

# **EXHIBIT DD 12**

**AFFIDAVIT & ANNEXURE**

**OF**

**ESTELLE LOOCK**





**JUDICIAL COMMISSION OF INQUIRY INTO ALLEGATIONS OF STATE CAPTURE,  
CORRUPTION AND FRAUD IN THE PUBLIC SECTOR INCLUDING ORGANS OF STATE**

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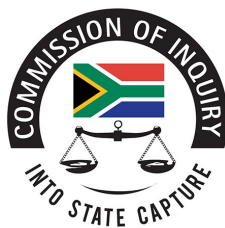
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**JUDICIAL COMMISSION OF INQUIRY INTO ALLEGATIONS OF STATE CAPTURE,  
CORRUPTION AND FRAUD IN THE PUBLIC SECTOR INCLUDING ORGANS OF STATE**

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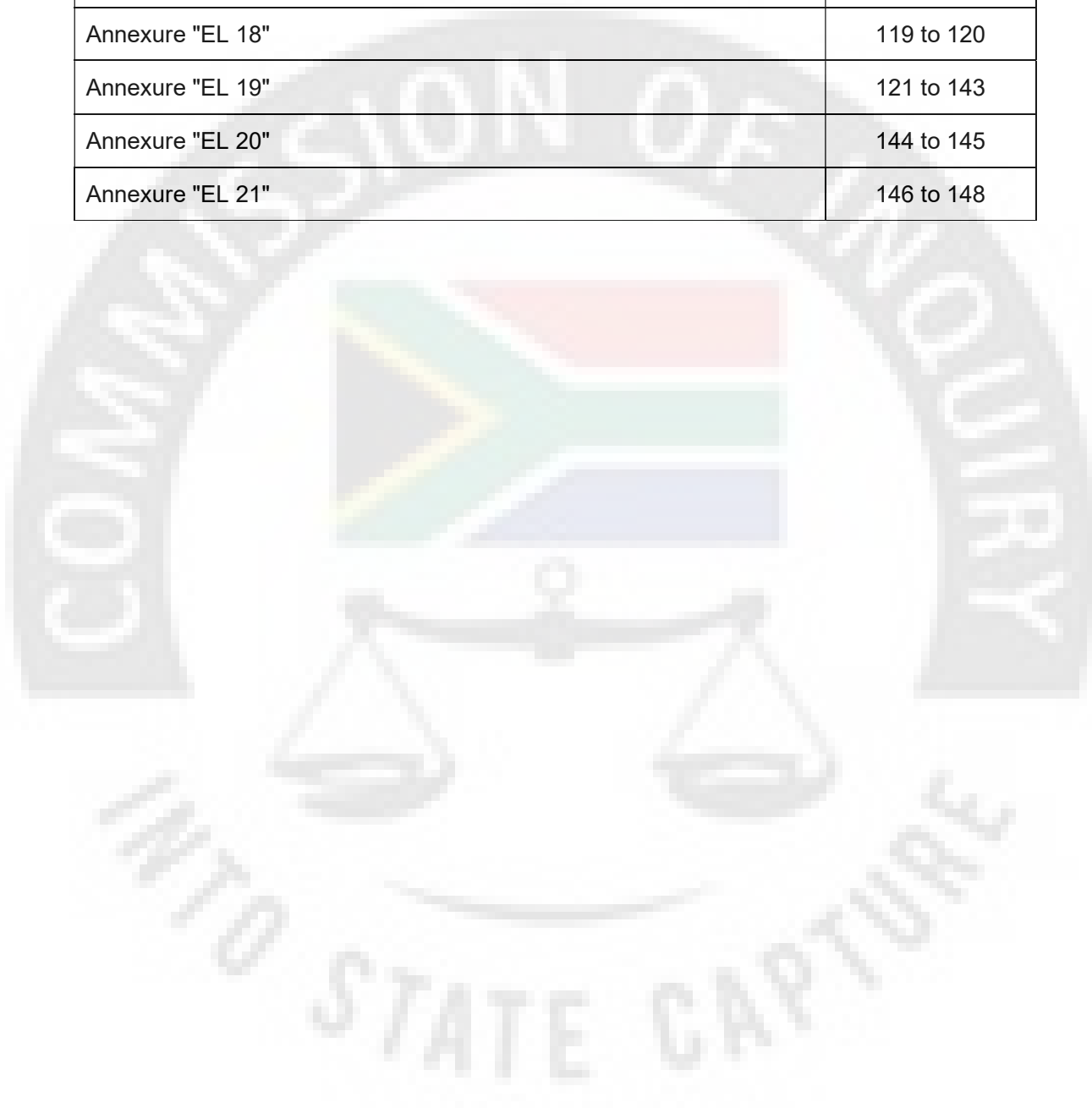
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**IN THE JUDICIAL COMMISSION OF INQUIRY INTO ALLEGATIONS OF STATE CAPTURE,  
CORRUPTION AND FRAUD IN THE PUBLIC SECTOR INCLUDING ORGANS OF STATE**

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**AFFIDAVIT**

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I, the undersigned,

**ESTELLE LOOCK**

do hereby make the following statements under oath:

1. I am currently the Airports Coordinator at SA Express. I have occupied this position since about 2009 to date.
2. The facts to which I depose are true and correct and are within my personal knowledge except where it is apparent from the context that they are not.
3. I started with SA Express in 2000 as the Cabin Crew up to 2008; where after I was appointed as the Airports Coordinator. During my tenure as the Airports Coordinator, I reported to Mr Wesley Hermanus and subsequently to Mr Dave Allanby who retired around September 2018.
4. My function as the Airports Coordinator includes the following:
  - 4.1 Contracts review and helping in the sourcing of service providers;

*EL*  
*CB*

4.2 Coordinating stations (Airports) and see to it that they run smoothly and that they have all they need; that function is for all stations domestically, regionally and internationally;

4.3 I assist Station Managers to follow due process to get whatever service or product they require;

4.4 I look after the ground handling services for stations which, at the time of the EML engagement, included Johannesburg, Walvis Bay, Gaborone, Hoedspruit, Richards Bay, Durban, East London, Port Elizabeth, Cape Town, Bloemfontein, Kimberley, George, Sun City (Pilanesburg), Mafikeng ; and

4.5 Receiving of invoices and making sure that service providers are paid.

#### **JET FUEL IN PILANESBURG**

5. In 2017 we had a jet fuel problem at Pilanesburg Airport; the service provider who was there at the time and approved by ACSA was RSI Fuel; their fuel was contaminated and this was confirmed through an audit that was done by SAA. Flight Operations decided to stop sourcing fuel from RSI for the Pilanesburg Airport, and ACSA could not provide a new supplier since the RSI fuel contract was declared null and void and was still under dispute.
6. The return trip for the Cape Town to Pilanesburg route was too long for the aircraft to return to Cape Town on the same fuel tank, it therefore needed to divert to Johannesburg to fuel. This was a costly process and so Flight Operations requested Mr Allanby, who was the General Manager: Operations, to get a service provider to assist.
7. I was then requested by Mr Allanby, around May 2017 to source a quotation for fuel at Pilanesburg. This instruction was given to me by Mr Allanby when we had a meeting with him in his office. He further brought to my attention that Technical was busy with a

review for fuelling and defueling of aircraft at the hanger at OR Tambo, and that I must speak to Mr Peter Corver.

8. I then approached Mr Corver who gave me a business card for EML Energy and he mentioned that he was given the same card by his General Manager: Mr Albert Oldenmark.
9. I then wrote an email dated the 16<sup>th</sup> of May 2017 to Mr Eric Motlhake of EML Energy to provide us with a quotation for Jet Fuel Transportation from Johannesburg to Pilanesburg (**Ann: EL 1**). According to our flight schedule, the truck needed to go twice (Monday and Friday) a week to Pilanesburg and fill two planes on each day since we were running two trips on each of those days. Mr Motlhake of EML responded and asked me about the quantities.
10. On the 19<sup>th</sup> of May 2017; Mr Allanby sent an email to Dr Samuel Vilakazi titled "*Fuel at Sun City and Denel*", informing Dr Vilakazi that we had "unearthed" EML for alternative fuel supply in Pilanesburg and provided him their details. He further confirmed that Mr Motlhake said he could send a bowser to Pilanesburg for us and could also assist in fueling the aircraft at Denel where EML was based (**Ann: EL 2**). At the time, Mr Corver told me that SA Express was already engaged with EML and that there may be economies of scale if we were to contract them for Pilanesburg.
11. At the time, I was of the impression that Technical was running with the procurement process for this service as the main issue was with the defueling and refueling of aircraft at OR Tambo. The Pilanesburg issue was an additional requirement from which I was told that it may influence the pricing to be provided by EML due to the economies of scale as I indicated above.
12. On the 9<sup>th</sup> of June 2017 at around 10:32 am; I responded to the enquiry by Mr Motlhake where he asked me of the quantities for Pilanesburg (**Ann: EL 3**). I was with Mr Gavin Fourie with whom I shared an office. He was the Fuel Specialist working for Flight Operations. Mr Fourie worked out the fuel requirements for Pilanesburg. He does all fuel

calculations based on the distance travelled by planes on each route and determines how much fuel is needed for each trip throughout all SA Express stations.

13. Mr Fourie provided me with the calculations based on the schedule of 2 days per week for Pilanesburg. He then came out with a figure of 8 500 litres per week from Cape Town to Pilanesburg and back. The truck needed to fuel twice on Monday and twice on Friday. I then responded to Mr Motlhake and told him that we were looking for 8 500 litres per week based on our flight schedule. I also copied Mr Allanby on this communication as I would normally do if he had given me an instruction. On the same day at around 10:58 am; I issued an email to Mr Allanby and informed him that I gave EML the quantities for them to provide a quotation and for Dr Vilakazi to take the matter further (Ann: EL 3).

14. As my understanding, there was no intention of using EML for other stations other than at Pilanesburg, and defuel and refuel requirements from Technical. It is to be noted that at the time; SA Express had an ongoing fuel supply agreement with SAA. SAA was providing us with fuel in other stations as per the agreement (Ann: EL 4).

#### WHATSAPP ROUND ROBIN APPROVAL

15. I became aware on the 18<sup>th</sup> of October 2017 through an email that was sent by Mr Allanby when the EML contract was being reviewed, that EXCO had approved the use of EML through a round robin resolution that had been done on a weekend. However, I was not aware of how that process had unfolded.

16. The Commission's Investigators have shown me the EXCO Group WhatsApp conversations of the 1<sup>st</sup> of July 2017 where the approval for EML was done (Ann: EL 5). I noted the following on the WhatsApp communication:

16.1 That Dr Vilakazi had introduced a subject to the BAC members and asked them to check their emails for a round robin approval needed urgently in respect of NME. NME is the registration code for a particular aeroplane which stands for "November Mike Echo". This was an aircraft that was in the hangers for maintenance and I think

5  
L.b

at the time, it had a tank problem. In my view; this is where the problem or the requirement from Technical started. However, Mr Corver is the best person to indicate the exact problem with this aircraft and can confirm if there was a C-check requirement on it.

16.2 On the same conversation; Mr Allanby confirms that the requirement is for NME and NMN defueling requirement. NMN is an acronym for "November Mike November", which is a CRJ 200 aircraft with a capacity of 50 seats. This is an indication that there were 2 aircrafts on the hanger that needed defueling urgently. He further confirmed his email approval to Dr Vilakazi for round robin.

16.3 Ms Mirriam Mochoele, who was the Chairperson of BAC at the time, asked Dr Vilakazi who EML was. Dr Vilakazi responded that they were the fuel supplier based at Denel. The Denel site that Dr Vilakazi was referring to is within OR Tambo where Technical is based.

16.4 Ms Kgatile Nkala also approved the round robin via WhatsApp and said it was in principal to avoid Aircraft on Ground and that she did not attend the last BAC meeting. It appears that Ms Nkala did send her email, but she does not provide details of what the email entailed.

16.5 Mr Mark Shelley who was the CFO of SA Express also approved the round robin via WhatsApp. He further indicated that he did not have access to email and that the WhatsApp message should serve as his approval. Mr Shelley approved the round robin even without looking at the content of the email which was sent to him.

16.6 Ms Mochoele confirmed not to have seen the submission at BAC and then referred to an explanation provided by Dr Vilakazi and gave her approval subject to a ratification in due course provided the BAC received a submitted memo.

16.7 Dr Vilakazi further confirmed to the members that EML can be able to assist for Heavy Maintenance (Technical) and Sun City (Pilanesburg) in terms of what he was told by Mr Allanby.

16.8 It is to be noted that the Sun City (Pilanesburg) requirement mentioned by Dr Vilakazi coincides with my previous communication where I requested a quote from EML, provided quantities and Mr Allanby provided details to Dr Vilakazi for the fuel supply at Pilanesburg Airport.

16.9 The message from Mr Allanby at around 11:49 confirms that the requirement was for the Technical side and for fuelling at Pilanesburg Airport.

17. Mr Victor Xaba, who was the Acting CEO for SA Express also approved the round robin, his approval was subject to BAC ratification. Mr Xaba was saying that the BAC needed to ratify or regularize the process prior to him giving his approval. The approval was to be given by Mr Xaba as the Acting CEO after it went through BAC process. All deviations go through BAC and are approved by the CEO.

#### **MOTIVATION TO DEVIATE FROM BID PROCESS**

18. I confirm that I do have knowledge of the motivation to deviate from bid process dated the 7<sup>th</sup> of July 2017 from Mr Allanby addressed to Mr Xaba (**Ann: EL 6**). The deviation was addressed to Mr Xaba by Mr Allanby seeking approval to contract EML for specified airport fuel and related services.

19. I found out about the Motivation to Deviate that was addressed to Mr. Xaba through Mr. Allanby after he had submitted this motivation. Mr Allanby and I normally had sittings twice a week to sign documents. During one of our signing sessions, Mr Allanby showed me the deviation that was signed off for EML. He showed me it because I had asked a number of questions about the matter.

20. This deviation was a continuation of the round robin done on the 1<sup>st</sup> of July 2017. The last person that gave the final approval was the CEO. The approval would have been effective from the date on which the CEO had signed the deviation. Reference is made to paragraph 27 of the 2017 SA Express Procurement Policy (**Ann: EL 7**).
21. The first scenario on the memo deals with the Pilanesburg requirement that I initiated and was aware of. It also refers to the Agreement between North West Government and SA Express.
22. The second scenario on the memo deals with Technical (Heavy Maintenance) requirement where they requested fueling and defueling of aircrafts and that the service be provided on ad hoc basis. The two aircrafts (NME and NMN) were used to justify the urgent need at the time, but from that point on, they would use EML for fueling and defueling as a long term solution since there was an issue with the existing supplier at the time.
23. I would like to deal with paragraph 4 of the memo which talks to Financial Implications. It is stated that the financial implications will be ad-hoc as per negotiated contract. This implies that there is a contract already negotiated which is not correct because you cannot negotiate a contract before approval of the deviation has been obtained. This is supposed to specify what are you going to spend so that when the BAC reviews, they can have an understanding of what are they approving and the cost implications. I have done a number of deviations; in this part of the memo, I would have put a detailed table of the envisaged expenditure which I do not see on this one.
24. The deviation was signed by a number of persons including Ms Mocheole as the BAC Chairperson and Mr Xaba as the CEO on the 1st of August 2017, respectively. The signature of the CEO being the 1<sup>st</sup> of August 2017 serves as the effective approval date.

## APPOINTMENT LETTER TO EML ENERGY

25. I noted that on the 5<sup>th</sup> of July 2017; Ms Sibongile Vilakazi ("Ms Vilakazi") sent an email to Mr Motlhake and copied Dr Vilakazi. Attached to the email is the award letter addressed to EML dated the 5<sup>th</sup> of July 2017 and signed by Dr Vilakazi in his capacity as the Chief Procurement Officer (**Ann: EL 8 & 9**).

26. The letter was confirmation of the appointment of EML to supply fuel to SA Express; this seems to have followed the round robin approval over the weekend. However, for me, you can't issue an appointment letter for something that is going through a deviation process even before that deviation has been approved (see Ann 8 para 27 which sets out the emergency bids and deviation process to be followed). The deviation was approved on the 1<sup>st</sup> of August 2018 but the appointment letter was issued on the 5<sup>th</sup> July 2017. The award letter is also extremely broad. It refers, generally, to the supply of fuel to SA Express. It does not refer to refuelling and defueling of the two aircraft, nor does it refer to Pilanesburg. These were the only two aspects of fuel supply of which I was aware that EML was being considered for at the time.

## TO WHOM IT MAY CONCERN LETTER

27. I have been shown a further letter by the Commission's investigators. It is from Dr Vilakazi addressed a letter to an unknown person or entity on the 7<sup>th</sup> of July 2017 confirming the appointment of EML by SA Express as the fuel supplier for a period of three (3) years (**Ann: EL 10**). He further confirmed that they were required to supply 25 million litres for OR Tambo and 8 million litres for Pilanesburg Airport per annum, respectively.

28. The requirement for Pilanesburg was 8 500 litres per week and that is approximately 442 000 litres per annum if you use 52 weeks. The volumes presented in this letter are extremely inflated and I do not know where or how procurement would have sourced these quantities as there was no requirement of this nature considering the 2 days flight schedule for Pilanesburg. The stipulated fuel amounts equate to over 153 000 litres per

*LB*

week for Pilanesburg, which is way too much for that airport since the need was for 8 500 litres per week.

29. I cannot comment much on the 25 million litres stated on the letter for OR Tambo, Mr Corver is probably the right person to deal with it. However, given the requirement for defueling and refuelling which I knew was the requirement from Technical and stated in the approved motivation; I would say this was against the spirit of the approval as the requirement was to be on ad hoc basis due to maintenance schedules.

#### **IDC FUNDING COMMUNICATION BETWEEN DR VILAKAZI AND MR MOTLHAKE**

30. I have not been aware that Dr Vilakazi had communication with Mr Motlhake in relation to the funding sought by EML from the Industrial Development Corporation ("IDC"). This matter was brought to my attention by the Commission's Investigators for my observation.

31. On the 14<sup>th</sup> of July 2017, Mr Motlhake was in communication with a person identified as Mr Vimal Rama whom I have been told is an employee of IDC (**Ann: EL 11**). Attached to the email were two documents on the letterhead of EML, referred to as the July 2017 Pricing Schedules. The one document was in the PDF format and the other in EXCEL.

32. These documents reflected all stations where SA Express was flying, the literage per station and the prices per litre. I noted that the volumes for Johannesburg (OR Tambo) were 21 200 000 and for Pilanesburg were 436 800. I have quoted below, the exact message that was communicated by Mr Motlhake to Mr Rama:

*"Best Vimal,*

*I have send same the SAX PDF for approval. The spreadsheet is our document with differentials and overheads.*

*Please note that the differential is a total of R1,00 (differential and mark up on transport and into plane prices)"*

33. On the 14<sup>th</sup> of July 2017 at around 09:18 am; Mr Motlhake issued an email to Ms Vilakazi and cc'd Dr Vilakazi amongst others (**Ann: EL 12**). The email reads:

*"Best Sibongile*

*Please note the adjustments in red as per the requirements by IDC Funding which does requires the draw down for guarantees only done once"*

34. On the same date at around 15:21, Mr Motlhake sent another email addressed to Dr Vilakazi which reads as follows:

*"Best Sam,*

*In line with our submission, we have attached the SAX Pricing Schedule Proposal which we need signed off if approved. We URGENTLY need this document for submission with our funders to release guarantees"*

35. On the 17<sup>th</sup> of July 2017, Dr Vilakazi sent an email to Mr Motlhake and attached to the email was the signed SA Express Pricing Schedule for July 2017 on the letterhead of EML (**Ann: EL 13 and 14**). Dr Vilakazi approved the EML pricing schedule on his own and at this point, we were not aware of the rates which were provided by EML and approved by Dr Vilakazi.

36. On the 24<sup>th</sup> of July 2017 at around 09:34 am; Dr Vilakazi requested Ms Vilakazi to follow up on the signing of three contracts, including EML Energy (**Ann: EL 15**). On the same date at around 14:23; Ms Vilakazi issued an email to Mr Motlhake and cc'd Tshenolo (**Ann: 16**). She requested for the attachment to be signed; attached to the email was the draft agreement between SAX and EML.

37. On the 2<sup>nd</sup> of August 2017 at around 2:54 pm; Mr Rama from the IDC issued an email to Mr Motlhake where he advised him that he was still waiting for the SA Express contract (**Ann: EL 17**).

38. On the 4<sup>th</sup> of August 2017 at around 11:46 pm; Mr Motlhake forwarded the email from Mr Rama to Dr Vilakazi and further alluded to the issues summarised below:

38.1 He referred Vilakazi to email from the IDC and the approval letter from IDC attached on the email;

38.2 He explained that EML had secured funding with IDC which they were under pressure to conclude by Monday, the 7<sup>th</sup> of August 2017 due to the six months CP for a first draw down;

38.3 He said that it was critical for the fuel supply guarantee of R65 million that they had to place with refineries, Working Capital of R6 million, Plant and Equipment of R6.5 million which included the Jet A1 bowser for remote airports access and additional de-fuelling capabilities;

38.4 He apologised for the pressure and the short notice but requested a signed contract for submission to the IDC in order to meet their deadline; and

38.5 He highlighted that the SAX Contract was the only CP with respect to the draw down from IDC.

39. On the 7<sup>th</sup> of August 2017 at around 09:49 am; Dr Vilakazi responded to the email from Mr Motlhake and stated that the matter was receiving urgent attention and they would advise during the course of the day.

#### **SIGNING OF EML CONTRACT**

40. At some point when I had seen the agreement signed between SA Express and EML, I got to understand that Mr Xaba asked Ms Mochoele to sign the agreement on his behalf because he was not around the office. This is now confirmed through an email dated the 7<sup>th</sup> of August 2017 where Mr Xaba, amongst other things, requested Ms Mochoele to sign the EML contract on his behalf (**Ann: EL 18**).

41. I am aware of the contract signed between SA Express and EML; the party that signed for SA Express was Ms Mochoele on behalf of Mr Xaba on the 7<sup>th</sup> of August 2017, and the same was signed by Mr Motlhake for EML on the 24<sup>th</sup> of July 2017 (**Ann: EL 19**).

This was in line with the email sent by Mr Xaba to Mr Mochoele and Mr Madavha on the 7<sup>th</sup>. At the time that the contract was concluded, I was not aware that it had been concluded.

42. I remember that during this time, around July/August 2017; Mr Allanby requested Mr Fourie to make a comparison of prices between SAA and EML. This was based on the August 2017 EML pricing schedule provided by Mr Allanby to Mr Fourie. He conducted the exercise which established that EML rates were 30% higher than what we were currently paying to SAA at the time. The calculated rates were hand written by Mr Fourie next to those provided by EML (**Ann: EL 20**).

43. It was only on the 18<sup>th</sup> of October 2017, that Mr Jacques Beck forwarded the EML contract to Mr Fourie after he had received it from Ms Vilakazi on the same day (**Ann: EL 21**). Mr Fourie printed the contract, which I was seeing for the first time on this date, and we looked at it together. We saw the scope of work and established that EML had been contracted to service all SA Express stations.

44. As part of the signed contract, there was a pricing schedule signed on behalf of Mr Xaba which is similar to the one signed and approved by Dr Vilakazi on the 17<sup>th</sup> of July 2017, which I have dealt with above.

45. The schedule includes all SA Express stations and the litres presented are exorbitant. I was perplexed when I saw this because I was only aware of the requirement for the Denel and Pilanesburg sites only. Fuel services were only required for only these two stations. SAA was servicing SA Express at the other stations.

46. When I received this schedule, I asked Mr Allanby why we had included other stations in the EML contract considering we did not have hangers in stations other than OR Tambo and Cape Town. No defueling and refueling of aircrafts took place in other stations since all major maintenance was mainly done in OR Tambo and a small fraction of it in Cape Town.

47. There were a series of emails between Mr Gavin Fourie and Mr Allanby where, Mr Allanby sought to explain the EML issues. Mr Fourie forwarded me this correspondence. In his response to me, Mr Allanby did not deal with issue of the supply of fuel country-wide. He assured me that it was only for defueling and refueling.
48. Mr Fourie and I had a discussion around Mr Allanby's response and we were not happy with his response as it did not deal with the EML issue in its entirety. As operations, we believed there was a contract between SAA and SA Express as we were still being supplied fuel by SAA; that is why we decided to compare EML prices with those that we were getting from SAA. It was at this point that Mr Fourie and I started having discussions around escalating this EML issue further, to higher authorities.
49. Mr Fourie addressed an email to Mr Allanby in which he asked for an explanation about the contract. He pointed out that SA Express couldn't enter into a contract like this; the prices were approximately 30% higher than what we were currently paying at SAA.
50. On or about 18 / 19 October 2017, I approached Mr Timothy Ngwenya who is the head of security to report this matter to him for investigation. Thereafter, I spoke to Mr Allanby and asked him how this could have happened. He said he also did not know. I then made it clear to him that I would not verify any invoices for EML.
51. Mr Xaba left SA Express in November 2017 and Ms Matsietsie Mokholo came and acted as the CEO.
52. Thereafter, a number of the people involved in the EML scandal were suspended.

Ewer  
DEPONENT

I hereby certify that the deponent has acknowledged that he knows and understands the contents of this affidavit, which was signed and sworn to before me, Commissioner of Oaths, at Kempton Park on this the 22 day of May 2019 the regulations contained in Government Notice No R1258 of 21 July 1972, as amended, and Government Notice No R1648 of 19 August 1977, as amended, having been complied with.

[Signature]  
COMMISSIONER OF OATHS

FULL NAMES:	SIGNATURE
ADDRESS:	Commissioner of Oaths
EX OFFICIO:	Adv. Lerato M. Brimah
	Date: <u>22/05/2019</u>
	South African Express Airways
	2nd Floor, E Block Offices,
	1 Jones Road, Airways Park

## Annexure “EL 1”



**From:** Estelle Looock <elooock@flyexpress.aero>  
**Sent:** 09 June 2017 10:32  
**To:** Eric | EML Energy (PTY) LTD  
**Cc:** Dave Allanby  
**Subject:** RE: Jet fuel to Sun City airport  
**Attachments:** image001.jpg; image002.gif; image003.gif; image004.gif; 117060910321901467.gif; 117060910321901867.jpg; 117060910321902067.gif; 117060910321902267.gif

<[https://protect-za.mimecast.com/s/PTTwCO79GRspZXXDSEy\\_AIL?domain=flyexpress.aero](https://protect-za.mimecast.com/s/PTTwCO79GRspZXXDSEy_AIL?domain=flyexpress.aero)>

Good day Eric

Trust you are well.

As per our telephonic discussion this morning kindly note that SA Express will be looking at around 8 500 litres of Jet A 1 fuel per week for Sun City. The current schedule is still running at 2 flights on Monday and 2 flights on Friday.

Kindly provide us with a quotation that includes the delivery of the fuel to Sun City.

Kind regards

Estelle

From: Eric | EML Energy (PTY) LTD [mailto:[eric@emlenergy.com](mailto:eric@emlenergy.com)]

LB

Sent: Tuesday, May 16, 2017 11:06 AM  
 To: Tshenolo  
 Cc: Estelle Loock; THILLY BASAYA  
 Subject: Re: Jet fuel to Sun City airport

Best Tshenolo,

Please revert to Estelle as a matter of URGENCY...

Estelle: Please advice on the quantities that you would require per day and/or per week.

Best Regards,

EML Motlhake

EML Engineers and Construction

T/A EML Energy

Managing Director

Pre Tech : Elec Eng | Avionics

0836771290

0877005953

eric@ <https://protect-za.mimecast.com/s/9dnQCP1JG8TKNmBmBizYARqm?domain=emlenergy.com>

<https://protect-za.mimecast.com/s/puygCQ1LXRTklqqnixXDILG?domain=emlenergy.com>

From: Estelle Loock <eloock@flyexpress.aero <mailto:eloock@flyexpress.aero> >  
 Date: Tuesday 16 May 2017 at 10:59 AM  
 To: Eric Motlhake <eric@emlenergy.com <mailto:eric@emlenergy.com> >  
 Subject: Jet fuel to Sun City airport

<[https://protect-za.mimecast.com/s/PTTwCO79GRspZXXDSEy\\_AIL?domain=flyexpress.aero](https://protect-za.mimecast.com/s/PTTwCO79GRspZXXDSEy_AIL?domain=flyexpress.aero)>

Good day Eric

I received your details from Pieter Corver from our Technical Department.

SA Express would like to find out whether your Company can transport Jet fuel to Sun City as per our flight schedule and what the cost would be?

Flight Schedule: ORT Airport to Sun City - Monday and Friday

Cape Town to Sun City - Monday and Friday

Regards

Estelle

Estelle Looch  
Airports Coordinator

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F: +2786 688 5399  
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*[Handwritten signature]*  
L.B.

Please note that this e-mail and the contents thereof is subject to the standard SA Express E-mail disclaimer which may be found on <https://protect-za.mimecast.com/s/a4LPCrgBX7uv0llwi9DYk6F?domain=flyexpress.aero>  
<<https://protect-za.mimecast.com/s/P3qGCVmZW9SxkKKVUGqWapN?domain=flyexpress.aero>>

Non Executive Directors: G N Mothema (Chairperson), T Abrahams, B P B Dibate, R Naithani, J N Nkabinde, P Ramosebudi, G R Sibiya Executive Directors: D V Xaba (Acting Chief Executive Officer), M R Shelley (Chief Financial Officer) Company Secretary: M Gie

South African Express Airways SOC Ltd Co.Reg. No. 1990/007412/30 Vat Reg No. 4400140499

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Estelle Looek  
Airports Coordinator

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Non Executive Directors: G N Mothema (Chairperson), T Abrahams, B P B Dibate, R Naithani, J N Nkabinde, P Ramosebudi, G R Sibiya Executive Directors: D V Xaba (Acting Chief Executive Officer), M R Shelley (Chief Financial Officer) Company Secretary: M Gie

South African Express Airways SOC Ltd Co.Reg. No. 1990/007412/30 Vat Reg No. 4400140499

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## Annexure “EL 2”



Am: D,

**Estelle Looock**

**From:** Dave Allanby  
**Sent:** Friday, May 19, 2017 04:43 PM  
**To:** Samuel Vilakazi  
**Cc:** Maureen Jacobs; Estelle Looock  
**Subject:** FUEL at Sun City and Denel

Hi Sam

In our quest to source an alternate fuel supply for Pilansberg we have "unearthed"

Eric Motihake  
CEO of EML Energy ([www.emlenergy.com](http://www.emlenergy.com))  
OfficeD3  
Denel  
3-8 Atlas Road  
Kempton Park

Contact: 083 677 1290 Or [eric@emlenergy.com](mailto:eric@emlenergy.com)

He says he can send a fuel bowser to Pilansberg for us and can also assist in fuelling our aircraft at Denel, where he is based.

Please follow through with him as fuel at NTY is a major issue necessitating that the our NTY-CPT flight has to route through JNB for a fuel uplift.

Thanks  
Dave

E

L'B

## Annexure “EL 3”



Estelle Looock

Ann: Dz

**From:** Dave Allanby  
**Sent:** Friday, June 09, 2017 11:18 AM  
**To:** Estelle Looock  
**Subject:** RE: Jet fuel to Sun City airport

Gr8 Tx

**From:** Estelle Looock  
**Sent:** Friday, June 09, 2017 10:58 AM  
**To:** Dave Allanby  
**Subject:** RE: Jet fuel to Sun City airport

Hi

I was suppose to give Eric fuel quantities a while ago and forgot to send it to him.

The quantities was just for them to issue a quotation. The quotation was to be submitted to Sam to take the matter further.

Regards  
Estelle

**From:** Dave Allanby  
**Sent:** Friday, June 09, 2017 10:46 AM  
**To:** Estelle Looock  
**Subject:** RE: Jet fuel to Sun City airport

Hi Estelle

I did give Eric's details to Sam. Are you working in tandem with him or not yet?

**From:** Estelle Looock  
**Sent:** Friday, June 09, 2017 10:32 AM  
**To:** Eric | EML Energy (PTY) LTD  
**Cc:** Dave Allanby  
**Subject:** RE: Jet fuel to Sun City airport

Good day Eric

Trust you are well.

As per our telephonic discussion this morning kindly note that SA Express will be looking at around 8 500 litres of Jet A 1 fuel per week for Sun City. The current schedule is still running at 2 flights on Monday and 2 flights on Friday.

Kindly provide us with a quotation that includes the delivery of the fuel to Sun City.

Kind regards  
Estelle

G  
L.B

## Annexure “EL 4”



**AVIATION FUEL SERVICE AGREEMENT**

between

**SOUTH AFRICA NAIRWAYS (Pty) Ltd**

Registration Number: 1997/022444/07

and

**SOUTH AFRICAN EXPRESS AIRWAYS (Pty) Ltd**

Registration Number: 1990/007412/07

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JW# PM

## RECORDALS

1.1 **SOUTH AFRICAN AIRWAYS (Pty) Ltd ("SAA")** is a company duly incorporated in terms of the company laws of the Republic of South Africa, having its principal place of business situated at Airways Park, Jones Road, Kempton Park, Republic of South Africa.

1.2 **SOUTH AFRICAN EXPRESS AIRWAYS (Pty) Ltd ("SA Express")** is a duly incorporated company in terms of the company laws of the Republic of South Africa, having its principal place of business situated at 4<sup>th</sup> Floor, West Wing Offices, Pier Development, O.R TAMBO International Airport, Republic of South Africa.

## 2 PREAMBLE

2.1 **WHEREAS** SA EXPRESS and SAA ("the parties") have a commercial relationship which is premised on the Commercial Agreement concluded on the 30<sup>th</sup> of June 2010 ("the Commercial Agreement").

2.2 **WHEREAS** the purpose of the said Commercial Agreement is to enable SAA and SA EXPRESS to achieve the following common objectives in their respective provision of air transportation services:

2.2.1 To improve the quality and quantity of air services on the African continent with particular reference to smaller communities.

2.2.2 To optimise the parties' use of aircraft to meet market requirements.

2.2.3 To provide a cost effective sustainable regional feeder system to SAA to enable it to effectively and efficiently address the needs of the market.

2.2.4 To optimise efficiency in the use of ground facilities and personnel who render such ground handling services.

2.2.5 To offer customers a seamless choice of transportation options; and

2.2.6 To maximise shareholder value, as long as both parties have a common majority shareholder;

2.3 **WHEREAS** the parties have agreed in the said Commercial Agreement that SAA shall provide SA EXPRESS with back-up facilities i.e. the facilities and services to be provided to SA EXPRESS by SAA in support of SA EXPRESS scheduled services; and

L.B

- 2.4 **WHEREAS** the parties have agreed that the terms and conditions for the provision of the said back-up facilities and services shall be set out in individual separate agreements;

**NOW THEREFORE**, the parties agree, in view of SAA's abovementioned commitment to provide back-up facilities and services to SA EXPRESS, to conclude an Aviation Fuel Service Agreement on the terms and conditions outlined in clauses 3 to 33 as follows:

### 3 REPRESENTATIONS AND WARRANTIES

- 3.1 Each party warrants and represents to the other that it has the power to enter into and the ability to perform in terms of this Agreement.
- 3.2 Each party warrants that it has not violated and will not violate any applicable laws or regulations of the Republic of South Africa or express policies regarding the offer or receipt of improper inducement in connection with this Agreement. A Breach of this Clause shall be deemed to be an irredeemable breach of this Agreement.
- 3.3 Each signatory warrants that he/she has received and complied with every consent and/or approval necessary with respect to the execution or carrying out of this Agreement or the validity and enforceability thereof.
- 3.4 SAA warrants that it, and its service, without limitation, will at all times during the term of this Agreement, comply to all legislation, directives and regulations, without limitation whatsoever, and howsoever arising, applicable to the rendering of the service and shall furnish, on request by SA Express, proof of such compliance.
- 3.5 Breach of any warranty given anywhere in this Agreement shall constitute a material breach.


### 4 OPERATIVE PROVISIONS

- 4.1 In this Agreement, the following expressions shall, unless the context otherwise requires, have the following meanings:

Annexes thereto, if any;

- the Parties                      the parties to this Agreement (and "Party" shall have a corresponding meaning);
- Signature Date                the date on which the last Party signs this Agreement;

- 4.2 any reference to a statutory provision or enactment shall include references to any amendment, modification or re-enactment of such statutory provision or such enactment (whether before or after the Signature Date), to any previous enactment which has been replaced or amended and to any regulation or order made under such statutory provision or enactment.
- 4.3 references to the Preamble, clauses and Schedules are, unless otherwise specified, references respectively to the Preamble, clauses and Schedules to and of this Agreement.
- 4.4 words importing one gender shall be treated as importing any gender, words importing individuals shall be treated as importing corporations and vice versa, words importing the singular shall be treated as importing the plural and vice versa, words importing the whole shall be treated as including a reference to any part thereof, and expressions denoting a natural person shall be treated as denoting a juristic person and vice versa.
- 4.5 clause headings are inserted for ease of reference only and shall not affect the construction of this Agreement.
- 4.6 references to documents or agreements "in the agreed form" are to documents or agreements on the terms and conditions agreed (whether before or after the Signature Date) in writing between the Parties, initialled by the Parties for the purposes of identification, whether or not such documents or agreements, as the case may be, are to be executed by the Parties.
- 4.7 words and/or expressions defined in this agreement shall bear the same meanings in any annexes hereto which do not contain their own defined words and/or expressions;
- 4.8 This Agreement may be executed in more than one counterpart (and, for the avoidance of doubt, a counterpart may be a facsimile copy), each of which shall be deemed to constitute an original of this Agreement and which taken together shall constitute one and the same agreement;

  
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JWH

- 4.9 The terms of this Agreement having been negotiated, the rule of construction that provisions are to be construed against the party drafting an agreement (or part of an agreement) or on whose behalf an agreement (or part of an agreement) was drafted, shall not apply to this Agreement and each Party shall be responsible for its own costs, legal fees and other expenses incurred in the negotiation, preparation and execution of this Agreement.

## 5 AIRCRAFT FUEL

- 5.1 In this Agreement, the parties are seeking to set out the terms of engagement and the service deliverables that are required from SAA, the service provider, and the obligations expected from SA Express, the Customer.

- 5.2 SAA agrees to provide SA Express with the following services in relation to the provision of Aviation Fuel Services :

- 5.2.1 Procurement of Aviation Fuel
- 5.2.2 Administration of Aviation Fuel Accounts including payment of fuel invoices
- 5.2.3 The provision of an IT platform for processing of Fuel documents and reporting;
- 5.2.4 Reasonable assistance in the provision of the remote access to the IT Platform where required.

## 6 PROCUREMENT OF AVIATION FUEL

- 6.1 SAA shall arrange, as part of its Tender Process, for its Aviation Fuel Supplier/s at nominated scheduled stations to deliver Aviation Fuel into SA Express aircraft as and when required by SA Express for its operations.
- 6.2 SA Express shall have access to all contracts negotiated with fuel suppliers subject to observation of the provisions of the confidentiality clause as set out in the relevant contracts.

Fuel uplift volumes for all SA Express designated stations unless it is agreed otherwise and reduced to writing and signed by both parties. The designated stations together

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with expected volumes of aviation fuel must be stipulated in writing by no later than three (3) months prior to the tender commencement process.

## 7 PRICES FOR AVIATION FUEL

7.1 Suppliers must have the ability to provide insurance equal to or in excess of the amount required by South African Express as notified in writing to SAA.

7.2 SA Express shall be able to uplift fuel at the same differential as SAA at all stations listed in the Fuel Supply Tender as per the fuel supply agreements with the respective suppliers.

