5.8) at all times –

5.4.1 maintain insurance (with an insurance company and on terms and conditions reasonably acceptable to ACSA) in its name (or maintain risk financing and/or other arrangements approved by ACSA in writing) in respect of –

5.4.1.1 any statutory liability and liability at common law (including, without limitation, any liability in terms of 6.2) that may be incurred by the throughputter arising out of or attributable to its activities at the bulk fuel site and/or the airport;

5.4.1.2 any loss, damage and/or liability arising from any environmental pollution arising out of or pursuant to the business and other activities of the throughputter at the –

5.4.1.2.1 bulk fuel site;

5.4.1.2.2 hydrant system (but excluding the use by the throughputter of the underground portion of the hydrant system); and/or

5.4.1.2.3 airport;

5.4.2 maintain (with an insurance company reasonably acceptable to ACSA) all insurance and risk financing and other arrangements required in terms of applicable aviation laws and regulations from time to time, including without limitation, comprehensive Aviation Products Liability insurance (including, without limitation, fuel contamination insurance) of at least US\$1 000 000 000 (one billion United States Dollars), or such higher amount as may be reasonably required by ACSA from time to time (having regard, inter alia, to aviation industry standards and the requirements of airlines using the airport) by giving at least thirty days prior written notice thereof to the throughputter.

5.5 The throughputter shall ensure that -

5.5.1 all insurers and third parties in respect of all policies of insurance and risk financing and other arrangements referred to in 5.4 waive all rights of subrogation which they might otherwise have had against ACSA in connection with any such policies provided that the grant of such waiver is standard practice having regard to the type of policy or arrangement in question;

5.5.2 ACSA is given, not later than –

5.5.2.1 fourteen days after the renewal of any such insurance policy, written confirmation from the relevant insurance broker/s; and

5.5.2.2 forty-five days after the renewal of any such insurance policy, a certificate of insurance reasonably acceptable to ACSA and/or ACSA's insurance brokers for the time being,

that such insurance has been effected and that all premiums in respect thereof have been paid by the throughputter;

5.5.3 ACSA is given thirty days prior written notice of the cancellation of any such policy and/or risk financing and/or other arrangements for any reason whatever;

5.5.4 a certificate of insurance (reasonably acceptable to ACSA and/or ACSA's insurance broker for the time being) in respect of each such insurance policy is delivered to ACSA forthwith upon the issue of such policy;

5.5.5 ACSA is, forthwith on demand, given –

5.5.5.1 proof (including, without limitation, proof of all payments required) to ACSA's satisfaction that all or any such risk financing and other arrangements are being maintained; and/or

5.5.5.2 copies of all documentation reasonably required by ACSA (including without limitation correspondence and all agreements, amendments, variations and additions) relating to all or any of such risk financing and other arrangements.

5.6 If –

5.6.1 ACSA at any time considers the amount of the insurance (or any risk financing and/or other arrangement) taken out by the throughputter to be less than the amount required by 5.4 or to be for a lesser range of perils than is required by 5.4; and

5.6.2 the throughputter does not, within seven days of receipt of written notice from ACSA calling upon such throughputter to increase the amount of the insurance (or risk financing or other arrangement) to additional amounts and/or to cover additional perils stated in such notice, give written notice to ACSA that it disagrees with ACSA's view,

the throughputter shall be obliged to increase the amount and range of the cover to those required by ACSA. If the throughputter gives ACSA the written notice referred to in 5.6.2, the determination of the additional amount of and/or the additional range of perils covered by the policy (or risk financing or other arrangement as the case may be) shall be referred to a senior insurance broker practising in Gauteng and nominated by the President for the time being of the Financial Intermediaries Association of Southern Africa (or his successor-in-title). Such broker shall act as an expert and not as an arbitrator and shall be entitled to consult with and/or obtain assistance from any person.

His decision as to the issue referred to him shall (save for manifest error) be final and binding on the parties and he shall determine (in his discretion) which of the parties shall bear his costs and charges.

5.7 The throughputter shall not do, omit to do or permit anything to be done or omitted which renders void or voidable any insurance policy taken out in terms of 5.4.

