

IN THE SOUTH GAUTENG HIGH COURT
(REPUBLIC OF SOUTH AFRICA)

CASE NO: 34974/12

In the matter between:

AVAAZ FOUNDATION

Applicant

AND

PRIMEDIA (PTY) LIMITED

First Respondent

AIRPORTS COMPANY SOUTH AFRICA LIMITED

Second Respondent

FILING NOTICE

DOCUMENT: 1. Second Respondent's Answering Affidavit.

DATED AT Saxonwold ON THIS THE 25th DAY OF OCTOBER 2012.


MOODLIYAR & BEDHESI ATTORNEYS
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25/10/2012.

ACCEPTED WITHOUT

PREJUDICE

ROSIN • WRIGHT • ROSENGARTEN

13h10 (time)



SOUTH GAUTENG HIGH COURT, JOHANNESBURG

Case No: 34974/12

In the matter between:

AVAAZ FOUNDATION

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and

PRIMEDIA (PTY) LIMITED

First Respondent

AIRPORTS COMPANY OF SOUTH AFRICA LIMITED

Second Respondent

SECOND RESPONDENT'S ANSWERING AFFIDAVIT

I, the undersigned:

HAROON JEENA

do hereby make oath and state:

- 1 I am an adult male Group Executive: Commercial employed as such by the second respondent and presently stationed at its corporate head office situated at 24 Johnson Road, Riverwoods Park, Bedfordview.

- 2 The content of this affidavit, save where otherwise indicated, is within my own personal knowledge and is to the best of my belief both true and correct.
- 3 To the extent that I make legal submissions in this affidavit, I do so on the advice of the second respondent's legal representatives.
- 4 I have read the founding affidavit deposed to by Mr Ian Bassin on behalf of the applicant, AVAAZ Foundation, ("AVAAZ") and wish to respond thereto as set out below. For convenience, within the content of this affidavit:
- 4.1 I use the same defining terms as appear in the founding affidavit; and
- 4.2 I refer to the first and second respondents respectively as Primedia and ACSA.
- 5 The applicant seeks two primary forms of relief in this application.
- 5.1 In the first place, it seeks an order declaring that the removal of the applicant's "Stop the Lion Bone Trade Campaign" advertisement from the international arrivals hall of O.R. Tambo International Airport by the first and second respondents was unlawful.
- 5.2 In the second place, it seeks an order directing Primedia and ACSA to reinstate the advertisement for a period of 22 days.
- 6 The applicant identifies three causes of action for this relief. It contends that the removal of the advertisement constituted a breach of:
- 6.1 the contract between Primedia and AVAAZ;

- 6.2 the right to freedom of expression under section 16 of the Constitution; and
- 6.3 the right to just administrative action under section 33 of the Constitution. (see paragraph 7 of the founding affidavit)
- 7 The first cause of action (i.e. the purported breach of contract) is pursued only against Primedia, whilst the last cause of action (i.e. the alleged right to just administrative action) is pursued only against ACSA. The cause of action premised upon the alleged right to freedom of expression is pursued against both Primedia and ACSA.
- 8 I intend to deal with each of the causes of action pursued by AVAAZ in turn in the sections which follow in this affidavit. However, before doing so, I will highlight the salient facts relevant to AVAAZ's causes of action against ACSA.

FACTS

- 9 On or about 20 August 2010, ACSA and Primedia concluded a concession contract. A true copy of the concession contract as well as the relevant transaction addendum is annexed hereto marked "AA1" ("**the concession contract**") The copy has been redacted to protect the confidential rates and amounts reflected in the addendum to the agreement.
- 10 In terms of the concession contract, Primedia was given the right to advertise and to contract with advertisers which wish to advertise at the sites situated at the Airport on the terms and conditions set out in the concession contract (see clause 1.1.11 as read with clause 2.1 of the concession contract).

- 11 Clause 8 of the concession contract sets out the obligations of Primedia. These include an obligation not to display any advertisement which does not meet the Code of conduct stipulated by the Advertising Standards Authority ("the ASA") from time to time and should Primedia be in breach of this clause, it is obliged to remove such advertisement within 24 hours after receiving written notification to that effect from ACSA or the ASA (clause 8.1.4).
- 12 In addition to this obligation, Primedia is under an obligation not to display any advertisement which, in the sole opinion of ACSA, is unsightly or of an objectionable nature and to remove such an advertisement within 24 hours after receiving written notification to that effect from ACSA (clause 8.1.5). I observe that, prior to the commencement of the current litigation the attorneys representing Primedia disclosed to AVAAZ the content of clause 8.1.5 of the **concession agreement**, such having been quoted in paragraph 7 of Annexure "AF12" to the founding affidavit.
- 13 ACSA is not aware of the dealings which took place between Primedia and AVAAZ prior to the conclusion of the contract which is attached as annexure AF5 to the founding affidavit.
- 14 ACSA was first alerted to the fact that AVAAZ's advertisement had been placed in the international arrivals hall on or about the 14th of August 2012. At that time, a journalist, one Brett Michael, approached a representative of ACSA, one Michelle Kalkwarf. The journalist advised Kalkwarf that there was a potentially controversial advertisement located in the international arrivals hall that he wished to take photographs of, and he accordingly requested permission to do so. The permission in question was naturally

required in that the international arrivals hall is a security controlled area and access is accordingly both controlled and limited.

- 15 Kalkwarf then e-mailed Ms Adele Williams, ACSA's Advertising Manager. This e-mail appears on the last page of Annexure "AF8" to the founding affidavit (page 92 of the paginated founding papers).
- 16 Kalkwarf then raised the issue with one Solomon Makgale, who is ACSA's Group Manager Communications.
- 17 That, in, turn led to a debate concerning the nature and content of the e-mail between Makgale, Tebogo Mekgoe (at the time, he was the Assistant General Manager of the O.R. Tambo Airport, but in the interim he has been promoted to the General Manager), Bonginkosi Mfusi (the Group Legal Counsel of ACSA), and myself. The outcome of the discussion was the determination that the advertisement was inappropriate for an international arrivals hall and thus of an objectionable nature. The considerations influencing that determination are dealt with hereunder under the heading "*International Arrivals Hall and Nature of Advertisement*".
- 18 The decision to require the removal of the advertisement was accordingly made upon the basis of the right enshrined in clause 8.1.5 of the concession agreement.
- 19 Consequent upon the determination, I communicated with Adele Williams and required that she take the steps necessary to bring about the removal of the advertisement. Williams then, on the 15th of August 2012, transmitted an e-mail to Primedia. That email forms the subject-matter of Annexure "AF8" to the founding papers.

- 20 In the letter from ACSA to AVAAZ of the 27th of August 2012, which is Annexure “**AF11**” to the founding affidavit, one Bongani Machobane, Legal Counsel representing ACSA, on behalf of ACSA, recorded the receipt of verbal comments from members of the public in relation to the advertisement. As I have said more fully above, the decision to remove the advertisements did not relate to any comment or complaint received from a member of the public and that recordal, as contained in Annexure “**AF11**”, occurred in error.
- 21 The error had its genesis in the fact that Bonginkosi Mfusi had (mistakenly) communicated to Machobane that there had been a complaint about the advertisement received from a member of the public. Machobane was not participant in the debate concerning the advertisement, nor was he involved in the decision to request Primedia to remove it.
- 22 In the next section of this affidavit, I deal with AVAAZ's causes of action against ACSA.

