AIRPORTS COMPANY SOUTH AFRICA SOC LIMITED

PROJECT NAME AND NUMBER: INSTALLATION OF DELINEATION KERBING

CONTRACTOR APPOINTMENT FOR INSTALLATION OF DELINEATION KERBING AT KING SHAKA INTERNATIONAL AIRPORT

NEC 3: ENGINEERING AND CONSTRUCTION CONTRACT (ECC)

Between **AIRPORTS COMPANY SOUTH AFRICA SOC LIMITED**

Applicable at KING SHAKA INTERNATIONAL AIRPORT

(Registration Number: 1993/004149/30)

and

_____

(The Contractor)

(Registration Number:_____)

for **CONTRACTOR APPOINTMENT FOR INSTALLATION OF DELINEATION KERBING AT KING SHAKA INTERNATIONAL AIRPORT**

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Part C1: Agreements and Contract Data

C1.1: Form of Offer and Acceptance

OFFER

The Employer, identified in the Acceptance signature block, has solicited offers to enter into a contract for the procurement of: **CONTRACTOR APPOINTMENT FOR INSTALLATION OF DELINEATION KERBING AT KING SHAKA INTERNATIONAL AIRPORT**

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

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

THE OFFERED TOTAL OF THE PRICES INCLUSIVE OF VAT IS:

(in words)
…**.....** Rands;

(in figures) **R……..**

THE OFFERED PRICES ARE AS STATED IN THE PRICING SCHEDULE

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

Signature(s)		
Name(s)		
Capacity		
For the Bidder:		
Name & signature of witness	*(Insert name and address of organisation)*	Date

ACCEPTANCE

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

The terms of the contract, are contained in:

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

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

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

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

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

Signature(s) .....

Name(s) .....

Capacity .....

for the Employer **Airports Company South Africa SOC Limited**

King Shaka International Airport,
La Mercy,
KwaZulu-Natal,
4407

.....

(Insert name and address of organisation)

Name & signature of witness ..... Date .....

Schedule of Deviations

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

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

	For the Employer	**For the Bidder**
Signature (s)		
Name (s)		
Capacity		
Name and Address	**Airports Company South Africa SOC Limited** King Shaka International Airport, La Mercy, KwaZulu-Natal, 4407	
Name & Signature of witness	*(Insert name and address of organisation)*	*(Insert name and address of organisation)*
Date		

Part C1.2a Contract Data

Part one – Data provided by the *Employer*

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

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

Clause	Statement	Data
1	**General**	
	The *conditions of contract* are the core clauses and the clauses for Main Option	
	Main Option Dispute resolution Option	**B: Priced contract with Bill of Quantities** **W1: Dispute resolution procedure**
	Secondary Options (incorporating amendments)	**X2: Changes in the law** **X7: Delay damages** **X13: Performance Bond** **X16: Retention** **X18: Limitation of liability** **Z: Additional conditions of contract** of the NEC3 Engineering and Construction Contract, April 2013
10.1	The *Employer* is (Name)	**Airports Company South Africa SOC Limited,** **King Shaka International Airport**
	Address	Airports Company South Africa SOC Limited King Shaka International Airport, La Mercy, KwaZulu-Natal, 4407
	Telephone Fax	(032) 436 6000 (032) 436 6672
10.1	The *Project Manager* is:	**Siphiwe Msimango**

	Address	KING SHAKA INTERNATIONAL AIRPORT LA MERCY 4407
	Telephone E-mail address	
10.1	The *Supervisor* is	
	Address	KING SHAKA INTERNATIONAL AIRPORT LA MERCY 4407
	Telephone Fax Email	
11.2	The *works* are	INSTALLATION OF DELINEATION KERBING AT KING SHAKA INTERNATIONAL AIRPORT
11.2	The following matters will be included in the Risk Register	• Access to Site • Delay in supply of materials and/or equipment • Progress of works against the program • Airport Operations • Occupational Health and Safety • Existing Services • Travelling public and ACSA stakeholders
11.2	The *Works Information* is in	Part C3 ‘Service Information’ section of this contract
11.2	The *Site Information* is in	Part C4 ‘Works Information’ section of this contract
11.2	The *boundary of the site* is	Refer to C3.1 ‘Service Information’’ for the location and boundary of works for the respective phases
12.2	The *law of the contract* is the law of	the Republic of South Africa
13.1	The *language of this contract* is	English
13.3	The *period of reply* is	Seven (7) days
3	**Time**	

31.2	The *starting date* is	Upon signing of contract by ACSA
11.2	The *completion date* is	Six (6) months from starting date.
30.1	The *access date* is	Access will be granted immediately once all applicable permits have been obtained
31.1	The *Contractor* submits a first (preliminary) programme with the tender by the tender closing date	Within two weeks of the of signing the contract
32.2	The *Contractor* submits revised programmes at intervals no longer than	Four (4) weeks
35.1	The *Employer* is not willing to take over the works before the *completion date*	The *Employer* and Others will have access to the *works* during construction or prior to completion. Such access by the Employer and Others shall not relieve the *Contractor* from liability for the completion of the *works* in accordance with the Works Information and in terms of this contract.
4	**Testing and Defects**	
42.2	The *defects date* is	Twelve (12) months after Completion of the whole of the *works*
43.2	The *defects correction period* is	One (1) week
5	**Payment**	
50.1	The *assessment interval* is	Four (4) weeks
50.1	The *currency of this contract* is the	South African Rand
51.2	The period within which payment is made is	Four (4) weeks
51.4	The *interest rate* is	The prime lending rate of the Nedbank Bank. as determined from time to time
6	**Compensation events**	No data
7	**Title**	No data required for this section of the *conditions of contract*
8	**Risks and Insurance**	
84.1	The *Employer* provides these insurances	Refer to the Insurance Clauses which is attached at the end of the Contract Data
84.2	The *Contractor* provides the insurance stated in	The Insurance Clauses which is attached at the end of the Contract Data. The insurances are in the joint names of the Parties and provide cover for events which are at the Contractor's risk from the starting date until the Defects Certificate or a termination certificate has been issued.