## 8 FUEL PRICES DETERMINATION

### 8.1 Locations within South Africa

8.1.1 The price quoted for each location will be based on the BFP ruling for the month in which the Aviation Fuel uplifts occur as negotiated.

8.1.2 The prices established will be quoted in South African cents per litre and shall be payable to Suppliers on behalf of SA Express by SAA comprising:

8.1.2.1 a Basic Fuel Price;

8.1.2.2 Differentials;

8.1.2.3 Transportation Fees; and

8.1.2.4 other charges which may be levied.

8.1.3 SAA shall advise SA Express by the fifth (5<sup>th</sup>) working day of each month what the total price in South African Cents per litre for the respective locations will be for each month respectively.

### 8.2 Locations outside the borders of South Africa

8.2.1 The prices quoted will be in accordance with negotiated terms and currencies with each Supplier at each location. These prices will vary during the currency of this agreement due to petroleum product market forces prevailing from time to time, government regulatory price changes and exchange rate fluctuations.

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8.2.2 The total price established for each location referred to in 8.2.1 above and payable to Suppliers on behalf of SA Express by SAA shall comprise of:

8.2.2.1 a basic price;

8.2.2.2 additional charges where applicable, such as duties, dues, taxes, levies, throughput fees, railage, transport, airport concession fees, etc.,

8.2.3 SAA shall advise SA Express by the fifth (5<sup>th</sup>) working day of each month what the total price in South African Cents per litre for the respective locations will be for each month respectively.

8.2.3.1

## 9 ADDITIONAL CHARGES

Should there be any change or variation to the charges referred to in Clause 8 above during the currency of this contract or to those charges affecting duties, dues, taxes, imports, throughput fees, railage, transport, airport concession fees etc. this will be communicated to SAX as soon as possible after SAA is advised and the increase/decrease shall be for the account of SA Express.

## 10 PRICE REVIEW

The above total price structure is not subject to review or change with respect to the basic or government regulated prices described in Clause 8 above except as defined in Clause 9 above.

## 11 FAILURE TO PROVIDE THE CONTRACTED SERVICES

11.1 Should a Supplier of Aviation Fuel, contracted to SAA under a separate Agreement, fail to deliver Aviation Fuel meeting the specification as stipulated hereunder, or fail to deliver Aviation Fuel in sufficient quantity to meet SAA's agreement with SA Express in this regard, or fail completely to deliver due to a cause or causes not limited to a situation or situations of force majeure, SA Express shall not hold SAA responsible for deliver.

*C.B.* *J.M.* *J.H.*

11.2 Further, the parties agree that in such instance, SAA would pursue the matter with its Supplier(s) and use its best efforts to resolve the matter in a manner deemed amicable to both parties. SAA shall keep SA Express apprised of developments.

11.3 Aviation Fuel delivered against this agreement not meeting the specification stipulated shall be rejected.

11.4 If Aviation Fuel is rejected in terms of 11.3, SAA shall endeavor to ensure that the Fuel Supplier take remedial action to replace such rejected Aviation Fuel at the Supplier's own cost.

11.5 Aviation Fuel rejected shall not be redelivered for use by SA Express without the Fuel Supplier having first provided proof that such Aviation Fuel then fully meets the specification to SAA's satisfaction

11.6 Without limiting the generality of clause 11.3 above, Aviation Fuel which is rejected at any station shall remain the property of the Fuel Supplier.

11.7 In the event of poor service being received from a contracted supplier of aviation fuel SA Express shall have the right to interact directly with the supplier in order to rectify the state of affairs should the need arise.

## 12 AVIATION FUEL SPECIFICATION

12.1 Aviation Fuel supplied shall be JET-A1 which is a kerosene grade of Fuel suitable for most turbine engine aircraft. The said Fuel shall be produced in accordance with very strict internationally agreed specifications, with a flash point above 38°C and a freeze point maximum of -47°C.

12.2 Further, the abovementioned Fuel needs to meet the most stringent requirements of the following specifications:

12.2.1 The British Ministry of Defense Specification DEFSTAN 91-91 issue 6, / 10; or

12.2.2 The ASTM (American Standard of Testing Method) for Aviation Turbine Fuels D1655-10.

12.3 Additionally, the operating procedures, equipment or inspection procedures should comply with JIG 10 quality specifications or those of the latest version of the Oil Industry standards for jointly operated systems.

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12.4 If the abovementioned specification requirements cannot be complied with, due to any reason whatsoever, NO OTHER FUEL OR SUBSTITUTES MAY BE USED. Consequently, SA Express shall bear the responsibility of deciding whether or not to operate the applicable Sector until the specified Fuel becomes available.

### 13 ADMINISTRATION OF AVIATION FUEL ACCOUNTS

#### 13.1 SA Express commitments regarding Fuel purchases:

13.1.1 SA Express shall provide SAA with the anticipated volume requirements by location for the contractual period in advance of the negotiations with Suppliers. Further, SA Express shall provide SAA with monthly updates of volume forecasts per location in order to ensure proper planning in this regard.

13.1.2 SA Express shall assume responsibility for ensuring timeous submission of documentation to SAA for processing purposes, including interfaces of daily flight schedule and maintenance folios, together with ensuring accuracy and completeness thereof.

13.1.3 SA Express shall assist SAA promptly in prevention and resolution of invoice queries to enable SAA to comply with Supplier contractual payment terms. In the event that queries are not satisfactorily resolved, SA Express shall not hold SAA responsible for any consequences or losses SA Express would incur as a result of inaccurate recordings (e.g. Subsequent VAT obligations) or failure to pay in time, save where same is resultant from SAA's gross negligence and/or willful misconduct.

13.1.4 Where a query cannot be easily resolved, SAA will take up the matter with its Suppliers and use its best efforts to resolve the matter in a manner deemed amicable to both parties. SAA shall keep SA Express apprised of developments.

#### 13.2 SAA activities in the Fuel administration process:

13.2.1 Ensure that the Fuel invoice information in the system is verified against the fuel administration system information before the elapse of the payment cycle.

13.2.2 Payment is made to Suppliers with respect to uplifted Fuel invoices in a timeous manner.

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C.B. JWH

13.2.3 SAA shall provide assistance to SA Express' staff with respect to on the job training that is required for purposes of ensuring their competency to operate the fuel administration system effectively.

13.2.4 SAA shall reasonably assist SA Express in the resolution of Fuel payment queries raised by suppliers in respect to the periods where the fuel administration was under the administration of SAA.

13.2.5 SAA shall provide SA Express with the option of including its staff in any fuel administration system training that is to be provided to its own staff at a marginal cost to SA Express.

13.2.6 SAA shall upon request from SA Express in writing provide SA Express personnel with training on the fuel administration system solution at a market related rate at the time of the training, which cost shall be borne by SA Express.


13.2.7 SAA shall upon request from SA Express in writing reasonably assist SA Express in the resolution of system related queries and issues that are encountered on the fuel administration systems.

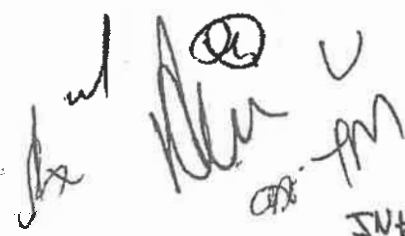
#### 14 PAYMENT AND CURRENCY

14.1 Payment to SAA by SA Express for Fuel uplifts within South Africa will be in South African Rand.

14.2 Any amounts payable by SA Express in accordance with the provisions of this agreement shall be invoiced weekly covering all supplier invoices processed, and settlement to SAA shall be effected within 17 days from date of invoice delivery to SA Express offices to coincide with average payment terms negotiated with suppliers. This will be revised annually according to latest supplier terms. Payment should be effected by either cheque or electronic transfer.

14.3 SA Express will make payment on fuel invoices submitted to SA Express by SAA on a weekly basis for amounts outstanding and cleared by the SA Express Finance department as per clause 14.2.

  
L.B.  
Page 10

  
JN4

14.4 Where multiple invoices are submitted to SA Express by SAA for supplier invoices within the same week for payment, the 17 day period will be calculated from the last invoice received.

14.5 Delivery of the invoices from SAA needs to be made electronically to [financesupport@flyexpress.aero](mailto:financesupport@flyexpress.aero) and all supporting documentation needs to be provided to the SA Express fuel administration clerks located at SAA for collection.

14.6 In the event of late payment, SAA shall raise interest charges at the Standard Bank Limited prime rate per annum.

14.7 For payments where prices are quoted in South African cents per litre, payment will be made to SAA according to the volume of Fuel uplifted at each location in litres as reflected on the flight receipts and summarized on the invoices forwarded to SA Express.

14.8 For payments by SA Express to SAA where prices for Fuel uplifts outside of South Africa are quoted in foreign currencies, SAA will use the South African Rand equivalent on date of payment, calculated according to conversion rates as applied to its own foreign currency payments

14.9 Any de-Fuelling costs/ credits for SA Express' account will be reflected on the invoice and on the SA Express account equally. This must also be included by SA Express in its payment for Fuel uplifted to SAA.

14.10 The charge relating to Fuel administration and handling costs will be as set out in Annexure A to this agreement.

## 15 SUPPLY REQUIREMENTS AT STATIONS NOT INCLUDED IN THE ORIGINAL PORTFOLIO

15.1 In the event that SA Express acquires additional routes and secures Fuel Suppliers of Aviation Fuel who are not included in SA Express' portfolio herein, then the said Agreements shall be entered into by SA Express with the Suppliers on a standalone basis.

such time as the SAA contracts become available for tender.

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15.3 Where routes have not been formally incorporated into the SAA tender process but uplifts to new destinations take place from existing contracted locations, the administration for the Fuel uplifts and payments thereof may be covered within the scope of this contract. However where locations are entirely new, SA Express will need to administer independently

## 16 CHANGING SUPPLY REQUIREMENTS AT STATIONS NOT OPERATED BY SAA

16.1 In the event that a Fuel provider exits a market after a Tender had already been awarded to the said Supplier, then SAA shall reasonably assist SA Express in the negotiation leading to securing of a new Supplier at the station in question.

16.2 The contract for the supply of Fuel at the said station shall however be between the Fuel Supplier at the station in question and SA Express, unless SAA is also impacted and needs to re-tender jointly with SA Express

16.3 Where contract falls outside of a joint tendering process the administration of the Fuel uplifts and the payments thereof will need to be independently administered by SA Express.

## 17 DISPOSAL OF WASTE FUEL

17.1 Upon request from SA Express to SAA in writing, SAA shall provide reasonable assistance to SA Express regarding the disposal of waste de-Fuelled Fuel from SA Express' Aircraft.

17.2 SAA warrants that the disposal of waste Fuel in terms of this Agreement shall be done in accordance with all relevant and applicable legislation in effect in the Republic of South Africa.

17.3 The rate for the disposal of Fuel shall be determined at the time of the request and the cost of disposal thereof shall be market related.

## 18 DURATION AND TERMINATION

18.1 This Agreement shall endure for an initial period of one (1) financial year from date of effect whereafter it may be renewed per Agreement between the parties.

18.2 The terms and conditions of the Fuel Services Agreement shall be reviewed annually by both parties at the end of each financial year and taking into consideration the changes in the market environment and the positions of both entities.

18.3 Should this Agreement not be reviewed by both parties in writing at the beginning of each new financial year in accordance with 18.2, the contract will automatically be renewed under the same terms and conditions as this Agreement on a year to year basis thereafter.

18.4 Should the renewal of this contract be as a result of an automatic renewal as per clause 18.3, the contract can be raised for review for the remainder of the current financial year by either party giving written notice to the other to this effect.

18.5 Upon such receipt of notice to review, the other party will need to respond within 30 days.

18.6 Subject to any contrary provision of this Agreement, either party shall be entitled to terminate this Agreement by giving the other Party six (6) months written notice or such longer period as may be agreed upon by both parties to enable the transfer of fuel uplift and payment data as well as any other relevant data from the fuel plus system for incorporation into the new fuel management system and set up satisfactory agreements with external suppliers for the provision of fuel as required.

18.7 Upon termination of this agreement SAA shall be obliged to provide (upon request) all financial data confirming payments made to suppliers for a period of five years as is stipulated by law.

## 19 DEFAULT AND TERMINATION

19.1 An event of default shall occur if:

19.1.1 Any party fails to pay any amount due to another party in terms of this agreement, and does not remedy such failure within 14 (fourteen) working days of receipt of notice from such other party calling upon it to do so; or

19.1.2 Any party defaults in the performance of any other material provision of this

such longer period as may reasonably be required to remedy such default) after receipt of notice from any other party calling upon it to remedy such default; or

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19.1.3 Any party makes any general assignment for the benefit of its creditors or compromises with its creditors generally; or

19.1.4 Any party is placed under provisional or final liquidation or provisional or final judicial management; or

19.1.5 The license of either party to conduct its business is suspended or revoked.

19.2 Upon the happening of an event of default, the non-defaulting party may by written notice to the defaulting party either demand specific performance from the party in default, or cancel this agreement, without prejudice to the non-defaulting party's right to claim damages from the party in default.

## 20 APPLICABLE LAW AND JURISDICTION

This Agreement shall be governed and construed in accordance with the laws of the Republic of South Africa. The parties hereby irrevocably consent and submit to the jurisdiction of the South Gauteng High Court, Johannesburg or its successor in title ("the High Court").

## 21 ENTIRE AGREEMENT

This Agreement shall supersede any previous arrangements between the Parties governing the provision of services at locations referred in the relevant Annexures hereto. This agreement contains all the express provisions agreed on by the parties with regard to the subject matter of the agreement and the parties waive the right to rely on any alleged express provision not contained in this Agreement.

## 22 NO REPRESENTATIONS

Neither party may rely on any representation, which allegedly induced that party to enter into this agreement, unless the representation is recorded in this Agreement.

## 23 VARIATION, CANCELLATION AND WAIVER

No contract varying, adding to, deleting from or cancelling this Agreement, and no waiver of any right under this Agreement, shall be effective unless reduced to writing and signed by or on behalf of the parties.

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## 24 INDULGENCES

24.1 If either party at any time breaches any of that party's obligations under this agreement, the other party ("the aggrieved party") may at any time after that breach, exercise any right that became exercisable directly or indirectly as a result of the breach, unless the aggrieved party has expressly elected in writing or by clear and unambiguous conduct, amounting to more than mere delay, not to exercise the right; and shall not be stopped (i.e. precluded) from exercising its rights arising out of that breach, despite the fact that the aggrieved party may have elected or agreed on one or more previous occasions not to exercise the rights arising out of any similar breach or breaches.

24.2 If the aggrieved party is willing to relinquish that right, the aggrieved party will on request do so in writing. In particular, acceptance of late performance shall, for a reasonable period after performance be provisional only and the aggrieved party may still exercise that right during that period.

## 25 CESSION

25.1 Neither party may cede that party's rights or delegate that party's obligations without the prior written consent of the other party, which consent shall not be unreasonably withheld.

## 26 SETTLEMENT OF DISPUTES

26.1 Should any dispute arise, in relation to this Agreement, between the parties the dispute shall be referred to the parties' Chief Executive Officers who will attempt to resolve the dispute amongst themselves.

26.2 Any such dispute or claim, which cannot be settled between the Chief Executive Officers, may be submitted, by written notice from the aggrieved Party to the other, to final and binding arbitration in terms of this clause.

26.3 Subject to the provisions of this clause, arbitration shall be held under the provisions of the arbitration laws for the time being in force in the Republic of South Africa.

26.4.1 primarily an accounting matter, an independent practising accountant of not less than 10 (ten) years' standing;

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26.4.2 primarily a legal matter, a practising senior counsel of not less than 10 (ten) years' standing;

26.4.3 any other matter, a suitably qualified independent person;

26.4.4 agreed upon by the Parties and failing such agreement within 3 (three) days after the date on which the arbitration is demanded, appointed by the committee of the Arbitration Foundation of Southern Africa (who may appoint one of their number) who may be instructed by either Party to make the nomination at any time after the expiry of that 3 (three) day period.

26.5 The arbitration shall be held in Johannesburg and in accordance with formalities and/or procedures determined by the arbitrator, and may be held in an informal and summary manner, on the basis that it shall not be necessary to observe or carry out the usual formalities of procedure, pleadings and/or discovery, or the strict rules of evidence.

26.6 The arbitrator shall be entitled:

26.6.1 to investigate or cause to be investigated any matter, fact or thing which he considers necessary or desirable in connection with the dispute and for that purpose shall have the widest powers of investigating all the books and records of either Party to the dispute in so far as the books and records may be relevant, and the right to take copies or make extracts there from and the right to have them produced and/or delivered at any reasonable place required by him for the aforesaid purpose;

26.6.2 to interview and question under oath representatives of either of the Parties;

26.6.3 to decide the dispute according to what he considers just and equitable in the circumstances;

26.6.4 to make such award, including an award for costs, specific performance, an interdict, damages or a penalty or otherwise as he in his discretion may deem fit and appropriate, provided that should the arbitrator fail to make an award with regard to costs, the costs of the arbitrator shall be borne equally between the Parties.

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26.7 The arbitration shall be held as soon as possible after it is demanded with a view to its being completed within 30 (thirty) days after it has been so demanded.

26.8 Immediately after the arbitrator has been agreed upon or nominated, either Party shall be entitled to call upon the arbitrator to fix a date and place when and where the arbitration proceedings shall be held and to settle the procedure and manner in which the arbitration proceedings will be held.

26.9 Any award that may be made by the arbitrator:

26.9.1 shall be final and binding;

26.9.2 will be carried into effect; and

26.9.3 may be made an order of any court to whose jurisdiction the parties to the dispute are subject.

26.10 Notwithstanding anything to the contrary contained in this clause, either Party shall be entitled to apply for, and if successful, be granted, an interdict from any competent court having jurisdiction.

26.10 This clause is severable from the rest of this Agreement and shall, notwithstanding the termination of this Agreement, remain in full force and effect.

26.11 The Parties agree that any arbitration, the proceedings and the final award, shall be kept strictly confidential and the Parties as well as the arbitrator shall be subject to the confidentiality undertakings contained in this Agreement.

26.12 The above provision shall however not preclude either party approaching the High Court for urgent interim relief.

## 27 SEVERABILITY

Whenever possible, each provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable law but if any provision of this Agreement shall be unenforceable or invalid under the applicable law, such invalidity or unenforceability shall not

Handwritten signatures and initials are present at the bottom right of the page, including a large signature, the initials "L.B.", and several other initials and marks.

## 28 CONFIDENTIALITY

Neither party shall under any circumstances divulge any information acquired as a result of this Agreement to a third party without the prior written consent of the other party to this Agreement. This provision will survive the expiry or early termination of this Agreement.

## 29 DOMICILIA CITANDI ET EXECUTANDI

29.1 The parties choose as their domicilium citandi et executandi for all purposes under this agreement, whether in respect of court process, notices or other documents or communications of whatsoever nature (including the exercise of any option), the following addresses:

### 29.1.1 SOUTH AFRICAN EXPRESS AIRWAYS:

Physical Address: 4<sup>th</sup> Floor, West Wing Offices  
Pier Development  
Domestic Arrivals  
O.R Tambo International Airport  
1627

Postal Address: P. O Box 101  
O.R Tambo International Airport  
1627


### 29.1.2 SOUTH AFRICAN AIRWAYS

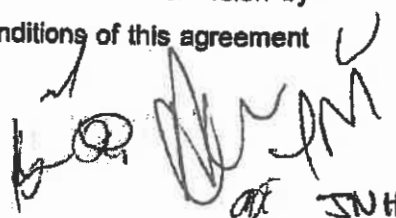
Physical Address: Airways Park  
Jones Road  
Kempton Park  
1627

Postal Address: O.R. Tambo International Airport  
Private Bag X13  
1627

## 30 FORCE MAJEURE

30.1 Notwithstanding any contrary provisions of this agreement, no failure or omission by either party to carry out or observe any of the terms and conditions of this agreement

  
L.B

  
JNH

shall give rise to any claim by the other of them or any other party, or be deemed to be a breach of this agreement, if same is caused by or arises as a result of force majeure, act of God, vis major or any act or direction of or limitation imposed by any governmental or statutory body, or war, strikes, civil commotion, riots, labour unrest, consumer boycotts, or any cause reasonably beyond the control of the party thus prevented from performing its obligations, provided, however, such party:

30.1.1 engages all its reasonable efforts to the extent reasonably possible to avoid and/or remedy such situation;

30.1.2 gives the other of them written notice of such situation as soon as possible after it becomes aware of the fact that such situation may arise or has arisen.

30.2 In the event of any cause reasonably beyond the control of the Supplier and/or SAA arising and preventing them or any one of them from carrying out their obligations in terms of this agreement, such performance of obligations shall be suspended during such period of inability by either of them to perform its obligations under this agreement, provided, however, that nothing herein contained shall extinguish, delay, or suspend the obligations of such party to liquidate all its outstanding liabilities under this agreement which accrued or became due before the period of suspension, or which it is not prevented from discharging by the circumstances giving rise to the suspension.

30.3 During any suspension contemplated in 30.2, the party affected by such suspension shall be entitled to obtain the services and/or facilities of which it is deprived as a result of such suspension from any other person.

### 31 STAMP DUTIES, REGISTRATION FEES

31.1 All stamp duties and registration fees in connection with this Agreement, which may be prescribed under the national law of either Party to this Agreement, are payable by that Party.

31.2 All stamp duties and registration fees in connection with this Agreement, which may be prescribed under the national law of the location(s), as mentioned in the Annexures and not being a location situated in the country of either Party to this Agreement will be

*[Handwritten signatures and initials]*  
 e.B  
 J.M.  
 SWH

**32 LEGAL COSTS**

Each party shall bear that party's own legal costs of and incidental to the negotiation, preparation, settling, signing and implementation of this Agreement.



*C.B.*

Page 20

*[Handwritten signatures and initials]*  
JNH

### 33 BINDING EFFECT AND ASSIGNMENT

33.1 The provisions of this Agreement shall inure to the benefit of and be binding upon the Parties hereto and their respective successors and assigns.

33.2 Notwithstanding any contrary provisions of this Agreement, no Party shall be entitled to assign any of its rights or obligations in terms of or arising from this Agreement without the prior written consent of the other Party, which consent shall not be unreasonably withheld, provided that a corporate reorganisation or amalgamation where the control of a Party (or survivor or assignor of such Party) remains the same shall not be considered an assignment for the purpose of this clause.



C.B.

✓  
Mox  
INT

SIGNED AT O.R. TAMBO INTERNATIONAL AIRPORT ON THIS THE 31<sup>st</sup> DAY OF AUGUST 2011



**Arson Malola-Phiri**  
Regional General Manager: African Expansion

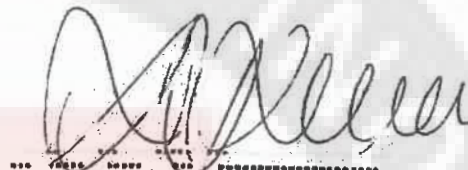


**Ken Wienand**  
Acting Chief Financial Officer

FOR AND ON BEHALF OF SOUTH AFRICAN EXPRESS AIRWAYS (WARRANTING HIS/HER AUTHORITY TO SIGN)

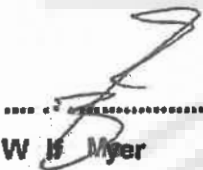


**John H. H.**  
Specialist: Business Development

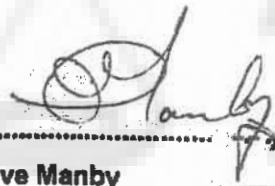


**Tshavhungwe Mamphiswana**  
Divisional Manager: Legal Services

SIGNED AT O.R. TAMBO INTERNATIONAL AIRPORT ON THIS THE 31<sup>st</sup> DAY OF August 2011

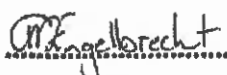


**W. H. Myer**  
Chief Financial Officer

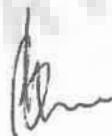


**Clive Manby**  
Head of Petroleum Affairs

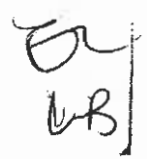
FOR AND ON BEHALF OF SOUTH AFRICAN AIRWAYS (PTY) LTD  
(WARRANTING HIS/HER AUTHORITY TO SIGN)



**WITNESS**



**WITNESS**



## Annexure “EL 5”



2017/07/01 11:22 AM(UTC+2)Direction:Incoming, 27834000050@s.whatsapp.net (Sam Vilakazi)  
BAC members please check your emails and assist with round robin approval needed urgently iro NME.

Status: Read  
Platform: Mobile

2017/07/01 11:24 AM(UTC+2)Direction:Incoming, 27834000039@s.whatsapp.net (Dave Allanby)  
It's for both NME & NMN defuelling requirement

Status: Read  
Platform: Mobile

2017/07/01 11:24 AM(UTC+2)Direction:Incoming, 27834000039@s.whatsapp.net (Dave Allanby)  
Tx Sam

Status: Read  
Platform: Mobile

2017/07/01 11:27 AM(UTC+2)Direction:Incoming, 27834000039@s.whatsapp.net (Dave Allanby)  
Sam u have my email confirming Approval

Status: Read  
Platform: Mobile

2017/07/01 11:30 AM(UTC+2)Direction:Incoming, 27832779705@s.whatsapp.net (Merriam Mochoele)  
Hi Sam. What's EML?

Status: Read  
Platform: Mobile

2017/07/01 11:30 AM(UTC+2)Direction:Incoming, 27834000050@s.whatsapp.net (Sam Vilakazi)  
Fuel supplier based at Denel

Status: Read  
Platform: Mobile

2017/07/01 11:32 AM(UTC+2)Direction:Incoming, 27832779705@s.whatsapp.net (Merriam Mochoele)  
This is for the supply of fuel where? Sorry, I don't have the background facts.

Status: Read  
Platform: Mobile

2017/07/01 11:35 AM(UTC+2)Direction:Incoming, 27834000050@s.whatsapp.net (Sam Vilakazi)  
ORTIA

Status: Read  
Platform: Mobile

LB

2017/07/01 11:41 AM(UTC+2)Direction:Outgoing, 27832779705@s.whatsapp.net (Kgatle Ntsho) => To: 27836517186@s.whatsapp.net Maryna Gie (Maryna Gie) To: 278323548654@s.whatsapp.net Phaphedi Moabelo (Phaphedi Moabelo) To: 27836281679@s.whatsapp.net Albert van Oldenmark (Albert van Oldenmark) To: 27832952570@s.whatsapp.net Thandi Kunene 2 (Thandi Kunene 2) To: 27791545513@s.whatsapp.net Madavha DPE (Madavha DPE) To: 2783937788@s.whatsapp.net Mimi Atlas (Mimi Atlas) To: 27834632737@s.whatsapp.net Mark Shelley (Mark Shelley) To: 27834000039@s.whatsapp.net Dave Allanby (Dave Allanby) To: 27716055007@s.whatsapp.net MphoS (+27 71 605 5007) (+27 71 605 5007) To: 27834000050@s.whatsapp.net Sam Vilakazi (Sam Vilakazi) To: 27611773251@s.whatsapp.net Mr Victor Xaba (Mr Victor Xaba) To: 27832779705@s.whatsapp.net Merriam Mochoele (Merriam Mochoele) To: 27832955319@s.whatsapp.net Thandi Kunene (Thandi Kunene) To: 27718566036@s.whatsapp.net Lufuno Tshitaudzi (Lufuno Tshitaudzi)

Hi Sam

Have responded to your mail

I didn't see the submission but again I did not attend BAC yesterday

So approved in principle so as to avoid AOG

Participants:

Participant	Delivered	Read	Played
27836517186@s.whatsapp.net Maryna Gie	2017/07/01 11:42 AM(UTC+2)	2017/07/01 12:21 PM(UTC+2)	
278323548654@s.whatsapp.net Phaphedi Moabelo	2017/07/01 11:41 AM(UTC+2)	2017/07/01 12:12 PM(UTC+2)	
27836281679@s.whatsapp.net Albert van Oldenmark	2017/07/01 11:41 AM(UTC+2)	2017/07/01 12:02 PM(UTC+2)	
27832952570@s.whatsapp.net Thandi Kunene 2	2017/07/02 03:20 AM(UTC+2)	2017/07/02 09:04 AM(UTC+2)	
27791545513@s.whatsapp.net Madavha DPE	2017/07/01 11:41 AM(UTC+2)	2017/07/01 11:41 AM(UTC+2)	
2783937788@s.whatsapp.net Mimi Atlas	2017/07/01 05:00 PM(UTC+2)	2017/07/01 05:03 PM(UTC+2)	
27834632737@s.whatsapp.net Mark Shelley	2017/07/01 11:41 AM(UTC+2)	2017/07/01 11:41 AM(UTC+2)	
27834000039@s.whatsapp.net Dave Allanby	2017/07/01 11:41 AM(UTC+2)	2017/07/01 11:43 AM(UTC+2)	
27716055007@s.whatsapp.net MphoS (+27 71 605 5007)	2017/07/01 11:42 AM(UTC+2)	2017/07/01 08:36 PM(UTC+2)	
27834000050@s.whatsapp.net Sam Vilakazi	2017/07/01 11:41 AM(UTC+2)	2017/07/01 11:41 AM(UTC+2)	
27611773251@s.whatsapp.net Mr Victor Xaba	2017/07/01 11:41 AM(UTC+2)	2017/07/01 11:51 AM(UTC+2)	
27832779705@s.whatsapp.net Merriam Mochoele	2017/07/01 11:41 AM(UTC+2)	2017/07/01 11:41 AM(UTC+2)	
27832955319@s.whatsapp.net Thandi Kunene	2017/07/11 02:32 PM(UTC+2)	2017/07/11 08:17 PM(UTC+2)	
27718566036@s.whatsapp.net Lufuno Tshitaudzi	2017/07/01 11:41 AM(UTC+2)	2017/07/01 11:45 AM(UTC+2)	

Status: Sent  
Platform: Mobile

2017/07/01 11:42 AM(UTC+2)Direction:Incoming, 27834632737@s.whatsapp.net (Mark Shelley)  
Hi I don't have access to e mail. Please use this message as approval.

Status: Read  
Platform: Mobile

2017/07/01 11:42 AM(UTC+2)Direction:Incoming, 27832779705@s.whatsapp.net (Merriam Mochoele)  
This was not discussed at BAC yesterday. Thanks Sam for the explanation. I'll approve on email, but we'll need to meet to ratify the decision, based on a submitted memo.

Status: Read  
Platform: Mobile

2017/07/01 11:43 AM(UTC+2)Direction:Incoming, 27834000050@s.whatsapp.net (Sam Vilakazi)  
Hi Kgatle. There was no submission but according to Captain Allanby they are able to assist us on the heavy maintenance side and sun city

Status: Read  
Platform: Mobile

2017/07/01 11:45 AM(UTC+2)Direction:Outgoing, 27832700680@s.whatsapp.net (Kgetle Nkala) => To: 27836517186@s.whatsapp.net Maryna Gle (Maryna Gle) To: 27823548654@s.whatsapp.net Phaphedi Moabelo (Phaphedi Moabelo) To: 27836281679@s.whatsapp.net Albert van Oldenmark (Albert van Oldenmark) To: 27832892570@s.whatsapp.net Thandi Kunene 2 (Thandi Kunene 2) To: 27791545513@s.whatsapp.net Madavha DPE (Madavha DPE) To: 27839937788@s.whatsapp.net Mimi Atlas (Mimi Atlas) To: 27834632737@s.whatsapp.net Mark Shelley (Mark Shelley) To: 27834000039@s.whatsapp.net Dave Allanby (Dave Allanby) To: 27716055007@s.whatsapp.net MphoS (+27 71 605 5007) (MphoS (+27 71 605 5007)) To: 27834000050@s.whatsapp.net Sam Vilakazi (Sam Vilakazi) To: 27611773251@s.whatsapp.net Mr Victor Xaba (Mr Victor Xaba) To: 27832779705@s.whatsapp.net Meriam Mochoele (Meriam Mochoele) To: 27832955319@s.whatsapp.net Thandi Kunene (Thandi Kunene) To: 27718566036@s.whatsapp.net Lufuno Tshlaudzi (Lufuno Tshlaudzi)

Ok

Thanks

Participants:

Participant	Delivered	Read	Played
27836517186@s.whatsapp.net Maryna Gle	2017/07/01 11:46 AM(UTC+2)	2017/07/01 12:21 PM(UTC+2)	
27823548654@s.whatsapp.net Phaphedi Moabelo	2017/07/01 11:45 AM(UTC+2)	2017/07/01 12:12 PM(UTC+2)	
27836281679@s.whatsapp.net Albert van Oldenmark	2017/07/01 11:45 AM(UTC+2)	2017/07/01 12:02 PM(UTC+2)	
27832892570@s.whatsapp.net Thandi Kunene 2	2017/07/02 03:20 AM(UTC+2)	2017/07/02 08:04 AM(UTC+2)	
27791545513@s.whatsapp.net Madavha DPE	2017/07/01 11:45 AM(UTC+2)	2017/07/01 02:32 PM(UTC+2)	
27839937788@s.whatsapp.net Mimi Atlas	2017/07/01 05:00 PM(UTC+2)	2017/07/01 05:03 PM(UTC+2)	
27834632737@s.whatsapp.net Mark Shelley	2017/07/01 11:45 AM(UTC+2)	2017/07/01 04:33 PM(UTC+2)	
27834000039@s.whatsapp.net Dave Allanby	2017/07/01 11:45 AM(UTC+2)	2017/07/01 11:45 AM(UTC+2)	
27716055007@s.whatsapp.net MphoS (+27 71 605 5007)	2017/07/01 11:45 AM(UTC+2)	2017/07/01 06:36 PM(UTC+2)	
27834000050@s.whatsapp.net Sam Vilakazi	2017/07/01 11:45 AM(UTC+2)	2017/07/01 11:48 AM(UTC+2)	
27611773251@s.whatsapp.net Mr Victor Xaba	2017/07/01 11:45 AM(UTC+2)	2017/07/01 11:51 AM(UTC+2)	
27832779705@s.whatsapp.net Meriam Mochoele	2017/07/01 11:45 AM(UTC+2)	2017/07/01 11:47 AM(UTC+2)	
27832955319@s.whatsapp.net Thandi Kunene	2017/07/11 02:32 PM(UTC+2)	2017/07/11 08:17 PM(UTC+2)	
27718566036@s.whatsapp.net Lufuno Tshlaudzi	2017/07/01 11:45 AM(UTC+2)	2017/07/01 11:46 AM(UTC+2)	

Status: Sent  
Platform: Mobile

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Did send mail

Participants:

Participant	Delivered	Read	Played
27836517186@s.whatsapp.net Maryna Gle	2017/07/01 11:46 AM(UTC+2)	2017/07/01 12:21 PM(UTC+2)	
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27836281679@s.whatsapp.net Albert van Oldenmark	2017/07/01 11:46 AM(UTC+2)	2017/07/01 12:02 PM(UTC+2)	
27832892570@s.whatsapp.net Thandi Kunene 2	2017/07/02 03:20 AM(UTC+2)	2017/07/02 08:04 AM(UTC+2)	
27791545513@s.whatsapp.net Madavha DPE	2017/07/01 11:46 AM(UTC+2)	2017/07/01 02:32 PM(UTC+2)	
27839937788@s.whatsapp.net Mimi Atlas	2017/07/01 05:00 PM(UTC+2)	2017/07/01 05:03 PM(UTC+2)	
27834632737@s.whatsapp.net Mark Shelley	2017/07/01 11:46 AM(UTC+2)	2017/07/01 04:33 PM(UTC+2)	
27834000039@s.whatsapp.net Dave Allanby	2017/07/01 11:46 AM(UTC+2)	2017/07/01 11:46 AM(UTC+2)	
27716055007@s.whatsapp.net MphoS (+27 71 605 5007)	2017/07/01 11:46 AM(UTC+2)	2017/07/01 06:36 PM(UTC+2)	
27834000050@s.whatsapp.net Sam Vilakazi	2017/07/01 11:46 AM(UTC+2)	2017/07/01 11:48 AM(UTC+2)	
27611773251@s.whatsapp.net Mr Victor Xaba	2017/07/01 11:46 AM(UTC+2)	2017/07/01 11:51 AM(UTC+2)	
27832779705@s.whatsapp.net Meriam Mochoele	2017/07/01 11:46 AM(UTC+2)	2017/07/01 11:47 AM(UTC+2)	
27832955319@s.whatsapp.net Thandi Kunene	2017/07/11 02:32 PM(UTC+2)	2017/07/11 08:17 PM(UTC+2)	
27718566036@s.whatsapp.net Lufuno Tshlaudzi	2017/07/01 11:46 AM(UTC+2)	2017/07/01 11:46 AM(UTC+2)	

Status: Sent  
Platform: Mobile

LB

2017/07/01 11:48 AM(UTC+2)Direction:incoming, 2781400000@s.whatsapp.net (Dave Allardy)

EML have fuel tankers based at Denel. We had begun engagement with them as a potential solution to our fuel supply problems at NTY. Their geographical locality to our Heavy Maintenance facility at Denel makes them ideal to assist with fueling & de-fueling of aircraft on that side of the airport. Otherwise we can wait +24 hours for a dedicated defuel bowser from Apron side. We currently need 2 aircraft defueled in order to carry out work to get them back in the sky. Hope this helps with clarification. Thank u BAC Members

Status: Read  
Platform: Mobile

2017/07/01 11:52 AM(UTC+2)Direction:incoming, 27811773251@s.whatsapp.net (Mr Victor Xaba)

Approved subject to BAC ratification.

Status: Read  
Platform: Mobile

2017/07/01 04:10 PM(UTC+2)Direction:incoming, 27811773251@s.whatsapp.net (Mr Victor Xaba)

Lufuno, I have sent an email with urgent action regarding the overpayments to Swissport. Please treat with utmost urgency.

Status: Read  
Platform: Mobile

2017/07/01 04:11 PM(UTC+2)Direction:incoming, 27718568065@s.whatsapp.net (Lufuno Tshikudze)

Thanks... will check

Status: Read  
Platform: Mobile

2017/07/01 08:48 PM(UTC+2)Direction:incoming, 27781545513@s.whatsapp.net (Madavha DPE)

<http://m.fin24.com/fin24/Companies/Industrial/saa-gets-urgent-r22bn-bailout-as-it-bleeds-millions-every-month-20170701>

Attachments:



AA gets urgent R2.2bn bailout as it bleeds millions every month

<http://m.fin24.com/fin24/Companies/Industrial/saa-gets-urgent-r22bn-bailout-as-it-bleeds-millions-every-month-20170701>

92f5a8c2-b5ea-4fc4-8deb-95c08ae79de1.thumb

Status: Read  
Platform: Mobile

2017/07/01 08:47 PM(UTC+2)Direction:incoming, 27781545513@s.whatsapp.net (Madavha DPE)

Friday Devine intervention worked

Status: Read  
Platform: Mobile

2017/07/01 08:47 PM(UTC+2)Direction:incoming, 27781545513@s.whatsapp.net (Madavha DPE)

Or is working

Status: Read  
Platform: Mobile

2017/07/01 10:43 PM(UTC+2)Direction:incoming, 27811773251@s.whatsapp.net (Mr Victor Xaba)

What does this mean for SAX?

Status: Read  
Platform: Mobile

2017/07/01 10:44 PM(UTC+2)Direction:incoming, 27781545513@s.whatsapp.net (Madavha DPE)

We are next in-line. That is what it means.

Status: Read  
Platform: Mobile

2017/07/01 10:46 PM(UTC+2)Direction:incoming, 27781545513@s.whatsapp.net (Madavha DPE)

This coming week is going to be interesting

Status: Read  
Platform: Mobile

2017/07/01 10:48 PM(UTC+2)Direction:incoming, 27811773251@s.whatsapp.net (Mr Victor Xaba)

I hate coming 2nd!

