NEC 3: ENGINEERING AND CONSTRUCTION CONTRACT (ECC)

Between AIRPORTS COMPANY SOUTH AFRICA SOC LIMITED
Applicable at King Shaka International Airport
(The Employer)

(Registration Number : 1993/004149/30)

and

(The Contractor)

(Registration Number : ______________)

for

REFURBISHMENT OF THE DROP OFF CANOPY & RELATED ROOF SUPPORTS (TERMINAL & RETAIL BUILDING) AT KING SHAKA INTERNATIONAL AIRPORT (KSIA)

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<td>[●]</td>
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<td>[●]</td>
</tr>
<tr>
<td>C4</td>
<td>Site Information</td>
<td>[●]</td>
</tr>
</tbody>
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Part C1: Agreements and Contract Data
C1.1: Form of Offer and Acceptance

OFFER

The Employer, identified in the Acceptance signature block, has solicited offers to enter into a contract for the procurement of: **REFURBISHMENT OF THE DROP OFF CANOPY & RELATED ROOF SUPPORTS (TERMINAL & RETAIL BUILDING) AT KING SHAKA INTERNATIONAL AIRPORT (KSIA)**

The tenderer, identified in the Offer signature block, has examined the documents listed in the Tender Data and addenda thereto as listed in the Returnable Schedules, and by submitting this Offer has accepted the Conditions of Tender.

By the representative of the tenderer, deemed to be duly authorised, signing this part of this Form of Offer and Acceptance the tenderer offers to perform all of the obligations and liabilities of the **Contractor** under the contract including compliance with all its terms and conditions according to their true intent and meaning for an amount to be determined in accordance with the conditions of contract identified in the Contract Data.

THE OFFERED TOTAL OF THE PRICES INCLUSIVE OF VAT IS:

(in words)

........................................................................................................................................................................... Rands;

(in figures) R...................................................................................

THE OFFERED PRICES ARE AS STATED IN THE PRICING SCHEDULE

This Offer may be accepted by the Employer by signing the Acceptance part of this Form of Offer and Acceptance and returning one copy of this document including the Schedule of Deviations (if any) to the tenderer before the end of the period of validity stated in the Tender Data, or other period as agreed, whereupon the tenderer becomes the party named as the **Contractor** in the conditions of contract identified in the Contract Data.

Signature(s) ..........................................................................................................................

Name(s) ..........................................................................................................................

Capacity ............................................................................................................................

For the Bidder: ......................................................................................................................

(Insert name and address of organisation) ...........................................................................

Name & ..............................................................................................................................

Date

Page 2 of 28
signature of witness

-----------------------------------------------
ACCEPTANCE

By signing this part of this Form of Offer and Acceptance, the Employer identified below accepts the tenderer’s Offer. In consideration thereof, the Employer shall pay the **Contractor** the amount due in accordance with the conditions of contract identified in the Contract Data. Acceptance of the tenderer’s Offer shall form an agreement between the Employer and the tenderer upon the terms and conditions contained in this agreement and in the contract that is the subject of this agreement.

The terms of the contract, are contained in:

- **Part C1** Agreements and Contract Data, (which includes this Form of Offer and Acceptance)
- **Part C2** Pricing Data
- **Part C3** Scope of Work: Works Information
- **Part C4** Site Information

and drawings and documents (or parts thereof), which may be incorporated by reference into the above listed Parts.

Deviations from and amendments to the documents listed in the Tender Data and any addenda thereto listed in the Returnable Schedules as well as any changes to the terms of the Offer agreed by the tenderer and the Employer during this process of offer and acceptance, are contained in the Schedule of Deviations attached to and forming part of this Form of Offer and Acceptance. No amendments to or deviations from said documents are valid unless contained in this Schedule.

The tenderer shall within two weeks of receiving a completed copy of this agreement, including the Schedule of Deviations (if any), contact the Employer’s agent (whose details are given in the Contract Data) to arrange the delivery of any securities, bonds, guarantees, proof of insurance and any other documentation to be provided in terms of the conditions of contract identified in the Contract Data. Failure to fulfil any of these obligations in accordance with those terms shall constitute a repudiation of this agreement.

Notwithstanding anything contained herein, this agreement comes into effect on the date when the tenderer receives one fully completed or original copy of this document, including the Schedule of Deviations (if any). Unless the tenderer (now **Contractor**) within five working days of the date of such receipt notifies the Employer in writing of any reason why he cannot accept the contents of this agreement, this agreement shall constitute a binding contract between the Parties.

<table>
<thead>
<tr>
<th>Signature(s)</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Name(s)</td>
<td></td>
</tr>
<tr>
<td>Capacity</td>
<td></td>
</tr>
<tr>
<td><strong>for the Employer</strong></td>
<td></td>
</tr>
<tr>
<td>Airports Company South Africa SOC Limited</td>
<td></td>
</tr>
<tr>
<td>King Shaka International Airport</td>
<td></td>
</tr>
<tr>
<td>King Shaka Dr, La Mercy, 4407</td>
<td></td>
</tr>
<tr>
<td>(Insert name and address of organisation)</td>
<td></td>
</tr>
<tr>
<td>Date</td>
<td></td>
</tr>
</tbody>
</table>

Name & signature of witness:  

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Schedule of Deviations

1 Subject ...........................................................................................................................................
Details ................................................................................................................................................
.........................................................................................................................................................
.........................................................................................................................................................
.........................................................................................................................................................

2 Subject ...........................................................................................................................................
Details ................................................................................................................................................
.........................................................................................................................................................
.........................................................................................................................................................
.........................................................................................................................................................

3 Subject ...........................................................................................................................................
Details ................................................................................................................................................
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.........................................................................................................................................................

