



# THROUGHPUTTER AGREEMENT

Between

**AIRPORTS COMPANY SOUTH AFRICA SOC LIMITED**

and

**XXXXXXXXXXXXXXXXXX (PTY) LTD**

In relation to

**XXXXXXXX AIRPORT**

And

**XXXXXXXX AIRPORT**

and

**XXXXXXXX AIRPORT**

and

**XXXXXXXXXXXXXXXX AIRPORT**

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## 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 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**" –

1.2.7. "**Aviation Fuels**" – collectively:

1.2.7.1. Jet A-1 aviation fuel at

1.2.7.2. AVGAS –

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. "**BBBEE**" – Broad Based Black Economic Empowerment

1.2.10. "**Bulk Fuel Site**" - subject to 18, the land, bulk fuel tanks and other improvements on the land situated at the Airport (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 **XX XXXXX 2025**.
- 1.2.14. "**Environment**" - the surroundings within which humans exist and that are made up of:
- 1.2.14.1. the land, water, and atmosphere of the Earth,
  - 1.2.14.2. micro-organisms, plant, and animal life,
  - 1.2.14.3. 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,
  - 1.2.14.4. the built Environment, and
  - 1.2.14.5. the physical, chemical, aesthetic, and cultural properties and conditions of the foregoing that influence human health and well-being,
- 1.2.15. "**Environment Pollution**" - any change in the Environment caused by:
- 1.2.15.1. Substances,
  - 1.2.15.2. radioactive or other waste, or
  - 1.2.15.3. 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 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,
- 1.2.16. "**Fuelling Services**" – collectively, the storage, conveyance, supply and distribution of Aviation Fuels and Related Products to and from aircraft.

- 1.2.17. **"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.
- 1.2.18. **"Into-Plane Operator"** - the company appointed by an Aircraft Operator that conveys fuel to the aircraft and performs Fuelling Services;
- 1.2.19. **"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.
- 1.2.20. **"Main Agreement"** - the agreement between the Bulk Fuel Operator and ACSA in terms of which ACSA lets the Bulk Fuel Site to the Bulk Fuel Operator and grants a non-exclusive right to use the Hydrant System and perform Fuelling Services at the Airport;
- 1.2.21. **"Bulk Fuel Operator"** - the Bulk Fuel Operator appointed from time to time for the purpose of, providing into plane services, ensuring the safe operation of the fuel depot, responsible storage of agreed minimum reserve stock, and being compliant to governance and standards as prescribed by NERSA, or any other Regulator/Authority.
- 1.2.22. **"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.
- 1.2.23. **"Related Products"** - products directly related to Aviation Fuels, diesel, and aircraft lubricants.
- 1.2.24. **"Restricted Party"** means any individual, legal person, entity or organisation that is:
- 1.2.24.1. resident, established or registered in a Restricted Jurisdiction;
  - 1.2.24.2. classified as a US OFAC Specially Designated National or otherwise subject to blocking sanctions under Trade Control Laws;

1.2.24.3. directly or indirectly owned or controlled (as these terms are interpreted under the relevant Trade Control Laws), or acting on behalf of, persons, entities or organisations described in 1.2.24.1 or 1.2.24.2; or

1.2.24.4. a director, officer or employee of a legal person, entity or organisation described in 1.2.24.1 to 1.2.24.3.

1.2.25. **"RSA"** - the Republic of South Africa.

1.2.26. **"Sanctions Laws"** means any laws concerning trade or economic sanctions or embargoes, Restricted Party lists, trade controls on the imports, export, re-export, transfer, or otherwise trade of goods, services or technology, and any other similar regulations, rules, restrictions, orders or requirements having the force of law in relation to the above matters in force from time to time, including those of the European Union, the United Kingdom, the United States of America or other government laws in relation to the above matters applicable to a Party to this Agreement.

1.2.27. **"Signature Date"** - the date of signature of This Agreement by the last signing of the parties.

1.2.28. **"Termination Date"** - the date which is **XX XXXXX 2028**

1.2.29. **"Throughputter"** - **XXXXXX** Pty Ltd registration number **XXXX/XXXXXXXX/XX.**

1.3. Any reference to any statute, regulation or other legislation shall be construed as a reference to that statute, regulation, or other legislation as at the commencement date and as amended or substituted from time to time.

1.4. If any provision in a definition is a substantive provision conferring rights or imposing obligations on any party then, notwithstanding that it is only in a definition, effect shall be given to that provision as if it were a substantive provision in the body of This Agreement.