Status: Read  
Platform: Mobile

2017/07/01 10:47 PM(UTC+2)Direction:incoming, 27781545513@s.whatsapp.net (Madavha DPE)

We didn't make the noise, but now we should and louder.

Status: Read  
Platform: Mobile

2017/07/01 10:49 PM(UTC+2)Direction:incoming, 27781545513@s.whatsapp.net (Madavha DPE)

Remember SAA didn't apply for Recap, their Funding is based on their Corporate Plan and imminent failure to honour their financial obligations as of yesterday

Status: Read  
Platform: Mobile

2017/07/01 10:50 PM(UTC+2)Direction:incoming, 27781545513@s.whatsapp.net (Madavha DPE)

Deadline

Status: Read  
Platform: Mobile

LB

## Annexure “EL 6”





2<sup>nd</sup> Floor  
E Block Offices  
Always Park  
1 Jones Road  
T: +27 (0)11 878 8900  
F: +27 (0)11 878 6578

P O Box 101  
OR Tambo International Airport  
1627  
South Africa  
www.flyexpress.co.za

## MEMO

**To:** Victor Xaba – Chief Executive Officer (CEO) – SA Express Airways SOC Ltd

**From:** Dave Allanby - General Manager: Operations – SA Express Airways SOC Ltd

**Subject:** Motivation to Deviate from Bid Process: Contract with EML Engineers & Construction t/a EML Energy for specified airport Fuel and related Services

**Date:** 5 July 2017

### 1. PURPOSE

The purpose of this memo is:

- 1.1 To request approval to contract with EML Engineers & Construction t/a EML Energy for the supply of fuel at Pilanesberg airport and periodic fuelling and defuelling at the SA Express Heavy Maintenance facility at Denel O R Tambo International Airport
- 1.2 To request approval to deviate from the normal Bid Planning activities relating to the review and approval of EML Engineers & Construction t/a EML Energy Fuel Handling Agreement, by the Bid Planning and Specifications Committee (BPSC) and the Bid Adjudication Committee (BAC) as stipulated in the Supply Chain Management Policy of SA Express

### 2. BACKGROUND: Scenario One

- 2.1 SA Express operates a weekly scheduled air service into Pilanesberg Airport (NTY) from both OR Tambo International (JNB) and Cape Town international (CPT) airports
- 2.2 This weekly scheduled air service is operated in compliance to an Agreement between SA Express SOC Limited (SAX) and the North West Provincial Government (NWPG)

Board of Directors: G N Mothema (Chairperson), V. Xaba\* (Chief Executive Officer), M R Sholeiy\* (Chief Financial Officer), T Abrahams, B P B Dibeja, R Nkomo (India), J N Nkabinde, P Ramosebudi, G R Sibye

\* Company Secretary: Marynne Gile  
\* Executive Director

South African Express Airways SOC Ltd  
Co. Reg. No. 1993/07412/20  
VAT Reg. No. 4400140409

*LB*

- 2.3 This scheduled service promotes trade and tourism within the North West Province and has significant benefits for the Sun International Hotel Group at Sun City who are also party to the Agreement in 2.2
- 2.4 Pilanesberg Airport does not have a fuel service for aircraft
- 2.5 Previous attempts by contractors to establish a fuel farm at Pilanesberg and/or provide a service have failed
- 2.6 Aviation fuel and the handling thereof is strongly regulated and monitored by the Aviation Authorities
- 2.7 Flights operating CPT-NTY-CPT cannot carry sufficient fuel for the two sectors and this necessitates the aircraft making an enroute diversion in order to uplift fuel. (Normally the likes of Kimberly would be used)
- 2.8 In order to overcome this inconvenience SA Express has currently rescheduled its service from CPT to operate through JNB. However, for schedule flexibility in the long term, it will be more preferential for there to be a reliable fuel supply available at NTY
- 2.9 EML Energy have submitted a proposal in which they would supply fuel to the SAX aircraft at NTY via mobile fuel bowser

### 3. BACKGROUND: Scenario Two

- 3.1 The SA Express Heavy Maintenance Section, based at Denel Aviation Industries premises on the East side of O R Tambo International airport require the ad-hoc availability of a service to defuel and refuel aircraft in order to conduct various aspects of maintenance
- 3.2 A defuel bowser, from one of the regular fuel suppliers operating predominantly on the Western side of the airport, is required to be booked +24 hours in advance and are even then not readily available
- 3.3 EML Energy, being based on the Eastern side of the airport on the Denel premises, is able to offer this service more simply and seamlessly

### 4. FINANCIAL IMPLICATIONS

Ad-hoc as per negotiated contract

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## **5. RATIONALE FOR DEVIATION FROM BID PROCESS**

- 5.1 The appointment of EML Engineers & Construction t/a EML Energy is deemed an Operational requirement
- 5.2 EML Engineers & Construction t/a EML Energy to be appointed through deviation process and enrolled on the SAX database as Enterprise Development (ED)
- 5.3 Implement an agreement that will specify fees, service levels and general operational fuel service requirements at both NTY airport and JNB airport on the Denel premises
- 5.4 Operations / Technical to ensure fixed rates for fixed period

## **6. DEVIATIONS FROM POLICY**

The Supply Chain Management Policy, Annexure B clause 3.1, states that the User Department must provide a comprehensive motivation for deviation from the bid process in writing, in which the reasons for the proposed deviation are outlined. The motivation must be duly authorized by the departmental head; the CFO and the CEO.

## **7. DOCUMENT VETTING & APPROVAL**

The following approval is requested:

- 7.1 To implement an agreement with EML Engineers & Construction t/a EML Energy that will specify and record all relevant fees and to deviate from the normal Bid Planning activities relating to the review and approval of the Request For Proposal (RFP) by the Bid Planning and Specifications Committee (BPSC) and the Bid Adjudication Committee (BAC) as stipulated in the Supply Chain Management Policy of SA Express Airways SOC Ltd
- 7.2 To request approval to deviate from the normal Bid Planning activities relating to the review and approval of EML Engineers & Construction t/a EML Energy Fuel Handling Agreement, by the Bid Planning and Specifications Committee (BPSC) and the Bid Adjudication Committee (BAC) as stipulated in the Supply Chain Management Policy of SA Express

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**Submitted by:**

**Name:** Dave Allanby  
**Position:** General Manager: Operations  
**Department:** Operations

**Date:** 5.04.17  
**Signature:** *[Signature]*

**Procurement Department:**

**Name:** Pumza Ngome Sam Vilakazi  
**Position:** Procurement Specialist CPO  
**Department:** Finance

**Date:** 06/07/2017  
**Signature:** *[Signature]*

**Proposed acquisition is budgeted/unbudgeted:**

**Name:** Mpho Selepe  
**Position:** DM: Finance  
**Department:** Finance

**Date:** 27/07/17  
**Signature:** *[Signature]*

**Approved/Disapproved:**

**Name:** Mark Shelley  
**Position:** Acting Chief Financial Officer  
**Department:** Finance

**Date:** 27/7/17  
**Signature:** *[Signature]*

**Approved/Declined:**

**Name:** Merriam Mochoele  
**Position:** Chairperson: Bid Adjudication Committee (BAC)

**Date:** 01/08/2017  
**Signature:** *[Signature]*

**Approved/Disapproved:**

**Name:** Victor Xaba

**Date:** 01/08/2017

**Position:** Chief Executive Officer

**Signature:** *[Signature]*

*Please Commissions from other Commissions.*

## Annexure “EL 7”



<b>SAX-PRO-POL-001</b>	 <b>sa express</b> <small>we fly for you</small>	Page <b>1</b> of <b>40</b>
Rev: 17/02/2017		Procurement
<b>PROCUREMENT POLICY</b>		

<b>EFFECTIVE DATE:</b>	 <b>sa express</b>	<b>REVIEW DATE:</b>
01 April 2017		31 March 2018
<b>Chief Executive Officer</b>	<b>SUPPLY CHAIN MANAGEMENT POLICY</b>	<b>POLICY NO:</b>
		<b>SA EXPRESS/SCM/2017</b>
<b>SIGNATURE:</b>		

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**ABBREVIATIONS**

AOG	Aircraft on ground
BAC	Bid Adjudication Committee
BEC	Bid Specification Committee
BEE	Black Economic Empowerment
BBBEE	Broad Based Black Economic Empowerment
BO	Black Owned
BWO	Black Women Owned
BPWD	Black People with Disability
CAA	Civil Aviation Authority
CEO	Chief Executive Officer
CFO	Chief Financial Officer
CPO	Chief Procurement Officer
DTI	Department of Trade and Industry
DPE	Department of Public Enterprises
EXCO	Executive Committee
HDI	Historically Disadvantaged Individuals
NIPP	National Industrial Participation Program
PFMA	Public Finance Management Act, Act 1 of 1999 (as amended)
PPPFA	Preferential Procurement Policy Framework Act, Act 5 of 2000
RFI	Request for Information
RFQ	Request for Quotation
RFP	Request for Proposal
SARS	South African Revenue Services
SAX	South African Express Airways
SCM	Supply Chain Management
SCM	Supply Chain Management
SMME	Small, Medium and Micro Enterprises
VAT	Value Added Tax
OEM	Original Equipment Manufacturer
EME	Exempted Micro Enterprise

**DEFINITIONS**

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**B-BBEE** means broad-based black economic empowerment as defined in section 1 of the Broad-Based Black Economic Empowerment Act;

**B-BBEE status level of contributor** means the B-BBEE status of an entity in terms of a code of good practice on black economic empowerment issued in terms of section 9(1) of the Broad-Based Black Economic Empowerment Act;

**"Black Designated Groups"** has the meaning assigned to it in the codes of good practice issued in terms of section 9(1) of the Broad-Based Black Economic Empowerment Act;

**"Black People"** has the meaning assigned to it in section 1 of the Broad-Based Black Economic Empowerment

**"Broad-Based Black Economic Empowerment Act"** means the Broad-Based Black Economic Empowerment Act, 2003 (Act No. 53 of 2003);

**"Bid/Tender"** – means a written offer in a prescribed or stipulated form in response to an invitation by an organ of state for the provision of services or goods.

**"Consortium or Joint Venture"** – means an association of persons, whether incorporated or unincorporated, for the purpose of combining their expertise, property, capital, efforts, skills and knowledge in an activity for the execution of a contract.

**"Consultant"** – includes, among others, consulting firms, engineering firms, construction managers, management firms, procurement agents, inspection agents, auditors, other multi-national organization, investment and merchant banks, universities, research agencies, government agencies, non-governmental organizations, and individuals.

**Designated group** means-

- (a) Black designated groups;
- (b) Black people;
- (c) Women;
- (d) People with disabilities; or
- (e) Small enterprises, as defined in section 1 of the National Small Enterprise Act, 1996 (Act No. 102 of 1996);

**"Firm Price"** – means the price that is only subject to adjustments in accordance with the actual increase or decrease resulting from the change, imposition or abolition of customs or excise duty

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and any other duty, levy or tax which, in terms of a law or regulation is binding on the contractor and demonstrably has an influence on the price of any supplies or the rendering cost of any service, for the execution of a contract.

**"Goods"** – means any work, equipment, machinery, tools, materials or anything of whatever nature to be rendered to SA Express or SA Express delegate by the successful vendor in terms of the proposal.

**"Historically Disadvantaged Individual" (HDI)** – means a South African citizen who: Due to the apartheid policy that had been in place, had no franchise in national elections prior to the introduction of the Constitution of the Republic of South Africa.

**"License"** – means conditional use of another party's intellectual property rights.

**"Management"** – in relation to an enterprise or business, means an activity inclusive of control, and performed on a daily basis, by any person who is a principal executive officer of the company, by whatever name that person may be designated, and whether or not that person is a director.

**"Organ of State"** – means a constitutional institution defined in the PFMA.

**"Person/s"** – refers to a natural and/or juristic person/s.

**"People with Disabilities"** has the meaning assigned to it in section 1 of the Employment Equity Act, 1998 (Act No. 55 of 1998);

**"Price"** includes all applicable taxes less all unconditional discounts;

**Rand value"** means the total estimated value of a contract in Rand, calculated at the time of the tender invitation;

**"RFP/Q"** – means a Request for Proposal/Quotation, which is a written official enquiry document encompassing all the terms and conditions of the bid.

**"SMME"** – bears the same meaning assigned to this expression in the National Small Business Act, Act 102 of 1996.

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**"Sub-Contracting"** – means the primary contractor's assigning or leasing or making out work to, or employing another person to support such primary contractor in executing part of a project in terms of a contract.

**"Successful Bidder"** – means an organization or person with whom the order is placed or who is contracted to execute the work as detailed in the bid.

**"To bid/tender"** – means to submit an offer to carry out work, render a service or to supply goods at a stated price.

**Supplier"** - means any enterprise, consortium or person, partnership, company, close corporation, firm or any other form of enterprise or person, legal or natural, which has been invited by SA Express to submit a bid in response to a bid invitation.

**"Youth"** has the meaning assigned to it in section 1 of the National Youth Development Agency Act, 2008 (Act No. 54 of 2008).

## 1. PREAMBLE

This policy establishes an Integrated Supply Chain Management framework within which the acquisition of goods, services and works is performed within SA Express. The policy has taken into account the company's vision, strategy and a new business model for long-term sustainability. Its desirable outcomes are therefore to ensure that the company's objectives are supported through an integrated and a responsive supply chain management system whilst ensuring high levels of compliance with the relevant sections of the legislation, regulations and prescripts.

SA Express's supply chain management systems, therefore, subscribes to the principles of a transparent and effective procurement system that gives effect to the objectives of the Preferential Procurement Policy Framework Act, Act 5 of 2000 and the National Treasury Regulations Framework for the Supply Chain Management (as a best practice model) as well as the provision of King three Report on Good Corporate Governance. This Policy must therefore be read in conjunction with all other relevant policies and National Treasury Regulations as well as Practice Notes (As guidelines) which were issued in terms of PFMA.

## 2. BACKGROUND

SA Express is a State-owned Airline established in terms of the SA Express Act No 34, 2007 and accountable to the Department of Public Enterprises as the sole shareholder. In implementing the new business model entitled 20:20 Vision, the company aims to address the following strategic objectives:

- To be a sustainable, well managed and profitable regional airline
- To provide consistent and efficient customer service
- To foster performance excellence through the development of people, skills and jobs
- To expand the airline's services throughout Africa
- To become a catalyst for key developmental state objectives, including the development of infrastructure, the facilitation of trade, and the growth of the tourism industry

### **3. SUPPLY CHAIN MANAGEMENT POLICY AIMS**

This policy seeks to ensure that all employees of SA Express have clear and proper guidelines and processes to follow when involved in supply chain management processes/activities. The supply chain management processes must ensure that, (1) the company maintains the procurement system which is effective, efficient and transparent, (2) the transactions entered into are neither unauthorized, irregular, fruitless nor wasteful and (3) All employees in the company become accountable for their actions.

This policy therefore sets out the ethical procurement practices aligned with the current legislation. Procuring services and commodities of desired quality and best value for money within acceptable turnaround times, are the derived benefits of this policy, enabling SA Express to retain its competitive advantage as the regional carrier of choice.

### **4. POLICY SCOPE**

This policy shall apply to supply chain management activities within SA Express covering all business units of the company. It is further applicable to all procurement transactions irrespective of their nature or value.

### **5. SUPPLY CHAIN GOVERNANCE STRUCTURES (ROLES AND RESPONSIBILITIES)**

#### **5.1 BOARD OF DIRECTORS**

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The board as the accounting authority is responsible for determining the strategic direction of the company and ensuring that all major procurement decisions and recommendations are geared towards accomplishing the company objectives by fulfilling the corporate plan commitments whilst simultaneously meeting the shareholder's expectations.

## **5.2 CHIEF EXECUTIVE OFFICER**

The Chief Executive Officer, as delegated by the board is responsible and accountable for the procurement of goods and services for the company, entering into contracts, strategic partnerships, arranges the hiring or letting of anything, the acquisition or granting of any right for or on behalf of SA Express and disposes of movable SA Express property. The Chief Executive Officer is also required to effect the provisions of Section 54 of the Public Finance Management Act in transactions that require approval by the Shareholder.

The Chief Executive officer is empowered by the PFMA and its associated regulations to, delegate certain functions to the various levels of management as and when the need arises.

## **5.3 BID ADJUDICATION COMMITTEE**

The Chief Executive Officer shall appoint a suitably skills officials within the company to constitute the five committee member excluding the Chairperson as follows:

- The Chairperson of the Committee shall be appointed by the Chief Executive Officer
- The Committee shall consist of at least three senior management officials
- At least one member to be an SCM practitioner
- The secretariat shall be made available from the company to assist the BAC and shall have no voting rights.

The roles and responsibilities of the Bid Adjudication Committee and bid committees (specifications and evaluation) shall be executed as prescribed by the Code of Conduct for Bid Adjudication Committees.



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#### 5.4 SUPPLY CHAIN MANAGEMENT UNIT

The Supply Chain Management Unit has a role to develop and maintain the robust Supply Chain Management Policy and Procedures, manage bidding processes effectively, provide a centralized supply chain management service for the company and also extend assistance and advice to business units on all procurement related matters.

These responsibilities encompass:

- Determine the procurement needs of the company and the appropriate sourcing strategies.
- Establish, maintaining and monitoring a credible database of suppliers.
- Assist in developing bid specifications, bid evaluation methodologies, briefing and debriefing of bidders.
- Negotiate contractual terms and conditions on behalf of the company Supply Chain Management Unit shall operate within the delegations as determined by the Chief Executive Officer and the board.
- The Chief Procurement Officer is responsible for ensuring that SA Express's Supply Chain Management Policy is effectively implemented, and leading the Supply Chain Management Unit in its operations.
- The Chief Procurement Officer may, from time to time, establish an ad hoc cross-functional committee/team to fulfil a specific required function in relations to procurement.

#### 6. SA EXPRESS INTEGRATED SUPPLY CHAIN MANAGEMENT FRAMEWORK

The company's model is driven by the six critical procurement pillars, namely:

- (1) Planning and Demand Management
- (2) Acquisition Management;
- (3) Contracts Management
- (4) Logistics Management
- (5) Disposal Management;
- (6) Risk Management; and
- (7) Monitoring of supply chain performance

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## 7. PRINCIPLES AND OBJECTIVES OF THE SUPPLY CHAIN MANAGEMENT POLICY

In achieving value for money, SA Express will base procurement outcomes on core principles of radical economic transformation using procurement as a strategic lever. This implies that SA Express is committed to:

- Ensuring that all procurement transactions achieve the best net value for money outcomes for the company.
- Providing suppliers with an opportunity to compete for business in an open, fair and transparent manner;
- Encouraging effective competition through procurement methods suited to market circumstances.
- Advancing the integration and advancement of the designated groups (Black-Owned (BO), Black Women Owned (BWO) and Black People with Disability (BPWD) into the mainstream of the aviation industry.

In addition, ethics and fair dealing considerations require SA Express officials to diligently conduct procurement activities as to ensure that:

- Suppliers are dealt with in a fair, equitable and ethical manner
- Staff, contractors or consultants do not compromise SA Express through unethical behaviour
- Conflicts of interest are identified and managed at all levels of the company.
- There is effective use of SA Express property
- Appropriate communication channels and support exist to prevent fraud and corruption across the company.
- Accountability for decisions, actions and responsibilities is enforced

## 8. INTEGRATED SUPPLY CHAIN MANAGEMENT MODEL

The SA Express Integrated Supply Chain Management Framework is a combination of the requirements of the Supply Chain Management Framework Policy as recommended by National Treasury and the business context in which the company operates. This model introduces an integrated supply chain management regime with a uniform set of processes and procedures that have a direct interface with a company's financial management system.

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## 8.1 SA EXPRESS INTEGRATED SUPPLY CHAIN MANAGEMENT FRAMEWORK

<b>DEMAND MANAGEMENT</b>		
<b>Activities</b>	<b>Outcomes</b>	<b>Responsibility</b>
<i>Identification of the business need/s in line with the strategy.</i> <i>Market analysis</i> <i>Determining the method of procurement</i>	Acquisition/Procurement Plans developed for all Business Units linked to budgets Processes that meet the audit requirements	Business Units Supply Chain Management CE and Board
<b>ACQUISITION MANAGEMENT</b>		
<i>Send out invitations to the market</i> <i>Cost-benefit analysis</i> <i>Total cost of ownership</i>	Business needs fulfilled Value for money Contribution to PPPFA/BBBEE Processes that meet the audit requirements	Business Units Supply Chain Management Bid Adjudication Committee Bid Committees CE and Board
<b>CONTRACT MANAGEMENT</b>		
<i>Contract drafting, reviews, amendments, extensions and exit</i> <i>Supplier management (SLAs, Service agreements, Supplier performance and close-out</i>	Governance and compliance Contract register	Legal, Risk and Compliance Unit Business Units Supply Chain Management Bid Adjudication Committee CE
<b>LOGISTICS MANAGEMENT</b>		
<i>Warehousing and storage</i> <i>Order processing, dispatch</i> <i>Receiving, issuing, invoice handling</i> <i>Stocktaking, assets count, inventory and Management of losses</i>	Logistics management, Internal controls that save the company money, responsiveness to the business needs Proper record keeping Processes that meet the audit requirements	Logistics management Unit Technical Supply Chain Management Unit
<b>DISPOSAL MANAGEMENT</b>		
<i>Unserviceable assets</i> <i>Redundant assets</i> <i>Obsolete stock and asset</i>	Disposal strategy and plan Proper record keeping Processes that meet the audit requirements	Logistics Management Unit Disposal Committee CE and Board
<b>PROCUREMENT RISK MANAGEMENT</b>		
<i>Identification of procurement risks</i> <i>Evaluating the seriousness</i> <i>Treatment options</i>	Risk Register Risk monitoring and reporting Processes that meet the audit requirements	Risk Management Unit Supply Chain Management Executive Committee Board
<b>MONITORING OF PERFORMANCE</b>		
<i>Conformance to SA Express Policies and Procedures</i> <i>Achievement of the company objectives</i>	Monthly Compliance and statistical reports generated.	Supply Chain Management Internal Audit Business Units Board

## 9. DEMAND MANAGEMENT

This is the beginning of the supply chain process where a detailed assessment of the requirements takes place to identify the need, establish the specification and determine the availability of the budget. This is to ensure that SA Express is able to (1) Provide an uninterrupted flow of goods and services required for operating the company (2) Keep inventory investment and loss.

### 9.1 DEMAND MANAGEMENT ACTIVITIES

The following steps should be considered within demand management and needs analysis activities:

- Defining the business need and compiling a business case
- Determine whether the needs/services will be fulfilled internally or outsourced including weighing options of leasing or outright purchasing.
- The analysis of historical statistics/data over a particular period of time when procuring goods and services in any manner plays an important role.
- Types of goods or services used;
- Consumption figures of the products used and services rendered;
- The cost of goods and services used;
- The relationship of the acquired goods and services to the planned operations;
- The method of acquisition applied i.e. RFP, Deviations, approved list of supplier, RFQ, Transversal contracts, strategic partnerships.
- Compare the identified needs with the current stock and outstanding orders.
- Compare the list of services required with the available/current service on contract.
- Consider government objectives such as promoting greater participation of HDIs and SMMEs, i.e. for all major procurement decisions, targets must be set upfront in respect of the involvement/participation of the local suppliers.
- Determine the goals to be promoted.
- The cross functional Specification Committee to determine the evaluation criteria which is objective, clear and quantifiable.
- Identifying and planning for critical lead and delivery dates
- This is a cross-functional exercise that brings the relevant key role players within supply chain management closer to the end user and ensuring that several goals of SA Express are achieved simultaneously, while value for money is also obtained.

- An outcome of this process is an inclusion of the major purchases and projects in the annual procurement plan and also planning in advance the acquisition of goods and services that are frequently used.

## 10. ACQUISITION MANAGEMENT

### 10.1 METHODS OF ACQUISITION AND THRESHOLD VALUES FOR PROCUREMENT OF GOODS AND SERVICES

The procurement officials shall determine the sourcing mechanism based on the budget value, term and thresholds as follows

Procurement mechanisms		
Mechanism	Threshold	Delegated Authority
Petty cash	R2000	General Managers
RFQ	R2000 – R500 000	General Managers
RFP/RFI	>R500 000	BAC, CE, Board
Emergency Procedures	>R500	General Managers, BAC
Transversal contracts	>R500 0000	BAC, CE, Board
Deviations	>R500, 000	General Managers, CE, BAC, Board
Approved list	>R500, 000	General Managers, CE, BAC
Strategic Partnerships	>R500, 000	CE, BAC, Board

### 10.2 REQUESTS FOR QUOTATIONS:

The procurement officers should invite and accept written quotations from the list of service providers, registered on Centralized Supplier Database and SA Express's data base, written on the supplier's letterhead. Where this is not possible, a confirmation of a quotation by email will be accepted.

In the event the 3 quotations have not been secured, SCM must demonstrate through record keeping that invitations were sent to a minimum of 3 potential suppliers. In this regard emails sent to the suppliers requesting quotations must be kept as evidence.

The request for quotation shall be open to the market for a maximum of 5 working days.

Threshold values for procurement of goods through an RFQ process are as follows;

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Threshold	Process
R2000- R10 000 incl. VAT	1 written quotation or rotation of suppliers
R10 000 – R30 000 incl. VAT	3 written quotation or rotation of suppliers
R30 000- R500 000 incl. VAT	3 written quotes plus PPPFA

Suppliers on rotation may be contacted telephonically in the cases of emergencies to render the goods or services and this will be based on the pre-determined fee estimates.

#### 11. SUPPLIER DATABASE

Only suppliers appearing on the Central Supplier Database (Local suppliers) and the customized SA Express Database which includes the international suppliers will be utilized when procuring goods and services. Motivation to engage new or unapproved suppliers to be registered on the database should be submitted to the Supply Chain Management Unit for approval and registration on the database. The list of suppliers shall be updated on an annual basis, to allow for all potential and new suppliers to register.

#### 12. SUPPLIER DATABASE FOR SPECIALIZED SERVICES

SA Express shall develop a pool of specialized suppliers for goods and services that will be used to meet the procurement requirements of the company. These suppliers will be appointed and pre-approved for a defined period of time. A qualifying criteria will be determined based on the requirements stipulated by the relevant regulatory bodies in the aviation sector.

In the event that goods and services are only obtainable from a single source, such suppliers will be automatically included in the list of the pre-approved services providers for a period of three years renewable subject to the normal due processes being followed. This includes offices, workshops and hangers in airports.

The company will also develop a pool of specialist services providers in the aviation industry who may be appointed from time to time to provide advice or render services to SA Express at risk. The remuneration of such suppliers will be determined based on a percentage of the tangible value or success realized from their engagement.

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### 13. BBBEE IMPROVEMENT

The policy requires that 60% of the suppliers must satisfy the requirements of BBBEE Levels 1-3. This will be applicable to the pre-approved list of suppliers for emergency/AOG procurement as well as the normal procurement processes.

Specific tendering conditions shall be applied to ensure that all suppliers who are awarded major contracts by SAX enroll/adopt the emerging suppliers for the purposes of business mentoring/skills transfers and coaching. Pre-qualifying tender criteria to advance certain designated groups shall also be applied.

In line with the Preferential Procurement Regulations, 2017, where feasible to subcontract for a contract above R30 million, SAX will apply subcontracting to advance designated groups wherein 30% will be sub-contracted to the designated groups.

Specific goods and services shall also from time to time be ring-fenced for exclusive procurement from the designated groups, i.e. Black-Owned Businesses, Black-Women Owned, Youth and people with Disabilities.

The policy makes it mandatory for the transformation targets to be attained as follows:

- 60% of SAX suppliers must satisfy the requirements of BBBEE Levels 1-3
- 80% local procurement spend
- 25% of the local procurement spend to be allocated to women-owned businesses
- 15% of the local procurement spend to be allocated to youth-owned businesses
- 3% of the local procurement spend to be allocated to businesses owned by people with disability.
- 5 local Black suppliers to be identified and designated as participants on the SA Express Black Industrialist Program.

### 14. SUPPLIER VERIFICATION

Vetting of suppliers both local and international may be performed prior to their engagement to ensure that they are clear of any contravention. This vetting shall include:

- Performing information searches to identify the following types of potentially irregular associations:
- Service providers with each other;

- and Service providers with SA Express employees,
- Criminal records,
- Verification of statutory information from documentation supplied at CSD,
- Confirmation whether the entity and/or individual is not blacklisted on the database initiated by National Treasury for this purpose.

## **15. REQUEST FOR PROPOSAL**

### **15.1 ABOVE THE TRANSACTION VALUE OF R 500 000 (VAT INCLUDED)**

Procurement of goods and/or services with a value of above R500 000.00 (VAT included) must be done on the basis of competitive bids. Where this is not possible, each case should be dealt with on its own merits. The reasons for not following a competitive bidding process should be recorded and approved by the Bid Adjudication Committee and the Chief Executive Officer.

Competitive bids should be advertised in appropriate media and the e-tenders portal to ensure greater exposure to potential bidders. Goods and services may not be deliberately split into parts or items of lesser value for the sake of bypassing the prescribed threshold values.

## **15.2 COMPETITIVE BIDS**

### **15.2.1 OBJECTIVES OF COMPETITIVE BIDS**

The followings are the main objectives:

- Ensure that the bidding process is in accordance with a system which is fair, equitable, transparent, competitive, and cost effective and also complies with SA Express policies as well as the government laws and regulations;
- To promote the use of the following principles when acquiring goods through a bidding process, i.e.
- Value for money;
- Open and effective competition;
- Ethics and fair dealing;
- Accountability and reporting; and
- Black Economic Empowerment.
- Promote knowledge of and easy accessibility of the bidding system, especially by members of the previously disadvantaged communities;

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- Eliminate discrimination in the bidding process, by affording opportunities to empowerment companies;
- Maintain minimum essential bid requirements, to encourage professional efficiency and quality;
- Ensure and monitor participant's commitment, by showing notable progress with respect to affirmative procurement;
- Encourage sub-contracting and enterprise development as much as possible, to enable skills transfer on complex and specialized bids;
- Offer and provide project management to empowerment businesses, if deemed necessary; and
- Promote transparency and accountability, and ensure that transactions are neither irregular, fruitless nor wasteful.

### **15.3. REQUEST FOR BIDS**

- Bids/tenders must be invited for all goods and services exceeding the amount of R500 000.00 (VAT included).
- Planning by the user department is imperative for efficient delivery of the required services, and agreed timelines will be negotiated with the Supply Chain Management Unit.

### **15.4. PRE-BID/ TENDER PREPARATION**

The user or originating department, based on the approved procurement plan, should obtain approval from the delegated authority for sourcing of goods or service above R500 000. The Bid Adjudication committee approves the request to issue an open tender to market.

The General Managers shall approve the appointment of the specifications team to compile all the necessary tender specifications and/or all the tender documents using the standard terms of reference document. The team shall comprise of officials from SA Express including the end user. It may further include external independent experts to bring an element of objectivity in the evaluation process.

The specification team should participate in the compilation of the bid/tender documents, detailing the bid specifications, the evaluation criteria, functionality and pricing requirements and other standard documents/certificates that the vendors will be required to submit to qualify for the tender.



The final tender documents shall be published by Supply Chain Management Unit upon approval of the business case by the BAC.

#### 15.5. BID/TENDER INFORMATION

A document setting out the general conditions of the bid shall be made available to bidders, or any member of the public interested in such information.

##### 15.5.1. BID/TENDER INVITATIONS

- Bid documents may not be made available at a fee.
- Bid documentation would only be available for collection from the SA Express Office in Kempton Park, Airways Park and can also be downloaded from e-tenders portal
- Bids will close 21 days working days after the date of advertisement unless stated otherwise.
- Bids must be submitted on or before the stipulated closing date and time at the furnished address. No late bids will be accepted.
- It must always be emphasized that the bid documents must be submitted in a sealed packaging and completed in black ink.
- The official language to be used on all bid documentation and communication is English.
- Bids will be opened in the presence of 1 procurement official and 1 representative from user department. These shall be recorded in a bid register by Procurement on the closing date and locked up in the storage room. This register may be made available for inspection should the need arises.
- In the event the user department wishes to have a shorter period for advertising the bid (14 days) the relevant approval must be obtained as per delegations of authority.

#### 16. TENDER REGULATIONS

All bid documents must contain, and clearly outline the following:

- The name and title of the person responsible, or whom to contact by the bidders (in case of queries);
- The fact that all bid documents must be submitted on or before the closing date in a firmly sealed;
- Packaging indicating the bid reference number, the closing date and time;
- That no bid shall be considered if it is received after the closing date and time;

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- That no amendments in the bid price shall be permitted after receipt, but before awarding, not even a reduction, unless it results from official negotiations for which prior approval has been obtained and authorized by the Bid Adjudication Committee.
- That no amendments or withdrawal from the bid shall have any legal force, unless accepted in writing;
- That all bids must remain valid for a minimum period of 90 days;
- That all bidders shall treat the details of the bid document as private and confidential, whether their bid is accepted or not;
- That black ink must be used when completing the bid documents; and
- That SA Express is not obligated to accept the lowest quote;
- SA Express reserves the right to revoke tenders awarded to suppliers;

#### 17. SUPPLIER REQUIREMENTS

All relevant stakeholders, in supply chain management, dealing with the suppliers must ensure that the following guiding principles are adhered to:

- All goods and services supplied to SA Express are of the type and quality specified.
- Preference will be given to locally manufactured goods and thereafter reference will be made to pricing, delivery, quality, services, etc. Second preference will be given to South African companies who act as agents to manufacturers of foreign origin. When the equipment required is not available locally, solution will be direct importation. Only in extreme instances (which must be motivated in detail) should equipment/services available locally and marketed by South African companies be imported.
- Long-term partnerships should be developed with manufacturers. These partnerships should enhance and improve after sales service to sustain SA Express competitive edge on cost, quality and reliability. Other criteria will be based on the BEE compliance, expertise, and commercial and financial viability.
- Procurement in consultation with finance division must be involved in decisions pertaining to down payments and payments in advance. Motivation for pre-payments must be compiled.
- Suppliers must comply with appropriate environmental laws and aviation standards when supplying goods and services to SA Express.
- Local agents for overseas suppliers responding to SA Express's bids must submit a resolution passed by the principal company authorizing the agent to act on their behalf.
- Tenderers are not allowed to contact, consult, meet or forward any information to the SA Express employees who are involved in the tender process.

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L.B

- Tenderers must forward all communication including information requests, in writing to the Bid Adjudication Committee Chairperson or the designated SA Express official/s.
- SA Express reserves the right to conclude contracts directly with principals (OEMs) should it be in the interest of both parties to do so, but this will not be done to the detriment of the local suppliers

## 18. EVALUATION OF BIDS

- The General Manager of the originating department shall in consultation with Procurement set up a cross-functional team with the purpose of evaluating the bid according to the pre-determined criteria, compiling a detailed report reflecting the followed evaluation process, a short-list, and a recommendation. It is permissible to invite independent experts from outside SA Express to assist with the evaluation of the bids.
- Once the evaluation process has eliminated the suppliers who failed to qualify, the
- SA Express Bid Adjudication Committee shall, after due consideration and analysis of the report, containing recommendations, submitted by the evaluation team, make a decision which will be forwarded to the Chief Executive Officer and the Board for ratification subject to DOA.

## 19. GENERAL EVALUATION CRITERIA

The evaluation of offers from the suppliers shall be based on the total cost of ownership, service level agreements, functionality, capacity, technical innovations, quality, BEE compliance, tax clearance certificate (applicable to both local and foreign companies)

The following considerations will also be taken into account:

- Suppliers should quote fixed prices to SA Express where possible, and where the goods and services are sourced from international suppliers, provisions must be made for currency fluctuations.
- SA Express shall not be bound to accept the lowest offer on quotations or bids, for either part or the whole offer. However, an offer which is financially and technically beneficial to SA Express, over the lifetime of the equipment, may be accepted;
- Purchase Orders for goods or services that need to be imported may either be placed directly with a foreign Supplier and payable in a foreign currency, or with a local agent and payable in the South African Rands, subject to Rate of Exchange variations and
- The Finance Department shall on the advice of procurement be responsible for taking out forward cover.

*GA*  
*C.B*

## **20. BEE COMPLIANCE**

All suppliers must submit a verified BEE certificates and supporting documentation, issued by a verification agency. SA Express reserves a right to choose relevant elements from the BEE scorecard to be emphasized when advertising and evaluating adjudicating tenders. In the event that suppliers are registered on the Central Supplier Database, the documents are not required in relations to the requests for quotations and SA Express shall do an independent verification directly with National Treasury.

## **21. ALLOCATION OF PREFERENCE POINTS**

The bidder with the highest number of points will be awarded the contract. Where the bidder with the highest adjudication points is not recommended, full details must be provided to the Bid Adjudication Committee. It is therefore important that the detailed evaluation information is always supplied. The BEE scorecard measuring BEE performance will be included in the evaluation criteria of all bids.

The BAC shall notify the Chief Executive Officer, within three days should a contract be awarded to a bidder other than the recommended bidder by the Bid Evaluation Committee. The notification should include the reasons for deviating from the recommendations.

## **22. CRITICAL POINTS**

In the case of joint ventures and partnerships, only legally established business entities will be considered. A tenderer may not be awarded points for B-BBEE status level of contributor if the tender documents indicate that the tenderer intends subcontracting more than 25% of the value of the contract to any other person not qualifying for at least the points that the tenderer qualifies for, unless the intended subcontractor is an EME that has the capability to execute the subcontract.

The PPPFA Regulations, 2004 and the Department of Trade and Industry's Broad-Based Black Economic Empowerment Strategy Document provides a basis for the implementation of the Preferential Procurement Policy Framework Act of 2011 and the Broad-Based Black Economic Empowerment Act through preference point system.

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**23. PREFERENCE POINT SYSTEM**

<b>B-BBEE Status Level of Contributor</b>	<b>Number of points (90/10 system)</b>	<b>Number of points (80/20 system)</b>
1	10	20
2	9	18
3	6	14
4	5	12
5	4	8
6	3	6
7	2	4
8	1	2
Non-compliant contributor	0	0

Suppliers are obliged to inform SA Express of any changes to their BEE status where they had claimed equity points. Failure to do so could result in a penalty. A consortium or joint venture may claim preference based on the percentage profit of the contract value enjoyed by the black partner. Where a contract has been awarded, based on BEE preference, such supplier may not sub-contract more than 25% of the value of the contract to a person who does not qualify for the same preference.

- No preference points may be applied to public companies or tertiary institutions.
- No preference points may be claimed if the declaration part of the bid document has not been signed.
- 80/20 preference point system will be applied for acquisition of goods or services for Rand value equal to or above R30 000 and up to R50 million
- 90/10 preference point system will be applied for acquisition of goods or services with Rand value above R50 million

## 24. NEGOTIATIONS

The Supply Chain Official as mandated by the Bid Adjudication Committee will negotiate the final terms of contract and cost with the short listed bidders provided that such negotiation:

- Does not allow any short-listed bidder unfair opportunity;
- Is not to the detriment of any other bidder;
- Aims at reducing the total cost further and will not lead to a higher pricing adjustment; and
- Aims at promoting Preferential Procurement and BBBEE policies
- Minutes of such negotiations must be kept for record purposes.
- After the negotiations, the SA Express Bid Adjudication Committee shall make a final decision
- The bidders will be informed in writing whether they were successful or not. The letters must be authorized by the Chief Procurement Officer.