5.8 Each policy of insurance and risk financing and other arrangement maintained in terms of 5.4 shall contain a provision (provided that the inclusion of such provision is standard practice having regard to the type of policy or arrangement in question) to the effect that the cover afforded to ACSA in terms of that policy or arrangement shall not be invalidated by any act or omission of the throughputter (including without limitation to any misrepresentation or non-disclosure or any delay in making a claim under the policy) unless ACSA was a party to the act or omission or became aware of the act or omission and did not promptly bring it to the attention of the insurer or relevant third party provider of such risk financing or other arrangement (as the case may be).

5.9 If the throughputter should at any time be in breach of any of its obligations in terms of this 5, ACSA shall be entitled, without prejudice to any of its other rights under this agreement or at law, to rectify the breach at its own expense and to recover the direct costs of so doing (including without limitation any insurance premiums, other amounts and duties (if any)), together with interest in accordance with 11.2, from the throughputter on demand.

6 EXCLUSION OF LIABILITY AND INDEMNITIES BY THROUGHPUTTER

6.1 The throughputter shall not (whether alone or together with any participant, other "throughputter" (as defined in the main agreement) or any other person (including without limitation any official, governmental body or organ of state)) have any claim of any nature whatever (including, without limitation, any claim in contract or in delict, any claim for damages (whether direct, indirect or consequential) or a remission of any amount payable to ACSA or any right to withhold or defer payment of any amount payable to ACSA or any

claim for cancellation) against ACSA and/or any of ACSA's directors, employees, agents and/or representatives arising out of or pursuant to -

- 6.1.1 any loss, liability, damage or expense (whether direct, indirect or consequential) suffered by any person as a result of or attributable to the use by the throughputter and/or its employees, representatives, directors, invitees, contractors, subcontractors, customers and/or agents of the bulk fuel site and/or the hydrant system and/or the conduct by the throughputter of its business at the airport;
- 6.1.2 the bulk fuel site and/or the hydrant system and/or any part of or any installation or appurtenance in the bulk fuel site and/or the hydrant system not functioning or being in a defective condition or in a state of disrepair for any reason whatever, or ACSA and/or ACSA's representatives, directors, employees, invitees and/or agents causing any damage to the bulk fuel site and/or the hydrant system;
- 6.1.3 any damage caused to the aviation fuels and/or related products in the bulk fuel site and/or hydrant system and/or equipment, installations, books, papers or other articles, or any assets of any nature whatever kept on the bulk fuel site and/or the airport by the throughputter and/or its employees, invitees, contractors, subcontractors, customers, agents, directors and/or representatives;
- 6.1.4 any loss of life and/or injury to persons and/or damage to property caused to or sustained by or occurring in respect of the throughputter and/or its employees, invitees, agents, directors, contractors, subcontractors, customers and/or representatives on, about or in the bulk fuel site, the hydrant system or the airport;
- 6.1.5 any aviation fuel spill, seepage or leakage from the pipelines from outside the airport to the bulk fuel site, from any vehicle delivering aviation fuels and/or related products to the bulk fuel site, from, under and/or on the bulk fuel site, from the hydrant system and/or from the hose inlet couplings of the hydrant system and/or between such couplings and any aircraft being refuelled, for any reason whatever;

- 6.1.6 rain, hail, lightning, fire, riot or civil commotion, or as a result of or attributable to vis major or causa fortuitus or (without any limitation by reference to the preceding categories) for any other reason whatever;
- 6.1.7 any interruption in the supply of water, electricity, gas or any other service, however caused, in respect of the bulk fuel site and/or hydrant system;
- 6.1.8 the release or discharge of any poisonous, noxious, polluting, dangerous or environmentally harmful substance or article on and/or from the bulk fuel site and/or hydrant system including, without limitation whatever, aviation fuels and/or related products;
- 6.1.9 any loss of life and/or injury to persons and/or damage to any property whatever arising out of the -
- 6.1.9.1 conveyance, supply, distribution and/or storage of aviation fuels and/or related products on the bulk fuel site and/or in the hydrant system and/or at the airport;
- 6.1.9.2 contamination of aviation fuels and/or related products for any reason whatever;
- 6.1.10 any loss of use of the whole or any part of the bulk fuel site and/or the hydrant system for any reason whatever;
- 6.1.11 any deficiency in the environmental safety and/or waste disposal arrangements at the bulk fuel site and/or hydrant system;
- 6.1.12 any loss, damage, liability and/or expense (whether direct, indirect or consequential) suffered and/or incurred by the throughputter and/or its employees, representatives, directors, invitees, contractors, subcontractors, customers and/or agents arising out of or pursuant to any act or omission (whether negligent, wilful or otherwise) of any participant (including without limitation the managing participant), the into-plane operator and/or any other "throughputter" (as defined in the main agreement) and/or any of their respective employees, directors,