1.5. Any word or phrase defined in the body of This Agreement as opposed to in 1.2 shall (unless the context clearly indicates a contrary intention) have the meaning ascribed to it in such definition throughout This Agreement.

1.6. Where any number of days is to be calculated from a particular day, such number shall be calculated as excluding such particular day and commencing on the next day. If the last day of such number so calculated falls on a day which is not a

Business Day, the last day shall be deemed to be the next succeeding day which is a Business Day.

- 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 Bulk Fuel Operator 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) at XXXXXXXXXX Airport.
- 2.4. The Throughputter (as defined in the Main Agreement) is appointed subject to the terms and conditions of This Agreement.

## 3. CONDITIONS PRECEDENT

- 3.1. The whole of this Agreement (other than 1, this 3 and 13, 16, 17, 19, 20, 21, 22 and 23, which shall be binding from the Signature Date) is subject to the fulfilment of the following conditions precedent ("*Conditions*") before 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 Bulk Fuel Operator appointing the Throughputter as a "*Throughputter*" in terms of the Main Agreement.
- 3.1.2. The delivery by the Throughputter (as security for the fulfilment by the Throughputter of its obligations to the Bulk Fuel Operator pursuant to the indemnity and agreement referred to in 3.1.3 and 3.1.4) of security or guarantee to the satisfaction of ACSA of such security or guarantee as follows:
  - 3.1.2.1. In the case where the appointed Throughputter is not the same organisation as and has no affiliation or relationship with the Bulk Fuel Operator, the fulfilment of obligations specified in this Agreement will be made to the Bulk Fuel Operator, and
  - 3.1.2.2. In the case where the Bulk Fuel Operator and the appointed Throughputter is the same organisation and/or managed/held by the same parent company and/or have a form of ownership between one another, then the fulfilment of obligations specified in this Agreement will be made directly to ACSA.
- 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 Bulk Fuel Operator) each of the participants against any loss, damage and/or expense 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 Bulk Fuel Operator in terms of which, inter alia, the Throughputter will inter alia agree that:

- 3.1.4.1. The Bulk Fuel Operator 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, supplying, 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 Bulk Fuel Operator's normal and reasonable scheduling of Aviation Fuel supplies so as to fit into the Bulk Fuel Operator's normal and reasonable system regarding the supply and distribution of Aviation Fuels to aircraft.
- 3.1.4.3. 30 (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 Bulk Fuel Operator in writing from time to time) prior written notice will be given, on each occasion, by the Throughputter to the Bulk Fuel Operator 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 Bulk Fuel Operator (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 Bulk Fuel Operator 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 Bulk Fuel Operator 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 documents and agreements referred to in 3.1.2 to 3.1.5 become 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 13, 16, 17, 19, 20, 21, 22 and 23, 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 and will terminate on the date as set out in This Agreement, and subject to clause 13 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.

4.3. The Throughputter shall pay an upfront refundable deposit of ZAR200 000 (Two Hundred Thousand Rands only), and no VAT shall apply, on or by the commencement date:

4.3.1. Such R200 000.00 (Two Hundred Thousand Rand) deposit shall be retained by ACSA as deposit ("deposit") as security for the performance by the Throughputter of its obligations under This Agreement but shall be refunded, with accrued interest at prime rate, to the Throughputter at termination of This Agreement.

4.3.2. The deposit shall be retained in an interest-bearing account.

4.3.3. ACSA shall have the right to apply the whole or any portion of the deposit for payment of any direct loss, claim or liability caused by the Throughputter to ACSA under This Agreement resulting from the Throughputter's material breach of This Agreement which remains unremedied after the respective remedy period. If any portion of the deposit is so applied, the Throughputter shall forthwith reinstate the deposit to its original amount on written demand by ACSA within a reasonable period of time.

4.3.4. Material breaches are defined as the following events/occurrences that may occur as part of this Agreement:

4.3.4.1. Failure to comply to the minimum stock holding of fuel at the site.

4.3.4.2. Failure to notify ACSA of anticipated shortages of Aviation Fuels and Related Products.

4.3.4.3. Failure or a break in holding the minimum insurance cover for the operation.

4.3.4.4. Not having a valid JIG certification for the duration of the contract.

4.3.4.5. Failure to provide fuel to aircraft/s and/or airlines that it has contracted with at the Airport.

4.3.4.6. Environmental contamination and/or safety incident caused by the Throughputter that is reportable to the Authorities and/or

requires clean-up and remediation by ACSA or any of its Contractors.