	The minimum limit of indemnity for insurance in respect of death of or bodily injury to employees of the Contractor arising out of and in the course of their employment in connection with this contract for any one event is:	As prescribed by the Compensation for Occupational Injuries and Diseases Act No. 130 of 1993
9	**Termination**	No data required for this section of the *conditions of contract*
10	**Data for Main Options**	
B	Priced contract with Bill of Quantities	Pricing schedule in part C2
11	**Data for Option W1**	
W1.1	The *Adjudicator* is	The person appointed jointly by the parties from the list of adjudicators contained below in Annexure A
W1.2	The *Adjudicator nominating body* is	The current Chairman of Johannesburg Advocate's Bar Council
W1.4	The *tribunal* is	Arbitration
W1.4	If the *tribunal* is arbitration, the arbitration procedure is	The latest edition of Rules for the Conduct of Arbitrations published by The Association of Arbitrators (Southern Africa) or its successor body.
W1.4	The place where arbitration is to be held is	In the city where the Site is located, within South Africa.
W1.4	The person or organisation who will choose an arbitrator	The *Arbitrator* is the person selected by the Parties as and when a dispute arises in terms of the relevant Z Clause, from the Panel of Arbitrators provided under the relevant Z clause if the arbitration procedure does not state who selects an arbitrator. The Arbitrator nominating body is the Chairman of the Johannesburg Advocates Bar Council.
12	**Data for Secondary Option Clauses**	
X7	**Delay Damages**	
	Delay damages of the *works* are	Refer Low Service Damages in part C3

X18	For any one event, the *Contractor*'s liability to the *Employer* for loss of or damage to the *Employer*'s property is limited to	
X18.1	The *Contractor's* total liability to the Employer for defects due to his design which are not listed on the Defects Certificate is limited to	N/A
X18.2	The *Contractor*'s total liability to the *Employer* for all matters arising under or in connection with this contract, other than excluded matters, is limited to	
X18.3	**The *Additional conditions of contract* are**	
X18.4	**Amendments to the Core Clauses**	Nil - Neither Party is liable to the other for any consequential or indirect loss, including but not limited to loss of profit, loss of income or loss of revenue
Z	**Interpretation of the law**	The Total costs incurred and/or damages suffered to the employer's property
	Add to core clause 12.3: Any extension, concession, waiver or relaxation of any action stated in this contract by the Parties, the *Project Manager*, the *Supervisor*, or the *Adjudicator* does not constitute a waiver of rights, and does not give rise to an estoppel unless the Parties agree otherwise and confirm such agreement in writing.	The Total costs incurred and/or damages suffered to the employer's property
Z1	**Providing the Works:**	The Total costs incurred and/or damages suffered to the employer's property
Z1.1	**Delete core clause 20.1 and replace with the following:** The *Contractor* provides the works in accordance with the Works Information and warrants that the results of the Works, when complete, shall be fit for their intended purpose	- **Z1 – Z20**
Z2	**Other responsibilities:**	

Z2.1	**Add the following at the end of core clause 27:** The *Contractor* shall have satisfied himself, prior to the Contract Date, as to the completeness, sufficiency and accuracy of all information and drawings provided to him as at the Contract Date
Z3	The *Contractor* shall be responsible for the correct setting out of the *Works* in accordance with the original points, lines and levels stated in the *Works* Information or notified by the *Project Manager*, *Supervisor* or the *Employer*. Any errors in the positioning of the *Works* shall be rectified by the *Contractor* at the *Contractor's* own costs.
Z3.1	**Extending the defects date:**
Z3.2	**Add the following as a new core clause 46:** If the *Employer* cannot use the *works* due to a Defect, which arises after Completion and before the *defects date*, the *defects date* is delayed by a period equal to that during which the *Employer*, due to a Defect, is unable to use the *works*
Z4	If part of the *works* is replaced due to a Defect arising after Completion and before the *defects date*, the *defects date* for the part of the *works* which is replaced is delayed by a period equal to that between Completion and the date by when the part has been replaced
Z4.1	The *Project Manager* notifies the *Contractor* of the change to a *defect date* when the delay occurs. The period between Completion and an extended *defects date* does not exceed twice the period between Completion and the *defects date* stated in the Contract Data
Z4.2	**Termination**
Z4.3	**Add the following to core clause 91.1, at the second main bullet, fifth sub-bullet point, after the words "assets or":** "business rescue proceedings are initiated or steps are taken to initiate business recue proceedings"**.**
Z5	**Amendment to the Secondary Option Clauses**
Z5.1	**Performance Bond**
	Amend the first sentence of clause X13.1 to read as follows: The *Contractor* gives the *Employer* an unconditional, on-demand performance bond, provided by a bank which the *Project Manager* and the *Employer* have accepted, for the amount stated in the Contract Data and in the form set out in Annexure C.ii of this Contract Data.
Z6	**Add the following new clause as Option X13.2:** The *Contractor ensures* that the performance bond is valid and enforceable until the end of the *contract period.* If the terms of the performance bond specify its expiry date and the end of the *contract period* does not coincide with such expiry date, four weeks prior to the said expiry date, the *Contractor* extends the validity of the performance bond until the end of the *contract period.* If the *Contractor* fails to so extend the validity of the performance bond, the *Employer* may claim the full amount of the performance bond and retain the proceeds as cash security
Z6.1	**Limitation of liability:**
Z6.2	**Insert the following new clause as Option X18.6:** The *Employer's* liability to the *Contractor* for the *Contractor's* indirect or consequential loss is limited to R0.00

