



AIRPORTS COMPANY
SOUTH AFRICA

BULK FUEL SITE SERVICE LEVEL AND LEASE AGREEMENT

between

AIRPORTS COMPANY SOUTH AFRICA SOC LIMITED

and

(Herein referred to as Operator)

(In respect of King Shaka International Airport)

TABLE OF CONTENTS

1	INTERPRETATION	3
2	DEPOSIT	6
3	COMMENCEMENT, DURATION, OPTION AND CANCELLATION OF PREVIOUS AGREEMENTS	7
4	LEASE AND GRANT OF USE	7
5	SPECIFIC USE OF THE BULK FUEL SITE AND HYDRANT SYSTEM ..	7
6	THROUGHPUTTERS.....	7
7	RENTAL, STORAGE TARIFF AND INTO-PLANE SERVICE FEES.....	8
8	LOCAL AUTHORITY AND OTHER CHARGES.....	9
9	INSURANCE.....	10
10	EXCLUSION OF LIABILITY AND INDEMNITIES BY OPERATOR ...	12
11	OBLIGATIONS OF OPERATOR	14
11.1	General obligations with regard to Bulk Fuel Site.....	14
11.4	Obligation to refrain from restrictive practices	27
11.5	Obligations in respect of Airport laws and regulations	27
11.6	Obligations in respect of employees, vehicles and ground service equipment.....	28
11.7	Rules for driving airside	29
11.8	Obligations in regard to the Airport apron	31
11.9	Obligation to report accidents and incidents and ensure compliance by the into-plane operator.....	32
11.10	Other obligations – flight delays, fuelling service hours, aviation fuel quality and compliance with security measures and provision of information to ACSA	32
12	OBLIGATIONS OF ACSA	33
13	ALTERATIONS AND IMPROVEMENTS	34
14	STRUCTURAL DAMAGE.....	35
15	ACSA'S RIGHT TO INSPECT	36
16	STRIKES AND LABOUR UNREST	36
17	FORCE MAJEURE.....	37

18	CESSION, SUB-LETTING AND CHANGE OF CONTROL	37
19	LEGAL COSTS, OUTSTANDING PAYMENTS AND VAT	38
20	BREACH.....	39
21	CONSEQUENCES OF TERMINATION AND ACSA'S RIGHT OF FIRST REFUSAL AND OPTION	41
22	CANCELLATION - HOLDING OVER.....	44
23	REASONABLENESS	44
24	CERTIFICATE OF INDEBTEDNESS	44
25	APPLICABLE LAW	45
26	DISPUTES.....	45
27	DOMICILIUM AND NOTICES	45
28	ENVIRONMENTAL ASSESSMENT	46
29	COUNTERPARTS	47
30	GENERAL	47
31	COSTS	48
32	PENALTIES.....	48
	ANNEXURE A – BULK FUEL SITE AND INTO-PLANE EQUIPMENT MAINTENANCE REGIME	52
	ANNEXURE B – SCHEDULE OF BULK FUEL STORAGE SITE MAINTENANCE COSTS, RESERVE STOCK INTEREST, INTO-PLANE MAINTENANCE COSTS AND MANAGEMENT FEES.....	53
	ANNEXURE C – SITE INFORMATION	54
	ANNEXURE D – ALLOWED THROUGHPUTTER CHARGES	55
	ANNEXURE E – SCHEDULE OF CALLOUT FEES FOR UNSCHEDULED AIRCRAFTS.....	56
	ANNEXURE F – TRANSFORMATION PLAN.....	57

AGREEMENT

between

AIRPORTS COMPANY SOUTH AFRICA SOC LIMITED

and

(In respect of King Shaka International Airport)

1 INTERPRETATION

In this agreement –

1.1 clause headings are for convenience and shall not be used in its interpretation;

1.2 unless the context clearly indicates a contrary intention –

1.2.1 an expression which denotes –

1.2.1.1 any gender includes the other genders;

1.2.1.2 a natural person includes an artificial person and vice versa;

1.2.1.3 the singular includes the plural and vice versa;

1.2.2 the following expressions shall bear the meanings assigned to them below and cognate expressions bear corresponding meanings –

1.2.2.1 “**ACSA**” – Airports Company South Africa SOC Limited (Registration No. 1993/004149/30);

1.2.2.2 “**The Operator**” – means _____
_____ with (Registration No. _____/_____/____)

1.2.2.3 “**aircraft**” - aircraft utilising the Airport;

1.2.2.4 “**aircraft operator**” - any party owning and/or operating an aircraft;

1.2.2.5 “**Airport Act**” – the Airports Company Act 44 of 1993;

1.2.2.6 “**airside**” - the runway, taxiway, aprons and parking stands used by aircraft, service vehicles and service personnel;

1.2.2.7 “**Airport**” – means King Shaka International Airport.

1.2.2.8 “**API**” – means American Petroleum Institute and its associated standards and regulations.

- 1.2.2.9 **"assets"** – the bulk fuel storage tanks, auxiliary equipment, offices at the bulk fuel storage sites and ground service equipment, which are owned by ACSA
- 1.2.2.10 **"aviation fuels"** - the aviation fuels to be conveyed, supplied and distributed by or on behalf of **the Operator** and/or the Throughputters to an aircraft, being – Jet A-1 aviation fuel to be conveyed, supplied and distributed by means of the hydrant system and/or ground service equipment; and complying with the aviation fuel quality requirements for jointly operated systems as set out in JIG standards, directives and bulletins;
- 1.2.2.11 **"bank"** – Nedbank Limited or such other bank as ACSA may from time to time stipulate by giving written notice thereof to the Operator;
- 1.2.2.12 **"bulk fuel site"**, the land, bulk fuel tanks and other improvements on the land situated at the Airport (including without limitation the bunded areas, and any other improvements erected on such land after the commencement date), it being agreed that, as at the commencement date, such land and such tanks and other improvements on the land as at the commencement date, are owned by ACSA;
- 1.2.2.13 **"carrier agreement"** - any agreement between any aircraft operator and **the Operator** relating to the performance of fuelling services in respect of the aircraft operator's aircraft;
- 1.2.2.14 **"commencement date"** – notwithstanding the signature date, **1 July 2025**
- 1.2.2.15 **"environment"** – the surroundings within which humans exist and that are made up of –
 - 1.2.2.15.1 the land, water and atmosphere of the earth;
 - 1.2.2.15.2 microorganisms, plant and animal life;
 - 1.2.2.15.3 any part or combination of the land, water and/or atmosphere of the earth and/or microorganisms, plant and/or animal life and the inter relationships among and between them;
 - 1.2.2.15.4 the built environment; and
 - 1.2.2.15.5 the physical, chemical, aesthetic and cultural properties and conditions of the foregoing that influence human health and wellbeing;
- 1.2.2.16 **"environmental pollution"** – any change in the environment caused by –
 - 1.2.2.16.1 substances;
 - 1.2.2.16.2 radioactive or other waste;
 - 1.2.2.16.3 noise, odours, dust or heat,
 - emitted from any activity (including the storage or treatment of waste or substances, construction under the provision of services, whether engaged in by any person including without limitation, any governmental body or organ of state) where that change has an adverse effect on human health or wellbeing or on the composition, reliance and productivity of natural or managed ecosystems or on materials useful to people, or which may have such an effect in the future;
- 1.2.2.17 **"fuelling services"** - the services performed by **the Operator** on behalf of Throughputters regarding the receipt, storage, conveyance, supply and distribution of aviation fuels and related products to and from aircraft;

- 1.2.2.18 **"ground service equipment"** - the equipment (other than the hydrant system) used by the Operator for the purposes of providing fuelling services, including without limitation, refuelling and defueling vehicles and hydrant dispensers;
- 1.2.2.19 **"hydrant system"** – the pipeline and fuel hydrant system (as constituted at the commencement date and as may be reconfigured, extended, shortened or otherwise changed from time to time) at the Airport through which Jet A-1 aviation fuel referred to in 1.2.2.10 may be conveyed from the main isolation valves on the Bulk Fuel Site to the aprons at the Airport.
- 1.2.2.20 **"JIG"** – the Joint Inspectorate Group Guidelines for Fuel Quality Control & Operating Procedures 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;
- 1.2.2.21 **"parties"** – ACSA and the Operator;
- 1.2.2.22 **"NERSA"** means the National Energy Regulator of South Africa
- 1.2.2.23 **"NERSA Guidelines"** means the annually published guidelines issued by NERSA in relation to the Petroleum Pipelines Act, 2003 (Act No.60 of 2003)
- 1.2.2.24 **"related products"** - products directly related to aviation fuels, diesel and aircraft lubricants;
- 1.2.2.25 **"RSA"** - the Republic of South Africa;
- 1.2.2.26 **"signature date"** - the date of signature of this agreement by the last signing of the parties;
- 1.2.2.27 **"termination date"** – 30 June 2035 or as set out in the Addendum which will be concluded after the awarding of the tender.
- 1.2.2.28 **"Throughputter"** – a third party fuel supplier appointed as a Throughputter in terms of clause 6;
- 1.2.2.29 **"Transition period"** – that period of up to 5 (five) calendar months prior to the Commencement date wherein the appointed Operator commences and concludes a handover program to enable a smooth transition.
- 1.2.2.30 **"Usable Aviation Fuels"** -means aviation fuels ready and certified in terms of JIG for use by and delivery to aircraft but excluding unpumpable stock;
- 1.2.2.31 **"VAT"** - Value Added Tax levied in terms of the Value Added Tax Act, No 89 of 1991; and
- 1.2.3 the terms **"holding"** and **"subsidiary"** company shall bear the meanings assigned to them in the Companies Act 2008;
- 1.3 if any provision in a definition is a substantive provision conferring rights or imposing obligations on any party, effect shall be given to such provision as if it were a substantive provision in the body of this agreement;
- 1.4 any word or phrase defined in the body of this agreement as opposed to in 1.2 (unless the context clearly indicates a contrary intention) shall have the meaning assigned to it in such definition throughout this agreement;
- 1.5 when any number of days is prescribed in this agreement, such number shall be reckoned exclusively of the first and inclusively of the last day unless the last day falls on a Saturday or Sunday or official public holiday in the RSA, in

which case the last day shall be the next succeeding day which is not a Saturday or Sunday or such public holiday; and

- 1.6 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.

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

2 DEPOSIT AND GUARANTEE

- 2.1 It is agreed that –

2.1.1 **The Operator** shall pay an upfront refundable deposit of ZAR300 000 (Three Hundred thousand rands only), excluding VAT, upon signing of the service level and lease agreement. –

2.1.1.1 Such R300 000.00 (Three Hundred thousand rand) deposit shall be retained by ACSA (“deposit”) as security for the performance by **the Operator** of its obligations under this agreement and shall be refunded by ACSA to **the Operator** at termination of this Agreement and subject to Clause 2.2.

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

- 2.2 The deposit shall be retained by ACSA until after the vacation of the Bulk Fuel Site and cessation of use of the hydrant system and/ or ground service equipment by **the Operator** and the complete discharge of all **the Operator** obligations to ACSA arising from this agreement, whereafter the deposit shall, be paid to the Operator. The Operator shall not be entitled to set-off any amount payable to ACSA in terms of this agreement against the deposit.

- 2.3 It is also agreed that **the Operator** shall secure and maintain for the duration of this agreement, a guarantee to the satisfaction of ACSA, with a minimum amount of 2 (two) calendar months’ worth of tariffs and fees payable to ACSA. The guarantee is to provide security for performance of the Operator of its obligations under this agreement.

- 2.4 ACSA shall have the right to apply the whole or any portion of the deposit and/or guarantee for payment of any amount or any liability of **the Operator** to ACSA under this agreement including without limitation any damages. If any portion of the deposit or guarantee is so applied, the Operator shall forthwith reinstate the deposit to its original amount on demand by ACSA.

3 COMMENCEMENT, DURATION, OPTION AND CANCELLATION OF PREVIOUS AGREEMENTS

- 3.1 Notwithstanding the signature date, this agreement shall commence on the Commencement Date and shall continue for a fixed period until Termination Date, on which date this agreement shall (unless otherwise agreed between the parties in writing) automatically terminate.
- 3.2 This agreement supersedes and replaces all prior commitments, undertakings and agreements whether oral or written, between the parties in respect of the subject matter of this agreement, all of which prior commitments, undertakings and agreements are hereby cancelled with effect from the Commencement Date but without prejudice to any rights and/or obligations arising under such prior commitments, undertakings and/or agreements (as the case may be) before the Commencement Date.
- 3.3 Notwithstanding anything to the contrary contained in this agreement, **the Operator** may terminate this agreement (and the tenancy thereby constituted) at any time on written notice to ACSA of not less than 12 (twelve) calendar months.

4 LEASE AND GRANT OF USE

ACSA, as one indivisible transaction -

- 4.1 lets to **the Operator**, which hires, the offices at the Bulk Fuel Site;
- 4.2 grants to **the Operator** the non-exclusive right -
- 4.2.1 to perform the fuelling services at the Airport
- on the terms and conditions of this agreement.
- 4.3 ACSA may after consultation with **the Operator**, lease certain tanks for storage use purposes to other fuel Throughputters for the period coinciding with the duration of this agreement.