By the duly authorised representatives signing this agreement, the Employer and the Tenderer agree to and accept the foregoing schedule of deviations as the only deviations from and amendments to the documents listed in the Tender Data and addenda thereto as listed in the returnable schedules, as well as any confirmation, clarification or changes to the terms of the offer agreed by the Tenderer and the Employer during this process of offer and acceptance.

It is expressly agreed that no other matter whether in writing, oral communication or implied during the period between the issue of the tender documents and the receipt by the tenderer of a completed signed copy of this Agreement shall have any meaning or effect in the contract between the parties arising from this agreement.

<table>
<thead>
<tr>
<th>For the Employer</th>
<th>For the Bidder</th>
</tr>
</thead>
<tbody>
<tr>
<td>Signature (s)</td>
<td></td>
</tr>
<tr>
<td>Name (s)</td>
<td></td>
</tr>
<tr>
<td>Capacity</td>
<td></td>
</tr>
<tr>
<td>Name and Address</td>
<td></td>
</tr>
<tr>
<td>Airports Company South Africa SOC Limited</td>
<td>(Insert name and address of organisation)</td>
</tr>
<tr>
<td>King Shaka Dr, La Mercy, 4407</td>
<td></td>
</tr>
<tr>
<td>Name &amp; Signature of witness</td>
<td>(Insert name and address of organisation)</td>
</tr>
<tr>
<td>Date</td>
<td></td>
</tr>
</tbody>
</table>
Part C1.2a  Contract Data

Part one – Data provided by the Employer

The Conditions of contract are selected from the NEC3 Engineering and Construction Contract, April 2013.

Each item of data given below is cross-referenced to the NEC3 Engineering Construction Contract which requires it.

<table>
<thead>
<tr>
<th>Clause</th>
<th>Statement</th>
<th>Data</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>General</td>
<td>The <em>conditions of contract</em> are the core clauses and the clauses for</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Main Option</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Dispute resolution Option</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Secondary Options (incorporating amendments)</td>
</tr>
<tr>
<td></td>
<td></td>
<td><strong>A</strong>: Priced Contract with Activity Schedule</td>
</tr>
<tr>
<td></td>
<td></td>
<td><strong>W1</strong>: Dispute resolution procedure</td>
</tr>
<tr>
<td></td>
<td></td>
<td><strong>X2</strong>: Changes in the law</td>
</tr>
<tr>
<td></td>
<td></td>
<td><strong>X7</strong>: Delay damages</td>
</tr>
<tr>
<td></td>
<td></td>
<td><strong>X13</strong>: Performance Bond</td>
</tr>
<tr>
<td></td>
<td></td>
<td><strong>X16</strong>: Retention</td>
</tr>
<tr>
<td></td>
<td></td>
<td><strong>X18</strong>: Limitation of liability</td>
</tr>
<tr>
<td></td>
<td></td>
<td><strong>Z</strong>: Additional conditions of contract</td>
</tr>
<tr>
<td></td>
<td></td>
<td>of the NEC3 Engineering and Construction Contract, April 2013</td>
</tr>
</tbody>
</table>

10.1 The *Employer is* (Name)  Airports Company South Africa SOC Limited, King Shaka International Airport

Address  King Shaka International Airport

Telephone  (032) 436 6000

Fax  (032) 436 6672

10.1 The *Project Manager is*  Airports Company South Africa SOC Limited, King Shaka International Airport

Address  King Shaka International Airport

Telephone  (032) 436 6000

E-mail address  TBC
<table>
<thead>
<tr>
<th>Section</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>10.1</td>
<td>The Supervisor is TBC</td>
</tr>
<tr>
<td></td>
<td>Address</td>
</tr>
<tr>
<td></td>
<td>Telephone</td>
</tr>
<tr>
<td></td>
<td>Email</td>
</tr>
<tr>
<td>11.2</td>
<td>The works are Refurbishment of The Drop Off Canopy at KSIA Terminal Building</td>
</tr>
<tr>
<td>11.2</td>
<td>The following matters will be included in the Risk Register</td>
</tr>
<tr>
<td></td>
<td>- Existing Services</td>
</tr>
<tr>
<td></td>
<td>- Access to Site</td>
</tr>
<tr>
<td></td>
<td>- Delay in supply of material and/or equipment</td>
</tr>
<tr>
<td></td>
<td>- Progress of the works against the program</td>
</tr>
<tr>
<td></td>
<td>- Travelling public and ACSA stakeholders</td>
</tr>
<tr>
<td></td>
<td>- Occupational and Health &amp; Safety</td>
</tr>
<tr>
<td></td>
<td>- Airport Operations</td>
</tr>
<tr>
<td>11.2</td>
<td>The Works Information is in Part C3 ‘Scope of Works’ section of this contract</td>
</tr>
<tr>
<td>11.2</td>
<td>The Site Information is in Part C4 ‘Site Information’ section of this contract</td>
</tr>
<tr>
<td>11.2</td>
<td>The boundary of the site Refer to C3.1 ‘Scope of Works’ for the location and boundary of works for the respective phases</td>
</tr>
<tr>
<td>12.2</td>
<td>The law of the contract is the law of the Republic of South Africa</td>
</tr>
<tr>
<td>13.1</td>
<td>The language of this contract is English</td>
</tr>
<tr>
<td>13.3</td>
<td>The period of reply is Seven (7) days</td>
</tr>
</tbody>
</table>

### 3 Time

<table>
<thead>
<tr>
<th>Section</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>31.2</td>
<td>The starting date is With appointment</td>
</tr>
<tr>
<td>11.2</td>
<td>The completion date is Maximum of six(6) months from appointment</td>
</tr>
<tr>
<td>30.1</td>
<td>The access date is With appointment</td>
</tr>
<tr>
<td>31.1</td>
<td>The Contractor submits a first (preliminary) programme with the tender by the tender closing date Closing Date</td>
</tr>
<tr>
<td>32.2</td>
<td>The Contractor submits revised programmes at intervals no longer than Monthly basis</td>
</tr>
</tbody>
</table>
The Employer is not willing to take over the works before the completion date. The Employer and Others will have access to the works during construction or prior to completion. Such access by the Employer and Others shall not relieve the Contractor from liability for the completion of the works in accordance with the Works Information and in terms of this contract.