Z7	Notwithstanding any other clause in this contract, any proceeds received from any insurances or any proceeds which would have been received from any insurances but for the conduct of the *Contractor* shall be excluded from the calculation of the limitations of liability listed in the contract
Z7.1	**Additional Z Clauses**
Z7.2	**Cession, delegation and assignment**
	The *Contractor* shall not cede, delegate or assign any of its rights or obligations to any person without the written consent of the *Employer*, which consent shall not be unreasonably withheld. This clause shall be binding on the liquidator/business rescue practitioner /trustee (whether provisional or not) of the *Contractor*
Z8	The *Employer* may cede and delegate its rights and obligations under this contract to any person or entity
Z8.1	
Z8.2	**Joint and several liability**
	If the *Contractor* constitutes a joint venture, consortium or other unincorporated grouping of two or more persons, these persons are deemed to be jointly and severally liable to the *Employer* for the performance of the Contract.
Z9	The *Contractor* shall, within 1 week of the Contract Date, notify the *Project Manager* and the *Employer* of the key person who has the authority to bind the *Contractor* on their behalf.
Z9.1	The *Contractor* does not materially alter the composition of the joint venture, consortium or other unincorporated grouping of two or more persons without prior written consent of the *Employer*.
Z9.2	**Ethics**
Z9.3	The *Contractor* undertakes:
Z10	not to give any offer, payment, consideration, or benefit of any kind, which constitutes or could be construed as an illegal or corrupt practice, either directly or indirectly, as an inducement or reward for the award or in execution of this contract;
Z10.1	to comply with all laws, regulations or policies relating to the prevention and combating of bribery, corruption and money laundering to which it or the *Employer* is subject, including but not limited to the Prevention and Combating of Corrupt Activities Act, 12 of 2004.
Z10.1.1	The *Contractor*'s breach of this clause constitutes grounds for terminating the *Contractor*'s obligation to Provide the Works or taking any other action as appropriate against the *Contractor* (including civil or criminal action). However, lawful inducements and rewards shall not constitute grounds for termination.
Z10.1.2	If the *Contractor* is found guilty by a competent court, administrative or regulatory body of participating in illegal or corrupt practices, including but not limited to the making of offers (directly or indirectly), payments, gifts, gratuity, commission or benefits of any kind, which are in any way whatsoever in connection with the contract with the *Employer*, the *Employer* shall be entitled to terminate the contract in accordance with the procedures stated in core clause 92.2. the amount due on termination is A1.
Z10.2	**Confidentiality**

Z10.3 All information obtained in terms of this contract or arising from the implementation of this contract shall be treated as confidential by the *Contractor* and shall not be used or divulged or published to any person not being a party to this contract, without the prior written consent of the *Project Manager* or the *Employer*, which consent shall not be unreasonably withheld.

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

Z11.1 This undertaking shall not apply to –

Z11.2 Information disclosed to the employees of the *Contractor* for the purposes of the implementation of this agreement. The *Contractor* undertakes to procure that its employees are aware of the confidential nature of the information so disclosed and that they comply with the provisions of this clause;

Z11.3 Information which the *Contractor* is required by law to disclose, provided that the *Contractor* notifies the *Employer* prior to disclosure so as to enable the *Employer* to take the appropriate action to protect such information. The *Contractor* may disclose such information only to the extent required by law and shall use reasonable efforts to obtain assurances that confidential treatment will be afforded to the information so disclosed;

Z11.3.1 Information which at the time of disclosure or thereafter, without default on the part of the *Contractor*, enters the public domain or to information which was already in the possession of the *Contractor* at the time of disclosure (evidenced by written records in existence at that time);

Z11.3.2 The taking of images (whether photographs, video footage or otherwise) of the *works* or any portion thereof, in the course of Providing the Works and after Completion, requires the prior written consent of the *Project Manager*. All rights in and to all such images vests exclusively in the *Employer*

Z11.3.3 The *Contractor* ensures that all his Subcontractors abide by the undertakings in this clause.

Z11.4 ***Employer*'s Step-in rights**

Z11.5 If the *Contractor* defaults by failing to comply with his obligations and fails to remedy such default within 2 weeks of the notification of the default by the *Project Manager*, the *Employer*, without prejudice to his other rights, powers and remedies under the contract, may remedy the default either himself or procure a third party (including any subcontractor or supplier of the *Contractor*) to do so on his behalf. The reasonable costs of such remedial works shall be borne by the *Contractor*

Z12 The *Contractor* co-operates with the *Employer* and facilitates and permits the use of all required information, materials and other matter (including but not limited to documents and all other drawings, CAD materials, data, software, models, plans, designs, programs, diagrams, evaluations, materials, specifications, schedules, reports, calculations, manuals or other documents or recorded information (electronic or otherwise) which have been or are at any time prepared by or on behalf of the *Contractor* under the contract or otherwise for and/or in connection with the *works*) and generally does all things required by the *Project Manager* to achieve this end.