## 25. CANCELLATION OF BIDS

A bid can be cancelled under the following conditions:

- No offers are received;
- The goods and/or service is no longer required;
- There are errors in the bid invitation documents; and
- The bid prices are deemed to be exorbitant in terms of pre-determined benchmarks.
- Changes in the market conditions post bidding processes
- Legislative changes or new regulations promulgated post bidding
- Amendments or changes in the operational requirements of the company

## 26. WITHDRAWAL OF BIDS

A bidder may request in writing after the closing of a bid, but prior to evaluation that their bid be withdrawn. Such a request may be granted at the discretion of the SA Express Bid Adjudication Committee.

## 27. EMERGENCY BIDS AND DEVIATIONS

It may become necessary, during the normal course of business, to procure goods or services in an emergency situation. The normal bidding processes or procurement process may not be appropriate for such an eventuality.

Motivations to deviate from the normal Supply Chain Management procedures shall be presented to the SA Express Bid Adjudication Committee for consideration or submitted for

  
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approval to the Chief Executive Officer. Such purchases shall be within thresholds prescribed in terms of the Delegation of Authority as well as within the Materiality and Significance Framework.

A detailed and sound motivation must be provided when submitting requests for deviations. Under no circumstances will the application be supported where it is evident that alternative action is proposed with the purpose of circumventing the SA Express procurement processes and that the urgency is due to negligence or bad planning.

To promote consistency in evaluating cases that are not repetitive and where circumstances were unforeseen, the SA Express Bid Adjudication Committee shall evaluate the interpretation, transparency of information and evaluation criteria.

The criteria reflected in the table below may be used by the SA Express Bid Adjudication Committee during the assessment process:

CASES OF EMERGENCY	REQUIREMENT TO SATISFY SUPPORT
Actions where emergency is pleaded.	<p>Proof that action was in the circumstances of:</p> <ul style="list-style-type: none"> <li>• An emergency;</li> <li>• Was in the best interest of SA Express;</li> <li>• SA Express did not suffer negligence or damages; and</li> <li>• Desirable outcomes or objectives will be achieved.</li> </ul>

## 28. AIRCRAFT ON GROUND (AOG)/EMERGENCY PROCUREMENT PROCEDURES

- ✕ AOG procurement requests within the values between R500-R499, 999 will be fulfilled by rotating the pre-approved suppliers (No three quotations required), however, motivation with supporting evidence must be approved by the GM or a delegated official and endorsed by the Procurement Manager before and post the transaction).
- ✕ AOG procurement requests within the values between R500, 000 – R1, 500, 000 will be fulfilled as follows:

Step 1 - Acquisition of the required goods/services to address the AOG from the pre-approved list of suppliers based on a pre-approval before the transaction is effected.

Step 2- Motivation signed off by the GM and submitted for endorsement by the BAC.




Motivation guidelines. The action taken was in the best interest of SA Express; the action was not as a result of poor planning or negligence. A clear demonstration of what damage could have been suffered had the action not been taken

All AOG procurement transactions in technical not signed or authorized by the General Manager- Technical and the Procurement Manager- Technical, shall be deemed irregular.

All cases of deviations above R1 Million shall be recorded in a register for tracking purposes.

## **29. AIRCRAFT CHARTER SERVICES**

In the event that SAX makes use of the private charter services to cater for aircraft availability, 50% of the companies being contracted must satisfy the requirements of BBBEE Levels 1-3.

## **30. CLOSED/SELECTED BIDS**

Such bids shall be considered for specialized and ring-fenced goods and services or for the purposes of promoting the participation by Black-Owned suppliers. The closed bids may also be used in cases where goods and services are available from a limited pool of suppliers, however, this must be supported by a thorough analysis of the market. The SA Express Bid Adjudication Committee shall consider the requests for these bids with a motivation/business case attached from the business units.

## **31. UNSOLICITED BIDS**

Unsolicited bids may be accepted where the opportunity/bid demonstrates significant cost savings, new innovation or value add for SA Express. Unsolicited bids can only be approved by the Chief Executive Officer and Bid Adjudication Committee on the advice of the Chief Procurement officer. Where the unsolicited bid is followed by a competitive bidding process, the supplier (initial bidder) will receive preference points for the initiative demonstrated.

## **32. SOLE SUPPLIER/SINGLE SOURCE**

In cases of sourcing goods and services from single source supplier, sufficient evidence must exist in writing which demonstrates that the supplier has exclusive, intellectual property rights, they are an OEM or a license holder. Sole source supplier will also be applicable in the event that the supplier possesses the unique and singularly available capacity to meet the business requirements of SA Express.

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### **33. GOODS AND SERVICES AVAILABLE FROM STATE OWNED COMPANIES.**

The policy further makes provision for direct contracting with State-Owned Entities and their subsidiaries who are involved in the aviation sector without subjecting them to a competitive bidding process where it is deemed economical and cost-effective to do so. Transversal contracting within the State-owned airlines and their subsidiaries shall be applied to ensure costs savings and bargaining for discounts based on volumes.

### **34. ENTERPRISE SUPPORT AND DEVELOPMENT PROGRAM.**

SA Express shall use the Enterprise Support and Development Program (ESDP) as a vehicle to achieve government's broader policy goals through the Supply Chain Management process. Aspects such as enhancing BEE and promoting HDIs as required in the Preferential Procurement Regulations, 2001, must be taken into account.

The implementation of the ESD program shall be done in line with the provisions of the BBBEE improvement provisions as stipulated on Section 13 of the Policy.

The company shall further implement the Black-Industrialist Program with a sole objective of accelerating the Black-Owned companies in the aviation space who are ready for industrialization. The Shareholder, Department of Public Enterprises (DPE) and the Department of Trade and Industry (DTI) will be the main key stakeholders in ensuring the successful implementation in line with the provisions of the Black Industrialist Policy and Guidelines.

### **35. STRATEGIC PARTNERSHIPS**

Strategic Partnerships may arise between organs of the state or Departments including the private sector players who operate within the aviation space. SA Express Bid Adjudication Committee is also empowered to entertain strategic partnership proposals. These proposals may include the projects and programs that seek to drive transformation within the company and ensuring that the local suppliers are afforded an opportunity to be integrated into the mainstream of the aviation for the purposes of creating employment and contributing to the economy of the country.

In this case, on the advice of the relevant General Manager and the Chief Procurement Officer, the Chief Executive Officer will assess the cost-benefit of such proposals before endorsement and approval. Depending on the financial implications as per the Delegations of Authority, the Chief Executive Officer may approve the transactions or escalate to the board for approval.



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### 36. SIGNIFICANT TRANSACTIONS

Strategic sourcing shall be applied mainly to significant transactions that fall within the requirements of Section 54 of the Public Finance Management Act. These include:

- establishment or participation in the establishment of a company;
- participation in a significant partnership, trust, unincorporated joint venture or similar arrangement;
- acquisition or disposal of a significant shareholding in a company;
- acquisition or disposal of a significant asset;
- commencement or cessation of a significant business activity; and
- a significant change in the nature or extent of SAX interest in a significant partnership, trust, unincorporated joint venture or similar arrangement;

SAX shall from time to time determine an appropriate sourcing strategy in terms of how best to fulfill the significant transactions. The key guiding principle is to ensure that the transformation imperatives in respect of Broad Based Black Economic Empowerment are attained in all major transactions and acquisitions are done in line with the provisions and guidelines outlined in the National Industrial Participation Program (NIPP).

### 37. COMMUNICATION WITH SUPPLIERS

Under no circumstances shall the suppliers be notified of the outcomes of adjudication until all internal processes have been finalized. All letters of appointment or regret shall be processed and issued only by Supply Chain Management Unit.

### 38. CONTRACTING

All contracts within SA Express shall be governed by the provisions of the Contract Management Policy.

The Supply Chain Management Unit is responsible for coordinating and submitting all the necessary tender documentation for Legal, Risk and Compliance Unit to draft contracts. The Supply Chain management Unit shall ensure that all contracts are signed by both parties, before the services or goods are provided by the respective service provider.

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All contracts where SA Express is a contracting body, shall be standardized and vetted by Legal, Risk and Compliance Unit. No Service provider/supplier shall develop contracts on behalf of the SAX unless in instances where SAX is being contracted by another party.

The powers to approve and sign contracts are vested with the CEO, however, these powers may be delegated to the level of General Managers as per the Delegation of Authority. Business Units shall be responsible for monitoring supplier performance whilst Supply Chain Management Unit will perform an oversight role on the overall management of contracts in relations to completeness, extensions, disputes, amendments, negotiations and close-out. This will be done in consultation with Legal, Risk and Compliance and the relevant business units.

All expenditure incurred against unsigned contracts shall be deemed irregular and the necessary remedial action/s shall be taken by the relevant General Manager to prevent recurrence.

### **39. MONITORING CONFORMITY**

It is the duty of the SA Express Business Units to ensure compliance to SA Express Supply Chain Management Policy as well as other associated legislative requirements, regulations and prescripts.

The office of the Chief Procurement Officer will serve as an advisory desk to ensure that support and advice on the correct application of the policy by all SA Express employees and its suppliers is provided.

### **40. LOGISTICS MANAGEMENT**

This process ensures that the goods and services planned and budgeted for at the demand stage, and acquired, are delivered according to the agreed contract. It involves the flow of goods and services from the contracted supplier to the end user.

#### **40.1. MANDATORY LOGISTICS MANAGEMENT ACTIVITIES**

The following steps should be considered within logistics management activities:

- Coding of new stock, non-stock items and assets;
- Setting of inventory re-orders levels;
- Requisitions, releasing and approvals;

- Order processing, authorizations and expediting outstanding orders;
- Vendor performance evaluation;
- Receiving and processing of goods receipt notes;
- Issuing of stores items;
- Distribution (internal and external);
- Transport management (inbound and outbound);
- Handling returned goods;
- Stocktaking;
- Storage and warehouse management;
- Management of losses and surpluses;
- Maintenance and contract administration;
- Obsolescence and depreciation planning; and
- Co-ordinated monthly reporting.

The activities above shall be executed as per the current Standard Operating Procedures of SAX.

#### **41. PAYMENT TERMS AND INVOICING**

Suppliers shall clearly reflect their preferred method for payment, which will be handled by the Finance Department. The SA Express's preferred method of payment is Electronic Fund Transfers ("EFT").

SA Express's standard payment terms, unless otherwise negotiated, are as indicated below:

- Local purchase order payments will be effected in 30 days of the submission of a valid tax invoice provided different payments terms have been negotiated with the individual suppliers.
- Preferential credit facilities may be made available to small enterprises.
- The payment documents shall be accompanied by all the necessary compliance documents.
- For the authority of releasing EFT's or signing of cheques, the Delegation of Authority will apply.
- In a situation where late payment has attracted interest, proper procedures will be followed to treat the interest amounts as fruitless and wasteful expenditure and remedial action implemented to prevent recurrence.

  
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## 42. FACILITIES MANAGEMENT

This process ensures the effective functionality of the office buildings facilities by integrating people, place, process and technology.

### 42.1. MANDATORY FACILITIES MANAGEMENT ACTIVITIES

The objectives of the Facilities Management Unit are achieved through the following activities:

- Management of lease agreements for the office space and associated services (e.g. cleaning services, security and maintenance), and office equipment; and
- Development and promulgation of policies and procedures pertaining to construction, operations and maintenance of buildings, safety and security, environmental factors, technology integration, etc.

The activities above shall be executed as per the Facilities Management Policy.

## 43. DISPOSAL MANAGEMENT

This is the final stage of the supply chain management process when assets have reached the point of redundancy, obsolescence or unserviceable and SA Express needs to get rid of them.

### 43.1. MANDATORY DISPOSAL MANAGEMENT ACTIVITIES

- Unserviceable assets;
- Redundant assets;
- Obsolete stock and assets, according to Sa Express policies
- Obsolescence planning;
- Calculating and monitoring the depreciation rate of items;
- Maintaining a database of all redundant material;
- Inspection of material for potential re-use;
- Determining a disposal strategy; and
- Disposing of items in terms of the determined strategy.
- The above activities shall be executed as per the Disposal Management Policy

  
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#### 44. RISK MANAGEMENT

Risk management is an integral and a crucial element within the supply chain management processes. It is important that risks be addressed when the relevant user within SA Express supply chain management process have defined their procurement requirements. In complex or high value projects; the company will adopt a systematic approach to identifying, analyzing, evaluating and monitoring supply chain management risks.

It is imperative to take cognizance of potential risks during the implementation of supply chain management policy provisions. Due consideration should ideally be given to:

- Identification of procurement/ acquisition risks on a case-by-case basis;
- Allocation of risks to the party/owner best equipped to manage such;
- SA Express bearing the cost of risks wherein the cost of transferring them is greater than that of retaining them; and
- The exercise of risk management in a proactive manner and providing adequately for the cover of residual risk.

Risk Management should, therefore, form part of the process for the acquisition of all goods and services within SA Express. These activities shall be incorporated into the overall organizational risks and managed in accordance with the Risk and Fraud Management Policies in place.

#### 45. SUPPLY CHAIN MANAGEMENT PERFORMANCE

The Supply Chain Management Policy emphasizes an integrated approach to planning and managing performance. This is a process where continuous monitoring and evaluation of the overall plan of the company is done to ensure that:

- The set objectives and time frames are achieved;
- The objectives are consistent with government's broader policy focus;
- Compliance to policies, procedures, norms and standards is maintained;
- Savings are generated;
- Supply of goods and services is operating efficiently;
- Contracts terms and conditions are adhered to;
- The reduction of provincial economic disparities is promoted (sourcing of suppliers from all provinces of the country)

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#### 45.1. PERFORMANCE MANAGEMENT ACTIVITIES

General supply chain management activities to be measured are as follows:

- Key performance areas in the supply chain management in relations to the achievement of SA Express 20: 20 Vision
- Conformance to SA Express policies and procedures;
- Compliance to government regulations;
- Satisfactory audit requirements;
- Achievement of goals set for specific periods in line with the strategic plan
- Compliance to norms and standards;
- Annual savings generated and cost savings initiatives;
- Compliance with contractual conditions and requirements;
- General efficiency of the procurement processes
- Spending reports on different categories of goods and services
- Local procurement spend on different designated groups
- Job creation by suppliers who have been awarded contracts.
- Bid reports.

#### 45.2. FEEDBACK FROM MONITORING AND PERFORMANCE MANAGEMENT

The suppliers who have conducted their business in an unacceptable and/or improper manner, should be removed from the approved supplier database, blocked from future business dealings with SA Express and recorded in risk register of supply chain management under the authority of the Supply Chain Management Unit.

Any official suspecting supplier misconduct should immediately bring it to the attention of the relevant head of the business unit, Supply Chain Management Unit and to the Chief Executive Officer, who should decide what course of action to take.

The circumstance giving rise to a supplier being listed, as a high risk supplier should be properly investigated and the conclusions and recommendations recorded. Such supplier should be requested to provide its full co-operation during the investigation. The process should be conducted with much circumspection and on a need-to-know basis, as the creation of wrong perceptions can be potentially harmful both to SA Express and the particular supplier.

*B*  
*C.B*

The supplier should be advised in writing as to the final decision taken. Due to the sensitive nature of the information contained in the risk register of the Supply Chain Management Unit, it will be regarded as "strictly confidential" and access to this risk register should be limited to a need-to-know basis only. Any enquiries in this regard external to SA Express should be referred to the General Manager: Legal, Risk and Compliance.

#### **46. POLICY INTERPRETATION AND APPLICATION**

The SA Express Supply Chain Management Policy should always be read in conjunction with the following Acts and regulations:

- The Public Finance Management Act;
- Broad Based Economic Empowerment Act;
- Preferential Procurement Policy Framework Act;
- National Treasury Regulations and Prescripts
- SA Express Fraud and Prevention and Whistle Blowing Policy
- SA Express Contract Management Policy.

Various procedures and processes shall be developed internally including Directives and notices to ensure that all procurement activities of SA Express are in line with the provisions of the Acts and Regulations stated above.

#### **47. TRAINING OF SA EXPRESS OFFICIALS ON THE POLICY**

Induction shall be provided to all SA Express employees on the application and use of this policy to ensure that they are familiar with its provisions and requirements.

#### **48. NON-COMPLIANCE**

Any deviation from the principles and standards laid down in this policy will be addressed in line with SA Express's Disciplinary Code and Procedures.

#### **49. POLICY REVIEW AND APPROVAL**

This policy will be reviewed on an annual basis or when necessary as dictated by the changes or amendments in the legislative or regulatory environment. The powers to approve the amendments to the policy are vested with the board.



## Annexure “EL 8”



**From:** Sibongile Vilakazi  
**Sent:** 05 July 2017 12:32  
**To:** eric@emlenergy.com  
**Cc:** Samuel Vilakazi  
**Subject:** Award Letter - Fuel Supply  
**Attachments:** S60C-7e17070512380.pdf

Good day Eric,


Kindly receive attached letter for your signature, details are enclosed.

Regards,

**Sibongile S. Vilakazi**  
**Contracts Management**

2nd Floor  
E Block Offices  
Airways Park  
1 Jones Road

D: 011 978 6770  
F:  
C:

  
**sa e xpr ess**  
we fly for you

*Please note that this e-mail and the contents thereof is subject to the standard SA Express E-mail disclaimer which may be found on [www.flyexpress.aero](http://www.flyexpress.aero)*

**Non Executive Directors:** G N Mothema (Chairperson), T Abrahams, B P B Dibate, R Naithani (Indian), J N Nkabinde, P Ramosebudi, G R Sibiya

**Executive Directors:** I Ntshanga (Chief Executive Officer), M R Shelley (Chief Financial Officer)

**Company Secretary:** M Gie

South African Express Airways SOC Ltd Co.Reg. No. 1990/007412/30 Vat Reg No. 4400140499



  
C.B

## Annexure “EL 9”





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E Block Offices  
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P O Box 101  
OR Tambo International Airport  
1627  
South Africa  
www.flysaexpress.co.za

# **EML ENERGY**

3-8 Atlas Road  
Office D3  
Denel  
Kempton Park

05 July 2017

Dear Eric,

## **RE: AWARD FOR SUPPLY OF FUEL TO SA EXPRESS**

This letter serves as a formal confirmation that EML Energy has been appointed for the above service.

This award is subject to the following condition:

1. Successful negotiation and conclusion of a contract between the SA Express and EML Energy.

Please acknowledge receipt of this award letter and confirm your acceptance thereof by signing the acceptance below and return it via e-mail to [samvilakazi@flyexpress.co.za](mailto:samvilakazi@flyexpress.co.za).

This letter of Award is effective from the **01 July 2017**.

We trust that this award shall be beneficial and fruitful to both parties.

Yours sincerely,

**Samuel Vilakazi**

Chief Procurement Officer

SA Express Airways SOC Ltd

Date: 05/07/2017

Board of Directors: G N Mqhele (Chairperson), J Ntshengs\* (Chief Executive Officer), M R Shelley\* (Chief Financial Officer),  
T Abrahams, S P B Dibets, R Nkomo (India), J N Nkomo, P Ramosebudi, G R Sibisi

Company Secretary: Maryna Gie  
\* Executive Director

South African Express Airways SOC Ltd  
Co. Reg. No. 1990/007412/30  
VAT Reg. No. 4400140499

We hereby accept the conditions of the contents of the above letter.

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

Designation: \_\_\_\_\_

Signed at \_\_\_\_\_ on this \_\_\_\_\_ day of \_\_\_\_\_ 2014.

For and on behalf of 21<sup>ST</sup> EML Energy and duly authorised thereto.



*[Handwritten signature]*

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*[Handwritten initials 'C.B']*

## Annexure “EL 10”





2<sup>nd</sup> Floor  
E Block Offices  
Airways Park  
1 Jones Road  
T: +27 (0)11 978 9900  
F: +27 (0)11 978 5578

P O Box 101  
OR Tambo International Airport  
1627  
South Africa  
www.flyexpress.aero

07 July 2017

### TO WHOM IT MAY CONCERN

This letter serves to confirm that EML Engineers and Construction T/A EML Energy (Reg 2011/011941/07) has been appointed by South African Express as the fuel supplier for a period of three (3) years. The fuel requirements will initially be confined to the two stations, i.e. OR Tambo International Airport (Twenty five (25) Million litres and Pilanesburg Airport (Eight (8) Million litres per annum respectively.

The volumes will be adjusted and increased over the contract period as part of developing EML Energy as the emerging Black-owned supplier in line with the transformation imperatives outlined in the Procurement Policy of South African Express.

I trust you will find the above in order.

Yours sincerely

Dr. Sam Vilakazi  
Chief Procurement Officer

Board of Directors: G N Mkhomo (Chairperson), D V Xaba\* (Acting Chief Executive Officer) M R Shelley\* (Chief Financial Officer),  
T Abrahams, B P B Dabate, R Ndlovu, J M Nkabinde, P Ramosebud, G R Sibye

Company Secretary: M Gie

South African Express Airways SOC Ltd  
Co. Reg. No. 1980/007412/30

## Annexure “EL 11”



**Zamaswazi Z. Madonsela**

**From:** Eric | EML Energy (PTY) LTD <eric@emlenergy.com>  
**Sent:** Friday, 14 July 2017 15:49  
**To:** Vimal Rama  
**Cc:** Tshenolo | EML Energy (PTY) LTD  
**Subject:** FW: Jet A1 prices July  
**Attachments:** SAX Pricing Schedule 2017 July.pdf; SAX Pricing Schedule 2017 July Rev.xlsx

Best Vimal,

I have send same the SAX PDF for approval. The spreadsheet is our document with differentials and overheads.

Please note that the differential is a total of R1,00 (differential and mark up on transport and into plane prices)

Best Regards,

EML Motlhake  
 EML Engineers and Construction  
 T/A EML Energy  
 Managing Director  
 Pre Tech : Elec Eng | Avionics  
 0836771290  
 0877005953  
 eric@emlenergy.com  
[www.emlenergy.com](http://www.emlenergy.com)

**From:** Marius NORTJE <marius.nortje@total.co.za>  
**Date:** Monday 03 July 2017 at 3:55 PM  
**To:** Eric Motlhake <eric@emlenergy.com>, "Sbongile | EML Energy (PTY) LTD" <info@emlenergy.com>, "tshenolo@emlenergy.com" <tshenolo@emlenergy.com>  
**Cc:** Diego MTSHALI <diego.mtshali@total.co.za>  
**Subject:** Jet A1 prices July

Good Day

Please find the prices for the month as indicated below;

**Jet A1 prices for EML Engineering**

Air ports	NATREF	ORT	CPT
Base Price	R 5.341	R 5.341	R 4
Transport - Nartef to ORT	R 0.000		R 0
Transport - CPT ( plus 13.5c p Other fees variable )			R 0
Storage and Handling	R 0.220	R 0.090	R 0
Differential	R 0.350	R 0.200	R 0
SACAA levy	R 0.146	R 0.146	R 0
<b>Total excluding VAT</b>	<b>R 6.057</b>	<b>R 5.777</b>	<b>R 4</b>

## EML ENGINEERS AND CONSTRUCTION

t/a EML ENERGY

P.O.BOX 953

MEDUNSA

0204

Tel : 012 549 3752

Fax: 086 691 2030

info@emlener.com

CM2011/011941/07

www.emlener.com



## South African Express Pricing Schedule:

July 2017

Airport	IATA Code	SAX	Index	Base Price (ZAR/Lt)	Credit Terms	Comments/Remarks		Amounts	
						Credit Period	Terms	AMOUNT	Amount (inc vat)
<b>Example</b>	xxx		150 BFP	4,5000	Weekly	Days		R 7,98	R 9,09
Bloemfontein	BFN	1 700 000	Natref	6,06	Weekly	30 days		R 6,78	R 7,73
Cape Town	CPT	11 200 000	Milnerton	5,42	Weekly	30 days		R 6,86	R 7,83
Durban	DUR	6 190 000	Enref	5,98	Weekly	30 days		R 7,45	R 8,49
East London	ELS	5 450 000	Enref	5,98	Weekly	30 days		R 6,79	R 7,74
George	GRJ	1 900 000	Milnerton	5,66	Weekly	30 days		R 6,80	R 7,75
Johannesburg	JNB	21 200 000	Natref	5,77	Weekly	30 days		R 8,08	R 9,22
Kimberly	KIM	193 000	Natref	6,06	Weekly	30 days		R 7,45	R 8,49
Port Elizabeth	PLZ	6 200 000	Enref	5,98	Weekly	30 days		R 7,00	R 7,98
Richards Bay	RCB	41 000	Enref	5,97	Weekly	30 days		R 8,22	R 9,37
Pilanesburg	NTY	436 800	Natref	6,28	Weekly	30 days		R 7,92	R 9,03
Denel Aviation	DAV	216 000	Natref	6,06	Weekly	30 days			
		<b>Pump Back (per hour)</b>	<b>Defuel (per hour)</b>						
Denel Aviation	DAV	R 1 000,00	R 1 000,00	Storage (per Day)					
				R 251,00					

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

Designation: \_\_\_\_\_

## TERMS:

BFP is the Basic Fuel Price determined monthly by DOE.

Total price includes, insurance, Transport, Into Plane and Differential costs

All Prices exclude the SACAA Levy

EML ENGINEERS AND CONSTRUCTION

t/a EML ENERGY

P.O. BOX 953

MEDUNSA

0204

Tel : 012 549 3752

Fax: 086 684 2030m



## South African Express Pricing Schedule:

Differential

July 2017

Airport	IATA Code	SAX	Index	Base Price (ZAR/Lt)	Transport (ZAR/Lt)	Aerospace Insurance	Addition <sup>a</sup> Specify	Credit Terms Invoice frequency	Credit Period	Comments/Remarks	Amounts
<b>Example</b>	<b>xxx</b>	<b>150</b>	<b>BFP</b>	<b>4.5000</b>	<b>0.1503</b>	<b>To the Value of USD1 000 000 000</b>	<b>0.0002 In</b>	<b>Weekly</b>	<b>Days</b>	<b>Terms</b>	<b>AMOUNT Amount (inc vat)</b>
Bloemfontein	BFN	1 700 000	Natref	R 6.06	R 0.51	R 0.06	R 0.95	Weekly	30 days		R 7.98 R 9.09
Cape Town	CPT	11 200 000	Minerton	R 5.42	R 0.60	R 0.06	R 0.30	Weekly	30 days		R 6.78 R 7.73
Durban	DUR	6 190 000	Enref	R 5.98	R 0.13	R 0.06	R 0.30	Weekly	30 days		R 6.86 R 7.83
East London	ELS	5 450 000	Enref	R 5.98	R 0.71	R 0.06	R 0.30	Weekly	30 days		R 7.45 R 8.49
George	GRJ	1 900 000	Minerton	R 5.66	R 0.37	R 0.06	R 0.30	Weekly	30 days	Storage Fee included in Diff and VAT	R 6.79 R 7.74
Johannesburg	JNB	21 200 000	Natref	R 5.77	R 0.27	R 0.06	R 0.30	Weekly	30 days		R 6.80 R 7.75
Kimberly	KIM	193 000	Natref	R 6.06	R 0.57	R 0.06	R 0.99	Weekly	30 days		R 8.08 R 9.22
Port Elizabeth	PLZ	6 200 000	Enref	R 5.98	R 0.71	R 0.06	R 0.30	Weekly	30 days		R 7.45 R 8.49
Richards Bay	RCB	41 000	Enref	R 5.97	R 0.27	R 0.06	R 0.30	Weekly	30 days	of 14% will be charged on Domestic flights	R 7.00 R 7.98
Planesburg	NTY	436 800	Natref	R 6.28	R 0.70	R 0.06	R 0.78	Weekly	30 days		R 8.22 R 9.37
Denel Aviation	DAV	216 000	Natref	R 6.06	R 0.40	R 0.06	R 1.00	Weekly	30 days		R 7.92 R 9.03
Denel Aviation	DAV	Pump Back (per hour)	Defuel (per hour)	Storage (per D <sub>2</sub> )	Call out						
		R 1 000.00	R 1 000.00	R 251.00	R 1 678.56						

## TERMS:

BFP is the Basic Fuel Price determined monthly by DOE.

Total price includes, insurance, Transport, into Plane and Differential costs

All Prices exclude the SACAA Levy

Signature:

Name:

Designation:

  
L.B

## Annexure “EL 12”



**From:** Eric | EML Energy (PTY) LTD <eric@emlenergy.com>  
**Sent:** 14 July 2017 15:21  
**To:** Samuel Vilakazi  
**Cc:** Tshenolo  
**Subject:** Re: URGENT | Re: Award Letter - Fuel Supply  
**Attachments:** image001.jpg; image002.png; image003.jpg; image004.jpg; image005.gif; image006.gif; image007.gif; SAX Pricing Schedule 2017 July.pdf

**Importance:** High

Best Sam,

In line with our submission, we have attached the SAX Pricing Schedule Proposal which we need signed off if approved.

We URGENTLY need this document for submission with our funders to release guarantees.

Best Regards,

EML Motlhake  
 EML Engineers and Construction  
 T/A EML Energy  
 Managing Director  
 Pre Tech : Elec Eng | Avionics  
 0836771290  
 0877005953  
 eric@emlenergy.com  
 www.emlenergy.com

**From:** Eric Motlhake <eric@emlenergy.com>  
**Date:** Friday 14 July 2017 at 9:18 AM  
**To:** Sibongile Vilakazi <SVilakazi@flyexpress.aero>  
**Cc:** "Tshenolo | EML Energy (PTY) LTD" <Tshenolo@emlenergy.com>, Sam Vilakazi <samvilakazi@flyexpress.aero>  
**Subject:** RE: Award Letter - Fuel Supply

Best Sibongile,

Please note the adjustments in red as per the requirement by IDC Funding which does requires the draw down for guarantees only done once...

**From:** Eric | EML Energy (PTY) LTD  
**Sent:** Thursday, July 13, 2017 2:34 PM  
**To:** 'Sibongile Vilakazi' <SVilakazi@flyexpress.aero>  
**Cc:** Tshenolo | EML Energy (PTY) LTD <Tshenolo@emlenergy.com>; 'samvilakazi@flyexpress.aero' <samvilakazi@flyexpress.aero>  
**Subject:** RE: Award Letter - Fuel Supply

Best Sibongile,

Please note that the scope of work is on the proposal but I have tried to summarize (under correction on Volumes and Locations) it as follows:

EML Scope of Work:

*[Handwritten signature]*  
 1.8

- ? Guarantee the Monthly Availability of JET A1 Product to the Value of R67,000,000.00 at all locations required by SAX.
- ? SAX will have a credit period of 30 days only.
- ? Ordering, Transporting and Receipt of Fuel from Refineries into Plane.
- ? Managing Compliance and Aerospace Insurances
- ? Refuel of Aircraft at Locations as determined by SAX
- ? Defuel of aircraft on-call at a set charge for defuel and fuel storage costs – fuel stored will be credited to client.
- ? Perform Fuel Lab Tests
- ? Supply Support, Products, Parts and Ground Services related to Fuelling
- ? Monthly Fuel Price submission determined by the variable Basic Fuel Price (BFP) of Refineries plus a Margin based on Overheads, Operating Costs and Profits. Prices to be submitted, negotiated and approved by the commodity manager and/or procurement.
- ? A monthly forecast of volume is required from SAX.
- ? Operate and Maintain the Fuel Farms, Bowsers and Trailers at specified locations
- ? Manage and Administrate Operation
- ? Submit Monthly Movements and reports.

#### **A.2 Additional Services related to Diesel and Petrol Fuel**

- ? Operate and Maintain the Petrol and Diesel facility with capacity of two tanks and two single hose pumps;
- ? Ordering and receipt of fuel from Refineries as required from major suppliers;
- ? Daily activities related to petrol station operations;
- ? Refuel of tow cars, cars, generators, trucks, and ground vehicles on-call during working hours; and
- ? Monthly Fuel price to be determined by the basic landed costs of Depot supply plus a Margin as determined based on Overheads, Operating Costs and Profits.

**Best Regards**

EML Motlhake  
 Chief Executive Officer  
 Pre Tech Elec Eng: Avionics  
 Tel :+2712 549 0375  
 Cel:+2783 677 1290  
[eric@emlenergy.com](mailto:eric@emlenergy.com)  
[www.emlener.com](http://www.emlener.com)

*LB*

**From:** Sibongile Vilakazi [mailto:SVilakazi@flyexpress.aero]  
**Sent:** Thursday, July 13, 2017 8:29 AM  
**To:** Tshenolo | EML Energy (PTY) LTD <Tshenolo@emlenergy.com>  
**Cc:** Eric | EML Energy (PTY) LTD <eric@emlenergy.com>  
**Subject:** RE: Award Letter - Fuel Supply



**Now flying direct from Mahfkeng to Joburg.**  
 Twice a day on Monday, Wednesday and Friday.



Good morning Tshenolo,

Thank you

**From:** Tshenolo | EML Energy (PTY) LTD [mailto:Tshenolo@emlenergy.com]  
**Sent:** Wednesday, July 12, 2017 4:14 PM  
**To:** Sibongile Vilakazi  
**Cc:** Eric | EML Energy (PTY) LTD  
**Subject:** RE: Award Letter - Fuel Supply

Best Sibongile

Please find the attached documents as requested.

Kind Regards

**Tshenolo Lebeko**  
 Logistics Manager

Tel: +27 119 274 790 | Cell: +27 829 002 600  
 tshenolo@emlenergy.com | www.emlenergy.com



Denel North Entrance, Kempton Park, Gauteng, South Africa | 3 - B Adas Road, Office D3

**From:** Eric | EML Energy (PTY) LTD  
**Sent:** Wednesday, 12 July 2017 4:02 PM  
**To:** Tshenolo | EML Energy (PTY) LTD <Tshenolo@emlenergy.com>  
**Cc:** Sibongile Vilakazi <SVilakazi@flyexpress.aero>  
**Subject:** Re: Award Letter - Fuel Supply

Best Tshenolo,

Please send through all the statutory documents to Sbgongile...

Best Regards,

*[Handwritten signature]*  
 L.B

EML Motlhake  
 EML Engineers and Construction  
 T/A EML Energy  
 Managing Director  
 Pre Tech : Elec Eng | Avionics  
 0836771290  
 0877005953  
 eric@emlenergy.com  
 www.emlener.com

**From:** Sibongile Vilakazi <SVilakazi@xpress.aero>  
**Date:** Wednesday 12 July 2017 at 3:42 PM  
**To:** Eric Motlhake <eric@emlenergy.com>  
**Subject:** RE: Award Letter - Fuel Supply



Cape Town

### Go on, be a High Flier

Travelling can be hassle free when you fly with us. No more wasted time in traffic and doing the things that weigh you down. **Because we fly for you!**



Hi Eric,

Please send through your Tax Clearance & B-BBEE certificates, I need information that is not on the proposal.

Regards,  
 Sibongile

**From:** Eric | EML Energy (PTY) LTD [mailto:eric@emlenergy.com]  
**Sent:** Wednesday, July 05, 2017 3:13 PM  
**To:** Samuel Vilakazi  
**Cc:** Tshenolo; Sibongile Vilakazi  
**Subject:** Re: Award Letter - Fuel Supply

Best Samuel,

We have received the award letter and signed the acceptance confirming same.

We are looking forward to the conclusion of the contract at your earliest convenience.

EML Energy would like to thank SAX for this opportunity.

Best Regards,

EML Motlhake  
 EML Engineers and Construction  
 T/A EML Energy  
 Managing Director  
 Pre Tech : Elec Eng | Avionics  
 0836771290  
 0877005953

*Handwritten signature*  
 L.b  
 1090

eric@emlenergy.com  
[www.emlenergy.com](http://www.emlenergy.com)

**From:** Sibongile Vilakazi <[SVilakazi@flyexpress.aero](mailto:SVilakazi@flyexpress.aero)>  
**Date:** Wednesday 05 July 2017 at 12:32 PM  
**To:** Eric Motlhake <[eric@emlenergy.com](mailto:eric@emlenergy.com)>  
**Cc:** Sam Vilakazi <[samvilakazi@flyexpress.aero](mailto:samvilakazi@flyexpress.aero)>  
**Subject:** Award Letter - Fuel Supply



**Go wild in Hoedspruit. It's a flight away.**

Go on safari anytime it suits you. SA Express can fly you directly to Hoedspruit from Johannesburg or Cape Town.



Good day Eric,

Kindly receive attached letter for your signature, details are enclosed.

Regards,

**Sibongile S. Vilakazi**  
**Contracts Management**

2nd Floor  
 E Block Offices  
 Airways Park  
 1 Jones Road

D: 011 978 6770  
 F:  
 C:

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**Executive Directors:** I Ntshanga (Chief Executive Officer), M R Shelley (Chief Financial Officer)

**Company Secretary:** M Gie

South African Express Airways SOC Ltd Co.Reg. No. 1990/007412/30 Vat Reg No. 4400140499



**Sibongile S. Vilakazi**  
**Contracts Coordinator**

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**Executive Directors:** D V Xaba (Acting Chief Executive Officer), M R Shelley (Chief Financial Officer)

**Company Secretary:** M Gie

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**Sibongile S. Vilakazi**  
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**Executive Directors:** D V Xaba (Acting Chief Executive Officer), M R Shelley (Chief Financial Officer)

**Company Secretary:** M Gie

South African Express Airways SOC Ltd Co.Reg. No. 1990/007412/30 Vat Reg No. 4400140499



**Sibongile S. Vilakazi**  
**Contracts Coordinator**

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**Executive Directors:** D V Xaba (Acting Chief Executive Officer), M R Shelley (Chief Financial Officer)

**Company Secretary:** M Gie

South African Express Airways SOC Ltd Co.Reg. No. 1990/007412/30 Vat Reg No. 4400140499



*[Handwritten signature]*  
L-B

## Annexure “EL 13”



---

**From:** Samuel Vilakazi  
**Sent:** 17 July 2017 15:57  
**To:** 'Eric | EML Energy (PTY) LTD'  
**Subject:** FW:  
**Attachments:** S60C-7e17071714171.pdf

Mr. Motlhake

Attached find the signed document as requested.

Regards  
Sam



*LB*

## Annexure “EL 14”



## EML ENGINEERS AND CONSTRUCTION

1/4 EML ENERGY  
P.O. BOX 953  
MEDUNSA  
0204

Tel : 012 549 3752

Fax: 086 691 2030

info@emlenergy.com

CM2011/011941/07

www.emlenergy.com



9801

9.7

20

## South African Express Pricing Schedule:

July 2017

Airport	IATA Code	SAX	Index	Base Price (ZAR/Lt)	Credit Terms	Credit Period	Comments/Remarks	Amounts
Example	BFA	150	WFF	4,500	Weekly	Days	7 days	Amount (inc vat)
Bloemfontein	BFN	1 700 000	Natref	R 6,06	Weekly	30 days		R 7,98 R 9,09
Cape Town	CPT	11 200 000	Milnerton	R 5,42	Weekly	30 days		R 6,78 R 7,73
Durban	DUR	6 190 000	Enref	R 5,98	Weekly	30 days		R 6,86 R 7,83
East London	ELS	5 450 000	Enref	R 5,98	Weekly	30 days		R 7,45 R 8,49
George	GRJ	1 900 000	Milnerton	R 5,66	Weekly	30 days	Storage fee	R 6,79 R 7,74
Johannesburg	JNB	21 200 000	Natref	R 5,77	Weekly	30 days	Included in	R 6,80 R 7,75
Kimberly	KIM	193 000	Natref	R 6,06	Weekly	30 days	Diff and VAT	R 8,08 R 9,22
Port Elizabeth	PLZ	6 200 000	Enref	R 5,98	Weekly	30 days	5% 12% will	R 7,45 R 8,49
Richards Bay	RCB	41 000	Enref	R 5,97	Weekly	30 days	the time and	R 7,00 R 7,98
Planesburg	NTY	436 800	Natref	R 6,28	Weekly	30 days	On Domestic	R 8,22 R 9,37
Denel Aviation	DAV	216 000	Natref	R 6,06	Weekly	30 days	flights	R 7,92 R 9,03
		Pump Back (per hour)	Defuel (per hour)	Storage (per Day)				
Denel Aviation	DAV	R 1 000,00	R 1 000,00	R 251,00				

## TERMS:

BFP is the Basic Fuel Price determined monthly by DOE.