4.3.4.7. Not having a valid Tax Clearance Certificate for the duration of the contract.

4.3.4.8. Not having a valid B-BBEE contributor level status certificate for the duration of the contract.

4.4. Notwithstanding anything to the contrary contained in This Agreement, ACSA may, only after the Throughputter fails to remedy a material breach within 48 hours of This Agreement in accordance with the terms included here under, grant a third party the right to supply Aviation Fuels at the Airports for a period deemed necessary by ACSA. Such additional through-putter must only be appointed after compliance with ACSA's Throughputter licence application process and the appointed term shall be determined by the governance structures of ACSA.

## **5. SPECIFIC USE OF THE BULK FUEL SITE AND HYDRANT SYSTEM BY THE THROUGHPUTTER, THROUGH PUTTER'S BOOKS, 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. All fuel stored at the Bulk Fuel Site is for the purpose of use at the relevant Airport unless agreed to in writing by ACSA and the Throughputter. 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 saves 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 will be fit for any purpose by the Throughputter and/or that the Throughputter will be granted any licence, permit, consent or the like to carry on its business once any licence, permit, consent or the like previously granted by ACSA has expired or any of the conditions upon which such licence or permit was granted are no longer fulfilled by the Throughputter, which conditions shall include, but not be limited to, signed valid Main Agreement and Operating Agreements.

- 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.

## **6. INSURANCE**

- 6.1. The Throughputter shall not:
- 6.1.1. Save for Aviation Fuels that are to be sold to Airlines at ACSA Airports, store or use or permit the storage or use of any article or substance in the Bulk Fuel Site and/or the Hydrant System and/ or ground service equipment which results or may result in the premiums in respect of any insurance in respect of the Bulk Fuel Site and/or Hydrant System and/ or ground service equipment and/or the Airport being increased;
  - 6.1.2. Do anything nor permit anything to be done which may result in any insurance policy held by ACSA for the time being in respect of the Bulk Fuel Site and/or Hydrant System and/ or ground service equipment and/or the Airport being rendered void or voidable and/or an increased premium being payable by ACSA in respect thereof;
- 6.2. Without prejudice to any of ACSA's rights under This Agreement and/or at law, should the Throughputter breach any of the provisions of 6.1; and
- 6.2.1. ACSA is unable to secure indemnity under any insurance policy it holds then, ACSA will claim against the Throughputter's insurance policies where ACSA is named as a co-insured, or sue the Throughputter; and
- 6.3. ACSA shall at all times ensure that its assets on the Bulk Fuel Site, the fuel tanks and all other permanent improvements on the Bulk Fuel Site are insured (including, the Hydrant System and/ or ground service equipment and/or otherwise on the Airport) and kept insured for the duration of This Agreement, against the risk of loss or damage by fire, flood, explosion, storm, riot, and other related perils.

- 6.4. The Throughputter shall, (subject to 6.6), at all times:
- 6.4.1. Secure and maintain, on terms and conditions (and with an insurance company) reasonably acceptable to ACSA and for the duration of This Agreement, Aviation liability insurance, for an amount of not less than USD500,000,000 (Five Hundred Million US Dollars). The aviation liability covers must-have extensions for Environmental Liability and Motor Third Party Liability.
  - 6.4.2. Product liability insurance for an amount of not less than USD500,000,000 (Five Hundred Million US Dollars).
  - 6.4.3. General Liability Insurance for an amount of not less than R100,000,000 (One Hundred Million Rands).
  - 6.4.4. ACSA must be named as the co-insured in all the policies in 6.4.1 to 6.4.3
  - 6.4.5. Furnish ACSA with written confirmation from an Insurance Broker in the form of a Certificate of Cover, of the existence and validity of the insurance referred to in clause 6.4.1 to 6.4.4. The proof of insurance cover must be furnished before signing of This Agreement, and thereafter annually upon the renewal of the insurance policies for the duration of the agreement.
- 6.5. The Throughputter shall, (subject to 6.6), at all times, on the terms and conditions reasonably acceptable to ACSA and for the duration of This Agreement:
- 6.5.1. Insure (with an insurance company reasonably acceptable to ACSA) all:
    - 6.5.1.1. the fixtures, fittings, and installation from time to time on the Bulk Fuel Site (excluding, for the avoidance of doubt, anything which ACSA is obliged to insure in terms of 6.3); and
    - 6.5.1.2. Aviation Fuel, Related Products, items, and substances from time to time on the Bulk Fuel Site and/or in the Hydrant System, for their full replacement value and against the risks referred to in 6.3.
  - 6.5.2. Maintain insurance in the Throughputter's name, with ACSA as the co-insured in respect of:
    - 6.5.2.1. Any statutory liability and liability at common law (including, without any limitation, any liability in terms of 7.2 that may be

incurred by ACSA arising out of or attributable to its activities at the Bulk Fuel Site and the Airport; and