5 SPECIFIC USE OF THE BULK FUEL SITE AND HYDRANT SYSTEM

- 5.1 The Bulk Fuel Site and hydrant system and/ or ground service equipment shall only be used 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 whatsoever unless ACSA otherwise agrees in writing.

6 THROUGHPUTTERS

- 6.1 Notwithstanding anything to the contrary contained in this agreement, ACSA may at its discretion or in the event **the Operator** defaults, grant a third party Throughputter the right to supply aviation fuels at the Airport for a period ACSA deems necessary to lower the risk of a shortage of fuel supply.

- 6.2 The granting of the Throughputter license will be subject to ACSA and/or **the Operator** complying to site Regulatory conditions, example: uncommitted capacity, and the fuel processing and quality assurance procedures developed for the site, are not compromised.
- 6.3 The Throughputter will have to demonstrate that it has concluded an arrangement for the supply of jet fuel to an Airline operating at the Airport.
- 6.4 The Throughputter license will be revoked should the Throughputter not be able to abide/agree to the site operation conditions. This amongst others, would relate to: arrangements for the receipt of jet fuel; quality assurance procedures; ability to maintain the buffer stock requirements of the site; and forecast of jet fuel supply to the site.
- 6.5 The site Operator will not impose conditions and/or costs on the Throughputter that have not been agreed to with ACSA prior. The schedule of costs an Operator is allowed to charge to the Throughputters is included in Annexure D,
- 6.6 The jet fuel storage and processing cost shall be consistent for all Throughputters at an Airport site and approved by ACSA.
- 6.7 **The Operator** shall apply to ACSA for a Throughputter licence if it is planning to sell fuel to the airlines.
- 6.8 **The Operator** hereby consents to ACSA publishing the tendered fuel quality management costs for the duration of this agreement for existing and prospective Throughputters. These shall be consistently applied in line with clause 6.6.

7 RENTAL, STORAGE TARIFF AND INTO-PLANE SERVICE FEES

- 7.1 **The Operator** shall, pay to ACSA a fixed monthly rental (exclusive of VAT) equal to –

Period	Airport	Monthly Rental excl VAT	VAT	Monthly Rental incl VAT
01/07/2025 to 30/06/2035	King Shaka International			

- 7.2 The rentals and other amounts payable to ACSA under this agreement shall be paid (together with VAT thereon) to ACSA in accordance with 7.3 and within thirty days after delivery of ACSA's statement in respect thereof to **the Operator**.
- 7.3 The rentals (plus VAT thereon) and all other amounts which are due and payable to ACSA under this agreement shall be paid by **the Operator** to ACSA by electronic bank transfer into ACSA's bank account in the RSA for the time being and without any set-off, withholding or deduction of any nature whatever.
- 7.4 **The Operator** 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/ or ground service equipment and performance of fuelling services at the Airport, and all records of the volume of aviation fuel conveyed by the Operator and Throughputters through the hydrant system and ground service equipment during each calendar month of this agreement) up to date and in accordance with IFRS accounting practices. ACSA, its representatives and/or its auditors shall be entitled, at all reasonable times and on reasonable notice to the Operator, to inspect all such books and records and to take copies and/or extracts thereof.

- 7.5 **The Operator** shall pay a storage Tariff determined by ACSA which reserves a right to set to below and/or up to a maximum published (www.nersa.org.za) NERSA approved storage Tariff for every litre of aviation fuels stored in the bulk fuel storage facilities at the Airport in accordance with clause 7.3 above. The strategic stock's NERSA Storage tariff is payable once and upon a use and replenish event. The Operator shall only off-set the agreed maintenance costs, NERSA approved reserve fuel stock return-on-investment and management fees agreed to by ACSA and the Operator against these NERSA Storage Tariffs at the Airport according to Annexure B. Costs over and above the agreed monthly costs, shall first be approved by ACSA Manager of Maintenance Engineering or a duly authorised person at each site prior to execution of the works. The method of calculating the monthly storage fees payable shall be:
- 7.5.1 All monthly throughput of fuel in the storage facility multiplied by the set storage tariff; and
- 7.5.2 All the static fuel in the tanks from the 1st up to the last day of each month less the required one day's volume of stock, the volume of fuel for the allowed 5 (five) days of stock for Throughputters and unpumpable stock then multiplied by the set storage tariff.
- 7.6 **The Operator** shall take dips in the presence of an ACSA representative on all storage and vehicle tanks on the 1st day of each month and on the last day of each month. The records shall be co-signed by the Operator staff and ACSA staff and thereafter issued to the ACSA commercial, Maintenance Engineering and Corporate representatives.
- 7.7 **The Operator** shall also pay to ACSA an Into-Plane service fee for every litre of aviation fuel processed (total sales) into the aircrafts at the Airport on a monthly basis. The into-plane service fee per litre shall be **15 cents**. This Into-Plane service fee per litre shall escalate by the higher of 5% and CPI upon every anniversary of this agreement. The Operator shall only off-set the Into-Plane related maintenance costs agreed to by ACSA Manager of Maintenance Engineering or a duly authorised person at each site and the Operator against these Into-plane service fees at the Airport. The Operator shall include the agreed Into-Plane related maintenance costs per month in Annexure B. The Operator shall make available copies of aircraft fuelling slips upon request by ACSA for verification of litres processed into the aircrafts. The costs over and above the agreed monthly costs, shall first be approved by ACSA Manager Maintenance Engineering or a duly authorised person at the Airport site.
- 7.8 **The Operator** shall contact the ACSA Manager for Maintenance and Engineering or a duly authorised person each time an unscheduled aircraft needs to fuel. The ACSA Manager for Maintenance and Engineering or a duly authorised person shall advise the Operator regarding which Throughputter is to supply the fuel. The Operator shall ensure that in addition to the storage tariff and into-plane service fee, the Throughputter pays 12 cents/litre for fuel supplied to unscheduled aircrafts and pays that over to ACSA in accordance with clause 7.3 above.

8 **LOCAL AUTHORITY AND OTHER CHARGES**

The Operator shall pay on demand to ACSA (subject to ACSA furnishing the Operator with reasonable proof of amounts so payable) or to the local authority, as ACSA may require –

- 8.1 the cost of all electric current (excluding the electricity to operate the bulk fuel storage site and hydrant system), gas and water consumed in the Bulk Fuel Site together with the basic or services charges in respect of such electric current, gas and water;

Should ACSA require any such payment to be made to ACSA, such payment shall be made in accordance with 7.3.

9 INSURANCE

9.1 **The Operator** shall not -

9.1.1 save for aviation fuels and related products, store or use or permit the storage or use of any article or substance upon 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; and

9.1.2 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; provided that ACSA shall provide copies of such insurance policies to **the Operator**.

9.2 Without prejudice to any of ACSA's rights under this agreement and/or at law, should **the Operator** breach any of the provisions of 9.1 and –

9.2.1 ACSA is unable to secure indemnity under any insurance held by ACSA, then, **the Operator** shall be liable to pay to ACSA in cash (without any set-off or deduction of any nature whatever) and on demand an amount equal to the amount of the indemnity which ACSA would have been entitled to under such insurance had the Operator not committed such proven breach; and

9.2.2 ACSA is charged an increased premium under any insurance held by it, **the Operator** shall be liable to pay to ACSA in cash (without set-off or deduction of any nature whatever) and on demand the full amount of any such increase.

9.3 **The Operator** shall (subject to 9.5) at all times –

9.3.1 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 USD 500,000,000 (Five hundred million US dollars). The aviation liability cover must have extensions for Environmental Liability and third-party liability.

9.3.2 Secure and maintain **Product liability insurance** for an amount of not less than USD 500,000,000 (Five hundred million US dollars).

- 9.3.3 Secure and maintain **General liability insurance** for an amount of not less than R100,000,000 (One hundred million Rands)
 - 9.3.4 Secure and maintain an insurance certificate which shows the insurer's details, the insured, ACSA must be named as the co-insured, it must show the details of cover, the period of cover, name, surname, contact details and the signature of the signatory.
 - 9.3.5 Upon request, furnish ACSA with written confirmation from an insurance broker of the existence and validity of the insurance referred to in 9.3.1 to 9.3.3 and/or the payment of any premiums due.
 - 9.3.6 upon request, furnish ACSA with written confirmation from an insurance broker of the existence and validity of the insurance referred to in 9.3.1 to 9.3.3 and/or the payment of any premiums due in respect thereof.
- 9.4 **The Operator** shall (subject to 9.5) at all times, on terms and conditions reasonably acceptable to ACSA and for the duration of this agreement -
- 9.4.1 insure (with an insurance company reasonably acceptable to ACSA) (or maintain risk financing and/or other arrangements approved by ACSA in writing in respect of) all –
 - 9.4.1.1 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;
 - 9.4.2 maintain insurance in **the Operator's** name (or maintain risk financing and/or other arrangements approved by ACSA in writing) in respect of –
 - 9.4.2.1 any statutory liability and liability at common law (including, without any limitation, any liability in terms of 10.2) that may be incurred by the Operator arising out of or attributable to its activities at the Bulk Fuel Site and the Airport; and
 - 9.4.2.2 any loss, damage and/or liability arising from any environmental pollution arising out of or pursuant to the business and other activities of the Operator at the –
 - 9.4.2.2.1 Bulk Fuel Site;
 - 9.4.2.2.2 hydrant system and/ or ground service equipment (but excluding the use by the Operator of the underground portion of the hydrant system); and/or
 - 9.4.2.2.3 Airport;
- 9.5 **The Operator** shall ensure that -

- 9.5.1 ACSA is given, within at least thirty business days after delivery of written request therefore by ACSA –
- 9.5.1.1 written confirmation of the renewal of any such insurance policy from the relevant insurance broker/s; and
- 9.5.1.2 a certificate of insurance reasonably acceptable to ACSA and/or ACSA's insurance brokers for the time being,
- that such insurance has been effected and that all premiums in respect thereof have been paid by the Operator;
- 9.5.2 ACSA is given thirty days prior written notice of the cancellation of any such policy and/or risk financing and/or other arrangements for any reason whatever;
- 9.5.3 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.
- 9.6 **The Operator** 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 9.3.
- 9.7 If **the Operator** should at any time be in breach of any of its obligations in terms of this 9, ACSA shall be entitled, without prejudice to any of its other rights under this agreement or at law, to rectify the breach at its own expense and to recover the direct costs of so doing (including without limitation any insurance premiums, other amounts and duties (if any)), together with interest in accordance with 19.2, from the Operator on demand.

10 EXCLUSION OF LIABILITY AND INDEMNITIES BY OPERATOR

- 10.1 **The Operator** shall not (whether alone or together with another Operator 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 indirect or consequential) or a remission of any amount payable in terms of this agreement to ACSA or any claim for cancellation) against ACSA and/or any of ACSA's directors, employees, agents and/or representatives, nor shall the Operator be entitled to withhold or defer payment of any amount payable to ACSA in terms of this agreement, arising out of or pursuant to -
- 10.1.1 any loss, liability, damage or expense (whether indirect or consequential) suffered by any person as a result of or attributable to the use by the Operator and/or its employees, representatives, directors, invitees, contractors, subcontractors and/or agents and/or the into-plane operator (if any), of the Bulk Fuel Site and/or the hydrant system and/ or ground service equipment and/or the conduct by the Operator of its business at the Airport;

- 10.1.2 the Bulk Fuel Site and/or the hydrant system and/ or ground service equipment and/or any part of or any installation or appurtenance in the Bulk Fuel Site and/or any part of the and/ or ground service equipment 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;
- 10.1.3 any damage caused to the aviation fuels and/or related products in the Bulk Fuel Site and/or any part of the 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 Operator** and/or its employees, invitees, agents, directors and/or representatives;
- 10.1.4 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 Operator** and/or its employees, invitees, agents, directors, clients and/or representatives on, about or in the Bulk Fuel Site or the Airport;
- 10.1.5 any spill, seepage or leakage of aviation fuels and/or related products from any vehicle delivering aviation fuels and/or related products to the Bulk Fuel Site, from, under and/or on the Bulk Fuel Site, and/or from the hose inlet couplings of any part of the hydrant system and/or between such couplings and any aircraft being refuelled for any reason whatever and/or pursuant to any fuelling services provided by and/or on behalf of **the Operator** by means of ground service equipment;
- 10.1.6 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;
- 10.1.7 any interruption in the supply of water, electricity, gas or any other service, however caused, in respect of the Bulk Fuel Site and/or any part of the hydrant system;
- 10.1.8 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 any part of the hydrant system and/ or ground service equipment including, without any limitation whatever, aviation fuels and/or related products;
- 10.1.9 any loss of life and/or injury to persons and/or damage to any property whatever arising out of the -
 - 10.1.9.1 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 ground service equipment and/or at the Airport;
 - 10.1.9.2 contamination of aviation fuels and/or related products for any reason whatever;
- 10.1.10 any loss of use of the whole or any part of the Bulk Fuel Site for any reason whatever; and

10.1.11 any deficiency in the environmental safety and/or waste disposal arrangements at the Bulk Fuel Site and/or hydrant system,

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

10.2 **The Operator** 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 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 legal costs on an attorney and own client scale) to the extent that such loss, liability, damage and/or expense directly arises out of –

10.2.1 the lease or use of the Bulk Fuel Site by the Operator; and/or

10.2.2 the use of any of the hydrant system and/ or ground service equipment by the Operator; and/or

10.2.3 the conduct by the Operator of its business and/or activities at the Airport; and/or

10.2.4 any occurrence referred to in 10.1; and/or

10.2.5 any breach of this agreement by the Operator;

provided that this 10.2 shall not apply to the extent that any such loss, liability, damage and/or expense arises out of a breach of this agreement by ACSA and/or the negligence or wilfulness of all or any of the indemnified persons.

