



SERVICES AGREEMENT

entered into between

AIRPORTS COMPANY SOUTH AFRICA SOC LIMITED

(Registration No. 1993/004149/30)

("the Company")

And

(Registration No:)

("SERVICE PROVIDER")

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PREAMBLE

1. All capitalised terms in this preamble shall have the meaning attributed thereto in clause 1 (*Interpretation and Preliminary*) of the Agreement which follows this preamble.
2. It is recorded that –
 - 2.1. The Company wishes to procure from the Service Provider (whose details are set out in Annexure A (Contract Data) hereto) the Services (the exact specifications of which are set out in Annexure B (Form of Service Specification) hereto), and the Service Provider wishes to render same to the Company; and
 - 2.2. as such, the Parties wish to record the terms and conditions of the provision of the Services in this Agreement. The Service Provider's terms and conditions are expressly excluded from this Agreement.
3. Accordingly, the Parties hereby enter into this Agreement to regulate their relationship as the "*customer*" and the "*service provider*" and matters ancillary thereto.

WHEREBY IT IS AGREED AS FOLLOWS:**1. INTERPRETATION AND PRELIMINARY**

The headings to the clauses in this Agreement are for the purpose of convenience and reference only and shall not be used in the interpretation of nor modify nor amplify the terms of this Agreement nor any clause hereof. Unless a contrary intention clearly appears:

- 1.1. words importing:
 - 1.1.1. any one gender included the other two genders;
 - 1.1.2. the singular included the plural and *vice versa*; and
 - 1.1.3. natural persons include created entities (corporate or unincorporated) and the state and *vice versa*;
- 1.2. the following terms shall have the meanings assigned to them hereunder and cognate expressions shall have a corresponding meaning, namely:
 - 1.2.1. "**the Company**" means Airports Company South Africa SOC Limited (Registration Number 1993/004149/30);

- 1.2.2. "**Affiliate**" means in relation to any person; (a) any Entity Controlled, directly or indirectly by that person; (b) any Entity that Controls, directly or indirectly, that person, or (c) any Entity under common Control with that person;
- 1.2.3. "**Agreement**" means this service agreement, as amended, replaced or re-stated from time to time, and the annexures hereto, if any;
- 1.2.4. "**Agreement Interest Rate**" means the publicly quoted prime overdraft rate of interest per annum, from time to time charged by Nedbank Limited, as certified by any manager of such bank, whose appointment and authority it shall not be necessary to prove, calculated daily and compounded monthly in arrears;
- 1.2.5. "**Applicable Law**" means any of the following, from time to time, to the extent it applies to a Party (including, as applicable, Affiliates and subcontractors of a Party), or the Services (including, the performance, delivery, receipt or use of the Services, as applicable and wherever occurring): (a) any statute, regulation, policy, by-law, ordinance or subordinate legislation (including treaties, multinational conventions and the like having the force of law);(b) the common law; (c) any binding court order, judgment or decree; (d) any applicable industry code, policy or standard enforceable by law; or (e) any applicable direction, policy or order that is given by a regulator;
- 1.2.6. "**BBBEE**" means Broad-Based Black Economic Empowerment and refers to use of the term in the context of compliance with the BBBEE Act and all related codes of practice and guidance promulgated under the BBBEE Act;
- 1.2.7. "**BBBEE Act**" means the Broad-Based Black Economic Empowerment Act No. 53 of 2003 (as supplemented, amended, succeeded or replaced from time to time);
- 1.2.8. "**Best Industry Practice**" means the exercise of that degree of skill, diligence, prudence and foresight which would reasonably and ordinarily be expected from time to time from a skilled and experienced service provider (holding itself out as being an expert in providing such relevant services) seeking in good faith to fully comply with its contractual obligations and complying with all Applicable Laws;
- 1.2.9. "**Business Day**" means a day, other than a Saturday, Sunday, or public holiday in the Republic of South Africa;
- 1.2.10. "**Charges**" means the charges payable by the Company to the Service Provider in accordance with the provisions of clause 11 (*Payment of Charges*) as

consideration for the performance of all of the Services, which charges are set out in **Annexure C** (*Details of Charges*) hereto;

- 1.2.11. "**Commercially Reasonable Efforts**" means taking such steps and performing in such a manner as a well-managed company would undertake where such company was acting in a determined, prudent, and reasonable manner to achieve the particular result for its own benefit provided always that such steps are within the reasonable control of the Party;
- 1.2.12. "**Completion Date**" means "*Completion Date*" as set out in **Annexure A** (*Customer Data*), being the date on which the operation of this Agreement expires;
- 1.2.13. "**Custom Intellectual Property**" means Intellectual Property that is originally developed under this Agreement, whether by the Subcontractor, a third party under the Subcontractor's direction and control, by both the Subcontractor and such third party, or by any combination of the Subcontractor, the third party and the Company under the Agreement. For purposes of this definition, the phrase "originally developed" shall mean Intellectual Property included in a deliverable that results from services:
- 1.2.13.1. substantially all of which are performed by the Subcontractor's personnel while such personnel are assigned to the Company account, unless assigned on less than a full time basis and the Subcontractor can reasonably establish that the development work was done during time that the personnel was not assigned to the Company account; or
- 1.2.13.2. substantially all of which are performed by the Company's personnel, and the Subcontractor's personnel while such Subcontractor's personnel are assigned to the Company account, unless assigned on less than a full time basis and the Subcontractor can reasonably establish that the development work was done during time that the personnel was not assigned to the Company account; or
- 1.2.13.3. substantially all of which were directly or indirectly funded by the Company;
- 1.2.14. "**Control**" means in relation to an Entity the ability of a person (the "**Controller**"), directly or indirectly, to ensure that the activities and business of an Entity (the "**Controlled Entity**") are conducted in accordance with the wishes of the Controller, and the Controller shall be deemed to so control the Controlled Entity

if the Controller owns, directly or indirectly, the majority of the issued share capital, members interest or equivalent equity and/or holds, directly or indirectly, the majority of the voting rights in the Controlled Entity or the Controller has the right to receive the majority of the income of that Controlled Entity on any distribution by it of all of its income or the majority of its assets on a winding up and in respect of a Controlled Entity that is a trust, "**Control**" means the ability of the Controller to control the majority of the votes of the trustees or to appoint the majority of the trustees or to appoint or change the majority of the beneficiaries, or such trust operates primarily for the benefit of such person and "**Controlling**" and "**Controlled**" shall be construed accordingly;

- 1.2.15. "**DTI Code**" means the Codes of Good Practice on Black Economic Empowerment, issued under section 9 (1) of the BBEE Act (as supplemented, amended, succeeded or replaced from time to time);
- 1.2.16. "**Effective Date**" means "*Effective Date*" as set out in **Annexure A (Customer Data)** being the date on which this Agreement commences;
- 1.2.17. "**Entity**" means any association, business, close corporation, company, concern, enterprise, firm, fund, partnership, person, trust, undertaking, voluntary association or other similar entity whether corporate or unincorporated;
- 1.2.18. "**Force Majeure Event**" shall have the meaning ascribed thereto in clause 23.1;
- 1.2.19. "**Indemnified Claim**" shall have the meaning ascribed thereto in clause 20.2;
- 1.2.20. "**Indemnified Party**" shall have the meaning ascribed thereto in clause 20.1;
- 1.2.21. "**Insolvency Event**" means, in relation to the Service Provider, the occurrence of any of the following events or circumstances -
- 1.2.21.1. an order or declaration is made or a meeting of the directors or shareholders (if any) of the Service Provider is convened to consider the passing of, or a resolution is passed for the administration, custodianship, curatorship, bankruptcy, liquidation, winding-up, any form of compromise, business rescue or dissolution, (and whether provisional or final) of it or its estate;
- 1.2.21.2. it is unable (or admits inability) to pay its debts generally as they fall due or is (or admits to being) otherwise insolvent or stops, suspends or threatens to stop or suspend payment of all or a material part of its debts or proposes or seeks to make or makes a general assignment or any arrangement or composition with or for the benefit of its

creditors or a moratorium is agreed or declared in respect of or affecting all or a material part of its indebtedness;