6.5.2.2. Any loss, damage and/or liability arising from any Environment Pollution arising out of or pursuant to the business and other activities of the Throughputter at the:

6.5.2.2.1. Bulk Fuel Site.

6.5.2.2.2. Hydrant System which also includes below-ground installations and/or ground service equipment; and/or,

6.5.2.2.3. Airports.

6.6. The Throughputter shall ensure that:

6.6.1. ACSA is given, within at least thirty (30) Business Days after delivery of written request thereof by ACSA:

6.6.1.1. Written confirmation of the renewal of any such insurance policy from the relevant insurance broker/s; and

6.6.1.2. A certificate of insurance reasonably acceptable to ACSA and/or ACSA's insurance brokers for the time being, that such insurance has been affected and that all premiums in respect thereof have been paid by the Throughputter.

6.6.2. ACSA is given thirty (30) days prior written notice of the cancellation of any such policy and/or risk financing and/or other arrangements for any reason whatever.

6.6.3. 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.

6.7. 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 6.3, 6.4 and/or 6.5.

6.8. If the Throughputter should at any time be in breach of any of its obligations in terms of this 6.1, 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 at a prime in accordance with ACSA on demand.

## **7. EXCLUSION OF LIABILITY AND INDEMNITIES BY THROUGHPUTTER**

7.1. 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:

7.1.1. 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.

7.1.2. 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.

7.1.3. 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.

7.1.4. 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.

- 7.1.5. 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.
- 7.1.6. 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.
- 7.1.7. 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.
- 7.1.8. 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, Aviation Fuels and/or Related Products.
- 7.1.9. Any loss of life and/or injury to persons and/or damage to any property whatever arising out of the:
  - 7.1.9.1. 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.
  - 7.1.9.2. Contamination of Aviation Fuels and/or Related Products for any reason whatever.
- 7.1.10. Any loss of use of the whole or any part of the Bulk Fuel Site and/or the Hydrant System for any reason whatever unless such loss is as a result of ACSA's gross negligence and/or wilful misconduct.
- 7.1.11. Any deficiency in the Environmental safety and/or waste disposal arrangements at the Bulk Fuel Site and/or Hydrant System.
- 7.1.12. 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 Bulk Fuel Operator), 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 gross negligence or wilful misconduct 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 a 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.

- 7.2. 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:
  - 7.2.1. The use of and/or access to the Bulk Fuel Site and/or Hydrant System by the Throughputter; save to the extent that such loss, liability, damage or expense is attributable to the gross negligence, wilful misconduct or omission of ACSA or its directors, agents, employees or representatives; and/or
  - 7.2.2. The sale and supply by the Throughputter of Aviation Fuels and Related Products, it's business and/or activities at the Airport.; and/or
  - 7.2.3. Any occurrence referred to in 7.1; and/or
  - 7.2.4. Any breach by the Throughputter of This Agreement and/or all or any of the Operating Agreements.

7.2.5. Any breach by the Throughputter's holding company or other person referred to in 3.1.2; provided that this 7.2 shall not apply to the extent that any such loss, liability, damage and/or expense arises out of the gross negligence or wilful act, omission or misconduct of all or any of the indemnified persons.

7.3. Neither party shall be liable for the indirect, consequential and special damages under the terms of This Agreement.

## **8. OBLIGATIONS OF THROUGHPUTTER**

8.1. General obligations with regard to Bulk Fuel Site, the Throughputter shall:

8.1.1. 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.

8.1.2. Not contravene or permit any contravention of the conditions of title whereunder the Bulk Fuel Site is held by ACSA.

8.1.3. Not commit or permit the commission of any nuisance in, or under, the Bulk Fuel Site.

8.1.4. At its cost and in the event of any spill, seepage or leakage of Aviation Fuels and/or Related Products and/or any Environment 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.

8.1.5. Not interfere with or alter any electrical or other installations on the Bulk Fuel Site without the prior written consent of ACSA; not permit to be written,

affixed or erected any signs, signboard, writing, fixtures, fittings, or any other thing anywhere on the Bulk Fuel Site.

- 8.1.6. 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 Environment 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.
- 8.1.7. Maintain a valid BBEE contributor level status for the duration of the contract.
- 8.1.8. Maintain a valid tax clearance Certificate for the duration of the contract.
- 8.1.9. Submit a copy of its insurance, B-BBEE certificate, audited financial statements and tax certificate annually on the anniversary of This Agreement
- 8.2. 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:
  - 8.2.1. Engage in any restrictive or other business practice or method of trading.
  - 8.2.2. 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.
    - 8.2.2.1. 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.