Z12.1 **Liens and Encumbrances**

Z12.2 The *Contractor* keeps the Equipment used to Provide the Services free of all liens and other encumbrances at all times. The *Contractor,* vis-a-vis the *Employer,* waives all and any liens which he may from time to time have, or become entitled to over such Equipment and any part thereof and procures that his Subcontractors similarly, vis-a-vis the *Employer,* waive all liens they may have or become entitled to over such Equipment from time to time

Z13 **Intellectual Property**

Z13.1 Intellectual Property ("IP") rights means all rights in and to any patent, design, copyright, trade mark, trade name, trade secret or other intellectual or industrial property right relating to the Works.

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

Z14.1 The *Contractor* gives the *Employer* an irrevocable, transferrable, non-exclusive, royalty free licence to use and copy all IP related to the *works* for the purposes of constructing, repairing, demolishing, operating and maintaining the works

Z14.2 The written approval of the *Contractor* is to be obtained before the *Contractor*'s IP made available to any third party which approval will not be unreasonably withheld or delayed. Prior to making any *Contractor*'s IP available to any third party the *Employer* shall obtain a written confidentiality undertaking from any such third party on terms no less onerous than the terms the *Employer* would use to protect its IP

Z14.3 The *Contractor* shall indemnify and hold the *Employer* harmless against and from any claim alleging an infringement of IP rights (**"the claim"**), which arises out of or in relation to:

Z14.4 the *Contractor's* design, manufacture, construction or execution of the Works

Z14.5 the use of the *Contractor's* Equipment, or

Z14.5.1 the proper use of the Works.

Z14.5.2 The *Employer* shall, at the request and cost of the *Contractor*, assist in contesting the claim and the *Contractor* may (at its cost) conduct negotiations for the settlement of the claim, and any litigation or arbitration which may arise from it.

Z14.5.3 **Dispute resolution:**

Z14.6 **Appointment of the Adjudicator**

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

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

Z16.1 **Appointment of the Arbitrator**

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

Z16.2 **Notification of a compensation event**

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

Z17	**BBBEE Certificate**	Panel of Adjudicators Refer Annexure A
Z17.1		
Z18	The *Contractor* shall be expected to annually present a compliant BEE Certificate. Failure to do adhere to these requirements shall be considered a material breach of the conditions of this Contract, the sanction for which may be a cancellation of this Contract.	Panel of Arbitrators Refer Annexure A
	Communication	
Z18.1		
Z19	**Add a new Core Clause** 14.5 and 14.6 to read as follows: The *Project Manager* requires the written consent of the Employer if an action will result in a change to the design, scope, and Works information that is 5% or more	
	The *Project Manager* requires the written consent of the Employer if an action will result in the Completion Date being extended by more than 30 days.	
Z19.1	**Delegation**	
Z19.2	As stipulated by Section 37(2) of the Occupational Health and Safety Act No. 85 of 1993 as amended the *Contractor* agrees to the following:	
Z20	As part of this contract the *Contractor* acknowledge that it (mandatory) is an employer in its own right with duties as prescribed in the Occupational Health and Safety Act No 85 of 1993 as amended and agree to ensure that all work being performed, or Equipment, Plant and Materials being used, are in accordance with the provisions of the said Act, and in particular with regard to the Construction Regulations	
Z20.1		

Annexure A: ACSA Panel of Adjudicators

One of the following adjudicators shall be selected by the referring party as and when a dispute arises. This panel is valid for a period of three years, commencing on 1 May 2020.

Potential Adjudicator	**Email Address**	**Chamber**
Adv. Mkhululi Duncan Stubbs	duncan.stubbs@gmail.com	Thulamela Chambers
Adv. Arzhar Bham SC	bhamae@law.co.za	Victoria Mxenge
Adv. Mohhamed Chohan SC	chohann@counsel.co.za	Group One
Adv. Benny Makola	benny.makola@gmail.com	Group 621
Adv. Vincent Maleka SC	ivmaleka@mweb.co.za	Thulamela Chambers
Adv. Chris Loxton SC	loxton@counsel.co.za	Group One

PART C1.2b CONTRACT DATA

PART TWO – DATA PROVIDED BY THE *CONTRACTOR*

Clause	Statement	Data
10.1	The Contractor is (Name): Address: Telephone No. Fax No.	
11.2	The *working areas* are	Refer to C4 Site Information
24.1	The *Contractor's Key people* are:	**CV's to be appended to Tender Schedule**
	Name: Job: Responsibility: Qualifications: Experience:	
	Name: Job: Responsibility: Qualifications: Experience:	
	Name: Job: Responsibility: Qualifications: Experience:	

Name:

Job:

Responsibility:

Qualifications:

Experience:

11.2	The *completion date* is	Six (6) months from the starting date
11.2	The following matters will be included in the Risk Register	• Access to Site • Delay in supply of materials and/or equipment • Delayed execution of works • Airport Operations • Occupational Health and Safety • Existing Services • Travelling public and ACSA stakeholders
11.2	The *Works Information* is in	Part C3 'Works Information' section of this contract
31.1	The programme identified in the	Preliminary to be submitted with at contract start

Part C1: Agreements and Contract Data

C1.3: Form of Guarantee

PRO FORMA FOR PERFORMANCE BOND

PERFORMANCE BOND

[TO BE REPLICATED ON BANK'S LETTERHEAD]

Brief description of contract……..