members, representatives, agents, contractors, subcontractors and/or customers,

unless directly attributable to a breach of this agreement by ACSA and/or the negligence or wilfulness of ACSA or any of its directors, agents, employees or representatives acting in the course and scope of their lawful duties to ACSA; provided that this exception shall only apply to the extent that any of the foregoing are so attributable and shall not entitle the throughputter to withhold or defer payment of any amount payable to ACSA in terms of this agreement and/or the operating agreements.

- 6.2 The throughputter indemnifies ACSA and each of ACSA's directors, agents, employees or representatives acting in the course and scope of their lawful duties to ACSA (collectively "**indemnified persons**") and holds each indemnified person harmless against any loss, liability, damage and/or expense (whether direct, indirect or consequential) suffered or incurred by all or any of the indemnified persons (and all costs reasonably incurred by all or any of the indemnified persons in connection therewith, including without limitation legal costs on an attorney and own client scale) to the extent that such loss, liability, damage and/or expense directly arises out of –
- 6.2.1 the use of and/or access to the bulk fuel site and/or hydrant system by the throughputter; and/or
 - 6.2.2 the sale and supply by the throughputter of aviation fuels and related products, its business and/or activities at the airport; and/or
 - 6.2.3 any occurrence referred to in 6.1; and/or
 - 6.2.4 any breach by the throughputter of this agreement and/or all or any of the operating agreements;
 - 6.2.5 any breach by the throughputter's holding company or other person referred to in 3.1.2 and/or 3.1.5 of the suretyships referred to in 3.1.2 and/or 3.1.5 (as the case may be);

provided that this 6.2 shall not apply to the extent that any such loss, liability, damage and/or expense arises out of the gross negligence or wilfulness of all or any of the indemnified persons;

7 OBLIGATIONS OF THROUGHPUTTER

7.1 General obligations with regard to bulk fuel site

The throughputter shall -

- 7.1.1 not contravene or permit a contravention of any laws or regulations relating to the ownership, possession, occupation or use of the bulk fuel site or relating to the conduct of the businesses and/or activities of ACSA, the throughputter, the participants and/or any third party in respect of the bulk fuel site;
- 7.1.2 not contravene or permit any contravention of the conditions of title whereunder the bulk fuel site is held by ACSA;
- 7.1.3 not commit or permit the commission of any nuisance in, or under, the bulk fuel site;
- 7.1.4 at its cost and in the event of any spill, seepage or leakage of aviation fuels and/or related products and/or any environmental pollution from any pipeline (owned by the throughputter) to the bulk fuel site from outside the airport (but only insofar as such pipelines are on or adjacent to the airport) and/or from any vehicle delivering the throughputter's aviation fuels and/or related products to the bulk fuel site, forthwith take all necessary action (as required by ACSA) to limit the effect of and remediate such spill, seepage, leakage and/or pollution and to restore the land to a good and clean order and condition. Such action shall be taken in accordance with all applicable laws, regulations, standards and conditions and within a specific reasonable time frame as advised by ACSA to the throughputter in writing;
- 7.1.5 not interfere with or alter any electrical or other installations on the bulk fuel site without the prior written consent of ACSA;

- 7.1.6 not permit to be written, affixed or erected any signs, signboard, writing, fixtures, fittings or any other thing anywhere on the bulk fuel site;
- 7.1.7 comply with all applicable environmental laws and regulations applicable to the bulk fuel site from time to time and implement, at its cost, all reasonable practices and procedures to ensure that no environmental pollution of any nature whatever (including, without limitation, the emission of fumes and/or gasses and/or any spill, seepage or leakage of any aviation fuel) emanates from pipelines (owned by the throughputter) to the bulk fuel site from outside the airport (but only insofar as such pipelines are on or adjacent to the airport) and/or from any vehicle delivering the throughputter's aviation fuels and/or related products to the bulk fuel site. The throughputter shall keep complete and accurate records with regard to its compliance with such environmental laws and regulations and such practices and procedures. ACSA and/or its representative shall be entitled at all reasonable times and on reasonable notice to the throughputter, to inspect any such records and to take copies and/or extracts thereof.