THE CAUSE OF ACTION BASED ON ADMINISTRATIVE ACTION

- 23 AVAAZ deals with this cause of action in paragraphs 39 to 46 of the founding affidavit.
- 24 ACSA denies that its decision to instruct Primedia to remove the advertisement from the international arrivals hall of O.R. Tambo airport constitutes administrative action. This is because the decision involves, not an exercise of public power, but rather the exercise of a contractual right.

No public power

- 25 AVAAZ alleges that because ACSA is an organ of state, its decision to remove the advertisement constitutes administrative action and ought to be set aside because it was procedurally unfair and irrational or unreasonable (see paragraphs 44 and 45 of the founding affidavit)
- 26 ACSA accepts that it is an organ of state as defined in section 239 of the Constitution of the Republic of South Africa, 1996.
- 27 The mere fact however that ACSA falls within the definition of an organ of State does not have the invariable result that all of its decisions are of an administrative nature. As AVAAZ itself accepts, in order for a decision to qualify as administrative action, it must, inter alia, amount to an exercise of public power or the performance of a public function (see paragraph 40.3 of the founding affidavit).
- 28 No provision of any law (either statute or the common law), obliges ACSA to make the airport available for advertising.
- 29 When ACSA elected to let space at the airport for advertising, it did so on the terms negotiated between it and Primedia.
- 30 Therefore, when ACSA instructed Primedia to remove the advertisement, ACSA exercised, not a public power, but a contractual power, the source of which was the concession agreement. Its instruction to Primedia to remove the advertisement was an

exercise of its rights under clauses 8.1.4 and 8.1.5 of the concession contract and not the performance of an administrative act.

- 31 The concession agreement is of a purely commercial nature. The conclusion of the concession agreement resulted from negotiations that took place between Primedia and ACSA. Adele Williams was participant in those negotiations.
- 32 The conclusion of the concession agreement accordingly did not arise in circumstances in which ACSA either acted from a position of superiority, or as a result of it seeking to assert any "*public authority*" over Primedia. Indeed, AVAAZ does not seek to make out any such case in its founding affidavit.
- 33 In the next section of the affidavit, I deal with the contention that the decision in question was irrational and unreasonable, and the nature of the relief sought by AVAAZ in the event of this Court determining to review the decision.
- 34 A consideration of the contract concluded between Primedia and AVAAZ is instructive in regard to this issue. It is to be observed that the duration of such agreement was expressly limited to the period 1 August to 31 August 2012. AVAAZ contends in its founding affidavit that the dates were adjusted to run from the 8th of August 2012 to the 11th of September 2012 (see paragraph 15 of the founding affidavit). By the time that AVAAZ launched this application, its rights in terms of the agreement with Primedia had already terminated. AVAAZ elected not to proceed with this application on an urgent basis. It thus seeks to exert a right to advertise but in circumstances where the contract permitting that advertising has, by effluxion of time, come to an end.

The Review – irrationality and unreasonableness

35 In the event that this court finds that ACSA's decision to instruct Primedia to remove the advertisement qualifies as administrative action, I respectfully submit that the decision was neither irrational or unreasonable.

36 AVAAZ claims that the decision to remove the advertisements was irrational and unreasonable because:

36.1 The decision was not informed by a legal opinion (see paragraph 45.2 of the founding affidavit);

36.2 It was based on comments from members of the public which raised the possibility that the advertisement was objectionable (see paragraph 45.1 of the founding affidavit);

36.3 The reasons given by ACSA in its letter of 27 August 2012 (annexure AF11 to the founding affidavit) for its decision to instruct Primedia to remove the advertisement was contradicted by what it said in email correspondence attached to the founding affidavit (see paragraph 45.5 of the founding affidavit).

37 However, none of these alleged bases of irrationality or unreasonableness sustains scrutiny.

38 It is not a requirement of rational or reasonable administrative action that administrative decisions must be preceded by legal opinion. Were this to be a requirement of administrative action, the conduct of the vast schemes of administration necessary for

the functioning of the state's bureaucracy would be completely undermined because administrators would have to await legal opinions before they could take administrative decisions.

- 39 As to the contention that the decision was based upon comments from members of the public, I have explained above that this was not, in fact, the case. To the extent that Annexure "FA11" makes this claim, it is erroneous. However, Annexure FA11 correctly records that the decision to instruct Primedia to remove the advertisement was based on ACSA's determination that the advertisement was inappropriate for an international arrivals hall and thus of an objectionable nature. This is in no way contradicted by the email correspondence attached to the founding affidavit.

The Review – procedural fairness

- 40 If this court finds that ACSA's decision to instruct Primedia to remove the advertisement was administrative action, and thus ought to have been preceded by an opportunity to AVAAZ to be heard, then I respectfully submit that the only appropriate relief would be for the decision to be set aside and remitted to ACSA for consideration.
- 41 However, AVAAZ does not seek this relief. Instead, it seeks an order directing ACSA and Primedia to reinstate the advertisement. A reinstatement order amounts to an order of substitution which is only exceptionally available under section 8(1)(c)(ii)(aa) of PAJA. I am advised that in order for an applicant to obtain substitution of a reviewable administrative decision, the applicant must set out the facts in its founding affidavit which explain why such an exceptional remedy is appropriate in its case.

42 AVAAZ has singularly failed to set out any grounds for substitution in its founding papers and I respectfully submit that it ought not to be permitted to cure this fatal deficiency in its replying affidavit.

43 On this basis, even if this court finds that ACSA's decision to instruct Primedia to remove the advertisement is reviewable under PAJA and ought to be set aside, no case has been made out by AVAAZ for the substituted relief sought in prayer 3 of its notice of motion.

THE CAUSE OF ACTION BASED ON FREEDOM OF EXPRESSION

The unavailability of the concession contract

44 AVAAZ contends that "notwithstanding the alleged contractual basis for the removal of the advertisement, the actions of both Primedia and ACSA unjustifiably infringed the constitutional right to freedom of expression of AVAAZ, its members and the public" (see paragraph 30 of the founding affidavit).

45 The need to respect, promote, protect and fulfil the right to freedom of expression does not, however, mean that ACSA is obliged to permit advertising at the airport. There is no law which obliges ACSA to do so.

46 Rather than being obliged to do so, ACSA has elected to permit advertising at the airport on the terms and conditions set out in its concession contract with Primedia. It is

because it has made this election and concluded this contract with Primedia that Primedia could let space to AVAAZ to display its advertisement. In other words, without the contract between ACSA and Primedia, Primedia could not contract with advertisers to display their advertisement at the airport and AVAAZ could not have put up its advertisement in the international arrivals hall of O.R. Tambo airport.

47 This fact has a bearing on the contractual remedies available to AVAAZ under its contract with Primedia because even if Primedia breached its contract with AVAAZ by taking down the advertisement (which is denied), and is entitled to an order of specific performance as postulated by prayer 3 of the notice of motion (the contract having terminated by effluxion of time, no such order for specific performance can arise thereunder) nevertheless the Court retains a discretion not to award specific performance where to do so would bring either of the contracting parties into conflict with their other legal obligations. In this case, were the court to order specific performance of the contract between Primedia and AVAAZ, Primedia would be acting in breach of its obligations under clauses 8.1.4 and 8.1.5 of its concession contract with ACSA. This relief is therefore not available to AVAAZ even if it were to establish that Primedia has breached its contract with AVAAZ (which is denied).

48 The unavailability of the specific performance remedy against Primedia underscores the interconnectedness of the contracts between ACSA and Primedia, on the one hand, and Primedia and AVAAZ on the other.