8.2.2.2. Contravene the provisions of the Competition Act 89 of 1998 and its Amendments.

8.3. Obligations in respect of Airport laws and regulations:

The Throughputter shall:

8.3.1. 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.

8.3.2. Strictly comply with all rules, regulations and standard operating procedures as 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.

8.3.3. Not in any way compromise the safety and security of people and/or property at the Airport.

8.3.4. Strictly comply in all respects with all applicable South African Civil Aviation Authority Regulations and Technical Standards, International Civil Aviation Organisation and International Air Transport Association (IATA) regulations from time to time including, without limitation, JIG.

8.3.5. Strictly comply with all applicable regulations promulgated by the RSA Department of Transport or any other competent authority from time to time.

8.3.6. 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.

8.4. Obligation to report accidents and incidents:

8.4.1. 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 (30) 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 cooperation and assistance to ACSA in this regard.

8.4.2. 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.

8.5. Other obligations: Flight delays, Aviation Fuel quality, compliance with security measures and provision of information to ACSA.

The Throughputter shall:

8.5.1. 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.

8.5.2. 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.

8.5.3. 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 South African Civil Aviation Authority, 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 to the commencement date, shall be borne by ACSA.

8.5.4. 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)).

- 8.5.5. On the last working day of each month provide ACSA and its appointed bulk fuel storage operator and into-plane service provider with the total fuel demand volume ordered by its contracted airlines, for up to three (3) months. The demand information shall state the fuel volumes per airline, per fuel type.
  - 8.5.6. As required by ACSA from time to time, ensure that a representative attends and actively participates in the activities of the Airport Management Centre (AMC), at all times that the Airport is operational.
- 8.6. Obligation in respect of minimum volumes:
- 8.6.1. The Throughputter shall at all times maintain sufficient volumes needed by the airline on a daily basis and/or agreed by the Airline in writing from time to time of usable Aviation Fuels and Related Products at the bulk storage fuel site in order to at all times satisfy the demand of their respective customers for usable Aviation Fuels and/or Related Products at the Airport.
  - 8.6.2. In the event of any special circumstances which are likely to result in a temporary increase in the number of aircraft using the Airport and/or a temporary increase in the demand for usable Aviation Fuels at the Airport, ACSA shall be entitled (by giving the Throughputter at least three (3) months prior written notice thereof) to require the Throughputter to store at the Bulk Fuel Site such additional volumes of usable Aviation Fuels as ACSA may stipulate in such notice. This situation will only apply if the Throughputter has secured the right to be a supplier of jet fuel to relevant users at the Airport.
  - 8.6.3. Without prejudice to any of ACSA's rights under This Agreement and/or at law, should the useable Aviation Fuels stored at the bulk site be less than the volumes in Clause 8.6.1 peak demand for usable Aviation Fuels at the Airport ("the penalty threshold"), then the Throughputter shall forthwith give written notice to ACSA and the Throughputter shall pay ACSA on demand an amount of R500,000 (Five Hundred Thousand Rand) per day from the date such usable Aviation Fuels are less than the penalty threshold for as

long as the Throughputter fails to comply with 8.6.2. It is expressly recorded that any amount payable under 8.6.4 constitutes a penalty and that ACSA will, notwithstanding anything to the contrary in This Agreement, be entitled to recover its damages only (and not its indirect or consequential damages) in lieu of such penalty.

8.6.4. The Throughputter will not have the right to supply fuel to unscheduled flights to the Airport. In the event that such a flight arrives at the Airport and requires refuelling, the Aircraft/Airline will contact ACSA and the Operator of the Fuel Infrastructure at the Airport to arrange refuelling. ACSA will, at its discretion, engage with Throughputters for the supply of fuel and provide a written undertaking of payment to the Throughputter. ACSA will transact with the Airline/Aircraft while the amounts payable to the Throughputter for the fuel dispenses will be within thirty (30) days of the transaction.

8.7. Obligation in respect of Fuel Shortage and adverse change in fuel supply:

8.7.1. In an event where there are anticipated shortages of Aviation Fuel and Related Products, the Throughputter shall notify ACSA within twenty-four (24) hours of such information becoming known and/or publicly available.

8.7.2. In an event where there is a material adverse change in the supply of Aviation Fuel and Related Products globally, in South Africa, and anticipated impact on supply to relevant ACSA Airports, the Throughputter shall notify ACSA within twenty-four (24) hours of the information becoming known and/or publicly available. Furthermore, the Throughputter agrees to sell their Aviation Fuel and associated product stock to other fuel suppliers and/or Airlines that may be experiencing difficulty in securing fuel. This transaction will work on a willing buyer and willing seller principle.