7.2 **Obligation to refrain from restrictive practices**

The throughputter shall not, whether alone or together with any participant or other person, during the period of this agreement -

- 7.2.1 engage in any restrictive or other business practice or method of trading;
- 7.2.2 perform any act or omission,

with regard to this agreement, the bulk fuel site, the hydrant system and/or any fuelling services and/or other activities at the airport, which may or does in any way –

- 7.2.3 adversely prejudice the performance of fuelling services at the airport by any other person (including without limitation any participant or other "throughputter" (as defined in the main agreement)) and/or the supply of aviation fuels and/or related products to the airport;

7.2.4 contravene the provisions of the Competition Act 89 of 1998.

7.3 **Obligations in respect of airport laws and regulations**

The throughputter shall -

7.3.1 strictly comply with all laws, legislation and regulations, as amended from time to time, relating to the airport and the conduct of the throughputter's business at the airport;

7.3.2 strictly comply with all rules and regulations prescribed by ACSA from time to time with regard to the administration and management of the airport including, without limitation, with regard to security, safety, access and the use of any area or areas of the airport;

7.3.3 not in any way compromise the safety and security of people and/or property at the airport;

7.3.4 strictly comply in all respects with all applicable International Civil Aviation Organisation and International Air Transport Association (IATA) regulations from time to time including, without limitation, JIG;

7.3.5 strictly comply with all applicable regulations promulgated by the RSA Department of Transport or any other competent authority from time to time;

7.3.6 strictly comply with all the requirements of all applicable laws, legislation and regulations, including without limitation, occupational safety legislation such as the Occupational Health and Safety Act 85 of 1993.

7.4 **Obligation to report accidents and incidents**

7.4.1 In addition to any statutory obligations that may be imposed on the throughputter from time to time, the throughputter shall report to ACSA every accident or important incident on or in connection with the performance of its obligations (as defined in the relevant carrier

agreement, such other agreements between the throughputter and any aircraft operator and/or JIG) immediately after its occurrence, whether such accident or other important incident is in respect of damage to facilities or equipment or to persons or property or otherwise. The throughputter shall within a further period of thirty days submit a final detailed written report in respect thereof to ACSA. ACSA shall have the right to make any necessary further enquiries as to the cause and results of any such accident or incident, and the throughputter shall give ACSA its full co-operation and assistance to ACSA in this regard.

7.4.2 The throughputter shall report all incidents and occurrences affecting aviation safety and security in accordance with ACSA's reporting system as amended and advised to the throughputter in writing from time to time.

7.5 **Other obligations– Flight delays, aviation fuel quality, compliance with security measures and provision of information to ACSA**

The throughputter shall –

7.5.1 if any flight of any aircraft is delayed as a result of any act or omission of the throughputter, fully cooperate with ACSA and promptly provide all information and details reasonably required by ACSA with regard to such delay and the reasons therefor;

7.5.2 ensure that the quality of the aviation fuels supplied at the airport at all times complies with the Aviation Fuel Quality Requirements for Jointly Operated Systems (AFQRJOS) (as set out in JIG) and internationally accepted standards for the time being;

7.5.3 comply with any security measures instituted and/or required by ACSA at the airport at any time in order to comply with the National Key Points Act 102 of 1980, as amended, the requirements of the International Civil Aviation Organisation (ICAO) and ACSA's aviation security requirements for the time being. If any such security measures are required in terms of any applicable laws or regulations for the time being in force in the RSA, then the throughputter's costs of complying therewith shall be borne by the throughputter. The costs of any additional security measures

instituted and/or required by ACSA after the signature date, in addition to those pertaining at the commencement date, shall be borne by ACSA;

7.5.4 provide ACSA with any information which ACSA may require with regard to this agreement and/or its performance in order for ACSA to comply with any applicable law and/or the lawful requirements of any governmental and/or regulatory body (including without limitation, the Regulating Committee established under the Airports Company Act 44 of 1993 and the National Energy Regulator of South Africa (NERSA));

7.5.5 as required by ACSA from time to time, ensure that representative of itself attends and actively participates in the activities of the Airport Management Centre (AMC) at the airport at all times that the airport is operational.

8 STRIKES AND LABOUR UNREST

8.1 The throughputter shall use reasonable endeavours to maintain harmonious labour relations with its employees at the airport and, in particular, to prevent them from engaging in any activities in or about the airport's aircraft movement area which may in any manner whatever prejudice safety or security or adversely interfere with the rights of other airport users.

