



**AIRPORTS COMPANY**  
SOUTH AFRICA

**MEMORANDUM OF UNDERSTANDING**

BETWEEN

**STAKEHOLDER 1**

**AIRPORTS COMPANY SOUTH AFRICA SOC LIMITED**  
(Registration No.: 1993/004149/30)  
("ACSA")

AND

**STAKEHOLDER 2**

**NORTHERN CAPE DEPARTMENT OF ECONOMIC DEVELOPMENT AND TOURISM**  
("DEDaT")

AND

**STAKEHOLDER 3**

**DAWID KRUIPER LOCAL MUNICIPALITY**  
("DKM")

**STAKEHOLDER 4**

**NORTHERN CAPE ECONOMIC DEVELOPMENT AGENCY**  
("NCEDA")

**STAKEHOLDER 5**

**NORTHERN CAPE CHAMBER OF COMMERCE**  
("NOCCI")

## 1. DEFINITIONS

In this MOU, the singular includes the plural and vice versa, and -

- 1.1 **"ACSA"** means Airports Company South Africa SOC Limited;
- 1.2 **"Binding clauses"** mean those clauses referred to in clause 3.2, being clauses 5.2, 9, 10, 12, 13 and 14;
- 1.3 **"ACSA"** means Stakeholder 1;
- 1.4 **"DEDaT"** means Stakeholder 2;
- 1.5 **"DKM"** means Stakeholder 3;
- 1.6 **"NCEDA"** means Stakeholder 4;
- 1.7 **"NOCCI"** means Stakeholder 5
- 1.8 **"Confidential Information"** means information of a confidential nature including but not limited to;
  - 1.8.1 details of the MOU
  - 1.8.2 terms of the MOU
  - 1.8.3 information or material proprietary to or deemed to be propriety to that Party;
  - 1.8.4 information designated as confidential by that Party;
  - 1.8.5 trade secrets of the Party
  - 1.8.6 intellectual property rights
- 1.9 **"MOU"** means this Memorandum of Understanding, including the annexures hereto;
- 1.10 **"UTN"** means Upington International Airport;



- 1.11 **"Parties"** means Airports Company, Northern Cape Department of Economic Development, Tourism and Dawid Kruiper Municipality, Northern Cape Development Agency and the Northern Cape Chamber of Commerce;
- 1.12 **"Project"** means the project described in clauses;
- 1.13 **"Project Committee"** means the committee referred to in clause 6;
- 1.14 **"Project Managers"** mean the project manager as nominated and appointed in terms of clause 7.1.1.
- 1.15 **"Steering Committee"** means the committee referred to in clause 5;
- 1.16 **"Signature Date"** means the date on which the last-signing party signs this MOU;

## 2. INTRODUCTION

Air Service connectivity is an integral part of any working economy, thus the establishment of new direct national, regional, and intercontinental routes linking the Province of Northern Cape using Upington International airport as a gateway plays a key catalytic role. The purpose of the proposed Project is to enhance air service connectivity between the national gateways and the city of Upington and surrounding areas, through the airport. The city and the catchment area play a critical economic role as the country's (Key economic activities i.e. Solar Energy etc) and other industries. The Project aims to improve Upington and the province's global competitiveness by stimulating air travel and opening air links to underserved markets across the region and the globe. Subsequently, an improved global brand equity for the City and province as well as the socio-economic landscape transformation, and seamless flow of trade and tourism. The Project will take a three-phase approach.

- 2.1 In line with both the Dawid Kruiper Local Municipality and Airport Company South Africa's desire, to facilitate and promote trade and tourism in the province for an inclusive Northern Cape province economy. Subsequently the Air Service Development Project "*the Project*" has thus been established.