8.7.3. The minimum stock holding will be 5 (five) days' supply based on a 7 (seven) day moving average of daily demand from the Throughputter. This amount can be adjusted through written consent from ACSA and is influenced by factors of supply and location of each Airport.

## **9. STRIKES AND LABOUR UNREST**

9.1. 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.

- 9.2. If the Throughputter, in the reasonable discretion of ACSA, fails either adequately or effectively to comply with 9.1, 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:
  - 9.2.1. Requiring, through its own security personnel or with the assistance of the South Africa 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.
  - 9.2.2. Denying all or any of the Throughputter's employees' access to the aircraft movement area of the Airport until the resolution of the dispute.
  - 9.2.3. Initiating such legal actions, proceedings and/or steps as ACSA may deem appropriate.
- 9.3. 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.
- 9.4. 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 9.2, save for any act of gross negligence or wilful misconduct and the Throughputter indemnifies ACSA against any claim arising out of or pursuant to any such loss, liability, damage, or expense.

## 10. FORCE MAJEURE

- 10.1. Subject to 9 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 9.1 and 9.2 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.
- 10.2. 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.
- 10.3. 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.

## 11. CESSION, ASSIGNMENT AND CHANGE OF CONTROL

- 11.1. The Throughputter shall not cede, delegate, assign, transfer, sub-contract 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.

11.2. If *de facto or de jure control* of either Party changes for any reason whatever after the commencement date, the Party whose control is being changed shall notify the other Party thereof in writing as soon as reasonably possible after such change and, should the other Party, on reasonable grounds, object thereto in writing, the Parties shall forthwith meet and negotiate in good faith in order to discuss and resolve the objection. Failing such resolution for any reason within 20 (twenty) days after the date of commencement of such negotiations, Either Party shall be entitled to forthwith terminate This Agreement. For the purposes of this clause 11.2, the term "*control*" shall include, without any limitation:

11.2.1. the beneficial ownership of (or other direct or indirect right to control the voting of):

11.2.1.1. 25% (if the Party is listed on any recognised stock exchange).

11.2.1.2. 51% (if the Party is not listed on any recognised stock exchange) of the issued share capital of the Throughputter,  
or

Neither Party 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 other Party.

## **12. LEGAL COSTS, OUTSTANDING PAYMENTS**

12.1. 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.

12.2. 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 arrears.

12.3. The provisions of 12.1 and 12.2 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 the due date.

### **13. BREACH AND TERMINATION**

13.1. The Throughputter will be considered to be in breach of This Agreement should it:

13.1.1. Commit or permit a breach of any provision of This Agreement and fail to remedy such breach within ten (10) 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;

13.1.2. 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

13.1.3. Be placed under sequestration, liquidation, business rescue or similar disability, whether provisional or final and whether voluntarily or compulsorily, as the case may be

13.1.4. Have a final judgment entered against it:

13.1.4.1. And fail within fourteen days after having knowledge of such judgment to satisfy such judgement or take steps to appeal or rescind such judgment;

13.1.4.2. If such appeal or rescission is not made or is made and is unsuccessful, fail to satisfy such judgment within fourteen days thereafter.

13.1.5. 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;

13.1.6. Compromise with its creditors generally;

13.1.7. 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 (30) days;

13.1.8. Commit any illegal or fraudulent conduct in its dealings with ACSA;

13.1.9. Suffer any interference, nationalisation, act of force majeure (as defined in 10.1) 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.

13.2. 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 13.1.1, 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), in the event

13.2.1. The Throughputter ceases to be financially capable of rendering Fuelling Services at the Airport for any reason whatever;

13.2.2. 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;

13.2.3. 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;

13.2.4. 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 whatsoever;

13.2.5. 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;

13.2.6. 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.

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).

13.3. Should 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 (5) Business Days after delivery by ACSA to the Throughputter of a written demand for such remedy;

13.3.1. 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

13.3.2. The Throughputter shall sell and/or remove all its Aviation Fuels and related products situated at the Bulk Fuel Site within thirty (30) days after the date of such cessation, and

13.3.3. Any such cessation shall be without prejudice to any claims that ACSA may have against the Throughputter arising before the date of such cessation.

13.3.4. The Throughputter shall forthwith notify ACSA in writing if any trigger event occurs.

13.4. If ACSA commits or permits a material breach of any material provision of This Agreement and fails to remedy such breach within ten (10) 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

13.5. Any of the events referred to in 13.1.3 to 13.1.6 (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 13.4, 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).