Total price includes, Insurance, Transport, Into Plane and Differential costs

All Prices exclude the SACAA Levy

Signature:

Name:

Designation:

Shawon  
Simeet Vekari

Chief Procurement Officer

## Annexure “EL 15”



**From:** Sibongile Vilakazi <SVilakazi@flyexpress.aero>  
**Sent:** 17 July 2018 12:17  
**To:** Suzanne Viljoen  
**Subject:** FW: CONTRACTS



Cape Town

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Traveling can be hassle-free when you fly with us. No more wasted time in traffic and doing the things that weigh you down. **Because we fly for you!**



**From:** Samuel Vilakazi  
**Sent:** Monday, July 24, 2017 09:34 AM  
**To:** Sibongile Vilakazi <SVilakazi@flyexpress.aero>  
**Subject:** CONTRACTS

Hi Bongile

Can you please make a follow up to get the following contracts signed:

1. EML Energy
2. Flyfofa
3. Matekane

Regards  
 Sam

**Sibongile S. Vilakazi**  
**Contracts Coordinator**

2nd Floor  
 E Block Offices  
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 1 Jones Road

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**Executive Directors:** M. Mokholo (Acting Chief Executive Officer), M Selepe (Acting Chief Financial Officer)  
**Company Secretary:** M Gie  
 South African Express Airways SOC Ltd Co.Reg. No. 1990/007412/30 Vat Reg No. 4400140499

*Handwritten signature*  
 L.B

## Annexure “EL 16”



**From:** Sibongile Vilakazi <SVilakazi@flyexpress.aero>  
**Sent:** 24 July 2017 14:23  
**To:** Eric | EML Energy (PTY) LTD  
**Cc:** Tshenolo | EML Energy (PTY) LTD  
**Subject:** Agreement EML  
**Attachments:** Agreement for ELM 24 Jul 2017.pdf; SAX Pricing Schedule.pdf



Durban

**There's no minute to waste, Fly with us!**

Flying with us gives you time to make your moments memorable. **Because we fly for you!**



Good day again,

Kindly receive attached for signature.

Regards,

**Sibongile S. Vilakazi**  
**Contracts Management**

2nd Floor  
 E Block Offices  
 Airways Park  
 1 Jones Road

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 F:  
 C:

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**Executive Directors:** I Ntshanga (Chief Executive Officer), M R Shelley (Chief Financial Officer)

**Company Secretary:** M Gie

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**Sibongile S. Vilakazi**  
**Contracts Coordinator**

2nd Floor  
 E Block Offices

D: +27 11 978 6770

L.B

## Annexure “EL 17”



**From:** Samuel Vilakazi  
**Sent:** 07 August 2017 09:49  
**To:** 'Eric | EML Energy (PTY) LTD'  
**Subject:** RE: CP Clearance

Good Morning

Your matter is receiving our urgent attention and we will advise during the course of the day.

Regards  
 Sam

**From:** Eric | EML Energy (PTY) LTD [mailto:eric@emlenergy.com]  
**Sent:** Friday, August 04, 2017 11:46 PM  
**To:** Samuel Vilakazi <samvilakazi@flyexpress.aero>  
**Subject:** RE: CP Clearance

Best Sam,

The email below and the attached approval letter from IDC refers,

EML Energy has secured funding with IDC ( of which we are now under pressure to conclude by Monday (7 August 2017) due to a six months condition precedent for a first draw down. This is critical with respect to the Fuel Guarantees (R65M) that we have to place with refineries, working capital (R6M) and the Plant & Equipment (R6,5M) which includes the Jet A1 Bowser required for Remote Airports ( eg Pilanesburg) Access and additional Defueling capabilities.

We really apologise for the pressure and the short notice but we humbly request for the signed contract on Monday so that we can submit same at IDC as per our deadline and the request below.

Please note that the SAX (Airline), is the only Condition Precedent with respect to the Draw Down from IDC.

Please further note that we will also be available at your earliest request to start the project Implementation planning process and the induction at SAX.

Best Regards,

EML Motlhake  
 EML Energy  
 Chief Executive Officer  
 Pre Tech Elec Eng: Avionics  
 Tel :+2712 549 0375  
 Cel:+2783 677 1290  
[eric@emlenergy.com](mailto:eric@emlenergy.com)  
[www.emlenergy.com](http://www.emlenergy.com)

**From:** Vimal Rama [mailto:VimalR@idc.co.za]  
**Sent:** Wednesday, August 2, 2017 2:54 PM  
**To:** Eric | EML Energy (PTY) LTD <eric@emlenergy.com>  
**Cc:** Tshenolo | EML Energy (PTY) LTD <Tshenolo@emlenergy.com>  
**Subject:** RE: CP Clearance

Hi Eric,

I am awaiting the SAX contract.

Please have a look at the Engen agreement you provided to us and verify that you have fulfilled all the conditions in the contract.

Vimal Rama CA(SA), CFA  
Deal Maker  
Basic and Speciality Chemical

Tel: 011 269 3081  
Fax: 086 260 1494

Email: [vimalr@idc.co.za](mailto:vimalr@idc.co.za)  
Website: [www.idc.co.za](http://www.idc.co.za)  
<image004.jpg>

<image005.png>

"To give us feedback on our service levels, please email your comments to [service@idc.co.za](mailto:service@idc.co.za)"

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C.B

## Annexure “EL 18”



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**From:** Victor Xaba <v.d.xaba@flyexpress.aero>  
**Sent:** 07 August 2017 15:38  
**Subject:** Limited Delegation of Authority - SKA and EML Contracts

Dear Nnditsheni, Merriam,

I am working out of office today and have been informed of two urgent contracts that require my signature, both of which are due today. Therefore as discussed and advised, please proceed to sign the contracts on my behalf as follows:

1. SKA Contract – Nnditsheni Madavha to sign,
2. EML Contract – Merriam Mochoele to sign.

Regards,



*[Handwritten signature]*  
C.B

## Annexure “EL 19”



**AGREEMENT  
SUPPLY OF JET FUEL**

Between

**SOUTH AFRICAN EXPRESS AIRWAYS SOC LIMITED**

Registration Number: 1990/007412/30

(Hereinafter referred to as "SA EXPRESS")

And

**EML ENGINEERS AND CONSTRUCTION T/A EML ENERGY**

Registration Number: 2011/011941/07

(Hereinafter referred to as "THE SERVICE PROVIDER")

## 1. PREAMBLE

- 1.1. **WHEREAS** SA Express is a state-owned company operating a commercial airline with scheduled flights to various destinations within the Republic of South Africa and neighboring African countries;
- 1.2. **WHEREAS** SA Express wishes to appoint a Service provider to supply and deliver jet A1 fuel;
- 1.3. **WHEREAS** the Service Provider's business and service offering includes providing of a complete solution related to aviation fuel services, refuelling, defueling, storage and calibration;
- 1.4. **WHEREAS** the Service Provider hereby agrees to supply SA Express with jet fuel;

**NOW THEREFORE**, the Parties agree on the terms and conditions set out hereunder:

## 2. INTERPRETATION AND PRELIMINARY

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

### 2.1.1 words importing -

- 2.1.1.1 any one gender include the other two genders;
- 2.1.1.2 the singular include the plural and vice versa; and
- 2.1.1.3 natural persons include created entities (corporate or unincorporate) and the state and vice versa;

- 2.2 the following terms shall have the meanings assigned to them hereunder and cognate expressions shall have corresponding meanings, namely -

- 2.2.1 **"Agreement"** means this Memorandum of Agreement, including any annexures hereto which Annexures must be signed by both parties failing which shall render the agreement null and void;
- 2.2.2 **"Commencement date"** means **01 July 2017**, notwithstanding the signature date;
- 2.2.3 **"Parties"** means SA Express and the Service Provider collectively, and **"Party"** shall refer to either of them;
- 2.2.5 **"the Service"** means aviation fuel services, refueling, defueling, storage and calibration;
- 2.2.6 **"Personnel"** means the employees, agents of the Service Provider who are assigned to perform the Services;
- 2.2.7 **"Republic"** means the Republic of South Africa;
- 2.2.8 **"SA Express"** means a state-owned company duly incorporated in terms of the company laws of the Republic of South Africa, having its principal place of business situated at 2<sup>ND</sup> Floor, Block E Offices, Airways Park, Jones Road, Kempton Park, Republic of South Africa.
- 2.2.9 **"signature date"** means the date of last signature of this agreement by the Parties provided that all Parties have signed the agreement;
- 2.2.10 **"the Services"** means supply and delivery of fuel services as set out in clause 3 and which is more fully set out in relevant Annexures attached hereto;
- 2.2.11 **"the Service Provider"** means EML Energy a private company duly incorporated in terms of the company laws of the Republic of South Africa with registration number 2011/011941/07 having its principal place of business situated at 13 Acacia Ave, The Orchards, Pretoria, 0201

2.2.12 "term" means the period commencing on the Commencement date and terminating on the termination date or upon the earlier termination of this agreement (as provided for in this agreement);

2.2.13 "termination date" means 30 June 2020;

2.3 any reference to an enactment is to that enactment as at the signature date and as amended or re-enacted from time to time;

2.4 if any provision in a definition is a substantive provision conferring rights or imposing obligations of any Party, notwithstanding that it is only in the definition clause, effect shall be given to it as if it were a substantive provision in the body of the agreement;

2.5 when any number of days is prescribed in this agreement, same shall be reckoned exclusively of the first and inclusively of the last day unless the last day falls on a Saturday, Sunday or proclaimed public holiday on the Republic, in which case the last day shall be the next succeeding day which is not a Saturday, Sunday or proclaimed public holiday on the Republic;

2.6 where figures are referred to in numerals and in words, if there is any conflict between the two, the words shall prevail;

2.7 expressions defined in this agreement shall bear the same meanings in schedules or annexure to this agreement which do not themselves contain their own definitions;

2.8 where any term is defined within the context of any particular clause in this agreement, the term so defined has limited application to the relevant clause, shall bear the meaning ascribed to it for all purposes in terms of this agreement, notwithstanding that the term has not been defined in this interpretation clause;

2.9 the expiration or termination of this agreement shall not affect such of the provisions of this agreement as expressly provide that they will operate after any such expiration or termination or which of necessity must continue to have effect after such expiration or

termination, notwithstanding that the clauses themselves do not expressly provide for this;

### **3. SCOPE OF WORK AND DESCRIPTION OF SERVICES**

- 3.1 To aggressively market SA Express with the aim of restoring the reputation of the brand as set out in **Annexure A**, which is attached hereto

### **4 REPRESENTATIONS AND WARRANTIES**

- 4.1 Each Party warrants and represents to the other that it has the power to enter into and the ability to perform in terms of this Agreement.
- 4.2 Each Party warrants that it has not violated and it will not violate any applicable laws or regulations of the Republic of South Africa or any of SA Express policies regarding the offer or receipt of improper inducement in connection with this Agreement. A breach of this clause shall be deemed to be an irredeemable breach of this Agreement.
- 4.3 Each signatory warrants that he/she has received and complied with every consent and/or approval necessary with respect to the execution or carrying out of this Agreement or the validity and enforceability thereof.
- 4.4 Each Party warrants that it, and its Services, without limitation, will at all times during the term of this Agreement, comply to all legislation, directives and regulations, without limitation whatsoever, and howsoever arising, applicable to the rendering of the Service and shall furnish, on request by SA Express proof of such compliance.
- 4.5 Breach of any warranty given anywhere in this Agreement shall constitute a material breach.

### **5. SERVICE PROVIDER'S WARRANTIES**

- 5.1. The Service Provider warrants to SA Express that –
- 5.1.1 it will discharge their obligations under this Agreement with all due skill, care and diligence;

5.1.2 for the duration of this Agreement, it shall maintain or improve the B-BBEE status it had upon its appointment by SA Express to provide the Services;

5.1.3 It will be solely responsible for the payment of remuneration of the Personnel and associated benefits, if any, and for withholding and remitting income tax for its Personnel in conformance with any applicable laws and regulations;

5.1.4 It understands and accepts that within the SA Express operational environment, strict safety operational controls, measures, policies, rules, laws, processes and procedures apply. The Service Provider will ensure full compliance at all times and it will ensure that maximum care and attention is exercised for the safety of all concerned.

## **6. DURATION**

6.1 This Agreement shall commence on 01 July 2017 and shall continue for a term of 36 months, unless terminated in accordance with the provisions of this Agreement or otherwise in accordance with the law.

6.2 The Parties shall conduct bi-annual reviews; to assess the performance of the Service Provider.

## **7. FEES AND PAYMENTS**

7.1. SA Express agrees to pay the Service Provider in accordance with the rates set out on Annexure B.

7.2 The Service Provider shall submit invoices and its supporting documents in respect of the Services comprising of fees, disbursement and VAT (if applicable), such invoice shall be payable by SA Express, 30 (thirty) from date of statement.

7.3 Should SA Express disagree with any item(s) in the invoice submitted by the Service Provider, it may withhold payment pending resolution of the disputed item. SA Express shall communicate to the Service Provider its reason(s) for withholding payment on an

invoiced item(s). The deadline for payment for any disputed item(s) will be deemed extended until ten (10) days after the resolution of such dispute.

- 7.4 The Parties acknowledge and agree that the consideration as contemplated in this clause is the only consideration payable by SA Express for the provision of the Services.

**8. SERVICES**

- 8.1 The Service Provider shall be obliged to perform the Services as defined in clause 3 and Annexure A and warrants that it is able and competent to render the Services and shall at all times render such Services in a proper and efficient manner.
- 8.2 The Service Provider shall observe all applicable laws, ordinances, decrees, rules, regulations and Service standards relating in any manner to the performance of its obligations in terms of this Agreement.
- 8.3 The Parties recognise the need to do whatever may be necessary and reasonable for the duration of this Agreement, to ensure that all agreed deadlines are timeously met.
- 8.4 The Service Provider shall ensure that the Services are provided in a manner that is not offensive, obscene, defamatory, confidential, harmful, misleading or otherwise tending to expose SA Express to civil or criminal liability and that it takes into consideration the diversity of SA Express passenger and employee profile.
- 8.5 Any variation to the scope of Services required from the Service Provider in terms of this agreement shall be in writing and signed by two (2) duly authorized by representatives of SA Express.

**9. SA EXPRESS'S OBLIGATIONS**

- 9.1 SA Express undertakes to promptly comply with any reasonable request by the Service Provider for information that relate to the Services as may be necessary for the Service Provider to perform the Services, but for no other purpose. However, SA Express's compliance with any request for information is subject to any internal security rules and

  
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requirements and subject to the observance by the Service Provider of its confidentiality obligations under this Agreement.

9.2 The Service Provider shall give SA Express reasonable notice of any information it requires in accordance with sub-clause 8.1 above.

9.3 Subject to sub-clause 8.4 above, SA Express agrees to provide the Service Provider or its Personnel such access to and use of its facilities as is necessary to allow the Service Provider to perform its obligations under this Agreement.

**10 PERSONNEL**

The Personnel shall be regarded at all times as agents or subcontractors of the Service Provider and no relationship of employer and employee shall arise between SA Express and any Personnel under any circumstances regardless of the degree of supervision that

**11 NON-SOLICITATION**

For the duration of this Agreement and for one (1) year thereafter, the Service Provider and its subsidiaries shall not, directly or indirectly, employ, solicit or offer employment to an employee, representative or consultant of SA Express, nor shall it solicit, entice, encourage or persuade him / her to terminate his / her employment with SA Express.

**12. INTELLECTUAL PROPERTY**

12.1 All Intellectual Property rights owned by the Party prior to this agreement shall remain the sole property of that Party.

12.2 Neither Party shall, without the prior written consent of the other Party, make use of the other Party's Intellectual Property.

12.3 Neither Party shall acquire any rights, title or interest of any kind in any Intellectual Property of the other Party, unless agreed otherwise in writing by both Parties.

- 12.4 Any Intellectual Property, in any media or format, prepared, created or authored prior to the effective date of this Agreement, by or specifically for either of the contracting Party in terms of this Agreement shall belong exclusively to that contracting Party and, in this regard, the Parties may not cede, assign and make over all rights, title and interest in and to any such material or documentation to the other Party, unless agreed otherwise in writing by both Parties.

### 13. CONFLICT

Should there be any conflict between the provisions of this Agreement and provisions of a Letter of Appointment (if any) or any other document, the provisions of this Agreement shall prevail.

### 14. CONFIDENTIALITY

The Parties undertake towards each other:

- 14.1 Not to disclose or otherwise reveal directly or indirectly to any third Party, any confidential information provided by one Party to the other, or otherwise acquired, particularly, contract terms, project information, trade secrets, financing arrangements, annexure, schedules, and information concerning intellectual property, clients, and/or all other information, advised by one Party to another as being confidential or privileged, without the prior specific written consent of the Party providing such information.
- 14.2 To exercise reasonable care to prevent disclosure of confidential information to any third Party, except as may be authorised in writing by the other Party, internal dissemination of the confidential information shall be limited to those employees whose duties justify their need to know such information and then only on the basis of a clear understanding by these employees of their obligations to maintain the trade secrets status of such confidential information and to restrict the use of such information solely to the use granted to the other Party under this agreement. The Parties shall each be liable for any improper disclosure of confidential information by their employees.

14.3 The above undertakings shall not apply to:

14.3.1 Information which at the time of disclosure is published or otherwise generally available to the public;

14.3.2 Information which after disclosure by the disclosing Party is published or becomes generally available to the public; otherwise than through any act or omission on the part of the disclosing Party; and

14.3.3 Information which the Recipient is obliged to disclose in terms of an Order of Court, subpoena or other legal process.

14.4 In the event that either Party hereto is required by legal process to disclose any of the confidential information of the other Party, covered by this clause 13:

14.4.1 Whether or not a protective order or other remedy is obtained or a Party has waived compliance with the provisions of this agreement, the other Party shall take all reasonable steps to ensure that only that portion of the information that it is legally required to disclose is so disclosed.

14.5 On termination of this Agreement, the Service Provider shall immediately deliver and ensure that its Personnel immediately deliver to SA Express, all property belonging to SA Express which it may be in the possession of, or under the control of the Service Provider at the date of the termination, and certify to SA Express in writing that this has been done.

14.6 To the extent that any of the property referred to in sub-clause 13.5 above are in electronic form and contained on non-detachable storage devices, the Service Provider shall provide SA Express with unencrypted copies of the same on magnetic media and shall irretrievably destroy and delete copies so held.

14.7 The provisions of this clause 13 shall survive termination of this agreement, for whatever reason.

## 15 TERMINATION

- 15.1 Without in any way derogating from any other provisions of this Agreement, providing for its termination in certain circumstances, notwithstanding the Term, SA Express may terminate this Agreement by giving the Service Provider 14 (fourteen) days prior notice in writing.
- 15.2 A Party may, without prejudice to any of its other rights which it may have in law, terminate this agreement immediately by way of written notice to the other Party, in the event that:
- 15.2.1 the other Party is provisionally or finally liquidated or wound-up, removed from the register of companies or placed under judicial management or any administration order whatsoever or takes any steps for its voluntary winding-up or liquidation; or
  - 15.2.2 the other Party compromises or attempts to compromise or defer payment of its debts owing by it to its creditors generally.
- 15.3 Termination of the agreement in accordance to clause 14.2 shall not affect any rights of the Parties accrued before the termination date and the rights and obligations of the Parties under this Agreement which, expressly or by implication from its nature are intended to continue after the termination date.

## 16. COMMUNICATION

The Parties agree that:

- 16.1 The contact persons for communication between the Parties shall be the following persons:

### **SA EXPRESS:**

Pieter Corver - Manager Maintenance

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E-mail: [PCorver@flyexpress.aero](mailto:PCorver@flyexpress.aero)

Tel: +27 11 978 9313

**THE SERVICE PROVIDER:**

Name: Eldridge Motlhake

E-mail: [eric@emlenergy.com](mailto:eric@emlenergy.com)

Tel: +27 83 677 1290

**17. BREACH**

- 17.1 Should either Party commit a breach of its obligations under this Agreement, the non-defaulting Party shall give the defaulting Party written notice, calling upon the defaulting Party to remedy the breach or default within a period of seven (7) days. If the defaulting Party fails to remedy the breach within that period, the non-defaulting Party will be entitled to cancel this Agreement without prejudice to any other rights which the Party may have against the defaulting Party.
- 17.2 The remedies set out in this clause 16 shall not be construed to be exhaustive of any other remedies available to the Parties.

**18. SETTLEMENT OF DISPUTES**

- 18.1 Should any difference or dispute at any time arise between the Parties, the duly authorised Senior Officials of each Party shall meet within seven (7) days of the written invitation, to attempt to resolve the dispute by negotiation.
- 18.2 If the dispute is not resolved by such negotiation, then either of the Parties shall be entitled to refer the dispute to the Arbitration Foundation of Southern Africa (AFSA) administered mediation, upon the terms set by the AFSA Secretariat. Failing such a

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resolution, the dispute, if arbitrable in law, shall be finally resolved in accordance with the Rules of AFSA by an arbitrator or arbitrators appointed by the Foundation.

#### 19. INDEMNITY

The Service Provider hereby indemnifies, defends and holds harmless SA Express and its employees, officers, directors, shareholders and agents against any loss, cost, liability, expense, injury, penalty or interest (including reasonable attorneys fees) of whatsoever nature which may be incurred or sustained by SA Express or such Parties unless pursuant to gross negligence or willful conduct of SA Express or its employees, officers, directors, shareholders and agents.

#### 20. DOMICILIUM CITANDI ET EXECUTANDI

20.1 All notices or correspondence in terms of this Agreement shall be delivered by hand or sent by registered mail, email or fax and shall be addressed as below which the Parties hereto choose as *domicilium citandi et executandi*.

##### SA EXPRESS

2<sup>nd</sup> Floor, Block E Offices

Airways Park

1 Jones Road

Kempton Park

1627

Gauteng

##### THE SERVICE PROVIDER

13 Acacia Ave

The Orchards

Pretoria

0201

Republic of South Africa

Cell: (087) 700 5953

Republic of South Africa

Tel: (011) 978 9900

Fax: (011) 978 5578

20.2 All notices or correspondence sent in terms of this Agreement shall be deemed received by the addressee if delivered by hand, on the date of delivery; if sent by registered mail, on the date of post office notification, if sent by fax, on the date of transmission and if sent by e-mail on successful delivery.

20.3 The Parties record that whilst they may correspond via email during the currency of this Agreement for operational reasons, no formal notice required in terms of this Agreement, nor any amendment of or variation to this Agreement may be given or concluded via email.

**21. SUBCONTRACTING**

The Service Provider shall not subcontract any of its obligations under this Agreement except without the prior written approval of SA Express and such consent shall not be unreasonably withheld. The Service Provider shall remain accountable for the timeous and qualitative delivery of any and all sub-contracted Services.

**22. NO PARTNERSHIP**

The Parties do not intend that any agency or partnership relationship be created between them by this Agreement and neither Party may bind the other in any way.

**23. NO REPRESENTATIONS**

Neither Party may rely on any representation, which allegedly induced that Party to enter into this agreement, unless the representation is recorded in this agreement.

**24. VARIATION, CANCELLATION AND WAIVER**

No contract varying, adding to, deleting from or cancelling this Agreement, and no waiver of any right under this agreement, shall be effective unless reduced to writing and signed by two (2) duly authorized representatives SAA Express representatives who have the necessary authority under the Delegation of Authority Framework (a document that sets out the necessary delegation of authority that is applicable). A breach of this clause shall be deemed to be an irredeemable breach of this Agreement.

**25. INDULGENCES**

- 26.1 If either Party at any time breaches any of that Party's obligations under this agreement, the other Party ("the aggrieved Party"), may at any time after that breach, exercise any right that became exercisable directly or indirectly as a result of the breach, unless the aggrieved Party has expressly elected in writing or by clear and unambiguous conduct, amounting to more than mere delay, not to exercise the right. If the aggrieved Party is willing to relinquish that right the aggrieved Party will on request do so in writing. In particular, acceptance of late performance shall for a reasonable period after performance be provisional only and the aggrieved Party may still exercise that right during that period;
- 26.2 The aggrieved Party shall not be precluded from exercising its rights arising out of that breach, despite the fact that the aggrieved Party may have elected or agreed on one or more previous occasions not to exercise the rights arising out of any similar breach or breaches.

**27. CESSION**

The Service Provider may not cede its rights or delegate its obligations without the prior written consent of SA Express and such consent shall not be unreasonably withheld.

**28. SEVERABILITY**

Whenever possible, each provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable law but if any provision of this Agreement shall be unenforceable or invalid under the applicable law, such invalidity or unenforceability shall not affect the other provisions of this Agreement, all of which shall remain in full force and effect.

**29. APPLICABLE LAW**

The Agreement shall be governed and interpreted according to the laws of the Republic of South Africa.

**30. ENTIRE AGREEMENT**

This Agreement contains all the express provisions agreed on by the Parties with regard to the subject matter of the agreement and the Parties waive the right to rely on any alleged express provision not contained in this agreement.

**31. COSTS**

Each Party shall bear that Party's own legal costs of and incidental to the negotiation, preparation, settling, signing and implementation of this agreement.

**28. SEVERABILITY**

Whenever possible, each provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable law but if any provision of this Agreement shall be unenforceable or invalid under the applicable law, such invalidity or unenforceability shall not affect the other provisions of this Agreement, all of which shall remain in full force and effect.

**29. APPLICABLE LAW**

The Agreement shall be governed and interpreted according to the laws of the Republic of South Africa.

**30. ENTIRE AGREEMENT**

This Agreement contains all the express provisions agreed on by the Parties with regard to the subject matter of the agreement and the Parties waive the right to rely on any alleged express provision not contained in this agreement.

**31. COSTS**

Each Party shall bear that Party's own legal costs of and incidental to the negotiation, preparation, settling, signing and implementation of this agreement.

32. SIGNATURES

Signed at KEMPTON PARK on this 7<sup>th</sup> day of AUGUST 2017.

PR. [Signature]  
 (ON BEHALF OF SA EXPRESS WARRANTING  
 THAT HE HAS THE AUTHORITY TO SIGN)  
 Name: Victor Xaba  
 Designation: Acting Chief Executive Officer

1. Witness  
 Name:  
 Designation:

2. Witness  
 Name:  
 Designation:

Signed at SAFARI POINT on this 24<sup>th</sup> day of July 2017.

(ON BEHALF OF THE SERVICE PROVIDER  
 THAT HE HAS THE AUTHORITY TO SIGN)  
 Name: Edmore MATHIBANE  
 Designation: CHIEF EXECUTIVE OFFICER

1. Witness  
 Name: TSHEMOLO LEBEKO  
 Designation: GENERAL MANAGER

2. Witness  
 Name: HESA BALOYI  
 Designation: Logistic manager

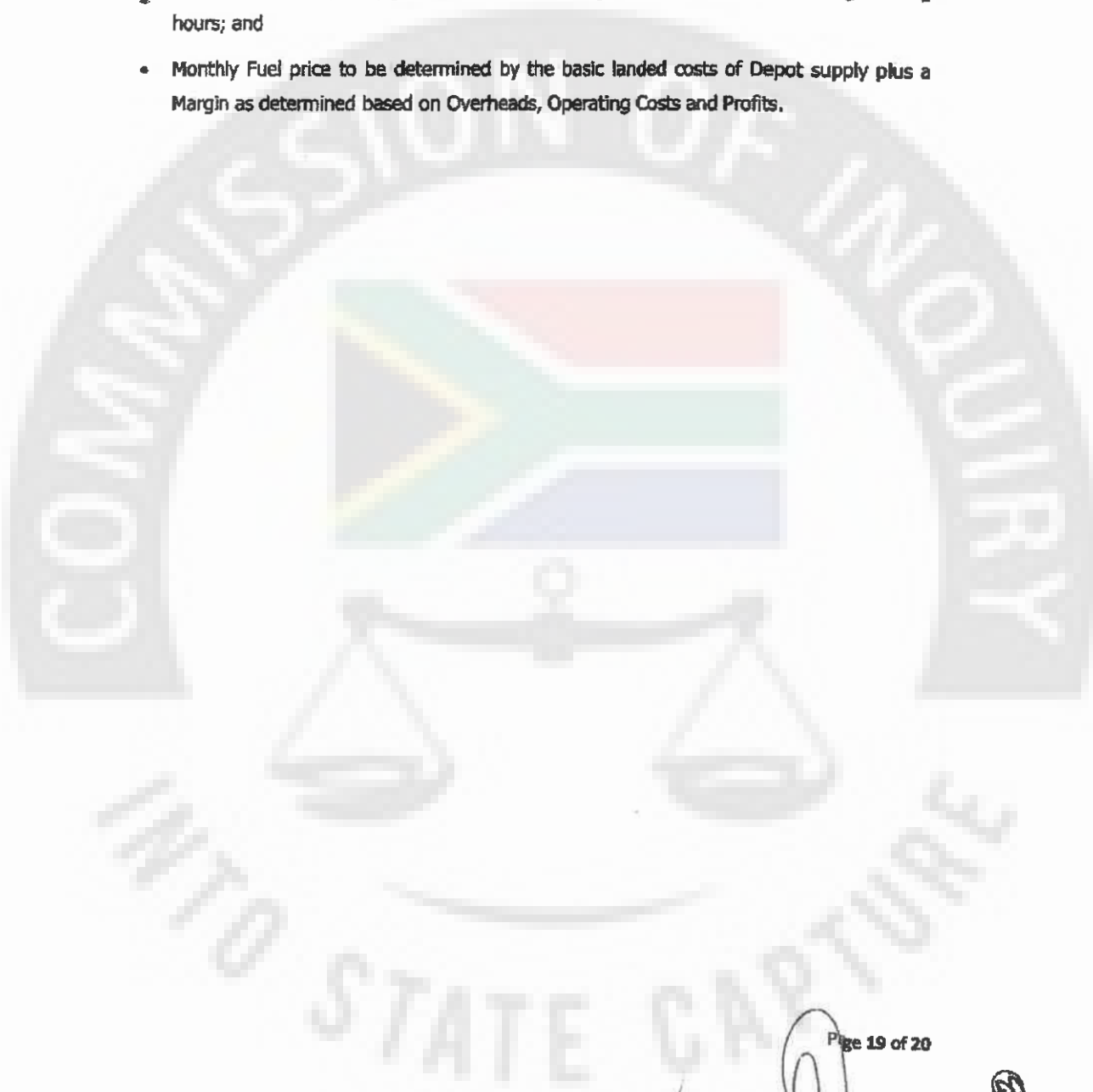
**ANNEXURE "A"****SCOPE OF WORK:**

- Guarantee the Monthly Availability of JET A1 Product to the Value of R67, 000,000.00 at all locations required by SAX.
- SAX will have a credit period of 30 days only.
- Ordering, Transporting and Receipt of Fuel from Refineries into Plane.
- Managing Compliance and Aerospace Insurances
- Refuel of Aircraft at Locations as determined by SAX
- Defuel of aircraft on-call at a set charge for defuel and fuel storage costs ~ fuel stored will be credited to client.
- Perform Fuel Lab Tests
- Supply Support, Products, Parts and Ground Services related to Fuelling
- Monthly Fuel Price submission determined by the variable Basic Fuel Price (BFP) of Refineries plus a Margin based on Overheads, Operating Costs and Profits. Prices to be submitted, negotiated and approved by the commodity manager and/or procurement.
- A monthly forecast of volume is required from SAX.
- Call out requested but unsuccessful in rendering services should not be billed to SAX.
- Operate and Maintain the Fuel Farms, Bowsers and Trailers at specified locations
- Manage and Administrate Operation
- Submit Monthly Movements and reports.

**Additional Services related to Diesel and Petrol Fuel**

- Operate and Maintain the Petrol and Diesel facility with capacity of two tanks and two single hose pumps;
- Ordering and receipt of fuel from Refineries as required from major suppliers;

- Daily activities related to petrol station operations;
- Refuel of tow cars, cars, generators, trucks, and ground vehicles on-call during working hours; and
- Monthly Fuel price to be determined by the basic landed costs of Depot supply plus a Margin as determined based on Overheads, Operating Costs and Profits.

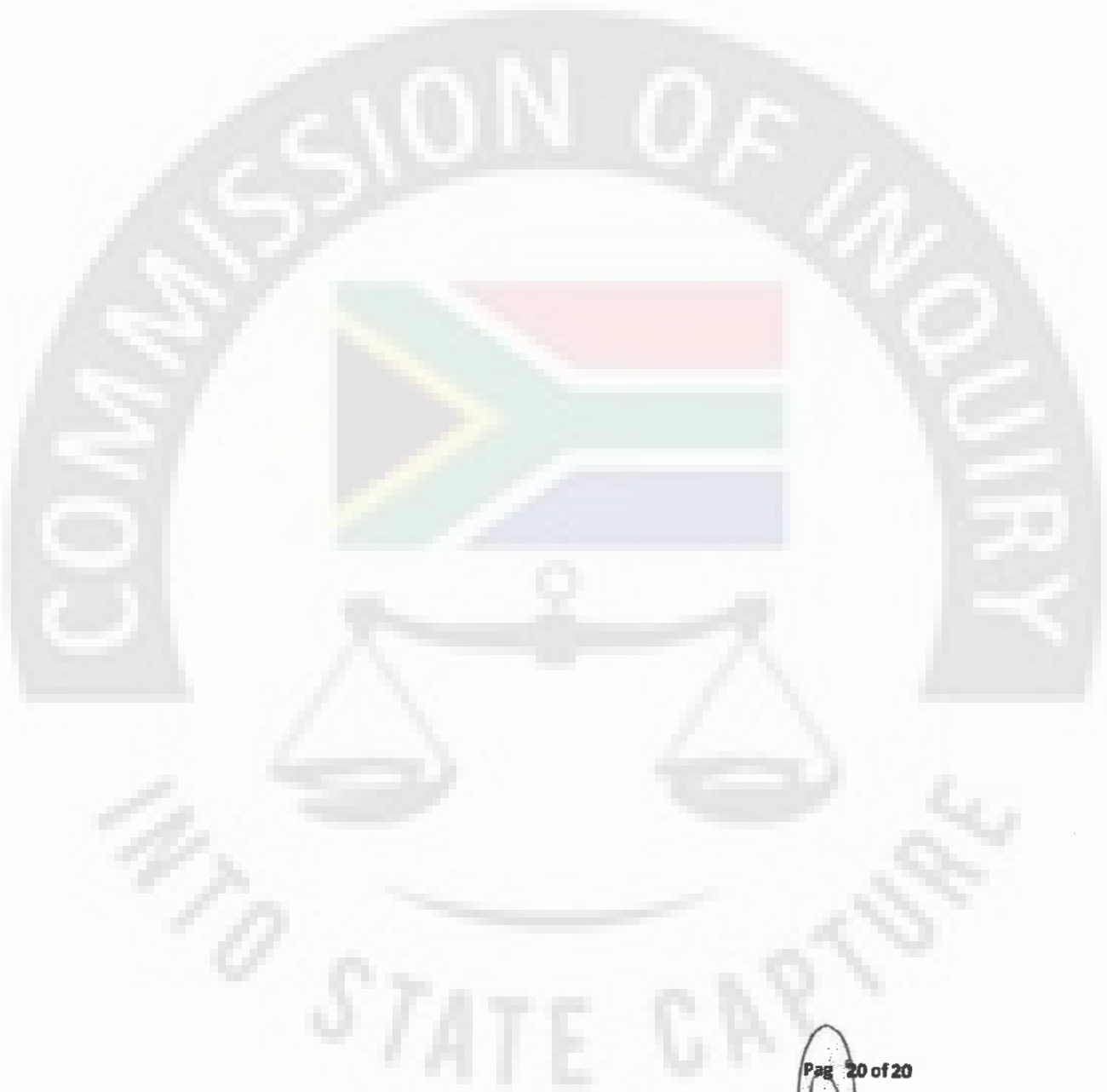


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Handwritten signatures and initials are present at the bottom of the page. On the left, there is a signature that appears to be 'L.H.'. In the center, there is a large, stylized circular signature. To the right of this, there are initials 'IB' and a signature that looks like 'G'. Further right, there is a small circular stamp or signature.

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ANNEXURE B (Attached)



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C.B.

*[Handwritten signature]*

*[Handwritten signature]*

## EML ENGINEERS AND CONSTRUCTION

1/a EML ENERGY

P.O. BOX 953

MEDUNSA

0204

Tel : 012 549 3752

Fax: 086 691 2030

info@emlenergy.com

CM2011/011941/07

www.emlenergy.com



## South African Express Pricing Schedule:

July 2017

Airport	IATA Code	SAX	Index	Base Price (ZAR/lt)	Credit Terms	Credit Period	Comments/Remarks	Amount	Amount (in words)
Example			150 BFP	4,500	Weekly	Days	Terms	R 7,98	R 9,09
Bloemfontein	BFN	1 700 000	Natref	R 6,06	Weekly	30 days		R 6,78	R 7,73
Cape Town	CPT	11 200 000	Minerton	R 5,42	Weekly	30 days		R 6,86	R 7,83
Durban	DUR	6 190 000	Enref	R 5,98	Weekly	30 days		R 7,45	R 8,49
East London	ELS	5 450 000	Enref	R 5,98	Weekly	30 days		R 6,79	R 7,74
George	GRJ	1 900 000	Minerton	R 5,66	Weekly	30 days	Storage fee	R 6,80	R 7,75
Johannesburg	JNB	21 200 000	Natref	R 5,77	Weekly	30 days	Included in	R 8,08	R 9,22
Kimberly	KIM	193 000	Natref	R 6,06	Weekly	30 days	Ref and Vat	R 7,45	R 8,49
Port Elizabeth	PLZ	6 200 000	Enref	R 5,98	Weekly	30 days	of 14% will	R 7,00	R 7,98
Richards Bay	RCB	41 000	Enref	R 5,97	Weekly	30 days	be charged	R 8,22	R 9,37
Pietermaritzburg	NTY	436 800	Natref	R 6,28	Weekly	30 days	in Domestic	R 7,92	R 9,03
Denel Aviation	DAV	216 000	Natref	R 6,06	Weekly	30 days	flights		
Denel Aviation	DAV	Pump Back (per hour)	Defuel (per hour)	Storage (per Day)					
		R 1 000,00	R 1 000,00	R 251,00					

## TERMS:

BFP is the Basic Fuel Price determined monthly by DOE.