11 **OBLIGATIONS OF OPERATOR**

11.1 **General obligations with regard to Bulk Fuel Site**

The Operator shall -

11.1.1 ensure that it and the into-plane operator (if any) do 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 Operator's business and/or activities in respect of the Bulk Fuel Site (including without limitation, the Petroleum Pipelines Act 60 of 2003 and any licence issued to ACSA under such Act);

- 11.1.2 ensure that it and the into-plane operator (if any) do not contravene or permit any contravention of the conditions of title whereunder the Bulk Fuel Site is held by ACSA;
- 11.1.3 not commit or permit the commission of any nuisance in, or under, the Bulk Fuel Site;
- 11.1.4 at agreed reimbursable costs, maintain all improvements of any nature whatever on the land comprising the Bulk Fuel Site (including, without limitation, the interior, exterior, structure and roof of all buildings, all fuel tanks, all electrical installations and fittings, sewerage pipes, water pipes, the main isolation valves and drains on the Bulk Fuel Site) in good order and repair and to ensure the proper operation of the Bulk Fuel Site at all times including, without limitation -
 - 11.1.4.1 any repairs and maintenance required pursuant to fair wear and tear;
 - 11.1.4.2 inspecting, cleaning, adjusting and lubricating all plant, equipment, fixtures and fittings in accordance with the relevant manufacturer's recommendations; and
 - 11.1.4.3 replacing any such improvement where replacement is required to ensure the proper operation of the whole and/or any part of the Bulk Fuel Site at all times;
- 11.1.5 at agreed reimbursable costs, **the Operator** shall -
 - 11.1.5.1 maintain reasonably detailed records in accordance with JIG standards, directives, bulletins, relevant Energy Institute standards and relevant American Petroleum Institute standards with regard to the performance of its obligations under 11.1.4 including, without limitation –
 - 11.1.5.1.1 maintenance schedules and separate maintenance logbooks for each improvement and major piece of equipment;
 - 11.1.5.1.2 maintenance records setting out the maintenance history (including without limitation, all damage, work and parts used); and
 - 11.1.5.1.3 a complete inventory (to ACSA's reasonable satisfaction) of the plant, equipment, fixtures and fittings for functional units (including, without limitation, all fuel tanks, firefighting equipment, pumps, valves, piping and gauges) on the Bulk Fuel Site;
 - 11.1.5.2 give ACSA reasonable access to all or any of the records referred to in 11.1.5.1 at all reasonable times;
- 11.1.6 at agreed reimbursable costs and to ACSA's reasonable satisfaction, perform inspections, tests and examinations of the fuel tanks and improvements on the Bulk Fuel Site (as well as all equipment required

for the proper operation of the Bulk Fuel Site and including without limitation routine integrity and functionality testing of all plant and equipment in accordance with the relevant manufacturer's recommendations) as required by JIG (or more frequently if required by the relevant manufacturer's recommendations). Such inspections and examinations shall be conducted by suitably qualified and experienced persons and shall include, without limitation, all the tests routinely conducted by **the Operator** prior to the commencement date in order to ensure that the integrity of such fuel tanks complies with international standards and JIG. **The Operator** shall keep complete and accurate records of all such inspections and examinations and ACSA and/or its representative shall be entitled, at all reasonable times and on reasonable notice to the managing Operator, to inspect any such records and to take copies and/or extracts thereof;

- 11.1.7 at agreed reimbursable costs, keep and maintain all necessary firefighting equipment and materials at the Bulk Fuel Site, conduct regular inspections of such equipment and materials and, whenever so required by ACSA, exhibit proof to ACSA's reasonable satisfaction that all such equipment and materials are in good order and condition, fair wear and tear excepted. **The Operator** shall also, at its cost, prepare, document and from time to time review and update firefighting procedures at the Bulk Fuel Site in consultation with ACSA's management and firefighting personnel at the Airport including, without limitation, possible access to the fire hydrant facilities at the Airport and possible operational support from ACSA's firefighting personnel at the Airport;
- 11.1.8 at its cost and in the event of any spill, seepage or leakage of aviation fuels and/or related products and/or any environmental pollution from any vehicle delivering aviation fuels and/or related products to the Bulk Fuel Site and/or from, under and/or on the Bulk Fuel Site, forthwith take all necessary action to limit the effect of and remediate such spill, seepage, leakage and/or pollution and to restore the land adjacent to and/or on the Bulk Fuel Site 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 to be advised to ACSA by **the Operator** forthwith after the occurrence of such spill, seepage, leakage and/or pollution;
- 11.1.9 at its cost, keep the Bulk Fuel Site in a clean, tidy and sanitary condition;
- 11.1.10 not interfere with or alter any electrical or other installations on the Bulk Fuel Site without the prior written consent of ACSA, which consent shall not be unreasonably withheld;
- 11.1.11 not permit to be written, affixed or erected any signs, signboard, writing, fixtures, fittings or any other thing anywhere on the Bulk Fuel Site without the prior written consent of ACSA (which consent shall not be unreasonably withheld); provided that should ACSA grant such consent, **the Operator** shall, at its cost and to ACSA's reasonable satisfaction, remove any of the foregoing upon termination or expiry of this agreement for any reason whatever and shall leave the Bulk Fuel Site in good order and condition; provided further that the provisions of this 11.1.10 shall not be construed as precluding **the Operator** (subject to the

Operator giving ACSA reasonable prior written notice thereof) from erecting signage required in terms of any statute or regulation for the time being in force

- 11.1.12 forthwith, at its expense, effect any repairs to the Bulk Fuel Site and improvements referred to in 11.1.4;
- 11.1.13 comply with all applicable environmental laws and regulations applicable to the Bulk Fuel Site from time to time and implement, at its cost, all reasonable practices and procedures to ensure that no environmental pollution of any nature whatever (including, without any limitation, the emission of fumes and/or gasses and/or any spill, seepage or leakage of any aviation fuel) emanates from any vehicle delivering aviation fuels and/or related products to the Bulk Fuel Site and/or from fuel tanks on the Bulk Fuel Site. **The Operator** 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 representatives shall be entitled at all reasonable times and on reasonable notice to the managing Operator, to inspect any such records and to take copies and/or extracts thereof; and
- 11.1.14 at its cost, remediate any aviation fuels or other fuel and/or related products that have leaked, seeped or spilled from any vehicle delivering aviation fuels and/or related products to the Bulk Fuel Site and/or from and/or under the Bulk Fuel Site (this is applicable where such leakage, seepage or spill occurred after the commencement date).
- 11.1.15 at agreed reimbursable costs maintain the Bulk Fuel Storage Sites in accordance with the maintenance regime contained in Annexure A.,
- 11.1.16 Scheduling of fuel receipts
- 11.1.17 Develop and Implement Procedures for fuel receipts, settling, sampling and quality testing which are aligned to JIG Standards.
- 11.1.18 Develop and Implement site Health and Safety procedures for the site which satisfy the requirements of the Occupational Health and Safety Act no 85 of 1993 and its associated Regulations.
- 11.1.19 Develop/Review and Implement at reimbursable costs a Site Risk Assessment approved by an AIA (DoL Approved Inspection Authority) on a 5 yearly basis in line with the MHI Regulations.
- 11.1.20 Develop, Implement and maintain a site Emergency Preparedness Plan in line with the Major Hazard Installation Regulations.
- 11.1.21 Perform Fuel receipts including fuel from ACSA approved Throughputters and quality testing in line with JIG (Joint Inspection Group) Standards 2 and 4.
- 11.1.22 Procure, Supply and Hold/maintain a minimum of 1 day's emergency or strategic JETA1 fuel stock for the site. Should alternative clean fuels be introduced during the validity period of the contract, **the Operator** shall also procure, supply and hold stock according to the required days. This is based on the 7-day moving average of jet fuel consumption at the Airport. This stock will be sold to ACSA approved Throughputters when they can't meet their supply obligations to airlines in the event of supply chain interruptions. **The Operator** will only be allowed to charge an annual WACC (Weighted Average Cost of Capital) aligned to what NERSA (National Energy Regulator of South Africa) approves for each site's tariff methodology.

- 11.1.23 Provision of security at the JET A1 Storage facilities according to Critical Infrastructure Protection 8 of 2019 requirements where ACSA has no existing security at own costs
- 11.1.24 Staff the facilities with suitably qualified, skilled and experienced staff. This also includes ensuring that the staff has all required permits and licenses.
- 11.1.25 Perform maintenance of the storage facilities according to the maintenance regime in Annexure A. This shall also be performed in accordance with ACSA's CMMS (Computerised Maintenance Management System) schedules.
- 11.1.26 Compiling Monthly reports in the current and future format(s) issued by NERSA (National Energy Regulator of South Africa) and submitting to ACSA on the 3rd business day of every new month.
- 11.1.27 Compiling annual reports required in terms of the Petroleum Pipeline Act 60 of 2003 regarding advancement of historically disadvantaged groups. These reports are to be submitted to ACSA by the end of the 1st week of April of each year.
- 11.1.28 Provide evidence through agreed Job cards that maintenance has been performed per the prescribed maintenance regime and that all safety systems are functional and compliant with applicable standards.
- 11.1.29 Implement a reliability engineering program that at a minimum assesses MTTR, MTBF, Availability of asset and sub-assets, reliability; failure rates for all asset classes
- 11.1.30 Implement a continuous improvement program, that aligns to JIG standards and IATA cost benchmarks targeted at improving productivity and reducing operating cost at the site
- 11.1.31 Health and Safety Management of staff, operations and Contractors. This also includes occupational risk assessments; PPE risk assessment; and occupational hygiene assessments.
- 11.1.32 Providing a Web-based Information Management or Enterprise Resource Planning system with capabilities for ordering of JET A1 fuel by airlines and other aircraft operators. The system should allow for capturing of fuel quality test results, the airline/company information input fields such as the Name of the Airline/Company, the Flight Number, Destination of the Flight (including differentiating between domestic, international, regional and unscheduled flights), the type of fuel, volume required, the date of order and date of fuel order fulfilment, time and the name of the contracted Throughput/Fuel Supplier. The system shall have filtering capabilities, to be able to select any period of interest, see daily stock figures per tank, daily fuel receipts, Dips per tank, Daily orders per airline, Daily sales per grade of fuel and on a consolidated level. The system should also have the capability to export required reports to excel and CSV format. At least 5 Designated ACSA personnel shall have viewing and reporting access rights and **the Operator** shall ensure that all required licenses are obtained to allow for such access. The minimum data retention period for such a system must be at least 20 years. **The Operator** shall implement and train designated ACSA employees on such a system at least a month before commencement of the contract. **The Operator** shall, within 5 months from notification, provide ACSA with an API (Application Programming Interface) to access the fuelling operations information in the event ACSA implements its own Fuel Information Management System. **The Operator** shall ensure that such API costs are provisioned for in the management fees. **The Operator** has a period of 180 calendar days from the commencement date to implement this web-based Information Management System and failure to do so shall result in penalties according to clause 32 until **the Operator** remedies such breach.
- 11.1.33 Compiling and issuing daily reports to ACSA and nominated parties on stock forecast, actual stock, buffer stock days, sales, expected daily fuel delivery and actual daily closing stock. This requirement may at the

discretion of ACSA be omitted or be required to be fulfilled only in the event the Information management system is down.