49 The exercise of AVAAZ's contractual rights (derived from its contract with Primedia) and its right to freedom of expression under section 16 of the Constitution of the Republic of

South Africa, 1996, is therefore dependent on and circumscribed by the concession contract between ACSA and Primedia.

- 50 Under the concession contract, Primedia is obliged to remove an advertisement which is either contrary to the ASA Code or which ACSA views as unsightly or objectionable.
- 51 AVAAZ does not allege that ACSA acted in breach of the concession contract when it instructed Primedia to remove the advertisement, nor could it, because the contract specifically reserves this right to ACSA. ACSA regarded the inclusion of that right to be of great importance to the agreement, and one of the material terms thereof. Without the term, the parties would not have achieved consensus or, in fact, concluded the concession agreement.
- 52 AVAAZ seeks an order declaring that the removal of the advertisement by *inter alia* the second respondent was unlawful. However, the concession contract, and in particular clause 8.1.5, thereof stands in the way of such a declaration.
- 53 If, notwithstanding what is stated above, this court determines that it can somehow overlook the contract between ACSA and Primedia (even though no basis has been laid in the founding affidavit for this Court to do so) and consider only the question whether ACSA's instruction to Primedia that it remove the advertisement from the international arrivals hall was inconsistent with AVAAZ's right to freedom of expression, I set out below why ACSA's decision did not unjustifiably infringe AVAAZ's right.

Justifiable limitation

54 ACSA accepts that its decision to instruct Primedia to remove the advertisement affected AVAAZ's right to freedom of expression. But it affected the outer sphere and not the inner sanctum of that right because the expression at issue in this case is commercial speech. It is an advertisement produced and paid for by an organisation which has used the advertisement in the third phase of its "Stop the lion bone trade campaign" to create awareness of its campaign and to solicit contributions to it (see paragraph 10.3 of the founding affidavit).

55 ACSA's decision also had a very limited impact on AVAAZ's right to advertise its campaign because, as the founding affidavit makes plain:

55.1 the campaign has already produced 718 000 signatures on a petition which was sent to President Zuma;

55.2 advocacy letters have been sent to key representatives of the South African government; and

55.3 advertisements have been placed in the South African airways in-flight magazine, *Sawubona* and on the Google search-engine (see paragraphs 10.1 to 10.3 of the founding affidavit).

56 The limited effect which ACSA's decision therefore had on AVAAZ's right to freedom of expression was justified on the following grounds:

Airports are non-public fora

56.1 The advertisement was displayed in the restricted arrivals terminal of the airport, which is a non-public forum.

56.1.1 Airports are neither traditionally used for expressive activities nor are they set aside or opened up in a substantial way for expressive activities.

56.1.2 Access to an airport, and in particular to the international arrivals hall of an international airport, is strictly controlled and policed. It is therefore unlike the traditionally public spaces such as roads or sidewalks. The protection afforded to freedom of expression in non-public places is more attenuated than in traditionally public spaces.

Breach of the ASA Code

56.2 The advertisement was in breach of the ASA Code.

Clause 1 of Section II of the Code – offensive advertising

56.2.1 The image of the lioness in the advertisement is offensive. The advertisement shows a lioness looking down the barrel of a gun. This image was to be displayed at the international arrivals hall of O.R. Tambo airport, the busiest airport in the country. The audience which would, as a result, have been exposed to the advertisement included children and the elderly.

56.2.2 The advertisement therefore breached clause 1 of Section II of the Code.

Clause 11 of Section II of the Code – no consent

- 56.2.3 It is implicit from the content of paragraph 49.2 and 49.3 of the founding affidavit that the advertisement was flighted without first obtaining the consent of President Zuma for the use of his image. This is in breach of Clause 11.1 of the Code which provides that "advertisements should not, except in the circumstances noted in 11.2, portray or refer to, by whatever means, any living persons, unless their express prior permission has been obtained".
- 56.2.4 AVAAZ contends that notwithstanding the fact that it failed to obtain President Zuma's consent to the use of his image in the advertisement, the use of his image falls within the exception set out in paragraph 11.2.4 of the Code. That section of the Code provides that where the use of an image does not constitute an unjustifiable commercial exploitation of the individual's fame or reputation, the prohibition on the use of images without consent does not apply.
- 56.2.5 Although President Zuma's privacy interests are attenuated as a result of his public profile, it is precisely because of the President's public profile that the use of his image in a commercial setting is unjustified.
- 56.2.6 Given the public persona of the President and the space he occupies in the social and political life of the country, it is potentially misleading to utilise his image (without his consent) in connection with advertising campaigns. This is because his appearance in any advertisement is likely to attract a level of conjecture about his attitude to and support for the advertisement which is potentially

misleading to the public. This is particularly the case where it can be expected that many of the persons viewing the advertisement would be foreign nationals who may not understand English.

56.2.7 Those persons who would be able to read and understand the writing on the advertisement would not know whether the President consented to the use of his image in the advertisement. They would therefore not know whether President Zuma supports the campaign or not, aligns himself with its objectives, or endorses the use of a lioness in a distressing portrayal in the advertisement. This means that the public may form a range of views about the President's attitude which are unfounded and uninformed.

56.2.8 It is also because of the important social and political space that the President occupies that it is exploitative of him and his office to utilise his image in advertisements on which his views have not first been sought.

56.2.9 The advertisement therefore breached clause 11 of Section II of the Code.

Clause 4.1 of Section II of the Code – prior substantiation

56.2.10 According to clause 4.1 of Section II of the Code, before an advertisement is published, advertisers shall hold in their possession documentary evidence as set out in the clause to support all claims, whether direct or implied, that are capable of objective substantiation.

- 56.2.11 This requirement was brought specifically to AVAAZ's attention in the opinion provided by the Association for Communication and Advertising Advisory Service which was furnished to Primedia, and copied to AVAAZ. (This appears as annexure AF9 to the founding affidavit).
- 56.2.12 In that opinion, ACAAS highlighted the fact that the claims made in the advertisement such as, the killing of lions, the use of lion bones in sex potions and the claim that President Zuma can save the lions must be substantiated according to clause 4.1.4 of Section II the Code.
- 56.2.13 Although AVAAZ acknowledges that this was a criticism of the advertisement (see paragraph 47.3 of the founding affidavit), it misunderstands the complaint and regards it as relating to clause 4.2 of the Code instead of clause 4.1.
- 56.2.14 It therefore has provided no indication that *prior* to the display of the advertisement for the first time on 7 August 2012, it had the necessary substantiation for the claims in the advertisement.
- 56.2.15 The only evidence AVAAZ put up to substantiate its claims appears to be a press release dated 9 August 2012, which is after the date on which the advertisement was first displayed. This press statement therefore does not qualify as *prior* substantiation, nor is its content admissible in these proceedings for that purpose. Even if the press statement could qualify as prior substantiation, it does not provide any

substantiation for the claim that President Zuma can save the lives of the lions which are hunted for their bones.

56.2.16 Given that AVAAZ has put up no evidence of prior substantiation, its advertisement was in breach of clause 4.1 of Section II of the Code.