- 2.2 The first phase will be completed between Parties which are signatory to this MOU, and includes scoping of key New/Existing air routes at National, regional, and intercontinental level to enhance trade and tourism. Followed by the appointment/selection of Project team which will be responsible for putting together business cases on targeted markets, and on opportunistic basis with the market coverage area of any destination within reach by a nonstop air service from Upington.
- 2.3 The second phase of the Project will be taken under the auspices of the Dawid Kruiper Local Municipality with the assistance of the Project Managers. This phase will involve analysis of potential markets, identification of potential airline partners, research and development for the airlift strategy and a 3-year implementation plan for the establishment of new routes linking Upington International airport. It will also involve the establishment of the Steering and Project Committees through nomination of representatives by all stakeholders, and then the conclusion of this MOU. It is anticipated that the second phase will be completed at a date to be determined by the Parties.
- 2.4 The third phase will require the implementation of the identified route opportunities and development of incentive schemes thereof. Work performed during the second phase will determine the strategic direction for the third phase. It is also anticipated that the third phase will involve more direct private sector participation in the Project.
- 2.5 The Parties have all recognised the need for a co-ordinated approach when implementing the Project. Therefore, the Parties have committed themselves to concluding this MOU as a written embodiment of their commitment to the Project.

### **3. PURPOSE AND LEGAL STATUS**

- 3.1 The purpose of this MOU is to record the commitment of the Parties to the implementation and completion of the Project and to regulate the way in which they will work together in the implementation of the Project.
- 3.2 Save for the provisions of clause 5.2 (decision making on the Steering Committee), clause 9 (communications), clause 10 (confidentiality), clause 0 (good faith), clause 14 (disputes) and clause 15 (general), no legally binding obligations arise under the other provisions of this MOU.



#### **4. DURATION**

4.1 The provisions of the MOU shall be effective from the Signature Date and shall be effective until the earliest of either of the following dates:

4.1.1 the date on which all the Parties choose to terminate this MOU by written agreement;

4.1.2 The date on which this MOU is superseded and replaced by a more definitive agreement.

4.2 Any Party may withdraw from the Steering Committee and cease being bound by the terms of this MOU on 30 (thirty) days' notice to the other Parties and the Project Managers.

#### **5. THE STEERING COMMITTEE**

##### **5.1 Membership**

5.1.1 Each member may occupy two seats on the Steering Committee by nominating two persons to serve thereon. In addition, each member may have one alternative representative and may replace its representative(s) at any time by written notice to the other members and the Project Managers.

5.1.2 Each Party must ensure that at least one of its representatives is a suitably mandated project or programme manager who also has the necessary designated authority for the purposes of decision making and funding approvals.

5.1.3 The Project Managers may attend all meetings of the Steering Committee, but do not have a vote.

##### **5.2 Decision making**

5.2.1 All decisions of the Steering Committee must in the first instance be made on a consensual basis.

5.2.2 Should the chairperson of the meeting, after providing a reasonable opportunity for consensus to be reached, assess that consensus will not be reached, he/she may refer the matter to the vote, in which event the decision shall be carried if



supported by a majority of the Parties, with each Party having one vote. Should it not be possible to obtain a majority, the chairperson of the meeting in his/her sole discretion may decide to refer the same item to the following meeting of the Steering Committee.

5.2.3 If a Party is unable to attend a meeting of the Steering Committee, it may convey its standpoint in relation to an issue through an email to the Project Managers.

5.2.4 Notwithstanding clause 5.2.2 above, the Steering Committee may not take a decision which impacts directly on one or more of the Parties without the support of the Party or Parties directly affected by the decision.

### 5.3 Steering Committee meetings

5.3.1 Meetings of the Steering Committee will occur every quarter of the financial year.

5.3.2 Additional meetings may be scheduled as and when necessary to deal with time sensitive matters, provided that all members agree that such additional meeting is necessary.

5.3.3 Northern Cape Department of Economic Development, Dawid Kruiper and ACSA supported by the Project Managers will be responsible for hosting all meetings, providing the agenda and information packs timeously before each quarterly meeting of the Steering Committee and circulating minutes as soon as possible after the conclusion of every meeting. Any costs and/ or funds contributed by the stakeholders will be undertaken under the auspices of the Municipality through the Municipal Managers Office.

