

AIRPORTS COMPANY SOUTH AFRICA LIMITED

CONDITIONS OF USE

INITIAL HERE

CONDITIONS OF USE

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AGREEMENT BETWEEN

AIRPORTS COMPANY SOUTH AFRICA LIMITED

And -----

1 Interpretation

In this agreement -

- 1.1 clause headings are for convenience and shall not be used in its interpretation;
- 1.2 unless the context clearly indicates a contrary intention -
 - 1.2.1 an expression which denotes -
 - 1.2.1.1 any gender includes the other genders;
 - 1.2.1.2 a natural person includes an artificial person and vice versa;
 - 1.2.1.3 the singular includes the plural and vice versa;
 - 1.2.2 the following expressions shall bear the meanings assigned to them below and cognate expressions bear corresponding meanings –
 - 1.2.2.1 **"ACS"** – Aviation Co-ordination Services (Pty) Ltd, (Registration No. 1999/20896/07) or its successors-in-title
 - 1.2.2.1A **"ACSA"** - Airports Company South Africa Limited (Registration No. 1993/004149/06);
 - 1.2.2.2 **"ACSA's systems"** - ACSA's computer network systems at the airport from time to time;
 - 1.2.2.3 **"this agreement"** - this document together with any annexures, as amended from time to time;
 - 1.2.2.4 **"aircraft"** - any aircraft (as defined in section 1 of the Aviation Act 74 of 1962 as amended);
 - 1.2.2.5 **"airfield regulations"** – the airfield regulations, or the successor to such regulations, as amended by the Minister of Transport from time to time, and referred to in 29.4.1.13;
 - 1.2.2.6 **"airport"** - the whole or any part of O R Tambo International Airport, Durban International Airport, Cape Town International Airport, Bloemfontein National Airport, Kimberly Airport, Upington Airport, George Airport, East London Airport, Port Elizabeth Airport, Pilanesberg Airport, or any other airport managed or operated now or in the future by ACSA, including without any limitation the demarcated area on land or water, or a building intended to be used either wholly or in part for the arrival, departure or movement of aircraft, and includes any building, installation, or equipment within any such area which is intended to be so used;

- 1.2.2.7 **"airport's lost and found counter"** - the lost and found counter operated by ACSA or a third party appointed by ACSA from time to time at the airport and referred to in 16;
- 1.2.2.8 **"airside area"** - the movement area of the airport, access to which is controlled by ACSA including, without limitation, the runways, service roadways, taxiways, aprons, hard stand locations and parking stands used by aircraft, service vehicles and service personnel at the airport;
- 1.2.2.9 **"airside service provider"** - any third party appointed in terms of 6.1.2, 7.2 and 8.1.2;
- 1.2.2.10 **"aviation regulations"** - the regulations made in terms of section 22 of the Aviation Act 74 of 1962;
- 1.2.2.11 **"baggage"** - all suitcases, bags, boxes, baggage, articles, things, goods and other matter belonging to passengers (whether hand held or otherwise) of any nature whatever (but specifically excluding cargo) which is carried, has been carried or will be carried on the operator's aircraft;
- 1.2.2.12 **"baggage counter"** - the baggage enquiry counter referred to in 13;
- 1.2.2.13 **"baggage storage facility"** - the baggage storage facility referred to in 13;
- 1.2.2.14 **"baggage reconciliation system"** – the computerised/automated baggage management and reconciliation system provided by ACS at the airport;
- 1.2.2.15 **"baggage trolleys"** - the baggage trolleys provided by ACSA at the airport from time to time;
- 1.2.2.16 **"BIDS"** - the Baggage Information Display System (or its equivalent) as provided by ACSA at the airport -
 - 1.2.2.16.1 for the purposes of assisting passengers arriving at the airport to retrieve their baggage from the domestic or international baggage claim facility;
 - 1.2.2.16.2 at such locations and in such manner and detail as ACSA may determine;
- 1.2.2.17 **"business day"** - any day other than a Saturday, Sunday or official public holiday in the RSA;
- 1.2.2.18 **"claim"** - any claim, action, proceeding, demand, costs, charges and expenses of any nature whatever;
- 1.2.2.19 **"common use check-in counters"** - the check-in counters at the airport designated for common use by ACSA from time to time and assigned by ACSA in terms of 19;
- 1.2.2.20 **"common use elevators"** - the elevators, travelators and escalators in the common use areas;
- 1.2.2.21 **"common use areas"** - areas at the airport which are designated by ACSA from time to time for use (subject to the terms and conditions of this agreement) by the operator together with such third parties as ACSA may from time to time decide, including the holding lounges, check-in halls, the airside area, that part of the terminal building which is open to the general public, public toilets, the parking areas and public roads giving access to the airport;

- 1.2.2.22 **"common hold baggage screening system"** - the hold baggage screening system provided by ACS at the airport;
- 1.2.2.23 **"common use facilities"** - facilities at the airport which are made available by ACSA from time to time to the operator (subject to the terms and conditions of this agreement) together with such third parties as ACSA may decide, including the outbound baggage handling system, the inbound baggage handling system, air bridges, boarding gates, air walks, the common use and kerbside check-in counters, the domestic baggage claim facility, the international baggage claim facility, the FIDS, the BIDS, the public address and paging system, the utilities and the computer terminals, software, hardware, desk space and other equipment provided by ACSA from time to time at the common use and kerbside check-in counters;
- 1.2.2.23A **"CUTE System"** - the computerised "common user terminal equipment" passenger handling system, including the automated check-in and boarding of passengers;
- 1.2.2.24 **"domestic baggage claim facility"** - the facility at the airport at which passengers arriving at the airport on domestic flights may retrieve their baggage;
- 1.2.2.25 **"domestic flight"** - any flight by any aircraft starting and ending at any airport in the RSA, where in passengers on such flight shall embark and disembark from the aircraft at an airport within the Republic of South Africa;
- 1.2.2.26 **"the EMS guide"** - the airline accident management guide (inclusive of a disabled aircraft recovery policy), as amended by ACSA from time to time in consultation with the operator, issued by ACSA in order to facilitate implementation of an emergency management system at the airport, in compliance with regulations made by the Minister of Transport in consultation with the South African Civil Aviation Authority from time to time and/or the Disaster Management Act 57 of 2002;
- 1.2.2.27 **"exclusive use areas"** - areas at the airport which are designated by ACSA from time to time for exclusive use by the operator in terms of 21, including, without any limitation, the lost baggage counter, the lost baggage storage facility, exclusive use check-in counters and counters for the sale by the operator of tickets on its domestic and/or international flights;
- 1.2.2.28 **"exclusive use check-in counters"** - the check-in counters at the airport designated by ACSA from time to time for exclusive use by the operator in terms of 21;
- 1.2.2.29 **"FIDS"** - the Flight Information Display Systems (or their equivalent) as provided by ACSA at the airport -
- 1.2.2.29.1 for the purposes of displaying the status of arriving and departing domestic and/or international flights at the airport and/or for any other purpose reasonably required by ACSA from time to time;
- 1.2.2.29.2 at such locations and in such manner and detail as ACSA may determine;
- 1.2.2.30 **"holding lounge"** - any area at the airport terminal at or near each departure gate -

- 1.2.2.30.1 at locations in the restricted area and in sizes determined by ACSA;
- 1.2.2.30.2 which are made available by ACSA for the purposes of allowing passengers to await the departure of aircraft at the airport after such passengers have been searched and screened for security purposes;
- 1.2.2.31 **"IATA"** - the International Air Transport Association;
- 1.2.2.32 **"ICAO"** - the International Civil Aviation Organisation;
- 1.2.2.33 **"in-bound baggage handling system"** - the baggage handling system provided by ACSA at the airport from time to time to move the baggage of passengers arriving at the airport in aircraft, from an area (determined by ACSA from time to time) adjacent to the airport's apron to the domestic or international (whichever is applicable) baggage claim facility;
- 1.2.2.34 **"information desk"** - the information desk provided and operated by ACSA at the airport -
 - 1.2.2.34.1 for the purposes of making information regarding domestic and international flights available to passengers; and
 - 1.2.2.34.2 at locations designated by ACSA from time to time;
- 1.2.2.35 **"injury"** - injury of a significant nature including, without any limitation, any sickness, mental or psychological injury and death;
- 1.2.2.36 **"international baggage claim facility"** - the facility at the airport at which passengers arriving at the airport on international flights may retrieve their baggage;
- 1.2.2.37 **"international flight"** - any flight by any aircraft starting -
 - 1.2.2.37.1 in the RSA and ending outside the RSA; or
 - 1.2.2.37.2 outside the RSA and ending in the RSA;
- 1.2.2.38 **"kerbside check-in counters"** - special check-in counters which ACSA may from time to time make available at the airport at locations designated by ACSA;
- 1.2.2.39 **"line maintenance"** - routine check, inspection and malfunction rectification performed during transit, turn-around or night stop at a place in the airport designated by ACSA from time to time;
- 1.2.2.40 **"maximum design take-off weight"** - means the maximum permissible weight for take-off as shown in the flight manual or other document associated with the certificate of air worthiness of the aircraft;
- 1.2.2.41 **"operator"** - shall mean a legal entity engaged, inter alia, in the business of scheduled or non-scheduled commercial transportation by air of persons, baggage, mail, parcels or cargo;
- 1.2.2.42 **"out-bound baggage handling system"** - the baggage handling system provided by ACSA at the airport from time to time to move the baggage of passengers leaving the airport in aircraft, from the common use check-in counters (including the kerbside check-in counters, if any) or the exclusive use check-in counters, to an area adjacent to the airport's apron (determined by ACSA) for loading onto aircraft;

- 1.2.2.43 **"parking areas"** - the landside parking bays, areas and garages operated by ACSA or a third party appointed by ACSA from time to time at the airport;
- 1.2.2.44 **"parties"** - collectively, ACSA and the operator;
- 1.2.2.45 **"passenger"** - any person transported or to be transported by any aircraft with the exception of the flight crew and cabin staff operating the relevant aircraft;
- 1.2.2.46 **"passenger handling services"** - any boarding and check-in services provided at the airport to passengers departing on aircraft including, without any limitation, the issue of boarding passes to passengers and referring passengers to the holding lounges and departure gates at the airport;
- 1.2.2.47 **"porter services"** - the porter services made available by ACSA at the airport to assist passengers with the conveyance of their baggage at the airport;
- 1.2.2.48 **"public address and paging system"** - the audible communication system provided by ACSA at the airport and capable of disseminating voice messages throughout the public areas of the terminal building at the airport;
- 1.2.2.49 **"ramp handling services"** - any services relating to the handling of baggage, mail and cargo, security in relation thereto, the maintenance and cleaning of aircraft at the airport (including line maintenance), fuelling, provisioning and the like;
- 1.2.2.50 **"restricted area"** - areas at the airport determined by ACSA in its sole discretion from time to time and to which access may be restricted by ACSA including, without any limitation, the holding lounges, domestic baggage claim facility, international baggage claim facility and airside area;
- 1.2.2.51 **"RSA"** - the Republic of South Africa;
- 1.2.2.52 **"SACAA"** - the South African Civil Aviation Authority or its successor-in-title;
- 1.2.2.53 **"safety enforcement system"** - the safety enforcement system, as amended by ACSA from time to time in consultation with the operator, and referred to in 23;
- 1.2.2.54 **"SITA"** - the Société Internationale de Télécommunications Aéronautiques;
- 1.2.2.55 **"signature date"** - the date of signature of this agreement by the last signing of the parties;
- 1.2.2.56 **"transfer passenger"** - any passenger who arrives at the airport on an international flight on one aircraft and, without having left the restricted area, leaves the airport on an international flight in another aircraft;
- 1.2.2.57 **"transit passenger"** - any passenger who arrives at the airport on an international flight on one aircraft and, without having left the restricted area, leaves the airport on an international flight in the same aircraft;
- 1.2.2.58 **"utilities"** - collectively, electricity, water, sewerage facilities, airconditioning and ventilation in the common use areas;
- 1.2.2.59 **"VAT"** - Value Added Tax levied in terms of the Value Added Tax Act, No 89 of 1991, as amended or substituted;
- 1.2.3 the terms "holding" and "subsidiary" company shall bear the meanings assigned to them in the Companies Act 1973, as amended or substituted;

- 1.3 if any provision in a definition is a substantive provision conferring rights or imposing obligations on any party, effect shall, notwithstanding that it is only in a definition, be given to such provision as if it were a substantive provision in the body of this agreement;
- 1.4 any term defined in the body of this agreement as opposed to in 1.2 shall have the meaning assigned to it in such definition throughout this agreement;
- 1.5 when any number of days is determined in this agreement, such number shall be calculated exclusively of the first and inclusively of the last day unless the last day falls on a day which is not a business day, in which case the last day shall be the next succeeding day which is a business day;
- 1.6 any reference to any statute, regulation or other legislation shall be construed as a reference to that statute, regulation or legislation as at the signature date and as amended or substituted from time to time;
- 1.7 technical and other terms not otherwise defined in this agreement, shall have the meaning normally ascribed thereto in the airport and/or airline industries.