56.3 AVAAZ contends that even if the advertisement breached the ASA Code, that breach does not entitle ACSA to remove the advertisement because ACSA is not a member of the ASA and the ASA must be left to adjudicate complaints itself (see paragraph 50 of the founding affidavit). But this misses the point. Although ACSA is not a member of the ASA, Primedia is a member and Primedia is ACSA's appointed concessionaire. Primedia's membership of the ASA binds it to respect its rulings and therefore AVAAZ is incorrect to contend that Primedia would only be obliged to act in accordance with a ruling of the ASA if that ruling was consistent with the right to freedom of expression (see paragraph 50.4 of the founding affidavit). Primedia has bound itself, through its contract with the ASA, to follow its rulings. The entire system of self-regulation which has been developed in the advertising sector under the auspices of the ASA would be undermined if advertisers could ignore the rulings of the ASA on the basis of their view that one of its decisions was inconsistent with the right to freedom of expression. In the second instance Primedia has bound itself, in accordance with the provisions of clause 8.1.4 of the concession agreement not to display any advertisement which does not meet the requirements of the Code of Conduct stipulated by the ASA.

56.4 Although Primedia may be able to challenge a decision of the ASA on review grounds in due course, it would be obliged to follow that decision at least until it

was reviewed and set aside by a court. Until such a point, it could not be expected of Primedia or ACSA to take the risk that an advertisement would breach the ASA Code if there were good grounds for believing that there was a likely breach.

56.5 It would therefore be reasonable and justifiable for ACSA to remove an advertisement which breached the ASA Code in order to ensure that the system of self-regulation which has been set up to govern the advertising industry remains intact.

International Arrivals Hall and Nature of Advertisement

57 AVAAZ's advertisements were wrapped around 10 (ten) pillars located at the OR Tambo International Airport international arrivals hall, the dimensions of the pillars are approximately 2.3m x 1m x 1m. True copies of the advertisements as they were placed on the said pillars are annexed marked "**AA2**".

58 As the copies of the display of the advertisements show, the advertisements occupy the full extent of the pillars and surround the pillars.

59 Each instance of the advertisement depicts a large firearm which occupies approximately a quarter of the space of the advertisement. So, in fact, there were forty images of this firearm and the lioness staring at it, in the international arrivals hall of O.R. Tambo airport.

- 60 Travellers were therefore to be confronted, on their entry to the international arrivals hall of the busiest airport in South Africa, with forty, large, graphic depictions of a firearm aggressively pointed at a lioness.
- 61 In addition, the international arrivals hall of South Africa's busiest airport is the place where visitors to the country first set foot on South African soil. It is legitimate for ACSA to seek to ensure that the images visitors are first confronted with in such a space present South Africa in the best light.
- 62 The country already suffers from a negative image because of its levels of crime and to be confronted by violent advertisements starkly displaying an aimed firearm is likely to reinforce the impressions that South Africa is a violent place.
- 63 Such a message is not conducive to tourism and could undermine the deliberate efforts being made by the government to attract foreign visitors to the country. It is also not in keeping with the good taste images which ACSA wishes to have displayed in the international arrivals hall.
- 64 As I have already observed, many of the persons viewing the advertisement would be foreign nationals who would not be able to read or understand the writing thereon.
- 65 In the final section of this affidavit I deal, in sequence, with the pertinent allegations in the founding affidavit which have not been dealt with above and which require a response. To the extent that I have not dealt with any of the allegations set out in the founding affidavit, I deny the allegations advanced in the founding affidavit which are in conflict

with what is stated in this affidavit but I do not burden these papers by again addressing those issues hereunder.

AD SERIATIM

66 Ad paragraph 2

To the extent that any of the facts contended for by AVAAZ in the founding affidavit are at variance with what I say herein, I deny the accuracy and veracity thereof.

67 Ad paragraph 3 (including sub-paragraphs)

67.1 I admit that the applicant is cited as the **AVAAZ Foundation** and that it is alleged that such is incorporated in the US State of Delaware. The precise nature of such incorporation has neither been alleged, nor does it emerge from a consideration of the founding affidavit. No evidence in corroboration thereof has been attached to the founding affidavit.

67.2 What is more it is not alleged that AVAAZ is possessed of the necessary *locus standi* to either sue or be sued, lest still has the necessary evidence in support thereof been adduced, and I accordingly take issue with its ability to do so.

67.3 Although I bear no knowledge in regard to the balance of the allegations contained in these paragraphs under reply, such are of no relevance to the determination of this application.

68 Ad paragraph 7

For the reasons given above, I deny that the removal of the advertisement was unlawful on the grounds listed in this paragraph or at all.

69 **Ad paragraph 9**

69.1 I admit that the statement constituted by Annexure “AF2” is attached to the founding affidavit and seeks to advance contentions in regard to *inter alia* the exportation of lion bones.

69.2 I deny that AVAAZ is entitled to rely upon the content of the statement for the purpose of demonstrating the accuracy or veracity of the claims therein made, bearing in mind that the content thereof, in the circumstances, is entirely hearsay and I moreover deny that the press statement provides the substantiation required by clause 4.1 of Section II of the ASA Code, ACSA has no knowledge of the contents of this paragraph.

70 **Ad paragraph 17**

On the 15th of August 2012, ACSA requested that Primedia remove the advert. That request was *inter alia* communicated by way of the e-mail from Adele Williams forming the subject-matter of Annexure “AF8” (on page 88 of the founding papers)

71 **Ad paragraphs 18 and 19 (including sub-paragraphs)**

71.1 I bear no knowledge of the matters that passed between Heejung and Lindstrom but I note that Lindstrom purported to express the view that the advertisements were not “*over the line*”. It is perhaps significant to observe however that AVAAZ itself makes clear that its campaign was intended to be “*hard hitting*”. That much

emerges *inter alia* from the press statement forming the subject-matter of Annexure “AF2” to the founding affidavit.

71.2 As I have explained above, on 14 August 2012 a journalist, approached the ACSA's Michelle Kalkwarf and requested access to the restricted international arrivals hall, to secure photographs of a “controversial” advert. The said journalist referred to the advert as a “controversial” advert. Michelle Kalkwarf conveyed the journalists request to view the “controversial” advert to ACSA's Mr Solomon Makgale.

71.3 Mr Solomon Makgale did not conclude that the content of the advert was “controversial”. Mr Makgale merely utilised the words as referred to by the journalist.

71.4 The decision by ACSA requiring the removal of the advertisement and the rationale therefor have been dealt with above.

72 Ad paragraph 25

I deny that the failure to disclose the terms of the concession agreement was either inappropriate or impermissible, but in any event the contract has been attached to this affidavit.

73 Ad paragraphs 26 to 29

73.1 This section of the founding affidavit deals with Primedia's alleged breach of the contract between it and AVAAZ. Although ACSA is not a party to that agreement, whether the contract was breached is a matter of law and ACSA denies that the

conduct of Primedia constituted a breach of its contract with AVAAZ. Further legal argument will be addressed in regard to this issue at the hearing of the matter. It suffices for present purposes to state that on a proper interpretation of clause 4.2 of that agreement, Primedia was within its rights to remove the advertisement after receiving the instruction from ACSA.

73.2 To the extent that Primedia was however not within its rights to remove the advertisement:

73.2.1 AVAAZ has a remedy premised in damages for breach of contract;
and

73.2.2 the contract period for the flighting of the advertisements having come to an end, AVAAZ is no longer permitted to seek relief founded in specific performance.

73.3 I deny that the enforcement of clause 4.2 by Primedia would be contrary to public policy and unconstitutional as alleged. In any event, even if such clause is contrary to public policy, the fact remains that as between Primedia and ACSA the latter was entitled to exercise the right expressed in clause 8.1.5 of the concession agreement and it was entitled to do so whether or not Primedia in turn provided therefor in its agreement with AVAAZ.

