

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 Through putter or New Participant including that –

1.2.3 the prospective Through putter 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 into plane 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 Through putter 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 Through putter or New Participant and ACSA shall be by written correspondence;
- 2.1.5 ACSA will then assess the application by the prospective Through putter or New Participant;
- 2.1.6 if ACSA decides not to approve the application, it will use its best endeavours to advise the prospective Through putter 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 Through putter or New Participant, ACSA will use its best endeavours to advise the prospective Through putter or New Participant accordingly within the thirty day period referred to in 2.1.6 above and the prospective Through putter 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 fuels 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 _____ 2016
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

2016

for []

(as the surety)

DRAFT NOT FOR SIGNATURE

who warrants that he is duly
authorised hereto