2 **Recital**

- 2.1 It is recorded that –
 - 2.1.1 ACSA is a public company established under the Airports Company Act 44 of 1993;
 - 2.1.2 ACSA currently -
 - 2.1.2.1 owns and/or operates three international and seven national airports in the RSA; and
 - 2.1.2.2 intends acquiring equity, management and/or other interests in other airports in and outside the RSA in the future;
 - 2.1.3 the operator currently conducts the business of an airline at the airport; and
 - 2.1.4 the activities of the operator at the airport and the use by the operator of the airport (including, without any limitation, the common use areas and common use facilities) is largely unregulated currently, save as may otherwise be provided for by specific existing written agreements and applicable aviation and other laws and regulations;
 - 2.1.5 the parties agree that it is desirable to record in writing:
 - 2.1.5.1 the terms and conditions in terms of which the operator will conduct its business and other activities at the airport; and
 - 2.1.5.2 the terms and conditions in terms of which ACSA will operate and manage the airport.

3 **Commencement and Duration**

This agreement shall commence on _____ and shall, subject to 37, continue indefinitely, provided that, should the operator cease to conduct business or operate aircraft at the airport for any reason whatever, the operator shall be entitled to terminate this agreement by giving ACSA at least thirty days prior written notice of termination.

4 **Grant of Rights**

- 4.1 ACSA grants to the operator, subject to the terms and conditions of this agreement, and subject to the relevant statutes, the right to -
 - 4.1.1 use the common use areas, the common use facilities and its exclusive use areas;

- 4.1.2 perform ramp handling and/or passenger handling services;
- 4.1.3 perform the services referred to in 7 and 8; and
- 4.1.4 land, take off, taxi and park its aircraft on the airport.

4.2 The operator shall not, without the prior written consent of ACSA, in any way conduct any business at the airport other than the business referred to in 2.1.3.

5 **Specific Use of the Common Use and Exclusive Use Areas**

5.1 The common use and exclusive use areas and the common use facilities shall be used by the operator subject to the terms and conditions of this agreement and only for the purposes of conducting the business referred to in 2.1.3.

5.2 The operator shall not conduct its business and/or other activities at the airport in any manner which unlawfully interferes with and/or materially and unreasonably adversely affects the -

5.2.1 use of the airport by passengers and the general public; and/or

5.2.2 business and/or activities at the airport of -

5.2.2.1 other operators of aircraft and/or users of the airport; and/or

5.2.2.2 ACSA, and/or any of their respective agents, subcontractors and contractors.

6 **Ramp Handling and Passenger Handling Services**

6.1 The operator shall, subject to the terms and conditions of this agreement, be entitled to provide ramp handling and passenger handling services to its aircraft at the airport by either -

6.1.1 appointing a third party (including another operator) to provide the ramp handling and/or passenger handling services; provided that such third party shall -

6.1.1.1 be licensed to provide such services in terms of the applicable legislation; and

6.1.1.2 conclude a written unconditional agreement with ACSA (on terms and conditions reasonably acceptable to ACSA) granting such third party the right to provide any such services at the airport; provided that it shall not be reasonable for ACSA to demand a right to trade fee from such third party and provided further that should such agreement expire or be terminated at any time for any reason whatever, the operator shall as soon as reasonably possible terminate its appointment of such third party.

6.2 The operator shall, upon request -

6.2.1 notify ACSA in writing within thirty days of the request, of the manner in which and by whom ramp handling and passenger handling services will initially be provided to its aircraft at the airport, together with a schedule of all ramp handling and passenger handling services performed by third parties in terms of 6.1.1; and

6.2.2 advise ACSA of any change within thirty days of matters referred to in 6.2.1.

6.3 In performing ramp handling and/or passenger handling services, the operator shall, comply with all applicable -

6.3.1 policies, directives, regulations and procedures which may be determined by ACSA from time to time in accordance with ICAO, IATA and/or SACAA standards; and

6.3.2 laws, legislation and regulations, as amended or substituted from time to time.

- 6.4 The operator agrees that -
- 6.4.1 cabin and cockpit cleaning, emergency and line maintenance, refuelling, provisioning, aircraft safety inspections, security inspections, the loading and offloading of baggage, cargo, mail and passengers in respect of the operator's aircraft and all other activities associated with aircraft turn-around, shall be performed at the aircraft parking location designated by ACSA in respect of such aircraft in terms of 20; and
 - 6.4.2 the maintenance and exterior cleaning of aircraft (other than emergency and line maintenance) and any other technical and/or other service in respect of the operator's aircraft, shall not be performed at any aircraft parking location but shall be performed, at the operator's cost, at an aircraft maintenance hangar or other facility designated by ACSA from time to time.
- 6.5 Notwithstanding anything to the contrary in this agreement, ACSA shall be entitled, on reasonable grounds, to regulate and restrict the provision of any ramp handling and/or passenger handling services in order to -
- 6.5.1 promote safety and security at the airport;
 - 6.5.2 discourage and minimise congestion of, and improve efficiency at, the airport apron (including, without any limitation, by vehicles, equipment and personnel); and
 - 6.5.3 address any emergency conditions at the airport, including, without any limitation, by requiring the operator to move its aircraft from any gate or remote hard stand location within a time that is reasonable in the circumstances, failing which ACSA shall be entitled to tow the operator's aircraft from such gate or remote hard stand at the operator's cost, provided only that the party so towing the operator's aircraft shall -
 - 6.5.3.1 be licensed to do so by ACSA;
 - 6.5.3.2 have the requisite expertise and training; and
 - 6.5.3.3 be fully insured against any loss or damage that may be caused to the operator and/or its aircraft during the towing process.

7 **Airside and Other Services**

The operator shall, subject to the terms and conditions of this agreement, be entitled to -

- 7.1 supply goods (including but not limited to, aviation fuel) and/or other services (other than ramp handling or passenger handling services including, but not limited to, security services) to its aircraft at the airport subject to such terms and conditions as ACSA may determine from time to time; and
- 7.2 appoint any third party to provide any of the goods and/or services referred to in 7.1; provided that the provisions of 6.1.1.1, 6.2 and 6.3 shall apply mutatis mutandis.

8 **In-Flight Catering Services**

8.1 The operator shall be entitled, subject to the terms and conditions of this agreement and the remaining provisions of this 8, to -

- 8.1.1 prepare (where appropriate and whether at an exclusive use area at the airport or not) and deliver to the operator's aircraft at the airport -
 - 8.1.1.1 previously prepared food, snacks, beverages, any other consumables and ancillary catering supplies for use or consumption by passengers and crew aboard such aircraft only; and/or
 - 8.1.1.2 duty-free goods for sale only on the operator's international flights; and/or

- 8.1.2 appoint any third party to provide services in respect of such preparation and/or delivery on the same terms and conditions *mutatis mutandis* as 7.2.
- 8.2 The operator shall comply with all applicable health and other laws, legislation and regulations directly or indirectly relating to -
 - 8.2.1 the preparation and/or delivery of all previously prepared food, snacks, beverages, any other consumables and/or ancillary catering supplies; and/or
 - 8.2.2 duty free goods, their sale and/or purchase on aircraft.

9 **The Common Use Facilities and Common Use Areas**

- 9.1 Notwithstanding anything to the contrary in this agreement, the operator, its employees, agents, representatives, subcontractors and airside service providers shall only be entitled to use the common use facilities and common use areas -
 - 9.1.1 on a non exclusive basis;
 - 9.1.2 jointly, together with other operators of aircraft at the airport and other users of the airport (including, without any limitation, passengers);
 - 9.1.3 at such locations and times, in such manner and for such time periods as ACSA may determine from time to time; and
 - 9.1.4 subject to the terms and conditions of this agreement.
- 9.2 ACSA will ensure that the common use facilities and common use areas will be -
 - 9.2.1 regularly and properly maintained; and
 - 9.2.2 upgraded from time to time in accordance with international best standards and practice.

10 **In-Bound and Out-Bound Baggage Handling System**

- 10.1 The operator shall, subject to 9, 10.2, 10.4 and 10.5, be obliged to use the in-bound and out-bound baggage handling systems for the purposes (only) of moving the in gauge baggage of its passengers; provided that ACSA shall not be responsible for or obliged to in any manner whatever -
 - 10.1.1 deliver any baggage to the operator's aircraft;
 - 10.1.2 retrieve any baggage from the operator's aircraft;
 - 10.1.3 place any baggage onto the in-bound baggage handling system;
 - 10.1.4 deliver any baggage to any baggage claim facility;
 - 10.1.5 place any baggage onto the out-bound baggage handling system;
 - 10.1.6 deliver any baggage from the out-bound baggage handling system to the operator, any third party appointed in terms of 6.1.1 and/or any of their respective employees, representatives, agents and/or subcontractors; and
 - 10.1.7 provide any other handling or other service of any nature whatever in relation to any baggage and/or the in-bound and/or out-bound baggage handling systems.
- 10.2 The operator shall, when using the in-bound and/or out-bound baggage handling systems -
 - 10.2.1 staff the relevant baggage handling system with sufficient, properly trained employees and shall ensure that all such employees shall wear a uniform in compliance with ACSA's aviation safety requirements for the time being; and

- 10.2.2 perform the services referred to in 10.1.1 to 10.1.7 inclusive and use the baggage handling systems (and any portion, section and/or subsystem thereof which may be assigned by ACSA to the operator from time to time) in accordance with the terms and conditions of this agreement.
- 10.3 ACSA will ensure that the inbound and outbound baggage handling systems will be -
 - 10.3.1 regularly and properly maintained in accordance with manufacturer's specifications; and
 - 10.3.2 upgraded from time to time in accordance with international best standards and practice.
- 10.4 Only baggage which is not in gauge or which is fragile may be processed utilising the infrastructure provided for moving out of gauge and/or fragile baggage;
- 10.5 The operator may, in exceptional circumstances, where baggage has been checked in at the last minute, be permitted to utilise the infrastructure referred to in 10.4, subject to procedures agreed to with ACSA from time to time.