#### **14. 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.

## **15. 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 rebuttable 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.

## **16. APPLICABLE LAW**

Subject to 17, 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.

## **17. DISPUTES**

17.1. 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.

17.2. The venue and seat of the arbitration shall be Johannesburg and the language of the arbitration shall be English.

17.3. The arbitral tribunal (the "Tribunal") shall consist of one arbitrator where the value of the claim is less than R50 million and of three arbitrators where the value of the claim is equal or more than R50 million.

17.4. The Parties agree to waive any objection to proceedings in such arbitration forum on the grounds of venue or on the grounds that proceedings have been brought in an appropriate forum.

17.5. Any award rendered by the Tribunal shall be made in writing and shall be final and binding on the Parties. The Parties undertake to carry out the award without delay.

17.6. All aspects of the arbitration shall be confidential. Save to the extent required by law or pursuant to any proceedings to enforce or challenge an award, no aspect of the proceedings, documentation, or any (partial or final) award or order or any

other matter connected with the arbitration shall be disclosed to any other person by either party or its counsel, agents, corporate parents, affiliates or subsidiaries without the prior written consent of the other party.

- 17.7. Each party shall be entitled to have any award of the arbitrators made an order of any competent court.
- 17.8. 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.
- 17.9. This clause is severable from the rest of This Agreement and shall remain in effect even if This Agreement is terminated for any reason.
- 17.10. 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.
- 17.11. For the purposes of Clause 17.10, the parties' consent to the non-exclusive jurisdiction of the Gauteng Division of the High Court, Johannesburg.

## **18. RELOCATION OF BULK FUEL SITE AND HYDRANT SYSTEM**

- 18.1. 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 affected 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.
- 18.2. If ACSA exercises its rights under 18.1 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.

## **19. DOMICILIUM AND NOTICES**

- 19.1. 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:

19.1.1. Party 1:

ACSA  Tel Number: Email: For the attention of:	Western Precinct, Aviation Park, O.R. Tambo International Airport 1 Jones Road Kempton Park 1632

19.1.2. Party 2:

XXXXXXXX Pty Ltd  Tel Number: Email: For the attention of:	       

- 19.2. 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 electronic mail address to any other electronic mail address.
- 19.3. 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.
- 19.4. 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.
- 19.5. This 19 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 19.

19.6. 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.

## **20. GENERAL**

20.1. This Agreement constitutes the sole record of the agreement between the parties in relation to the subject matter hereof.

20.2. 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.

20.3. 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.

20.4. 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.

20.5. 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.

## **21. COSTS**

Each party shall bear and pay its own costs of and incidental to the negotiation, preparation, and execution of This Agreement.

## **22. ANTI-CORRUPTION UNDERTAKINGS**

22.1. The Parties hereby agree and undertake that in accordance with This Agreement and the transactions contemplated by This Agreement, they will comply with all applicable laws and anti-corruption laws, rules and regulations, decrees and/or official government orders of the Republic of South Africa, with particular reference but not limited to the provisions of the Prevention and Combating of Corrupt Activities Act 12 of 2004, the Airports Company Act 44 of

1993, the Airports Company Amendment Act 2 of 1998, the Public Finance Management Act 1 of 1999, the Constitution of the Republic of South Africa, 1996, the United States Foreign Corrupt Practices Act of 1977, the United Kingdom Bribery Act 2010 as well as the laws of any country where any of the parties will undertake the performance of their obligations in connection with This Agreement (collectively referred to as “**Anti-Corruption Laws**”).

- 22.2. The Parties represent, warrant and undertake that it, and each of their owners, directors, officers, employees, and every other person acting on their behalf will not engage in acts or transactions (including any not involving a party), otherwise in violation of or inconsistent with Anti-Corruption Laws. For the purposes of this undertaking, the applicable laws of the Republic of South Africa, and the laws of any other country where any of the parties will undertake the performance of their obligations, shall also be deemed to apply to each party regardless of whether the party is otherwise subject to those laws.
- 22.3. The Parties hereby agree and undertake that in accordance with This Agreement whether in the Republic of South Africa or elsewhere, it and each of their affiliates have and will apply effective disclosure controls and procedures to comply with Anti-Corruption Laws; have and will maintain proper and accurate books, records and accounts, for a period of at least three (3) years after the period to which they relate, which, in reasonable detail, accurately and fairly reflect any and all payments made, expenses incurred and assets disposed of; and have and will maintain an internal accounting controls system that is sufficient to ensure the proper authorisation, recording and reporting of all transactions to provide reasonable assurances that violations of Anti-Corruption Laws will be avoided, prevented, detected and deterred.
- 22.4. The Parties represent and warrant that:
- 22.4.1. to the best of their knowledge and belief neither it nor any of their directors, or other officers, employees, partners, shareholders, agents, consultants or representatives:
  - 22.4.2. have at any time been found by a court in any jurisdiction to have engaged in any corrupt activity (or similar conduct);
  - 22.4.3. have at any time admitted to having engaged in any corrupt activity;
  - 22.4.4. have at any time been investigated or been suspected in any jurisdiction of having engaged in any corrupt activity (or similar conduct).
- 22.5. The Parties confirm that they do not know or have any reason to suspect that:

- 22.5.1. the proceeds, funds or property that are the subject of any transactions under This Agreement involving the parties are or will be derived from, or related to, any illegal and fraudulent activities under any applicable laws; and
- 22.5.2. the proceeds, funds or property that are or will be the subject of such transactions are not intended to commit, further, or sponsor a violation of applicable law, including but not limited to violations of any tax, customs or revenue laws;
- 22.6. If at any time either Party becomes aware that any of the circumstances represented or warranted in This Agreement are not as it has confirmed, it will notify the other party immediately in writing.
- 22.7. In the event that either Party believes in good faith that the other Party may not be in compliance with the undertakings and/or requirements set forth in This Agreement, then that Party shall advise the offending Party in writing of its good faith belief and that Party shall co-operate fully with any and all enquiries undertaken by or on behalf of the Party in connection therewith, including the provision by the offending Party of personnel and supporting documents and affidavits, if reasonably deemed necessary by the other party.

### **23. SANCTIONS**

- 23.1. It is agreed that all activities contemplated by the parties pursuant to This Agreement will be performed in conformity with and shall not be prohibited by Sanctions Laws.
- 23.2. The Parties confirm that, to the extent that such Sanctions Laws apply to the said Party, they have implemented and maintain in effect policies and/or procedures designed to facilitate compliance by the Parties, their respective directors, officers, employees and agents as well as their controlled subsidiaries, subcontractors, suppliers and customers with all applicable Sanctions Laws.
- 23.3. Notwithstanding any other provision of this clause or any other clause or provision to the contrary in This Agreement, neither Party shall be required to do anything under This Agreement which constitutes a violation of, or would be in contravention of, or would expose it to the risk of designation pursuant to any Sanction Laws applicable to it.

23.4. If, at any time during the term of This Agreement any Sanctions Laws are changed, or new Sanctions Laws are imposed or become effective, or there is a change in the interpretation of Sanctions, which would –

23.4.1. expose it to the risk of designation or to other punitive measures by a Sanctions authority or

23.4.2. materially affect a Party's performance of This Agreement including but not limited to

23.4.2.1. its ability to take or make delivery or make or receive any payments as may be required in the performance of This Agreement or to insure or transport the goods to be delivered by the seller to the buyer or

23.4.2.2. importing the goods into the country of destination, or

23.4.2.3. either:

- a) a curtailment, reduction in, interference with, failure or
- b) cessation of supply of goods from any of the Parties' or Parties' suppliers' sources of supply, or
- c) a refusal to supply such goods by any such supplier;

then notwithstanding any clause or provision to the contrary in This Agreement, such Party may, by written notice to the other Party

- (i) suspend performance until such time as the notifying Party may lawfully perform This Agreement and/or
- (ii) terminate This Agreement, in each event, without any further obligation or liability by either Party, save for any accrued rights and remedies (including, but not limited to the Parties' obligation to refund the outstanding balance of any prepayment amount).

**THUS, DONE AND SIGNED BY THE DULY AUTHORISED REPRESENTATIVE OF THE AIRPORTS COMPANY SOUTH AFRICA**

**At \_\_\_\_\_ on \_\_\_\_\_ in the presence of the undersigned witness**

**AS WITNESSES:**

**AUTHORISED REPRESENTATIVE:**

1. \_\_\_\_\_

\_\_\_\_\_  
**XXXXX XXXXXXXX**  
**Group Executive: CIAM**  
**Airports Company South Africa**

2. \_\_\_\_\_

**THUS, DONE AND SIGNED BY THE DULY AUTHORISED REPRESENTATIVE OF  
THE THROUGHPUTTER**

**At \_\_\_\_\_ on \_\_\_\_\_ in the  
presence of the undersigned witness**

**AS WITNESSES:**

**AUTHORISED REPRESENTATIVE:**

1. \_\_\_\_\_

\_\_\_\_\_

2. \_\_\_\_\_