8.2 If the throughputter, in the reasonable discretion of ACSA, fails either adequately or effectively to comply with 8.1, ACSA may take such steps as it deems, in its discretion, necessary for the protection of its interests and those of other airport users. Such steps may include, without limitation -

8.2.1 requiring, through its own security personnel or with the assistance of the South African Police Service, all or any of the employees of the throughputter to vacate the airport, alternatively, requiring the throughputter to withdraw from and cease business operations on the airport until the resolution of the dispute. Without limiting the generality of the foregoing, the throughputter shall at all times maintain and implement (where applicable) a contingency plan in effect, in compliance with the National Key Points Act 102 of 1980, as amended, applicable RSA laws and regulations and international standards;

- 8.2.2 denying all or any of the throughputter's employees access to the aircraft movement area of the airport until resolution of the dispute;
- 8.2.3 initiating such legal actions, proceedings and/or steps as ACSA may deem appropriate.
- 8.3 The throughputter shall use its best endeavours to ensure that each recognition or similar agreement between it and each trade union representing throughputter's employees, contains provisions (to ACSA's reasonable satisfaction) protecting ACSA's property against any loss or damage arising out of or pursuant to any labour unrest at the airport. Should the throughputter breach such obligation, it shall, without prejudice to any of ACSA's rights, bear full responsibility for any loss or damage to any of ACSA's property sustained as a result of or attributable to any labour unrest (including without limitation strike action) by any of its employees and/or agents.
- 8.4 ACSA shall not be liable for any loss, liability, damage or expense suffered by the throughputter as a result of or attributable to any action taken by ACSA in terms of 8.2, and the throughputter indemnifies ACSA against any claim arising out of or pursuant to any such loss, liability, damage or expense.

9 **FORCE MAJEURE**

- 9.1 Subject to 8 and the terms of this agreement, if any party is prevented from performing all or any of its obligations under this agreement as a result of an act of God, fire, riot, war (whether declared or not) embargoes, export control, international restrictions, shortage of transport facilities not caused by such party, any order of any international authority, any court order, any requirements of any governmental authority or other competent authority, any theft, interruption of electrical power or destruction of equipment due to any cause beyond the reasonable control of such party or any other circumstances whatever which are not within the reasonable control of such party (collectively "**acts of force majeure**") (but specifically excluding any matters and/or occurrences referred to in 8.1 and 8.2 and the failure to obtain or renew any governmental approval, consent, licence or the like), such party will be deemed to have been released from such obligations (but only to the

extent and for so long as it is so prevented from performing such obligations). If any such act of force majeure continues for more than 180 consecutive days then either ACSA or the throughputter shall be entitled, by written notice to the other of them, to forthwith terminate this agreement.

9.2 As soon as a party becomes aware that an act of force majeure is likely to occur, it shall give notice in writing to the other party estimating the approximate duration of such act of force majeure. The estimate shall not be binding and the party claiming force majeure shall forthwith give written notice to the other party as soon as the act of force majeure ceases to operate.

9.3 Notwithstanding anything to the contrary contained herein, the party relying on an act of force majeure shall use its best endeavours to mitigate and remedy its non-performance due to such act of force majeure.

10 CESSION, ASSIGNMENT AND CHANGE OF CONTROL

10.1 The throughputter shall not cede, delegate, assign, transfer, subcontract or burden all or any of its rights and/or obligations under this agreement to any other person without the prior written consent of ACSA, which consent shall not be unreasonably withheld; provided that should ACSA give such consent, the throughputter shall remain fully responsible and liable to (and indemnifies) ACSA under this agreement for all acts and omissions of the relevant third party and/or its employees, directors, members, representatives, agents, invitees, contractors and/or subcontractors.