10.A Common Hold Baggage Screening, Baggage Reconciliation and Cute Systems

- 10.A.1 The operator shall, subject to 9, be obliged to use the common hold baggage screening system, the baggage reconciliation system and the CUTE system in respect of any category of passengers required for the time being, for the purposes of checking and screening (collectively "screening") all baggage departing on all flights by the operator's aircraft, which screening shall be performed in accordance with all applicable laws, legislation, regulations and SACAA standards.
- 10.A.2 The operator shall ensure that it undertakes screening of all hold baggage on international flights departing from the airport in accordance with ICAO standards and recommended practises.
- 10.A.3 The operator shall utilise the baggage reconciliation system as provided by ACS for the purposes of reconciling baggage and may only revert to manual systems of baggage reconciliation if the baggage reconciliation system is unserviceable.
- 10.A.4 The operator shall utilise the CUTE system provided by ACS at the airport (if installed at the airport), including the mandatory use of boarding gate readers.
- 10.A.5 Notwithstanding anything to the contrary in this agreement, ACSA shall not be responsible for or obliged to provide any services in respect of the screening provided that it shall be responsible for providing the infrastructure for the common hold baggage screening system, the baggage reconciliation system and the CUTE system in the event of the Civil Aviation Authority or similar authority requiring that such systems be operative at the airport concerned.
- 10.A.6 The operator shall enter into an agreement with ACS for the purposes of conducting 100% screening of hold baggage on all flights departing from the airport (if designated) as well as to contract for a baggage reconciliation system and the use of CUTE at the airport (if designated) to ensure that no piece of baggage is loaded on board an aircraft unless the passenger to whom it belongs has also boarded the aircraft, as stipulated in ICAO annexure 17-4.3.1.
- 10.A.7 The operator shall, to the extent that same may be reasonably possible, ensure that its equipment and systems are compatible with, and capable of interfacing with, the equipment provided by ACS for the provision of the services contemplated herein.

11 Cargo

The operator shall, subject to 9, be entitled to use the common use areas and common use facilities for the purposes of carrying cargo on its aircraft (and for purposes necessarily ancillary thereto); provided that -

- 11.1 the operator shall only use the areas and facilities for processing cargo at the airport which are designated by ACSA for this purpose from time to time; and
- 11.2 cargo shall be screened and checked for safety and security purposes by the operator in accordance with applicable laws, regulations and SACAA standards and requirements for the time being.

12 **General Security**

The operator shall be entitled, at its cost, to implement security measures in order to protect its aircraft, vehicles, equipment, exclusive use areas (if any) and any baggage in the airside area which is being loaded onto or offloaded from its aircraft at the airport, by means of its own employees or a third party appointed by the operator in terms of 6.1.1 *mutatis mutandis* to provide commercial aviation security services at the airport; provided that -

- 12.1 ACSA is given at least fourteen days prior written notice of the operator's intention to implement such security measures and of any change thereto and cessation thereof;
- 12.2 such security measures are implemented in a manner reasonably acceptable to ACSA and not in conflict with any -
 - 12.2.1 SACAA and/or IATA regulations or requirements for the time being; and/or
 - 12.2.2 applicable law or regulation, as amended or substituted from time to time; and
- 12.3 the operator shall -
 - 12.3.1 notify ACSA in writing together with the notice referred to in 12.1, of the manner in which and by whom such security measures will initially be implemented and furnish a schedule of all such security measures; and
 - 12.3.2 not change any matter referred to in 12.3.1 without ACSA's prior written consent, which consent shall not be unreasonably withheld.

13 **Baggage Enquiries Counter and Storage Facility**

- 13.1 The operator shall, subject to 21, be entitled to request in writing that ACSA leases to the operator at reasonable rates and on an exclusive basis an area of the airport designated by ACSA for the purposes of operating a baggage counter and baggage storage facility.
- 13.2 The baggage storage facility shall only be used for the storage by the operator of lost, damaged or replacement baggage carried on the operator's aircraft and any other goods, article or thing left on any operator's aircraft by any person.
- 13.3 The operator shall ensure that the baggage counter and the baggage storage facility is effectively and efficiently managed and operated to ACSA's reasonable satisfaction.
- 13.4 The operator shall be solely liable for any loss, mishandling, damage and/or theft in respect of any baggage, good, article or thing while at the baggage counter and/or in the baggage storage facility, save as may have been caused by the negligence or wilful default of ACSA.

14 **International And Domestic Baggage Claim Facilities**

The operator shall, subject to 9, be entitled to use the international baggage claim facility and/or the domestic baggage claim facility for the purposes of allowing the operator's passengers arriving at the airport on its international and domestic flights, to retrieve their baggage; provided that the operator shall be solely liable for any loss, mishandling, damage and/or theft in respect of any such baggage arising out of the operation of

such facility by the operator or its ramp handling service provider, save as may have been occasioned by the negligence or wilful default of ACSA.

15 **Flight Information Display Systems (FIDS) and Baggage Information Display Systems (BIDS)**

- 15.1 The operator shall be obliged to have -
 - 15.1.1 information in respect of the arrival and departure of its international and domestic flights displayed on the FIDS; and
 - 15.1.2 details of the baggage carousel location for each of its domestic and international flights displayed on the BIDS.
- 15.2 The operator shall, subject to 15.3, provide ACSA with written details of all its domestic and international flights to and from the airport (including schedules of all such flights, which schedules shall be in a SITA format or such other format as ACSA may reasonably require) from time to time –
 - 15.2.1 ninety days in advance in respect of each international flight; and
 - 15.2.2 thirty days in advance in respect of each domestic flight.
- 15.3 The operator shall provide ACSA with written details of any deviations from the schedules provided in terms of 15.2 within a reasonable period of time after the operator becomes aware of such deviation.
- 15.4 The operator shall, before 23h59 on each day in respect of each of the operators' aircraft as which have arrived at or departed from the airport during the course of the day, give ACSA's operations centre at the airport confirmation (by means of load message) of –
 - 15.4.1 the aircraft's registration number;
 - 15.4.2 whether any dangerous or hazardous goods, products or materials were on board the aircraft;
 - 15.4.3 the confirmed time of departure of the aircraft;
 - 15.4.4 the confirmed time of arrival of the aircraft;
 - 15.4.5 the type of aircraft;
 - 15.4.6 the number of -
 - 15.4.6.1 passengers;
 - 15.4.6.2 crew members;
 - 15.4.6.3 transit passengers;
 - 15.4.6.4 persons under the age of two years;
 - 15.4.6.5 transfer passengers; on board the aircraft; and
 - 15.4.7 the weight (in kilograms) of mail and cargo on board the aircraft.
- 15.5 Where the facility to do so exists (such as, for example, by the installation of the necessary facilities on the CUTE system), the information referred to in 15.4 may be provided to ACSA's operations centre electronically, in real time.
- 15.6 The operator acknowledges and agrees that ACSA shall be obliged to -
 - 15.6.1 display airline flight information on the FIDS and the BIDS with regard to the departures and arrivals of any aircraft at the airport (including the operator's aircraft);

- 15.6.2 update airline flight information on the FIDS and the BIDS with regard to the departures and arrivals of any aircraft at the airport (including the operator's aircraft);
- 15.6.3 display the FIDS and the BIDS (and the information displayed thereon) at suitable locations (whether on or outside the airport) and in such manner as may be determined by ACSA in consultation with the operator; and
- 15.6.4 use the FIDS and/or BIDS for the purpose of displaying advertisements by third parties in such manner and on such terms and conditions as may be agreed to by ACSA from time to time in consultation with the operator.

16 **Airport's Lost and Found Counter**

The operator shall, subject to 9, be entitled to use and have access to the airport's lost and found counter. The operator acknowledges and agrees that -

- 16.1 the airport's lost and found counter will be provided by ACSA only for the temporary storage of goods, articles and other things -
 - 16.1.1 found at the airport (other than on aircraft); and
 - 16.1.2 lost or appearing to be lost by any person;

17 **Public Address and Paging System**

The operator shall, subject to 9, be entitled to -

- 17.1 have access to the public address and paging system for the purposes of making announcements relating to its international and/or domestic flights in the public areas of the airport; provided that such announcements shall be made by ACSA;
- 17.2 use the public address and paging system; provided that such system shall only be used by the operator -
 - 17.2.1 in the holding lounge at the relevant departure gate for its aircraft or at such other location as may be made available by ACSA from time to time; and
 - 17.2.2 for the purposes of announcing the boarding of the operator's aircraft, the paging of the operator's departing passengers, delays in the departure of the operator's aircraft and service disruptions; provided that such access and use shall conform to generally accepted international standards.
- 17.3 Notwithstanding anything to the contrary contained in this clause, the parties acknowledge the international trend towards "silent airports" and agree to co-operate with each other in working towards implementing such a policy at the airport.

18 **Holding Lounges**

- 18.1 The operator shall, subject to 9, be entitled to use and have access to the -
 - 18.1.1 relevant holding lounge for the purposes of arranging the boarding of its passengers onto its domestic and international flights; and
 - 18.1.2 departure gates (including desk space, one telephone, one telephone line connected to ACSA's internal telephone network at the airport and any computer terminals and other equipment which may be provided by ACSA (and/or any third party acceptable to ACSA) at the departure gate) from time to time assigned to the operator in terms of 18.2; provided that the operator shall only be entitled to use the departure gate during the

period allotted to the operator by ACSA and only for the purposes of the operator's relevant domestic or international flight (as the case may be).

- 18.2 The operator acknowledges and agrees that ACSA may, having regard to all relevant circumstances including aircraft parking stand location, reasonably assign any departure gate in the relevant holding lounge to the operator for the purposes of the operator's domestic or international flights.

19 **Common Use Check-In Counters, Terminals, Systems and Kerbside Check-in Facilities and Systems**

The operator shall, subject to 9, be entitled to use and have access to the kerbside check-in counters (if any), common use check-in counters and the computer terminals and software giving access to ACSA's systems and which may be provided at such counters by ACSA and/or any third party acceptable to ACSA; provided that -

- 19.1 the operator shall only use the common use and kerbside check-in counter/s and computer terminal/s assigned to the operator by ACSA, provided that the operator acknowledges and agrees that ACSA shall be entitled, in accordance with commercial and efficiency criteria, to -
- 19.1.1 review the number and type of common use and/or kerbside check-in counters and/or computer terminals assigned to the operator on a daily basis having regard, without any limitation, to the actual and/or anticipated usage of such counters and/or computer terminals;
 - 19.1.2 reassign any such counters and/or computer terminals to other operators of aircraft at the airport from time to time; and
 - 19.1.3 modify the number and location of any such counters assigned to the operator for the time being;
- 19.2 the operator acknowledges and agrees that each common use check-in counter assigned to it in terms of 19.1 will be equipped with -
- 19.2.1 one telephone and one telephone line connected to ACSA's internal telephone network at the airport; and
 - 19.2.2 one computer terminal and software connected to ACSA's systems and to the operator's systems;
- 19.3 the operator shall operate and use such computer terminals and ACSA's systems in accordance with the terms and conditions of this agreement. The operator acknowledges and agrees that -
- 19.3.1 ACSA shall be entitled to monitor the operator's use and operation of such counters, computer terminals and ACSA's systems from time to time provided that ACSA shall not be permitted to monitor, or have access to, the operator's systems or confidential information;
- 19.4 the operator shall ensure that after the operator has completed its operations at each counter assigned to it in terms of 19.1 -
- 19.4.1 such counter is left in a clean and tidy state;
 - 19.4.2 all litter, documents, paper, boarding passes and baggage tags and any other property of the operator, its employees, representatives, agents, subcontractors and/or contractors is removed from such counter and immediate adjacent areas; and
 - 19.4.3 each computer terminal assigned to it in terms of 19.1 is, unless otherwise agreed between the parties in writing, switched off immediately after the operator ceases using it, failing which, ACSA shall be entitled, at the operator's cost and without prejudice to any

of its rights under this agreement or at law, to clean and tidy the counters and immediate adjacent areas, remove the matters referred to in 19.4.2 and switch off such computer terminals. Such cost shall be payable to ACSA on demand;

- 19.5 while the operator uses the counters assigned to it in terms of 19.1, the operator shall maintain a minimum utilisation factor, as determined by IATA guidelines from time to time, per counter during peak departure periods at the airport for the time being. Should the operator regularly or persistently fail to maintain a minimum utilisation factor as aforesaid, ACSA shall be entitled, after having brought these failures to the attention of the operator and having provided the operator with an opportunity to rectify such failures, without prejudice to any of its rights under this agreement or at law, to reallocate the relevant counters to other operators of aircraft at the airport and the operator shall be bound by any such reallocation.