Name and address of Beneficiary.....

…….. (whom the contract defines as the Contractor).

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

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

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

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

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

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

Signed at _____ on _____20….

For:
Registration Number:

_____

Name & Position

As witnesses:

1. _____

2. _____

PART C1: AGREEMENTS AND CONTRACT DATA

C1.4: OCCUPATIONAL HEALTH AND SAFETY AGREEMENT

OCCUPATIONAL HEALTH AND SAFETY AGREEMENT

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

OBJECTIVES

To assist Airport Company South Africa (ACSA) in order to comply with the requirements of:

1. The Occupational Health & Safety (Act 85 of 1993) and its regulations and
2. The Compensation for Occupational Injuries & Diseases Act (Act 130 of 1993) also known as the (COID Act).

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

The parties to this Agreement are:

Name of Organisation: **AIRPORTS COMPANY SOUTH AFRICA** **KING SHAKA INTERNATIONL AIRPORT**
Physical Address: **Airport Company South Africa** **King Shaka International Airport,** **La Mercy,** **KwaZulu-Natal,** **4407**

Hereinafter referred to as "Client"

Name of organisation:
Physical Address

Hereinafter referred to as "the Mandatary/ Principal Contractor"

MANDATORY'S MAIN SCOPE OF WORK

GENERAL INFORMATION FORMING PART OF THIS AGREEMENT

1. The Occupational Health & Safety Act comprises of SECTION 1-50 and all unrepealed REGULATIONS promulgated in terms of the former Machinery and Occupational Safety Act No.6 of 1983 as amended as well as other REGULATIONS which may be promulgated in terms of the Act and other relevant Acts pertaining to the job in hand.
2. "Mandatary" is defined as including as agent, a principal contractor or a contractor for work, but WITHOUT DEROGATING FROM HIS/HER STATUS IN HIS/HER RIGHT AS AN EMPLOYER or user of the plant
3. Section 37 of the Occupational Health & Safety Act potentially punishes Employers (PRINCIPAL CONTRACTOR) for unlawful acts or omissions of Mandataries (CONTRACTORS) save where a Written Agreement between the parties has been concluded containing arrangements and procedures to ensure compliance with the said Act BY THE MANDATARY.
4. All documents attached or refer to in the above Agreement form an integral part of the Agreement.
5. To perform in terms of this agreement Mandataries must be familiar and conversant with the relevant provisions of the Occupational Health & Safety Act 85 of 1993 (OHS Act) and applicable Regulations.
6. Mandatories who utilise the services of their own Mandatories (contractors) must conclude a similar Written Agreement with them.
7. Be advised that this Agreement places the onus on the Mandatary to contact the CLIENT in the event of inability to perform as per this Agreement.
8. This Agreement shall be binding for all work the Mandatary undertakes for the client.
9. All documentation according to the Safety checklist including a copy of the written Construction Manager appointment in terms of construction regulation 8, must be submitted 7 days before work commences.

THE UNDERTAKING

The Mandatary undertakes to comply with:

INSURANCE

1. The Mandatary warrants that all their employees and/or their contractor's employees if any are covered in terms of the COID Act, which shall remain in force whilst any such employees are present on the Client's premises. A letter is required prior commencing any work on site confirming that the Principal contractor or contractor is in good standing with the Compensation Fund or Licensed Insurer.
2. The Mandatary warrants that they are in possession of the following insurance cover, which cover shall remain in force whilst they and /or their employees are present on the Client's premises, or which shall remain in force for that duration of their contractual relationship with the Client, whichever period is the longest.
   a. Public Liability Insurance Cover as required by the Subcontract Agreement.
   b. Any other Insurance cover that will adequately makes provision for any possible losses and/or claims arising from their and /or their Subcontractors and/or their respective employee's acts and/or omissions on the Client's premises.

COMPLIANCE WITH THE OCCUPATIONAL HEALTH & SAFETY ACT 85 OF 1993

The Mandatary undertakes to ensure that they and/or their subcontractors if any and/or their respective employees will at all times comply with the following conditions:

1. All work performed by the Mandatary on the Client's premises must be performed under the close supervision of the Mandatary's employees who are to be trained to understand the hazards associated with any work that the Mandatary performs on the Client's premises.
2. The Mandatary shall be assigned the responsibility in terms of Section 16(1) of the OHSAct 85 of 1993, if the Mandatary assigns any duty in terms of Section 16(2), a copy of such written assignment shall immediately be forwarded to the Client.
3. The Mandatary shall ensure that he/she familiarise himself/herself with the requirements of the OHS Act 85 of 1993 and that s/he and his/her employees and any of his subcontractors comply with the requirements.
4. The Mandatary shall ensure that a baseline risk assessment is performed by a competent person before commencement of any work in the Client's premises. A baseline risk assessment document will include identification of hazards and risk, analysis and evaluation of the risks and hazards identified, a documented plan and safe work procedures to mitigate, reduce or control the risks identified, and a monitoring and review plan of the risks and hazards.
5. The Mandatary shall appoint competent persons who shall be trained on any Occupational Health & Safety aspect pertaining to them or to the work that is to be performed.
6. The Mandatary shall ensure that discipline regarding Occupational Health & Safety shall be strictly enforced.
7. Any personal protective equipment required shall be issued by the Mandatary to his/her employees and shall be worn at all times.
8. Written safe working practices/procedures and precautionary measures shall be made available and enforced and all employees shall be made conversant with the contents of these practises.
9. No unsafe equipment/machinery and/or articles shall be used by the Mandatary or contractor on the Client's premises.
10. All incidents/accidents referred to in OHS Act shall be reported by the Mandatary to the Provincial Director: Department of Labour as well as to the Client.
11. No user shall be made by the Mandatary and/or their employees and or their subcontractors of any of the Client's machinery/article/substance/plant/personal protective equipment without prior written approval.
12. The Mandatary shall ensure that work for which the issuing of permit is required shall not be performed prior to the obtaining of a duty completed approved permit.
13. The Mandatary shall ensure that no alcohol or any other intoxicating substance shall be allowed on the Client's premises. Anyone suspected to be under the influence of alcohol or any other intoxicating substance shall not be allowed on the premises. Anyone found on the premises suspected to be under the influence of alcohol or any other intoxicating substance shall be escorted off the said premises immediately.
14. Full participation by the Mandatary shall be given to the employees of the Client if and when they inquire into Occupational Health & Safety.