74 Ad paragraphs 30 to 38

74.1 In these paragraphs of the founding affidavit, AVAAZ sets out its reasons why the removal of the advertisement constituted an alleged unjustifiable limitation on its right to freedom of expression. Many of the allegations so advanced constitute a

matter for legal argument which will be addressed at the hearing of this application. I have in any event dealt extensively with the factual content of these paragraphs above and, as I have said, anything inconsistent therewith is denied.

74.2 I make only the following additional points:

74.2.1 Although AVAAZ contends that clauses in contracts do not qualify as laws of general application and therefore cannot be used to justify an alleged violation of the right to freedom of expression, it will be argued at the hearing of this application that such is not the correct approach to test whether or not ACSA is entitled to rely on those clauses, nor has AVAAZ made out a proper case to demonstrate that ACSA is not entitled to exercise the right afforded to it under the concession contract.

74.2.2 Although ACSA has not contended that the advertisement is offensive or prejudicial to President Zuma, it does contend that the advertisement is in breach of the ASA code and is potentially misleading. Although AVAAZ alleges that there is nothing in the advertisement that suggests personal complicity on the part of President Zuma in the killing of lions and that it is intended to convey that he is the addressee in his capacity as President of the Republic, the advertisement is in fact open, as I have said, to conjecture. That conjecture includes the question of the President's complicity in the killing of lions.

75.1 In these paragraphs of the founding affidavit, AVAAZ sets out its case based on an alleged violation of its right to just administrative action. I have addressed this above in detail and I have denied that the decision constituted an exercise of public power or performance of a public function. Anything stated above which is inconsistent with what is said in these paragraphs is accordingly denied.

75.2 ACSA does not contend that the decision taken was of a temporary nature. ACSA has not endeavoured *ex post facto* to recast the nature of the decision taken.

76 Ad paragraphs 47 to 50

76.1 In these paragraphs of the founding affidavit, AVAAZ argues that the advertisement does not breach the ASA Code. I have dealt above with these allegations and I repeat that anything stated above which is inconsistent with what is said in these paragraphs is accordingly denied.

76.2 Although I admit that the advertisement contains the name "AVAAZ" and a reference to a website, I deny that such gives rise to compliance with clause 7 of the ASA code.

76.3 I accept that in terms of section 85(2)(b) of the Constitution of the Republic of South Africa, 1996, the President together with members of cabinet exercises executive authority by *inter alia* the development and implementation of national policy. The advertisement of course makes no reference to the other members of cabinet.

76.4 I note the Applicant's quotation of what it contends are extracts from ASA Rulings.

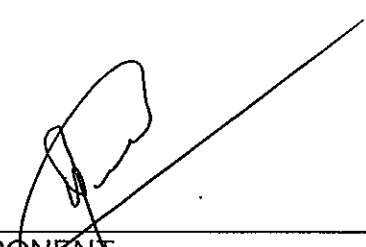
76.5 The Applicant has not seen fit to adduce the Rulings relied upon and in the circumstances I am not able to deal meaningfully with the matter so referred to nor am I required to do so in the absence of the production of the Rulings in question. This is so in that the approach adopted by the Applicant is not sanctioned by the rules of evidence.

77 **Ad paragraphs 51 to 53**

I deny that AVAAZ is entitled to the relief sought in this application.

78. In regard to what I have stated above as concerns Michelle Kalkwarf, Adele Williams, Solomon Makgale, Tebogo Mekgoe, Bonginkosi Mfusi and Bongani Machobane, I annex the confirmatory affidavits of Michelle Kalkwarf, Adele Williams, Solomon Makgale, Tebogo Mekgoe, Bonginkosi Mfusi and Bongani Machobane marked "AA3", "AA4", "AA5", "AA6", "AA7" and "AA8", respectively.

WHEREFORE, the second respondent seeks an order that the application be dismissed with costs including the costs of two counsel.



DEPONENT

I certify that this affidavit was signed and sworn to before me at JOHANNESBURG on this the 25th day of OCTOBER 2012 by the deponent who acknowledged that he knew and understood the contents of this affidavit, had no objection to taking this oath, considered this oath to be binding on his conscience and uttered the following words: 'I swear that the contents of this affidavit are both true and correct, so help me God.'



COMMISSIONER OF OATHS

Name: MOLEBOUE .B. LEKWANE

Address: BLOCK 7, NO 7 EDIN ROAD, SANDHURST

Capacity: PRACTISING ATTORNEY

"AAI"

ADVERTISING CONCESSION AGREEMENT

between

AIRPORTS COMPANY SOUTH AFRICA LIMITED

(Registration Number: 1993/004149/06)

("ACSA")

and

PRIMEDIA (PTY) LTD T/A PRIMEDIA OUTDOOR

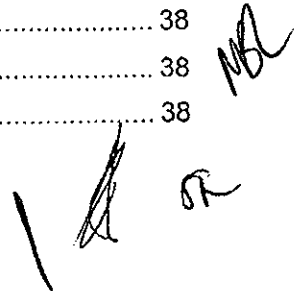
(Registration Number: 1934/005624/07)

("the Concessionaire")

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/ [Signature] SR

1. Definitions and interpretation

1.1 In this Agreement, unless the context clearly indicates a contrary intention, the words herein below defined shall have the meanings assigned to them, and cognate expressions shall bear corresponding meanings:

- | | | |
|-------|--|--|
| 1.1.1 | "ACSA" | - means Airports Company South Africa Limited, registration number 1993/004149/06; |
| 1.1.2 | "Advertisement" | - means any visible representation of words, names, letters, figures, objects, marks or symbols or of an abbreviation of a word or name, or any combination of such elements with the object of transferring information that may be attached, installed or displayed on a Site; |
| 1.1.3 | "Advertiser" | - means a third party which has contracted with the Concessionaire, for the right to advertise on a Site pursuant to the granting of a Concession Right; |
| 1.1.4 | "Agreement" | - means this agreement, together with all schedules hereto (including each Transaction Addendum concluded from time to time by the Parties); |
| 1.1.5 | "Airports" | - means the airports identified in the relevant Transaction Addendum; |
| 1.1.6 | "Airside Service Provider Concession Agreement" | means the agreement, if applicable, concluded or to be concluded between ACSA and the Concessionaire (which is attached hereto as Schedule 6) in terms |

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of which ACSA grants the Concessionaire the right of access to the airside areas at the relevant Airports and the Concessionaire agrees to be bound by the airside rules and regulations relating to the relevant Airports;

- 1.1.7 **"Audited Statements"** - means the audited statements submitted to ACSA by the Concessionaire and certified by the Auditor as provided in clause 6 (accounting provisions);
- 1.1.8 **"Auditor"** - means a person independent of the Parties and registered as an accountant and auditor in terms of the provisions of section 15 of the Public Accountants and Auditors' Act, 80 of 1991;
- 1.1.9 **"Commencement Date"** - means in respect of any Site, the date recorded as such in the applicable Transaction Addendum;
- 1.1.10 **"Concessionaire"** - means the Party identified as such on the front page of this Agreement duly represented by the signatory hereof as provided for in Schedule 1 (resolution of the Concessionaire);
- 1.1.11 **"Concession Right"** - means the right granted by ACSA to the Concessionaire to advertise and to contract with Advertisers which wish to advertise on the Sites situated at the Airports, on the terms and conditions recorded in this Agreement;