- 1.2.21.3. it takes any proceeding or other step with a view to the general readjustment, rescheduling or deferral of its indebtedness (or any part thereof which it would otherwise be unable to pay when due) or proposes to take any such step;
 - 1.2.21.4. any receiver, administrative receiver, any form of administrator, compulsory manager, curator, trustee in bankruptcy, liquidator, business rescue practitioner or the like (whether provisional or final) is appointed in respect of it or any material part of its assets or it requests any such appointment;
 - 1.2.21.5. any act which, if such act was committed by an individual, would be an act of insolvency within the meaning of section 8 of the Insolvency Act No. 24 of 1936 or any equivalent legislation in any jurisdiction to which the Service Provider is subject; or
 - 1.2.21.6. an application is made by any affected person or third party for an order placing it under supervision for business rescue proceedings as contemplated in section 131(1) of the Companies Act No. 71 of 2008;
- 1.2.22. **"Intellectual Property"** means all specifications, operating instructions, compilations, lists, databases, systems, operations, processes, methodologies, technologies, algorithms, techniques, methods, designs, circuit layouts and mask-works, plans, reports, data, works protected under the Copyright Act of 1978, works of authorship, video recordings, audio recordings, photographs, models, samples, substances, trade secrets, formulae, know-how, show-how, confidential information, concepts and ideas of any nature (including of a technical, scientific, engineering, commercial, strategic, financial, marketing or organisational nature), inventions, discoveries, drawings, notes, manuals, documentation, training materials, job aids, trademarks, service marks, logos, slogans, corporate, business and trade names, domain names, trade dress, brand names and other indicia of origin, regardless of whether Intellectual Property Rights actually inhere in any such items, and any other tangible or intangible items in which Intellectual Property Rights may inhere, and includes all Intellectual Property Rights in any of the foregoing set out in this clause 1.2.22;
- 1.2.23. **"Intellectual Property Rights"** means all intellectual property rights of whatever nature, including: (i) all patents and other patent rights, including divisional and

continuation patents, utility models; (ii) rights in and to inventions, whether patentable or not; (iii) rights in trademarks, service marks, logos, slogans, corporate, business and trade names, trade dress, brand names and other *indicia* of origin; (iv) rights in designs, topography rights, rights in circuit layouts and mask-works; (v) copyright, including all copyright in and to computer programs, moral economic rights of authors and inventors; (vi) rights in internet domain names, reservations for internet domain names, uniform resource locators and corresponding internet sites; (vii) rights in databases and data collections; (viii) know-how, show-how, trade secrets and confidential information, in each case whether or not registered and including applications for the registration, extension, renewal and re-issuance, continuations, continuations in part or divisionals of, any of these and the right to apply for any of the foregoing, all claims for past infringements, and all rights or forms of protection of a similar nature or having equivalent or similar effect to any of these which may subsist anywhere in the world;

- 1.2.24. "**Parties**" means the Company and the Service Provider and "**Party**" shall mean either of them as the context requires;
- 1.2.25. "**Penalties**" means the penalty applicable against the Service Provider in case of default in its Performance Standard, as set out in **Annexure E** (*Service Levels and Penalties*);
- 1.2.26. "**Performance Standards**" means a quantitative or qualitative level of service specified in this Agreement to which the Service Provider's performance under this Agreement must conform, as set out in **Annexure E** (*Service Levels and Penalties*);
- 1.2.27. "**PFMA**" means the Public Finance Management Act No.1 of 1999;
- 1.2.28. "**Services**" means the services to be rendered by the Service Provider, as described in a Service Specification Form;
- 1.2.29. "**Service Provider**" means "*Service Provider*" as set out in **Annexure A** (*Contract Data*);
- 1.2.30. "**Service Specification Form**" means a services specification form in the form of **Annexure B** (*Form of Services Specification*) hereto describing in detail the Services to be performed by the Service Provider to the Company;
- 1.2.31. "**Signature Date**" means the date of signature of this Agreement by the Party signing it last in time;

- 1.2.32. "**Special Terms and Conditions Form**" means a special terms and conditions form (in the form of **Annexure D** (*Form of Special Terms and Conditions Form*)), attached as an annexure to this Agreement, that materially changes and/or amends any specific terms and conditions set out in this Agreement as at the Signature Date;
- 1.2.33. "**Specifications**" means specifications of the Services as set out in **Annexure B** (*Form of Services Specification*);
- 1.2.34. "**Target**" means the threshold or level set for attainment by the Service Provider in relation to the Performance Standard, as set out in **Annexure E** (*Service Levels and Penalties*);
- 1.2.35. "**Term**" shall have the meaning ascribed thereto in the preamble to clause 4 (*Commencement and Duration*);
- 1.2.1. "**VAT**" means value-added tax as may be levied in terms of the VAT Act; and
- 1.2.2. "**VAT Act**" means the Value-Added Tax Act, No. 89 of 1991; and
- 1.3. any reference to an enactment is to that enactment as at the Signature Date and as amended or re-enacted from time to time and includes any subordinate legislation made from time to time under such enactment. Any reference to a particular section in an enactment is to that section as at the Signature Date, and as amended or re-enacted from time to time and/or an equivalent measure in an enactment, provided that if as a result of such amendment or re-enactment, the specific requirements of a section referred to in this Agreement are changed, the relevant provision of this Agreement shall be read also as if it had been amended as necessary, without the necessity for an actual amendment;
- 1.4. if any provision in a definition is a substantive provision conferring rights or imposing obligations on either Party, notwithstanding that it is only in the definition clause, effect shall be given to it as if it were a substantive provision in the body of the Agreement;
- 1.5. when any number of days is prescribed in this Agreement, same shall be reckoned exclusively of the first and inclusively of the last day unless the last day is not a Business Day, in which case the last day shall be the next succeeding day which is a Business Day;
- 1.6. references to an "**agreement**" or "**document**" shall be construed as a reference to such agreement or document as the same may have been amended, varied, supplemented or novated in writing at the relevant time in accordance with the requirements of such agreement or document and, if applicable, of this Agreement with respect to amendments;

- 1.7. expressions defined in this Agreement shall bear the same meanings in the Annexure to this Agreement which do not themselves contain their own conflicting definitions;
- 1.8. the use of any expression in this Agreement covering a process available under South African law such as a winding up (without limitation *eiusdem generis*) shall, if any of the Parties is subject to the law of any other jurisdiction, be construed as including any equivalent or analogous proceedings under the law of such defined jurisdiction;
- 1.9. if any term is defined within the context of any particular clause in this Agreement, the term so defined, unless it is clear from the clause in question that the term so defined has limited application to the relevant clause, shall bear the meaning ascribed to it for all purposes in terms of this Agreement, notwithstanding that that term has not been defined in this interpretation clause;
- 1.10. the expiration or termination of this Agreement shall not affect such of the provisions of this Agreement as expressly provide that they will operate after any such expiration or termination or which of necessity must continue to have effect after such expiration or termination, notwithstanding that the clauses themselves do not expressly provide for this;
- 1.11. the rule of construction that a contract shall be interpreted against the Party responsible for the drafting or preparation of the contract, shall not apply;
- 1.12. any reference in this Agreement to a Party shall include a reference to that Party's assigns expressly permitted under this Agreement and, if such party is liquidated, sequestrated or placed under Business Rescue in terms of Chapter 6 of the Act, be applicable also to and binding upon that party's liquidator, trustee or Business Rescue practitioner, as the case may be;
- 1.13. references to "**clause**" and "**Annexure**" are references to the clauses of and the annexure to this Agreement;
- 1.14. the words "**include**", "**including**" and "**in particular**" shall be construed as being by way of example or emphasis only and shall not be construed, nor shall they take effect, as limiting the generality of any preceding word/s;
- 1.15. the words "**other**" and "**otherwise**" shall not be construed *eiusdem generis* with any preceding words where a wider construction is possible.

2. **CONDITION PRECEDENT**

To the extent necessary, the operation of this entire Agreement is subject to the condition precedent that all and any approvals required in terms of the PFMA are obtained by no later than 3 (three) months

after the Signature Date (or such earlier or later date as the Company may notify the Service Provider in writing).

3. **APPOINTMENT**

The Company hereby appoints the Service Provider on a non-exclusive basis to provide the Services to the Company, and the Service Provider hereby accepts such appointment on the terms and conditions set out herein.

4. **NO EXCLUSIVITY**

The Service Provider specifically acknowledges and agrees that this Agreement does not establish an exclusive arrangement. Moreover, the Company is under no obligation to offer the Service Provider a minimum number of orders or particular kinds or volumes of the Services and that the Company is entitled to engage any other third party to provide all or any of the Services.

5. **COMMENCEMENT AND DURATION**

This Agreement shall, subject to the fulfilment of the condition precedent contemplated in clause 2 (*Condition Precedent*), be deemed to have commenced on the Effective Date and shall endure until it expires on the Completion Date, unless it is -

5.1. extended by agreement between the Parties in writing no later than **30 (Thirty)** Business Days prior to the Completion Date; or

5.2. terminated earlier by –

5.2.1. reason of the occurrence of Force Majeure Event;

5.2.2. the cancellation of this Agreement by either Party in accordance with the provisions of clause 29 (*Breach*); or

5.2.3. either Party in accordance with the provisions of clause 28 (*Termination*),

(the "**Term**").

6. **RELATIONSHIP OF THE PARTIES**

6.1. The Service Provider, in providing the Services hereunder, is acting as an independent contractor. Neither Party is an agent of the other or has any authority to represent the other as to any matters, except as expressly authorised in this Agreement.

6.2. Nothing contained in this Agreement shall be construed as creating a company, close corporation, joint venture, partnership or association of any kind, the any of the Parties; nor is

anything contained in this Agreement to be construed as creating or requiring any continuing relationship or commitment on a Party's or its Affiliates' behalf with regard to the other Party and its Affiliates other than as specifically set out herein.

- 6.3. Unless expressly authorised by this Agreement, neither of the Parties (nor their respective agents) shall have the authority or right, nor shall any Party hold itself out as having the authority or right, to assume, create or undertake any obligation of any kind whatsoever, express or implied, on behalf of or in the name of the other Party.

7. **EXCLUSION OF THE SERVICE PROVIDER'S TERMS AND CONDITIONS**

Notwithstanding anything to the contrary contained in this Agreement or any other documentation (including without limitation, the Service Provider's quotations), the Service Provider's terms and conditions are hereby expressly excluded from application in respect of the subject matter herein.