4 Testing and Defects

42.2 The defects date is Twelve (12) months after Completion of the whole of the works.

43.2 The defects correction period is To be determined on completion.

5 Payment

50.1 The assessment interval is Four (4) weeks.

50.1 The currency of this contract is South African Rand.

51.2 The period within which payment is made is Four (4) weeks.

51.4 The interest rate is The prime lending rate of the Nedbank Bank, as determined from time to time.

6 Compensation events

60.1 The weather measurements to be recorded for each calendar month are: the cumulative rainfall (mm), the number of days with rainfall more than 10 mm, the number of days with minimum air temperature less than 0 degrees Celsius.

60.1 The place where weather is to be recorded (on the Site) is At the Construction Site Office and the records to be kept on site in a file clearly marked for this purpose.

60.1 Assumed values for the ten-year return weather data for each weather measurement for each calendar month are:

<table>
<thead>
<tr>
<th>Month</th>
<th>Days</th>
<th>Month</th>
<th>Days</th>
</tr>
</thead>
<tbody>
<tr>
<td>January</td>
<td>4*</td>
<td>July</td>
<td>1</td>
</tr>
<tr>
<td>February</td>
<td>3</td>
<td>August</td>
<td>2</td>
</tr>
<tr>
<td>March</td>
<td>3</td>
<td>September</td>
<td>2</td>
</tr>
<tr>
<td>April</td>
<td>2</td>
<td>October</td>
<td>2</td>
</tr>
<tr>
<td>May</td>
<td>2</td>
<td>November</td>
<td>3</td>
</tr>
<tr>
<td>June</td>
<td>1</td>
<td>December</td>
<td>1*</td>
</tr>
</tbody>
</table>

* = The number of working days lost allows for the annual statutory Construction holiday in December and January of each year.

7 Title

No data required for this section of the conditions of contract.

8 Risks and Insurance

84.1 The Employer provides these insurances Refer to the Insurance Clauses which is attached at the end of the Contract Data.
The Contractor provides the insurance stated in "The Insurance Clauses" which is attached at the end of the Contract Data. The insurances are in the joint names of the Parties and provide cover for events which are at the Contractor’s risk from the starting date until the Defects Certificate or a termination certificate has been issued. The minimum limit of indemnity for insurance in respect of death of or bodily injury to employees of the Contractor arising out of and in the course of their employment in connection with this contract for any one event is:

As prescribed by the Compensation for Occupational Injuries and Diseases Act No. 130 of 1993

| 84.2 | The Contractor provides the insurance stated in "The Insurance Clauses" which is attached at the end of the Contract Data. The insurances are in the joint names of the Parties and provide cover for events which are at the Contractor’s risk from the starting date until the Defects Certificate or a termination certificate has been issued. | The minimum limit of indemnity for insurance in respect of death of or bodily injury to employees of the Contractor arising out of and in the course of their employment in connection with this contract for any one event is: |
| Termination | No data required for this section of the conditions of contract | The person appointed jointly by the parties from the list of adjudicators contained below. The current Chairman of Johannesburg Advocate’s Bar Council. Arbitration. Johannesburg, South Africa. The Arbitrator is the person selected by the Parties as and when a dispute arises in terms of the relevant Z Clause, from the Panel of Arbitrators provided under the relevant Z clause if the arbitration procedure does not state who selects an arbitrator. The Arbitrator nominating body is the Chairman of the Johannesburg Advocates Bar Council. |
| 10 | Data for Main Options | Refer to Pricing Instructions under Part C2 ‘Pricing Data’ for information on the Activity Schedule. |
| 11 | Data for Option W1 | |
| W1.1 | The Adjudicator is | |
| W1.2 | The Adjudicator nominating body is | |
| W1.4 | The tribunal is | |
| W1.4 | If the tribunal is arbitration, the arbitration procedure is | The arbitration procedure is set out in The Rules for the Conduct of Arbitrations 2013 Edition, 7th Edition, published by The Association of Arbitrators, (Southern Africa) |
| W1.4 | The place where arbitration is to be held is | |
| W1.4 | The person or organisation who will choose an arbitrator | |
| X7 | Delay Damages | |
| X13 | Performance bond | |

Delay damages of the works are calculated at a rate of 0.05% per day, up to a maximum of 10% of the Contract value.
**X13.1** The amount of the performance bond is 10% of the contract value. Pro-forma draft of a performance bond to be used is attached to this contract.

**X16** Retention

**X16.1** The retention percentage is **10%** of the Contract value.

**X18** Limitation of Liability

**X18.1** The Contractor's liability to the Employer for indirect or consequential loss is limited to Nil - Neither Party is liable to the other for any consequential or indirect loss, including but not limited to loss of profit, loss of income or loss of revenue

**X18.2** For any one event, the Contractor's liability to the Employer for loss of or damage to the Employer's property is limited to The total of the Prices

**X18.3** The Contractor's total liability to the Employer for defects due to his design which are not listed on the Defects Certificate is limited to The total of the Prices

**X18.4** The Contractor's total liability to the Employer for all matters arising under or in connection with this contract, other than the excluded matters, is limited to The Contractor's total direct liability to the Employer for all matters arising under or in connection with this contract, other than the excluded matters, is limited to the total of the Prices and applies in contract, tort or delict and otherwise to the extent allowed under the law of the contract.