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- 1.1.12 **"Handbook"** - means a booklet titled *"National Policy Guidelines, Pricing Structures and Terms of Business"* prepared by or for ACSA and as amended from time to time;
- 1.1.13 **"Parties"** - means both ACSA and the Concessionaire and **"Party"** shall mean either one of them;
- 1.1.14 **"Rental"** - means the minimum monthly rental payable by the Concessionaire to ACSA recorded in the Transaction Addenda in respect of each Site;
- 1.1.15 **"Revenue"** - means the monthly consideration which is charged to the Advertiser by the Concessionaire in respect of the Advertiser's use of a Site, less any agency commission on such consideration (which agency commission shall never exceed 16,5%) payable to any agency in connection with or in respect of the use of such Site;
- 1.1.16 **"Signature Date"** - means the date of signature of this Agreement by the Party signing last in time;
- 1.1.17 **"Site"** - means any object, structure or device positioned (either permanently or non-permanently) at or on the Airports, in respect of which a Concession Right is granted and which is either owned by ACSA or the Concessionaire as detailed in the Transaction Addenda. Sites shall include, without limitation,

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billboards, multi-face advertising and electronic messaging units, advertising light boxes and posters and any other signs, structures or airport utilities (e.g. trolleys and the like), carrying Advertisements;

- 1.1.18 **"Termination Date"** - means, in respect of each Site, the date recorded as such in the applicable Transaction Addendum; and
- 1.1.19 **"Turnover Rental"** - means an amount expressed as that percentage of Revenue charged by the Concessionaire to Advertisers recorded in the Transaction Addenda in respect of each Site; and
- 1.1.20 **"Transaction Addendum"** - means an addendum to this Agreement in respect of one or more Sites, executed by the Parties, which materially conforms to the draft addendum annexed hereto marked Transaction Addendum "A".

- 1.2 Words importing the singular shall include the plural and vice versa, words importing the masculine gender shall include the other genders and vice versa and natural persons shall include juristic persons and vice versa.
- 1.3 References to a "*person*" include a natural person, company, close corporation or any other juristic person or other corporate entity, a charity, trust, partnership, joint venture, syndicate or any other association of persons.
- 1.4 The headnotes to the clauses of this Agreement are inserted for purposes of reference only and shall not affect the interpretation of any provisions to which they relate.
- 1.5 In the event that any definition in this clause 1 contains substantive provisions, then such provisions shall be given effect to as if same were incorporated into the main body of this Agreement.

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- 1.6 All amounts payable under this Agreement shall be exclusive of VAT.
- 1.7 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 official public holiday in the Republic of South Africa in which case, the last day shall be the next succeeding day which is not a Saturday, Sunday or official public holiday in the Republic of South Africa and the term "*day*" shall mean every day of the week excluding Saturdays, Sundays and official public holidays in the Republic of South Africa.
- 1.8 Where any term is defined within the context of any particular clause in this Agreement, the term so defined, unless it is clear from the clause in question that the term so defined has limited application to the relevant clause, shall bear the meaning ascribed to it for all purposes in terms of this Agreement, notwithstanding that that term has not been defined in this clause 1.
- 1.9 The use of the word "*including*" followed by specific examples shall not be construed as limiting the meaning of the general wording preceding it.
- 1.10 Expressions defined in this Agreement shall bear the same meanings in schedules or addenda to this Agreement which do not themselves contain their own definitions.
- 1.11 The rule of construction that the contract shall be interpreted against the party responsible for the drafting or preparation of the contract shall not apply.

2. Concession

- 2.1 ACSA hereby grants the Concession Right to the Concessionaire in respect of those Sites detailed in the Transaction Addendum and thereafter, in each Transaction Addendum executed between ACSA and the Concessionaire from time to time in terms of this Agreement.
- 2.2 The information and particulars recorded in the Transaction Addenda may be amended, varied, amplified, cancelled or added to at any time during the term of this Agreement by means of further Transaction Addenda which are dated and signed by the Parties and which are thereafter bound into and form an

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integral part of this Agreement and are to be interpreted in all respects in accordance with the provisions of this Agreement.

- 2.3 Where applicable, the Concessionaire shall timeously submit to ACSA full details of the design and specifications of the structures to be erected or constructed on the Sites, the design and specifications to have been approved and signed by a suitably qualified engineer or an architect and reflecting details of the design, shape, size, material to be used and method of erection or affixing to the Site.
- 2.4 The Concessionaire hereby undertakes to ACSA that where it is to construct any Sites:
 - 2.4.1 the structure will be manufactured and erected in accordance with the Handbook;
 - 2.4.2 it will not commence with the erection, construction or installation of the Site until ACSA's written approval has been obtained; and
 - 2.4.3 the location, design and erection of any Site shall be in strict accordance with ACSA's requirements and shall always be subject to the prior written consent of ACSA.
- 2.5 It is specifically recorded that to the extent that the Concessionaire concludes any agreement with one or more Advertisers in accordance with the Concession Right, ACSA consents thereto on the basis that such agreement shall, under no circumstances, be construed as a cession, assignment, delegation or transfer of any of the Concessionaire's rights and obligations in terms of this Agreement.

3. Ownership

It is recorded that the Sites may be owned by either ACSA or the Concessionaire and the Party which owns a Site is identified in the Transaction Addenda.

4. Period

Notwithstanding the Signature Date (but subject to the conclusion and continued operation of the Airside Service Provider Concession Agreement, if applicable) the Concession Right in respect of each Site shall commence on the Commencement

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Date recorded in the applicable Transaction Addendum pertaining thereto and shall endure for the period recorded in such Transaction Addendum.

5. Consideration

5.1 Rental

5.1.1 The Concessionaire shall effect payment to ACSA each month of the Rental.

5.1.2 The Rental shall:

5.1.2.1 be payable in advance, on or before the first day of each and every succeeding month; and

5.1.2.2 be paid by debit order and without deductions, bank charges, set-off or exchange, at the address of ACSA recorded in clauses 21.1 or 21.2 of this Agreement or at such other address as ACSA may notify the Concessionaire in writing; or

5.1.2.3 should ACSA so notify the Concessionaire in writing, be paid into ACSA's nominated bank account and forthwith upon such payment, the Concessionaire shall furnish ACSA with documentary proof, reasonably satisfactory to ACSA, of having effected same.

5.1.3 The Rental shall never be less than that stipulated in the Transaction Addenda and shall escalate on each anniversary of the relevant Commencement Date by the percentage stipulated in the Transaction Addenda.

5.1.4 In addition to the payment of the Rental by the Concessionaire, the Concessionaire shall effect payment to ACSA of a separate charge in respect of electricity consumption payable in respect of the Sites (if any) monthly in arrears.

5.2 Turnover Rental

5.2.1 The Concessionaire shall pay the Turnover Rental to ACSA for each particular month, monthly in arrears, less the Rental paid for that month,

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provided that if the Turnover Rental is less than the Rental, the Rental shall be paid.

- 5.2.2 On or before the 7th day of each month (commencing on the 7th day of the second month following the relevant Commencement Date), the Concessionaire shall:
- 5.2.2.1 deliver to ACSA a statement in respect of each Site, substantially in the prescribed form set out in Schedule 2 (Pro Forma Report) which reports shall include, amongst other things, each Site's Advertiser, the status of each Site (*ie.* sold or vacant), the Revenue achieved by the Concessionaire during the preceding month in respect of such Site and the amount of Turnover Rental due to ACSA in respect of such month;
- 5.2.2.2 effect payment to ACSA, simultaneously with the delivery of the aforementioned statements, of the Turnover Rental due for the preceding month, less the amount representing the Rental paid by the Concessionaire to ACSA in respect of such month in terms of the provisions of clause 5.1.1. In this regard, the terms of payment described in clauses 5.1.2.2 and 5.1.2.3 shall apply, the necessary changes having been made.
- 5.2.3 A failure to submit any statement referred to in clause 5.2.2.1 shall constitute a material breach of this Agreement and the Concessionaire hereby warrants to ACSA that the information submitted to ACSA in terms of clause 5.2.2.1 shall be true and correct in all material respects.
- 5.2.4 For the avoidance of doubt, the Concessionaire shall not, under any circumstances, be entitled to net off Revenue received in respect of one Site against the Revenue received in respect of another Site.