8. **SPECIAL TERMS AND CONDITIONS**

- 8.1. The general terms and conditions of this Agreement may be varied in writing at any time and from time to time by agreement between the Parties.
- 8.2. In the event that the Parties so wish to vary all or any of the general terms and conditions of this Agreement as aforesaid, they shall do so by preparing (or causing to be prepared) a Special Terms and Conditions Form (initialled by each of them and attached as an annexure to this Agreement), setting out therein at least the following: (a) additional definition, (b) the terms and conditions of this Agreement sought to be varied; (c) the proposed change and/or amendment; and (d) the effect of such proposed change and/or amendment.
- 8.3. In the event that there is a conflict between the general terms and conditions of this Agreement and those terms and condition provided for in a Special Terms and Conditions Form, the terms and conditions provided for in the Special Terms and Conditions Form shall prevail and take precedence over those contemplated in this Agreement, provided however that the Special Terms and Conditions Form references and specifically overrides the general terms and conditions this Agreement. For purposes of the foregoing, a clause in the Special Terms and Conditions Form shall be deemed to reference and override a clause in this Agreement if it provides that it applies "notwithstanding" such clause.

9. **SERVICES**

9.1. **Procurement of Services**

- 9.1.1. During the Term, when the Company requires that the Service Provider perform the Services, the Company shall: (a) together with the Service Provider, complete **Annexure A (Contract Data)** hereto; (b) prepare a Service Specification Form

describing in detail therein, *inter alia*, the nature, scope and cost of the work to be performed under such Service Specification Form; and (c) prepare and complete a service level and penalties form (in the form of **Annexure E** (*Form of Service Levels and Penalties*) hereto. All of the foregoing documentation shall only be binding as between the Parties if they are signed by both the Service Provider and the Company.

- 9.1.2. A Service Specification Form shall contain such further terms and conditions (in addition to the terms and condition contemplated herein) as the Company may consider reasonably necessary and specific to the Services contemplated therein.
- 9.1.3. Throughout the Term, the Service Provider shall perform the services, functions and responsibilities described in the Service Specification Form (as well as any services, functions, and responsibilities not described in the Service Specification Form but which reasonably necessary in order for the Services in question to meet the requirements set forth in the Service Specification Form), in accordance with the terms and conditions of this Agreement.
- 9.1.4. Without limiting the generality of the foregoing, the Service Provider specifically acknowledges and agrees that the Company may withdraw any services from the scope of the Services described in the Service Specification Form on 20 (twenty) Business Days' written notice to the Service Provider without incurring any liability to the Service Provider, other than the payment of the Service Provider's Charges for the Services actually and properly rendered prior to the effective date of the aforesaid withdrawal. In such event, there shall be an equitable adjustment to the Service Provider's Charges, and in the event that amounts already paid by the Company to the Service Provider exceed such adjusted Charges, the Service Provider hereby agrees and undertakes to promptly refund such excess amounts to the Company.

10. THE SERVICES AND THE CHARGES

- 10.1. As consideration for the due, proper and punctual provision of the Services, the Company shall pay the Service Provider the Charges in accordance with the provisions of clause 11 (*Payment of Charges*) below.
- 10.2. The Charges shall include VAT. The Service Provider shall fully comply with all the Company's requirements for invoicing as notified to the Service Provider in writing from time to time.
- 10.3. The Charges are the total amount payable by the Company to the Service Provider in respect of the Services and includes all and any further direct and indirect costs (whether foreseeable

or not) that the Service Provider may incur in the provision of the Services, including, but not limited to, transportation, delivery, storage, insurance, all taxes, duties, clearance charges and the like.

11. INVOICING AND PAYMENT OF THE CHARGES

11.1. On the last day of each month, the Service Provider shall deliver original invoices to the Company in respect of the Services. The invoice must contain the following minimum information and/or be substantiated by the following documentation:

11.1.1. amount due in respect of VAT;

11.1.2. the Service Provider's VAT registration number;

11.1.3. such additional information and/or documentation as the Company may reasonably require from time to time;

11.2. Payment will take place within 20 (twenty) Business Days after receipt by the Company of a duly prepared original invoice.

11.3. All payments shall be made by electronic transfer into the Service Provider's bank account, initially being the account set out in **Annexure A (Contract Data)** hereto.

11.4. The Company may set off any amounts due and payable from the Service Provider pursuant to the terms of this Agreement against any amounts payable by the Company to the Service Provider on any invoice. If the amounts payable by the Service Provider to the Company exceed the amounts payable by the Company to the Service Provider pursuant to an outstanding invoice under this Agreement, then, at the Company's option, the Service Provider shall either issue a credit note for the net amount which the Company may set off against any other invoices rendered by the Service Provider, or promptly pay the amount to the Company.

12. DISPUTED CHARGES

12.1. If an invoice is identified by the Company as incorrect, then the Service Provider shall, at the Company's election: (i) issue a corrected invoice; or (ii) issue a credit note to the Company and forthwith refund to the Company the overpayment (if any); or (iii) make a correction on the invoice for the month following the month in which the incorrect invoice was issued. If (ii) or (iii) applies the Service Provider shall calculate the credit note or invoice correction (as the case may be) on the basis that interest calculated at the Agreement Interest Rate shall accrue in favour of the Company for the number of days from the date of the Company's payment to the date of the refund (in the case of (ii) and the date of the payment of the corrected invoice (in the case of (iii)) (assuming a 365 day year). The Company shall not be liable to pay interest on undercharged amounts, if any.

- 12.2. The Company may withhold payment of charges that the Company disputes in good faith (or, if the disputed charges have already been paid, the Company may withhold an equal amount from a later payment), including disputes in respect of an error in an invoice or an unpaid amount.
- 12.3. If any dispute contemplated in clause 12.2 is resolved or determined in favour of the Service Provider, the Company shall pay any amounts withheld in terms of clause 12.2, with interest calculated at the Agreement Interest Rate for the number of days from the due date of payment to the date of actual payment (assuming a 365 day year), within 20 (twenty) days of final resolution or determination of the said dispute.

13. **SERVICE LEVELS AND PENALTIES**

The Service Provider shall provide the Services in accordance with the Performance Standards and the Targets set out in **Annexure E** (*Form of Service Levels and Penalties*) hereto. In the event that the provision of the Services falls below the expected Performance Standard and thus does not achieve the Target, the Company shall be entitled to invoke the Penalties as set out in **Annexure E** (*Form of Service Levels and Penalties*) hereto. The Penalties invoked shall be applied by way of discounting the Charges payable to the Service Provider in the month in which the default in the Performance Standard occurred. Alternatively, if the Company has paid the Charges in full, the Company may require that the Service Provider issue a credit note in respect of such discounts.

14. **INTELLECTUAL PROPERTY**

- 14.1. To the extent that any Intellectual Property is used, created or developed pursuant to the rendering of the Services, the provisions of this clause 14 (*Intellectual Property*) shall apply.
- 14.2. All right, title, and interest (of whatsoever nature and howsoever arising) worldwide, in any Intellectual Property which prior to the Effective Date was: (a) owned by the Service Provider; and (b) used by the Service Provider to provide the Services, shall remain owned by, and vested exclusively in, the Service Provider (the "**Service Provider IP**").
- 14.3. The Service Provider hereby grants to the Company a perpetual, irrevocable, worldwide, royalty-free, fully paid-up, non-exclusive, transferable and sub-licensable licence to use, reproduce, copy, adapt, maintain, support, modify, customise, enhance, develop, improve and create derivative works of the Service Provider IP, for use by the Company as may be necessary in maintaining continuity of the Services.
- 14.4. Notwithstanding the provisions of clause 14.2, all right, title and interest (of whatsoever nature and howsoever arising) worldwide, in any Intellectual Property which:
- 14.4.1. is owned by the Company as at the Effective Date;

- 14.4.2. is a Custom Intellectual Property; and
- 14.4.3. arises out of any developments, modifications, enhancements or derivative works of the Service Provider IP that are created jointly by the Service Provider and the Company,
- shall be owned by, and vest exclusively in, the Company (the "the Company IP").
- 14.5. The Company hereby grants the Service Provider, for no consideration, a worldwide non-exclusive licence to use the Company IP for the sole and exclusive purpose of providing the Services to the Company in terms of this Agreement for the duration of this Agreement, which licence the Service Provider shall not be entitled to transfer or sub-licence.
- 14.6. Except as otherwise requested or approved by the Company in writing, as of the effective date of any expiration or termination of the Agreement for whatsoever reason, or upon the Company's earlier written notification to the Service Provider, the licence contemplated in clause 14.5 shall forthwith terminate and the Service Provider shall cease all use of the Company IP which was previously authorised in terms of the licence contemplated in clause 14.5 (if and to the extent that the Service Provider was so using the Company IP).
- 14.7. If, and to the extent that, a Party (the "**Holding Party**"), by operation of law, holds or acquires any right, title, or interest anywhere in the world, in any Intellectual Property Rights to which the other Party (the "**Entitled Party**") is, in terms of clause 14.2 or 14.4, entitled, the Holding Party hereby irrevocably and in perpetuity transfers, makes over and assigns to that Entitled Party all such right, title and interest in such Intellectual Property Rights, which transfer, making over and assignment the Entitled Party hereby accepts.
- 14.8. The Service Provider shall not use any of the Company Intellectual Property for any reason whatsoever without first obtaining the Company's prior written consent which consent the Company shall be entitled to grant solely at its own discretion.
- 14.9. If the Service Provider requires the use of such Company Intellectual Property, a request must be sent to the Brand Custodians Office, via email to brandcustodian@airports.co.za. Each single request by the same Service Provider shall be treated as a new request.
- 14.10. Should the Company provide its consent in terms of clause 14.9 above, the Service Provider shall comply with the Company's policies and standards with regard to the use of the Company Intellectual Property. Such policies and standards shall be communicated to the Service Provider at the time of the grant of the consent by the Company.
- 14.11. Failure to adhere to the provisions of this clause 13 or the policies, brand requirements and protocols shall result in a breach of the Agreement.