FURTHER UNDERTAKING

1. Only a duly authorised representative appointed in terms of Section 16.2 of the OHS Act is eligible to sign this agreement on behalf of the Mandatary. The signing power of this representative must be designated in writing by the Chief Executive Officer of the Mandatary. A copy of this letter must be made available to the Client.
2. The Mandatary confirms that he has been informed that he must report to the Client's management, in writing anything he/she deems to be unhealthy and /or unsafe. He has versed his employees in this regard.
3. The Mandatary warrants that he/she shall not endanger the health & safety of the Client's employees and other persons in any way whilst performing work on the Client's premises.
4. The Mandatary understands that no work may commence on the Client's premises until this procedure is duly completed, signed and received by the Client.
5. Non-compliance with any of the above clauses may lead to an immediate cancellation of the contract.

ACCEPTANCE BY MANDATARY

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

I …….a duly authorised 16.2 Appointee acting for and on behalf of ……..(company name) undertake to ensure that the requirements and the provision of the OHS Act 85 of 1993 and its regulations are complied with.

Mandatary – WCA/ Federated Employers Mutual No…….

Expiry date …….

SIGNATURE ON BEHALF OF MANDATARY (Warrant his authority to sign)	**DATE**
SIGNATURE ON BEHALF OF THE CLIENT AIRPORT COMPANY SOUTH AFRICA	**DATE**

PART C1: AGREEMENTS AND CONTRACT DATA

C1.5: ACSA INSURANCE CLAUSES

SECTION A: DEFINITIONS

Landside refers to:

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

Airside refers to:

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

SECTION B: INSURANCE CLAUSES

1. Insurance requirements for construction projects with a value below R150 million (Excluding VAT) at award and construction period not exceeding 36 months on the AIRSIDE

- Projects with a value below R150 million are automatically covered under an ACSA umbrella insurance.
- But please note that details of all projects with a value below R150million, and with duration that **exceeds** 36 months should be forwarded to ACSA Treasury as soon as the contractor is awarded (Email: nokulunga.masiza@airports.co.za) as these projects are not automatically covered under an ACSA umbrella insurance

1.1 Contract Works.

- The contractor must secure a contract works insurance cover in respect of all loss or damage for a minimum limit of R150 000, each and every claim;
- The contractor must secure a contract works insurance cover in respect of loss or damage arising from testing or commissioning for a minimum limit of R250 000, each and every claim;
- The contractor must submit to ACSA proof of cover in the form of a certificate of insurance before a contract is signed between ACSA and the contractor

1.2 Contract Works SASRIA

- The contractor must secure a contract works SASRIA insurance cover for a minimum limit of R25 000, each and every claim;
- The contractor must submit to ACSA proof of cover in the form of a certificate of insurance before a contract is signed between ACSA and the contractor

1.3 Public Liability

- The contractor must secure Public Liability insurance cover for 3rd party property damage, for a minimum limit of R75 000 for each and every claim;
- The contractor must secure Public Liability insurance cover for removal of lateral support, for a minimum limit of R75 000 for each and every claim;

- The contractor must submit to ACSA proof of cover in the form of a certificate of insurance before a contract is signed between ACSA and the contractor

1.4 Aviation Liability

- The contractor must secure Aviation Liability insurance cover for 3rd party property damage and injury, for a minimum limit of USD250 000 (Two hundred and fifty US Dollars) for each and every claim
- The contractor must submit to ACSA proof of cover in the form of a certificate of insurance before a contract is signed between ACSA and the contractor

1.5 Professional Indemnity

- All consultants must secure Professional Indemnity cover for a limit of not less than R5 million for contracts under R50 million at award
- All consultants must secure Professional Indemnity cover for a limit not less than R10 million for contracts over R50 million at award
- The above is also applicable to contractors who have a material design element, excluding typical P & G related work, as part of their scope
- Proof of cover in the form of a certificate of insurance must be submitted to ACSA before a contract is signed between ACSA and the service provider

PART C2: PRICING DATA

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Document reference	Title	Page No.
C2.1	PRICING INSTRUCTIONS: OPTION B	1

C2.1 PRICING INSTRUCTIONS: OPTION B

1. THE CONDITIONS OF CONTRACT

1.1. How the contract prices work and assesses it for progress payments

Clause 11 in NEC3 Engineering and Construction Contract, June 2005 (with amendments June 2006 and April 2013) (ECC) Option B states:

Identified and defined terms **11**

11.2 (21) The Bill of Quantities is the *bill of quantities* as changed in accordance with this contract to accommodate implemented compensation events and for accepted quotations for acceleration.