20 Aircraft Parking

The operator shall be entitled, subject to 9, to park its aircraft at the airport; provided that -

- 20.1 the operator's aircraft shall only be parked in an area designated by ACSA from time to time (but having regard, *inter alia*, to the operator's daily schedule of its domestic and international flights), including, without any limitation, an area which is not a formally demarcated parking stand. The operator acknowledges and agrees that ACSA shall not be obliged to warrant or ensure that -
- 20.1.1 every request by the operator for any specific parking locations shall be granted by ACSA; and/or
- 20.1.2 the same parking location will be allocated by ACSA to the operator;
- 20.2 the operator shall ensure that -
- 20.2.1 sufficient ground handling equipment and sufficient suitably qualified personnel are available at all times to ensure that the operator's aircraft may be moved at any time if ACSA so requests;
- 20.2.2 the equipment and personnel referred to in 20.2.1 are at all times in possession of valid airside and driving permits issued by ACSA;
- 20.2.3 the operator's aircraft shall be moved, at any time after the disembarkation of its passengers and if ACSA so requests, from its initial parking location to any other parking location determined by ACSA for one of the following reasons: where the operator's aircraft parks in the initial parking location beyond its permitted time allocation or for the purposes of maintaining the safety, security and efficient and effective operation of the airport;
- 20.2.4 the operator's aircraft is parked in the parking location designated by ACSA in terms of 20.1 for the specific period of time designated by ACSA;
- 20.2.5 the parking stand and air bridge used in respect of the operator's aircraft, shall, after such use, be left in a condition that in no way restricts the effective operation, safety, security, arrival and departure of any other aircraft and/or passengers and/or the business and/or activities of other operators of aircraft or users of the airport; and
- 20.2.6 any air bridge used in respect of the operator's aircraft, shall, save in exceptional circumstances, not be used for a period exceeding that referred to in ACSA's use and tariff policies as negotiated and published by ACSA from time to time.
- 20.3 Should the operator's aircraft not be moved from any parking location at the airport within a reasonable time after ACSA has requested such move in accordance with the provisions of this agreement, ACSA shall be entitled to tow the aircraft, at the operator's cost (payable to ACSA on

demand), to another parking location at the airport provided only that the party so towing the operator's aircraft shall –

- 20.3.1 be licensed to do so by ACSA;
- 20.3.2 have the requisite expertise and training; and
- 20.3.3 be fully insured against all or any loss or damage that may be caused to the operator and/or its aircraft during the towing process.

21 **Exclusive Use Areas**

The operator shall be entitled to request in writing that ACSA leases to the operator on an exclusive basis, certain areas ("premises") at the airport designated by ACSA from time to time. As soon as reasonably possible after receipt by ACSA of such request, the parties shall enter into negotiations in good faith with regard to the conclusion of an appropriate written lease agreement; provided that, unless otherwise agreed to between the parties in such agreement -

- 21.1 the premises shall be accepted by the operator in a "voetstoots" condition and ACSA shall not be obliged to make any alteration, addition and/or improvement of any nature whatever to the premises;
- 21.2 the operator shall be solely responsible for effecting any repairs, maintenance, alterations and/or improvements to the premises, which repairs, maintenance, alterations and/or improvements shall, subject to the prior grant of all approvals, permits, consents and the like by any local and/or other governmental authority (where appropriate in the circumstances), be effected -
 - 21.2.1 at the operator's cost;
 - 21.2.2 subject to the prior written approval of ACSA, which shall not be unreasonably withheld; and
 - 21.2.3 by a third party appointed by the operator with the prior written consent of ACSA, which shall not be unreasonably withheld;
- 21.3 all permanent improvements (including, without any limitation, all fixtures and fittings of any nature whatever) effected by the operator to the premises shall become ACSA's sole property upon termination or expiry of such agreement and ACSA shall not be obliged to compensate the operator in respect thereof in any manner whatever;
- 21.4 should the operator wish to operate an exclusive counter for the purposes of selling air tickets and for purposes ancillary thereto, the operator acknowledges and agrees that, in addition to the provisions of this 21 -
 - 21.4.1 such counter shall only be used by the operator for the purpose of selling tickets for air travel and for purposes necessarily ancillary thereto;
 - 21.4.2 it shall require ACSA's prior written consent, which shall not be unreasonably withheld, for the design and construction of such counter and for all notices, signage and displays at the counter from time to time; and
 - 21.4.3 the operator shall, unless otherwise agreed between the parties in writing, bear and pay all costs of the design and construction of such counter.
- 21.5 ACSA shall be entitled to have access to the premises, at all reasonable times and on reasonable notice to the operator, for any reason whatever, including, without any limitation, for the purposes of inspections, security, safety, health and welfare and for the purposes of viewing the premises with prospective tenants and/or purchasers and in the event of emergencies and/or in terms of any order by any court or governmental and/or other competent authority.

22 **Emergency Management System**

- 22.1 Each of ACSA and the operator shall acquaint itself with, and take full cognisance of, the EMS guide. The operator acknowledges receipt of the airline accident management guide and acknowledges that the procedures set out therein will be communicated to all its responsible staff. The operator hereby acknowledges that it is familiar with the following provisions of the EMS:
- 22.1.1 alarm notification procedures for the assessment of, and co-ordinated response to, an aircraft accident;
 - 22.1.2 check lists to assist management members required to direct disaster response activities on behalf of the operator;
 - 22.1.3 check lists and organisational aids required during disaster response; and
 - 22.1.4 check lists based on the regulatory requirements applicable to the airport;
- 22.2 The operator acknowledges that the EMS guide does not contain aircraft accident prevention or investigation procedures but is designed to provide for the key elements and vital actions that it is suggested be undertaken during an emergency or as recommended by the ACSA accident response plan referred to in the EMS guide.
- 22.3 The operator acknowledges that the response plan establishes recommended actions and guidelines but it does not attempt to include all emergency response procedures that may be required in a given situation.
- 22.4 The operator acknowledges that the EMS guide is intended to guide the operator in preparing for an appropriate response to any major incident or accident at the airport and should be used as a guide rather than as a detailed set of instructions.

23 **Safety Enforcement System**

- 23.1 The operator hereby agrees that in the interests of safety and security on the airside area it is necessary for ACSA to administer and implement the safety enforcement system which will, of necessity, include sanctions in the form of warnings and monetary penalties and the suspension and/or withdrawal of airside permits to ensure compliance. The operator hereby acknowledges that the safety enforcement system will address, *inter alia*, the following:
- 23.1.1 the serviceability of vehicles and equipment;
 - 23.1.2 removal and impoundment of unsafe vehicles and equipment;
 - 23.1.3 induction training for airside employees (including those of the operator);
 - 23.1.4 driving in the airside area;
 - 23.1.5 incident / accident reporting; and
 - 23.1.6 compliance with legislation relating to safety on the airside area;
- 23.2 ACSA agrees that its personnel responsible for the administration and implementation of the safety enforcement system, as referred to in 23.1, will be suitably trained for the job at hand.

24 **Miscellaneous Obligations, Rights and Entitlements**

- 24.1 Notwithstanding anything to the contrary contained in this agreement, the rights granted to the operator under this agreement shall be subject to compliance by the operator with the terms and conditions of this agreement, including, without any limitation, ACSA's rights of access in terms of 21.5 and 34;

- 24.2 ACSA shall be entitled at any time, in the reasonable exercise of its discretion, to close the whole or any portion of any runway, taxiway, the airport apron, the airside area, terminal buildings, warehouses and/or any area of and/or improvement on the airport, for the purposes of implementing safety and/or security measures, effecting repairs, rehabilitation and/or maintenance and/or dealing with any accident, adverse weather conditions, emergency and/or any event of force majeure referred to in 35.4 at the airport; provided that ACSA shall give prior notice to the operator of such closure by means of a Notice to Airmen ("NOTAM") or such other means as ACSA may reasonably determine -
- 24.2.1 at least thirty days prior to such closure if caused by an event other than an accident or emergency; and
- 24.2.2 forthwith after such closure if caused by an accident or emergency.
- 24.2 The operator acknowledges and agrees that -
- 24.2.3 such closure may result in the temporary suspension, interruption and/or discontinuance of the use by the operator of the affected area of the airport and/or any or all of the common use areas and/or common use facilities;
- 24.2.4 such closure shall, notwithstanding anything to the contrary in this agreement, not constitute or result in a breach of this agreement by ACSA and shall not entitle the operator to any claim, set-off, abatement or other reduction or withholding of any amount payable to ACSA under this agreement; and
- 24.2.5 the operator shall reschedule the arrival and/or departure times of its domestic and/or international flights at the airport to enable ACSA to complete any action or measures taken by ACSA in terms of 24.2 to ACSA's reasonable satisfaction.
- 24.3 In the event of any accident involving any of the operator's aircraft at the airport, ACSA shall be obliged, in consultation with the operator, the owner of the aircraft and the insurers thereof, to initiate such operations as may be appropriate (in accordance with the requirements of Annex 14 to the Convention on International Civil Aviation, as amended or substituted and as contemplated by the disabled aircraft recovery policy referred to in the EMS guide) in order to make the airport operational and to return the airport to the position existing immediately before such accident as soon as reasonably possible. The operator shall fully co-operate with ACSA in the implementation of such operations and any costs reasonably incurred by ACSA arising out of or pursuant to such operations shall be paid to ACSA by the operator on demand.
- 24.4 The operator shall conduct business and/or other activities at the airport only during the operating times of the airport as determined by the then prevailing Aeronautical Information Publication (AIP) published by SACAA (or its successor publication), subject to any NOTAMs issued by ACSA from time to time; unless -
- 24.4.1 ACSA otherwise agrees in writing; and
- 24.4.2 the operator unconditionally and irrevocably agrees in writing to pay ACSA's standard after hour charges for the time being.
- 24.5 ACSA will use its best endeavours to ensure that the common use areas and common use facilities be maintained and upgraded to international standards from time to time. Subject to the foregoing, the operator accepts that ACSA is not obliged to make any particular alteration, variation, amendment, modification, improvement or enhancement to any of the common use areas and common use facilities.
- 24.6 Any signage, notices, advertisements, displays and/or the like by and/or on behalf of the operator at the airport (whether for the benefit of the operator or any third party) shall require ACSA's prior written consent, and ACSA shall be entitled to direct the location, specification, dimension, quality

and period of display thereof ; provided that should ACSA grant such consent, the operator shall remove the foregoing, at its cost and to ACSA's satisfaction on termination or expiry of this agreement for any reason whatever;

- 24.7 ACSA shall not unreasonably grant or refuse to grant any rights at the airport to any airside service provider or other third party in respect of
- 24.7.1 the provision and/or performance at the airport of any -
 - 24.7.1.1 ramp handling and/or passenger handling services;
 - 24.7.1.2 services in respect of food, duty-free goods, beverage, retail or other goods; and/or
 - 24.7.1.3 services of any nature whatever; and/or
 - 24.7.2 any business and/or other activity at the airport;
- 24.8 ACSA shall use its best endeavours to monitor the extent of the common use areas at the airport by means of CCTV and/or other cameras for the purposes of ensuring the safety, security and effective and efficient operation of the airport, in such manner and at such times and locations as ACSA may determine. The operator acknowledges and agrees that ACSA gives no undertaking and/or warranty of any nature whatever with regard to such monitoring, including, without any limitation, that such area/s will be monitored at all times or that any specific area or occurrence will be monitored and/or that all or any of such cameras will be operational and/or in good working order and condition at all times save that it will use its best endeavours to do so and save that it will maintain and service the applicable equipment.
- 24.9 ACSA does not warrant that the operator will be granted any licence or consent to carry on any business and/or activities or that any such licence or consent will be renewed and/or reissued.
- 24.10 Licences and trade marks -
- 24.10.1 ACSA shall be entitled (and is hereby granted a non-transferrable, non-exclusive licence for the period of this agreement) to display, in unmodified form, the operator's trade marks and/or logos on the FIDS and BIDS (or any replacement thereof) and at such other locations at the airport as ACSA may determine. The time, manner and location of such display shall be determined by ACSA and no consideration of any nature whatever shall be payable by ACSA to the operator in respect of such display.
 - 24.10.2 ACSA warrants that it shall not use the operator's trade marks and/or logos otherwise than in accordance with the provisions of 24.10.
- 24.101 The operator shall not, save in respect of its exclusive use areas, be entitled to install and/or use any flight information display system and/or baggage information display system at the airport (other than the BIDS and FIDS).
- 24.11.1 the operator shall not be entitled to license, install, use and/or exploit any technology, equipment and/or machinery at the airport which is not ordinarily and/or reasonably associated with the conduct of the business referred to in 2.1.3, without the prior written consent of ACSA.
- 24.112 ACSA shall be entitled at its cost to vary, modify, enhance and/or improve any of the computer hardware, software, ACSA's systems, technology, equipment and/or the like for the time being used or made available in respect of any of the common use areas, the common use facilities and/or the airport generally, on seven days written notice to the operator provided only that should such variation, modification, enhancement or improvement lead to increased costs on the part of the operator ACSA shall be obliged to first consult with the operator in relation thereto. The operator

shall fully co-operate with ACSA with regard to any such variation, modification, enhancement and/or improvement.