14.12. Notwithstanding anything contained in this Agreement and except as otherwise requested or approved by the Service Provider in writing, as of the Termination Date or early termination of this Agreement for whatsoever reason, the consent (if granted) contemplated in this clause 13 shall forthwith terminate and the Company shall cease all use of the Service Provider's IP which was authorised in terms of such consent.

15. **WARRANTIES AND REPRESENTATIONS**

15.1. The Service Provider hereby warrants and represents to the Company that, as at the Effective Date:

15.1.1. it shall carry out the Services and all its duties and obligations arising in terms of this Agreement in accordance with the Best Industry Practice. Without derogating from the generality of the foregoing, the Service Provider shall assign performance of the Services to personnel having the skills, experience and expertise, capacity and knowledge required to perform the Services;

15.1.2. it shall not engage in any activities that would detract from the proper performance of its obligations and duties under this Agreement;

15.1.3. it shall use its reasonable endeavours to avoid any material conflict between its interests and those of the Company and, where such conflict is unavoidable, will disclose the details of such conflict to the Company;

15.1.4. it has adequate facilities to comply with its obligations hereunder;

15.1.5. it has the necessary power and legal capacity to enter into and perform its obligations under this Agreement and all matters contemplated herein;

15.1.6. it has taken all necessary corporate and/or internal action to authorise the execution and performance of this Agreement;

15.1.7. it has the capacity and power to provide the representations, warranties and undertakings contained in this Agreement;

15.1.8. the provisions of this Agreement are and shall remain legally binding on the Service Provider and the obligations imposed on it pursuant to this Agreement constitute its legal, valid and binding obligations, enforceable in accordance with their terms;

15.1.9. the execution of this Agreement and performance of its obligations hereunder does not and shall not:

- 15.1.9.1. contravene any Applicable Law; or
- 15.1.9.2. contravene any provision of its constitutional documents; or
- 15.1.9.3. conflict with, or result in a breach of any of the terms of, or constitute a default under any agreement or other instrument to which it is a party, or any licence or other authorisation to which it is subject, or by which it or any of its property or revenues are bound,

so as to prevent it from performing its obligations under this Agreement;

- 15.1.10. it shall provide the Services under this Agreement:
 - 15.1.10.1. in a cost-effective manner;
 - 15.1.10.2. in a manner which ensures that the Company receives “*value for money*”; and
 - 15.1.10.3. in a manner such that the provision of the Services assists the Company to prevent unauthorised, irregular and fruitless and wasteful expenditure for the Company and assists the Company to prevent the procuring of the Services by the Company being a breach of the PFMA;
- 15.1.11. all information provided by the Service Provider to the Company in relation to this Agreement or the Services shall be accurate in all respect; and
- 15.1.12. upon provision the Services to the Company, the Services shall meet the Specifications.

16. SUPPORT AND GOOD FAITH

- 16.1. The Parties undertake at all times to do all such things, perform all such actions and take all such steps and to procure the doing of all such things, the performance of all such actions and the taking of all such steps as may be open to them and necessary for or incidental to the putting into effect or maintenance of the terms, conditions and/or import of this Agreement.
- 16.2. The Service Provider shall at all times during the continuance of this Agreement observe the principles of good faith towards the Company in the performance of its obligations in terms of this Agreement. This implies, without limiting the generality of the foregoing, that it shall –
 - 16.2.1. at all times during the term of this Agreement act reasonably, honestly and in good faith; and

16.2.2. perform its obligations arising from this Agreement diligently and with care.

17. **BROAD-BASED BLACK ECONOMIC EMPOWERMENT**

17.1. The Service Provider represents and warrants that as at the Effective Date and throughout the duration of this Agreement, it shall be and it shall maintain, a BBBEE compliance level (the "**BBBEE Rating**") of at least the Level Contributor as set out in **Annexure A** (*Contract Data*).

17.2. The Service Provider shall, upon receipt of a reasonable written request from the Company, provide the Company with a BBBEE verification certificate issued by a rating agency accredited by the South African National Accreditation Service, reflecting the Service Provider's current black ownership level together with the Service Provider's current BBBEE Rating.

17.3. The Service Provider warrants that it has read, made itself fully acquainted with, fully understands the implications of, and, where appropriate, follows and will continue to follow the BBBEE Act and DTI Code.

17.4. The Service Provider shall, for the duration of the Agreement:

17.4.1. maintain or improve its BBBEE Rating;

17.4.2. notify the Company in writing within 14 (fourteen) days of any occurrence which significantly affects, will significantly affect, or would be reasonably likely to significantly affect, its BBBEE Rating; and

17.4.3. notify the Company in writing within 30 (thirty) days of the occurrence as to what steps have been and/or will be taken to restore its BBBEE Rating.

18. **TAX COMPLIANCE**

18.1. The Service Provider represents and warrants that as of the Signature Date, the Service Provider will remain compliant with all Applicable Laws relating to taxation in South Africa.

18.2. The Service Provider shall deliver to the Company on the Signature Date and each anniversary thereof during the term of the Agreement a valid tax clearance certificate issued to the Service Provider for the then-current year. If the Service Provider fails to provide such a certificate, the Company may terminate the Agreement on 30 (thirty) days' notice.

19. MATERIALITY OF WARRANTIES AND REPRESENTATIONS

- 19.1. Each of the warranties and representations given by the Service Provider in terms of clause 15 (*Warranties and Representations*) and this clause 19 (*Materiality of Warranties and Representations*) (or elsewhere in this Agreement) shall:
- 19.1.1. be a separate warranty and will in no way be limited or restricted by inference from the terms of any other warranty or by any other word/s in this Agreement;
 - 19.1.2. continue and remain in force notwithstanding the completion of the transactions contemplated in the Agreement; and
 - 19.1.3. be deemed to be material and to be a material representation inducing the Company to enter into this Agreement.
- 19.2. It is recorded and agreed that the Company has entered into this Agreement on the strength of the warranties and undertakings it has received from the Service Provider and on the basis that such warranties and undertaking will, unless otherwise specifically stated, be correct on the Effective Date.
- 19.3. A breach by the Service Provider of any warranty, representation or other provision of clause 15 (*Warranties and Representations*) and this clause 19 (*Materiality of Warranties and Representations*) or of any express or implied warranty or representation contained elsewhere in this Agreement, shall be a material breach of this Agreement which shall confer on the Company the right, in its sole discretion, to utilise any remedy it may have in law or created in this Agreement for the enforcement of the Company's rights, including termination in terms of clause 28 (*Termination*).

20. INDEMNITY

- 20.1. Without prejudice to any of the rights of the Company arising from this Agreement, the Service Provider hereby indemnifies and holds the Company and its directors, servants, employees, agents, advisors, representatives, contractors and any other person for whom the Company may be liable in law (each an "**Indemnified Party**") harmless against any and all loss, liability, damage, injury, costs (including attorney-own-client costs), claim, fine, penalty, interest or expense of whatsoever nature or howsoever arising which may be incurred or sustained by, threatened against, or imposed on any Indemnified Party by reason of or pursuant to: (a) the breach by the Service Provider (or any of its employees agents, contractors and/or consultants) of any of the provisions of this Agreement; (b) the breach by the Service Provider (or any of its employees, agents, contractors and/or consultants) of any law or legislation which relates to the Service Provider's obligations in terms of this Agreement; and (c) any claim made against the Company in respect of any liability, loss, damage, injury, cost or

expense sustained by any Indemnified Party or by any third party to the extent that such liability, loss, damage, injury, cost or expense was caused by, relates to or arises as a consequence of a breach or negligent performance or failure or delay in performance by the Service Provider of any of its obligations in terms of the Agreement.