The excluded matters are amounts payable by the Contractor as stated in this contract for

- Loss of or damage to the Employer's property,
- Delay damages,
- Defects liability,
- Insurance liability to the extent of the Contractor's risks
- Loss of or damage to property (other than the works, Plant and Materials),
- Death of or injury to a person;
- Damage to third party property; and
- Infringement of an intellectual property right

**Z** The Additional conditions of contract are

**Amendments to the Core Clauses**

**Z1** Interpretation of the law
Z1.1 Add to core clause 12.3:
Any extension, concession, waiver or relaxation of any action stated in this contract by the Parties, the Project Manager, the Supervisor, or the Adjudicator does not constitute a waiver of rights, and does not give rise to an estoppel unless the Parties agree otherwise and confirm such agreement in writing.

Z2 Providing the Works:

Z2.1 Delete core clause 20.1 and replace with the following:
The Contractor provides the works in accordance with the Works Information and warrants that the results of the Works, when complete, shall be fit for their intended purpose.

Z3 Other responsibilities:

Z3.1 Add the following at the end of core clause 27:
The Contractor shall have satisfied himself, prior to the Contract Date, as to the completeness, sufficiency and accuracy of all information and drawings provided to him as at the Contract Date.

Z3.2 The Contractor shall be responsible for the correct setting out of the Works in accordance with the original points, lines and levels stated in the Works Information or notified by the Project Manager, Supervisor or the Employer. Any errors in the positioning of the Works shall be rectified by the Contractor at the Contractor's own costs.

Z4 Extending the defects date:

Z4.1 Add the following as a new core clause 46:
If the Employer cannot use the works due to a Defect, which arises after Completion and before the defects date, the defects date is delayed by a period equal to that during which the Employer, due to a Defect, is unable to use the works.

Z4.2 If part of the works is replaced due to a Defect arising after Completion and before the defects date, the defects date for the part of the works which is replaced is delayed by a period equal to that between Completion and the date by when the part has been replaced.

Z4.3 The Project Manager notifies the Contractor of the change to a defect date when the delay occurs. The period between Completion and an extended defects date does not exceed twice the period between Completion and the defects date stated in the Contract Data.

Z5 Termination

Z5.1 Add the following to core clause 91.1, at the second main bullet, fifth sub-bullet point, after the words “assets or”: “business rescue proceedings are initiated or steps are taken to initiate business rescue proceedings”.

Amendment to the Secondary Option Clauses

Z6 Performance Bond

Z6.1 Amend the first sentence of clause X13.1 to read as follows:
The Contractor gives the Employer an unconditional, on-demand performance bond, provided by a bank which the Project Manager and the Employer have accepted, for the amount stated in the Contract Data and in the form set out in Annexure C.ii of this Contract Data.
Z6.2 Add the following new clause as Option X13.2:
The Contractor ensures that the performance bond is valid and enforceable until the end of the contract period. If the terms of the performance bond specify its expiry date and the end of the contract period does not coincide with such expiry date, four weeks prior to the said expiry date, the Contractor extends the validity of the performance bond until the end of the contract period. If the Contractor fails to so extend the validity of the performance bond, the Employer may claim the full amount of the performance bond and retain the proceeds as cash security.

Z7 Limitation of liability:

Z7.1 Insert the following new clause as Option X18.6:

The Employer's liability to the Contractor for the Contractor's indirect or consequential loss is limited to R0.00

Z7.2 Notwithstanding any other clause in this contract, any proceeds received from any insurances or any proceeds which would have been received from any insurances but for the conduct of the Contractor shall be excluded from the calculation of the limitations of liability listed in the contract.

Additional Z Clauses

Z8 Cession, delegation and assignment

Z8.1 The Contractor shall not cede, delegate or assign any of its rights or obligations to any person without the written consent of the Employer, which consent shall not be unreasonably withheld. This clause shall be binding on the liquidator/business rescue practitioner/trustee (whether provisional or not) of the Contractor.

Z8.2 The Employer may cede and delegate its rights and obligations under this contract to any person or entity.

Z9 Joint and several liability

Z9.1 If the Contractor constitutes a joint venture, consortium or other unincorporated grouping of two or more persons, these persons are deemed to be jointly and severally liable to the Employer for the performance of the Contract.

Z9.2 The Contractor shall, within 1 week of the Contract Date, notify the Project Manager and the Employer of the key person who has the authority to bind the Contractor on their behalf.

Z9.3 The Contractor does not materially alter the composition of the joint venture, consortium or other unincorporated grouping of two or more persons without prior written consent of the Employer.

Z10 Ethics

Z10.1 The Contractor undertakes:

Z10.1.1 not to give any offer, payment, consideration, or benefit of any kind, which constitutes or could be construed as an illegal or corrupt practice, either directly or indirectly, as an inducement or reward for the award or in execution of this contract;

Z10.1.2 to comply with all laws, regulations or policies relating to the prevention and combating of bribery, corruption and money laundering to which it or the Employer is subject, including but not limited to the Prevention and Combating of Corrupt Activities Act, 12 of 2004.
Z10.2 The Contractor’s breach of this clause constitutes grounds for terminating the Contractor’s obligation to Provide the Works or taking any other action as appropriate against the Contractor (including civil or criminal action). However, lawful inducements and rewards shall not constitute grounds for termination.

Z10.3 If the Contractor is found guilty by a competent court, administrative or regulatory body of participating in illegal or corrupt practices, including but not limited to the making of offers (directly or indirectly), payments, gifts, gratuity, commission or benefits of any kind, which are in any way whatsoever in connection with the contract with the Employer, the Employer shall be entitled to terminate the contract in accordance with the procedures stated in core clause 92.2. the amount due on termination is A1.