6. Accounting provisions

- 6.1 For the duration of this Agreement and for a period of 1 year thereafter, the Concessionaire shall keep and retain at its registered office comprehensive accounting records materially complying with generally accepted accounting principles in use in the Republic of South Africa together with all books of

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original entry and source documents relating to all billings achieved by the Concessionaire from each Site.

- 6.2 Furthermore, the Concessionaire shall, for the term of this Agreement and on an annual basis, submit to ACSA an Audited Statement in respect of each Advertising Site by no later than 31 December of each year.
- 6.3 Each Audited Statement must certify, in respect of the preceding year (alternatively, the period since the Commencement Date or the period since the submission of the last Audited Statement, as the case may be):
- 6.3.1 the total income received by the Concessionaire for the Sites from the Advertisers;
 - 6.3.2 the percentage and amount of agency commission collected from the aforesaid income;
 - 6.3.3 the amount of Turnover Rental actually paid to ACSA during the course of the relevant period; and
 - 6.3.4 the amount of Turnover Rental that should have been paid to ACSA (if any).
- 6.4 Any difference between the Turnover Rental due and the Turnover Rental actually paid to ACSA shall be either:
- 6.4.1 paid by the Concessionaire if due by it simultaneously with the delivery of the relevant Audited Statement; or
 - 6.4.2 or repaid (as the case may be) by ACSA within 14 days of receiving the Audited Statement.
- 6.5 Each Audited Statement shall be on the letterhead of the Auditor, addressed to ACSA and substantially in the form contained in Schedule 3 (draft Audited Statement).
- 6.6 In the event that the Concessionaire fails, for any reason whatsoever to deliver an Audited Statement on due date, ACSA shall have the right to appoint its own auditor, at the cost of the Concessionaire, to produce the required Audited Statement.

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- 6.7 In the absence of patent or manifest error, the contents of each Audited Statement shall be final and binding upon the Parties.
- 6.8 ACSA and the Auditor shall, at all times and on reasonable notice to the Concessionaire, be granted full and unfettered access to the Concessionaire's accounting records, books and source documents and shall be able to inspect them, take extracts from them and/or make copies of them for the purposes of establishing due compliance by the Concessionaire with its obligations in terms of this clause 6.

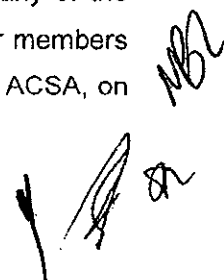
7. Security deposit

- 7.1 The Concessionaire shall, on the Signature Date, deliver to ACSA security acceptable to ACSA in its reasonable discretion, for the due and punctual fulfilment of all obligations and the due and punctual payment of all sums of money which may at any time be or become owing by the Concessionaire to ACSA in terms of this Agreement. Such security deposit shall be in an amount of not less than the amount stipulated in each Transaction Addendum (which amount shall, in respect of each Site, be not less than the equivalent of 3 months Rental payable during the final 3 months of the period during which the Concession Right in respect of such Site subsists). The security deposit shall, at the ACSA's election (which shall be communicated in writing to the Concessionaire), take the form of:
- 7.1.1 a cash deposit; or
- 7.1.2 an irrevocable payment guarantee issued by a reputable financial institution acceptable to ACSA substantially in the form contained in Schedule 4 hereto (draft payment guarantee in lieu of security).
- 7.2 Should a payment guarantee (as required in terms of clause 7.1.2) not be furnished by the Concessionaire to ACSA on the Signature Date or should the financial institution that issued the payment guarantee withdraw therefrom, then the Concessionaire shall furnish ACSA with the cash deposit (as contemplated in clause 7.1.1) within 7 days of receiving written demand from ACSA to do so. In order for ACSA to monitor compliance by the Concessionaire of the provisions of this clause 7.2, the Concessionaire shall do all things necessary in order to ensure that the financial institution advise

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ACSA in writing of any withdrawal of, cancellation of or amendment to the payment guarantee.

- 7.3 ACSA shall have the right to apply the whole or any part of such security deposit towards the payment of any amount or liability in respect of which the Concessionaire may become liable to ACSA under this Agreement. ACSA shall notify the Concessionaire in writing of any utilisation of such security deposit by it for such purpose and forthwith upon receipt of such notification by the Concessionaire, the Concessionaire shall be obliged to effect payment in cash to ACSA of such amount as may be required to reinstate the security deposit to the amount contemplated in clause 7.1.
- 7.4 Notwithstanding any provision of clause 7, ACSA may, in its sole and absolute discretion, reduce the amount of the security deposit during subsequent years of the Agreement. In exercising its discretion, ACSA shall have regard, amongst other things, to the payment profile of the Concessionaire and the Concessionaire's prompt payment of the Rental, Turnover Rental and other amounts during the term of this Agreement. Any such reduction of the security deposit shall be communicated to the Concessionaire in writing where after and to the extent required, ACSA shall release to the Concessionaire the relevant amount of the security deposit.
- 7.5 The Concessionaire shall not be entitled to set-off against the security deposit any amount payable by it in terms of this Agreement.
- 7.6 The security deposit shall be retained by ACSA until the discharge by the Concessionaire of all its obligations to ACSA under this Agreement where after the security deposit, or any balance still remaining, shall be released by ACSA to the Concessionaire.
- 7.7 Should the various amounts required to calculate the amount of the security deposit not be known or be uncertain, then ACSA's auditor shall determine the amount for which the security deposit is to be provided, and its decision shall be final and binding on the Parties.
- 7.8 Furthermore, should the Concessionaire be a first time trader at any of the Airports, the Concessionaire shall procure that the shareholders or members of the Concessionaire (as the case may be) execute and deliver to ACSA, on



or prior to the Signature Date, the deed of suretyship attached hereto as Schedule 5 (deed of suretyship) as further security for the due and punctual payment by the Concessionaire of all monies which are due and owing by the Concessionaire to ACSA from time to time in terms of this Agreement which suretyship shall lapse on the 3rd anniversary of the Signature Date save in respect of any liabilities which may arise after the Signature Date but prior to the 3rd anniversary of the Signature Date.

- 7.9 Notwithstanding that the Concessionaire shall furnish ACSA with the security deposit as contemplated in this clause, ACSA reserves the right to require the Concessionaire to procure further security for its obligations under the Agreement as it deems appropriate in the circumstances.