5.3.4 The chairing of every Steering Committee meeting will be through a rotation between the ACSA, and Province/Municipality (including entities/departments under the Province).

### 5.4 Roles and Responsibilities

The Steering Committee is responsible for the following:





- 5.4.1 funding the Project to a level decided upon by each Party and assisting in the sourcing of additional funds as may be required;
- 5.4.2 providing policy direction;
- 5.4.3 making decisions regarding any recommendations received from the Project Committee;
- 5.4.4 where possible, resolving issues which may be impeding the implementation of the Project;
- 5.4.5 facilitating access to other public and private bodies where necessary;
- 5.4.6 ensuring that the leadership of the respective Parties is kept up to date on all matters relating to the Project;
- 5.4.7 providing relevant information to other Steering Committee members and the Project Committee to facilitate the implementation of the Project;
- 5.4.8 monitoring the performance of members of the Project Committee and ensuring that they comply with the terms of this MOU;
- 5.4.9 any additional roles and responsibilities which the Steering Committee may decide upon from time to time.

## **6. THE PROJECT COMMITTEE**

### **6.1 Membership**

- 6.1.1 The Project Committee is made up of representatives of the Parties (collectively "**members**"), whose appointment to serve on the Steering Committee must be confirmed by email to the Steering Committee.
- 6.1.2 The membership of the Project Committee is made up of the Project Managers together with one representative appointed by each Party.
- 6.1.3 To ensure good governance, no members of the Steering Committee may serve on the Project Committee.
- 6.1.4 A Party may change its representative by written notice to the Project Managers.



## 6.2 Meetings and secretariat

- 6.2.1 Project Committee meetings will be held monthly;
- 6.2.2 Additional meetings may be scheduled as and when necessary to deal with time sensitive matters at the discretion of the Project Managers;
- 6.2.3 Meetings of the Project Committee will be attended by the members of the Project Committee as well as any other additional individuals which the Project Managers deem appropriate for a specific topic;
- 6.2.4 The Project Managers are responsible for managing and chairing all meetings of the Project Committee;
- 6.2.5 Unless otherwise decided, meetings of the Project Committee will be held in Upton or Airport (including entities/departments under the Province).

## 6.3 Roles and responsibilities

The Project Committee is responsible for assisting the Project Managers in the implementation of the Project, including -

- 6.3.1 Providing data, reports, research, and any other materials that exist within their organisations and are required for the implementation of the Project. It is the responsibility of the Project Committee to obtain the necessary approvals and sign off from the relevant Party before supplying any such resources to the Project Managers;
- 6.3.2 assisting the Project Managers in setting up meetings with appropriate individuals within their organisations;
- 6.3.3 executing any project-related tasks that may be assigned by the Steering Committee;
- 6.3.4 providing input and comments on deliverables and other materials before these are distributed to the Steering Committee;
- 6.3.5 Making proposals regarding matters to be presented to the Steering Committee.



## **7. PROJECT MANAGERS**

### **7.1 Membership**

7.1.1 The initial Project Managers will comprise of two individuals nominated and appointed by ACSA, Northern Cape Department of Economic Development and Tourism and Dawid Kruiper Municipality.

7.1.2 The Project Managers may also draw on the expertise of advisors or external service providers and obtain additional resources as may be directed by the Steering Committee or as may be required for the implementation of the Project.

7.1.3 Any sub-contracted advisors and/or service providers will be managed by the Project Managers, with the support of the Steering Committee.

### **7.2 Roles and Responsibilities**

The Project Managers are responsible for the following:

7.2.1 engaging with the aviation sector (including airlines), government stakeholders and any other parties external to the Steering Committee;

7.2.2 conceptualising and packaging incentive and support packages in line with principles decided by the Steering Committee;

7.2.3 presenting incentive and support package offers to airlines on behalf of the Parties provided that any such offers are in line with principles decided by the Steering Committee;

7.2.4 ensuring that all communications happen in the manner set out in clause 9;

7.2.5 drafting terms of reference for the recruitment and management of all subcontracted advisors and service providers;