Z11 Confidentiality

Z11.1 All information obtained in terms of this contract or arising from the implementation of this contract shall be treated as confidential by the Contractor and shall not be used or divulged or published to any person not being a party to this contract, without the prior written consent of the Project Manager or the Employer, which consent shall not be unreasonably withheld.

Z11.2 If the Contractor is uncertain about whether any such information is confidential, it is to be regarded as such until otherwise notified by the Project Manager.

Z11.3 This undertaking shall not apply to –

Z11.3.1 Information disclosed to the employees of the Contractor for the purposes of the implementation of this agreement. The Contractor undertakes to procure that its employees are aware of the confidential nature of the information so disclosed and that they comply with the provisions of this clause;

Z11.3.2 Information which the Contractor is required by law to disclose, provided that the Contractor notifies the Employer prior to disclosure so as to enable the Employer to take the appropriate action to protect such information. The Contractor may disclose such information only to the extent required by law and shall use reasonable efforts to obtain assurances that confidential treatment will be afforded to the information so disclosed;

Z11.3.3 Information which at the time of disclosure or thereafter, without default on the part of the Contractor, enters the public domain or to information which was already in the possession of the Contractor at the time of disclosure (evidenced by written records in existence at that time);

Z11.4 The taking of images (whether photographs, video footage or otherwise) of the works or any portion thereof, in the course of Providing the Works and after Completion, requires the prior written consent of the Project Manager. All rights in and to all such images vests exclusively in the Employer

Z11.5 The Contractor ensures that all his Subcontractors abide by the undertakings in this clause.

Z12 Employer’s Step-in rights

Z12.1 If the Contractor defaults by failing to comply with his obligations and fails to remedy such default within 2 weeks of the notification of the default by the Project Manager, the Employer, without prejudice to his other rights, powers and remedies under the contract, may remedy the default either himself or procure a third party (including any subcontractor or supplier of the Contractor) to do so on his behalf. The reasonable costs of such remedial works shall be borne by the Contractor.
Z12 The Contractor co-operates with the Employer and facilitates and permits the use of all required information, materials and other matter (including but not limited to documents and all other drawings, CAD materials, data, software, models, plans, designs, programs, diagrams, evaluations, materials, specifications, schedules, reports, calculations, manuals or other documents or recorded information (electronic or otherwise) which have been or are at any time prepared by or on behalf of the Contractor under the contract or otherwise for and/or in connection with the works) and generally does all things required by the Project Manager to achieve this end.

Z13 Liens and Encumbrances

Z13.1 The Contractor keeps the Equipment used to Provide the Services free of all liens and other encumbrances at all times. The Contractor, vis-a-vis the Employer, waives all and any liens which he may from time to time have, or become entitled to over such Equipment and any part thereof and procures that his Subcontractors similarly, vis-a-vis the Employer, waive all liens they may have or become entitled to over such Equipment from time to time.

Z14 Intellectual Property

Z14.1 Intellectual Property ("IP") rights means all rights in and to any patent, design, copyright, trade mark, trade name, trade secret or other intellectual or industrial property right relating to the Works.

Z14.2 IP rights remain vested in the originator and shall not be used for any reason whatsoever other than carrying out the works.

Z14.3 The Contractor gives the Employer an irrevocable, transferrable, non-exclusive, royalty free licence to use and copy all IP related to the works for the purposes of constructing, repairing, demolishing, operating and maintaining the works.

Z14.4 The written approval of the Contractor is to be obtained before the Contractor's IP made available to any third party which approval will not be unreasonably withheld or delayed. Prior to making any Contractor's IP available to any third party the Employer shall obtain a written confidentiality undertaking from any such third party on terms no less onerous than the terms the Employer would use to protect its IP.

Z14.5 The Contractor shall indemnify and hold the Employer harmless against and from any claim alleging an infringement of IP rights ("the claim"), which arises out of or in relation to:

Z14.5.1 the Contractor's design, manufacture, construction or execution of the Works

Z14.5.2 the use of the Contractor's Equipment, or

Z14.5.3 the proper use of the Works.

Z14.6 The Employer shall, at the request and cost of the Contractor, assist in contesting the claim and the Contractor may (at its cost) conduct negotiations for the settlement of the claim, and any litigation or arbitration which may arise from it.

Z16 Dispute resolution:

Z16.1 Appointment of the Adjudicator
An Adjudicator is appointed when a dispute arises, from the Panel of Adjudicators below. The referring party nominates an Adjudicator, which nomination is either accepted or rejected by the other party. In the instance of a rejection of the nominated Adjudicator, the referring Party refers the appointment deadlock to the Chairman of the Johannesburg Bar Council, who appoints an Adjudicator listed in the Panel of Adjudicators below.

The Parties appoint the Adjudicator under the NEC3 Adjudicator’s Contract, April 2013