- 20.2. The Indemnified Party shall be deemed to have suffered a loss equivalent to the amount of any loss, liability, damage, injury, cost, claim, fine, penalty, interest or expense against which it is indemnified in terms of clause 20.1 (an "**Indemnified Claim**").
- 20.3. The Indemnified Party shall notify the Service Provider in writing of an Indemnified Claim, and the surrounding facts in respect thereof, as soon as is reasonably possible after the Indemnified Party has become aware of such Indemnified Claim, to enable the Service Provider to take steps to contest it.
- 20.4. The Service Provider shall be entitled within **5 (five)** Business Days of the receipt of written notice under clause 20.3 to elect in writing to contest (which shall include an appeal) an Indemnified Claim in the name of the Indemnified Party and shall be entitled to control the proceedings in regard thereto, provided that the Service Provider indemnifies the Indemnified Party against all and any costs (including attorney and own-client-costs) which may be incurred by or awarded against the Indemnified Party as a consequence of the Service Provider's defence of the Indemnified Claim. The Indemnified Party shall be entitled to require the Service Provider to give reasonable security for the payment of such costs prior to the Service Provider taking any steps to contest the Indemnified Claim. If the Indemnified Party and the Service Provider are unable to agree upon the nature or amount of such security, the amount shall be determined by –
- 20.4.1. any third party agreed upon by the Indemnified Party and the Service Provider within **10 (ten)** Business Days of them failing to agree on the amount of the security; and
- 20.4.2. failing agreement of the identity of the third party referred to in clause 20.4.1, by the Registrar of the South Gauteng High Court, Johannesburg of South Africa in accordance with the uniform rules of the High Court of South Africa as soon as reasonably possible after the period in clause 20.4.1 expires.
- 20.5. The Service Provider shall pay to the Indemnified Party the amount of an Indemnified Claim forthwith after receipt of the notification referred to in clause 20.3 unless the Service Provider contests the Indemnified Claim in terms of clause 20.4, in which case the Service Provider shall pay to the Indemnified Party the amount of the Indemnified Claim forthwith after any final judgement or order is granted against the Indemnified Party, provided that in those circumstances where -

- 20.5.1. an Indemnified Claim is contested and despite such contest the Indemnified Claim is payable in law, the Service Provider shall pay to the Indemnified Party the amount of the Indemnified Claim as soon as it is payable; and
- 20.5.2. the Service Provider does not proceed with the contest of the Indemnified Claim in a diligent manner, the Indemnified Party shall be entitled to require the Service Provider to pay the amount of the Indemnified Claim in question in trust to the Company's attorneys, pending the outcome of the contest or the Indemnified Party shall be entitled to require the Service Provider to give proper and adequate security therefore, and in that event the provisions of clause 20.4 shall apply *mutatis mutandis*.
- 20.6. Save as expressly provided in this clause 20 (*Indemnity*), the Indemnified Party will not be obliged to procure that the Service Provider contests an Indemnified Claim.
- 20.7. This clause 20 (*Indemnity*) constitutes a *stipulatio alteri* in favour of each Indemnified Party, which shall be capable of acceptance by any one or more of them at any time.

21. AUDITS

21.1. Audit Rights

- 21.1.1. The Service Provider will maintain a complete audit trail of all financial and non-financial transactions resulting from this Agreement as reasonably necessary to give effect to the provisions of this clause 21 (*Audits*). The Service Provider will allow the Company, its auditors (including internal audit staff and external auditors), inspectors and regulators (collectively, the "**Auditors**") access at all reasonable times to any facility or part of a facility at which either the Service Provider or any of the Service Provider's subcontractors is providing the Services. The Service Provider will also allow Auditors access at all reasonable times to the Service Provider's personnel and to data and records relating to the Services for the purpose of performing audits and inspections of either the Service Provider or any of the Service Provider's subcontractors to:
- 21.1.1.1. verify the accuracy of the Service Provider's charges and invoices;
- 21.1.1.2. verify the accuracy of payments by or credits from the Service Provider;
- 21.1.1.3. verify the accuracy of price changes to the extent that under the Agreement such changes are determined by reference to the Service Provider's costs and/or margin, or changes to the Service Provider's costs and/or margin;

- 21.1.1.4. examine the Service Provider's performance of its obligations under this Agreement, including, verifying compliance with the Performance Standards;
 - 21.1.1.5. verify compliance generally with the terms of the Agreement;
 - 21.1.1.6. satisfy the requirements of any Applicable Law; and
 - 21.1.1.7. any other audit reasonably required by the Company.
- 21.1.2. The Service Provider will provide Auditors with such assistance and cooperation as they may reasonably require, including installing and operating audit software. The Company will require that the Auditors conduct audits in such a fashion so as not to unreasonably interfere with the Service Provider's normal course of business, and to agree to confidentiality provisions at least as rigorous and protective as those set out in clause 31 (*Confidentiality*).
- 21.1.3. Other than in the case of security audits, or audits triggered by a good faith suspicion of fraud, the Company will provide the Service Provider reasonable notice before conducting audits. Audits will take place during normal business hours, with the exception of security or any other urgent audits, which may take place outside of business hours in the sole discretion of the Company. The Parties will cooperate so as to minimise the impact any audit may have on the Service Provider's provision of the Services.
- 21.1.4. All costs of the Auditors incurred in performing audits under clause 21 (*Audits*) will be borne by the Company.
- 21.1.5. If an audit uncovers overcharges, the Service Provider will promptly refund the overcharge plus interest thereon at the Agreement Interest Rate, from the date of payment of the overcharge until the date the overcharge is refunded by the Service Provider.
- 21.2. **Audit Follow-up**
- 21.2.1. Following an audit or examination, the Company may at its election conduct, or have its Auditors conduct, an exit conference with the Service Provider to obtain factual concurrence with issues identified in the audit or examination.
 - 21.2.2. Within 10 (ten) Business Days following the provision to the Service Provider of the findings of an audit, whether by exit conference or the delivery of the audit report by the Auditors or an audit report by the Service Provider's auditors, the Service Provider will provide the Company with a plan ("**Audit Response Plan**")

to address shortcomings or deficiencies raised in such audit findings attributable to the Service Provider. The Audit Response Plan shall identify the steps that the Service Provider will take to remedy such shortcomings and deficiencies and include a completion date for the plan. With the Company's approval, the Service Provider will implement such Audit Response Plan at the Service Provider's cost and expense. The Service Provider will report monthly to the Company on the status of the implementation of any Audit Response Plan. Failure to complete the Audit Response Plan on or before the completion date included in such Plan shall be a material breach of the Agreement.

21.3. **Records Retention**

The Service Provider will maintain and provide the Company access upon request to the records, documents and other information required to meet the Company's audit rights under this Agreement until the later of (i) 3 (three) years after expiration or termination of this Agreement, (ii) all pending matters relating to this Agreement (e.g., disputes) are closed, or (iii) such other period as is required by Applicable Law.

22. **SUBCONTRACTING**

The Service Provider shall not subcontract (nor permit anyone to perform) any part of the provision of the Services without the Company's prior written consent. If the Company consents to any subcontracting as aforesaid, then the Service Provider shall be deemed to have guaranteed the due, punctual and proper performance of the subcontractor or third party in question and the Service Provider shall procure that the subcontractor concerned is bound by the provisions of clause 14.4 which shall apply to such subcontractor *mutatis mutandis*.

23. **FORCE MAJEURE**

23.1. Neither Party shall be liable for any default or delay in the performance of its obligations under this Agreement if and to the extent: (i) the default or delay is caused, directly or indirectly, by fire, flood, elements of nature, earthquake, rebellion, civil disorder, revolution, or any other cause beyond the reasonable control of that Party; and (ii) the non-performing Party is without fault and the default or delay could not have been prevented by reasonable precautions (a "**Force Majeure Event**"). Subject to clause 23.2, in such event, the non-performing Party is excused from further performance for as long as such circumstances prevail and the Party continues to use its Commercially Reasonable Efforts to recommence performance. Any Party so delayed shall notify the Party to whom performance is due and describe the circumstances causing the delay.

23.2. If a Force Majeure Event substantially prevents or delays provision of the Services to an extent that the Company reasonably believes to be critical at reasonable levels of service for more

than 5 (five) consecutive days (or such longer period as the Company may agree in its sole discretion), then at the Company's option, the Company may:

- 23.2.1. at its expense procure the Services from an alternative source, in which case the Company shall be relieved of its obligation to pay the Service Provider for such Services for so long as the Service Provider's performance is impaired;
 - 23.2.2. terminate the portion of the Agreement affected as of a date specified by the Company and the charges shall be equitably reduced to reflect the termination of the terminated Services; or
 - 23.2.3. if a substantial portion of the Services are affected, terminate the Agreement as of a date specified by the Company in a written notice to the Service Provider.
- 23.3. A termination of the Agreement under clause 23.2 shall not be treated as a termination for convenience. Accordingly, the Company shall not be liable for the payment of any termination fees or have any other liability to the Service Provider for terminating the Agreement.
- 23.4. A performance failure of a contractor or subcontractor of the Service Provider shall not be a Force Majeure Event for the Service Provider unless such contractor's or subcontractor's performance failure was caused by a Force Majeure Event.

24. **INSURANCE**

- 24.1. The Service Provider shall, during the term of the Agreement and at its own expense, effect and keep current policies of insurance in accordance with the specifications set out by the Company in writing from time to time (or, in the absence of such specifications, in accordance with good industry practice) in the Service Provider's own name for such value and with such insurer as notified to the Company with the intent that the Service Provider is adequately insured and will be fully indemnified for any cost, claims or damages which may arise.
- 24.2. The Service Provider shall at any time if required by the Company provide proof as to the sufficiency and validity of any insurance obtained by it.
- 24.3. In addition to the above, the Service Provider shall effect the insurances contemplated in this Agreement. Such insurances shall be effected with insurers and its terms approved by the Company.
- 24.4. Any payments received from insurers shall be used for the compensation of the loss or damage. The Service Provider shall, when called upon, submit to the Company:
- 24.4.1. evidence that the insurance described in this clause have been effected; and

24.4.2. copies of the policies for the insurances described in this clause.