- 11.1.134 Providing at all times, resources required to provide JET A1 storage operations during Airport operational hours including even during industrial actions.
- 11.1.135 Providing an aircraft operator service desk manned during Airport operational hours to coordinate and fulfil airline fuelling related requirements or requests. **The Operator** shall upon receiving a reasonable request to fuel an aircraft after hours, make staff available for such fuelling service. The call out fee charged to such aircraft operator shall be published by **the operator** and shall be the same as in the bid pricing schedule for each year. The schedule for such charges is included in Annexure E. In the event **the Operator** charges a call out fee that is higher than what is in the bid pricing schedule, such shall constitute a material breach of the Agreement and the penalty schedule shall apply.
- 11.1.136 Providing all Fuel storage operations documentation and making relevant management personnel available for quarterly audits by ACSA. The audits shall be conducted within 2 weeks after each quarter. The scope of the audit shall include but not limited to Storage and Into-Plane Operations, Maintenance and environmental management. **The Operator** shall also provide information and resources required at anytime for any audit request by the Auditor General or any Statutory Body with jurisdiction over the business of ACSA.
- 11.1.137 Ensuring that each ACSA approved Throughputter complies with the relevant requirements of JIG (Joint Inspection Group), EI (Energy Institute) and American Petroleum Institute (API).
- 11.1.138 Developing and implementing consistent contracts with approved ACSA approved Throughputters. The terms and conditions of such contracts shall materially satisfy the requirements in the agreement between ACSA and **the Operator**. **The Operator** shall not discriminate against any Throughputter and ACSA shall have a right to audit these agreements. **The Operator** shall ensure that the NERSA Storage Tariff OR lower storage tariff stipulated by ACSA, the Into-plane Service Fee and the call out fee charged to Throughputters are the same for each year as in the Agreement between ACSA and **the Operator** with the exception of the NERSA Storage TARIFF. This Tariff shall be as approved by NERSA from time to time. ACSA reserves a right to instruct **the Operator** to charge a lower Storage Tariff than the Approved NERSA storage Tariff per site from time to time.
- 11.1.139 Perform the API in-service inspection of tanks due, either the 5 yearly or 10 yearly out-of-service inspection of the fuel tanks. The costs of the inspection will be borne by **the Operator** and reimbursed by ACSA upon receipt of an Inspection report.
- 11.1.140 Providing fuel in terms of the Airport Company Act no 44 of 1993 to all airlines or aircraft operators that are using the Airport. Where **the Operator** is unable to provide fuel or fuelling services due to a binding statute or any other warranted reason, ACSA shall have an immediate step-in right to ensure continuity of fuelling services at the Airport.
- 11.1.141 Ensure that the NERSA License conditions for the Airport and any other license conditions such as the Air Emissions License are not contravened and that each required activity is conducted at reimbursable costs. Wilful contravention of this clause shall constitute material breach of this agreement.

11.2 General obligations with regard to hydrant system

In the instance that a hydrant system may be installed during the currency of this Agreement, then **the Operator** shall -

- 11.2.1 not and shall procure that the into-plane operator (if any) shall not, contravene or permit a contravention of any laws or regulations relating to the ownership, possession, occupation or use of the hydrant system and/ or ground service equipment or relating to the conduct of **the Operator's** business and/or activities in respect of the hydrant system;
- 11.2.2 not (and shall procure that the into-plane operator (if any) shall not) contravene or permit any contravention of the conditions of title whereunder the land on which the hydrant system is situated, is held by ACSA; provided that ACSA shall provide a copy of such conditions of title to **the Operator**;
- 11.2.3 not commit or permit the commission of any nuisance in respect of the hydrant system and/ or ground service equipment and shall not (and shall procure that the into-plane operator (if any) shall not) commit or permit any act or omission which causes any damage or loss to the whole or any part of the hydrant system;
- 11.2.4 at its cost –
 - 11.2.4.1 inspect (and record in writing to ACSA the results of such inspection) service and clean the hydrant pit boxes as regularly as necessary for the proper operation of the hydrant system (based on usage of the hydrant pit boxes) but at least once every week (including, without any limitation, the pit lids, chains and door mechanism opening and closing function) and regularly remove the "slops" and dispose of them in accordance with ACSA's reasonable requirements and all applicable laws and regulations from time to time;
 - 11.2.4.2 conduct monthly testing of each of the hydrant pit valves' pilot valve and pressure relief valve;
 - 11.2.4.3 conduct dynamic testing of the hydrant pit valves in accordance with JIG (or more frequently if required by the relevant manufacturer's recommendations);
 - 11.2.4.4 drain and "flush" the hydrant low points at least once every week or as otherwise reasonably required by ACSA from time to time;
 - 11.2.4.5 advise ACSA in respect of the maintenance and/or repair of all aspects of the hydrant system including, without limitation, the pit-boxes and all low-points;
 - 11.2.4.6 maintain reasonably detailed books and records in respect of all of its obligations under this 11.2.4 and give ACSA reasonable access to all such books and records at all reasonable times;

- 11.2.4.7 provide all reasonable assistance (to the extent that **the Operator** is able to do so) to ACSA and/or ACSA designee/s in procuring the repair and/or replacement of the hydrant system (or any part or component thereof or equipment required for the proper operation of the hydrant system) by ACSA's designee from time to time;
- 11.2.4.8 ensure that employees and/or contractors of **the Operator** shall (to the greatest extent reasonably possible) continuously monitor and operate the hydrant system in order to detect (insofar as may be possible having regard to the relevant detection systems/equipment available at the Airport from time to time) any abnormal occurrences (including, without limitation, leaks) and other operational issues and problems and **the Operator** shall forthwith advise ACSA of such abnormal occurrences, issues and problems. **The Operator** shall ensure that such employees and contractors are –
 - 11.2.4.8.1 trained to understand the operation and functioning of the hydrant system (including, without limitation, the into-hydrant pumps) with regard to flows and pressure; and
 - 11.2.4.8.2 able to monitor such flows and pressure (insofar as may be possible having regard to the relevant detection systems/equipment available at the Airport from time to time;
- 11.2.4.9 until ACSA installs and commissions a leak detection system, conduct (at least once every month as required by JIG and having regard to the detection systems and equipment available at the Airport from time to time) operational pressure testing of the hydrant system when the hydrant system is not being used for fuelling services, provided that this 11.2.4.9 shall not apply to the extent that such pressure testing is not operationally possible;
- 11.2.4.10 conduct daily leak detection testing of the hydrant system once a leak detection system has been installed and commissioned by ACSA, provided that this 11.2.4.10 shall not apply to the extent that such testing is not operationally possible;
- 11.2.4.11 reinstate all protective equipment (including, without limitation, dust caps) after fuelling services which used the whole or any part of the hydrant system have been completed;
- 11.2.4.12 promptly report to ACSA (in accordance with ACSA's reasonable reporting requirements from time to time) all breakdowns and other problems relating to the hydrant system that **the Operator** may become aware of during the operation thereof;
- 11.2.4.13 ensure that no part, component, pipe, plant or equipment of and/or relating to the hydrant system is modified or removed for any reason whatever by **the Operator**, the into-plane operator (if any) and/or any of its respective employees, directors, agents, representatives, contractors and/or subcontractors without ACSA's prior written consent (which consent shall not be unreasonably withheld);

- 11.2.4.14 provide all reasonable assistance (to the extent that **the Operator** is able to do so) to ACSA with regard to the disposal of contaminated water from the hydrant valve chambers when such disposal is required by ACSA and/or any applicable law and/or regulation; and
- 11.2.4.15 provide reasonable operational assistance (as may be required by ACSA from time to time) with regard to the installation and/or operation of any extensions and/or additions to (and/or any new systems, plant and equipment relating to) the hydrant system;
- 11.2.5 "flush" the fuel hydrant lines during commissioning of the hydrant system and/or during and/or following any repair work of the whole or any part of the hydrant system and/or as otherwise reasonably required by ACSA, it being agreed that ACSA shall –
 - 11.2.5.1 bear the reasonable costs of such "flushing" and shall pay **the Operator** a fee equal to a market related price for the aviation fuel used for such "flushing" (it being agreed that such aviation fuel will be provided by **the Operator** at no additional cost to ACSA); and
 - 11.2.5.2 be responsible for any mechanical fitment required for such "flushing";
- 11.2.6 dispose of the aviation fuel used for "flushing" in terms of 11.2.5 in accordance with all applicable laws and regulations and ACSA's reasonable requirements from time to time;
- 11.2.7 at reimbursable costs and to ACSA's reasonable satisfaction, perform operational inspections, tests and examinations of the hydrant pit boxes (including, without any limitation, the other items referred to in 11.2.4.1), the hydrant pit valves and the hydrant low points of the hydrant system (in accordance with the relevant manufacturer's recommendations) as required by JIG (or more frequently if required by the relevant manufacturer's recommendations). Such inspections and examinations shall be conducted by suitably qualified and experienced persons and shall include, without limitation, all the tests routinely conducted by **the Operator** prior to the commencement date in order to ensure that the integrity of the hydrant system complies with international standards and JIG. **The Operator** shall keep complete and accurate records of all such inspections and examinations and ACSA and/or its representative shall be entitled, at all reasonable times and on reasonable notice to the Operator, to inspect any such records and to take copies and/or extracts thereof;
- 11.2.8 operate and use the hydrant system in accordance with JIG and such other standards and requirements as ACSA may reasonably require from time to time.
- 11.2.9 at their cost and in the event of any spill, seepage or leakage of aviation fuels and/or related products and/or any environmental pollution from the hose inlet couplings of any hydrant dispenser used to provide fuelling services and/or between such couplings and any aircraft being refuelled and/or pursuant to any fuelling services provided by and/or on behalf of **the Operator** by means of ground service equipment,

forthwith take all necessary action to limit the effect of and remediate such spill, seepage, leakage and/or pollution and to restore the land adjacent to or on the hydrant system to a good and clean order and condition. Such action shall be taken in accordance with all relevant international standards and specifications and within a specific reasonable time frame to be advised to ACSA by **the Operator** forthwith after the occurrence of such spill, seepage, leakage and/or pollution;

- 11.2.10 comply with all applicable environmental laws and regulations from time to time and implement, at its cost, all reasonable practices and procedures to ensure that no environmental pollution of any nature whatever (including, without any limitation, the emission of fumes and/or gasses and/or any spill, seepage or leakage of any aviation fuel) emanates from the hose inlet couplings of the hydrant dispenser used to provide fuelling services and/or between such couplings and any aircraft being refuelled and/or pursuant to any fuelling services provided by and/or on behalf of the Operator by means of ground service equipment. **The Operator** 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 Operator, to inspect any such records and to take copies and/or extracts thereof; and
- 11.2.11 provide reasonable assistance (to the extent that **the Operator** is able to do so) to ACSA (at ACSA's request) in the prevention of a spill, seepage or leakage of aviation fuels and/or related products from the hydrant system and assist ACSA in implementing all remediation measures following any such spill, seepage or leakage when requested by ACSA to do so. ACSA shall bear **the Operator's** costs of providing such assistance unless –
 - 11.2.11.1 ACSA requests such assistance as a result of the acts or omissions of **the Operator**; and/or
 - 11.2.11.2 such costs are incurred without the prior written consent of ACSA, which consent shall not be unreasonably withheld.
- 11.2.12 Develop and Implement Into-Plane procedures which are aligned with JIG (Joint Inspection Group) Standard 1.
- 11.2.13 Provision of into-plane fuelling services in terms of the Airports Company Act no 44 of 1993 to all airlines or aircraft operators that are using the Airport without reservations.
- 11.2.14 Supply of the ACSA approved Throughputter(s) fuel to the airlines through use of ACSA's into plane equipment.
- 11.2.15 Maintenance of the Into-Plane equipment according to the OEM requirements, and relevant sections of EI 1540 and JIG 1 standard.
- 11.2.16 Implement an Invoicing system for invoicing of aircraft operators.
- 11.2.17 Provide resources which are skilled, certified and sufficiently trained to perform the Into-Plane fuelling service. **The Operator** shall ensure that staff has valid permits and licenses at all times.
- 11.2.18 Ensure that the refuelling trucks and where applicable the hydrant dispensers have roadworthy certificates and that they are licensed.

- 11.2.19 Ensuring that the refuelling trucks and where applicable, the hydrant dispensers are serviced according to OEM requirements and that records are maintained at reimbursable costs.
- 11.2.20 Ensuring that all vehicle mounted fire extinguishers are serviced annually and that they are recorded in a firefighting equipment register.
- 11.2.21 Ensuring that where applicable, the into-plane fuelling staff is on standby to cater for unplanned fuelling of aircrafts.
- 11.2.22 Implement improvements required in terms of JIG bulletins at reimbursable costs
- 11.2.23 Ensuring that all safety systems of Into-plane equipment are functional and providing evidence thereof on a monthly basis.

11.2.24 Airline and IATA Audits

- 11.2.24.1 Providing all Fuel storage operations documentation and making relevant management personnel available within a reasonable time upon a reasonable Commercial Airline or IATA (International Air Transport Association) audit request.

11.2.25 JIG Inspections

- 11.2.25.1 Ensure that there is an annual inspection by a certified JIG inspector on fixed and mobile fuelling assets. The inspection shall be conducted in June of every year and the report shall be shared with ACSA by end of July every year. The costs of the inspection will be borne by **the Operator** and reimbursed by ACSA upon receipt of an independent Inspection report.

11.2.26 Vehicles and Fuel

- 11.2.26.1 **The Operator** shall provide at their own costs vehicle(s) such as Bakkie(s) equipped with suitable towbars for use in towing any fuelling related equipment or accessing the airside. The fuel for use of such vehicle(s) shall be for the account of **the Operator**.
- 11.2.26.2 **The Operator** shall ensure that the vehicle(s) used for accessing the airside, meets the ACSA's vehicle requirements for accessing the airside at all times.