Total price includes, Insurance, Transport, Into Plane and Differential costs

All Prices exclude the SACAA Levy

Signature:

Name: V. XabaDesignation: Managing Director

## Annexure “EL 20”



## EML ENGINEERS AND CONSTRUCTION

t/a EML ENERGY

P.O. BOX 953

MEDUNSA

0204

Tel : 012 549 3752

Fax: 086 691 2030

info@emlenergy.com

CM2011/011941/07

www.emlenergy.com



## South African Express Pricing Schedule:

Aug 2017

SAX  
Current

Airport	IATA Code	SAX	Index	Base Price (ZAR/Lt)	Credit Terms		Comments/Remarks	Amounts	
					Invoice frequency	Credit Period			
Example									
Bloemfontein	BFN	1 700 000	Natref	R 6,36	Weekly	30 days		R 8,27	R 9,43
Cape Town	CPT	11 200 000	Milnerton	R 6,11	Weekly	30 days		R 7,47	R 8,52
Durban	DUR	6 190 000	Enref	R 6,55	Weekly	30 days		R 7,44	R 8,48
East London	ELS	5 450 000	Enref	R 6,55	Weekly	30 days		R 8,02	R 9,15
George	GRU	1 900 000	Milnerton	R 6,11	Weekly	30 days		R 7,24	R 8,25
Johannesburg	JNB	21 200 000	Natref	R 6,36	Weekly	30 days		R 7,39	R 8,42
Kimberly	KIM	193 000	Natref	R 6,36	Weekly	30 days		R 8,38	R 9,56
Port Elizabeth	PLZ	6 200 000	Enref	R 6,55	Weekly	30 days		R 8,02	R 9,15
Richards Bay	RCB	41 000	Enref	R 6,55	Weekly	30 days		R 7,58	R 8,64
Planesburg	NTY	436 800	Natref	R 6,36	Weekly	30 days		R 8,30	R 9,46
Denel Aviation	DAV	216 000	Natref	R 6,36	Weekly	30 days		R 8,22	R 9,37
Denel Aviation	DAV		Pump Back (per hour)						
		R 1 000,00	Defuel (per hour)						
				Storage (per Day)					
		R 1 000,00	R 1 000,00	R 251,00					

5-73  
5-86  
5-83  
6-56  
6-67  
6-18  
5-73  
6-81  
10-66

Am: S,

Signature:

Name:

Designation:

## TERMS:

BFP is the Basic Fuel Price determined monthly by DOE.

Total price includes, Insurance, Transport, Into Plane and Differential costs

All Prices exclude the SACAA Levy

LB

## Annexure “EL 21”



**Pieter Corver**

**From:** Pieter Corver  
**Sent:** Wednesday, February 21, 2018 10:52 AM  
**To:** Matsietsi Mokholo  
**Subject:** FW: EML Contract

FYI Madam.

**From:** Dave Allanby  
**Sent:** Wednesday, October 18, 2017 01:30 PM  
**To:** Gavin Fourie <gfourie@flyexpress.aero>  
**Cc:** Iain Findlay (Captain) <IFindlay@flyexpress.aero>; Jacques Beck <jbeck@flyexpress.aero>; Merriam (Chueu) Mochoele <MMochoele@flyexpress.aero>; Nnditsheni Madavha <NMadavha@flyexpress.aero>; Samuel Vilakazi <samvilakazi@flyexpress.aero>; Pieter Corver <PCorver@flyexpress.aero>; Marco Dal Bianco <mdalbiano@flyexpress.aero>  
**Subject:** RE: EML Contract

Afternoon Gavin

Before this concern grows legs allow me to clarify on what I have gleaned:

1. I too was taken aback but have subsequently seen the date of signature
2. This was an approved contract, via a Saturday Exco round robin, in order for SAX to use the services of EML to defuel a CRJ200 standing at Denel. (The normal service providers required 24 hours advance notice in order to supply the dedicated bowser)
3. You will see that Pieter Corver is to manage the relationship
4. This is not a carte blanche change of fuel service provider countrywide
5. There are however on-going discussions with EML w.r.t the possible supply of fuel at our problematic stations NTY and HDS

I hope this allays your fears

Regards  
 Dave

**From:** Gavin Fourie  
**Sent:** Wednesday, October 18, 2017 09:57 AM  
**To:** Dave Allanby

**Cc:** Iain Findlay (Captain); Jacques Beck  
**Subject:** FW: EML Contract

Hi Dave,

What am I missing here? With the price quoted in Annexure B surely we can't enter into a contract like this? Prices are approx 30% higher than what we are currently paying at SAA.

Regards

Gavin

---

**From:** Jacques Beck  
**Sent:** Wednesday, October 18, 2017 9:04 AM  
**To:** Gavin Fourie  
**Subject:** FW: EML Contract

Eml Contract -signed



Jacques Beck  
Divisional Manager Airport Operations/ Ground Handling  
SA EXPRESS

Cell:- 071 874 8425  
E-mail:- [jbeck@flyexpress.aero](mailto:jbeck@flyexpress.aero)

---

**From:** Sibongile Vliakazi  
**Sent:** 05 October 2017 01:46 PM  
**To:** Maureen Jacobs; Jacques Beck; Marco Dal Bianco; Pieter Conner  
**Subject:** EML Contract

Good afternoon Colleagues,

Please note that EML was appointed in July 2017 for a period of 36 months to supply Jet Fuel, the attached contract has all the details of the scope of work.

1215

C.B.



**JUDICIAL COMMISSION OF INQUIRY INTO ALLEGATIONS OF STATE CAPTURE,  
CORRUPTION AND FRAUD IN THE PUBLIC SECTOR INCLUDING ORGANS OF STATE**

2<sup>nd</sup> floor, Hillside House  
17 Empire Road,  
Parktown  
Johannesburg  
2193  
Tel: (010) 214-0651  
Email:

[inquiries@sastatecapture.org.za](mailto:inquiries@sastatecapture.org.za)

Website: [www.sastatecapture.org.za](http://www.sastatecapture.org.za)

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**INDEX: EXHIBIT DD 12 SECTION 2**

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	Description	Pages
	Additional information on Annexures "EL 11" of Estelle Loock's affidavit	01 to 02
	Additional information on Annexures "EL 16" of Estelle Loock's affidavit	03 to 23

## Annexure "EL11" - Better print

**From:** Eric | EML Energy (PTY) LTD <eric@emlenergy.com>  
**Sent:** 14 July 2017 15:49  
**To:** Vimal Rama  
**Cc:** Tshenolo | EML Energy (PTY) LTD  
**Subject:** FW: Jet A1 prices July  
**Attachments:** SAX Pricing Schedule 2017 July.pdf; SAX Pricing Schedule 2017 July Rev.xlsx

Best Vimal,

I have send same the SAX PDF for approval. The spreadsheet is our document with differentials and overheads.

Please note that the differential is a total of R1,00 (differential and mark up on transport and into plane prices)

Best Regards,

EML Motlhake  
EML Engineers and Construction  
T/A EML Energy  
Managing Director  
Pre Tech : Elec Eng | Avionics  
0836771290  
0877005953  
eric@ [emlenergy.com](mailto:emlenergy.com)  
[www.emlenergy.com](http://www.emlenergy.com)

From: Marius NORTJE <[marius.nortje@total.co.za](mailto:marius.nortje@total.co.za)>  
**Date:** Monday 03 July 2017 at 3:55 PM  
**To:** Eric Motlhake <[eric@emlenergy.com](mailto:eric@emlenergy.com)>, "Sbongile | EML Energy (PTY) LTD" <[info@emlenergy.com](mailto:info@emlenergy.com)>, "[tshenolo@emlenergy.com](mailto:tshenolo@emlenergy.com)" <[tshenolo@emlenergy.com](mailto:tshenolo@emlenergy.com)>  
**Cc:** Diego MTSHALI <[diego.mtshali@total.co.za](mailto:diego.mtshali@total.co.za)>  
**Subject:** Jet A1 prices July

Good Day

Please find the prices for the month as indicated below;

Airports	NATREF	ORT	CPT	Milnerton Depot
Base Price	R 5.341	R 5.341	R 4.946	R 4.946
Transport - Natref to ORT	R 0.000		R 0.000	R 0.000
Transport - CPT ( plus 13.5cpl Other fees variable)			R 0.045	
Storage and Handling	R 0.220	R 0.090	R 0.115	R 0.115
Differential	R 0.350	R 0.200	R 0.200	R 0.450
SACAA levy	R 0.146	R 0.146	R 0.146	R 0.146
<b>Total excluding VAT</b>				<b>R 5.657</b>

VAT (Non International Flights)

R 0.848	R 0.809	R 0.763	R 0.792
---------	---------	---------	---------

**Total including VAT**

R 6.905	R 6.586	R 6.216	R 6.449
---------	---------	---------	---------

Regards

**Marius Nortje**

Lubricants Pricing Analyst: Lubricants &amp; Specialities

**MARKETING & SERVICES**

Lubricants &amp; Specialities

Sales and Marketing

Tel : +(2711) 778 3026

Email: [marius.nortje@total.co.za](mailto:marius.nortje@total.co.za)

Total South Africa (Pty) Ltd  
 Level 3 Certified BBBEE Company  
 3 Biermann Avenue  
 Rosebank  
 Johannesburg  
 2196  
 South Africa

*CONFIDENTIALITY. This email (including any attachments) may contain information which may be confidential. It may not be used other than for the purpose for which it has been sent. If you are not the intended recipient, please delete it and notify the sender immediately.*

## Annexure "EL16" - Email & Agreement

**From:** Sibongile Vilakazi <SVilakazi@flyexpress.aero>  
**Sent:** 24 July 2017 14:23  
**To:** Eric | EML Energy (PTY) LTD  
**Cc:** Tshenolo | EML Energy (PTY) LTD  
**Subject:** Agreement EML  
**Attachments:** Agreement for ELM 24 Jul 2017.pdf; SAX Pricing Schedule.pdf



**There's no minute to waste, Fly with us!**

Flying with us gives you time to make your moments memorable. **Because we fly for you!**



Good day again,

Kindly receive attached for signature.

Regards,

**Sibongile S. Vilakazi**  
**Contracts Management**

2nd Floor  
 E Block Offices  
 Airways Park  
 1 Jones Road

D: 011 978 6770  
 F:  
 C:

**sa express**  
 we fly for you

*Please note that this e-mail and the contents thereof is subject to the standard SA Express E-mail disclaimer which may be found on [www.flyexpress.aero](http://www.flyexpress.aero)*

**Non Executive Directors:** G N Mothema (Chairperson), T Abrahams, B P B Dibate, R Naithani (Indian), J N Nkabinde, P Ramosebudi, G R Sibiya

**Executive Directors:** I Ntshanga (Chief Executive Officer), M R Shelley (Chief Financial Officer)

**Company Secretary:** M Gie

South African Express Airways SOC Ltd Co.Reg. No. 1990/007412/30 Vat Reg No. 4400140499



**Sibongile S. Vilakazi**  
**Contracts Coordinator**

2nd Floor  
 E Block Offices

D: +27 11 978 6770

Airways Park  
1 Jones Road

F:  
C:



**sa express**

we fly for you

*Please note that this e-mail and the contents thereof is subject to the standard SA Express E-mail disclaimer which may be found on [www.flyexpress.aero](http://www.flyexpress.aero)*

**Non Executive Directors:** G N Mothema (Chairperson), T Abrahams, B P B Dibate, R Naithani, J N Nkabinde, P Ramosebudi, G R Sibiya

**Executive Directors:** D V Xaba (Acting Chief Executive Officer), M R Shelley (Chief Financial Officer)

**Company Secretary:** M Gie

South African Express Airways SOC Ltd Co.Reg. No. 1990/007412/30 Vat Reg No. 4400140499



**AGREEMENT**  
**SUPPLY OF JET FUEL**

Between

**SOUTH AFRICAN EXPRESS AIRWAYS SOC LIMITED**

Registration Number: 1990/007412/30

(Hereinafter referred to as "**SA EXPRESS**")

And

**EML ENGINEERS AND CONSTRUCTION T/A EML ENERGY**

Registration Number: 2011/011941/07

(Hereinafter referred to as "**THE SERVICE PROVIDER**")

## 1. **PREAMBLE**

- 1.1. **WHEREAS** SA Express is a state-owned company operating a commercial airline with scheduled flights to various destinations within the Republic of South Africa and neighboring African countries;
- 1.2. **WHEREAS** SA Express wishes to appoint a Service provider to supply and deliver jet A1 fuel,
- 1.3. **WHEREAS** the Service Provider's business and service offering includes providing of a complete solution related to aviation fuel services, refueling, defueling, storage and calibration;
- 1.4. **WHEREAS** the Service Provider hereby agrees to supply SA Express with jet fuel;

**NOW THEREFORE**, the Parties agree on the terms and conditions set out hereunder.

## 2. **INTERPRETATION AND PRELIMINARY**

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

### 2.1.1 words importing -

2.1.1.1 any one gender include the other two genders;

2.1.1.2 the singular include the plural and vice versa; and

2.1.1.3 natural persons include created entities (corporate or unincorporate) and the state and vice versa;

- 2.2 the following terms shall have the meanings assigned to them hereunder and cognate expressions shall have corresponding meanings, namely -

- 2.2.1 **"Agreement"** means this Memorandum of Agreement, including any annexures hereto which Annexures must be signed by both parties failing which shall render the agreement null and void;
- 2.2.2 **"Commencement date"** means **01 July 2017**, notwithstanding the signature date;
- 2.2.3 **"Parties"** means SA Express and the Service Provider collectively, and **"Party"** shall refer to either of them;
- 2.2.5 **"the Service"** means aviation fuel services, refueling, defueling, storage and calibration;
- 2.2.6 **"Personnel"** means the employees, agents of the Service Provider who are assigned to perform the Services;
- 2.2.7 **"Republic"** means the Republic of South Africa;
- 2.2.8 **"SA Express"** means a state-owned company duly incorporated in terms of the company laws of the Republic of South Africa, having its principal place of business situated at 2<sup>ND</sup> Floor, Block E Offices, Airways Park, Jones Road, Kempton Park, Republic of South Africa.
- 2.2.9 **"signature date"** means the date of last signature of this agreement by the Parties provided that all Parties have signed the agreement;
- 2.2.10 **"the Services"** means supply and delivery of fuel services as set out in **clause 3** and which is more fully set out in relevant Annexures attached hereto;
- 2.2.11 **"the Service Provider"** means EML Energy a private company duly incorporated in terms of the company laws of the Republic of South Africa with registration number 2011/011941/07 having its principal place of business situated at 13 Acacia Ave, The Orchards, Pretoria, 0201

2.2.12 **"term"** means the period commencing on the Commencement date and terminating on the termination date or upon the earlier termination of this agreement (as provided for in this agreement);

2.2.13 **"termination date"** means 30 June 2020;

- 2.3 any reference to an enactment is to that enactment as at the signature date and as amended or re-enacted from time to time;
- 2.4 if any provision in a definition is a substantive provision conferring rights or imposing obligations of any Party, notwithstanding that it is only in the definition clause, effect shall be given to it as if it were a substantive provision in the body of the agreement;
- 2.5 when any number of days is prescribed in this agreement, same shall be reckoned exclusively of the first and inclusively of the last day unless the last day falls on a Saturday, Sunday or proclaimed public holiday on the Republic, in which case the last day shall be the next succeeding day which is not a Saturday, Sunday or proclaimed public holiday on the Republic;
- 2.6 where figures are referred to in numerals and in words, if there is any conflict between the two, the words shall prevail;
- 2.7 expressions defined in this agreement shall bear the same meanings in schedules or annexure to this agreement which do not themselves contain their own definitions;
- 2.8 where any term is defined within the context of any particular clause in this agreement, the term so defined has limited application to the relevant clause, shall bear the meaning ascribed to it for all purposes in terms of this agreement, notwithstanding that the term has not been defined in this interpretation clause;
- 2.9 the expiration or termination of this agreement shall not affect such of the provisions of this agreement as expressly provide that they will operate after any such expiration or termination or which of necessity must continue to have effect after such expiration or

termination, notwithstanding that the clauses themselves do not expressly provide for this;

### **3. SCOPE OF WORK AND DESCRIPTION OF SERVICES**

- 3.1 To aggressively market SA Express with the aim of restoring the reputation of the brand as set out in **Annexure A**, which is attached hereto

### **4 REPRESENTATIONS AND WARRANTIES**

- 4.1 Each Party warrants and represents to the other that it has the power to enter into and the ability to perform in terms of this Agreement.
- 4.2 Each Party warrants that it has not violated and it will not violate any applicable laws or regulations of the Republic of South Africa or any of SA Express policies regarding the offer or receipt of improper inducement in connection with this Agreement. A breach of this clause shall be deemed to be an irredeemable breach of this Agreement.
- 4.3 Each signatory warrants that he/she has received and complied with every consent and/or approval necessary with respect to the execution or carrying out of this Agreement or the validity and enforceability thereof.
- 4.4 Each Party warrants that it, and its Services, without limitation, will at all times during the term of this Agreement, comply to all legislation, directives and regulations, without limitation whatsoever, and howsoever arising, applicable to the rendering of the Service and shall furnish, on request by SA Express proof of such compliance.
- 4.5 Breach of any warranty given anywhere in this Agreement shall constitute a material breach.

### **5. SERVICE PROVIDER'S WARRANTIES**

- 5.1. The Service Provider warrants to SA Express that –
- 5.1.1 it will discharge their obligations under this Agreement with all due skill, care and diligence;

- 5.1.2 for the duration of this Agreement, it shall maintain or improve the B-BBEE status it had upon its appointment by SA Express to provide the Services;
- 5.1.3 it will be solely responsible for the payment of remuneration of the Personnel and associated benefits, if any, and for withholding and remitting income tax for its Personnel in conformance with any applicable laws and regulations;
- 5.1.4 it understands and accepts that within the SA Express operational environment, strict safety operational controls, measures, policies, rules, laws, processes and procedures apply. The Service Provider will ensure full compliance at all times and it will ensure that maximum care and attention is exercised for the safety of all concerned.

## **6. DURATION**

- 6.1 This Agreement shall commence on 01 July 2017 and shall continue for a term of 36 months, unless terminated in accordance with the provisions of this Agreement or otherwise in accordance with the law.
- 6.2 The Parties shall conduct bi-annual reviews; to assess the performance of the Service Provider.

## **7. FEES AND PAYMENTS**

- 7.1. SA Express agrees to pay the Service Provider in accordance with the rates set out on Annexure B.
- 7.2 The Service Provider shall submit invoices and its supporting documents in respect of the Services comprising of fees, disbursement and VAT (if applicable), such invoice shall be payable by SA Express, 30 (thirty) from date of statement.
- 7.3 Should SA Express disagree with any item(s) in the invoice submitted by the Service Provider, it may withhold payment pending resolution of the disputed item. SA Express shall communicate to the Service Provider its reason(s) for withholding payment on an

invoiced item(s). The deadline for payment for any disputed item(s) will be deemed extended until ten (10) days after the resolution of such dispute.

- 7.4 The Parties acknowledge and agree that the consideration as contemplated in this clause is the only consideration payable by SA Express for the provision of the Services.

## **8. SERVICES**

- 8.1 The Service Provider shall be obliged to perform the Services as defined in clause 3 and Annexure A and warrants that it is able and competent to render the Services and shall at all times render such Services in a proper and efficient manner.
- 8.2 The Service Provider shall observe all applicable laws, ordinances, decrees, rules, regulations and Service standards relating in any manner to the performance of its obligations in terms of this Agreement.
- 8.3 The Parties recognise the need to do whatever may be necessary and reasonable for the duration of this Agreement, to ensure that all agreed deadlines are timeously met.
- 8.4 The Service Provider shall ensure that the Services are provided in a manner that is not offensive, obscene, defamatory, confidential, harmful, misleading or otherwise tending to expose SA Express to civil or criminal liability and that it takes into consideration the diversity of SA Express passenger and employee profile.
- 8.5 Any variation to the scope of Services required from the Service Provider in terms of this agreement shall be in writing and signed by two (2) duly authorized by representatives of SA Express.

## **9. SA EXPRESS'S OBLIGATIONS**

- 9.1 SA Express undertakes to promptly comply with any reasonable request by the Service Provider for information that relate to the Services as may be necessary for the Service Provider to perform the Services, but for no other purpose. However, SA Express's compliance with any request for information is subject to any internal security rules and

requirements and subject to the observance by the Service Provider of its confidentiality obligations under this Agreement.

- 9.2 The Service Provider shall give SA Express reasonable notice of any information it requires in accordance with sub-clause 8.1 above.
- 9.3 Subject to sub-clause 8.4 above, SA Express agrees to provide the Service Provider or its Personnel such access to and use of its facilities as is necessary to allow the Service Provider to perform its obligations under this Agreement.

#### **10 PERSONNEL**

The Personnel shall be regarded at all times as agents or subcontractors of the Service Provider and no relationship of employer and employee shall arise between SA Express and any Personnel under any circumstances regardless of the degree of supervision that

#### **11 NON-SOLICITATION**

For the duration of this Agreement and for one (1) year thereafter, the Service Provider and its subsidiaries shall not, directly or indirectly, employ, solicit or offer employment to an employee, representative or consultant of SA Express, nor shall it solicit, entice, encourage or persuade him / her to terminate his / her employment with SA Express.

#### **12. INTELLECTUAL PROPERTY**

- 12.1 All Intellectual Property rights owned by the Party prior to this agreement shall remain the sole property of that Party.
- 12.2 Neither Party shall, without the prior written consent of the other Party, make use of the other Party's Intellectual Property.
- 12.3 Neither Party shall acquire any rights, title or interest of any kind in any Intellectual Property of the other Party, unless agreed otherwise in writing by both Parties.

- 12.4 Any Intellectual Property, in any media or format, prepared, created or authored prior to the effective date of this Agreement, by or specifically for either of the contracting Party in terms of this Agreement shall belong exclusively to that contracting Party and, in this regard, the Parties may not cede, assign and make over all rights, title and interest in and to any such material or documentation to the other Party, unless agreed otherwise in writing by both Parties.

### **13. CONFLICT**

Should there be any conflict between the provisions of this Agreement and provisions of a Letter of Appointment (if any) or any other document, the provisions of this Agreement shall prevail.

### **14. CONFIDENTIALITY**

The Parties undertake towards each other:

- 14.1 Not to disclose or otherwise reveal directly or indirectly to any third Party, any confidential information provided by one Party to the other, or otherwise acquired, particularly, contract terms, project information, trade secrets, financing arrangements, annexure, schedules, and information concerning intellectual property, clients, and/or all other information, advised by one Party to another as being confidential or privileged, without the prior specific written consent of the Party providing such information.
- 14.2 To exercise reasonable care to prevent disclosure of confidential information to any third Party, except as may be authorised in writing by the other Party, internal dissemination of the confidential information shall be limited to those employees whose duties justify their need to know such information and then only on the basis of a clear understanding by these employees of their obligations to maintain the trade secrets status of such confidential information and to restrict the use of such information solely to the use granted to the other Party under this agreement. The Parties shall each be liable for any improper disclosure of confidential information by their employees.

14.3 The above undertakings shall not apply to:

14.3.1 Information which at the time of disclosure is published or otherwise generally available to the public;

14.3.2 Information which after disclosure by the disclosing Party is published or becomes generally available to the public; otherwise than through any act or omission on the part of the disclosing Party; and

14.3.3 Information which the Recipient is obliged to disclose in terms of an Order of Court, subpoena or other legal process.

14.4 In the event that either Party hereto is required by legal process to disclose any of the confidential information of the other Party, covered by this clause 13:

13.4.1 Whether or not a protective order or other remedy is obtained or a Party has waived compliance with the provisions of this agreement, the other Party shall take all reasonable steps to ensure that only that portion of the information that it is legally required to disclose is so disclosed.

14.5 On termination of this Agreement, the Service Provider shall immediately deliver and ensure that its Personnel immediately deliver to SA Express, all property belonging to SA Express which it may be in the possession of, or under the control of the Service Provider at the date of the termination, and certify to SA Express in writing that this has been done.

14.6 To the extent that any of the property referred to in sub-clause 13.5 above are in electronic form and contained on non-detachable storage devices, the Service Provider shall provide SA Express with unencrypted copies of the same on magnetic media and shall irretrievably destroy and delete copies so held.

14.7 The provisions of this clause 13 shall survive termination of this agreement, for whatever reason.

## **15 TERMINATION**

15.1 Without in any way derogating from any other provisions of this Agreement, providing for its termination in certain circumstances, notwithstanding the Term, SA Express may terminate this Agreement by giving the Service Provider 14 (fourteen) days prior notice in writing.

15.2 A Party may, without prejudice to any of its other rights which it may have in law, terminate this agreement immediately by way of written notice to the other Party, in the event that:

15.2.1 the other Party is provisionally or finally liquidated or wound-up, removed from the register of companies or placed under judicial management or any administration order whatsoever or takes any steps for its voluntary winding-up or liquidation; or

15.2.2 the other Party compromises or attempts to compromise or defer payment of its debts owing by it to its creditors generally.

15.3 Termination of the agreement in accordance to clause 14.2 shall not affect any rights of the Parties accrued before the termination date and the rights and obligations of the Parties under this Agreement which, expressly or by implication from its nature are intended to continue after the termination date.

## **16. COMMUNICATION**

The Parties agree that:

16.1 The contact persons for communication between the Parties shall be the following persons:

### **SA EXPRESS:**

Pieter Corver - Manager Maintenance

E-mail: [PCorver@flyexpress.aero](mailto:PCorver@flyexpress.aero)

Tel: +27 11 978 9313

**THE SERVICE PROVIDER:**

Name: Eldridge Motlhake

E-mail: [eric@emlenergy.com](mailto:eric@emlenergy.com)

Tel: +27 83 677 1290

**17. BREACH**

17.1 Should either Party commit a breach of its obligations under this Agreement, the non-defaulting Party shall give the defaulting Party written notice, calling upon the defaulting Party to remedy the breach or default within a period of seven (7) days. If the defaulting Party fails to remedy the breach within that period, the non-defaulting Party will be entitled to cancel this Agreement without prejudice to any other rights which the Party may have against the defaulting Party.

17.2 The remedies set out in this clause 16 shall not be construed to be exhaustive of any other remedies available to the Parties.

**18. SETTLEMENT OF DISPUTES**

18.1 Should any difference or dispute at any time arise between the Parties, the duly authorised Senior Officials of each Party shall meet within seven (7) days of the written invitation, to attempt to resolve the dispute by negotiation.

18.2 If the dispute is not resolved by such negotiation, then either of the Parties shall be entitled to refer the dispute to the Arbitration Foundation of Southern Africa (AFSA) administered mediation, upon the terms set by the AFSA Secretariat. Failing such a

resolution, the dispute, if arbitrable in law, shall be finally resolved in accordance with the Rules of AFSA by an arbitrator or arbitrators appointed by the Foundation.

## 19. INDEMNITY

The Service Provider hereby indemnifies, defends and holds harmless SA Express and its employees, officers, directors, shareholders and agents against any loss, cost, liability, expense, injury, penalty or interest (including reasonable attorneys fees) of whatsoever nature which may be incurred or sustained by SA Express or such Parties unless pursuant to gross negligence or willful conduct of SA Express or its employees, officers, directors, shareholders and agents.

## 20. DOMICILLIUM CITANDI ET EXECUTANDI

- 20.1 All notices or correspondence in terms of this Agreement shall be delivered by hand or sent by registered mail, email or fax and shall be addressed as below which the Parties hereto choose as *domicilium citandi et executandi*:

### **SA EXPRESS**

2<sup>nd</sup> Floor, Block E Offices

Airways Park

1 Jones Road

Kempton Park

1627

Gauteng

### **THE SERVICE PROVIDER**

13 Acacia Ave

The Orchards

Pretoria

0201

Republic of South Africa

Cell: (087) 700 5953

Republic of South Africa

Tel: (011) 978 9900

Fax: (011) 978 5578

- 20.2 All notices or correspondence sent in terms of this Agreement shall be deemed received by the addressee if delivered by hand, on the date of delivery; if sent by registered mail, on the date of post office notification, if sent by fax, on the date of transmission and if sent by e-mail on successful delivery.
- 20.3 The Parties record that whilst they may correspond via email during the currency of this Agreement for operational reasons, no formal notice required in terms of this Agreement, nor any amendment of or variation to this Agreement may be given or concluded via email.

**21. SUBCONTRACTING**

The Service Provider shall not subcontract any of its obligations under this Agreement except without the prior written approval of SA Express and such consent shall not be unreasonably withheld. The Service Provider shall remain accountable for the timeous and qualitative delivery of any and all sub-contracted Services.

**22. NO PARTNERSHIP**

The Parties do not intend that any agency or partnership relationship be created between them by this Agreement and neither Party may bind the other in any way.

**23. NO REPRESENTATIONS**

Neither Party may rely on any representation, which allegedly induced that Party to enter into this agreement, unless the representation is recorded in this agreement.

## **24. VARIATION, CANCELLATION AND WAIVER**

No contract varying, adding to, deleting from or canceling this Agreement, and no waiver of any right under this agreement, shall be effective unless reduced to writing and signed by two (2) duly authorized representatives SAA Express representatives who have the necessary authority under the Delegation of Authority Framework (a document that sets out the necessary delegation of authority that is applicable). A breach of this clause shall be deemed to be an irredeemable breach of this Agreement.

## **25. INDULGENCES**

26.1 If either Party at any time breaches any of that Party's obligations under this agreement, the other Party ("the aggrieved Party"), may at any time after that breach, exercise any right that became exercisable directly or indirectly as a result of the breach, unless the aggrieved Party has expressly elected in writing or by clear and unambiguous conduct, amounting to more than mere delay, not to exercise the right. If the aggrieved Party is willing to relinquish that right the aggrieved Party will on request do so in writing. In particular, acceptance of late performance shall for a reasonable period after performance be provisional only and the aggrieved Party may still exercise that right during that period;

26.2 The aggrieved Party shall not be precluded from exercising its rights arising out of that breach, despite the fact that the aggrieved Party may have elected or agreed on one or more previous occasions not to exercise the rights arising out of any similar breach or breaches.

## **27. CESSION**

The Service Provider may not cede its rights or delegate its obligations without the prior written consent of SA Express and such consent shall not be unreasonably withheld.

**28. SEVERABILITY**

Whenever possible, each provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable law but if any provision of this Agreement shall be unenforceable or invalid under the applicable law, such invalidity or unenforceability shall not affect the other provisions of this Agreement, all of which shall remain in full force and effect.

**29. APPLICABLE LAW**

The Agreement shall be governed and interpreted according to the laws of the Republic of South Africa.

**30. ENTIRE AGREEMENT**

This Agreement contains all the express provisions agreed on by the Parties with regard to the subject matter of the agreement and the Parties waive the right to rely on any alleged express provision not contained in this agreement.

**31. COSTS**

Each Party shall bear that Party's own legal costs of and incidental to the negotiation, preparation, settling, signing and implementation of this agreement.

**32. SIGNATURES**

Signed at \_\_\_\_\_ on this \_\_\_\_\_ day of \_\_\_\_\_ 2017.

\_\_\_\_\_  
 (ON BEHALF OF SA EXPRESS WARRANTING  
 THAT HE HAS THE AUTHORITY TO SIGN)  
 Name: Victor Xaba  
 Designation: Acting Chief Executive Officer

\_\_\_\_\_  
 1. Witness  
 Name:  
 Designation:

\_\_\_\_\_  
 2. Witness  
 Name:  
 Designation:

Signed at \_\_\_\_\_ on this \_\_\_\_\_ day of \_\_\_\_\_ 2017.

\_\_\_\_\_  
 (ON BEHALF OF THE SERVICE PROVIDER  
 THAT HE HAS THE AUTHORITY TO SIGN)  
 Name:  
 Designation:

\_\_\_\_\_  
 1. Witness  
 Name:  
 Designation:

\_\_\_\_\_  
 2. Witness  
 Name:  
 Designation:

ANNEXURE B (Attached)



## EML ENGINEERS AND CONSTRUCTION

t/a EML ENERGY

P.O. BOX 953

MEDUNSA

0204

Tel : 012 549 3752

Fax: 086 691 2030

info@emlenergy.com

CM2011/011941/07

www.emlenergy.com



July 2017

## South African Express Pricing Schedule:

Airport	IATA Code	SAX	Index	Base Price (ZAR/Lt)	Credit Terms		Comments/Remarks		Amounts	
					Invoice frequency	Credit Period		Terms	AMOUNT	Amount (inc vat)
<i>Example</i>	<i>xxx</i>		150		Weekly	Days			R 7,98	R 9,09
Bloemfontein	BFN	1 700 000	Natref	4,5000	Weekly	30 days			R 6,78	R 7,73
Cape Town	CPT	11 200 000	Milnerton	5,42	Weekly	30 days			R 6,86	R 7,83
Durban	DUR	6 190 000	Enref	5,98	Weekly	30 days			R 7,45	R 8,49
East London	ELS	5 450 000	Enref	5,98	Weekly	30 days			R 6,79	R 7,74
George	GRJ	1 900 000	Milnerton	5,66	Weekly	30 days			R 6,80	R 7,75
Johannesburg	JNB	21 200 000	Natref	5,77	Weekly	30 days			R 8,08	R 9,22
Kimberly	KIM	193 000	Natref	6,06	Weekly	30 days			R 7,45	R 8,49
Port Elizabeth	PLZ	6 200 000	Enref	5,98	Weekly	30 days			R 7,00	R 7,98
Richards Bay	RCB	41 000	Enref	5,97	Weekly	30 days			R 8,22	R 9,37
Pilanesburg	NTY	436 800	Natref	6,28	Weekly	30 days			R 7,92	R 9,03
Denel Aviation	DAV	216 000	Natref	6,06	Weekly	30 days				
		Pump Back (per hour)	Defuel (per hour)	Storage (per Day)						
Denel Aviation	DAV	R 1 000,00	R 1 000,00	R 251,00						

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

Designation: \_\_\_\_\_

## TERMS:

BFP is the Basic Fuel Price determined monthly by DOE.

Total price includes, insurance, Transport, Into Plane and Differential costs

All Prices exclude the SACAA Levy



**JUDICIAL COMMISSION OF INQUIRY INTO ALLEGATIONS OF STATE CAPTURE,  
CORRUPTION AND FRAUD IN THE PUBLIC SECTOR INCLUDING ORGANS OF STATE**

2<sup>nd</sup> floor, Hillside House  
17 Empire Road,  
Parktown  
Johannesburg  
2193  
Tel: (010) 214-0651  
Email:

[inquiries@sastatecapture.org.za](mailto:inquiries@sastatecapture.org.za)

Website: [www.sastatecapture.org.za](http://www.sastatecapture.org.za)

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**INDEX: EXHIBIT DD 12 SECTION 3**

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**IN THE JUDICIAL COMMISSION OF INQUIRY INTO ALLEGATIONS OF STATE CAPTURE,  
CORRUPTION AND FRAUD IN THE PUBLIC SECTOR INCLUDING ORGANS OF STATE**

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**AFFIDAVIT**

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I, the undersigned,

**GAVIN FOURIE**

do hereby make the following statements under oath:

1. I am currently a Pensioner and former employee of SA Express.
2. The facts to which I depose are true and correct and are within my personal knowledge except where it is apparent from the context that they are not.
3. I worked for SAA until I went into pension in 2007; three months into my pension, I got a call from Captain Frans du Toit Le Roux who wanted me to join SA Express. I went through the processes and joined SA Express on the 10<sup>th</sup> of March 2008 as the Aircraft Performance Engineer. I've held this position with SA Express until I retired in November 2017.
4. My function as the Aircraft Performance Engineer included the following:
  - 4.1 Route navigation;
  - 4.2 Determination of fuel consumption per aircraft across all routes;



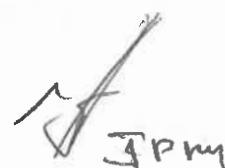
- 4.3 Determination of the weight the aircraft can lift off (weight on flight);
- 4.4 Running the fuel tankering program; and
- 4.5 Analysing fuel prices in different airports and determining at which airports there are cheap prices for cost-saving purposes.
5. A few months before I went into retirement, which was in November 2017, I went to see Mr Dave Allanby who was the General Manager: Operations to let him know that I would be retiring soon. During that discussion in his office, he told me that he had a document that he wanted me to look at. It was the EML fuel pricing schedule. He wanted me to compare the EML fuel prices with those that we were currently paying at SAA.
6. The document referred to as "the South African Express Pricing Schedule" was presented to me by Mr Allanby for the purposes of conducting a comparison (**Ann: GF 1**). This document was on the letterhead of EML Energy ("EML") and provided prices and volumes for stations where SA Express was flying.
7. In around July 2017, Mr Allanby informed me that there was a planned meeting for the following week with EML, and he needed this exercise done for the purposes of preparing for that meeting. He therefore needed to establish beforehand whether the EML prices were realistic. Mr Allanby also wanted me to join him in this meeting, which I agreed to do.
8. The proposed meeting was postponed for a future date, and I never got to attend nor was I invited to such a meeting with EML. I cannot confirm if the meeting took place or not, as I had no further communication with Mr Allanby relating to meeting after I had been informed about the postponement.



9. The Commission's Investigators presented me with EML Pricing schedule which had calculations on the side of the document (**Ann: GF 1**). I confirm that I have had sight of this document and that the hand writing on the side of the document is mine.
10. In assessing the EML costs against the other prices SA Express was paying for fuel, I determined that the prices provided by EML were approximately 30% higher than what we were paying to SAA at the time.
11. The prices I used were based on those that SA Express was paying for fuel to SAA. After doing this exercise, I responded to Mr Allanby via an email in which I indicated that the prices supplied by EML were approximately 30% higher than what SA Express normally paid to SAA. I cannot remember if this was explicit in my communication, or the price difference written by hand served that purpose. I did not expressly state in my email that SA Express should not contract with EML at these prices but that was because I thought it was obvious that this should not happen given the significant price differential.

#### **PILANESBURG AIRPORT JET FUEL**

12. There was an issue with contaminated fuel at Pilanesburg airport and so the Chief Pilot at the time; Mr Iain Findlay, had issued an instruction that no fuel must be uplifted from Pilanesburg. I cannot remember the name of the fuel service provider there at the time. As a result, a plan needed to be made to re-route flights in order to uplift fuel in other stations for the Cape Town to Pilanesburg and return to Cape Town trips.



13. There was a plan to put a tanker on Mondays and Fridays to load fuel into the aircrafts. I was not involved in that business of sourcing the tankers and I would not know the details of the arrangements made.
14. The Commission's Investigators presented me with email communication between 16 May 2017 to 09 June 2017, between Ms Estelle Looock of SA Express and Mr Eric Motlhake of EML Energy (Ann: GF 2). The communication relates to the fuel requirement in Pilanesburg (Sun City) based on the flight schedule of 2 flights per day for Monday and Friday, and this requirement was for flights between OR Tambo to Pilanesburg, and Cape Town to Pilanesburg. According to these records, EML was requested to provide a quotation for the provision of fuel in Pilanesburg.
15. Specific reference was made to an email communication of the 9<sup>th</sup> of June 2017, where Ms Looock sent an email to Ms Motlhake of EML and copied Mr Allanby. In this communication, Ms Looock provided 8 500 litres per week as the quantities required and to be supplied at Pilanesburg based on the flight schedule of 2 flights on Monday, and 2 flights on Friday.
16. I confirm that these quantities would have been calculated by me and eventually landed with Ms Looock. I determined the 8 500 litres per week that Ms Looock referred to in the email; however I cannot remember who requested me to conduct this exercise. When I did the calculations, I considered a number of factors including: the description and size of the aircraft, the capacity and weight on aircraft. We were using the CRJ 200 aircraft for these routes which had a capacity of 50 passengers. I remember that there was a buffer on the calculated quantities which was approximately 500 litres of fuel.



## MOTIVATION TO DEVIATE FROM PROCUREMENT

17. The Commission's Investigators presented me with a motivation to deviate from bid process dated the 5<sup>th</sup> of July 2017 which was written by Mr Allanby and addressed to Mr Victor Xaba, the then Acting CEO of SA Express (**Ann: GF 3**).
18. I confirm that I had not seen this motivation letter before it was presented to me by the Commission's Investigators. I also confirm that I have read and understood the content of the motivation. In my reading of the memo; I observed that it sought approval to deviate from procurement in contracting EML for the provision of fuel at Pilanesburg and for defuel and refuel of aircrafts under maintenance on ad hoc basis.
19. The motivation and approval thereof is only limited to the Pilanesburg and Technical requirement. It does not include any other stations where SA Express was flying to. I confirm that the first scenario in the memo coincides with the 8 500 litres I had calculated for Pilanesburg; it was referring to the fuel requirement in Pilanesburg. The deviation was approved on the 1<sup>st</sup> of August 2017 as it was signed by the BAC Chairperson and the Acting CEO on that same date. Therefore, from my understanding, this serves as the approval date.
20. I also need to mention that at some stage, I got to know that there was a round robin approval that was given by EXCO on some weekend to contract EML for the requirement at Technical; however I do not have details to this approval.