24.5. The Service Provider shall not make any material alteration to the terms of any insurance policy without the prior approval of the Company.

24.6. If the Service Provider fails to effect and keep in force any of the insurances it is required to effect and maintain under the Agreement, or fails to provide satisfactory evidence and copies of policies in accordance with this sub-clause, the Company may (at its option and without prejudice to any other right or remedy) effect insurance for the relevant coverage, pay the premiums due and set-off such payment against amounts payable to the Service Provider.

24.7. Nothing in this clause limits the obligations, liabilities or responsibilities of the Service Provider under the Agreement or otherwise. Any amount not insured or not recovered from the insurers or any deductible payable shall be borne by the Service Provider in accordance with these obligations, liabilities or responsibilities.

25. SAFETY PROCEDURES

25.1. The Service Provider shall:

25.1.1. comply with all the Company's safety, health and security policies and any applicable safety laws and regulations, including, but not limited to, the Occupational Health and Safety Act No. 85 of 1993; and

25.1.2. use reasonable efforts to ensure that the provision of the Services at the Company's premises does not cause any unnecessary obstruction so as to avoid danger to these persons.

25.2. The Service Provider shall consider itself "the Company" for the purposes of the legislation referred to in clause 25.1.1 and shall not consider itself under the supervision or management of the Company with regard to compliance with this legislation.

25.3. The Service Provider shall ensure that all statutory appointments are made and that all appointees fully understand their responsibilities and are trained and competent to execute their duties.

26. DISPUTE RESOLUTION

26.1. General Dispute Resolution

26.1.1. Any dispute of whatsoever nature which arises out of or in connection with this Agreement, including any dispute as to the validity, existence, enforceability, interpretation, application, implementation, breach, termination or cancellation of

this Agreement or as to the Parties' rights and/or obligations in terms of this Agreement or in connection with any documents furnished by the Parties in terms of this Agreement, shall be submitted to binding arbitration before a single arbitrator in terms of this clause 26 (*Dispute Resolution*) and, except as otherwise provided herein, the rules for the time being as stipulated by the Arbitration Foundation of Southern Africa.

- 26.1.2. The arbitrator shall, if the dispute is:
- 26.1.2.1. primarily an accounting matter, be an independent practising accountant of not less than 10 (ten) years' standing as such; or
 - 26.1.2.2. primarily a legal matter, be an attorney of not less than 10 (ten) years' standing as such or a practising senior counsel.
- 26.1.3. Such arbitrator shall be agreed upon in writing by the Parties; provided that if the Parties do not, within 3 (three) Business Days after the date on which the arbitration is demanded, agree in writing as to the nature of the dispute and the identity of the arbitrator, the arbitrator shall, irrespective of the nature of the dispute, be appointed by the Chairperson of the Arbitration Foundation of Southern Africa or its successor-in-title upon request by either Party to make such appointment after expiry of such 3 (three) Business Days.
- 26.1.4. The arbitration shall be held as quickly as possible after it is demanded with a view to it being completed within 60 (sixty) Business Days after it has been so demanded.
- 26.1.5. Promptly after the arbitrator has been appointed, either Party shall be entitled to call upon the arbitrator to fix a date when and where the arbitration proceedings shall be held and to settle the procedure and manner in which the arbitration proceedings shall be held. The arbitration proceedings shall be held in Sandton, Republic of South Africa.
- 26.1.6. The arbitrator shall allocate the costs of the arbitration in the manner that the arbitrator deems appropriate.
- 26.1.7. Any order or award that may be made by the arbitrator:
- 26.1.7.1. absent manifest error or bad faith, shall be final and binding subject to either Party's right of appeal in terms of clause 26.1.8 below;
 - 26.1.7.2. shall be carried into effect; and

- 26.1.7.3. may be made an order of any competent court (including the High Court of South Africa).
- 26.1.8. There shall be a right of appeal against any award of the arbitrator provided that –
- 26.1.8.1. the appeal is noted within 10 (ten) days of the arbitrator's award;
- 26.1.8.2. the appellant delivers the record to the respondent within five (5) days of the record becoming available to the appellant. The relevant provisions of this arbitration clause shall apply *mutatis mutandis* in regard to the appeal;
- 26.1.8.3. the appeal shall be heard before a panel of 3 (three) arbitrators and shall be appointed in terms of the provisions of clause 26.1.3 above;
- 26.1.8.4. the appellant shall provide security for the costs of the appeal within 10 (ten) days of a Pro-Forma Bill of Costs being determined by the Taxing Master of the South Gauteng High Court.
- 26.1.9. This clause 26 (*Dispute Resolution*) is severable from the rest of the Agreement and constitutes an irrevocable consent by the Parties to any proceedings in terms hereof, which consent to arbitration shall survive the Agreement regardless of whether the Agreement is terminated for any reason whatsoever.
- 26.1.10. The arbitrator (or arbitrators in the case of an appeal) shall have the power to give default judgment if any party fails to make submissions on due date and/or fails to appear at the arbitration (or appeal).
- 26.1.11. To the extent that under the terms of this clause 26 (*Dispute Resolution*), a Party is entitled to resort to the High Court of South Africa, each of the Parties hereby irrevocably submits to the jurisdiction of the South Gauteng High Court (the Republic of South Africa) for the institution and hearing of any legal proceedings permitted under this clause 26 (*Dispute Resolution*).
- 26.1.12. Notwithstanding the above or any prior submission of the dispute to arbitration by the Service Provider, the Company, in its sole election, shall be entitled to bring any dispute before the South Gauteng High Court, (the Republic of South Africa) and the Service Provider hereby submits to the jurisdiction of the High Court.
- 26.2. Urgent Relief

Nothing in this clause 26 (*Dispute Resolution*) shall preclude either Party from obtaining urgent or interim relief from the High Court of South Africa or any other competent organs of state

created for the specific purpose of regulating the business or industry activities in which the Parties are engaged.

26.3. Continued Performance

Subject to the Company's right to withhold payment of amounts it disputes in good faith under clause 12 (*Dispute Charges*), and to terminate the Agreement, each Party agrees to continue performing its obligations under this Agreement while any dispute is being resolved.

27. **ANTI-CORRUPTION**

Each party to this agreement shall be bound by the Anti-Corruption Undertakings attached as Annexure F hereto, in so far as such undertakings are applicable to the terms of this Agreement.

28. **TERMINATION**

28.1. Termination for Cause by the Company

28.1.1. The Company may, by giving notice to the Service Provider, terminate this Agreement, in whole or in part, as of a date set out in the notice of termination in the event that the Service Provider:

28.1.1.1. commits a material breach of this Agreement, which breach is not remedied within 30 (thirty) days after notice of breach from the Company to the Service Provider;

28.1.1.2. commits a material breach of this Agreement that is not capable of being remedied within 30 (thirty) days; or

28.1.1.3. commits numerous breaches of this Agreement that collectively constitute a material breach, even if remedied;

28.1.2. The Company may, by giving notice to the Service Provider, terminate this Agreement, in whole or in part, as of a date set out in the notice of termination if any Insolvency Event occurs in relation to the Service Provider.

28.1.3. The Company may terminate this Agreement, by giving notice to the Service Provider, in whole or in part, as of a date set out in the notice of termination in the event that it is advised that the Applicable Laws, as they may be changed, enacted or repealed, prevent the Service Provider from performing its obligations under this Agreement.

28.1.4. In the case of a termination of the Agreement in part, the charges payable under this Agreement shall be reduced proportionately to reflect the partial termination of the Agreement.

28.1.5. The Company may terminate this Agreement, by giving notice to the Service Provider, if the Service Provider fails to comply with clause 18 (*Tax Compliance*).

28.1.6. The Company shall have no liability to the Service Provider with respect to a termination under this clause 28.1.

28.2. Termination for Cause by the Service Provider

28.2.1. In the event that the Company fails to pay the Service Provider when undisputed amounts for the Services or amounts which have been finally adjudged to be due for the Services fall due and it fails to make such payment within 90 (ninety) days of the later of notice from the Service Provider of the failure to make such payment or the date that an amount is finally adjudged to be due under the Agreement, then the Service Provider may, by giving notice to the Company terminate this Agreement as of the date set out in the notice of termination.

28.2.2. The Service Provider shall have no other right to terminate this Agreement.

28.3. Termination for Convenience

The Company may terminate this Agreement in whole or in part for convenience and without cause at any time by giving the Service Provider at least 60 (sixty) days' prior notice designating the termination date. The Company shall have no liability to the Service Provider with respect to such termination.

28.4. Termination upon Sale, Acquisition, Merger or Change of Control

In the event of a sale, acquisition, merger, or other change of Control of the Service Provider where such Control is acquired, directly or indirectly, in a single transaction or series of related transactions, or in the event of a sale of all or substantially all of the assets of the Service Provider in a single or series of related transactions, then, at any time within 180 (one hundred and eighty) days after the last to occur of such events, the Company may terminate this Agreement by giving the Service Provider at least 90 (ninety) days' prior notice and by designating a date upon which such termination shall be effective. The Company shall have no liability to the Service Provider with respect to any such termination.