<table>
<thead>
<tr>
<th>Name</th>
<th>Location</th>
<th>Contact details (phone &amp; e mail)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Adv. Ghandi Badela</td>
<td>Gauteng</td>
<td>+27 11 282 3700 <a href="mailto:ghandi@badela.co.za">ghandi@badela.co.za</a></td>
</tr>
<tr>
<td>Mr. Errol Tate Pr. Eng.</td>
<td>Durban</td>
<td>+27 11 262 4001 <a href="mailto:Errol.tate@mweb.co.za">Errol.tate@mweb.co.za</a></td>
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<tr>
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<td>+27 11 535-1800 <a href="mailto:salimebrahim@mweb.co.za">salimebrahim@mweb.co.za</a></td>
</tr>
<tr>
<td>Mr. Sebe Msutwana Pr. Eng.</td>
<td>Gauteng</td>
<td>+27 11 442 8555 <a href="mailto:sebe@civilprojects.co.za">sebe@civilprojects.co.za</a></td>
</tr>
<tr>
<td>Mr. Sam Amod</td>
<td>Gauteng</td>
<td><a href="mailto:sam@samamod.com">sam@samamod.com</a></td>
</tr>
<tr>
<td>Adv. Sias Ryneke SC</td>
<td>Gauteng</td>
<td>083 653 2281 <a href="mailto:reyneke@duma.nokwe.co.za">reyneke@duma.nokwe.co.za</a></td>
</tr>
<tr>
<td>Mr. Emeka Ogbugo (Quantity Surveyor)</td>
<td>Pretoria</td>
<td>+27 12 349 2027 <a href="mailto:emeka@gosiame.co.za">emeka@gosiame.co.za</a></td>
</tr>
</tbody>
</table>

**Panel of Arbitrators**

Z16.2 Appointment of the Arbitrator

An Arbitrator is appointed when a dispute arises from the Panel of Arbitrators below. The referring party nominates an Arbitrator, which nomination is either accepted or rejected by the other party. In the instance of a rejection of the nominated Arbitrator, the referring Party refers the appointment deadlock to the Chairman of the Johannesburg Bar Council, who appoints an Arbitrator listed in the Panel of Arbitrators below.

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</tr>
</tbody>
</table>
Z17  Notification of a compensation event

Z17.1 Delete “eight weeks” in clause 61.3 and replace with “four weeks”. Delete the words “unless the event arises from the Project Manager or the Supervisor giving an instruction, issuing a certificate, changing an earlier decision or correcting an assumption.

Z18  BBBEE Certificate

Z18.1 The Contractor shall be expected to annually present a compliant BEE Certificate. Failure to do adhere to these requirements shall be considered a material breach of the conditions of this Contract, the sanction for which may be a cancellation of this Contract.

Z19  Communication

Z19.1 Add a new Core Clause 14.5 and 14.6 to read as follows:
The Project Manager requires the written consent of the Employer if an action will result in a change to the design, scope, and Works information that is 5% or more.

Z19.2 The Project Manager requires the written consent of the Employer if an action will result in the Completion Date being extended by more than 30 days.

Z20  Delegation

As stipulated by Section 37(2) of the Occupational Health and Safety Act No. 85 of 1993 as amended the Contractor agrees to the following:

Z20.1 As part of this contract the Contractor acknowledge that it (mandatory) is an employer in its own right with duties as prescribed in the Occupational Health and Safety Act No 85 of 1993 as amended and agree to ensure that all work being performed, or Equipment, Plant and Materials being used, are in accordance with the provisions of the said Act, and in particular with regard to the Construction Regulations
PART C1.2b  CONTRACT DATA

PART TWO – DATA PROVIDED BY THE CONTRACTOR

<table>
<thead>
<tr>
<th>Clause</th>
<th>Statement</th>
<th>Data</th>
</tr>
</thead>
<tbody>
<tr>
<td>10.1</td>
<td>The Contractor is (Name):</td>
<td>Address:</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Telephone No.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Fax No.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Email:</td>
</tr>
<tr>
<td>11.2</td>
<td>The working areas are</td>
<td>Only the Site Area for each phase; See C3 ‘Scope of Works’</td>
</tr>
<tr>
<td>24.1</td>
<td>The Contractor’s Key people are:</td>
<td>CV’s to be appended to Tender Schedule</td>
</tr>
<tr>
<td></td>
<td>Name:</td>
<td>Job:</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Responsibility:</td>
</tr>
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<td></td>
<td></td>
<td>Qualifications:</td>
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<td></td>
<td>Qualifications:</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Experience:</td>
</tr>
</tbody>
</table>
The completion date is **Maximum of six (6) months from appointment**

| 11.2 | The following matters will be included in the Risk Register | • Existing Services  
• Access to Site  
• Delay in supply of material and/or equipment  
• Progress of the works against the program  
• Travelling public and ACSA stakeholders  
• Occupational and Health & Safety  
• Airport Operations |

**Works Information** is in Part C3 ‘Scope of Works’ section of this contract

The programme identified in the Preliminary to be submitted with tender
PRO FORMA FOR PERFORMANCE BOND

PERFORMANCE BOND

[TO BE REPLICATED ON BANK’S LETTERHEAD]

Brief description of contract

Name and address of Beneficiary

We, the undersigned in our capacities as Guarantor’s of (Registration Number: ...) (hereinafter called “the Bank”) have been informed that hereinafter called the ‘Principal’) is your Contractor under such contract, which requires him to obtain an irrevocable, unconditional performance security.

At the request of the Principal, we (name of bank) hereby irrevocably undertake to pay you, the Employer, any sum or sums not exceeding in total the amount of (the “Guaranteed Amount”) upon receipt by us of your first written demand stating that such an amount (or lesser amount) as may be claimed is due and payable to the Employer.

This guarantee constitute an irrevocable, unconditional, non-negotiable and non-transferable undertaking to pay in accordance with the above, subject to the proviso that this Letter will not be interpreted as extending the Bank’s liability to anything more than the Guaranteed Amount.

Notwithstanding anything to the contrary herein contained, the Bank’s obligation shall be construed as principal and not as accessory to the contract and shall not be delayed or discharged by the fact that a dispute exists between the Employer and the Contractor.

We undertake to pay you such Guaranteed Amount upon receipt by us, within such period of 14 days, of your first written demand stating that such an amount (or lesser amount) as may be claimed is due and payable to the Employer.

The guarantee shall be governed by and construed in accordance with the laws of the Republic of South Africa

Signed at ______________________________ on ____________________20….