24.13 ACSA shall be entitled to -

24.13.1 adjust, subject to 24.13.2 and 19, the assignment to the operator by ACSA for the time being of any part of the common use areas and/or common use facilities on thirty days written notice having regard to the changing needs of the operator and/or other users of the airport and/or for the purposes of the effective and efficient operation of the airport; and

24.13.2 reassign, subject to 19, any of the common use areas and/or common use facilities between the operator and other users of the airport by giving not less than thirty days written notice to the operator; provided that no such notice shall be required should such reassignment be required by ACSA in the event of the occurrence of any extraordinary circumstances concerning the safety or security of the airport.

25 **Consideration**

25.1 In consideration for the rights granted under this agreement, the operator shall pay to ACSA -

25.1.1 the landing, parking and passenger service charges levied by ACSA for the time being in terms of Section 5 of the Airports Company Act 1993 in respect of the operator's aircraft and passengers at the airport;

25.1.2 ACSA's agreed charges for the time being in terms of a separate written agreement (if any) between the parties in respect of any supplies, services, warehousing and/or facilities provided by or on behalf of ACSA to the operator and/or in respect of the operator's aircraft.

25.2 The operator shall pay the amounts referred to in 25.1 within thirty days of the date of ACSA's monthly statement in respect thereof, free of exchange and without any set-off, withholding or deduction of any nature whatever.

25.3 The operator shall pay interest on any overdue amounts payable to ACSA under this agreement at the prime bank overdraft rate as charged, calculated and compounded monthly in arrears from time to time by Nedbank, a division of Nedcor Bank Limited, from the date on which payment of such amount was due until date of actual receipt thereof by ACSA, which interest shall be calculated and payable monthly in arrear.

25.4 The operator shall timeously deliver to ACSA, on intervals no more frequent than on a daily basis, and on ACSA's request, the following operational data –

25.4.1 the maximum design take-off weight of each of its aircraft which is at the airport at any relevant time;

25.4.2 any changes in the maximum design take-off weight of each of its aircraft which is at the airport at any relevant time;

25.4.3 information concerning the incidents of pilferage and mishandling of baggage and of cargo at the airport reported to the operator;

25.5 Should the operator fail to provide any or all of the information and/or details in terms of 25.4, ACSA shall be entitled to assess the charges ("assessed charges") payable by the operator in terms of 25.1 by reference to the maximum design take-off weight and the maximum passenger capacity of the type of aircraft in respect of which such information and/or details was not provided. The operator shall, notwithstanding anything to the contrary in this agreement, pay the full amount of the assessed charges to ACSA; provided that should the operator subsequently provide such

information and/or details, ACSA shall pay to the operator the difference (if any) between the assessed charges and the actual amount payable by the operator in terms of 25.1, together with interest thereon at the prescribed legal rate, which payment shall be made by ACSA within thirty days after receipt by ACSA of such information and/or details;

- 25.6 The operator shall on receipt of a written request from ACSA, permit ACSA and/or its duly authorised representatives (including without any limitation, its legal advisers and/or auditors) to inspect, at the operator's premises -
- 25.6.1 the aircraft load sheets in respect of any of the operator's aircraft to allow ACSA to verify all details with respect to the passengers carried on any or all of the operator's domestic and/or international flights during a specified period;
 - 25.6.2 the aircraft flight manuals to allow ACSA to verify the weight and noise characteristics of any of the operator's aircraft;
 - 25.6.3 such other documentation as ACSA may reasonably require in order to verify any of the amounts payable by the operator under this agreement; and shall allow ACSA and/or its duly authorised representatives to inspect the original copies of any such documentation on reasonable prior notice to the operator;
- 25.7 Should such inspection reveal a discrepancy of more than 5 % in a calendar year between the amounts paid to ACSA by the operator in terms of 25.1 and the amounts that should have been paid to ACSA in terms of 25.1, then the operator shall, without prejudice to ACSA's rights in terms of this agreement or at law, reimburse ACSA for any proven and reasonable costs that it may have expended in conducting such inspection (including, without limitation, any professional fees paid to its legal advisers and/or auditors);
- 25.8 All amounts payable in terms of this agreement are expressed to be exclusive of VAT at the current rate, which VAT shall be payable by the operator to ACSA against the issue of an appropriate tax invoice by ACSA.

26 Deposit

- 26.1 If ACSA has reason to believe that the operator, being an operator who did not previously conduct the business of an airline at the airport, will be unable to pay to ACSA, on a monthly basis, the charges referred to in 25.1.1 on due date then, should ACSA call upon the operator to furnish it with security in writing, the operator shall, as security for the fulfilment of its obligations under this agreement, within 45 (forty five) days of such request –
- 26.1.1 pay a deposit ("deposit") in an amount equal to three months consideration referred to in 25.1.1; or
 - 26.1.2 at its option, furnish to ACSA an irrevocable, unconditional bank guarantee or standby letter of credit ("guarantee") in an amount equivalent to the amount of the deposit as referred to above, in a form, on terms and conditions and from a financial institution or other party reasonably acceptable to ACSA;
- 26.2 If the operator, being an operator who previously conducted the business of an airline at the airport, persistently fails to pay the charges referred to in 25.1.1 on due date despite written reminders calling upon it to do so then, should ACSA call upon the operator to furnish it with security in writing, the operator shall, as security for the fulfilment of its obligations under this agreement, within 45 (forty five) days of such request –
- 26.2.1 pay a deposit ("deposit") in an amount equivalent to the number of months in respect of which it is persistently in arrears; or

- 26.2.2 at its option, furnish to ACSA an irrevocable, unconditional bank guarantee (“guarantee”) in an amount equivalent to the amount of the deposit as referred to above, in a form, on terms and conditions and from a financial institution or other party reasonably acceptable to ACSA;
- 26.3 Should the operator pay a deposit, ACSA shall pay the deposit into a separate interest bearing account with Nedbank, a division of Nedcor Bank Limited;
- 26.4 ACSA shall have the right to apply the whole or portion of the deposit (and any interest thereon) or require payment under the guarantee towards payment of any amount payable by the operator in terms of 25.1.1. If any portion of the deposit is so applied or if payment is so required under the guarantee, the operator shall forthwith reinstate the deposit to its original amount or furnish a further guarantee (as the case may be) in the amount so applied or paid;
- 26.5 The operator's deposit (and any interest thereon) or guarantee (as the case may be) shall be retained by ACSA for a period of no more than 3 months from the date of termination or expiry of this agreement, whereafter the deposit (and any interest thereon) or guarantee (as the case may be) shall, subject to 26.3 be paid or delivered to the operator. The operator shall not be entitled to set off any amount payable by it to ACSA in terms of this agreement, against the deposit or guarantee amount for any reason whatever.

27 Insurance

- 27.1 The operator shall -
 - 27.1.1 with a reputable insurance company and for the duration of this agreement, maintain such insurance in such sums, or to such extent and against such claims as may be specified from time to time by the regulations promulgated in terms of the Air Services Licensing Act 115 of 1990, the International Air Services Act 60 of 1993 or any other such applicable legislation;
 - 27.1.2 in addition to the insurance referred to in 27.1.1 with a reputable insurance company and for the duration of this agreement, maintain-
 - 27.1.2.1 motor third party liability insurance of at least US \$1 000 000,00 per event, in the event of the operator operating motor vehicles on the airside area;
 - 27.1.2.2 war risk liability insurance in such sum as may be stipulated or required by the Air Services Licensing Council or other relevant authorities.
- 27.2 If requested in writing by ACSA to do so, the operator shall procure that a certificate of insurance (reasonably acceptable to ACSA and/or ACSA's insurance brokers for the time being) in respect of every insurance referred to in 27.1 is delivered to ACSA as proof that such insurance has been effected;
 - 27.2.1 the operator shall be obliged to give ACSA written notice forthwith of the cancellation of any such policy for any reason whatsoever;
- 27.3 The operator shall not do, omit to do or permit anything to be done or omitted which renders void or voidable any insurance policy taken out in terms of 27.1.
- 27.4 If the operator should at any time be in breach of any of its obligations in terms of this 27, ACSA shall be entitled, without prejudice to any of its other rights under this agreement or at law, to rectify the breach at its own expense and to recover the direct costs of so doing (including any insurance premiums and policy stamp duty), together with interest in accordance with 25.3 from the operator on demand.
- 27.5 ACSA shall, with a reputable insurance company and for the duration of this agreement, maintain

- 27.5.1 such insurance in such sums, or to such extent and against such claims as may be specified from time to time by the regulations promulgated in terms of the Aviation Act 74 of 1962 or any other such applicable legislation;
- 27.5.2 motor third party liability insurance of at least US \$1 000 000,00 per event;
- 27.5.3 war risk liability insurance in such sum as may be stipulated or required by the Air Services Licensing Council or other relevant authorities;
- 27.6 if requested in writing by the operator to do so, ACSA shall procure that a certificate of insurance (reasonably acceptable to the operator and/or the operator's insurance brokers for the time being) in respect of every insurance referred to in 27.4.1 is delivered to the operator as proof that such insurance has been effected;
- 27.7 ACSA shall not do, omit to do or permit anything to be done or omitted which renders void or voidable any insurance policy taken out in terms of 27.5.1.

28 **Exclusion of Liability**

- 28.1 Neither the operator nor ACSA shall have any claim for direct loss or damage against the other and/or against any of the other parties' directors, employees or agents attributable to a negligent act or omission or negligent breach of this agreement on the part of the other party or any of its directors, employees or agents acting in the course and scope of their employment;
- 28.2 For the avoidance of doubt, the exclusion of liability and waiver referred to in paragraph 28.1 above does not operate or apply in respect of any claim of whatever nature caused by or attributable to the gross negligence, wilful misconduct or intentional breach on the part of any party or its directors, employees or agents acting in the course and scope of their employment, nor does it operate in regard to any indirect or consequential damages of whatever nature and howsoever caused.

29 **Obligations of the Operator**

29.1 **General obligations in regard to the airport**

The operator shall, and shall use its best endeavours to procure that each of its employees, agents, representatives, subcontractors and directors shall -

- 29.1.1 comply with any security (including, without any limitation, firearm control), health (including, without any limitation, in respect of life threatening diseases, illnesses or viruses such as Ebola), safety and emergency measures instituted and/or required by ACSA at the airport at any time in order to comply with any applicable laws and/or regulations, including without any limitation, the Occupational Health and Safety Act 85 of 1993, as amended, the Labour Relations Act, 1995, as amended, the National Key Points Act 102 of 1980, as amended, the Aviation Act 74 of 1962 as amended and the requirements or recommendations of SACAA, IATA and/or ICAO for the time being;
- 29.1.2 not contravene or permit a contravention of any laws or regulations relating to the ownership, possession, occupation or use of the airport or relating to the conduct of the operator's business and/or activities at the airport;
- 29.1.3 not commit or permit the commission of any nuisance in the airport;
- 29.1.4 at its cost and in the event of any spillage, seepage or leakage (other than in the normal and ordinary course of business) of aviation fuels and/or related products from the operator's aircraft at the airport, forthwith notify ACSA thereof and take all necessary action to limit the effect of such spillage. Such action shall be taken in accordance with all relevant international standards and specifications and within a specific reasonable

time frame to be advised to ACSA by the operator forthwith after the occurrence of such spillage;

- 29.1.5 ensure that the common use areas, common use facilities, exclusive use areas, airport apron and the airside area is not left in a dirty, untidy and unsanitary condition after use thereof by the operator, its employees representatives, agents, subcontractors and/or airside service providers;
- 29.1.6 not interfere with or alter any electrical or other installations at the airport without the prior written consent of ACSA.