7.2.6 Execution of the agreed Project deliverables in accordance with their Terms of Reference.

## **8. FUNDING AND OTHER CONTRIBUTIONS**

- 8.1 The participation of each of the Parties on the Steering Committee is premised on the understanding that they will contribute to the Project. Which can in any related form i.e. Financial or in terms of the work of the Project.
- 8.2 It is recorded that, as at the Signature Date, the following contributions have been made:
- 8.2.1 Municipality via the Municipal Manager's Office and other stakeholders have provided funding for the Project (If any available). The Airports Company will make contribution in terms of route development tools, market data/systems, Analysis and research, project management, and facilities for the Project.
  - 8.2.2 The Steering Committee will provide an oversight of the implementation of the Project, and will also make available facilities and resources through stakeholders to the MOU for the project. The Municipal Manager's Office and/or through entities reporting to the office is ultimately the responsible authority over the implementation of the Project including the airlift strategy and designated Project managers/leads.
  - 8.2.3 Airports Company has agreed in principle to provide all market data, analysis, research, and tools relevant for the evaluation of the route performances and new opportunities, and the refinement of the internal forecasts and infrastructure development plans;
  - 8.2.4 Northern Cape/Upington Tourism will make available and share with the project committee on a monthly or quarterly basis the tourism statistics and any relevant data to at their disposal.
- 8.3 Additional contributions to be made by the Parties will be recorded in the minutes of the Steering Committee.
- 8.4 No Party can be compelled to make any specific contribution but each Party will use their best efforts to provide the information undertaken in this clause to ensure the success of the Project. Each contribution is decided upon by a Party in its sole discretion.

## 9. COMMUNICATIONS

- 9.1 A representative from the Municipal Managers Office and/or entities reporting to the office is/are the only spokesperson permitted to communicate with the public and the media regarding the progress of the Project and the ongoing negotiations with airlines and/or the private sector, as approved by the steering committee. The appointed representative shall liaise with the appointed representative of the ACSA before issuing any statements or publications to the media and or the public. The representative may delegate this responsibility to the Project Managers from time to time.
- 9.2 The following spokespersons may communicate with the public regarding the support of the relevant party for the Project:
- 9.2.1 Airports Company – Business Development Executive, General Manager of the airport and the CEO.
- 9.2.2 Northern Cape Department OF Economic Development and Tourism – To be appointed.
- 9.2.3 Dawid Kruiper Municipality – The office of the Municipal Manager's Office.
- 9.3 These spokespersons on behalf of the Parties may not divulge details of the Project's progress or of any ongoing negotiations with airlines or the private sector unless the airline(s) concerned provide permission.
- 9.4 It is recorded that carefully managed communications are crucial to the implementation of the Project, particularly given the sensitivities of information when negotiations are conducted with airlines and of any Confidential Information.

## 10. CONFIDENTIALITY

- 10.1 It is recorded that, during the implementation of the Project, information will be provided which will be deemed by the Party providing it or by the Project Managers to be confidential ("**Confidential Information**"). The Parties undertake to keep confidential and not disclose any such confidential information without the written consent of the Party disclosing the confidential information.



- 10.2 A Party may require that any reference to confidential information provided by it at a meeting of the Steering Committee is excluded from the minutes of that meeting.

## **11. INTELLECTUAL PROPERTY RIGHTS**

- 11.1 Any intellectual property rights created in the course of the MOU shall remain or vest in the Party who created it and (save where otherwise agreed in writing) no intellectual property prior to or after this Agreement is assigned, transferred to licensed to the other.
- 11.2 The use of the Airports Company logo or trade mark by Garden Route DM is subject to the prior written consent by Airports Company and Garden Routes DM's compliance with any guidelines for the usage provided by Airports Company.

## **12. ADDITIONAL PARTIES**

- 12.1 The Parties may decide to admit a new party or parties to the Steering Committee, by written agreement, based on the contribution which any new party undertakes to make, in particular parties representing the private sector.
- 12.2 Any such new party may only be admitted to the Steering Committee upon signature of this MOU. By their signature, they undertake to be bound by the terms and conditions set out herein.