For:

Registration Number:

_____________________________
____________________________

Name & Position

As witnesses:

1. 

2. 
PART C1: AGREEMENTS AND CONTRACT DATA
C1.4: OCCUPATIONAL HEALTH AND SAFETY AGREEMENT

OCCUPATIONAL HEALTH AND SAFETY AGREEMENT

AGREEMENT IN TERMS OF SECTION 37(2) OF THE OCCUPATIONAL HEALTH & SAFETY ACT (ACT 85 OF 1993) & CONSTRUCTION REGULATION 5.1(k)

OBJECTIVES

To assist Airport Company South Africa (ACSA) in order to comply with the requirements of:
1. The Occupational Health & Safety (Act 85 of 1993) and its regulations and
2. The Compensation for Occupational Injuries & Diseases Act (Act 130 of 1993) also known as the (COID Act).

To this end an Agreement must be concluded before any contractor/ subcontracted work may commence.

The parties to this Agreement are:

<table>
<thead>
<tr>
<th>Name of Organisation:</th>
</tr>
</thead>
<tbody>
<tr>
<td>AIRPORTS COMPANY SOUTH AFRICA</td>
</tr>
<tr>
<td>KING SHAKA INTERNATIONAL AIRPORT</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Physical Address:</th>
</tr>
</thead>
<tbody>
<tr>
<td>AIRPORT COMPANY SOUTH AFRICA</td>
</tr>
<tr>
<td>KING SHAKA DR, LA MERCY, 4407</td>
</tr>
</tbody>
</table>

Hereinafter referred to as “Client”

<table>
<thead>
<tr>
<th>Name of organisation:</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
</tr>
</tbody>
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<table>
<thead>
<tr>
<th>Physical Address</th>
</tr>
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<tbody>
<tr>
<td></td>
</tr>
</tbody>
</table>

Hereinafter referred to as “the Mandatary/ Principal Contractor”
MANDATORY'S MAIN SCOPE OF WORK

GENERAL INFORMATION FORMING PART OF THIS AGREEMENT

1. The Occupational Health & Safety Act comprises of SECTION 1-50 and all unrepealed REGULATIONS promulgated in terms of the former Machinery and Occupational Safety Act No.6 of 1983 as amended as well as other REGULATIONS which may be promulgated in terms of the Act and other relevant Acts pertaining to the job in hand.

2. “Mandatory” is defined as including as agent, a principal contractor or a contractor for work, but WITHOUT DEROGATING FROM HIS/HER STATUS IN HIS/HER RIGHT AS AN EMPLOYER or user of the plant.

3. Section 37 of the Occupational Health & Safety Act potentially punishes Employers (PRINCIPAL CONTRACTOR) for unlawful acts or omissions of Mandataries (CONTRACTORS) save where a Written Agreement between the parties has been concluded containing arrangements and procedures to ensure compliance with the said Act BY THE MANDATORY.

4. All documents attached or refer to in the above Agreement form an integral part of the Agreement.

5. To perform in terms of this agreement Mandataries must be familiar and conversant with the relevant provisions of the Occupational Health & Safety Act 85 of 1993 (OHS Act) and applicable Regulations.

6. Mandatories who utilise the services of their own Mandataries (contractors) must conclude a similar Written Agreement with them.

7. Be advised that this Agreement places the onus on the Mandatary to contact the CLIENT in the event of inability to perform as per this Agreement.

8. This Agreement shall be binding for all work the Mandatary undertakes for the client.

9. All documentation according to the Safety checklist including a copy of the written Construction Manager appointment in terms of construction regulation 8, must be submitted 7 days before work commences.

THE UNDERTAKING

The Mandatary undertakes to comply with:

INSURANCE

1. The Mandatary warrants that all their employees and/or their contractor’s employees if any are covered in terms of the COID Act, which shall remain in force whilst any such employees are present on the Client's premises. A letter is required prior commencing any work on site confirming that the Principal contractor or contractor is in good standing with the Compensation Fund or Licensed Insurer.

2. The Mandatary warrants that they are in possession of the following insurance cover, which cover shall remain in force whilst they and/or their employees are present on the Client's premises, or which shall remain in force for that duration of their contractual relationship with the Client, whichever period is the longest.
   a. Public Liability Insurance Cover as required by the Subcontract Agreement.
   b. Any other Insurance cover that will adequately makes provision for any possible losses and/or claims arising from their and/or their Subcontractors and/or their respective employee’s acts and/or omissions on the Client's premises.

COMPLIANCE WITH THE OCCUPATIONAL HEALTH & SAFETY ACT 85 OF 1993

The Mandatary undertakes to ensure that they and/or their subcontractors if any and/or their respective employees will at all times comply with the following conditions:
1. All work performed by the Mandatary on the Client's premises must be performed under the close supervision of the Mandatary’s employees who are to be trained to understand the hazards associated with any work that the Mandatary performs on the Client’s premises.

2. The Mandatary shall be assigned the responsibility in terms of Section 16(1) of the OHS Act 85 of 1993, if the Mandatary assigns any duty in terms of Section 16(2), a copy of such written assignment shall immediately be forwarded to the Client.

3. The Mandatary shall ensure that he/she familiarise himself/herself with the requirements of the OHS Act 85 of 1993 and that s/he and his/her employees and any of his subcontractors comply with the requirements.

4. The Mandatary shall ensure that a baseline risk assessment is performed by a competent person before commencement of any work in the Client's premises. A baseline risk assessment document will include identification of hazards and risk, analysis and evaluation of the risks and hazards identified, a documented plan and safe work procedures to mitigate, reduce or control the risks identified, and a monitoring and review plan of the risks and hazards.

5. The Mandatary shall appoint competent persons who shall be trained on any Occupational Health & Safety aspect pertaining to them or to the work that is to be performed.