**AWARD LETTER ISSUED TO EML – 5 JULY 2017**

21. The Commission's Investigators also presented me with an email communication dated the 5<sup>th</sup> of July 2017 from Mr Motlhake to Dr Samuel Vilakazi ("Vilakazi"). Mr Motlhake confirmed on email to have received, accepted and signed an appointment letter. Attached to the email communication, was the appointment letter dated the 5<sup>th</sup> of July 2017, addressed to EML and signed by Dr Vilakazi in his capacity as the Chief Procurement Officer (**Ann: GF 4 and 5**). The letter was accepted by EML on the same date.

22. I confirm that I read and understood the content of the letter. From my reading of the appointment letter, I believe that it is too broad because it does not indicate which station this appointment relates to, it does not speak to the motivation that was presented to the BAC and it does not deal with the Pilanesburg and Technical fuel requirements which were the issues at the time.

**TO WHOM IT MAY CONCERN LETTER – 7 JULY 2017**

23. The Commission's Investigators presented me with a letter addressed, "To Whom It May Concern", dated the 7<sup>th</sup> of July 2017 and signed by Dr Vilakazi. I had not seen this letter before it was presented to me during the interview (**Ann: GF 6**). I confirm to have read and understood its contents.

24. The 25 million litres of jet fuel per annum for OR Tambo reflecting on the letter, does not represent the Technical (Heavy Maintenance) requirement to defuel and refuel aircrafts on ground, the requirement was on an ad hoc basis as maintenance (de-fuelling) is not done on a daily basis. To me, 25 million is too much, and more than what Technical required to



defuel, refuel and test runs. These quantities would make sense that if they were going to be used for scheduled flights at OR Tambo; this is from the top of my head looking at the quantities involved.

25. The requirements for Pilanesburg was 8 500 litres per week which is approximately 442 000 litres of jet fuel per annum, and not the 8 million reflected on this letter. The indicated 8 million litres per annum was grossly overstated for Pilanesburg. I was not consulted in the determination of this figure. I know what the correct Pilanesburg requirement was because I did the calculations of how much fuel was required there given the 2 days and 4 flights schedule per week.

26. In my opinion, even if you were flying the routes every week day, you would consume approximately 1 105 000 litres of jet fuel per annum. So, that means you would need to fly at least 8 times a day between OR Tambo to Pilanesburg and Cape Town to Pilanesburg in order to utilise the 8 million litres per annum as cited in this letter. This was not feasible considering that we had no plans for such flights and the traffic was too low on these routes to justify the use of 8 million litres of fuel per annum.

27. This letter is a total misrepresentation of what was happening between Pilanesburg and Technical, and their respective fuel requirements.

#### **THE AGREEMENT BETWEEN SAX AND EML**

28. In October 2017, I shared an office with Ms. Looock and Mr Jacques Beck. Mr Beck was the Airports Manager and was tasked to make sure that the airports ran smoothly. On the 18<sup>th</sup> of October 2017; he received an email with a signed EML contract. While he was looking at



his screen, he said to us: "it seems as if we are now going to buy fuel from EML and not SAA anymore". My immediate response to him was that it can't be because I knew that EML prices were 30% more. I then asked him to forward me the email that had the EML contract, which he did **(Ann: GF 7 and 8)**.

29. I immediately looked at the contract on my computer, paged through until I found the pricing schedule, I then established that the prices provided by EML were still more or less 30% higher than the prevailing prices at the time from SAA.

30. I confirm that the agreement presented to me and signed by Ms Mirriam Mochoele on the 7<sup>th</sup> of August 2017, looks similar to the agreement that was sent to me by Mr Beck on email dated 18<sup>th</sup> of October 2017 .

31. I subsequently sent an email to Mr Allanby questioning him and asking if there was something that I was missing on this contract. I had previously communicated with him and worked out the price difference between EML and SAA at the time, which came to about 30% higher. I proceeded to say that we cannot enter into a contract of this nature considering that EML was 30% more expensive than SAA **(Ann: GF 7)**.

32. Mr Allanby responded on my email. The response given by him in this regard was contrary to the agreement as it included jet fuel supply for almost all SA Express stations. Mr Allanby in his response was referring to EML having been approved via a Saturday round robin to deal with defuel of a CRJ 200 aircraft standing at Denel. This was not the case in light of the signed contract which covered jet fuel supply across the board and not only at Denel. When Mr Allanby responded to my email, I confirm that he had knowledge of the signed contract as I forwarded the same to him when I inquired. I cannot answer as to why he



could not deal with the gist of my question; he provided misleading information in that the contracting of EML only dealt with Technical.

33. I also need to put across a point that in his response, he referred to Mr Peter Corver being the person to manage the contract. Mr Corver was taken aback that his name had been mentioned in this contract as the contact person since he never got involved and knew nothing about it. Around this time Mr Corver came to the office and he was not impressed. I also spoke to Ms Looock and she was not happy with the contract. I think she subsequently took it up with Mr Timothy Ngwenya to say, he must look further into it.

34. On the same date of the 18<sup>th</sup> of October 2018; Mr Mark Vaughan, the SAA Head of Fuel told me that he was meeting two guys, referring to people from PUMA on that day. I met SAA and PUMA on that day regarding possible fuel supply in Richards Bay, Pilanesburg and Hoedspruit. PUMA was to come back with the proposal for fuel supply in these stations. I confirm that the PUMA pricing offer was subsequently received and I cannot remember their pricing at this stage, however, I confirm that the PUMA pricing offer was forwarded to Mr Allanby who told me that he further provided the same to Dr Vilakazi. My interaction with regards to this contract ended at this stage whilst in the employ of SA Express.

35. I retired around November 2017 and left SA Express. In December 2017, I received a call from Mr Vaughan who mentioned to me that he had received a notification from Dr Vilakazi that the jet fuel contract with SAA should be stopped, and was to be replaced by EML from that point on. He told me that in the meantime, Dr Vilakazi had not responded to him in relation to the PUMA offer.

Handwritten signature and initials, possibly 'JPM'.

36. Mr Vaughan asked for my advice in this regard. I told him not to go back to Dr Vilakazi but to speak to Mr Allanby and tell him what he (Vaughan) had received. At the time the EML transaction was concluded, SAA was supplying SA Express with fuel which was based on the signed agreement between the parties (**Ann: GF 9**). This contract had been in place even before I came in. In fact, I'm of the view that it was there since SA Express was established as an airline because I'm not aware of any service provider having supplied SA Express with fuel other than SAA across the stations.

*File*  
DEPONENT

I hereby certify that the deponent has acknowledged that he knows and understands the contents of this affidavit, which was signed and sworn to before me, Commissioner of Oaths, at ~~MARGATE~~ on this the ~~11~~ day of ~~June~~ 2019 the regulations contained in Government Notice No R1258 of 21 July 1972, as amended, and Government Notice No R1648 of 19 August 1977, as amended, having been complied with.

*[Signature]*  
COMMISSIONER OF OATHS



FULL NAMES: *Peter James Msimango*

ADDRESS: *Letusaq Clifton Bimber*

EX OFFICIO: *MARGATE*

## Annexure “GF 1”



## EML ENGINEERS AND CONSTRUCTION

t/a EML ENERGY

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Tel : 012 549 3752

Fax: 086 691 2030

info@emlenergy.com

CM2011/011941/07

www.emlenergy.com

## South African Express Pricing Schedule:

AUG 2017

Airport	IATA Code	SAX	Index	Base Price (ZAR/Lt)	Credit Terms Invoice frequency	Credit Period	Comments/Remarks	Amounts
Bloemfontein	BFN	1 700 000	Natref	R 6,36	Weekly	30 days		R 8,27 R 9,43
Cape Town	CPT	11 200 000	Milnerton	R 6,11	Weekly	30 days		R 7,47 R 8,52
Durban	DUR	6 190 000	Enref	R 6,55	Weekly	30 days		R 7,44 R 8,48
East London	ELS	5 450 000	Enref	R 6,55	Weekly	30 days		R 8,02 R 9,15
George	GRJ	1 900 000	Milnerton	R 6,11	Weekly	30 days		R 7,24 R 8,25
Johannesburg	JNB	21 200 000	Natref	R 6,36	Weekly	30 days		R 7,39 R 8,42
Kimberly	KIM	193 000	Natref	R 6,36	Weekly	30 days		R 8,38 R 9,56
Port Elizabeth	PLZ	6 200 000	Enref	R 6,55	Weekly	30 days		R 8,02 R 9,15
Richards Bay	RCB	41 000	Enref	R 6,55	Weekly	30 days		R 7,58 R 8,64
Planesburg	NTY	436 800	Natref	R 6,36	Weekly	30 days		R 8,30 R 9,46
Denel Aviation	DAV	216 000	Natref	R 6,36	Weekly	30 days		R 8,22 R 9,37
Denel Aviation	DAV	Pump Back (per hour)	Defuel (per hour)	Storage (per Day)				R 1 000,00 R 1 000,00 R 251,00

## TERMS:

BFP is the Basic Fuel Price determined monthly by DOE.

Total price includes, insurance, Transport, Into Plane and Differential costs

All Prices exclude the SACAA Levy

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

Designation: \_\_\_\_\_

SAX  
current

Ann: S

## Annexure “GF 2”



**From:** Estelle Looock <elooock@flyexpress.aero>  
**Sent:** 09 June 2017 10:32  
**To:** Eric | EML Energy (PTY) LTD  
**Cc:** Dave Allanby  
**Subject:** RE: Jet fuel to Sun City airport  
**Attachments:** image001.jpg; image002.gif; image003.gif; image004.gif; 117060910321901467.gif; 117060910321901867.jpg; 117060910321902067.gif; 117060910321902267.gif

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Good day Eric

Trust you are well.

As per our telephonic discussion this morning kindly note that SA Express will be looking at around 8 500 litres of Jet A 1 fuel per week for Sun City. The current schedule is still running at 2 flights on Monday and 2 flights on Friday.

Kindly provide us with a quotation that includes the delivery of the fuel to Sun City.

Kind regards

Estelle

From: Eric | EML Energy (PTY) LTD [mailto:[eric@emlenergy.com](mailto:eric@emlenergy.com)]

*[Handwritten signature]*  
JPM

Sent: Tuesday, May 16, 2017 11:06 AM  
To: Tshenolo  
Cc: Estelle Looock; THILLY BASAYA  
Subject: Re: Jet fuel to Sun City airport

Best Tshenolo,

Please revert to Estelle as a matter of URGENCY...

Estelle: Please advice on the quantities that you would require per day and/or per week.

Best Regards,

EML Motlhake

EML Engineers and Construction

T/A EML Energy

Managing Director

Pre Tech : Elec Eng | Avionics

0836771290

0877005953

eric@ <https://protect-za.mimecast.com/s/9dnQCP1JG8TKNmmBizYARqm?domain=emlenergy.com>

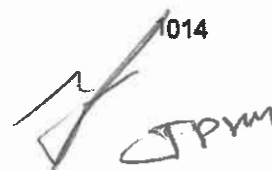
<https://protect-za.mimecast.com/s/puygCQ1LXRTklqqnixXDilG?domain=emlenergy.com>

From: Estelle Looock <[elooock@flyexpress.aero](mailto:elooock@flyexpress.aero)> <<mailto:elooock@flyexpress.aero>> >

Date: Tuesday 16 May 2017 at 10:59 AM

To: Eric Motlhake <[eric@emlenergy.com](mailto:eric@emlenergy.com)> <<mailto:eric@emlenergy.com>> >

Subject: Jet fuel to Sun City airport

 JPM

<[https://protect-za.mimecast.com/s/PTTwCO79GRspZXXDSEy\\_AIL?domain=flyexpress.aero](https://protect-za.mimecast.com/s/PTTwCO79GRspZXXDSEy_AIL?domain=flyexpress.aero)>

Good day Eric

I received your details from Pieter Corver from our Technical Department.

SA Express would like to find out whether your Company can transport Jet fuel to Sun City as per our flight schedule and what the cost would be?

Flight Schedule: ORT Airport to Sun City - Monday and Friday

Cape Town to Sun City - Monday and Friday

Regards

Estelle

Estelle Looock  
Airports Coordinator

2nd Floor  
E Block Offices  
Airways Park  
1 Jones Road

D: +27 11 978 3172  
F: +2786 688 5399  
C:

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*[Handwritten signature]*  
JPM

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Non Executive Directors: G N Mothema (Chairperson), T Abrahams, B P B Dibate, R Naithani, J N Nkabinde, P Ramosebudi, G R Sibiyi Executive Directors: D V Xaba (Acting Chief Executive Officer), M R Shelley (Chief Financial Officer) Company Secretary: M Gie

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South African Express Airways SOC Ltd Co.Reg. No. 1990/007412/30 Vat Reg No. 4400140499

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<<https://protect-za.mimecast.com/s/iE03CX6VPRSDNNIT6qB7SN?domain=twitter.com>>

## Annexure “GF 3”





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OR Tambo International Airport  
1627  
South Africa  
www.flyexpress.co.za

## MEMO

**To:** Victor Xaba – Chief Executive Officer (CEO) – SA Express Airways SOC Ltd

**From:** Dave Allanby - General Manager: Operations – SA Express Airways SOC Ltd

**Subject:** Motivation to Deviate from Bid Process: Contract with EML Engineers & Construction t/a EML Energy for specified airport Fuel and related Services

**Date:** 5 July 2017

### 1. PURPOSE

The purpose of this memo is:

- 1.1 To request approval to contract with EML Engineers & Construction t/a EML Energy for the supply of fuel at Pilanesberg airport and periodic fuelling and defuelling at the SA Express Heavy Maintenance facility at Denel O R Tambo International Airport
- 1.2 To request approval to deviate from the normal Bid Planning activities relating to the review and approval of EML Engineers & Construction t/a EML Energy Fuel Handling Agreement, by the Bid Planning and Specifications Committee (BPSC) and the Bid Adjudication Committee (BAC) as stipulated in the Supply Chain Management Policy of SA Express

### 2. BACKGROUND: Scenario One

- 2.1 SA Express operates a weekly scheduled air service into Pilanesberg Airport (NTY) from both OR Tambo International (JNB) and Cape Town International (CPT) airports
- 2.2 This weekly scheduled air service is operated in compliance to an Agreement between SA Express SOC Limited (SAX) and the North West Provincial Government (NWPG)

Board of Directors: G N Mothema (Chairperson), V. Xaba\* (Chief Executive Officer), M R Shelley\* (Chief Financial Officer), T Abrahamse, B P B Dibale, R Ntshani (Indie), J N Nkabinde, P Ramoetsadi, G R Sibaya

Company Secretary: Mervyn Gile  
\* Executive Director

South African Express Airways SOC Ltd  
Co. Reg. No. 1980/0741230  
VAT Reg. No. 4460140499

- 2.3 This scheduled service promotes trade and tourism within the North West Province and has significant benefits for the Sun International Hotel Group at Sun City who are also party to the Agreement in 2.2
- 2.4 Pilanesberg Airport does not have a fuel service for aircraft
- 2.5 Previous attempts by contractors to establish a fuel farm at Pilanesberg and/or provide a service have failed
- 2.6 Aviation fuel and the handling thereof is strongly regulated and monitored by the Aviation Authorities
- 2.7 Flights operating CPT-NTY-CPT cannot carry sufficient fuel for the two sectors and this necessitates the aircraft making an enroute diversion in order to uplift fuel. (Normally the likes of Kimberly would be used)
- 2.8 In order to overcome this inconvenience SA Express has currently rescheduled its service from CPT to operate through JNB. However, for schedule flexibility in the long term, it will be more preferential for there to be a reliable fuel supply available at NTY
- 2.9 EML Energy have submitted a proposal in which they would supply fuel to the SAX aircraft at NTY via mobile fuel bowser

### 3. BACKGROUND: Scenario Two

- 3.1 The SA Express Heavy Maintenance Section, based at Denel Aviation Industries premises on the East side of O R Tambo International airport require the ad-hoc availability of a service to defuel and refuel aircraft in order to conduct various aspects of maintenance
- 3.2 A defuel bowser, from one of the regular fuel suppliers operating predominantly on the Western side of the airport, is required to be booked +24 hours in advance and are even then not readily available
- 3.3 EML Energy, being based on the Eastern side of the airport on the Denel premises, is able to offer this service more simply and seamlessly

### 4. FINANCIAL IMPLICATIONS

Ad-hoc as per negotiated contract

*[Handwritten signatures and initials]*  
JPM  
1840

1041

**Submitted by:**

**Name:** Dave Allanby  
**Position:** General Manager: Operations  
**Department:** Operations

**Date:** 5.04.17

**Signature:** [Signature]

**Procurement Department:**

**Name:** Puma Nqome Sam Vilakazi  
**Position:** Procurement Specialist CPO  
**Department:** Finance

**Date:** 06/02/2017

**Signature:** [Signature]

**Proposed acquisition is budgeted/unbudgeted:**

**Name:** Mpho Selepe  
**Position:** DM: Finance  
**Department:** Finance

**Date:** 27/07/17

**Signature:** [Signature]

**Approved/Disapproved:**

**Name:** Mark Shelley  
**Position:** Acting Chief Financial Officer  
**Department:** Finance

**Date:** 27/7/17

**Signature:** [Signature]

**Approved/Declined:**

**Name:** Merriam Mochoele  
**Position:** Chairperson: Bid Adjudication Committee (BAC)

**Date:** 01/08/2017

**Signature:** [Signature]

**Approved/Disapproved:**

**Name:** Victor Xaba

**Date:** 01/08/2017

**Position:** Chief Executive Officer

**Signature:** [Signature]

Please Comments from other Committees.

[Signature]  
 JPM

## Annexure “GF 4”



**From:** Eric | EML Energy (PTY) LTD <eric@emlenergy.com>  
**Sent:** 05 July 2017 15:13  
**To:** Samuel Vilakazi  
**Cc:** Tshenolo; Sibongile Vilakazi  
**Subject:** Re: Award Letter - Fuel Supply  
**Attachments:** image001.gif; image002.gif; image003.gif; 117070513164301143.gif; 117070513164301343.jpg; 117070513164301543.gif; 117070513164301743.gif; SAX Award Letter 2017.pdf

Best Samuel,

We have received the award letter and signed the acceptance confirming same.

We are looking forward to the conclusion of the contract at your earliest convenience.

EML Energy would like to thank SAX for this opportunity.

Best Regards,

EML Motihake  
 EML Engineers and Construction  
 T/A EML Energy  
 Managing Director  
 Pre Tech : Elec Eng | Avlonics  
 0836771290  
 0877005953  
 eric@emlenergy.com  
 www.emlenergy.com

**From:** Sibongile Vilakazi <SVilakazi@flyexpress.aero>  
**Date:** Wednesday 05 July 2017 at 12:32 PM  
**To:** Eric Motihake <eric@emlenergy.com>  
**Cc:** Sam Vilakazi <samvilakazi@flyexpress.aero>  
**Subject:** Award Letter - Fuel Supply



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Go on safari anytime it suits you, SA Express can fly you directly to Hoedspruit from Johannesburg or Cape Town.

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 every day you  
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Good day Eric,

Kindly receive attached letter for your signature, details are enclosed.

Regards,

*Handwritten signature and initials*

**Sibongile S. Vilakazi**  
**Contracts Management**

2nd Floor  
 E Block Offices  
 Airways Park  
 1 Jones Road

D: 011 978 6770  
 F:  
 C:



**sa express**

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*Please note that this e-mail and the contents thereof is subject to the standard SA Express E-mail disclaimer which may be found on [www.flyexpress.aero](http://www.flyexpress.aero)*

**Non Executive Directors:** G N Mothema (Chairperson), T Abrahams, B P B Dibate, R Naithani (Indian), J N Nkabinde, P Ramosebudi, G R Sibiyi

**Executive Directors:** I Ntshanga (Chief Executive Officer), M R Shelley (Chief Financial Officer)

**Company Secretary:** M Gie

South African Express Airways SOC Ltd Co.Reg. No. 1990/007412/30 Vat Reg No. 4400140499



**Sibongile S. Vilakazi**  
**Contracts Coordinator**

2nd Floor  
 E Block Offices  
 Airways Park  
 1 Jones Road

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 F:  
 C:



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**Non Executive Directors:** G N Mothema (Chairperson), T Abrahams, B P B Dibate, R Naithani, J N Nkabinde, P Ramosebudi, G R Sibiyi

**Executive Directors:** D V Xaba (Acting Chief Executive Officer), M R Shelley (Chief Financial Officer)

**Company Secretary:** M Gie

South African Express Airways SOC Ltd Co.Reg. No. 1990/007412/30 Vat Reg No. 4400140499



## Annexure “GF 5”





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1627  
South Africa  
www.flyexpress.aero

# **EML ENERGY**

3-8 Atlas Road

Office D3

Denel

Kempton Park

05 July 2017

Dear Eric,

## **RE: AWARD FOR SUPPLY OF FUEL TO SA EXPRESS**

This letter serves as a formal confirmation that EML Energy has been appointed for the above service.

This award is subject to the following condition:

1. Successful negotiation and conclusion of a contract between the SA Express and EML Energy.

Please acknowledge receipt of this award letter and confirm your acceptance thereof by signing the acceptance below and return it via e-mail to [samvilakazi@flyexpress.aero](mailto:samvilakazi@flyexpress.aero).

This letter of Award is effective from the 01 July 2017.

We trust that this award shall be beneficial and fruitful to both parties.

Yours sincerely,

**Samuel Vilakazi**

Chief Procurement Officer

SA Express Airways SOC Ltd

Date: 05/07/2017

Board of Directors: G N Mofhele (Chairperson), I Ntshang\* (Chief Executive Officer), M R Shelley\* (Chief Financial Officer),  
T Abrahams, B P B Dibeke, R Ndihani (India), J N Nkomo, P Ramosebudi, G R Sibye

Company Secretary: Maryna Gie  
\* Executive Director

South African Express Airways SOC Ltd  
Co. Reg. No. 1991/00741 2/30  
VAT Reg. No. 4400140489

We hereby accept the conditions of the contents of the above letter.

Signature: 

Name: EDRISSE MATHOSANLO LESADI MOTLHARE

Designation: DIRECTOR

Signed at Compton Park on this 5<sup>th</sup> day of July 2017 Motlhare  
For and on behalf of 21<sup>st</sup> EML Energy and duly authorised thereto.



  
GPmer

## Annexure “GF 6”





2<sup>nd</sup> Floor  
E Block Offices  
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1 Jones Road  
T: +27 (0)11 978 9800  
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OR Tambo International Airport  
1627  
South Africa  
[www.flyexpress.co.za](http://www.flyexpress.co.za)

07 July 2017

### TO WHOM IT MAY CONCERN

This letter serves to confirm that EML Engineers and Construction T/A EML Energy (Reg 2011/011941/07) has been appointed by South African Express as the fuel supplier for a period of three (3) years. The fuel requirements will initially be confined to the two stations, i.e. OR Tambo International Airport (Twenty five (25) Million litres and Pilanesburg Airport (Eight (8) Million litres per annum respectively.

The volumes will be adjusted and increased over the contract period as part of developing EML Energy as the emerging Black-owned supplier in line with the transformation imperatives outlined in the Procurement Policy of South African Express.

I trust you will find the above in order.

Yours sincerely

Dr. Sam Vilakazi  
Chief Procurement Officer

Board of Directors: G N Mothema (Chairperson), D V Xaba\* (Acting Chief Executive Officer) M R Shelley\* (Chief Financial Officer),  
T Abrahams, B P B Dibete, R Neitheri, J N Nkabinde, P Ramosebudi, G R Sibisi

Company Secretary: M Gle

South African Express Airways SOC Ltd  
Co. Reg. No. 1990/007412/30

## Annexure “GF 7”



**Pieter Corver**

**From:** Pieter Corver  
**Sent:** Wednesday, February 21, 2018 10:52 AM  
**To:** Matsietsi Mokholo  
**Subject:** FW: EML Contract

FYI Madam.

**From:** Dave Allanby  
**Sent:** Wednesday, October 18, 2017 01:30 PM  
**To:** Gavin Fourie <gfourie@flyexpress.aero>  
**Cc:** Iain Findlay (Captain) <Ifindlay@flyexpress.aero>; Jacques Beck <jbeck@flyexpress.aero>; Merriam (Chueu) Mochoele <MMochoele@flyexpress.aero>; Nnditsheeni Madavha <NMMadavha@flyexpress.aero>; Samuel Vilakazi <samvilakazi@flyexpress.aero>; Pieter Corver <PCorver@flyexpress.aero>; Marco Dal Bianco <mdalbianco@flyexpress.aero>  
**Subject:** RE: EML Contract

Afternoon Gavin

Before this concern grows legs allow me to clarify on what I have gleaned:

1. I too was taken aback but have subsequently seen the date of signature
2. This was an approved contract, via a Saturday Exco round robin, in order for SAX to use the services of EML to defuel a CRJ200 standing at Denel. (The normal service providers required 24 hours advance notice in order to supply the dedicated bowser)
3. You will see that Pieter Corver is to manage the relationship
4. This is not a carte blanche change of fuel service provider countrywide
5. There are however on-going discussions with EML w.r.t the possible supply of fuel at our problematic stations NTV and HDS

I hope this allays your fears

Regards  
 Dave

**From:** Gavin Fourie  
**Sent:** Wednesday, October 18, 2017 09:57 AM  
**To:** Dave Allanby

Cc: Iain Findlay (Captain); Jacques Beck  
Subject: FW: EML Contract

Hi Dave,

What am I missing here? With the price quoted in Annexure B surely we can't enter into a contract like this? Prices are approx 30% higher than what we are currently paying at SAA.

Regards

Gavin

From: Jacques Beck  
Sent: Wednesday, October 18, 2017 9:04 AM  
To: Gavin Fourie  
Subject: FW: EML Contract

Eml Contract -signed



Jacques Beck  
Divisional Manager Airport Operations/ Ground Handling  
SA EXPRESS

Cell:- 071 874 8425  
E-mail:- jbeck@flyexpress.aero

From: Sibongile Vlakazi  
Sent: 05 October 2017 01:46 PM  
To: Maureen Jacobs; Jacques Beck; Marco Dal Bianco; Pieter Corver  
Subject: EML Contract

Good afternoon Colleagues,

Please note that EML was appointed in July 2017 for a period of 36 months to supply Jet Fuel, the attached contract has all the details of the scope of work.

## Annexure “GF 8”



**A AGREEMENT  
SUPPLY OF JET FUEL**

Between

**SOUTH AFRICA NEXPRESS AIRWAYS SOC LIMITED**

Registration Number: 1990/007412/30

(Hereinafter referred to as "SA EXPRESS")

And

**EML ENGINEERS AND CONSTRUCTION T/A EML ENERGY**

Registration Number: 2011/011941/07

(Hereinafter referred to as "THE SERVICE PROVIDER")

## 1. PREAMBLE

- 1.1. **WHEREAS** SA Express is a state-owned company operating a commercial airline with scheduled flights to various destinations within the Republic of South Africa and neighboring African countries;
- 1.2. **WHEREAS** SA Express wishes to appoint a Service provider to supply and deliver jet A1 fuel,
- 1.3. **WHEREAS** the Service Provider's business and service offering includes providing of a complete solution related to aviation fuel services, refueling, defueling, storage and calibration;
- 1.4. **WHEREAS** the Service Provider hereby agrees to supply SA Express with jet fuel;

**NOW THEREFORE**, the Parties agree on the terms and conditions set out hereunder.

## 2. INTERPRETATION AND PRELIMINARY

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

### 2.1.1 words importing:

- 2.1.1.1 any one gender include the other two genders;
- 2.1.1.2 the singular include the plural and vice versa; and
- 2.1.1.3 natural persons include created entities (corporate or unincorporate) and the state and vice versa;

- 2.2 the following terms shall have the meanings assigned to them hereunder and cognate expressions shall have corresponding meanings, namely -

- 2.2.1 **"Agreement"** means this Memorandum of Agreement, including any annexures hereto which Annexures must be signed by both parties failing which shall render the agreement null and void;
- 2.2.2 **"Commencement date"** means **01 July 2017**, notwithstanding the signature date;
- 2.2.3 **"Parties"** means SA Express and the Service Provider collectively, and **"Party"** shall refer to either of them;
- 2.2.5 **"the Service"** means aviation fuel services, refueling, defueling, storage and calibration;
- 2.2.6 **"Personnel"** means the employees, agents of the Service Provider who are assigned to perform the Services;
- 2.2.7 **"Republic"** means the Republic of South Africa;
- 2.2.8 **"SA Express"** means a state-owned company duly incorporated in terms of the company laws of the Republic of South Africa, having its principal place of business situated at 2<sup>ND</sup> Floor, Block E Offices, Airways Park, Jones Road, Kempton Park, Republic of South Africa.
- 2.2.9 **"signature date"** means the date of last signature of this agreement by the Parties provided that all Parties have signed the agreement;
- 2.2.10 **"the Services"** means supply and delivery of fuel services as set out in clause 3 and which is more fully set out in relevant Annexures attached hereto;
- 2.2.11 **"the Service Provider"** means EML Energy a private company duly incorporated in terms of the company laws of the Republic of South Africa with registration number 2011/011941/07 having its principal place of business situated at 13 Acacia Ave, The Orchards, Pretoria, 0201

2.2.12 "term" means the period commencing on the Commencement date and terminating on the termination date or upon the earlier termination of this agreement (as provided for in this agreement);

2.2.13 "termination date" means 30 June 2020;

- 2.3 any reference to an enactment is to that enactment as at the signature date and as amended or re-enacted from time to time;
- 2.4 if any provision in a definition is a substantive provision conferring rights or imposing obligations of any Party, notwithstanding that it is only in the definition clause, effect shall be given to it as if it were a substantive provision in the body of the agreement;
- 2.5 when any number of days is prescribed in this agreement, same shall be reckoned exclusively of the first and inclusively of the last day unless the last day falls on a Saturday, Sunday or proclaimed public holiday on the Republic, in which case the last day shall be the next succeeding day which is not a Saturday, Sunday or proclaimed public holiday on the Republic;
- 2.6 where figures are referred to in numerals and in words, if there is any conflict between the two, the words shall prevail;
- 2.7 expressions defined in this agreement shall bear the same meanings in schedules or annexure to this agreement which do not themselves contain their own definitions;
- 2.8 where any term is defined within the context of any particular clause in this agreement, the term so defined has limited application to the relevant clause, shall bear the meaning ascribed to it for all purposes in terms of this agreement, notwithstanding that the term has not been defined in this interpretation clause;
- 2.9 the expiration or termination of this agreement shall not affect such of the provisions of this agreement as expressly provide that they will operate after any such expiration or termination or which of necessity must continue to have effect after such expiration or

termination, notwithstanding that the clauses themselves do not expressly provide for this;

### **3. SCOPE OF WORK AND DESCRIPTION OF SERVICES**

- 3.1 To aggressively market SA Express with the aim of restoring the reputation of the brand as set out in Annexure A, which is attached hereto

### **4 REPRESENTATIONS AND WARRANTIES**

- 4.1 Each Party warrants and represents to the other that it has the power to enter into and the ability to perform in terms of this Agreement.
- 4.2 Each Party warrants that it has not violated and it will not violate any applicable laws or regulations of the Republic of South Africa or any of SA Express policies regarding the offer or receipt of improper inducement in connection with this Agreement. A breach of this clause shall be deemed to be an irredeemable breach of this Agreement.
- 4.3 Each signatory warrants that he/she has received and complied with every consent and/or approval necessary with respect to the execution or carrying out of this Agreement or the validity and enforceability thereof.
- 4.4 Each Party warrants that it, and its Services, without limitation, will at all times during the term of this Agreement, comply to all legislation, directives and regulations, without limitation whatsoever, and howsoever arising, applicable to the rendering of the Service and shall furnish, on request by SA Express proof of such compliance.
- 4.5 Breach of any warranty given anywhere in this Agreement shall constitute a material breach.

### **5. SERVICE PROVIDER'S WARRANTIES**

- 5.1. The Service Provider warrants to SA Express that –

- 5.1.1 It will discharge their obligations under this Agreement with all due skill, care and diligence;

5.1.2 for the duration of this Agreement, it shall maintain or improve the B-BBEE status it had upon its appointment by SA Express to provide the Services;

5.1.3 it will be solely responsible for the payment of remuneration of the Personnel and associated benefits, if any, and for withholding and remitting income tax for its Personnel in conformance with any applicable laws and regulations;

5.1.4 it understands and accepts that within the SA Express operational environment, strict safety operational controls, measures, policies, rules, laws, processes and procedures apply. The Service Provider will ensure full compliance at all times and it will ensure that maximum care and attention is exercised for the safety of all concerned.

## **6. DURATION**

6.1 This Agreement shall commence on 01 July 2017 and shall continue for a term of 36 months, unless terminated in accordance with the provisions of this Agreement or otherwise in accordance with the law.

6.2 The Parties shall conduct bi-annual reviews; to assess the performance of the Service Provider.

## **7. FEES AND PAYMENTS**

7.1. SA Express agrees to pay the Service Provider in accordance with the rates set out on Annexure B.

7.2 The Service Provider shall submit invoices and its supporting documents in respect of the Services comprising of fees, disbursement and VAT (if applicable), such invoice shall be payable by SA Express, 30 (thirty) from date of statement.

7.3 Should SA Express disagree with any item(s) in the invoice submitted by the Service Provider, it may withhold payment pending resolution of the disputed item. SA Express shall communicate to the Service Provider its reason(s) for withholding payment on an

Invoiced item(s). The deadline for payment for any disputed item(s) will be deemed extended until ten (10) days after the resolution of such dispute.

- 7.4 The Parties acknowledge and agree that the consideration as contemplated in this clause is the only consideration payable by SA Express for the provision of the Services.

## **8. SERVICES**

- 8.1 The Service Provider shall be obliged to perform the Services as defined in clause 3 and Annexure A and warrants that it is able and competent to render the Services and shall at all times render such Services in a proper and efficient manner.
- 8.2 The Service Provider shall observe all applicable laws, ordinances, decrees, rules, regulations and Service standards relating in any manner to the performance of its obligations in terms of this Agreement.
- 8.3 The Parties recognise the need to do whatever may be necessary and reasonable for the duration of this Agreement, to ensure that all agreed deadlines are timeously met.
- 8.4 The Service Provider shall ensure that the Services are provided in a manner that is not offensive, obscene, defamatory, confidential, harmful, misleading or otherwise tending to expose SA Express to civil or criminal liability and that it takes into consideration the diversity of SA Express passenger and employee profile.
- 8.5 Any variation to the scope of Services required from the Service Provider in terms of this agreement shall be in writing and signed by two (2) duly authorized by representatives of SA Express.

## **9. SA EXPRESS'S OBLIGATIONS**

- 9.1 SA Express undertakes to promptly comply with any reasonable request by the Service Provider for information that relate to the Services as may be necessary for the Service Provider to perform the Services, but for no other purpose. However, SA Express's compliance with any request for information is subject to any internal security rules and

requirements and subject to the observance by the Service Provider of its confidentiality obligations under this Agreement.

9.2 The Service Provider shall give SA Express reasonable notice of any information it requires in accordance with sub-clause 8.1 above.

9.3 Subject to sub-clause 8.4 above, SA Express agrees to provide the Service Provider or its Personnel such access to and use of its facilities as is necessary to allow the Service Provider to perform its obligations under this Agreement.

#### 10 **PERSONNEL**

The Personnel shall be regarded at all times as agents or subcontractors of the Service Provider and no relationship of employer and employee shall arise between SA Express and any Personnel under any circumstances regardless of the degree of supervision that

#### 11 **NON-SOLICITATION**

For the duration of this Agreement and for one (1) year thereafter, the Service Provider and its subsidiaries shall not, directly or indirectly, employ, solicit or offer employment to an employee, representative or consultant of SA Express, nor shall it solicit, entice, encourage or persuade him / her to terminate his / her employment with SA Express.

#### 12. **INTELLECTUAL PROPERTY**

12.1 All Intellectual Property rights owned by the Party prior to this agreement shall remain the sole property of that Party.

12.2 Neither Party shall, without the prior written consent of the other Party, make use of the other Party's Intellectual Property.

12.3 Neither Party shall acquire any rights, title or interest of any kind in any Intellectual Property of the other Party, unless agreed otherwise in writing by both Parties.

- 12.4 Any Intellectual Property, in any media or format, prepared, created or authored prior to the effective date of this Agreement, by or specifically for either of the contracting Party in terms of this Agreement shall belong exclusively to that contracting Party and, in this regard, the Parties may not cede, assign and make over all rights, title and interest in and to any such material or documentation to the other Party, unless agreed otherwise in writing by both Parties.

**13. CONFLICT**

Should there be any conflict between the provisions of this Agreement and provisions of a Letter of Appointment (if any) or any other document, the provisions of this Agreement shall prevail.

**14. CONFIDENTIALITY**

The Parties undertake towards each other:

- 14.1 Not to disclose or otherwise reveal directly or indirectly to any third Party, any confidential information provided by one Party to the other, or otherwise acquired, particularly, contract terms, project information, trade secrets, financing arrangements, annexure, schedules, and information concerning intellectual property, clients, and/or all other information, advised by one Party to another as being confidential or privileged, without the prior specific written consent of the Party providing such information.
- 14.2 To exercise reasonable care to prevent disclosure of confidential information to any third Party, except as may be authorised in writing by the other Party, internal dissemination of the confidential information shall be limited to those employees whose duties justify their need to know such information and then only on the basis of a clear understanding by these employees of their obligations to maintain the trade secrets status of such confidential information and to restrict the use of such information solely to the use granted to the other Party under this agreement. The Parties shall each be liable for any improper disclosure of confidential information by their employees.

14.3 The above undertakings shall not apply to:

14.3.1 Information which at the time of disclosure is published or otherwise generally available to the public;

14.3.2 Information which after disclosure by the disclosing Party is published or becomes generally available to the public; otherwise than through any act or omission on the part of the disclosing Party; and

14.3.3 Information which the Recipient is obliged to disclose in terms of an Order of Court, subpoena or other legal process.

14.4 In the event that either Party hereto is required by legal process to disclose any of the confidential information of the other Party, covered by this clause 13:

13.4.1 Whether or not a protective order or other remedy is obtained or a Party has waived compliance with the provisions of this agreement, the other Party shall take all reasonable steps to ensure that only that portion of the information that it is legally required to disclose is so disclosed.

14.5 On termination of this Agreement, the Service Provider shall immediately deliver and ensure that its Personnel immediately deliver to SA Express, all property belonging to SA Express which it may be in the possession of, or under the control of the Service Provider at the date of the termination, and certify to SA Express in writing that this has been done.

14.6 To the extent that any of the property referred to in sub-clause 13.5 above are in electronic form and contained on non-detachable storage devices, the Service Provider shall provide SA Express with unencrypted copies of the same on magnetic media and shall irretrievably destroy and delete copies so held.

14.7 The provisions of this clause 13 shall survive termination of this agreement, for whatever reason.

## 15 TERMINATION

15.1 Without in any way derogating from any other provisions of this Agreement, providing for its termination in certain circumstances, notwithstanding the Term, SA Express may terminate this Agreement by giving the Service Provider 14 (fourteen) days prior notice in writing.