## **13. GOOD FAITH**

The Parties undertake to display good faith in their dealings with each other and not to do anything, or refrain from doing anything, which could be harmful to the implementation of the Project.

## **14. DISPUTES**

Should any dispute arise regarding the implementation of the Project or the terms of this MOU, such dispute shall be resolved in the following way:

- 14.1 The dispute shall first be raised at an ad hoc meeting of the Steering Committee called by the Project Managers. The Parties shall use their best endeavours to resolve the issue in dispute. If they cannot resolve their dispute and it relates to the binding clauses, then the dispute shall be resolved in terms of clauses 0 and 0 below. If the dispute does not relate

to a binding clause and it cannot be resolved in terms of this clause 0 above, then the issue in dispute shall be referred to the each Parties CEO or someone with similar authority..

14.2 If the Parties fail to resolve a dispute regarding the binding clauses at the meeting of the Steering Committee called for that purpose, then the dispute shall be resolved in terms of the Rules of the Arbitration Foundation of South Africa (AFSA) for expedited arbitration, by an arbitrator appointed by AFSA.

14.3 Notwithstanding clause 0 above, if a dispute regarding the binding clauses lies between two parties governed by the provisions by the Intergovernmental Relations Framework Act, 2005, then the dispute shall be resolved in line with the provisions of that Act.

14.4 This clause shall not preclude either Party from obtaining interim relief on an urgent basis from a court of competent jurisdiction pending the decision of the arbitrator.

14.4.1 The arbitration referred to in clause 14 (Disputes) shall be held:

14.4.2 at Johannesburg in the English language; and

14.4.3 immediately and with a view to its being completed within 15 (fifteen) business days after it is demanded; and

14.4.4 The Parties irrevocably agree that the decision in arbitration proceedings:

14.4.5 shall be final and binding upon the Parties;

14.4.6 shall be carried into effect; and

14.4.7 \_ may be made an order of any court of competent jurisdiction.

\_\_\_\_\_ 14.4.8 This clause is severable from the rest of this MOU and therefore shall remain effective between the Parties even if this MOU is terminated.

## 15. GENERAL



- 15.1 No agreement varying, adding to, deleting from or cancelling this MOU and no waiver of any right under this MOU, shall be effective, unless reduced to writing and signed by or on behalf of the Parties.
- 15.2 A Party may not cede any or all of that Party's rights or delegate any or all of that Party's obligations under this MOU without the prior written consent of the other Parties.
- 15.3 Each Party shall bear that Party's own legal costs of an incidental to the negotiation and preparation of this MOU.

**SIGNED** by the Parties and witnesses on the following dates and at the following places respectively:

A handwritten signature in black ink, appearing to be a stylized 'S' or 'J' followed by a flourish.



**FOR AIRPORTS COMPANY SOUTH AFRICA SOC LIMITED**

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

Name &  
Surname: **Mr. Charles Shilowa**

Date and  
Place: \_\_\_\_\_

Designation: **Group Executive Business Development**

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

Name &  
Surname: \_\_\_\_\_

Date and  
Place: \_\_\_\_\_

Designation: **Airport Manager Upington International Airport**

**FOR DAWID KRUIPER LOCAL MUNICIPALITY**

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

Name &  
Surname: **ELIAS NTOBA**

Date and  
Place: **14 December 2018 at UPINGTON**

Designation: **MUNICIPAL MANAGER**

**FOR NORTHERN CAPE DEPARTMENT OF ECONOMIC DEVELOPMENT AND TOURISM**

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

Name &  
Surname: \_\_\_\_\_

Date and  
Place: \_\_\_\_\_

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

**FOR NORTHERN CAPE DEVELOPMENT AGENCY**

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

Name &  
Surname: \_\_\_\_\_

Date and  
Place: \_\_\_\_\_

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

**FOR NORTHERN CAPE CHAMBER OF COMMERCE**

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

Name &  
Surname: \_\_\_\_\_

Date and  
Place: \_\_\_\_\_

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