10.2 If de facto or de jure control of the throughputter changes for any reason whatever after the commencement date, the throughputter shall notify ACSA thereof in writing as soon as reasonably possible after such change and, should ACSA, on reasonable grounds, object thereto in writing, ACSA and the throughputter shall forthwith meet and negotiate in good faith in order to discuss and resolve the objection. Failing such resolution for any reason whatever within 20 days after the date of commencement of such negotiations, ACSA shall be entitled to forthwith terminate this agreement. For the purposes of this 10.2, the term "control" shall include, without any limitation -

- 10.2.1 the beneficial ownership of (or other direct or indirect right to control the voting of) -
- 10.2.1.1 25% (if the throughputter is listed on any recognised stock exchange);
- 10.2.1.2 51% (if the throughputter is not listed on any recognised stock exchange),
- of the issued share capital of the throughputter; or
- 10.2.2 the right entitling any person to directly or indirectly control the management of the throughputter or appoint (or veto the appointment of) a majority of the board of directors of the throughputter.
- 10.3 ACSA shall be entitled to cede, assign or delegate any of its rights and obligations under this agreement to any other person without the consent of the throughputter; provided that ACSA shall give written notice of such cession, assignment or delegation to the throughputter.

11 LEGAL COSTS, OUTSTANDING PAYMENTS

- 11.1 Should ACSA institute any legal action or proceeding against the throughputter then, without prejudice to any of ACSA's rights under this agreement and/or at law, ACSA shall be entitled to recover from the throughputter all the legal costs incurred by it, including without limitation attorney and own client charges and collection commission.
- 11.2 Without prejudice to any of ACSA's rights under this agreement or at law, the throughputter shall pay interest to ACSA on any amount not paid on due date (or in the case of damages, from the date that ACSA suffered such damages), at 2% above the prime bank overdraft rate as charged, calculated and compounded by the bank from time to time, from the date on which payment of any such amount was due until date of payment thereof, which interest shall be calculated and payable monthly in arrear.

- 11.3 The provisions of 11.1 shall apply, mutatis mutandis, in respect of any legal action or proceeding instituted by the throughputter against ACSA and to any payment due by ACSA to the throughputter which is not made on due date.

12 BREACH AND TERMINATION

- 12.1 Should the throughputter -

- 12.1.1 commit or permit a breach of any provision of this agreement and fail to remedy such breach within ten days (or such longer period as may be reasonably required to remedy such breach) after notice has been given to the throughputter by ACSA requiring it to remedy such breach; provided that no such notice shall be required in the case of a third such breach by the throughputter; or
- 12.1.2 commit or permit a breach of any provision of any of the operating agreements and fail to remedy such breach within any applicable period (if any) in terms of such operating agreement; or
- 12.1.3 be placed under sequestration, liquidation, business rescue or similar disability, whether provisional or final and whether voluntarily or compulsorily, as the case may be; or
- 12.1.4 have a final judgment entered against it –
- 12.1.4.1 and fail within fourteen days after having knowledge of such judgment to satisfy such judgement or take steps to appeal or rescind such judgment; or
- 12.1.4.2 if such appeal or rescission is not made or is made and is unsuccessful, fail to satisfy such judgment within fourteen days thereafter; or
- 12.1.5 be insolvent or deemed to be unable to pay its debts under any applicable law or commit any act which if committed by a natural person would constitute an act of insolvency; or

- 12.1.6 compromise with its creditors generally; or
- 12.1.7 have any licence or permit required to be maintained by the throughputter for the operation of the throughputter's business or the performance of the throughputter's obligations under this agreement revoked or suspended for more than thirty days; or
- 12.1.8 commit any illegal or fraudulent conduct in its dealings with ACSA; or
- 12.1.9 suffer any interference, nationalisation, act of force majeure (as defined in 9.1) or act of any governmental or statutory body which, in the reasonable opinion of ACSA, is potentially or actually prejudicial or detrimental to the throughputter, the throughputter's business and/or ACSA,

then ACSA shall be entitled to cancel this agreement by giving written notice thereof to the throughputter (or, in the event of a breach referred to in 12.1.1, claim immediate specific performance by the throughputter), without prejudice to any of its other rights under this agreement or at law (including without limitation any right to claim damages).

- 12.2 Should any surety for the throughputter under this agreement -
 - 12.2.1 commit or permit a material breach of any material provision of the relevant suretyship and fail to remedy such breach within ten days after notice has been given by ACSA to such surety requiring it to remedy such breach;
 - 12.2.2 commit any act or omission referred to in 12.1.3, 12.1.4, 12.1.5 or 12.1.6,

then ACSA shall be entitled to cancel this agreement, without prejudice to any of ACSA's other rights under this agreement or at law (including without limitation any right to claim damages).