29.2 **Obligations in Respect of Airport Regulations**

The operator shall -

- 29.2.1 within 30 days, if called upon by ACSA to do so, deliver to ACSA a true, complete and most recent copy of the operator's-
 - 29.2.1.1 air service or international air service license (as the case may be), issued in terms of the Air Services Licensing Act 115 of 1990, the International Air Services Act 60 of 1993 or other applicable legislation;
 - 29.2.1.2 foreign operator's permit (if applicable) issued in terms of the International Air Services Act 60 of 1993 or other applicable legislation; and
 - 29.2.1.3 emergency and security action plans, including, without any limitation, aircraft recovery and defuelling plans;
- 29.2.2 be responsible, at its cost, for the implementation of the plans referred to in 29.2.1.3 in the event of an emergency or other occurrence which triggers such implementation;
- 29.2.3 fully assist and cooperate with ACSA for the purposes of any biannual service standards survey -
 - 29.2.3.1 in respect of the quality and quantity of services provided by ACSA for the time being; and
 - 29.2.3.2 required pursuant to the Airports Company Act 1993;
- 29.2.4 strictly comply with all legislation and regulations, as amended, passed by any competent authority, relating to the airport and the conduct of the operator's business at the airport;
- 29.2.5 strictly comply with the airfield regulations with regard to security, safety, access and the use of any area of the airport in the event of an emergency;
- 29.2.6 not in any way compromise the safety and security of people and/or property at the airport;
- 29.2.7 strictly comply in all respects with all applicable SACAA and IATA regulations from time to time and take cognisance of all applicable ICAO recommendations;
- 29.2.8 strictly comply with all applicable regulations promulgated by the RSA National Department of Transport or any other competent authority from time to time.

29.3 **Obligations in Respect of Employees, Vehicles**

The operator shall use its best endeavours to -

- 29.3.1 deploy only duly trained and properly authorised personnel in its airside operations, which personnel shall at all times wear its uniform (and reflective clothing acceptable to ACSA)

- or be readily identifiable as its employees; provided that if any new employees are being trained in airside operations, such employees shall at all times be under the supervision of properly trained, qualified and authorised personnel;
- 29.3.2 ensure that all of its employees, representatives, agents, vehicles and equipment required to be used by it in the conduct of its operations are in possession of a valid permit issued by ACSA appropriate for the area in which any such employee, representative, agent, equipment or vehicle is required to operate; provided that ACSA may, in its reasonable discretion, withdraw any such permit if it considers that the holder is no longer fit or suitable to be in possession thereof;
- 29.3.3 ensure that each of its employees, representatives and agents wears or displays in a prominent position a valid and appropriate permit issued by ACSA at all times whilst such employee or agent is on or about the airport in the course of his employment with the operator;
- 29.3.4 subject its employees, representatives, agents and/or invitees and all vehicles used by it in the conduct of its operations on the airport apron and airside area, to security and/or safety checks by ACSA, whether such checks are routine or otherwise, and at a level that is in accordance with ACSA's directions applicable for the time being to all airside service providers, users and operators at the airport and ACSA's own staff;
- 29.3.5 ensure that there are sufficient suitably trained employees on duty to operate its airside and other equipment and uses all reasonable endeavours to efficiently deal with reasonably anticipated demands of its aircraft without causing any undue delays or disruptions to the operation of the airport;
- 29.3.6 ensure that all pilots of its aircraft and drivers of its vehicles are in possession of a valid pilot's and unendorsed driver's licenses appropriate to the category of aircraft or vehicle which they fly or drive;
- 29.3.7 require all drivers of its vehicles, to undergo regular testing, at the operator's cost, to ensure that they comply with minimum standards for the time being with regard to eyesight and general health. The frequency of these tests shall be reasonably determined by ACSA and shall accord with the recommendations made from time to time by the National Occupational Safety Association or its successor-in-title;
- 29.3.8 employ in its operations only persons who do not have a criminal record (in respect of a Schedule 1 or 2 offence) ;
- 29.3.9 ensure that any aircraft and vehicle used by it in its operations is in an airworthy and roadworthy condition (as the case may be) and is in possession of a valid certificate of airworthiness or a roadworthy certificate issued by the relevant licencing authority;
- 29.3.10 ensure that any vehicle reasonably required to be operated in or on the airport apron or airside is equipped with warning revolving lights required by ACSA from time to time;
- 29.3.11 ensure that each of its employees, representatives, agents and vehicles wears or displays in a prominent position the name or identification code of the operator or the airside service provider (as the case may be) at all times that such employee, representative, agent or vehicle (as the case may be) is on or about the airport for any reason whatever;
- 29.3.12 cause all vehicles required to be used by it in the conduct of its operations to undergo regular service and maintenance inspections. ACSA may at any time require the operator to produce proof that such services and inspections have been carried out, and shall be entitled, if in ACSA's reasonable discretion any of the operator's vehicles may pose a threat to other users of the airside area by virtue of its not having been properly

- serviced or maintained, to summarily withdraw the airside vehicle permit issued by ACSA, in respect of any such vehicle;
- 29.3.13 ensure that it is at all times represented on and complies with all the rules, policies, directives, regulations and procedures of the airport safety committee;
- 29.3.14 repair without undue delay any of its vehicles or equipment that is not in proper working order and remove such vehicles and equipment from the airport apron forthwith;
- 29.3.15 implement with its employees, to the extent that this may be consistent with, and permitted by, current labour law, legislation and practice, procedures providing for the institution of disciplinary action and/or sanctions for any non-compliance with any of the provisions of this agreement and other applicable laws and/or regulations;
- 29.3.16 report to ACSA, to the extent that it comes to the operator's attention, any Schedule 1 or 2 offences committed by any of its employees.

29.4 **Rules for Driving Airside**

- 29.4.1 The operator shall procure that all drivers of its vehicles in, on or about the airport, including, without limitation the airport apron shall -
 - 29.4.1.1 operate a vehicle only within the approved area of operation specially designated for this purpose by ACSA;
 - 29.4.1.2 give way to any manoeuvring aircraft or any aircraft under tow;
 - 29.4.1.3 give way to passengers moving towards or away from an aircraft for the purposes of embarking on or disembarking from a flight;
 - 29.4.1.4 not in any manner obstruct, disrupt or interfere with the movement of any vehicles and/or equipment owned and operated by other users of the airport apron;
 - 29.4.1.5 obey all speed limits applicable in or on the airport; provided that should it repeatedly breach such speed limits, ACSA shall have the right (by giving three months prior written notice) to require the operator (or the airside service provider), which shall then be obliged at its cost, to install in its vehicles maximum speed restriction devices as specified by ACSA;
 - 29.4.1.6 obey all road signs, road markings and security personnel on duty at the airport;
 - 29.4.1.7 ensure that all loose materials, equipment and garbage carried on any of its vehicles are properly covered or secured to prevent accidental spillage;
 - 29.4.1.8 when operating a vehicle at night or in periods of poor visibility, ensure that headlights are dimmed and tail lights are displayed as for normal night driving, and that all mandatory warning or other lights required by ACSA from time to time to be used are so displayed;
 - 29.4.1.9 park vehicles and store all equipment not in operation, only in the areas specially designated by ACSA from time to time. ACSA may, should it deem it necessary in the interests of safety or security at the airport, remove any vehicle or equipment not parked or stored in such areas to an alternate location by notice to the operator or the airside service provider and at the sole risk of the operator or the airside service provider;

- 29.4.1.10 take cognisance of the height restrictions applicable on the airside service roads at the airport;
 - 29.4.1.11 refrain from operating any vehicle on any runway or taxiway unless such vehicle is in radio contact with air traffic control or the relevant ground control office and the driver is in possession of an appropriate radio telephony license, or alternatively unless such vehicle is under escort by an ACSA vehicle which is similarly equipped;
 - 29.4.1.12 refrain from operating any vehicle within the 1,5m radius or alternatively within the minimum determined (by ACSA for the time being) distance away from any aircraft unless specifically required to do so by the relevant aircraft operator or by the nature of the re-fuelling or other operations being carried out;
 - 29.4.1.13 comply further with the rules and procedures defined in the airfield regulations as amended from time to time;
- 29.4.2 Any breach by the operator of the provisions of this 29.4 shall not of itself be regarded as a material breach of this agreement unless the operator so consistently breaches the provisions so as to justify ACSA in concluding that the operator is unwilling or incapable of meeting its obligations to ACSA in terms thereof, the intention being that contraventions of 29.4 shall be addressed by way of the safety enforcement system referred to in 23.

29.5 **Obligations in regard to the airport apron**

- 29.5.1 The operator may, subject to the terms and conditions of this agreement, use the airport apron as and when necessary for the purposes of its domestic and international flights; provided that ACSA shall at all times retain full possession and control of the airport apron, including, without any limitation, the right to give such new directions after the signature date as may be reasonable relating to the use of the airport apron;
- 29.5.2 The operator shall use its best endeavours to ensure strict compliance by its employees, agents, representatives and subcontractors with any directives published by the Airside Safety Committee or other similar or equivalent body of the airport; provided that current copies of such directives are provided by ACSA to the operator from time to time;
- 29.5.3 The operator shall use its best endeavours to not without the express prior written approval of ACSA bring, or permit the introduction into or onto the airport of any offensive, hazardous, noxious, toxic, corrosive or dangerous substance, without complying with all legislation and regulations applicable to such substance;
- 29.5.4 The operator shall use its best endeavours to ensure that no waste or litter shall be dropped or deposited anywhere on the airport apron by the operator or any of its employees, agents, representatives, subcontractors and/or directors. Any foreign objects shall be disposed of in the receptacles identified by ACSA for that purpose, and the operator shall use its best endeavours to ensure that the airport apron is at all times kept clean and tidy;
- 29.5.5 The operator shall not without the prior written approval of ACSA use any portion of the airport apron for the purpose of refuelling, cleaning, servicing or repairing any of its vehicles or other equipment, other than that part of the airport apron that has been specially designated by ACSA from time to time for that purpose;
- 29.5.6 The operator shall supply ACSA with a copy of the final report, within thirty days after receipt thereof, of every compulsory inspection as provided for in the airfield regulations

and/or by the Airside Safety Committee. A copy of such report shall be retained at the airport and be available for inspection by ACSA at all reasonable times;

- 29.5.7 Notwithstanding anything to the contrary in this agreement, the operator shall not without the relevant permit bring and/or operate any bus or other vehicle transporting the crew of any of the operator's aircraft on the airport apron for any reason whatever.

29.6 **Obligation to report accidents and incidents**

- 29.6.1 In addition to any statutory and/or regulatory obligations that may be imposed on the operator from time to time, the operator shall immediately report to ACSA every accident or significant incident, (including, without any limitation, any accident or significant incident arising out of the conveyance or storage of any dangerous or hazardous goods, articles and/or substances or materials) on or in connection with the conduct of its business and/or activities at the airport, whether such accident or other significant incident is in respect of damage to facilities or equipment or to persons or property. The operator shall, if requested by ACSA to do so, within a period of thirty days submit a further detailed written report to ACSA concerning such accident or significant incident. ACSA shall have the right to make any necessary further enquiries as to the cause and results of any such accident or incident, and the operator shall give ACSA its full co-operation in this regard;
- 29.6.2 Notwithstanding the provisions of 29.6.1, the operator shall report all incidents and occurrences directly or indirectly affecting aviation safety.