(22) Defined Cost is the cost of the components in the Shorter Schedule of Cost Components whether work is subcontracted or not excluding the cost of preparing quotations for compensation events.

(28) The Price for Work Done to Date is the total of

- the quantity of the work which the *Contractor* has completed for each item in the Bill of Quantities multiplied by the rate and
- a proportion of each lump sum which is the proportion of the work covered by the item which the *Contractor* has completed.

Completed work is work without Defects which would either delay or be covered by immediately following work.

(31) The Prices are the lump sums and the amounts obtained by multiplying the rates by the quantities for the items in the Bill of Quantities.

This confirms that Option B is a re-measurement contract and the bill comprises only items measured using quantities and rates or stated as lump sums. Value related items are not used. Time related items are items measured using rates where the rate is a unit of time.

2. FUNCTION OF THE BILL OF QUANTITIES

Clause 55.1 in Option B states, “Information in the Bill of Quantities is not Works Information or Site Information”. This confirms that instructions to do work or how it is to be done are not included in the Bill, but in the Works Information. This is further confirmed by Clause 20.1 which states, “The *Contractor* Provides the Works in accordance with the Works Information”. Hence the *Contractor* does **not** Provide the Works in accordance with the Bill of Quantities. The Bill of Quantities is only a pricing document.

2.1. Guidance before pricing and measuring

Employers preparing tenders or contract documents, and tendering contractors are advised to consult the sections dealing with the bill of quantities in the NEC3 Engineering and Construction Contract (June 2005) Guidance Notes before preparing the *bill of quantities* or before entering rates and lump sums into the *bill*.

Historically bill of quantities based contracts in South Africa have been influenced by the different approaches of the civil engineering and building sectors of the industry through their respective discipline based standard forms of contract and methods of measurement. This is particularly apparent in the approach to the Preliminary and General bill. On the other hand, because ECC caters for a number of disciplines in the same contract, including electrical works, a different approach not currently found in local methods of measurement to the Preliminary & General bill items may have been used.

The NEC approach to the P & G bill assumes use will be made of method related charges for Equipment applied to Providing the Works based on durations shown in the Accepted Programme, fixed charges for the use of Equipment that is required throughout the construction phase, time related charges for people working in a supervisory capacity for the period required, and lump sum charges for other facilities or services not directly related to performing work items typically included in other parts of the bill.

3. MEASUREMENT AND PAYMENT

3.1. Symbols

The units of measurement described in the Bill of Quantities are metric units abbreviated as follows:

Abbreviation	Unit
%	percent
h	hour
m	metre
mm	millimetre
m^2	square metre
No.	number
Prov sum[1]	provisional sum
PC-sum	prime cost sum
R/only	Rate only
sum	Lump sum
t	ton (1 000 kg)
W/day	Work day

4 ADDITIONAL PRICING INSTRUCTIONS

1. The Contract Data, Service information, drawings and any other documents relevant to this tender must be read in conjunction with the Bill of quantities. The Contract Data is according to NEC3 ECC: Option B - Priced contract with Bill of quantities. The provided bill is to guide the contractor in pricing the works he expects to carry as per the scope of work.

2. The contractor must plan the work in this contract as a set of activities. These should be the same activities as he/she shows on his/her programme.

3. Clause 63.13 in Option B provides that these rates and Prices may be used as a basis for assessment of compensation events instead of Defined Cost.

4. This Bill of quantities covers the Prov Sums that will be measurable.
5. The Bill of quantities as completed by the Contractor shall be VAT exclusive prices and shall cover, “inter alia” all general risks, liabilities, obligations, profit, expenses, costs, bonuses, all allowances such as shift and standby allowances, sick-leave, other leave, brackets, fixings, incidentals, consumables etc. that will be required to successfully complete the works as set forth or as implied in the documents on which this Contract is based.

6. The description of each Prov Sum shall, unless otherwise stated herein, be held to include making, conveying and delivering, unloading, storing, unpacking, hoisting, setting, fitting and fixing in position, cutting and waste, patterns, models and templates, plant, temporary works, return of packaging, establishment charges, profit and all other obligations arising out of the scope of works.

7. No alterations to the original text shall be allowed. If any alterations are made, they will be ignored, and the original wording will apply.
8. Variations in the scope and extent of the work shall be allowed to meet the Project Manager requirements and shall be measured and priced at the rates entered in the bill of quantities, where appropriate, and shall form an addition to or deduction from the total of the Accepted Contract Amount. Any Prov Sums or variations for which rates have not been included in the bill of quantities shall be agreed and priced as non-scheduled Prov Sums.

9. All provisional sums and contingency amounts shall be expended as directed by the Project Manager and any balance remaining shall be deducted from the contract sum.
10. No commitment to expending any portion of the contingency amounts and/or provisional sums are made or implied by the Employer.

11. The Contractor shall not be entitled to any claim in instances where provisional sums are partially or in total removed from the contract.
12. Upon appointment, the bidder must further develop detailed specifications with detailed bills of quantities and must be submitted to ACSA within 30 Calendar days from the date appointment with no change to the original tender price. All allowances which formed part of the pricing schedule which belong to the client must form part of the bills of quantities (All client allowances included on the original tendered price will be managed by ACSA)

13. The bills of quantities to be drawn up in accordance with the standard system of measuring building work (as amended) published and issued by the South African Association of Quantity Surveyors.