- 12.3 If –

- 12.3.1 the throughputter ceases to be financially capable of rendering fuelling services at the airport for any reason whatever; or
- 12.3.2 the throughputter ceases to be able to supply aviation fuels of a quality complying with the standards set out in JIG for any reason whatever; or
- 12.3.3 the throughputter ceases to be financially capable of performing the obligations of the throughputter in terms of, the main agreement, this agreement and/or all or any of the operating agreements for any reason whatever; or
- 12.3.4 the throughputter's demands on the bulk fuel site materially adversely affect the use of the bulk fuel site by the participants and/or other "throughputters" (as defined in the main agreement) for any reason whatever; or
- 12.3.5 all or any of the agreements and/or the documents referred to in 3.1.2, 3.1.3, 3.1.4 and/or 3.1.5 are breached by the throughputter or its holding company or other person referred to in 3.1.2 and/or 3.1.5 (as applicable) for any reason whatever; or
- 12.3.6 the throughputter becomes a participant or a participant's direct or indirect subsidiary, holding company, fellow subsidiary or direct or indirect subsidiary of any of its holding companies or fellow subsidiaries; or
- 12.3.7 all or any of the agreements and/or other documents referred to in 3.1.2, 3.1.3, 3.1.4 and/or 3.1.5 terminate, expire or otherwise cease to be of any further force or effect for any reason whatever,

(collectively "**trigger events**") then, unless the relevant trigger event is remedied by the throughputter to ACSA's satisfaction within five business days after delivery by ACSA to the throughputter of written demand for such remedy –

- 12.3.8 the throughputter shall immediately cease to be a "throughputter" (as defined in the main agreement) and this agreement shall immediately cease to be of any further force or effect; and
- 12.3.9 the throughputter shall sell and/or remove all its aviation fuels and related products situated at the bulk fuel site within thirty days after the date of such cessation; and
- 12.3.10 any such cessation shall be without prejudice to any claims that ACSA may have against the throughputter arising before the date of such cessation.
- 12.4 The throughputter shall forthwith notify ACSA in writing if any trigger event occurs.
- 12.5 If –
- 12.5.1 ACSA commits or permits a material breach of any material provision of this agreement and fails to remedy such breach within ten days (or such longer period as may be reasonably required to remedy such breach) after notice has been given to it by the throughputter requiring ACSA to remedy such breach; or
- 12.5.2 any of the events referred to in 12.1.3 to 12.1.6 (both inclusive) occur in respect of ACSA,
- then the throughputter shall be entitled to immediately cancel this agreement by giving written notice thereof to ACSA (or, in the event of a breach referred to in 12.5.1, claim immediate specific performance by ACSA), without prejudice to any of their respective rights under this agreement or at law (including without limitation any right to claim damages).

13 REASONABLENESS

If there is a dispute between ACSA and the throughputter as to whether ACSA has unreasonably withheld its consent or approval in any case where this agreement precludes ACSA from withholding its consent or approval unreasonably, or if there

is a dispute between ACSA and the throughputter as to whether ACSA has acted unreasonably in any case where this agreement obliges ACSA to act reasonably, the onus shall be on the throughputter to prove that ACSA has withheld its consent or approval unreasonably or acted unreasonably, as the case may be.

14 **CERTIFICATE OF INDEBTEDNESS**

A certificate under the hand of any director for the time being of ACSA as to the existence and the amounts of any indebtedness of the throughputter to ACSA in terms of this agreement at any time, as to the fact that such amount is due and payable, the amount and interest accrued thereon and as to any other fact, matter or thing relating to such indebtedness, shall be prima facie proof of the contents and correctness thereof and of the amounts of the throughputter's indebtedness for the purpose of provisional sentence or summary judgment or any other proceedings against the throughputter in any competent court, and shall be valid as a liquid document for such purposes. Such certificate shall be rebuttably binding on the throughputter and shall be deemed to be of sufficient particularity for the purpose of pleading or trial in any action or other proceeding instituted by ACSA against the throughputter.

15 **APPLICABLE LAW**

Subject to 16, this agreement shall in all respects be governed by and interpreted in accordance with the laws of the RSA, and all disputes, actions and other matters in connection with this agreement shall be determined in accordance with such laws.

16 **DISPUTES**

- 16.1 Any dispute arising from or in connection with this agreement shall be finally resolved in accordance with the Rules of the Arbitration Foundation of Southern Africa ("**AFSA**") by an arbitrator or arbitrators appointed by AFSA.
- 16.2 Each party shall be entitled to have any award of the arbitrators made an order of any competent court.
- 16.3 This clause constitutes an irrevocable consent by the parties to any proceedings in terms thereof and no party shall be entitled to withdraw

therefrom or to claim at any such proceedings that it is not bound by this clause.