29.7 **Obligation to maintain books and records**

- 29.7.1 The operator shall keep and maintain proper records in respect of the information referred to at 25.4 in reasonable detail for such periods as may be required of it by law.

30 **Obligations of ACSA**

ACSA shall, subject to due payment by the operator in accordance with 25.1 -

- 30.1 allow the operator and its duly authorised employees or agents access to all such areas and relevant equipment on the airport to which it may be reasonably necessary for them to properly have access in order to conduct the operator's business at the airport;
- 30.2 inform the operator in writing as soon as reasonably possible of any changes which might affect the business of the operator at the airport. ACSA shall use reasonable endeavours to give the operator at least thirty days prior notice of any such changes;
- 30.3 take appropriate steps against third parties or other airside users and service providers where such third parties, airside service providers or users have caused damage to the operator's vehicles or equipment at the airport or are guilty of general misconduct affecting the business activities of the operator at the airport;
- 30.4 consult regularly with the operator regarding the formulation and implementation, of policies which may have an impact on the business activities of the operator at the airport;
- 30.5 at its cost -
- 30.5.1 maintain the airside area, common use areas, common use facilities, airport apron and all other infrastructure, buildings and permanent improvements used by the operator at the airport in good order and repair, fair wear and tear excepted;

- 30.5.2 use reasonable endeavours to upgrade the aforesaid areas and facilities to international standards;
- 30.5.3 clean the airside area, common use areas, common use facilities, airport apron and all other infrastructure, buildings and permanent improvements including, without limitation, of all seepages, leakages and/or pollution;
- 30.6 without limiting the ambit of 30.5.1.2, ACSA shall not unreasonably refuse to provide, within the common use areas, at its cost, such infrastructure as may be reasonably requested and substantiated by the operator to promote safety, security, efficient passenger flow, customer service, operator efficiency and profitability and international best practice;
- 30.7 provide fire and emergency rescue services at the airport in accordance with Civil Aviation Authority regulations and ICAO standards and recommendations having regard to the ICAO categorisation of the airport for the time being;
- 30.8 use reasonable endeavours to expedite any security or other check to which it requires the operator to subject its employees or vehicles, with a view to causing as little disruption as possible to the business operations of the operator at the airport;
- 30.9 make the common elevators, baggage trolleys, information desk and porter services generally available for use by the operator's passengers; provided that the baggage trolleys and porter services shall only be made available -
 - 30.9.1 to assist the operator's arriving and departing passengers at the airport to transport their baggage; and
 - 30.9.2 at times, locations and in quantities determined by ACSA from time to time;
- 30.10 make the common use facilities available to the operator subject to the terms and conditions of this agreement;
- 30.11 maintain and repair the outbound and inbound baggage handling systems, the domestic and international baggage claim facilities, the BIDS, the FIDS, the airport's lost and found counter, the common elevators and the information desk and all other common use facilities; in accordance with generally accepted international best practice;
- 30.12 ensure that the common use areas are clean at all times;
- 30.13 subject to 10 and 12, provide security services at the airport in compliance with the National Key Points Act 102 of 1980, as amended, and any other applicable legislation either by means of ACSA's employees or a third party reasonably acceptable to ACSA;
- 30.14 use its best endeavours to ensure safety and security at the airport, including the airside area;
- 30.15 discourage and minimise congestion of, and improve efficiency at, the aircraft apron (including, without any limitation, by vehicles, equipment and personnel);
- 30.16 address any emergency conditions at the airport;
- 30.17 comply with all applicable laws, regulations and license conditions pertaining to the operation and management of the airport;
- 30.18 regulate vehicle traffic on the airside area;
- 30.19 regularly update the airfield regulations from time to time in accordance with international best practice;
- 30.20 to the extent that the obligations of the operator as referred to in 29. are also of application to ACSA'S operations and activities, comply with such obligations *mutatis mutandis*.

- 31.1 Notwithstanding anything to the contrary in this agreement, the operator shall not be entitled to make any structural or other alterations, additions or improvements to any part of the airport, except as provided for in 21 and any agreement entered into in terms thereof.
- 31.2 ACSA shall be entitled at all times -
 - 31.2.1 to effect any alterations, improvements and/or additions to any part of the airport (including without any limitation, the airside area and common use areas); and
 - 31.2.2 for any such purpose to -
 - 31.2.2.1 erect, in such manner as may be reasonably necessary, scaffolding, hoardings and/or other building equipment on or adjacent to the airport and such devices as may be required for the protection of any person against injury arising out of the building operations; and
 - 31.2.2.2 have access to any portion of the airport by itself or through its workmen or agents.
- 31.3 ACSA, in exercising its rights in terms of 31.2 undertakes to take all reasonable steps to ensure that the business operations of the operator at the airport are disrupted to the minimum extent reasonably possible.

32 Confidentiality

Notwithstanding the cancellation or termination of this agreement, neither party ("receiving party") shall, at any time after the signature date directly or indirectly divulge or disclose to any person or directly or indirectly use and/or exploit in any manner whatever any of the other party's confidential information (as defined in 32.4) provided that -

- 32.1 the receiving party may disclose the other party's confidential information -
 - 32.1.1 to the extent required by law;
 - 32.1.2 to, and permit the use thereof by, its employees, representatives and professional advisers to the extent strictly necessary for the purpose of implementing or enforcing this agreement or obtaining professional advice in relation to this agreement, it being specifically agreed that -
 - 32.1.2.1 any disclosure or use and/or exploitation by any such employee, representative or adviser of such confidential information for any other purpose shall, notwithstanding anything to the contrary in this agreement, constitute a breach of this 32 by the receiving party;
 - 32.1.2.2 the receiving party shall, prior to making such disclosure and/or permitting such use, give written notice thereof to the other party and the receiving party shall, should the other party require in writing, procure that each such employee, representative and/or adviser gives the other party unconditional and irrevocable written confidentiality undertakings on terms and conditions reasonably acceptable to the other party; and
- 32.2 the provisions of this 32 shall cease to apply to any confidential information of a party which -
 - 32.2.1 is or becomes generally available to the public other than as a result of a breach by the receiving party of its obligations in terms of this 32 (including without any limitation, a deemed breach in terms of 32.1.2.1);

- 32.2.2 is also received by the receiving party from a third party who did not acquire such confidential information unlawfully or subject to any duty of confidentiality in favour of the other party; or
- 32.2.3 subject to 32.2.2 was known to the receiving party prior to receiving it from the other party;
- 32.3 for the purposes of this clause 32, "confidential information" shall mean any information in any form and of any nature whatever, (including, without any limitation, information supplied in terms of 25.4) directly or indirectly divulged or disclosed by either party to the other party prior to the signature date, in terms of this agreement and/or otherwise pursuant to or in connection with this agreement.

33 **Structural Damage**

Subject to 30, should any part of the airport and/or any facility, (including any of the common use facilities), equipment and/or item owned by ACSA at the airport be destroyed or damaged in any manner whatever arising out of or pursuant to -

- 33.1 the negligence or wilfulness of ACSA, its employees, agents, representatives, directors, contractors and/or subcontractors, ACSA shall, if the damaged or destroyed item forms part of the common use areas, common use facilities and/or any part of the airport, used by the operator in the ordinary course of its business, be obliged to repair, replace and/or rectify such destruction and damage at its cost as expeditiously as reasonably possible;
- 33.2 the negligence or wilfulness of the operator, its employees, agents, representatives, directors and/or subcontractors, ACSA shall be entitled to elect that such destruction and damage be replaced, repaired and rectified, at the operator's cost (which costs shall, if required by ACSA, be paid to ACSA on demand) by -
 - 33.2.1 ACSA and/or any third party appointed by ACSA in its sole discretion; or
 - 33.2.2 the operator and/or any third party appointed with ACSA's prior written consent, as expeditiously as reasonably possible (and specifically having regard, *inter alia*, to maintaining ACSA's safety and security requirements at the airport for the time being); provided that such replacement, repair and rectification shall be effected in a form and manner acceptable to ACSA and ACSA shall be entitled to change or vary the form, position, construction, structure, composition and/or lay out of the destroyed or damaged part of the airport;
- 33.3 Notwithstanding 33.2, in the event of the operator and/or third party appointed with ACSA's prior written consent failing to so replace, repair and rectify such destruction and damage, ACSA shall be obliged to do so at the operator's cost.

34 **ACSA's Right to Inspect and Access**

ACSA and/or its duly authorised representatives (including without any limitation, its legal advisers and/or auditors) shall be entitled at all reasonable times to inspect any part of the common use areas and/or the common use facilities without any notice to the operator.

35 **Strikes and Force Majeure**

- 35.1 Each party shall use all reasonable endeavours to maintain harmonious labour relations with its employees at the airport and, in particular, to prevent them from engaging in any activities in or about the airport which may in any manner whatever prejudice safety or security or adversely interfere with the rights of airport users;

- 35.2 If the operator, in the reasonable discretion of ACSA, fails to comply with 35.1, ACSA shall be entitled to take such steps as it deems necessary for the protection of its interests and those of other airport users. Such steps may include, without limitation;
- 35.2.1 requiring, through its own security personnel or with the assistance of the South African Police Service, all or any of the employees of the operator, to vacate the airport, alternatively, requiring the operator to withdraw from and cease business operations on the airport until the resolution of any labour or other dispute. Without limiting the generality of the foregoing, the operator shall at all times maintain and implement (where applicable) a contingency plan in effect, in compliance with the National Key Points Act 102 of 1980, as amended, applicable RSA laws and regulations and international standards;
 - 35.2.2 denying all or any of the employees of the operator access to the airside area of the airport until resolution of the dispute;
 - 35.2.3 initiating such legal actions, proceedings and/or steps as ACSA may deem appropriate;
- 35.3 ACSA shall not be liable for any loss, liability, damage or expense suffered by the operator as a result of or attributable to any lawful action taken by ACSA in terms of 35.2, and the operator indemnifies ACSA against any claim, loss, damage and/or expense (whether direct, indirect, consequential or otherwise) arising out of or pursuant to any such loss, liability, damage or expense;
- 35.4 Each of the parties shall indemnify the other party against any loss or damage to the other party's property sustained as a result of, or attributable to, any strike action by any of its employees, agents and subcontractors;
- 35.5 Subject to the foregoing provisions of this 35 and the terms of this agreement, if any party is prevented from carrying out any of its obligations as a result of an act of God, fire, any weather conditions, riot, war (whether declared or not) embargoes, export control, international restrictions, shortage of transport facilities, any order of any international authority, any court order, any requirements of any governmental authority or other competent authority, or any other circumstances whatever which are not within the reasonable control of such party (collectively "acts of *force majeure*") (but specifically excluding any labour relations or other disputes or problems of the operator contemplated in 35.1 and 35.2 and the failure to obtain or renew any governmental or other approval, consent, licence or the like), such party will be deemed to have been released from its obligations to perform under this agreement to the extent and for so long as it is so prevented from performing, and to such extent, this agreement will be deemed to have been suspended for the period concerned; provided that no party shall be entitled to terminate this agreement as a result of any act of *force majeure*;
- 35.6 As soon as a party becomes aware that an act of *force majeure* is likely to cause a suspension of this agreement, it shall give notice in writing to the other party estimating the approximate duration of such suspension. The estimate shall not be binding and the party claiming *force majeure* shall forthwith give written notice to the other party as soon as the act of *force majeure* ceases to operate;
- 35.7 Notwithstanding anything to the contrary contained in this agreement, the party relying on an act of *force majeure* shall use its best endeavours to mitigate and remedy its non-performance due to such act of *force majeure*.