28.5. Extension of Termination Effective Date

The Company shall have one option to elect not later than 90 (ninety) days (or 30 (thirty) days in the case of a termination for cause) prior to expiration or termination of the Agreement, to require that the Service Provider continue to provide some or all of the Services for a fixed term up to 180 (one hundred and eighty) days following the effective date of expiration or termination of the Agreement on the terms and conditions then in effect.

28.6. Disengagement Assistance

Commencing 6 (six) months prior to expiration of this Agreement, or commencing upon any notice of termination (including notice of a termination by the Service Provider), and continuing through the effective date of expiration (as such effective date may be extended in terms of clause 28.5), or, if applicable, through the effective date of termination (as such effective date may be extended in terms of clause 28.5), and for up to 12 (twelve) months after such date, the Service Provider shall provide to the Company, or at the Company's request to the Service Provider's designate, such termination/expiration assistance as the Company may reasonably request to facilitate the transition of the Services to the Company or its designate and, to the extent applicable, without material interruption or degradation of the Services.

29. **BREACH**

Without derogating from the provisions of clause 27 (*Termination*) above, if any Party breaches any provision or term of this Agreement and fails to remedy such breach within 10 (ten) days of receipt of written notice requiring it to do so then the aggrieved Party shall be entitled, without notice and in addition to any other remedy available to it at law or under this Agreement (including obtaining an interdict but excluding cancellation or termination of this Agreement which remedy shall only be available to the Parties in terms of clause 27 (*Termination*) above) to claim specific performance of any obligation whether or not the due date for performance has arrived, in either event without prejudice to the aggrieved Party's right to claim damages.

30. **NOTICES**

30.1. The Parties choose as their *domicilia citandi et executandi* for all purposes under this Agreement, whether in respect of court process, notices or other documents or communications of whatsoever nature (including the exercise of any option), the respective addresses as set out in **Annexure A** (*Contract Data*).

30.2. Any notice or communication required or permitted to be given in terms of this Agreement shall be valid and effective only if in writing but it shall be competent to give notice by fax or email.

- 30.3. Any Party may by notice to the other Party change the physical address chosen as its *domicilium citandi et executandi vis-à-vis* that Party to another physical address the relevant jurisdiction or its fax number or its email address, provided that the change shall become effective *vis-à-vis* that addressee on the 10th (tenth) Business Day from the receipt of the notice by the addressee.
- 30.4. Any notice to a Party:
- 30.4.1. delivered by hand to a responsible person during ordinary business hours at the physical address chosen as its *domicilium citandi et executandi* shall be deemed to have been received on the day of delivery; or
- 30.4.2. sent by fax to its chosen fax number stipulated in **Annexure A (Contract Data)** shall be deemed to have been received on the date of despatch (unless the contrary is proved), provided that the sender has received a receipt indicating proper transmission; or
- 30.5. Notwithstanding anything to the contrary herein contained a written notice or communication (including by email) actually received by a Party shall be an adequate written notice or communication to it notwithstanding that it was not sent to or delivered at its chosen *domicilium citandi et executandi*.

31. **CONFIDENTIALITY**

- 31.1. Save as provided in this clause 31 (*Confidentiality*), each Party shall, and shall procure that its Affiliate and their respective officers, directors, employees, agents, auditors and advisors shall, treat as confidential all information relating to the other Party or its Affiliates thereof or relating to their respective businesses that is of a confidential nature and which is obtained by that Party in terms of, or arising from the implementation of this Agreement, which may become known to it by virtue of being a Party, and shall not reveal, disclose or authorise the disclosure of any such information to any third party or use such information for its own purpose or for any purposes other than those related to the implementation of this Agreement.
- 31.2. The obligations of confidentiality in clause 31.1 shall not apply in respect of the disclosure or use of such information in the following circumstances:
- 31.2.1. in respect of any information which is previously known by such Party (other than as a result of any breach or default by any Party or other person of any agreement by which such Confidential Information was obtained by such Party);
- 31.2.2. in respect of any information which is in the public domain (other than as a result of any breach or default by either Party);

- 31.2.3. any disclosure to either Party's professional advisors, executive staff, board of directors or similar governing body who (i) such Party believes have a need to know such information, and (ii) are notified of the confidential nature of such information and are bound by a general duty of confidentiality in respect thereof materially similar to that set out herein;
 - 31.2.4. any disclosure required by law or by any court of competent jurisdiction or by any regulatory authority or by the rules or regulations of any stock exchange;
 - 31.2.5. any disclosure made by a Party made in accordance with that Party's pursuit of any legal remedy;
 - 31.2.6. any disclosure by a Party to its shareholders or members pursuant to any reporting obligations that Party may have to its shareholders or members, provided that each such shareholder or member is notified of the confidential nature of such information and is bound by a general duty of confidentiality in respect thereof materially similar to that set out herein;
- 31.3. In the event that a Party is required to disclose confidential information as contemplated in clause 31.2.4, such Party will:
- 31.3.1. advise any Party/ies in respect of whom such information relates (the "**Relevant Party/ies**") in writing prior to disclosure, if possible;
 - 31.3.2. take such steps to limit the disclosure to the minimum extent required to satisfy such requirement and to the extent that it lawfully and reasonably can;
 - 31.3.3. afford the Relevant Party/ies a reasonable opportunity, if possible, to intervene in the proceedings;
 - 31.3.4. comply with the Relevant Party/ies' reasonable requests as to the manner and terms of such disclosure; and
 - 31.3.5. notify the Relevant Party/ies of the recipient of, and the form and extent of, any such disclosure or announcement immediately after it was made.
- 31.4. Either Party may, by notice in writing, be entitled to demand the prompt return of the whole or any part of any confidential information supplied by it to the other Party, and each Party hereby undertakes to comply promptly with any such demand.

32. GOVERNING LAWS

This Agreement is governed by, and all disputes, claims, controversies, or disagreements of whatever nature arising out of or in connection with this Agreement, including any question regarding its existence, validity, interpretation, termination or enforceability, shall be resolved in accordance with the laws of South Africa.

33. WHOLE AGREEMENT, NO AMENDMENT

33.1. This Agreement sets out the entire understanding of the Parties with respect to the subject matter hereof, and supersedes and replaces any other agreements and/or discussions, written or oral.

33.2. No amendment or consensual cancellation of this Agreement or any provision or term thereof or of any agreement or other document issued or executed pursuant to or in terms of this Agreement and no settlement of any disputes arising under this Agreement and no extension of time, waiver, or relaxation or suspension of or agreement not to enforce or to suspend or postpone the enforcement of any of the provisions or terms of this Agreement or of any agreement or other document issued pursuant to or in terms of this Agreement shall be binding unless recorded in a written document signed by the Parties (or in the case of an extension of time, waiver, relaxation or suspension, signed by the Party granting such extension, waiver, relaxation or suspension). Any such extension, waiver, relaxation or suspension which is so given or made shall be construed strictly as relating only to the matter in respect whereof it was made or given.

33.3. No oral *pactum de non petendo* shall be of any force or effect.

33.4. No extension of time or waiver or relaxation of any of the provisions or terms of this Agreement or any agreement, or other document issued or executed pursuant to or in terms of this Agreement, shall operate as an estoppel against any Party in respect of its rights under this Agreement, nor shall it operate so as to preclude such Party thereafter from exercising its rights strictly in accordance with this Agreement.

33.5. To the extent permissible under Applicable Law, no Party shall be bound by any express or implied term, representation, warranty, promise or the like not recorded herein, whether it induced the contract and/or whether it was negligent or not.

34. SEVERABILITY

Any provision in this Agreement which is or may become illegal, invalid or unenforceable in any jurisdiction affected by this Agreement shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability and shall be treated *pro non scripto* and severed from the balance of

this Agreement, without invalidating the remaining provisions of this Agreement or affecting the validity or enforceability of such provision in any other jurisdiction.

35. **STIPULATIO ALTERI**

No part of this Agreement shall constitute a *stipulatio alteri* in favour of any person who is not a Party to the Agreement unless the provision in question expressly provides that it does constitute a *stipulatio alteri*.

36. **NO CESSION AND ASSIGNMENT**

36.1. Other than in accordance with clause 36.2, or as otherwise expressly provided in this Agreement which expressly states that cession, delegation or assignment may take place, no Party shall be entitled to cede, assign, transfer or delegate ("**Transfer**") all or any of its rights, obligations and/or interest in, under or in terms of this Agreement to any third party without the prior written consent of the other Party (which consent shall not be unreasonably withheld).

36.2. The Company shall be entitled, in its sole and absolute discretion, to Transfer all (but not some) of its rights, obligations and/or interest in, under or in terms of this Agreement to an Affiliate of the Company and shall notify the Service Provider in writing of such Transfer at least 10 (ten) Business Days prior to such Transfer taking place.

37. **EXECUTION IN COUNTERPARTS**

This Agreement may be executed in two counterparts, each of which shall be deemed to be an original, and all of which together shall constitute one and the same agreement as at the date of signature of the Party that signs its counterpart last in time.