11.2.27 Transition Period

- 11.2.27.1 The Transition Period shall be at least 5 full calendar months before commencement date of the Agreement.
- 11.2.27.2 **The Operator** shall make suitable staff available before the commencement date to participate in a Transition program at each of the sites.
- 11.2.27.3 **The Operator** shall ensure that the following outcomes are reached during the transition period:
 - 11.2.27.3.1 The Fuelling Information Management System is set up, tested and users including designated ACSA personnel are trained and provided access credentials.
 - 11.2.27.3.2 Bulk Fuelling and Into-plane operating staff attend Airside Induction and obtain necessary Permits.
 - 11.2.27.3.3 Familiarisation with plant and Into-plane equipment

- 11.2.27.3.4 Training staff on operating procedures
- 11.2.27.3.5 Compiling and agreeing with stakeholders on a site emergency response plan
- 11.2.27.3.6 Conducting a joint inspection of the asset condition with ACSA and signing off on the Asset Condition Assessment report.
- 11.2.27.3.7 Reviewing Asset Information, Environmental monitoring information Environmental Due Diligence report conducted by the outgoing Operator and signing off to accept the Environmental baseline information upon cessation of operations by the current Operator. Where **the Operator** does not agree with the Environmental Due Diligence report issued by the outgoing Operator, such Operator shall conduct a Baseline Environmental Due Diligence at own Costs.
- 11.2.27.3.8 Negotiating and where feasible agreeing to a purchase price or a fuel swap with the current Operator for the dead fuel stock or stock which may be in the tanks or refuelling trucks.
- 11.2.27.3.9 Setting up office and IT infrastructure.
- 11.2.27.3.10 Setting up a maintenance management system
- 11.2.27.3.11 Scheduling a date for delivery of 1 day's fuel stock holding.
- 11.2.27.3.12 Jointly signing off on stock Dips a day before the commencement date of the operating agreement.

11.2.28 Confidential documents issued to the Operator

- 11.2.28.1 The confidential ACSA documents which include the Fuelling operations information at the Airport and the Procedures Issued to **the Operator** shall not be divulged to any party without express written consent of a designated ACSA Executive.
- 11.2.28.2 **The Operator** shall not hold ACSA liable as a result of any information issued.

11.2.29 General

- 11.2.29.1 Providing own office equipment.
- 11.2.29.2 Providing own office cleaning materials and services

11.3 Minimum volumes

11.3.1 The Operator shall procure that -

- 11.3.1.1 **the Operator** delivers to ACSA by not later than three business days after the last day of each calendar month of this agreement, or such other date as required by ACSA, a statement showing the total volume of aviation fuels (including without limitation the total volume of aviation fuels ready and certified in terms of JIG for use by and delivery to aircraft ("**usable aviation fuels**")), stored in the Bulk Fuel Site and conveyed through the hydrant system and ground service equipment by **the Operator** (and any Throughputters) on each day during the immediately preceding calendar month;

- 11.3.1.2 the total volume of usable aviation fuels stored at the Bulk Fuel Site shall (subject to 11.3.2 and 17.1) at all times not be less than 1 (One) times the daily average ("**daily average**") demand for usable aviation fuels at the Airport, which average shall be determined for each month of this agreement in accordance with the following formula –

$$A = B \div C$$

where –

A is the daily average for a particular month;

B is the total volume of a particular type of usable aviation fuel actually supplied to aircraft during the immediately preceding month; and

C is the number of calendar days in the immediately preceding month;

- 11.3.1.3 it shall (subject to 11.3.2 and 7) at all times maintain sufficient volumes of usable aviation fuels and related products at the Bulk 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.

- 11.3.2 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 (for example, without limitation, the 2010 Soccer World Cup), ACSA shall be entitled (by giving **the Operator** at least six months prior written notice thereof) to require the Operator (who shall be obliged) to store at the Bulk Fuel Site (for the period of such special circumstances and periods of thirty days both before and after such special circumstances commence and end (collectively "special periods")) such additional volumes (not exceeding the total storage capacity of the Bulk Fuel Site) of usable aviation fuels as ACSA may stipulate in such notice. The provisions of 11.3.3 shall apply mutatis mutandis if the usable aviation fuels stored at the Bulk Fuel Site is (at any time during the special periods) less than the amount stipulated by ACSA in such notice.

- 11.3.3 Without prejudice to any of ACSA's rights under this agreement and/or at law, should the usable aviation fuels stored at the Bulk Fuel Site be less than One times the daily average (as calculated in terms of 11.3.1.2) for usable aviation fuel at the Airport ("**the penalty threshold**"), then **the Operator** shall forthwith give written notice thereof to ACSA and the Operator shall (to the extent that such shortfall in usable aviation fuels does not result from any act of force majeure as defined in 17.1) pay ACSA on demand an amount of R20 000 (twenty thousand rand) per day from the date that such usable aviation fuels are less than the penalty threshold for as long as **the Operator** fails to comply with 11.3.1.2. It is expressly recorded that any amount payable under this 11.3.3 constitutes a penalty and that ACSA, notwithstanding anything to the contrary in this agreement, will be entitled to recover its direct damages only (and not its indirect or consequential damages) in lieu of such penalty.

11.4 **Obligation to refrain from restrictive practices**

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

11.4.1 engage in any restrictive or other business practice or method of trading; and/or

11.4.2 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 -

11.4.3 adversely prejudice the performance of fuelling services at the Airport by any other person (including without limitation any additional Throughputters admitted in terms of 6) and/or the supply of aviation fuels and/or related products to the Airport; and or

11.4.4 contravene the provisions of the Competition Act No 89 of 1998.

11.5 **Obligations in respect of Airport laws and regulations**

The Operator shall, and shall procure that the into-plane operator (if any) shall -

11.5.1 strictly comply with all laws, legislation and regulations, as amended from time to time, relating to the Airport and the conduct of **the Operator's** business at the Airport;

11.5.2 strictly comply with all rules and regulations reasonably 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;

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

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

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

11.5.6 strictly comply with all the requirements of all applicable laws, legislation and regulations, including without any limitation, occupational safety legislation including without limitation the Occupational Health and Safety Act 85 of 1993; and

- 11.5.7 procure that **the Operator** represents the Operator on the Airport's Airside Safety Committee with a view to continually monitor and improve safety standards on the Airport apron and at the Airport generally.

11.6 Obligations in respect of employees, vehicles and ground service equipment

The Operator shall and shall procure that the into-plane operator (if any) shall -

- 11.6.1 employ only duly trained, qualified and properly authorised personnel in its operations airside, which personnel shall at all times wear the uniform of the Operator or the into-plane operator (if any) or be readily identifiable as employees of the Operator or the into-plane operator (if any); provided that if any new employees are being trained in airside operations, such employees shall at all times be under the supervision of properly trained, qualified and authorised personnel;
- 11.6.2 ensure that all of its employees, agents and vehicles required to be used by it in the conduct of its operations are in possession of a valid permit appropriate for the area in which any such employee, agent or vehicle is required to operate; provided that ACSA may, in its reasonable discretion, withdraw any such permit if it considers that the holder is no longer fit or suitable to be in possession thereof;
- 11.6.3 ensure that each of its employees and agents (and those of the into-plane operator (if any)) wears or displays in a prominent position a valid and appropriate permit at all times whilst such employee or agent is, on or about the Airport in the course of his employment with the Operator or the into-plane operator (if any);
- 11.6.4 subject its employees, agents and/or invitees and all vehicles used by it in the conduct of its operations on the Airport apron and airside area, to security checks by ACSA, whether such checks are routine or otherwise, and at a level that is in accordance with ACSA's reasonable policies applicable for the time being to all service providers at the Airport and ACSA's own staff;
- 11.6.5 ensure that there are sufficient staff on duty to operate its ground service equipment and use all reasonable endeavours to efficiently deal with anticipated fuelling service demands without causing any undue delays or disruptions to the operation of the Airport;
- 11.6.6 ensure that all drivers of its vehicles are in possession of a valid, unendorsed driver's license appropriate to the category of vehicle which they are required to possess;
- 11.6.7 require all drivers of vehicles, including all operators of ground service equipment, to undergo regular testing, at the Operator's cost, to ensure that they comply with ACSA's minimum reasonable standards for the time being with regard to eyesight and general health. The frequency of these tests shall be reasonably determined by ACSA and shall accord with the recommendations made from time to time by the National Occupational Safety Association or its successor-in-title;

- 11.6.8 employ in its operations only persons who comply with ACSA's reasonable security and safety requirements from time to time;
- 11.6.9 submit its employees to regular and ongoing training, with a view to improving their skills and efficiency levels and increasing their awareness of the special needs of the fuelling services industry. ACSA may from time to time require proof of these ongoing training programs, and may make reasonable recommendations as it deems fit for the improvement thereof and of service standards generally, which recommendations shall forthwith be implemented by the Operator;
- 11.6.10 ensure that any vehicles used by it in its operations are in a roadworthy condition and are in possession of and display in a prominent position the appropriate airside vehicle permit issued by ACSA;
- 11.6.11 ensure that any vehicle reasonably required to be operated in or on the Airport apron or airside is equipped with the mandatory or recommended warning lights and radio equipment required by ACSA;
- 11.6.12 cause all vehicles required to be used by it in the conduct of its operations, including ground service equipment, to undergo regular service and maintenance inspections. ACSA may at any time require the Operator and/or the into-plane operator (if any) to produce proof that such services and inspections have been carried out, and may summarily withdraw the airside vehicle permit issued by ACSA, of any vehicle which in the reasonable discretion of ACSA may pose a threat to other users of the Airport apron by virtue of its not having been properly maintained; and
- 11.6.13 repair at agreed reimbursable costs without undue delay any ground service equipment that is not in proper working order and remove such equipment from the Airport apron forthwith.

11.7 Rules for driving airside

The Operator shall procure that all drivers of vehicles owned and/or used by the Operator and/or the into-plane operator, including any ground service equipment, in, on or about the Airport, including, without limitation, the apron shall -

- 11.7.1 operate a vehicle only within the approved area of operation specially designated for this purpose by ACSA;
- 11.7.2 give way to any manoeuvring aircraft or any aircraft under tow;
- 11.7.3 give way to passengers moving towards or away from an aircraft for the purposes of embarking on or disembarking from a flight;
- 11.7.4 not in any manner obstruct, disrupt or interfere with the movement of ground service and/or other equipment owned and operated by other users of the Airport apron;

- 11.7.5 obey all speed limits applicable in or on the Airport (as determined by ACSA from time to time); provided that should the drivers of the Operator or the into-plane operator (if any) repeatedly breach such speed limits, ACSA shall have the right (by giving three months prior written notice to the Operator or the into-plane operator (if any)) to require the Operator or the into-plane operator (if any), which shall then be obliged at its cost, to install in their vehicles maximum speed restriction devices as specified by ACSA;
- 11.7.6 obey all road signs, road markings and security personnel on duty at the Airport;
- 11.7.7 ensure that all loose materials, equipment and garbage carried on any of its vehicles are properly covered or secured to prevent accidental spillage;
- 11.7.8 when operating a vehicle at night or in periods of poor visibility, ensure that headlights are dimmed and taillights are displayed as required for normal night driving, and that all mandatory warning or other lights required by ACSA from time to time to be used are so displayed;
- 11.7.9 park vehicles only in areas specially designed for that purpose, and store all ground service equipment which is not in operation in the area specially designated by ACSA for this purpose, failing which ACSA may, should it deem it necessary in the interests of safety or security at the Airport, remove any such vehicle or equipment to an alternate location by notice to the Operator or its agent and at the sole risk of the Operator or its agent;
- 11.7.10 take cognisance of the height restrictions applicable on the airside service roads at the Airport;
- 11.7.11 refrain from operating any vehicle on any runway or taxiway unless such vehicle is in radio contact with air traffic control or the relevant ground control office and the driver is in possession of an appropriate radio telephony license, or alternatively unless such vehicle is under escort by an ACSA vehicle which is similarly equipped;
- 11.7.12 refrain from operating any vehicle within the 1,5m radius or alternatively within the minimum reasonably prescribed (by ACSA for the time being) distance away from any aircraft unless specifically required to do so by the relevant aircraft operator or by the nature of the re-fuelling operations being carried out; and
- 11.7.13 comply further with the reasonable rules and procedures defined in ACSA's Airside Vehicle Operator Permit Manual, as amended from time to time, a copy of which will be made available to the Operator as soon as reasonably possible after the signature date.
- 11.7.14 **The Operator** shall use its best endeavours to procure that all drivers referred to in 11.7, refrain from the consumption, for a period of at least twelve hours before driving, of any drugs or intoxicating substance which might have the effect of impairing his judgment, whether medically indicated, prescribed or otherwise.