16.4 This clause is severable from the rest of this agreement and shall remain in effect even if this agreement is terminated for any reason.

16.5 This clause shall not preclude any party from obtaining relief by way of motion proceedings on an urgent basis or from instituting any interdict, injunction or any similar proceedings in any court of competent jurisdiction pending the resolution of a dispute under this clause.

16.6 For the purposes of 16.2 and 16.6, the parties consent to the non-exclusive jurisdiction of the South Gauteng High Court, Johannesburg.

17 RELOCATION OF BULK FUEL SITE AND HYDRANT SYSTEM

17.1 Notwithstanding anything to the contrary contained in this agreement, ACSA shall be entitled to require the throughputter to transfer the whole or any part of its operations in respect of the bulk fuel site and/or hydrant system to an alternative site and/or hydrant system at the airport ("**alternative site and/or hydrant system**") by giving the throughputter twelve months prior written notice thereof. Any such transfer shall be effected on the basis that reasonable attempts shall be made so as not to prevent or unduly interfere with the ability of the throughputter to continue with its business operations at the airport.

17.2 If ACSA exercises its rights under 17.1 then notwithstanding anything to the contrary contained in this agreement, this agreement shall not terminate and shall be deemed to have been concluded between the parties in respect of the alternative site and/or hydrant system.

18 DOMICILIUM AND NOTICES

18.1 The parties choose domicilium citandi et executandi ("**domicilium**") for all purposes relating to this agreement, including without limitation the giving of any notice, the payment of any sum, the serving of any process, as follows -

18.1.1 ACSA The Maples
Riverwoods
24 Johnson Road
Bedfordview
2008

Fax no: 011 453 9910

18.1.2 the throughputter []

Fax no: [].

18.2 Each party shall be entitled from time to time, by giving written notice to the other, to vary its domicilium to any other physical address (not being a post office box or poste restante) within the RSA and to vary its facsimile domicilium to any other facsimile number.

18.3 Any notice given or payment made by either party to the other ("**addressee**") which is delivered by hand between the hours of 09:00 and 17:00 on any business day to the addressee's physical domicilium for the time being shall be deemed to have been received by the addressee at the time of delivery.

18.4 Any notice given by either party to the other which is successfully transmitted by facsimile to the addressee's facsimile domicilium for the time being shall be deemed (unless the contrary is proved by the addressee) to have been received by the addressee on the day immediately succeeding the date of successful transmission thereof.

18.5 This 18 shall not operate so as to invalidate the giving or receipt of any written notice which is actually received by the addressee other than by a method referred to in this 18.

18.6 Any notice in terms of or in connection with this agreement shall be valid and effective only if in writing and if received or deemed to be received by the addressee.

19 GENERAL

- 19.1 This agreement constitutes the sole record of the agreement between the parties in relation to the subject matter hereof. Neither party shall be bound by any express, tacit or implied term, representation, warranty, promise or the like not recorded herein. This agreement supersedes and replaces all prior commitments, undertakings or representations, whether oral or written, between the parties in respect of the subject matter hereof.
- 19.2 No addition to, variation, novation or agreed cancellation of any provision of this agreement shall be binding upon the parties unless reduced to writing and signed by or on behalf of the parties.
- 19.3 No indulgence or extension of time which either party may grant to the other shall constitute a waiver of or, whether by estoppel or otherwise, limit any of the existing or future rights of the grantor in terms hereof, save in the event and to the extent that the grantor has signed a written document expressly waiving or limiting such right.
- 19.4 Without prejudice to any other provision of this agreement, any successor-in-title, including without limitation any executor, heir, liquidator, judicial manager, curator or trustee, of either party shall be bound by this agreement.

20 COSTS

Each party shall bear and pay its own costs of and incidental to the negotiation, preparation and execution of this agreement

Signed at _____ on _____ 2015
for Airports Company South Africa SOC
Limited

DRAFT - NOT FOR SIGNATURE

who warrants that he is duly
authorised hereto

Signed at

on

2015

for []

DRAFT - NOT FOR SIGNATURE

who warrants that he is duly
authorised hereto

DRAFT

ANNEXURE A – DIAGRAM OF BULK FUEL SITE

DRAFT