38. **PROTECTION OF PERSONAL INFORMATION**

38.1 For the purposes of this clause, the words "data subject", "personal information", "process", "responsible party" and "Regulator" have the meanings given to them in the Protection of Personal Information Act, 2013 (POPI).

38.2 Both Parties will comply with their obligations under POPI in relation to personal information for which they are the responsible party.

38.3 The Service Provider must only process personal information of the Company and third parties on behalf of the Company, with the Company's knowledge or authorisation, treat such information which comes to their knowledge as confidential and must not disclose it unless required by law or in the course of the proper performance of the Service Provider's duties. The Service Provider must comply with the responsible party's obligations in clause 19 of POPI.

38.4 The Service Provider must notify the Company immediately where there are reasonable grounds to believe that personal information has been accessed or acquired by any unauthorised person (Data Breach) and must assist the Company, at its own cost: a) with any investigation or notice to the Regulator or data subjects that the Company may make in relation to a Data Breach; and b) in responding to any directions by the Regulator to publicise the Data Breach, including assisting the Company to make public announcements if required.

38.5 The Service Provider indemnifies the Company against any civil or criminal action or administrative fine or other penalty or loss as a result of the Service Provider’s breach of this clause.

39. **COSTS**

39.1 Each of the Parties shall bear its own legal and other costs, charges and expenses in connection with the negotiation and execution of this Agreement.

39.2 The Service Provider shall be responsible for all costs, charges and expenses of whatsoever nature which may be incurred by the Company in enforcing its rights in terms hereof, including, without limitation, legal costs on the scale as between attorney and own client and collection commission.

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: _____

Place: _____

Witness _____

Witness _____

FOR XXX

Signature: _____
who warrants that he / she is duly authorised thereto

Name: _____

Date: _____

Place: _____

Witness

Witness

Annexure A – CONTRACT DATA

| SERVICE PROVIDER'S DETAILS | |
|--|------------|
| Service Provider's Name | (Pty) Ltd. |
| Service Provider's Registration Number | |
| Service Provider's Domicilium Details | |
| | |
| Service Provider's VAT Registration Number | |
| Service Provider's BBEE Level | |
| Tender Reference Number | [•] |
| SERVICE PROVIDER'S BANKING DETAILS | |
| Bank | |
| Branch | |
| Branch Code | |
| Account Holder | |
| Account No. | |
| Reference | |
| MATERIAL DATES | |
| Effective Date | |
| Completion Date | |
| the Company's DETAILS | |
| the Company's Domicilium Details | |
| | |
| | |

Annexure B – FORM OF SERVICES SPECIFICATIONS

The Scope of works covers the following key areas:

Annexure C – DETAILS OF CHARGES

| ESCALATION OF CHARGES |
|-----------------------|
| NONE |

Annexure D – FORM OF SPECIAL TERMS AND CONDITIONS

This Special Terms and Conditions Form dated as of XXXXXXXX (the "**Special Terms and Conditions Form**") is being executed pursuant to the services agreement entered into between Company South Africa SOC Limited ("the Company") and XXXXXXXXXXXXXXXXXXXX. ((Registration No: XXXXXXXXXXXX) (the "**Service Provider**") dated as of XXXXXXXXXXXX (to which a form of this Special Terms and Conditions Form was attached as an **Annexure D**), the terms of which are incorporated herein by reference. All capitalized terms used but not defined herein shall have the meanings given to them in the Services Agreement. Reference herein to the "**Parties**" shall be construed as reference to the Company and the Service Provider, collectively or individually, as the context may require.

1. **DISCRIPTION OF SPECIAL TERMS AND CONDITIONS**

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: _____

Place: _____

Witness _____

Witness _____

FOR **XXXXXXXXXX XXXXXXXXXXX(Pty) Ltd.**

Signature: _____
who warrants that he / she is duly authorised thereto

Name: _____

Date: _____

Place: _____

Witness _____

Witness _____

Annexure E - SERVICE LEVELS AND PENALTIES

Annexure F– ANTI-CORRUPTION UNDERTAKINGS**ANTI-CORRUPTION UNDERTAKINGS**

1. The Service Provider do hereby agrees and undertakes that in accordance with this agreement and the transactions contemplated by this agreement, it will comply with all applicable laws and anti-corruption laws, rules and regulations, decrees and/or official government orders of the Republic of South Africa, with particular reference but not limited to the provisions of the Prevention and Combating of Corrupt Activities Act 12 of 2004, the Airports Company Act 44 of 1993, the Airports Company Amendment Act 2 of 1998, the Public Finance Management Act 1 of 1999 and the Constitution of the Republic of South Africa; and the laws of any country where any of the parties will undertake the performance of their obligations in connection with this agreement.
2. The Service Provider represents, warrants and undertakes that it, and each of its owners, directors, officers, employees, and every other person acting on its behalf will not engage in acts or transactions (including any not involving a party), otherwise in violation of or inconsistent with the principles of any applicable anti-corruption legislation, including but not limited to anti-corruption laws of the Republic of South Africa or successor legislation. For the purposes of this undertaking, the applicable laws of the Republic of South Africa, and the laws of any other country where any of the parties will undertake the performance of their obligations, shall be deemed to apply to each party regardless of whether the party is otherwise subject to those laws.
3. The Service Provider do hereby agrees and undertakes that in accordance with this agreement whether in the Republic of South Africa or elsewhere, it and each its affiliates have and will apply effective disclosure controls and procedures; have and will maintain proper and accurate books, records and accounts, for a period of at least three (3) years after the period to which they relate, which, in reasonable detail, accurately and fairly reflect any and all payments made, expenses incurred and assets disposed of; and have and will maintain an internal accounting controls system that is sufficient to ensure the proper authorisation, recording and reporting of all transactions to provide reasonable assurances that violations of the anti-money laundering or anti-corruption laws of the applicable jurisdictions will be avoided, prevented, detected and deterred.
4. The Service Provider represents and warrants that:
 - 4.1. to the best of its knowledge and belief neither it nor any of its directors, or other officers, employees, partners, shareholders, agents, consultants or representatives:
 - 4.1.1. has at any time been found by a court in any jurisdiction to have engaged in any corrupt activity (or similar conduct);
 - 4.1.2. has at any time admitted to having engaged in any corrupt activity;
 - 4.1.3. has at any time been investigated or been suspected in any jurisdiction of having engaged in any corrupt activity (or similar conduct).

5. The Service Provider confirms that it does not know or have any reason to suspect that:
 - 5.1. the proceeds, funds or property that are the subject of any transactions under this agreement involving the parties are or will be derived from, or related to, any illegal and fraudulent activities under any applicable laws; and
 - 5.2. the proceeds, funds or property that are or will be the subject of such transactions are not intended to commit, further, or sponsor a violation of applicable law, including but not limited to violations of any tax, customs or revenue laws;
6. If at any time Airports Company of South Africa (the Company) becomes aware that any of the circumstances represented or warranted in this agreement are not as it has confirmed, it will notify the Service Provider immediately in writing.
7. In the event that the Company believes in good faith that the Service Provider may not be in compliance with the undertakings and/or requirements set forth in this agreement, then the Company shall advise the Service Provider in writing of its good faith belief and the Service Provider shall co-operate fully with any and all enquiries undertaken by or on behalf of the party in connection therewith, including the provision by the Service Provider of personnel and supporting documents and affidavits, if reasonably deemed
8. Service Provider shall subject to this agreement, allow the Company to review or audit its books, records and files relating to this agreement and will provide information and answer any reasonable questions that the other parties may have and will raise relating to its performance of this agreement.
9. **BUSINESS COURTESIES, GIFTS, ENTERTAINMENT AND DONATIONS**
 - 9.1 The Company acknowledges that exchanging courtesies such as modest gifts, meals and entertainment are a common business practices intended to build generosity and establish trust in the business relationship. The occasional exchange of entertainment and gifts, as stipulated in the Airports Company South Africa Code of Ethics and Business Conduct policy, may be appropriate, providing such courtesies are not specifically projected to influence any procurement or sales decision and the Company employee who obtains such gift.
 - 9.2 Privileges, bribes or kickbacks of any kind must never be solicited, accepted or offered, either directly or indirectly. This includes, but not limited to money, loans, equity, special privileges, personal favours, benefits or services. Such favours may be considered bribery, which infringes South African Law and is in contradiction with the Company Code of Ethics and Business Conduct.
 - 9.3 Any employee / Service Provider found guilty of the above actions shall be disciplined by the Company and will face criminal action. Furthermore, any person who has offered the Company employees a bribe or who has given a bribe as a result of a request / demand from an employee

of the Company, shall have their concluded contracts terminated with immediate effect, face criminal action and shall be excluded from doing business with the Company in future.

10. **the Company TIP-OFFS ANONYMOUS**

- 10.1 The Service Provider is required, in terms of the Airports Company South Africa Code of Ethics, to report any unethical activities to the Company's Tip-offs Anonymous Hotline to: 0800 00 8080.
- 10.2 Users of the Company Anti-Corruption Hotline shall act in good faith and shall not make false accusations when reporting any concerns. Any party who knowingly or recklessly makes false or misleading statements or disclosures shall be subject to disciplinary action (internal parties) alternatively face civil / criminal prosecution.