11.8 Obligations in regard to the Airport apron

- 11.8.1 **The Operator** and the into-plane operator (if any) may use the Airport apron as and when necessary for the discharge of their obligations to the relevant aircraft operator, save that ACSA shall at all times retain full possession and control of the Airport apron, including the right to give such new directions after the signature date as may be reasonable relating to the use of the Airport apron.
- 11.8.2 **The Operator** shall ensure strict compliance by its employees, agents, representatives and the into-plane operator (if any) with any directives published by the Airside Safety Committee or other similar or equivalent body of the Airport provided that current copies of such directives are provided by ACSA to the Operator from time to time.
- 11.8.3 **The Operator** shall not (and shall procure that the into-plane operator (if any) shall not) without the express prior written approval of ACSA bring, or permit the introduction into or onto the Airport of any offensive, hazardous, noxious, toxic or dangerous substance, as commonly construed (other than aviation fuels and related products).
- 11.8.4 No waste or litter shall be dropped anywhere on the Airport apron by the Operator, the into-plane operator (if any) or any of their respective employees, agents, representatives and/or directors. Any foreign objects shall be disposed of in the receptacles identified by ACSA for that purpose, and the Operator shall (and shall procure that the into-plane operator (if any) shall) use their best endeavours to ensure that the Airport apron is at all times kept clean and tidy.
- 11.8.5 **The Operator** shall not (and shall procure that the into-plane operator (if any) shall not) without the prior written approval of ACSA use any portion of the Airport apron for the purpose of refuelling, cleaning, servicing or repairing any of their vehicles or any ground service equipment, other than that part of the Airport apron that has been specifically designated by ACSA from time to time for that purpose.
- 11.8.6 **The Operator** shall notify ACSA forthwith in writing of any substantive changes to the carrier agreement (or such other agreements which may exist between the Operator and any aircraft operator regarding fuelling services) which may require changes to airside operational activities.
- 11.8.7 All aviation fuels supplied by **the Operator** or the into-plane operator (if any) to aircraft shall be supplied from the Bulk Fuel Site or such other facilities as may be agreed upon between ACSA and the Operator in writing.
- 11.8.8 All aviation fuels supplied by **the Operator** or the into-plane operator (if any) to aircraft shall be transported from the Bulk Fuel Site through the hydrant system and/or ground service equipment to the Airport apron or by such other means as may be agreed upon in writing between ACSA and the managing Operator;

provided that the Operator shall as far as possible supply aviation fuels through the hydrant system in preference to ground service equipment.

11.8.9 **The Operator** undertakes and shall procure that the into-plane operator (if any) shall fully comply with all matters and requirements stipulated in JIG and not specifically dealt with elsewhere in this agreement.

11.8.10 **The Operator** undertakes to (and shall procure that the into-plane operator (if any) shall) supply ACSA with a copy of the final report, within seven days after receipt thereof, of every compulsory inspection as provided for in JIG. A copy of such report shall be retained at the Bulk Fuel Site and be available for inspection by ACSA at all reasonable times. ACSA shall use reasonable endeavours to preserve the confidentiality of any such report.

11.9 **Obligation to report accidents and incidents and ensure compliance by the into-plane operator**

11.9.1 In addition to any statutory obligations that may be imposed on **the Operator** and the into-plane operator (if any) from time to time, the Operator shall (and shall procure that the into-plane operator (if any) shall) report to ACSA every accident or important incident on or in connection with the performance of their obligations (as set out in the relevant carrier agreement, such other agreements between the Operator 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 Operator shall within a further period of thirty days submit a final detailed written report in respect thereof to ACSA. ACSA shall have the right to make any necessary further enquiries as to the cause and results of any such accident or incident, and the Operator shall (and shall procure that the into-plane operator (if any) shall) give ACSA their full co-operation and assistance to ACSA in this regard.

11.9.2 **The Operator** shall (and shall procure that the into-plane operator (if any) shall) report all incidents and occurrences affecting aviation security in accordance with ACSA's reasonable reporting system as amended and advised to the Operator in writing from time to time.

11.9.3 **The Operator** shall ensure compliance with the provisions of this 11 and all the other applicable provisions of this agreement.

11.10 **Other obligations – flight delays, fuelling service hours, aviation fuel quality and compliance with security measures and provision of information to ACSA**

The Operator shall –

11.10.1 if any flight of any aircraft is delayed as a result of any act or omission of the Operator and/or the into-plane operator (if any), fully cooperate with ACSA and promptly provide all information and details reasonably required by ACSA with regard to such delay and the reasons therefor;

- 11.10.2 provide fuelling services to aircraft at all times during the Airport's operating hours (as determined by ACSA from time to time);
- 11.10.3 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; and
- 11.10.4 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, the requirements of the International Civil Aviation Organisation (ICAO) and ACSA's reasonable aviation security requirements for the time being. If any security measures are required in terms of any applicable laws or regulations for the time being in force in the RSA, then the costs of complying therewith shall be borne by **the Operator**. The costs of any additional security measures instituted and/or required by ACSA after the signature date, in addition to those pertaining at the commencement date, shall be borne by ACSA;
- 11.10.5 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)
- 11.10.6 ensure that its representative attends and actively participates in the activities of the Airport Management Centre (AMC) at the Airport at all times that the Airport is operational.

12 OBLIGATIONS OF ACSA

ACSA shall, subject to due compliance by **the Operator** and the into-plane operator (if any) with all applicable laws and regulations and with all reasonably prescribed ACSA procedures -

- 12.1 allow **the Operator** and its duly authorised employees or agents access to all such areas and relevant equipment on the Airport to which it may be necessary for them to have access for the proper conduct of its business at the Airport including, inter alia, access to the Airport apron at the Airport using roads that are not open to the public;
- 12.2 use reasonable endeavours to expedite any security or other check to which it requires the Operator or the into-plane operator (if any) to subject their employees or vehicles, with a view to causing as little disruption as possible to the business operations of the Operator and the into-plane operator (if any) at the Airport;
- 12.3 inform, in writing, the Operator or the into-plane operator (if any) without undue delay of any changes to the Airport regulations and/or management rules of ACSA which might affect the business of the Operator or the into-plane operator (if any) at the Airport. ACSA shall use reasonable endeavours to give the Operator at least thirty days prior notice of any such changes;

- 12.4 take reasonable appropriate steps against third parties or other airside users and service providers where such third parties, airside service providers or users have caused damage to equipment used for fuelling services or are guilty of general misconduct affecting the business activities of the Operator or the into-plane operator at the Airport;
- 12.5 use its reasonable commercial endeavours in the utmost good faith to allow **the Operator** or the into-plane operator (if any) to comply with JIG;
- 12.6 consult regularly with the managing Operator regarding the formulation and implementation of policies, procedures and conditions by ACSA which may have an impact on the business activities of the Operator or its agents at the Airport;
- 12.7 at its cost but subject to 11.1.14 (and excluding the obligations of **the Operator** in terms of 11.1.14), maintain the hydrant system in good order and repair, fair wear and tear excepted.

13 ALTERATIONS AND IMPROVEMENTS

- 13.1 **The Operator** shall not make any structural or other alteration, addition or improvement to the Bulk Fuel Site and/or the hydrant system without the prior written consent of ACSA, which consent shall not be unreasonably withheld and to which a response will be given by ACSA within thirty days of receipt by ACSA of –

- 13.1.1 a written request by the Operator to effect such alteration, addition or improvement; and
- 13.1.2 comprehensive written details (including the costs and budget) of such alteration, addition or improvement and the reasons therefor, which shall be supported by a written report by a qualified engineer (if applicable) and a written inspection report by the Operator in accordance with international standards.

When giving such consent, ACSA shall elect whether or not it will require the Operator, on termination or expiry of this agreement, to restore the Bulk Fuel Site and/or hydrant system to the condition in which they were in before such alteration, addition or improvement.

- 13.2 ACSA shall, after consultation with the Operator, be entitled at all reasonable times -

- 13.2.1 to effect, at ACSA's cost, any alterations, improvements and/or additions to the Bulk Fuel Site and/or the hydrant system;

- 13.2.2 for any such purpose –

- 13.2.2.1 to erect, in such manner as may be reasonably necessary, scaffolding, hoardings and/or other building equipment on or adjacent to the Bulk Fuel Site and/or the hydrant system and also such devices as may be required for the protection of any person against injury arising out of the building operations; and

13.2.2.2 have access to any portion of the Bulk Fuel Site and/or the hydrant system by itself or through its workmen or agents.

13.3 ACSA, in exercising its rights in terms of 13.2, undertakes to take all reasonable steps to ensure that there is minimal disruption to the business operations and fuelling services of **the Operator**

14 STRUCTURAL DAMAGE

Should the improvements (whether existing at the signature date or effected in terms of 3 and including, without any limitation whatever, the improvements referred to in 11.1.4) on the Bulk Fuel Site and/or the hydrant system be -

14.1 destroyed or damaged to such an extent as to render them substantially or wholly incapable of delivering aviation fuels to aircraft, then -

14.1.1 this agreement may be cancelled by written agreement between **the Operator** and ACSA with effect from the date of such destruction or damage; or

14.1.2 should this agreement not be cancelled in terms of 14.1.1 within 30 (thirty) days of the date of such destruction or damage, the Operator shall restore the improvements on the Bulk Fuel Site, and the consideration payable by the Operator in terms of 7.1 shall (subject to 14.1.4) be abated pro rata, having regard to the extent to which the Operator is able to deliver aviation fuels to aircraft (as agreed between the parties in writing or, failing such agreement within forty-five days of the date of such destruction or damage, determined by independent auditors appointed for the purpose by ACSA, acting as experts and not as arbitrators, whose decision shall (save for manifest error) be final and binding on the parties and whose costs shall be paid equally by the Operator (on the one hand) and ACSA (on the other hand). In such event the Operator shall restore the improvements on the Bulk Fuel Site as expeditiously as is reasonably possible (and specifically having regard to maintaining health, safety and environmental requirements to ACSA's reasonable satisfaction), ACSA reserving the right to change or vary the form of construction and/or positioning of the improvements in such restoration, but granting to the Operator the same accommodation as regards position, usefulness and area as existed before the damage or destruction; provided that, notwithstanding the foregoing -

14.1.3 **the Operator** shall not be obliged to expend more in such restoration than it received as the proceeds of a claim made in respect of such damage or destruction in terms of the insurance policies;

14.1.4 **the Operator** shall not be entitled to any such abatement if the damage or destruction arises out of or pursuant to the fault or negligence of the Operator, the into-plane operator (if any) and/or their respective, employees, directors, representatives and/or agents, save to the extent that ACSA has been compensated for any loss of the rentals referred to in 7.1 under any insurance policy;

- 14.2 damaged but nevertheless remain substantially capable of delivering aviation fuels to aircraft, then this agreement shall not terminate but the amounts payable in terms of 7.1 shall be abated pro-rata on mutatis mutandis the terms and conditions set out in 14.1.2. In such event **the Operator** shall restore the improvements on the Bulk Fuel Site in terms of 14.1.2 (which shall apply mutatis mutandis) to as near as may be reasonably possible, the same condition prior to the damage being caused, as expeditiously as is reasonably possible.

15 **ACSA'S RIGHT TO INSPECT**

ACSA shall be entitled, on reasonable notice to the managing Operator, to -

- 15.1 inspect the Bulk Fuel Site and/or the hydrant system and/ or ground service equipment at all times for any reason whatever including, without limitation, together with its representatives, advisers and/or contractors (including, without limitation, any international tank farm specialist) for the purposes of verifying the compliance by the Operator with its obligations under this agreement; and
- 15.2 view the Bulk Fuel Site and/or the hydrant system and/ or ground service equipment together with prospective Operators, Throughputters and/or purchasers of the Bulk Fuel Site and/or hydrant system and/ or ground service equipment (or any portion thereof).

16 **STRIKES AND LABOUR UNREST**

- 16.1 **The Operator** shall (and shall procure that the into-plane operator (if any) 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.
- 16.2 If **the Operator** or the into-plane operator (if any), in the reasonable discretion of ACSA, fail either adequately or effectively to comply with 16.1, 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 -
- 16.2.1 requiring, through its own security personnel or with the assistance of the South African Police Service, all or any of the employees of the Operator and/or the into-plane operator (if any) to vacate the Airport, alternatively, requiring the Operator and/or the into-plane operator (if any) to withdraw from and cease business operations on the Airport until the resolution of the dispute. Without limiting the generality of the foregoing, the Operator 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, applicable laws and regulations of the RSA and international standards;
- 16.2.2 denying all or any of **the Operator's** or the into-plane operator's (if any) employees access to the aircraft movement area of the Airport until resolution of the dispute; and
- 16.2.3 initiating such legal actions, proceedings and/or steps as ACSA may deem appropriate.

- 16.3 ACSA shall not be liable for any loss, liability, damage or expense suffered by **the Operator** and/or the into-plane operator (if any) as a result of or attributable to any action taken by ACSA in terms of 16.2, and **the Operator** indemnifies ACSA against any claim arising out of or pursuant to any such loss, liability, damage or expense.

17 **FORCE MAJEURE**

- 17.1 Subject to 6 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 16.1 and 16.2 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 Operator** concerned shall be entitled, by written notice to the other of them, to forthwith terminate this agreement as between them.
- 17.2 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 parties estimating (if possible) 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 parties as soon as the act of force majeure ceases to operate.
- 17.3 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.