Where applicable

a. Civil engineering work to be drawn up in accordance with the provisions of the latest edition of the SANS standardized specifications for civil engineering works where applicable.

b. Mechanical work to be drawn up in accordance with the provisions of the Model Bills of Quantities

for Mechanical work, published by the South African Association of Quantity Surveyors.

c. Electrical work to be drawn up in accordance with the provisions of the Model Bills of Quantities for Electrical work, published by the South African Association of Quantity Surveyors.

15) It will be assumed that prices tendered are based on incorporating relevant Acts, Ordinances, Regulations, By - Laws, National Standards and International standards as it applies to the scope of works.

16) Reference to any particular trademark, name, patent, design, type, specific origin or producer is purely to establish a standard for requirements. Products or articles of an equivalent standard may be substituted.

17) The amount of the preliminaries to be included in each monthly payment certificate shall be assessed as an amount prorated to the value of work duly executed in the same ratio as the preliminaries bears to the total of prices excluding any contingency sum, the amount for the preliminaries and any amount in respect of contract price adjustment provided for in the contract.

Part C2.2 Pricing Schedule

No.	DESCRIPTION	QTY	Unit of Measure	Rate	Amount
1	Installation of delineation kerbs height 300mm and width 200mm in *Figure 1 below*. (rate to include excavation of existing pavement layers to depth 40-80mm and casting of mortar 1:3)	70	m		
2	Installation of reto-reflective markings across both incline sides 50mm of the kerbing for high visibility	150	m		
3	Traffic management	Lump sum			
4	Preliminaries and generals	Lump sum			
5	OHS compliance	Lump sum			
6	Safety file				5000
7	Contingency				R 50 000
				Total	
				VAT	
				SubTotal	

PART 3: WORKS INFORMATION

Document reference	Title	Page No
C3.1	*Employer*'s Works Information	[39]
C3.2	*Contractor*'s Works Information	[44]

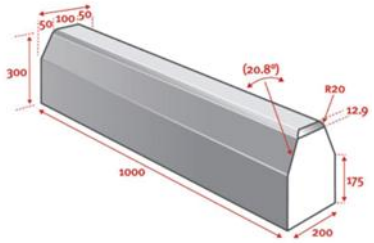
PART C3
SERVICE INFORMATION (SCOPE / SPECIFICATIONS)

C3 WORKS INFORMATION

C3.1: EMPLOYER'S WORKS INFORMATION

BOULEVARD ROAD

Installation of delineation kerbs. kerbs are required to have reflective marking affixed for ease of visual identification and mitigate any accidents or obstruction to traffic. Mortar channeling bases to be flush to existing pavement surface. Installation to allow for continuous drainage and not inhibit current drainage system.



Low service damages
Performance management on the contract shall be conducted as per the table below.
Below is the performance rating with associated low service damages.

Key Performance Area	When	Target	Low Service Damage
The contractor will comply with OHS & Environmental audits that are performed periodically and rectify/attend to any findings within the stipulated timeframe (as will be detailed in the audit).	All times	100% must be achieved	First incident: R 1000 for failure to rectify/attend to any findings. Second incident: R 3000 for failure to rectify after initial fine is paid. Third incident: Withhold payment of invoices until findings are rectified.
Meeting & Maintaining Standards and frequencies as detailed in the specifications	All times	100% must be achieved	R 1000 per deviation
The contractor to start execution of the works within the agreed timeframe in the Task Order	per task order	100% must be achieved	R 1000 for works not commenced in specified timeframe
Work specified in the task order must be completed within the agreed time frame and reported to the Service manager	All times	100% must be achieved	R 2000 for works not completed in specified timeframe
Airport permits must always be displayed by the staff and to be used as per the airports permit regulations	All times	100% must be achieved	First incident: R 500 per person Second incident: if not rectified a claim of R 1000 will apply Third incident: the permit is confiscated for a week. Contractor to make own arrangements at own cost for delays in work and replacement of employee

Special Notes for Service:

- The service provider shall be required to prepare a copy of the Safety File to mitigate risk of the service to be approved by ACSA OHS compliance prior to commencement of works.
- Work will only take place during the night. Monday – Friday (22h00 to 04h30)
- All personnel are always required to wear PPE.
- Service provider to provide 6 months defects liability period.
- Payment will be made on completion of works.
- Compulsory site visit/inspection.
- Materials quality assurance and acceptance condition apply. Contractor to supply materials data sheets and or delivery receipts in accordance with specifications.

C3.2 *CONTRACTOR*'S WORKS INFORMATION

All Plant and Materials to execute the works must meet all requirements and specifications as stipulated in the Works information, drawings and BOQ.

PART C4: SITE INFORMATION

Document reference	Title	Page No
C4	Site Information	[45]

Core clause 11.2(16) states

“Site Information is information which describes the Site and its surroundings and is in the documents which the Contract Data states it is in.”

In Contract Data, reference has been made to this Part 4 of the contract for the location of Site Information.

Description of the Site and its surroundings

General description

The site is located at King Shaka International Airport; works will be performed in a live environment with ongoing airport operations.

Existing buildings, structures, and plant & machinery on the Site

Not applicable

Subsoil information

Not applicable

Hidden services

The contractor is to work carefully to ensure that services that may be hidden are not damaged during repairs and is to make the employer aware of such services.

Other reports and publicly available information

The drawings issued along with any comments and remarks are to be deemed as the available information from employer.