6. The Mandatary shall ensure that discipline regarding Occupational Health & Safety shall be strictly enforced.

7. Any personal protective equipment required shall be issued by the Mandatary to his/her employees and shall be worn at all times.

8. Written safe working practices/procedures and precautionary measures shall be made available and enforced and all employees shall be made conversant with the contents of these practises.

9. No unsafe equipment/machinery and/or articles shall be used by the Mandatary or contractor on the Client’s premises.

10. All incidents/accidents referred to in OHS Act shall be reported by the Mandatary to the Provincial Director: Department of Labour as well as to the Client.

11. No user shall be made by the Mandatary and/or their employees and or their subcontractors of any of the Client’s machinery/article/substance/plant/personal protective equipment without prior written approval.

12. The Mandatary shall ensure that work for which the issuing of permit is required shall not be performed prior to the obtaining of a duly completed approved permit.

13. The Mandatary shall ensure that no alcohol or any other intoxicating substance shall be allowed on the Client’s premises. Anyone suspected to be under the influence of alcohol or any other intoxicating substance shall not be allowed on the premises. Anyone found on the premises suspected to be under the influence of alcohol or any other intoxicating substance shall be escorted off the said premises immediately.

14. Full participation by the Mandatary shall be given to the employees of the Client if and when they inquire into Occupational Health & Safety.

FURTHER UNDERTAKING

1. Only a duly authorised representative appointed in terms of Section 16.2 of the OHS Act is eligible to sign this agreement on behalf of the Mandatary. The signing power of this representative must be designated in writing by the Chief Executive Officer of the Mandatary. A copy of this letter must be made available to the Client.

2. The Mandatary confirms that he has been informed that he must report to the Client’s management, in writing anything he/she deems to be unhealthy and /or unsafe. He has versed his employees in this regard.

3. The Mandatary warrants that he/she shall not endanger the health & safety of the Client’s employees and other persons in any way whilst performing work on the Client’s premises.

4. The Mandatary understands that no work may commence on the Client’s premises until this procedure is duly completed, signed and received by the Client.

5. Non-compliance with any of the above clauses may lead to an immediate cancellation of the contract.
ACCEPTANCE BY MANDATARY

In terms of section 37(2) of the Occupational Health & Safety Act 85 of 1993 and section 5.1(k) of the Construction Regulations 2014,

I ……………………………………………………………………………….. a duly authorised 16.2 Appointee acting for and

on behalf of ……………………………………………………………………………………………...(company name) undertake to

ensure that the requirements and the provision of the OHS Act 85 of 1993 and its regulations are complied with.

Mandatary – WCA/ Federated Employers Mutual No……………………………………

Expiry date ………………………………………………………………………………………

SIGNATURE ON BEHALF OF MANDATARY DATE

(Warrant his authority to sign)

SIGNATURE ON BEHALF OF THE CLIENT DATE

AIRPORT COMPANY SOUTH AFRICA

ADDITIONAL DOCUMENTATION

The Mandatory is referred to the Health and Safety Specifications and Baseline Risk Assessment prepared by the appointed OHS Practitioner/Agent for the works specific to this contract (Section 5.1(a) and (b) of the Construction Regulations 2014) in order to compile the site specific health and safety plan (Section 7.1(a) of the Construction Regulations 2014).
PART C1: AGREEMENTS AND CONTRACT DATA
C1.5: ACSA INSURANCE CLAUSES

INSURANCE CLAUSES FOR CAPEX PROJECTS

The insurance clauses in this document should be extracted and attached to tender documents and to contracts.

SECTION A: DEFINITIONS

Landside refers to:
- Areas of the airport before the security points, and
- The restricted area beyond the security points but, within the perimeter of gatehouses, passenger terminals and cargo buildings

Airside refers to:
- The Apron / manoeuvring areas
- Area within the airside boundary/perimeter fence, excluding the internal areas of the passenger terminals, perimeter gatehouses and cargo building.

SECTION B: INSURANCE CLAUSES

2. Insurance requirements for contracts below R50million on the AIRSIDE

2.1 Contract Works
- With regards to contract works claims, the contractor / consultant is responsible for a deductible (excess) of R250 000.
- Contractors / consultants may re-insure the deductible
- Proof of cover in the form of a certificate of insurance should be provided to ACSA before a contract is signed between ACSA and the contractor and/or consultant.

2.2 Public Liability
- In the event of a claim brought against the contractor / consultant for 3rd party property damage the contractor / consultant will be responsible for a deductible (excess) of R525 000 for each and every claim
- In the event of a claim brought against the contractor / consultant for removal of lateral support, the contractor / consultant will be responsible for a deductible (excess) of R750 000
- In the event of a claim brought against the contractor / consultant for damage to aircraft, the contractor / consultant will be responsible for a deductible (excess) of R750 000
- Contractors / consultants may re-insure the deductibles
- Proof of cover in the form of a certificate of insurance should be provided to ACSA before a contract is signed between ACSA and the contractor and/or consultant.

2.3 Professional Indemnity
• All consultants are responsible for Professional Indemnity cover of R5million
• Contractors who have a material design element, excluding typical P & G related work, as part of their scope, are responsible for a Professional Indemnity cover of R5million.
• In the event of a claim above R5million, the ACSA PI cover will kick in for the amount in excess of R5million.
• Proof of cover in the form of a certificate of insurance should be provided to ACSA before a contract is signed between ACSA and the contractor and/or consultant.

PART C2: PRICING DATA

REFER TO ATTACHED
PART 3: SCOPE OF WORK
C3.1: EMPLOYER'S WORKS INFORMATION

REFER TO ATTACHED
PART C4: SITE INFORMATION

REFER TO THE ATTACHED