18 **CESSION, SUB-LETTING AND CHANGE OF CONTROL**

- 18.1 **The Operator** shall not -

18.1.1 cede, assign, transfer, subcontract or burden any of its rights or delegate any of its obligations under this agreement; or

18.1.2 sub-let or grant possession, occupation or the right to use the whole or any part of the Bulk Fuel Site and/or the hydrant system,

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 to the Operator, the Operator shall remain fully responsible and liable to ACSA for (and indemnifies ACSA mutatis mutandis in accordance with 10.2 against)

all acts and omissions of the relevant third party and/or its employees, directors, members, representatives, agents, invitees, contractors and/or subcontractors.

18.2 If de facto or de jure control of **the Operator** changes for any reason whatever after the signature date, **the Operator** shall notify ACSA thereof in writing as soon as reasonably possible after such change and should ACSA, on reasonable grounds, object thereto in writing, ACSA and the Operator shall forthwith meet and negotiate in good faith in order to discuss and resolve the objection. Failing such resolution for any reason whatever within 20 days after the date of commencement of such negotiations, ACSA shall be entitled to forthwith terminate this agreement only insofar as it relates to the Operator. For the purposes of this 18.2, the term "control" shall include, without any limitation -

18.2.1 the beneficial ownership of (or other direct or indirect right to control the voting of) -

18.2.1.1 25% (if **the Operator** is listed on any recognised stock exchange);

18.2.1.2 51% (if **the Operator** is not listed on any recognised stock exchange),

of the issued share capital of **the Operator**; or

18.2.2 the right entitling any person to directly or indirectly control the management of the Operator or appoint (or veto the appointment of) a majority of the board of directors of the Operator.

18.3 **The Operator** shall not appoint any into-plane operator (if any) to perform fuelling services for the purpose of this agreement –

18.3.1 without the prior written consent of ACSA, which consent shall not be unreasonably withheld; and

18.3.2 unless such into-plane operator (if any) unconditionally and irrevocably agrees in writing in favour of ACSA to be bound, mutatis mutandis, by all applicable provisions of this agreement.

18.4 ACSA shall be entitled to cede, assign or delegate any of its rights and obligations under this agreement to any other person without the prior written consent of **the Operator**; provided that ACSA shall give written notice of such cession, assignment or delegation to **the Operator**.

19 **LEGAL COSTS, OUTSTANDING PAYMENTS AND VAT**

19.1 Should ACSA institute any legal action and/or proceedings against **the Operator** pursuant to a breach by **the Operator** of this agreement then, without prejudice to any of ACSA's rights under this agreement and/or at law, ACSA shall (to the extent that ACSA is successful in such legal action and/or proceedings) be entitled to recover from **the Operator** all the legal costs incurred by it, including party-party costs only. .

- 19.2 Without prejudice to any of ACSA's rights under this agreement or at law, **the Operator** shall pay interest to ACSA on any amount not paid on due date, 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.
- 19.3 All amounts payable by **the Operator** to ACSA in terms of this agreement are expressed to be exclusive of VAT at the current rate, which VAT shall be payable by the Operator to ACSA against the issue of a tax invoice by ACSA.
- 19.4 The provisions of 19.1 and 19.2 shall apply, mutatis mutandis, in respect of any legal action or proceeding instituted by **the Operator** against ACSA and to any payment due by ACSA to the Operator which is not made on due date.

20 BREACH

20.1 Should **the Operator** -

- 20.1.1 commit or permit a material breach of any material provision of this agreement and fail to remedy such breach within 10 (ten) days (or such longer period as may be reasonably required to remedy such breach) after notice has been given to the Operator 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 Operator; or
- 20.1.2 be placed under sequestration, liquidation, business rescue or similar disability, whether provisionally or finally and whether voluntarily or compulsorily, as the case may be; or
- 20.1.3 have a final judgment entered against it and fail to satisfy such judgement within fourteen days thereafter;
- 20.1.4 be insolvent or deemed to be unable to pay its debts under any applicable law or commit any act which if committed by a natural person would constitute an act of insolvency; or
- 20.1.5 compromise with its creditors generally; or
- 20.1.6 have any licence or permit required to be maintained by **the Operator** for the operation of the Operator's business or the performance of the Operator's obligations under this agreement revoked or suspended for more than thirty days; or
- 20.1.7 commit any illegal or fraudulent conduct in its dealings with ACSA; or
- 20.1.8 suffer any interference, nationalisation, act of force majeure (as defined in 17.1) or act of any governmental or statutory body which, in the reasonable opinion of ACSA, is potentially or actually prejudicial or detrimental to **the Operator**, the Operator's business and/or ACSA,

then ACSA shall be entitled to cancel this agreement with regard to the Operator by giving written notice thereof to the Operator (or, in the event of a breach referred to in 20.1.1, claim immediate specific performance by the Operator), without prejudice to any of its other rights under this agreement or at law (including without limitation any right to claim direct proven damages).

20.2 Should -

20.2.1 ACSA commit or permit a material breach of any material provision of this agreement and fail to remedy such breach within ten days (or such longer period as may be reasonably required to remedy such breach) after notice has been given to it by **the Operator** requiring ACSA to remedy such breach; and/or

20.2.2 any of the events referred to in 20.1.2 to 20.1.7 (which shall apply mutatis mutandis in favour of **the Operator**) occur in respect of ACSA,

then **the Operator** shall be entitled to cancel this agreement by giving written notice thereof to ACSA (or, in the event of a breach referred to in 20.2.1, claim immediate specific performance by ACSA), without prejudice to any of its rights under this agreement or at law (including without limitation any right to claim damages).

20.3 Notwithstanding anything to the contrary contained in this agreement -

20.3.1 should **the Operator** breach any material provision of this agreement and the agreement is lawfully cancelled in respect of **the Operator** pursuant to such breach, ACSA shall, provided that any litigation or dispute arising out of or pursuant to such breach and/or cancellation has been finally resolved, terminate this agreement insofar as it relates to such Operator only.

20.4 **The Operator** warrants that, as at the commencement date, it has all licences, approvals, consents and permits required to provide fuelling services at the Airport (including all licences required in terms of the Petroleum Pipelines Act 60 of 2003). It is agreed that if –

20.4.1 any such licence, permit, approval or consent is not renewed (or if any licence, consent, approval or permit required under any law and/or regulation which comes into effect after the commencement date is not granted to **The Operator**) for any reason other than an act or omission of **The Operator** and/or its employees, directors, agents, representatives, contractors and/or subcontractors; and

20.4.2 **The Operator** is as a result of such non-renewal or non-grant not able to provide fuelling services at the Airport, or

20.4.3 **The Operator** no longer finds it economical to operate at the Airport,

The Operator shall be entitled to terminate this agreement by giving ACSA at least twelve (12) months prior written notice thereof; provided that **the Operator** shall assist and fully cooperate with ACSA to identify a suitable third party

to replace **the Operator** and, if required by ACSA, **The Operator** shall cede, delegate and assign all of its rights and obligations under this agreement to such third party.

21 **CONSEQUENCES OF TERMINATION AND ACSA'S RIGHT OF FIRST REFUSAL AND OPTION**

21.1 On the date of expiry or termination of this agreement ("termination date") for any reason whatever -

21.1.1 **the Operator** shall vacate the Bulk Fuel Site and cease to use the hydrant system; and

21.1.2 **the Operator** shall, subject to 21.2, 21.3 and 21.4, forthwith restore the Bulk Fuel Site to a good, clean, environmentally safe and tidy, working order and condition but (subject to compliance by **the Operator** with 11.1.4.1) fair wear and tear excepted. To the extent necessary to comply with this 21.1.2 but without limiting or derogating from its obligations under this 21.1.2, **the Operator** shall have a reasonable right of access to the Bulk Fuel Site after the termination date.

21.2 ACSA shall have the irrevocable right and option ("**option**") to require **the Operator**, where applicable; (which shall then be obliged) to sell to ACSA all or any of the permanent improvements owned by **the Operator** on the Bulk Fuel Site (including all fuel tanks, buildings and alterations, additions and improvements made by **the Operator** in terms of 3) with effect from the termination date and on the following terms and conditions –

21.2.1 the option shall be exercisable by ACSA delivering written notice thereof to **the Operator** on or before -

21.2.1.1 the date of expiry of ten business days after the termination date (if the termination date is before the expiry of the fixed period referred to in 3.1);

failing which the option shall automatically lapse and cease to be of any force and effect;

21.2.2 if the option is exercised in terms of 21.2.1, then the purchase price payable to **the Operator** by ACSA for the relevant permanent improvements in respect of which the option is exercised shall be –

21.2.2.1 an aggregate amount of R1 for any permanent improvements on the Bulk Fuel Site as at the commencement date and any alteration, addition and improvement to the Bulk Fuel Site made by **the Operator** after the commencement date without ACSA's consent in terms of 13.1;

21.2.2.2 the depreciated book value of any alteration, addition and improvement to the Bulk Fuel Site made by **the Operator** after the commencement date with ACSA's consent in terms of 13.1, which depreciated book value shall be calculated in accordance with generally accepted accounting practices and by an independent firm of auditors (appointed by ACSA) mutatis mutandis in accordance with 21.6.2; provided that if this agreement terminates due to the expiry of the initial period in 3.1, then the aggregate amount payable by ACSA under this 21.2.2.2 shall be R1;

- 21.2.3 the purchase price shall be paid by ACSA to **the Operator** within 30 (thirty) days after the later of the –
- 21.2.3.1 date of exercise by ACSA of the option; or
- 21.2.3.2 date of grant of the approvals referred to in 21.2.4;
- 21.2.4 to the extent that any approvals are required for the sale of such permanent improvements to ACSA in terms of the option (whether under the Competition Act and/or any other law), ACSA and **the Operator** shall use all reasonable commercial endeavours to obtain such approvals as soon as reasonably possible after the date of exercise of the option, which approvals shall be unconditional or subject to such conditions as are acceptable to both ACSA and **the Operator**, failing which the sale in terms of the option shall automatically lapse unless otherwise agreed in writing by ACSA and **the Operator**. Any merger filing or other fee or amount payable to any governmental and/or regulatory authority in respect of such approvals shall be borne and paid by ACSA and **the Operator** in equal shares;
- 21.2.5 ownership of and all risk and benefit in such permanent improvements shall, unless otherwise agreed between ACSA and **the Operator** in writing, pass to ACSA on the termination date.
- 21.3 To the extent that ACSA does not acquire all the permanent improvements on the Bulk Fuel Site in terms of 21.2, ACSA shall be entitled to require **the Operator** to remove, at **the Operator's** cost, all or any of the bulk fuel tanks, buildings and other permanent improvements on the Bulk Fuel Site (including without limitation but subject to any election by ACSA in terms of 13.1, any alteration, addition and/or improvement by **the Operator** in terms of 3) by giving **the Operator** written notice thereof on or before the date referred to in 21.2.1.1. In such event, **the Operator** shall retain ownership of and remove such tanks, buildings and other improvements within ninety days after the termination date.
- 21.4 To the extent that ACSA does not exercise its rights in terms of 21.2 and/or 21.3, **the Operator** shall (unless otherwise agreed by the parties in writing) retain ownership of its permanent improvements on the Bulk Fuel Site and shall remove all such improvements from the Bulk Fuel Site within ninety days after the termination date.
- 21.5 Should **the Operator** wish to directly or indirectly sell, transfer or otherwise dispose of to any third party, all or any of its fixtures, fittings, ground service equipment, into-plane equipment and any other movable property at the Airport required to properly operate the Bulk Fuel Site and/or perform fuelling services at the Airport (collectively "movables") at any time during the period of one year before the date of expiry of the fixed period referred to in 3.1 and/or the period of 30 days after the termination date, **the Operator** shall first offer to sell, transfer or otherwise dispose of such movables to ACSA (or its nominee) on the following terms and conditions -
- 21.5.1 such offer ("**the offer**") shall -
- 21.5.1.1 be in writing and shall be delivered by **the Operator** to ACSA at its domicile referred to in 7;