15.2 A Party may, without prejudice to any of its other rights which it may have in law, terminate this agreement immediately by way of written notice to the other Party, in the event that:

15.2.1 the other Party is provisionally or finally liquidated or wound-up, removed from the register of companies or placed under judicial management or any administration order whatsoever or takes any steps for its voluntary winding-up or liquidation; or

15.2.2 the other Party compromises or attempts to compromise or defer payment of its debts owing by it to its creditors generally.

15.3 Termination of the agreement in accordance to clause 14.2 shall not affect any rights of the Parties accrued before the termination date and the rights and obligations of the Parties under this Agreement which, expressly or by implication from its nature are intended to continue after the termination date.

## 16. COMMUNICATION

The Parties agree that:

16.1 The contact persons for communication between the Parties shall be the following persons:

### **SA EXPRESS:**

Pieter Corver - Manager Maintenance

Page 11 of 20

1162

E-mail: [PCorver@fivexpress.aero](mailto:PCorver@fivexpress.aero)

Tel: +27 11 978 9313

**THE SERVICE PROVIDER:**

Name: Eldridge Motlhake

E-mail: [eric@emlenergy.com](mailto:eric@emlenergy.com)

Tel: +27 83 677 1290

**17. BREACH**

17.1 Should either Party commit a breach of its obligations under this Agreement, the non-defaulting Party shall give the defaulting Party written notice, calling upon the defaulting Party to remedy the breach or default within a period of seven (7) days. If the defaulting Party fails to remedy the breach within that period, the non-defaulting Party will be entitled to cancel this Agreement without prejudice to any other rights which the Party may have against the defaulting Party.

17.2 The remedies set out in this clause 16 shall not be construed to be exhaustive of any other remedies available to the Parties.

**18. SETTLEMENT OF DISPUTES**

18.1 Should any difference or dispute at any time arise between the Parties, the duly authorised Senior Officials of each Party shall meet within seven (7) days of the written invitation, to attempt to resolve the dispute by negotiation.

18.2 If the dispute is not resolved by such negotiation, then either of the Parties shall be entitled to refer the dispute to the Arbitration Foundation of Southern Africa (AFSA) administered mediation, upon the terms set by the AFSA Secretariat. Failing such a

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resolution, the dispute, if arbitrable in law, shall be finally resolved in accordance with the Rules of AFSA by an arbitrator or arbitrators appointed by the Foundation.

## 19. INDEMNITY

The Service Provider hereby indemnifies, defends and holds harmless SA Express and its employees, officers, directors, shareholders and agents against any loss, cost, liability, expense, injury, penalty or interest (including reasonable attorneys fees) of whatsoever nature which may be incurred or sustained by SA Express or such Parties unless pursuant to gross negligence or willful conduct of SA Express or its employees, officers, directors, shareholders and agents.

## 20. DOMICILIUM CITANDI ET EXECUTANDI

20.1 All notices or correspondence in terms of this Agreement shall be delivered by hand or sent by registered mail, email or fax and shall be addressed as below which the Parties hereto choose as *domicilium citandi et executandi*:

### SA EXPRESS

2<sup>nd</sup> Floor, Block E Offices  
Airways Park  
1 Jones Road  
Kempton Park  
1627  
Gauteng

### THE SERVICE PROVIDER

13 Acacia Ave  
The Orchards  
Pretoria  
0201  
Republic of South Africa  
Cell: (087) 700 5953

Republic of South Africa

Tel: (011) 978 9900

Fax: (011) 978 5578

20.2 All notices or correspondence sent in terms of this Agreement shall be deemed received by the addressee if delivered by hand, on the date of delivery; if sent by registered mail, on the date of post office notification, if sent by fax, on the date of transmission and if sent by e-mail on successful delivery.

20.3 The Parties record that whilst they may correspond via email during the currency of this Agreement for operational reasons, no formal notice required in terms of this Agreement, nor any amendment of or variation to this Agreement may be given or concluded via email.

**21. SUBCONTRACTING**

The Service Provider shall not subcontract any of its obligations under this Agreement except without the prior written approval of SA Express and such consent shall not be unreasonably withheld. The Service Provider shall remain accountable for the timeous and qualitative delivery of any and all sub-contracted Services.

**22. NO PARTNERSHIP**

The Parties do not intend that any agency or partnership relationship be created between them by this Agreement and neither Party may bind the other in any way.

**23. NO REPRESENTATIONS**

Neither Party may rely on any representation, which allegedly induced that Party to enter into this agreement, unless the representation is recorded in this agreement.

#### 24. VARIATION, CANCELLATION AND WAIVER

No contract varying, adding to, deleting from or canceling this Agreement, and no waiver of any right under this agreement, shall be effective unless reduced to writing and signed by two (2) duly authorized representatives SAA Express representatives who have the necessary authority under the Delegation of Authority Framework (a document that sets out the necessary delegation of authority that is applicable). A breach of this clause shall be deemed to be an irredeemable breach of this Agreement.

#### 25. INDULGENCES

- 26.1 If either Party at any time breaches any of that Party's obligations under this agreement, the other Party ("the aggrieved Party"), may at any time after that breach, exercise any right that became exercisable directly or indirectly as a result of the breach, unless the aggrieved Party has expressly elected in writing or by clear and unambiguous conduct, amounting to more than mere delay, not to exercise the right. If the aggrieved Party is willing to relinquish that right the aggrieved Party will on request do so in writing. In particular, acceptance of late performance shall for a reasonable period after performance be provisional only and the aggrieved Party may still exercise that right during that period;
- 26.2 The aggrieved Party shall not be precluded from exercising its rights arising out of that breach, despite the fact that the aggrieved Party may have elected or agreed on one or more previous occasions not to exercise the rights arising out of any similar breach or breaches.

#### 27. CESSION

The Service Provider may not cede its rights or delegate its obligations without the prior written consent of SA Express and such consent shall not be unreasonably withheld.

**28. SEVERABILITY**

Whenever possible, each provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable law but if any provision of this Agreement shall be unenforceable or invalid under the applicable law, such invalidity or unenforceability shall not affect the other provisions of this Agreement, all of which shall remain in full force and effect.

**29. APPLICABLE LAW**

The Agreement shall be governed and interpreted according to the laws of the Republic of South Africa.

**30. ENTIRE AGREEMENT**

This Agreement contains all the express provisions agreed on by the Parties with regard to the subject matter of the agreement and the Parties waive the right to rely on any alleged express provision not contained in this agreement.

**31. COSTS**

Each Party shall bear that Party's own legal costs of and incidental to the negotiation, preparation, settling, signing and implementation of this agreement.

**32. SIGNATURES**

Signed at KEMPTON PARK on this 7<sup>th</sup> day of AUGUST 2017.

pe. [Signature]  
 (ON BEHALF OF SA EXPRESS WARRANTING  
 THAT HE HAS THE AUTHORITY TO SIGN)  
 Name: Victor Xaba  
 Designation: Acting Chief Executive Officer

1. Witness  
 Name:  
 Designation:

2. Witness  
 Name:  
 Designation:

Signed at Blairgowrie Park on this 24<sup>th</sup> day of July 2017.

(ON BEHALF OF THE SERVICE PROVIDER  
 THAT HE HAS THE AUTHORITY TO SIGN)  
 Name: EMERSON MATHEW LEBEKO  
 Designation: CHIEF EXECUTIVE OFFICER

1. Witness  
 Name: TSMETHOLO LEBEKO  
 Designation: GENERAL MANAGER

2. Witness  
 Name: HESA BALOYI  
 Designation: Logistic manager

**ANNEXURE "A"****SCOPE OF WORK:**

- ★ Guarantee the Monthly Availability of JET A1 Product to the Value of R67, 000,000.00 at all locations required by SAX.
- SAX will have a credit period of 30 days only.
- ★ Ordering, Transporting and Receipt of Fuel from Refineries into Plane.
- Managing Compliance and Aerospace Insurances
- Refuel of Aircraft at Locations as determined by SAX
- Defuel of aircraft on-call at a set charge for defuel and fuel storage costs -- fuel stored will be credited to client.
- Perform Fuel Lab Tests
- Supply Support, Products, Parts and Ground Services related to Fuelling
- Monthly Fuel Price submission determined by the variable Basic Fuel Price (BFP) of Refineries plus a Margin based on Overheads, Operating Costs and Profits. Prices to be submitted, negotiated and approved by the commodity manager and/or procurement.
- A monthly forecast of volume is required from SAX.
- Call out requested but unsuccessful in rendering services should not be billed to SAX.
- Operate and Maintain the Fuel Farms, Bowsers and Trailers at specified locations
- Manage and Administrate Operation
- Submit Monthly Movements and reports.

**Additional Services related to Diesel and Petrol Fuel**

- Operate and Maintain the Petrol and Diesel facility with capacity of two tanks and two single hose pumps;
- Ordering and receipt of fuel from Refineries as required from major suppliers;

- Daily activities related to petrol station operations;
- Refuel of tow cars, cars, generators, trucks, and ground vehicles on-call during working hours; and
- Monthly Fuel price to be determined by the basic landed costs of Depot supply plus a Margin as determined based on Overheads, Operating Costs and Profits.



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ANNEXURE B (Attached)



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## Annexure “GF 9”



**AVIATION FUEL SERVICE AGREEMENT**

between

**SOUTH AFRICAN AIRWAYS (Pty) Ltd**

Registration Number: 1997/022444/07

and

**SOUTH AFRICAN EXPRESS AIRWAYS (Pty) Ltd**

Registration Number: 1990/007412/07

  
DPW

  
JWH



## RECORDALS

- 1.1 **SOUTH AFRICAN AIRWAYS (Pty) Ltd ("SAA")** is a company duly incorporated in terms of the company laws of the Republic of South Africa, having its principal place of business situated at Airways Park, Jones Road, Kempton Park, Republic of South Africa.
- 1.2 **SOUTH AFRICAN EXPRESS AIRWAYS (Pty) Ltd ("SA Express")** is a duly incorporated company in terms of the company laws of the Republic of South Africa, having its principal place of business situated at 4<sup>th</sup> Floor, West Wing Offices, Pler Development, O.R TAMBO International Airport, Republic of South Africa.

## 2 PREAMBLE

2.1 **WHEREAS** SA EXPRESS and SAA ("the parties") have a commercial relationship which is premised on the Commercial Agreement concluded on the 30<sup>th</sup> of June 2010 ("the Commercial Agreement").

2.2 **WHEREAS** the purpose of the said Commercial Agreement is to enable SAA and SA EXPRESS to achieve the following common objectives in their respective provision of air transportation services:

- 2.2.1 To improve the quality and quantity of air services on the African continent with particular reference to smaller communities.
- 2.2.2 To optimise the parties' use of aircraft to meet market requirements.
- 2.2.3 To provide a cost effective sustainable regional feeder system to SAA to enable it to effectively and efficiently address the needs of the market.
- 2.2.4 To optimise efficiency in the use of ground facilities and personnel who render such ground handling services.
- 2.2.5 To offer customers a seamless choice of transportation options; and
- 2.2.6 To maximise shareholder value, as long as both parties have a common majority shareholder;

2.3 **WHEREAS** the parties have agreed in the said Commercial Agreement that SAA shall provide SA EXPRESS with back-up facilities i.e. the facilities and services to be provided to SA EXPRESS by SAA in support of SA EXPRESS scheduled services; and

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TPM

ANC

- 2.4 **WHEREAS** the parties have agreed that the terms and conditions for the provision of the said back-up facilities and services shall be set out in individual separate agreements;

**NOW THEREFORE**, the parties agree, in view of SAA's abovementioned commitment to provide back-up facilities and services to SA EXPRESS, to conclude an Aviation Fuel Service Agreement on the terms and conditions outlined in clauses 3 to 33 as follows:

### 3 REPRESENTATIONS AND WARRANTIES

- 3.1 Each party warrants and represents to the other that it has the power to enter into and the ability to perform in terms of this Agreement.
- 3.2 Each party warrants that it has not violated and will not violate any applicable laws or regulations of the Republic of South Africa or express policies regarding the offer or receipt of improper inducement in connection with this Agreement. A Breach of this Clause shall be deemed to be an irredeemable breach of this Agreement.
- 3.3 Each signatory warrants that he/she has received and complied with every consent and/or approval necessary with respect to the execution or carrying out of this Agreement or the validity and enforceability thereof.
- 3.4 SAA warrants that it, and its service, without limitation, will at all times during the term of this Agreement, comply to all legislation, directives and regulations, without limitation whatsoever, and howsoever arising, applicable to the rendering of the service and shall furnish, on request by SA Express, proof of such compliance.
- 3.5 Breach of any warranty given anywhere in this Agreement shall constitute a material breach.

### 4 OPERATIVE PROVISIONS

- 4.1 In this Agreement, the following expressions shall, unless the context otherwise requires, have the following meanings:

Annexes thereto, if any;

- the Parties the parties to this Agreement (and "Party" shall have a corresponding meaning);
- Signature Date the date on which the last Party signs this Agreement;

- 4.2 any reference to a statutory provision or enactment shall include references to any amendment, modification or re-enactment of such statutory provision or such enactment (whether before or after the Signature Date), to any previous enactment which has been replaced or amended and to any regulation or order made under such statutory provision or enactment.
- 4.3 references to the Preamble, clauses and Schedules are, unless otherwise specified, references respectively to the Preamble, clauses and Schedules to and of this Agreement.
- 4.4 words importing one gender shall be treated as importing any gender, words importing individuals shall be treated as importing corporations and vice versa, words importing the singular shall be treated as importing the plural and vice versa, words importing the whole shall be treated as including a reference to any part thereof, and expressions denoting a natural person shall be treated as denoting a juristic person and vice versa.
- 4.5 clause headings are inserted for ease of reference only and shall not affect the construction of this Agreement.
- 4.6 references to documents or agreements "in the agreed form" are to documents or agreements on the terms and conditions agreed (whether before or after the Signature Date) in writing between the Parties, initialled by the Parties for the purposes of identification, whether or not such documents or agreements, as the case may be, are to be executed by the Parties.
- 4.7 words and/or expressions defined in this agreement shall bear the same meanings in any annexes hereto which do not contain their own defined words and/or expressions;
- 4.8 This Agreement may be executed in more than one counterpart (and, for the avoidance of doubt, a counterpart may be a facsimile copy), each of which shall be deemed to constitute an original of this Agreement and which taken together shall constitute one and the same agreement;

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4.9 The terms of this Agreement having been negotiated, the rule of construction that provisions are to be construed against the party drafting an agreement (or part of an agreement) or on whose behalf an agreement (or part of an agreement) was drafted, shall not apply to this Agreement and each Party shall be responsible for its own costs, legal fees and other expenses incurred in the negotiation, preparation and execution of this Agreement.

## 5 AIRCRAFT FUEL

**5.1 In this Agreement, the parties are seeking to set out the terms of engagement and the service deliverables that are required from SAA, the service provider, and the obligations expected from SA Express, the Customer.**

**5.2 SAA agrees to provide SA Express with the following services in relation to the provision of Aviation Fuel Services :**

### 5.2.1 Procurement of Aviation Fuel

### 5.2.2 Administration of Aviation Fuel Accounts including payment of fuel invoices

**5.2.3 The provision of an IT platform for processing of Fuel documents and reporting:**

**5.2.4 Reasonable assistance in the provision of the remote access to the IT Platform where required.**

## 6 PROCUREMENT OF AVIATION FUEL

6.1 SAA shall arrange, as part of its Tender Process, for its Aviation Fuel Supplier/s at nominated scheduled stations to deliver Aviation Fuel into SA Express aircraft as and when required by SA Express for its operations.

**6.2 SA Express shall have access to all contracts negotiated with fuel suppliers subject to observation of the provisions of the confidentiality clause as set out in the relevant contracts.**

Fuel uplift volumes for all SA Express designated stations unless it is agreed otherwise and reduced to writing and signed by both parties. The designated stations together

with expected volumes of aviation fuel must be stipulated in writing by no later than three (3) months prior to the tender commencement process.

## **7 PRICES FOR AVIATION FUEL**

- 7.1 Suppliers must have the ability to provide insurance equal to or in excess of the amount required by South African Express as notified in writing to SAA.
- 7.2 SA Express shall be able to uplift fuel at the same differential as SAA at all stations listed in the Fuel Supply Tender as per the fuel supply agreements with the respective suppliers.

## **8 FUEL PRICES DETERMINATION**

### **8.1 Locations within South Africa**

8.1.1 The price quoted for each location will be based on the BFP ruling for the month in which the Aviation Fuel uplifts occur as negotiated.

8.1.2 The prices established will be quoted in South African cents per litre and shall be payable to Suppliers on behalf of SA Express by SAA comprising:

8.1.2.1 a Basic Fuel Price;

8.1.2.2 Differentials;

8.1.2.3 Transportation Fees; and

8.1.2.4 other charges which may be levied.

8.1.3 SAA shall advise SA Express by the fifth (5<sup>th</sup>) working day of each month what the total price in South African Cents per litre for the respective locations will be for each month respectively.

### **8.2 Locations outside the borders of South Africa**

8.2.1 The prices quoted will be in accordance with negotiated terms and currencies with each Supplier at each location. These prices will vary during the currency of this agreement due to petroleum product market forces prevailing from time to time, government regulatory price changes and exchange rate fluctuations.

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 AG  
 JMH

**8.2.2** The total price established for each location referred to in 8.2.1 above and payable to Suppliers on behalf of SA Express by SAA shall comprise of:

**8.2.2.1** a basic price;

**8.2.2.2** additional charges where applicable, such as duties, dues, taxes, levies, throughput fees, railage, transport, airport concession fees, etc.,

**8.2.3** SAA shall advise SA Express by the fifth (5<sup>th</sup>) working day of each month what the total price in South African Cents per litre for the respective locations will be for each month respectively.

**8.2.3.1**

## **9 ADDITIONAL CHARGES**

Should there be any change or variation to the charges referred to in Clause 8 above during the currency of this contract or to those charges affecting duties, dues, taxes, imports, throughput fees, railage, transport, airport concession fees etc. this will be communicated to SAX as soon as possible after SAA is advised and the increase/decrease shall be for the account of SA Express.

## **10 PRICE REVIEW**

The above total price structure is not subject to review or change with respect to the basic or government regulated prices described in Clause 8 above except as defined in Clause 9 above.

## **11 FAILURE TO PROVIDE THE CONTRACTED SERVICES**

**11.1** Should a Supplier of Aviation Fuel, contracted to SAA under a separate Agreement, fail to deliver Aviation Fuel meeting the specification as stipulated hereunder, or fail to deliver Aviation Fuel in sufficient quantity to meet SAA's agreement with SA Express in this regard, or fail completely to deliver due to a cause or causes not limited to a situation or situations of force majeure, SA Express shall not hold SAA responsible for deliver.

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11.2 Further, the parties agree that in such instance, SAA would pursue the matter with its Supplier(s) and use its best efforts to resolve the matter in a manner deemed amicable to both parties. SAA shall keep SA Express apprised of developments.

11.3 Aviation Fuel delivered against this agreement not meeting the specification stipulated shall be rejected.

11.4 If Aviation Fuel is rejected in terms of 11.3, SAA shall endeavor to ensure that the Fuel Supplier take remedial action to replace such rejected Aviation Fuel at the Supplier's own cost.

11.5 Aviation Fuel rejected shall not be redelivered for use by SA Express without the Fuel Supplier having first provided proof that such Aviation Fuel then fully meets the specification to SAA's satisfaction

11.6 Without limiting the generality of clause 11.3 above, Aviation Fuel which is rejected at any station shall remain the property of the Fuel Supplier.

11.7 In the event of poor service being received from a contracted supplier of aviation fuel SA Express shall have the right to interact directly with the supplier in order to rectify the state of affairs should the need arise.

## 12 AVIATION FUEL SPECIFICATION

12.1 Aviation Fuel supplied shall be JET-A1 which is a kerosene grade of Fuel suitable for most turbine engine aircraft. The said Fuel shall be produced in accordance with very strict internationally agreed specifications, with a flash point above 38°C and a freeze point maximum of -47°C.

12.2 Further, the abovementioned Fuel needs to meet the most stringent requirements of the following specifications:

12.2.1 The British Ministry of Defense Specification DEFSTAN 91-91 issue 6, / 10; or

12.2.2 The ASTM (American Standard of Testing Method) for Aviation Turbine Fuels D1655-10.

12.3 Additionally, the operating procedures, equipment or inspection procedures should comply with JIG 10 quality specifications or those of the latest version of the Oil Industry standards for jointly operated systems.

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GPM, AB, DM, JH

- 12.4 If the abovementioned specification requirements cannot be complied with, due to any reason whatsoever, NO OTHER FUEL OR SUBSTITUTES MAY BE USED. Consequently, SA Express shall bear the responsibility of deciding whether or not to operate the applicable Sector until the specified Fuel becomes available.

### 13 ADMINISTRATION OF AVIATION FUEL ACCOUNTS

#### 13.1 SA Express commitments regarding Fuel purchases:

13.1.1 SA Express shall provide SAA with the anticipated volume requirements by location for the contractual period in advance of the negotiations with Suppliers. Further, SA Express shall provide SAA with monthly updates of volume forecasts per location in order to ensure proper planning in this regard.

13.1.2 SA Express shall assume responsibility for ensuring timely submission of documentation to SAA for processing purposes, including interfaces of daily flight schedule and maintenance folios, together with ensuring accuracy and completeness thereof.

13.1.3 SA Express shall assist SAA promptly in prevention and resolution of invoice queries to enable SAA to comply with Supplier contractual payment terms. In the event that queries are not satisfactorily resolved, SA Express shall not hold SAA responsible for any consequences or losses SA Express would incur as a result of inaccurate recordings (e.g. Subsequent VAT obligations) or failure to pay in time, save where same is resultant from SAA's gross negligence and/or willful misconduct.

13.1.4 Where a query cannot be easily resolved, SAA will take up the matter with its Suppliers and use its best efforts to resolve the matter in a manner deemed amicable to both parties. SAA shall keep SA Express apprised of developments.

#### 13.2 SAA activities in the Fuel administration process:

13.2.1 Ensure that the Fuel invoice information in the system is verified against the fuel administration system information before the elapse of the payment cycle.

13.2.2 Payment is made to Suppliers with respect to uplifted Fuel invoices in a timely manner.

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- 13.2.5 SAA shall provide SA Express with the option of including its staff in any fuel administration system training that is to be provided to its own staff at a marginal cost to SA Express.
- 13.2.6 SAA shall upon request from SA Express in writing provide SA Express personnel with training on the fuel administration system solution at a market related rate at the time of the training, which cost shall be borne by SA Express.
- 13.2.7 SAA shall upon request from SA Express in writing reasonably assist SA Express in the resolution of system related queries and issues that are encountered on the fuel administration systems.
- 14 PAYMENT AND CURRENCY**
- 14.1 Payment to SAA by SA Express for Fuel uplifts within South Africa will be in South African Rand.

13.2.5 SAA shall provide SA Express with the option of including its staff in any fuel administration system training that is to be provided to its own staff at a marginal cost to SA Express.

13.2.6 SAA shall upon request from SA Express in writing provide SA Express personnel with training on the fuel administration system solution at a market related rate at the time of the training, which cost shall be borne by SA Express.

13.2.7 SAA shall upon request from SA Express in writing reasonably assist SA Express in the resolution of system related queries and issues that are encountered on the fuel administration systems.

**14 PAYMENT AND CURRENCY**

14.1 Payment to SAA by SA Express for Fuel uplifts within South Africa will be in South African Rand.

- 13.2.5 SAA shall provide SA Express with the option of including its staff in any fuel administration system training that is to be provided to its own staff at a marginal cost to SA Express.
- 13.2.6 SAA shall upon request from SA Express in writing provide SA Express personnel with training on the fuel administration system solution at a market related rate at the time of the training, which cost shall be borne by SA Express.
- 13.2.7 SAA shall upon request from SA Express in writing reasonably assist SA Express in the resolution of system related queries and issues that are encountered on the fuel administration systems.
- 14 PAYMENT AND CURRENCY**
- 14.1 Payment to SAA by SA Express for Fuel uplifts within South Africa will be in South African Rand.

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14.4 Where multiple invoices are submitted to SA Express by SAA for supplier invoices within the same week for payment, the 17 day period will be calculated from the last invoice received.

14.5 Delivery of the invoices from SAA needs to be made electronically to [financesupport@flyexpress.aero](mailto:financesupport@flyexpress.aero) and all supporting documentation needs to be provided to the SA Express fuel administration clerks located at SAA for collection.

14.6 In the event of late payment, SAA shall raise interest charges at the Standard Bank Limited prime rate per annum.

14.7 For payments where prices are quoted in South African cents per litre, payment will be made to SAA according to the volume of Fuel uplifted at each location in litres as reflected on the flight receipts and summarized on the invoices forwarded to SA Express.

14.8 For payments by SA Express to SAA where prices for Fuel uplifts outside of South Africa are quoted in foreign currencies, SAA will use the South African Rand equivalent on date of payment, calculated according to conversion rates as applied to its own foreign currency payments

14.9 Any de-Fuelling costs/ credits for SA Express' account will be reflected on the invoice and on the SA Express account equally. This must also be included by SA Express in its payment for Fuel uplifted to SAA.

14.10 The charge relating to Fuel administration and handling costs will be as set out in Annexure A to this agreement.

## 15 SUPPLY REQUIREMENTS AT STATIONS NOT INCLUDED IN THE ORIGINAL PORTFOLIO

15.1 In the event that SA Express acquires additional routes and secures Fuel Suppliers of Aviation Fuel who are not included in SA Express' portfolio herein, then the said Agreements shall be entered into by SA Express with the Suppliers on a standalone basis.

such time as the SAA contracts become available for tender.

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15.3 Where routes have not been formally incorporated into the SAA tender process but, uplifts to new destinations take place from existing contracted locations, the administration for the Fuel uplifts and payments thereof may be covered within the scope of this contract. However where locations are entirely new, SA Express will need to administer independently

## 16 CHANGING SUPPLY REQUIREMENTS AT STATIONS NOT OPERATED BY SAA

16.1 In the event that a Fuel provider exits a market after a Tender had already been awarded to the said Supplier, then SAA shall reasonably assist SA Express in the negotiation leading to securing of a new Supplier at the station in question.

16.2 The contract for the supply of Fuel at the said station shall however be between the Fuel Supplier at the station in question and SA Express, unless SAA is also impacted and needs to re-tender jointly with SA Express

16.3 Where contract falls outside of a joint tendering process the administration of the Fuel uplifts and the payments thereof will need to be independently administered by SA Express.

## 17 DISPOSAL OF WASTE FUEL

17.1 Upon request from SA Express to SAA in writing, SAA shall provide reasonable assistance to SA Express regarding the disposal of waste de-Fuelled Fuel from SA Express' Aircraft.

17.2 SAA warrants that the disposal of waste Fuel in terms of this Agreement shall be done in accordance with all relevant and applicable legislation in effect in the Republic of South Africa.

17.3 The rate for the disposal of Fuel shall be determined at the time of the request and the cost of disposal thereof shall be market related.

## 18 DURATION AND TERMINATION

18.1 This Agreement shall endure for an initial period of one (1) financial year from date of effect whereafter it may be renewed per Agreement between the parties.

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 SPM  
 JWH

18.2 The terms and conditions of the Fuel Services Agreement shall be reviewed annually by both parties at the end of each financial year and taking into consideration the changes in the market environment and the positions of both entities.

18.3 Should this Agreement not be reviewed by both parties in writing at the beginning of each new financial year in accordance with 18.2, the contract will automatically be renewed under the same terms and conditions as this Agreement on a year to year basis thereafter.

18.4 Should the renewal of this contract be as a result of an automatic renewal as per clause 18.3, the contract can be raised for review for the remainder of the current financial year by either party giving written notice to the other to this effect.

18.5 Upon such receipt of notice to review, the other party will need to respond within 30 days.

18.6 Subject to any contrary provision of this Agreement, either party shall be entitled to terminate this Agreement by giving the other Party six (6) months written notice or such longer period as may be agreed upon by both parties to enable the transfer of fuel uplift and payment data as well as any other relevant data from the fuel plus system for incorporation into the new fuel management system and set up satisfactory agreements with external suppliers for the provision of fuel as required.

18.7 Upon termination of this agreement SAA shall be obliged to provide (upon request) all financial data confirming payments made to suppliers for a period of five years as is stipulated by law.

## 19 DEFAULT AND TERMINATION

19.1 An event of default shall occur if:

19.1.1 Any party fails to pay any amount due to another party in terms of this agreement, and does not remedy such failure within 14 (fourteen) working days of receipt of notice from such other party calling upon it to do so; or

19.1.2 Any party defaults in the performance of any other material provision of this

such longer period as may reasonably be required to remedy such default) after receipt of notice from any other party calling upon it to remedy such default; or

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SPK, [Signature], [Signature], [Signature], [Signature]

19.1.3 Any party makes any general assignment for the benefit of its creditors or compromises with its creditors generally; or

19.1.4 Any party is placed under provisional or final liquidation or provisional or final judicial management; or

19.1.5 The license of either party to conduct its business is suspended or revoked.

19.2 Upon the happening of an event of default, the non-defaulting party may by written notice to the defaulting party either demand specific performance from the party in default, or cancel this agreement, without prejudice to the non-defaulting party's right to claim damages from the party in default.

## 20 APPLICABLE LAW AND JURISDICTION

This Agreement shall be governed and construed in accordance with the laws of the Republic of South Africa. The parties hereby irrevocably consent and submit to the jurisdiction of the South Gauteng High Court, Johannesburg or its successor in title ("the High Court").

## 21 ENTIRE AGREEMENT

This Agreement shall supersede any previous arrangements between the Parties governing the provision of services at locations referred in the relevant Annexures hereto. This agreement contains all the express provisions agreed on by the parties with regard to the subject matter of the agreement and the parties waive the right to rely on any alleged express provision not contained in this Agreement.

## 22 NO REPRESENTATIONS

Neither party may rely on any representation, which allegedly induced that party to enter into this agreement, unless the representation is recorded in this Agreement.

## 23 VARIATION, CANCELLATION AND WAIVER

No contract varying, adding to, deleting from or cancelling this Agreement, and no waiver of any right under this Agreement, shall be effective unless reduced to writing and signed by or on behalf of the parties.

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## 24 INDULGENCES

24.1 If either party at any time breaches any of that party's obligations under this agreement, the other party ("the aggrieved party") may at any time after that breach, exercise any right that became exercisable directly or indirectly as a result of the breach, unless the aggrieved party has expressly elected in writing or by clear and unambiguous conduct, amounting to more than mere delay, not to exercise the right; and shall not be stopped (i.e. precluded) from exercising its rights arising out of that breach, despite the fact that the aggrieved party may have elected or agreed on one or more previous occasions not to exercise the rights arising out of any similar breach or breaches.

24.2 If the aggrieved party is willing to relinquish that right, the aggrieved party will on request do so in writing. In particular, acceptance of late performance shall, for a reasonable period after performance be provisional only and the aggrieved party may still exercise that right during that period.

## 25 CESSION

25.1 Neither party may cede that party's rights or delegate that party's obligations without the prior written consent of the other party, which consent shall not be unreasonably withheld.

## 26 SETTLEMENT OF DISPUTES

26.1 Should any dispute arise, in relation to this Agreement, between the parties the dispute shall be referred to the parties' Chief Executive Officers who will attempt to resolve the dispute amongst themselves.

26.2 Any such dispute or claim, which cannot be settled between the Chief Executive Officers, may be submitted, by written notice from the aggrieved Party to the other, to final and binding arbitration in terms of this clause.

26.3 Subject to the provisions of this clause, arbitration shall be held under the provisions of the arbitration laws for the time being in force in the Republic of South Africa.

26.4.1 primarily an accounting matter, an independent practising accountant of not less than 10 (ten) years' standing;





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- 26.4.2 primarily a legal matter, a practising senior counsel of not less than 10 (ten) years' standing;
- 26.4.3 any other matter, a suitably qualified independent person;
- 26.4.4 agreed upon by the Parties and failing such agreement within 3 (three) days after the date on which the arbitration is demanded, appointed by the committee of the Arbitration Foundation of Southern Africa (who may appoint one of their number) who may be instructed by either Party to make the nomination at any time after the expiry of that 3 (three) day period.

26.5 The arbitration shall be held in Johannesburg and in accordance with formalities and/or procedures determined by the arbitrator, and may be held in an informal and summary manner, on the basis that it shall not be necessary to observe or carry out the usual formalities of procedure, pleadings and/or discovery, or the strict rules of evidence.

**26.6 The arbitrator shall be entitled:**

- 26.6.1 to investigate or cause to be investigated any matter, fact or thing which he considers necessary or desirable in connection with the dispute and for that purpose shall have the widest powers of investigating all the books and records of either Party to the dispute in so far as the books and records may be relevant, and the right to take copies or make extracts there from and the right to have them produced and/or delivered at any reasonable place required by him for the aforesaid purpose;
- 26.6.2 to interview and question under oath representatives of either of the Parties;
- 26.6.3 to decide the dispute according to what he considers just and equitable in the circumstances;
- 26.6.4 to make such award, including an award for costs, specific performance, an interdict, damages or a penalty or otherwise as he in his discretion may deem fit and appropriate, provided that should the arbitrator fail to make an award with regard to costs, the costs of the arbitrator shall be borne equally between the Parties.

26.7 The arbitration shall be held as soon as possible after it is demanded with a view to its being completed within 30 (thirty) days after it has been so demanded.

26.8 Immediately after the arbitrator has been agreed upon or nominated, either Party shall be entitled to call upon the arbitrator to fix a date and place when and where the arbitration proceedings shall be held and to settle the procedure and manner in which the arbitration proceedings will be held.

26.9 Any award that may be made by the arbitrator:

26.9.1 shall be final and binding;

26.9.2 will be carried into effect; and

26.9.3 may be made an order of any court to whose jurisdiction the parties to the dispute are subject.

26.10 Notwithstanding anything to the contrary contained in this clause, either Party shall be entitled to apply for, and if successful, be granted, an interdict from any competent court having jurisdiction.

26.10 This clause is severable from the rest of this Agreement and shall, notwithstanding the termination of this Agreement, remain in full force and effect.

26.11 The Parties agree that any arbitration, the proceedings and the final award, shall be kept strictly confidential and the Parties as well as the arbitrator shall be subject to the confidentiality undertakings contained in this Agreement.

26.12 The above provision shall however not preclude either party approaching the High Court for urgent interim relief.

## 27 SEVERABILITY

Whenever possible, each provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable law but if any provision of this Agreement shall be unenforceable or invalid under the applicable law, such invalidity or unenforceability shall not

*[Handwritten signatures and initials]*

## 28 CONFIDENTIALITY

Neither party shall under any circumstances divulge any information acquired as a result of this Agreement to a third party without the prior written consent of the other party to this Agreement. This provision will survive the expiry or early termination of this Agreement.

## 29 DOMICILIA CITANDI ET EXECUTANDI

29.1 The parties choose as their domicilium citandi et executandi for all purposes under this agreement, whether in respect of court process, notices or other documents or communications of whatsoever nature (including the exercise of any option), the following addresses:

### 29.1.1 SOUTH AFRICAN EXPRESS AIRWAYS:

Physical Address: 4<sup>th</sup> Floor, West Wing Offices  
Pier Development  
Domestic Arrivals  
O.R Tambo International Airport  
1627

Postal Address: P. O Box 101  
O.R Tambo International Airport  
1627

### 29.1.2 SOUTH AFRICAN AIRWAYS

Physical Address: Airways Park  
Jones Road  
Kempton Park  
1627

Postal Address: O.R. Tambo International Airport  
Private Bag X13  
1627

## 30 FORCE MAJEURE

30.1 Notwithstanding any contrary provisions of this agreement, no failure or omission by either party to carry out or observe any of the terms and conditions of this agreement

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shall give rise to any claim by the other of them or any other party, or be deemed to be a breach of this agreement, if same is caused by or arises as a result of force majeure, act of God, vis major or any act or direction of or limitation imposed by any governmental or statutory body, or war, strikes, civil commotion, riots, labour unrest, consumer boycotts, or any cause reasonably beyond the control of the party thus prevented from performing its obligations, provided, however, such party:

30.1.1 engages all its reasonable efforts to the extent reasonably possible to avoid and/or remedy such situation;

30.1.2 gives the other of them written notice of such situation as soon as possible after it becomes aware of the fact that such situation may arise or has arisen.

30.2 In the event of any cause reasonably beyond the control of the Supplier and/or SAA arising and preventing them or any one of them from carrying out their obligations in terms of this agreement, such performance of obligations shall be suspended during such period of inability by either of them to perform its obligations under this agreement, provided, however, that nothing herein contained shall extinguish, delay, or suspend the obligations of such party to liquidate all its outstanding liabilities under this agreement which accrued or became due before the period of suspension, or which it is not prevented from discharging by the circumstances giving rise to the suspension.

30.3 During any suspension contemplated in 30.2, the party affected by such suspension shall be entitled to obtain the services and/or facilities of which it is deprived as a result of such suspension from any other person.

### 31 STAMP DUTIES, REGISTRATION FEES

31.1 All stamp duties and registration fees in connection with this Agreement, which may be prescribed under the national law of either Party to this Agreement, are payable by that Party.

31.2 All stamp duties and registration fees in connection with this Agreement, which may be prescribed under the national law of the location(s), as mentioned in the Annexures and not being a location situated in the country of either Party to this Agreement will be

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GPW

*[Handwritten signature]*  
M  
DWA

32 LEGAL COSTS

Each party shall bear that party's own legal costs of and incidental to the negotiation, preparation, settling, signing and implementation of this Agreement.



*[Handwritten signature]*  
SPM

*[Handwritten signature]*  
SPM  
ANT  
JNH

### 33 BINDING EFFECT AND ASSIGNMENT

33.1 The provisions of this Agreement shall inure to the benefit of and be binding upon the Parties hereto and their respective successors and assigns.

33.2 Notwithstanding any contrary provisions of this Agreement, no Party shall be entitled to assign any of its rights or obligations in terms of or arising from this Agreement without the prior written consent of the other Party, which consent shall not be unreasonably withheld, provided that a corporate reorganisation or amalgamation where the control of a Party (or survivor or assignor of such Party) remains the same shall not be considered an assignment for the purpose of this clause.



*[Signature]*  
GPR

*[Signature]*  
*[Signature]*  
JW

SIGNED AT O.R. TAMBO INTERNATIONAL AIRPORT ON THIS THE 31<sup>st</sup> DAY OF AUGUST 2011



**Arson Malola-Phiri**  
Regional General Manager: African Expansion



**Ken Wienand**  
Acting Chief Financial Officer

FOR AND ON BEHALF OF SOUTH AFRICAN EXPRESS AIRWAYS (WARRANTING HIS/HER AUTHORITY TO SIGN)

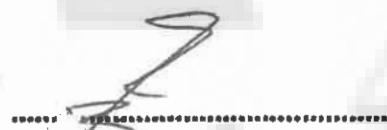


**Julia Hall**  
Specialist: Business Development

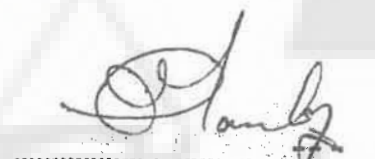


**Tshavhungwe Mamphiswana**  
Divisional Manager: Legal Services

SIGNED AT O.R. TAMBO INTERNATIONAL AIRPORT ON THIS THE 31<sup>st</sup> DAY OF August 2011



**W. J. Meyer**  
Chief Financial Officer



**Clive Manby**  
Head of Petroleum Affairs

FOR AND ON BEHALF OF SOUTH AFRICAN AIRWAYS (PTY) LTD  
(WARRANTING HIS/HER AUTHORITY TO SIGN)



**W. Engelbrecht**  
WITNESS



WITNESS