36 Cession, Sub-Letting and Change of Control

- 36.1 The operator shall not save as may otherwise be provided for in this agreement: -

- 36.1.1 cede, assign, transfer, subcontract or burden any of its rights or delegate any of its obligations under this agreement; or
- 36.1.2 grant possession, occupation or any right in respect of the whole or any part of the airport (including, without any limitation, any part of the common use areas, the exclusive use areas, the common use facilities and the airside area), to any other person without the prior written consent of ACSA, which consent is not to be unreasonably withheld.
- 36.2 The operator shall, as soon as reasonably possible, notify ACSA in writing of any change in the de jure control of the operator, provided that no such notification shall be required in the event of the operator being listed on any recognized stock exchange.
- 36.3 ACSA shall be entitled to cede, assign, subcontract or delegate any of its rights and obligations under this agreement to any other person without the consent of the operator, provided same is permissible in Law. ACSA shall in such event be liable as surety for the performance of any such obligations.

37 **Breach**

- 37.1 Should any party -
 - 37.1.1 commit or permit a breach of any provision of this agreement and fail to remedy such breach within ten days (or such longer period as may be reasonably required) after notice has been given to the other party requiring it to remedy such breach; or
 - 37.1.2 be placed under sequestration, liquidation or judicial management, whether provisional or final, as the case may be; or
 - 37.1.3 have a final judgment entered against it and fail within twenty days after becoming aware of such judgment to take steps to satisfy or rescind same (and, in the latter instance, to pursue such rescission to its final determination); or
 - 37.1.4 commit any act which if committed by a natural person would constitute an act of insolvency; or
 - 37.1.5 compromise with its creditors generally; or
 - 37.1.6 have any licence or permit required to be maintained by the operator for the operation of the operator's business revoked or suspended for more than thirty days; or
 - 37.1.7 commit any illegal or fraudulent act in its dealings with each other; then the innocent party shall be entitled, without prejudice to any of its other rights under this agreement or at law, to cancel this agreement or claim specific performance of all the defaulting party's obligations, whether or not due for performance;
- 37.2 Notwithstanding anything to the contrary contained in this agreement, no party shall be entitled to cancel this agreement as a consequence of a breach by the other party unless the breach is incapable of being remedied by the payment of compensation and is a material breach or, if it is capable of being remedied by payment of compensation, the guilty party fails to pay such compensation within 21 days of the amount thereof being finally determined;
- 37.3 In the event of this agreement being cancelled or otherwise terminated in accordance with the terms hereof then, notwithstanding anything to the contrary, any agreement concluded between the parties as referred to in 21 shall automatically terminate and be of no further force and effect.

38 **Vacation on Termination**

On termination of this agreement for any reason whatever, the operator shall vacate the airport on or before the date of such termination.

Disputes

- 39.1 Should there be any dispute between the parties on any matter arising from or in connection with this agreement, then ACSA and the relevant operator shall forthwith meet to negotiate in good faith in order to discuss and resolve the dispute within a period of ten days of the dispute being declared;
- 39.2 Failing such settlement the said dispute will, on written notice by one party to the other, either be referred for resolution in accordance with 39.2.1 and 39.2.2, or at that party's discretion, to the Dispute Resolution Committee in accordance with the following provisions -
- 39.2.1 the Dispute Resolution Committee will be a standing committee consisting of two representatives appointed by ACSA, one representative appointed by The Airlines Association of Southern Africa and one representative appointed by The Board of Airlines Representatives of South Africa;
- 39.2.2 the committee shall meet as often as required for the purpose of resolving disputes referred to it;
- 39.2.3 the quorum for any meeting of the committee shall be 2 representatives of which one representative must be appointed by ACSA and one representative must be appointed by either The Airlines Association of Southern Africa or The Board of Airlines Representatives of South Africa;
- 39.2.4 a representative shall be entitled to appoint a proxy in his stead;
- 39.2.5 the committee shall be entitled to co-opt additional representatives from time to time although such representatives shall not have voting rights;
- 39.2.6 decisions of the committee, in order to bind the parties, must be taken by a majority of the representatives present at any meeting in person or by proxy in which case such decisions will be final and binding on the parties;
- 39.2.7 all representatives appointed to the Dispute Resolution Committee will be senior appointees, capable of taking decisions on behalf of the parties so appointing them;
- 39.2.8 notwithstanding that a party may have elected to refer a dispute for resolution to the Dispute Resolution Committee in accordance with the provisions of 39.2.1, the other party may, within 48 hours of receipt of the notice contemplated by 39.1 have the right to immediately refer such dispute for resolution in accordance with 39.2.1 and 39.2.2, on written notification to that effect;
- 39.3 Any dispute arising from or in connection with this agreement and which has not been resolved by the Dispute Resolution Committee for any reason whatever within 40 days after the referral of the dispute for resolution, shall be finally resolved in accordance with 39.3.1 and 39.2.2 below;
- 39.3.1 Where the parties elect to have the dispute resolved informally through an Attorneys', Auditors', or Experts' Determination, then the following shall apply:
- 39.3.1.1 Attorneys' Determination : Where an Attorneys' Determination is called for, each party shall call upon its own attorneys to between them agree an umpire (who, failing agreement, shall be nominated by the President of the Law Society of the Northern Province) who will act and make a determination in relation to any matter upon which the representatives may be in disagreement. The Determination will then proceed in terms of 39.2.1.4;
- 39.3.1.2 Auditors' Determination : Where an Auditors' Determination is called for, each party shall call upon its own auditors to provide a representative. The representatives shall then between them agree an umpire (who, failing

agreement, shall be nominated by the President of the Public Accountants' and Auditors' Board) who will act and make a determination in relation to any matter upon which the representatives may be in disagreement. The Determination will then proceed in terms of 39.2.1.4;

39.3.1.3 Experts' Determination : Where an Experts' Determination is called for, each party shall appoint its own expert in the field in question. The experts shall then between them agree ay umpire who, failing agreement, shall be nominated by the President of the Arbitration Foundation of Southern Africa ("AFSA") who will act and make a determination in relation to any matter upon which the experts may be in disagreement. The Determination will then proceed in terms of 39.2.1.4;

39.3.1.4 Determination Procedure : In Determinations under 39.2.1.1 to 39.2.1.3 inclusive, both representatives or experts (as the case may be) shall consult with the parties prior to considering their determination, and they shall agree to accept written submissions, should either or both of the parties request this. The representatives or experts are not obliged to hear evidence from the parties (whether under oath or otherwise) as in making their determination they will be doing so as experts and not as arbitrators. Each party will bear the costs of its own representative or expert, and the costs of the umpire will be shared equally;

39.3.2 In the event of there being a dispute which is not agreed to be resolved through an Attorneys', Auditors' or Experts' Determination in terms of 39.2.1, the such dispute shall be finally resolved in accordance with the Rules of the Arbitration Foundation of Southern Africa (AFSA) or should AFSA for any reason have ceased to act at the time, then in accordance with the Arbitration Act;

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

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

39.6 Notwithstanding anything to the contrary contained herein –

39.6.1 should any dispute arise between the parties during the course of this agreement, the parties shall continue to perform their respective obligations under this agreement until such time as the dispute has been finally resolved in terms of this clause;

39.6.2 disputes of a material, operational nature must first be referred to the Dispute Resolution Committee for resolution and may not be directly referred for resolution in accordance with 39.3.1 and 39.3.2. Any dispute as to whether a dispute is of a material, operational nature shall be finally resolved in accordance with 39.3.1 and 39.3.2 above;

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

39.8 For the avoidance of doubt, the operator shall, pending the determination of any dispute, continue to pay to ACSA on the due date thereof, all amounts due under this agreement, and the acceptance and payment thereof shall be without prejudice to either of the party's rights.

- 40.1 Whenever ACSA or the operator is to grant consent or approval or to exercise a discretion or to make a determination or designation, then such consent or approval shall not be unreasonably withheld nor shall the discretion be unreasonably exercised nor shall the determination or designation be unreasonably made;
- 40.2 Notwithstanding the provisions of 40.1, where the granting of such consent or approval or the exercise of such discretion or the making of such determination or designation is likely to have a material effect on the business activities of the operator or the profitability or competitiveness thereof, such consent, approval, discretion, determination or designation shall only be granted, exercised or made in consultation with the operator;
- 40.3 In the event of the operator being aggrieved by the failure of ACSA to grant its consent or approval or the manner in which it has exercised its discretion or any determination or designation made by ACSA then, notwithstanding anything to the contrary contained in this agreement, the operator shall be entitled to declare a dispute in respect thereof and to have such dispute resolved in accordance with the provisions of 39.

41 **Applicable Law**

This agreement shall, subject to 39, in all respects be governed by and construed in accordance with the laws of the RSA, and all disputes, actions and other matters in connection with this agreement shall be determined in accordance with such law. The parties hereby consent and submit to the non-exclusive jurisdiction of the High Court of South Africa, Witwatersrand Local Division in respect of any dispute or claim arising out of or in connection with this agreement.

42 **Domicilium and Notices**

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

42.1.1 **ACSA:**

The Maples
Riverwoods
24 Johnson Road
Bedfordview 2008

Postal:

P O Box 75480
Gardenview
2047

Telefacsimile: (011) 453-9353

42.1.2 **The Operator:**

Postal:

Telefacsimile:

- 42.2 Each of the parties shall be entitled from time to time, by written notice to the other, to vary its domicile to any other physical address within the RSA and/or its postal address or facsimile number;
- 42.3 Any notice given and any payment made by any party to any other which -
- 42.3.1 is delivered by hand during the normal business hours of the addressee at the addressee's domicile for the time being shall be rebuttably presumed to have been received by the addressee at the time of delivery;
- 42.3.2 is posted by prepaid registered post from an address within the RSA to the addressee at the addressee's postal address for the time being shall be rebuttably presumed to have been received by the addressee on the 14th day after the date of posting;
- 42.4 Any notice given by any party to any other party which is transmitted by facsimile to the addressee at the addressee's facsimile address for the time being shall be rebuttably presumed to have been received by the addressee on the date of successful transmission thereof provided that receipt of such facsimile has been acknowledged by the addressee;
- 42.5 Notwithstanding anything to the contrary contained or implied in this clause, a written notice actually received by a party from the other, including by way of data message, shall be adequate notice to such party;

43. **Environmental Rehabilitation**

The operator shall be obliged to effect such alterations, repairs, maintenance and/or rehabilitation and/or to make such financial contributions as it is lawfully obliged to do arising out of, or pursuant to, any noise and/or other environmental pollution arising out of or pursuant to, the operation of aircraft at the airport by the operator.

44 **Counterparts**

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

45 **General**

- 45.1 This agreement constitutes the sole record of the agreement between the parties in relation to the subject matter hereof. Neither party shall be bound by any express, tacit or implied term, representation, warranty, promise or the like not recorded herein. This agreement supersedes and replaces all prior commitments, undertakings or representations, whether oral or written, between the parties in respect of the subject matter hereof;
- 45.2 No addition to, variation, novation or agreed cancellation of any provision of this agreement shall be binding upon the parties unless reduced to writing and signed by or on behalf of the parties;
- 45.3 No indulgence or extension of time which either party may grant to the other shall constitute a waiver of or, whether by estoppels or otherwise, limit any of the existing or future rights of the grantor in terms hereof, save in the event and to the extent that the grantor has signed a written document expressly waiving or limiting such right;
- 45.4 Without prejudice to any other provision of this agreement, any successor-in-title, including, without limitation, any executor, heir, liquidator, judicial manager, curator or trustee, of either party shall be bound by this agreement.

46 **Costs**

Each party shall bear and pay its own costs of and incidental to the negotiation, preparation and execution of this agreement. Any stamp duty payable on this agreement shall be paid by the operator.

Signed at _____ on this _____ day of _____

20__

AS WITNESSES:

1. _____

2. _____

For and on behalf of ACSA, being duly authorised hereto

Full name of signatory

Capacity

Signed at _____ on this _____ day of _____

20__

AS WITNESSES:

1. _____

2. _____

For and on behalf of the operator, being duly
authorised hereto

Full name of signatory

Capacity