- 21.5.1.2 be irrevocable and open for acceptance by ACSA (or its nominee) for a period of thirty days following the date of receipt of the offer by ACSA;
- 21.5.1.3 if an offer has been made by a bona fide third party to **the Operator**, be accompanied by a -
 - 21.5.1.3.1 written memorandum setting out the cash price (which shall be expressed and payable in money) and all other terms and conditions that have been offered to **the Operator** orally; or
 - 21.5.1.3.2 true and complete copy of any written offer made to **the Operator**,which in either case must contain the name of the bona fide third party and, in the case where the bona fide third party is an agent, the name of his ultimate principal;
- 21.5.1.4 in all other cases apart from those referred to in 21.5.1.3, stipulate a cash price and the terms and conditions on which **the Operator** is prepared to sell, transfer or otherwise dispose of such movables;
- 21.5.2 if the whole of the offer is not accepted by ACSA (or its nominee in terms of 21.5.1.2), then **the Operator** shall be entitled, within thirty days after expiry of the thirty day period referred to in 21.5.1.2, to sell, transfer or otherwise dispose of all (but not a part only) of such movables to a bona fide third party (or, where 21.5.1.3 is applicable, to the bona fide third party referred to in 21.5.1.3) at a price not lower and on terms and conditions not more favourable to such third party than those at which ACSA (or its nominee) was entitled to purchase or otherwise acquire such movables in terms of the offer;
- 21.5.3 should **the Operator** not sell all such movables in terms of 21.5.2 within the thirty day period referred to in 21.5.2, then all of the foregoing provisions of this 21.5 shall again apply de novo.
- 21.6 Should this agreement terminate in terms of 14.1.1, 17.1, 18.2, 20.1, 20.2 or 20.3 or 20.4, ACSA shall have the irrevocable right and option to purchase from **the Operator** (which shall be obliged to sell to ACSA) all or any of the movables on the following terms and conditions –
 - 21.6.1 the option shall be exercised by ACSA delivering to **the Operator** written notice of such exercise within a period of ninety days after notice of termination of this agreement has been given by any party or, where this agreement terminates in terms of 14.1.1, ninety days after the date of signature of the relevant agreement by the last signing party thereto;
 - 21.6.2 if the option is exercised, then the purchase price payable by ACSA to **the Operator** shall be the depreciated replacement value of the relevant movables, which value shall be determined by an independent firm of auditors (appointed by ACSA). Such auditors shall act as experts and not as arbitrators and their decision

shall (save for manifest error) be final and binding on the parties. The costs of such auditors shall be paid by **the Operator** and ACSA in equal shares;

21.6.3 the purchase price shall be payable to **the Operator** in cash within sixty days after the determination of the purchase price in terms of 21.6.2 (or if any approvals referred to in 21.2.4 (which shall apply mutatis mutandis to this 21.6) are required, 60 days after the date of grant of such approvals), against delivery of the relevant movables to ACSA.

21.7 For the avoidance of doubt, the provisions of 1, this 1, 2 to 7 (both inclusive), 2 and 3 shall survive the termination of expiry of this agreement for any reason whatever.

22 CANCELLATION - HOLDING OVER

Should ACSA cancel this agreement and **the Operator** disputes the right to cancel and remain in occupation of the Bulk Fuel Site and/or continues to use the hydrant system, then -

22.1 **the Operator** shall, pending the final determination of such dispute, continue to pay to ACSA on the due date thereof, all amounts due under this agreement, and the acceptance thereof shall be without prejudice to any of ACSA's rights;

22.2 should such dispute be determined in favour of ACSA, any such payments received shall be deemed to be amounts paid by **the Operator** on account of damages suffered by ACSA by reason of the cancellation of the agreement and/or the unlawful holding over by **the Operator**; and

22.3 subject to the foregoing, the parties shall pending the final determination of such dispute continue to observe and abide by the terms and conditions of this agreement.

23 REASONABLENESS

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

24 CERTIFICATE OF INDEBTEDNESS

A Statement, unless the contents thereof are disputed by **the Operator**, issued by ACSA as to the existence and the amounts of any indebtedness of **the Operator** 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 Operator's** indebtedness for the purpose of provisional sentence or summary judgment or any other proceedings against **the Operator** in any competent court, and shall be valid as a liquid document for such purposes. Such

statement shall be rebuttably binding on **the Operator** 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 Operator**.

25 APPLICABLE LAW

Subject to 6, 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 law.

26 DISPUTES

26.1 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.

26.2 Each party shall be entitled to have any award of the arbitrators made an order of any competent court.

26.3 This clause constitutes an irrevocable consent by the parties to any proceedings in terms thereof and no party shall be entitled to withdraw therefrom or to claim at any such proceedings that it is not bound by this clause.

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

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

26.6 For the purposes of 26.2 and 26.6, the parties consent to the non-exclusive jurisdiction of the High Court, Johannesburg.

27 DOMICILIUM AND NOTICES

27.1 The parties choose domicilium citandi et executandi ("**domicilium**") for all purposes of the giving of any notice, the payment of any sum, the serving of any process and for any other purpose arising from this agreement, as follows –

27.1.1	ACSA	-	Western Precinct Aviation Park OR Tambo International Airport 1 Jones Road Kempton Park South Africa, 1632
	Email:	-	charles.shilowa@airports.co.za dineo.teffo@airports.co.za
		cc	

27.1.2 **the Operator** -

 email address -

27.2 Each of the parties shall be entitled from time to time, by written notice to the others, to vary its domicile to any other physical address within the RSA and/or its facsimile number.

27.3 Any notice given and any payment made by any party to any other which is delivered by hand during the normal business hours of the addressee at the addressee's domicile for the time being shall be rebuttably presumed to have been received by the addressee at the time of delivery.

27.4 Any notice given by any party to any other party which is transmitted by electronic mail to the addressee at the addressee's e-mail address for the time being shall be rebuttably presumed to have been received by the addressee when the complete data message enters the information system designated and is capable of being retrieved by the addressee.

27.5 Any notice or communication 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. This Clause 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 Clause.

28 **ENVIRONMENTAL ASSESSMENT**

28.1 Prior to vacating the Bulk Fuel Site, **the Operator** shall conduct an Environmental Assessment and deliver the report to ACSA within 7 (seven) days of vacation.

28.2 **The Operator** shall (if either ACSA or **the Operator** gives written notice thereof to the other of them at any time after the signature date) appoint an independent Environmental Assessment Practitioner ("**the EAP**") to conduct an environmental assessment of the Bulk Fuel Site (including all improvements of a permanent and temporary nature thereon) and the hydrant system and/ or ground service equipment in terms of all applicable environmental laws and regulations. The costs of the EAP shall be shared equally by both Parties.

28.3 If ACSA and **the Operator** fail to agree upon an EAP within ten business days after the date of delivery of the written notice referred to in 28.2 then, the matter shall at the request of any party, be referred to the of the AFSA to appoint a mediator..

28.4 Should the EAP find any environmental damage or pollution upon and/or emanating from vehicles delivering aviation fuels and/or related products to the Bulk Fuel Site, from the Bulk Fuel Site and/or any of the improvements thereon and/or from the hose inlet couplings of any hydrant dispenser of the hydrant system and/ or ground service equipment used to provide fuelling services and/or between such couplings and any aircraft being refuelled and/or pursuant to any fuelling services provided by and/or on behalf of the previous Operator by means of ground service equipment, which in the EAP's reasonable opinion should be repaired, restored or removed, then such repair, restoration and removal shall be effected as soon as reasonably possible by the Previous Operator at its cost and not the current Operator. However, if any environmental damage or pollution can be shown to have been caused directly by ACSA's conduct prior to the signature date, then the costs of repair, restoration and/or removal in respect of the damage or pollution caused directly by ACSA shall be borne by ACSA.

28.5 Should the EAP find any environmental damage or pollution upon and emanating from the underground portion of the hydrant system and/ or ground service equipment (other than from the hose inlet couplings of any hydrant dispenser used for fuelling services and/or between such couplings and any aircraft being refuelled) which in the EAP's reasonable opinion should be repaired, restored or removed, then such repair, restoration and removal shall be effected as soon as reasonably possible by ACSA at its cost, and without prejudice to any of ACSA's rights in terms of this agreement, without limitation, any of ACSA's rights against **the Operator** (whether under any existing agreement or).

29 COUNTERPARTS

This agreement may be executed in one or more counter-parts and in separate counterparts, each of which when executed shall be deemed to be an original but all of which taken together shall constitute one and the same agreement.

30 GENERAL

30.1 This agreement, together with its annexures, constitutes the sole record of the agreement between the parties in regard to the subject matter thereof.

30.2 No party shall be bound by any representation, express, tacit or implied term, warranty, promise or the like not recorded in this agreement or reduced to writing and signed by the parties or their representatives.

30.3 No addition to, variation or agreed cancellation of this agreement or any of its annexures shall be of any force or effect unless in writing and signed by or on behalf of the parties.

30.4 No indulgence or extension of time which any party may grant to any other shall constitute a waiver of any of the existing or future rights of the grantor or, whether by estoppel or otherwise, limit any of the existing or future rights of the grantor in terms of this agreement, save in the event and to the extent that the grantor has signed a written document expressly waiving or limiting such right.

30.5 Without prejudice to any other provision of this agreement, any successor-in-title of any party (including, without any limitation, any executor, heir, liquidator, business rescue practitioner, curator or trustee) shall be bound by this agreement.

31 COSTS

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

32 PENALTIES

32.1 The following penalties shall be payable for low performance and wilful contravention of the terms of the agreement:

Item Description	Low service damages amount	Source
Not meeting monthly tank availabilities of 99.5%	R 10,000.00/month	ACSA Oracle CMMS
Committing an infringement of the Occupational Health and Safety Act 85 of 1993 and the regulations of the Occupational Health and Safety Act (Items applicable will be under "offences and penalties" in the Regulations of the Occupational Health and Safety Act.)	R 5,000.00/event	ACSA Audits
Less than 100% of planned maintenance (PMs) completed per month (unless the delay in repair was agreed to by ACSA Service Manager or his/her duly authorized representative or unless the required spares are not available to complete the work). Note: No work order shall be considered closed until all works have been correctly completed and the correct completed documents have been sent to both the IMC and the Service Manager.	R 10,000.00/month	ACSA Audits
Failure to complete works and or provide completion certificates as agreed with the site Maintenance Engineering Manager and as per agreed work order timelines.	R 10,000.00 per event	ACSA Audits/ ACSA ORACLE CMMS
Non-compliance to statutory maintenance (incl. JIG, API, EI, gazetted SANS standards, OHS Act and its regulations	R10 000/per event per month	ACSA Audits

Item Description	Low service damages amount	Source
Contravening a NERSA requirements, or license conditions or NERSA information requests.	R100 000 per event	ACSA Audits or NERSA request
Failure to provide quarterly environmental monitoring reports at each site	R10 000/ Event	ACSA
Committing the same offence/class of infringement of the Occupational Health and Safety Act 85 of 1993 and the regulations of the Occupational Health and Safety Act for three (3) consecutive months.	Termination	ACSA Audits
Failure to issue JIG Reports issued by the certified JIG Inspector on an annual basis	R50 000/Event	ACSA Audit
Failure to report and comply with the agreed Transformation plan as in Annexure F. The penalty is applicable after three months from commencement date.	R50 000/Month that the Non-compliance remains	ACSA Audit
Failure to issue the required 5 Yearly and 10 Yearly API reports for the tanks	R10 000/day that the Non-compliance remains	ACSA Audits
Failure to implement the Web-based Information Management System as in clause 11.1.32	R2000/Day that the system meeting the full requirements is not in place	ACSA Audits
Failure to issue daily operations reports	R2000/day that the report was not issued to ACSA designated personnel	ACSA received emails
Wilful misrepresentation or omission of fuel supplied to unscheduled aircrafts	Termination proceedings	ACSA Audits OR Statutory Audits such as Audit by Auditor General of SA
Imposing Throughput charges which are above the signed and agreed (Set NERSA storage Tariff, Into-plane service fee, fuel quality management fee and unscheduled flights margin per litre) charges	Termination proceedings	ACSA Audits and Throughput Engagements
Wilful misrepresentation of the uncommitted capacity at the storage depot	Termination proceedings	ACSA Audits or Statutory audits such as NERSA audits
Failure to meet the agreed Transformation goals as in the Transformation plan for 3 consecutive	Termination proceedings	ACSA Audits and ACSA/Transformed Entity Engagements

Item Description	Low service damages amount	Source
months. (This applies 3 months from commencement date)		

SIGNED by the Parties and witnesses on the following dates and at the following places respectively:

FOR	AIRPORTS COMPANY SOUTH AFRICA SOC LIMITED	
Signature	_____ who warrants that he / she is duly authorised thereto	
Name		
Date and Place		
Designation		
Name and Surname	Witness 1	Witness 2
Signature		
ID Number		

FOR		
Signature	_____ who warrants that he / she is duly authorised thereto	
Name		
Date and Place		
Designation		
Name and Surname	Witness 1	Witness 2
Signature		
ID Number		

ANNEXURE A – BULK FUEL SITE AND INTO-PLANE EQUIPMENT MAINTENANCE REGIME

A1 – Maintenance regime for Into-Plane services shall also include requirements in JIG 1 Standard.

ANNEXURE B – SCHEDULE OF BULK FUEL STORAGE SITE MAINTENANCE COSTS, RESERVE STOCK INTEREST, INTO-PLANE MAINTENANCE COSTS, MARK UPS, ADHOC FEES AND MANAGEMENT FEES

ANNEXURE C – SITE INFORMATION

ANNEXURE D – ALLOWED THROUGHPUTTER CHARGES

ANNEXURE E – SCHEDULE OF CALLOUT FEES FOR UNSCHEDULED AIRCRAFTS

ANNEXURE F – TRANSFORMATION PLAN