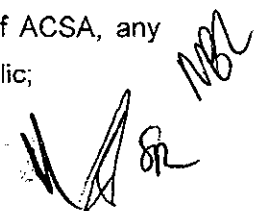
8. The Concessionaire's obligations

- 8.1 The Concessionaire hereby undertakes:

- 8.1.1 to keep, at all times, each Site (including the area immediately surrounding such Site) and Advertisements in a clean and tidy condition. Should any Site or Advertisement, in the sole opinion of ACSA, require cleaning, such work shall promptly be attended to by the Concessionaire and at its cost within 24 hours after receipt by it of written notification by ACSA to do so;
- 8.1.2 that should the Site or any portion thereof be damaged or destroyed at any time during the period of this Agreement, it shall, within a reasonable period of time and at its own cost and expense, repair each Site (or any portion thereof) so that after such repairing, the Site shall be substantially in the same condition as it was prior to such damage or destruction;
- 8.1.3 not to insert or drive nails, screws or other objects or materials whatsoever in or upon the walls or any part of the buildings at the Airports without the prior written consent of ACSA being obtained, nor shall the Concessionaire make any writing or scratching in or upon or otherwise deface any portion of the Airport and the Concessionaire shall take all steps necessary to prevent or remove such writing, scratching or defacement;

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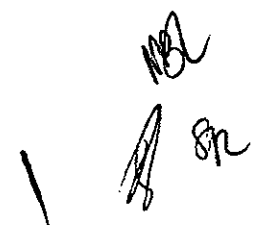
- 8.1.4 not to display any Advertisement which does not meet the code of conduct stipulated by the Advertising Standards Authority from time to time and should the Concessionaire be in breach of this clause 8.1.4, it will remove such Advertisement within 24 hours after receipt by it of written notification to that effect from ACSA or the Advertising Standards Authority;
- 8.1.5 notwithstanding the provisions of clause 8.1.4, not to display any Advertisement which, in the sole opinion of ACSA (which opinion is not subject to arbitration in terms of clause 20 (dispute resolution)), is unsightly or of an objectionable nature, and the Concessionaire shall remove such Advertisement within 24 hours after receipt by it of written notification to that effect from ACSA;
- 8.1.6 to the extent that it is the owner of the Site, to adequately insure such Site and keep it insured against usual third party risks;
- 8.1.7 not to remove any Site during the term of the Agreement unless it is removed for the purposes of repair as contemplated in clause 8.1.2 or for the purposes of relocation as contemplated in clause 16 (relocation). In the case of repair, the Concessionaire is required to obtain the written consent of ACSA before such removal takes place;
- 8.1.8 to obey and perform all the requirements of any relevant statute, statutory regulation, by-law, standards and all orders, regulations and notices of any competent authority and to keep ACSA indemnified against all liabilities, claims, costs and expenses of whatsoever nature in respect of the Sites or any Advertisements displayed thereon;
- 8.1.9 to submit, within 30 days of the Commencement Date, and thereafter on an annual basis, a business plan and marketing plan relevant to the Sites allocated to the Concessionaire in terms of this Agreement which plan must include the anticipated Revenue to be generated from each Site;
- 8.1.10 to conduct its business in a manner which ensures that such use and conduct do not interfere with, cause any disturbance or nuisance of whatsoever nature to, or affect the rights and privileges of ACSA, any other tenant at the Airport or any member of the general public;

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- 8.1.11 to submit to ACSA all information in writing required by ACSA for the purpose of conducting an annual review of the Concessionaire's performance in terms of progress made with regard to the business and marketing plans submitted, as well as its broad base black economic empowerment commitments as required under clause 11 in accordance with applicable policies, laws and regulations;
- 8.1.12 to obey such rules relating to safety and security as may be imposed by ACSA from time to time, in its absolute discretion, provided ACSA has notified the Concessionaire in writing of such imposition;
- 8.1.13 to pay for electricity at the average metered rates and as billed by ACSA and, for purposes hereof, the provisions of clause 10.3 shall apply, the necessary changes having been made;
- 8.1.14 to replace, as required and at its cost, all fluorescent tubes, bulbs, starters, ballasts and any other illumination and/or mechanical equipment associated with the Sites;
- 8.1.15 to subscribe to and comply with the provisions of the Handbook and the Concessionaire shall ensure that it is familiar with the provisions thereof. The Parties agree that in the event of any conflict arising or ambiguity existing between this Agreement and the Handbook, the provisions of this Agreement will prevail; and
- 8.1.16 to actively promote that Advertiser's tenure.
- 8.2 The Concessionaire, furthermore undertakes in respect of any Site vacancy, to ensure that no Sites shall remain vacant and that filler adverts are promptly put in place within 48 hours of a Site becoming vacant. A vacancy level on a Site of more than 15% over a period of 3 consecutive months, will be considered a material breach of this Agreement. For purposes hereof, "vacancy level" shall mean that no Advertiser has been secured for the particular Site and no filler adverts have been provided.
- 8.3 Notwithstanding the provisions of clause 8.2 above and without prejudice to any other rights ACSA may have, where a Site is void of any graphic material for a period of 30 days or more, a penalty shall be payable by the

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Concessionaire to ACSA in an amount of 10% of the Rental in respect of the Site and thereafter, on a pro rata basis until such vacancy is filled.

- 8.4 The Concessionaire confirms that its right to do business at the Airports and its conduct thereon are, at all times, subject to applicable legislation, by-laws and regulations of the Republic of South Africa. In this regard, the Concessionaire is solely responsible for and undertakes to obtain all approvals, permissions and/or consents from the relevant authorities which are necessary for the erection of the Sites and for the display of Advertisements (including, without limitation, any municipal approval, and the approval of the South African National Roads Authority and any applicable environmental assessment investigation, where applicable) and the Concessionaire, accordingly, indemnifies ACSA against all liabilities, claims, costs and expenses of whatsoever nature in respect hereof.
- 8.5 The Concessionaire shall not effect any alteration, addition or improvement or any fitting to a Site without the prior written consent of ACSA. Where alterations, additions or improvements are required, detailed plans outlining such alterations, additions or improvements must accompany the written application of the Concessionaire and the provisions of clause 2.4 shall apply, the necessary changes having been made. All such alterations, additions, improvements or fittings shall be for the sole account of the Concessionaire and may only be effected once ACSA has granted its written approval thereof.
- 8.6 Subject to the provisions of clause 18, the Concessionaire shall, after the expiration or earlier termination of the Agreement, remove all Advertisements from the Sites and, where it owns the Sites, the Sites installed and/or erected at its instance and any costs attendant on removing such Advertisements and Sites and/or repairing any damage caused to the Site and/or the Airports as a result of such removal, shall be paid by the Concessionaire and ACSA shall attract no liability in this regard. Should the Concessionaire fail, after the expiration of a 30 day period, to remove such Advertisements and/or Sites and/or repair any damage caused to the Sites and/or the Airports as a result of such removal, ACSA shall be entitled to effect such removal and/or repairs and the costs incurred by ACSA in effecting same shall be paid by the Concessionaire to ACSA on demand.
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- 8.7 All material or artwork production in respect of any Advertisements, additional services required and/or utilities consumed by the Concessionaire in respect of any Site shall be for the sole account of and be discharged in full by the Concessionaire.
- 8.8 Should any complaint be received in respect of any Advertisement which complainant seeks to hold ACSA liable in any capacity in respect of the Advertisement, ACSA shall inform the Concessionaire and, in its sole and unfettered discretion:
- 8.8.1 immediately remove the offending Advertisement; and/or
- 8.8.2 afford the Concessionaire the opportunity to dispute the complaint on condition that:
- 8.8.2.1 ACSA is indemnified in writing on terms and security to its satisfaction in respect of the claim, damages and/or costs, including its own legal costs on an attorney and own client scale; and
- 8.8.2.2 the Concessionaire allows ACSA full and unfettered access to all pleadings, affidavits, witnesses, information, developments, legal opinions and all legal advice received by the Concessionaire and the Concessionaire hereby renounces all claims of legal privilege in this regard.
- 8.9 Notwithstanding any action taken as set out above, the Concessionaire shall remain liable for all payments and expenses set out in the Agreement and shall furthermore be liable in respect of any penalties which may be levied by the Advertising Complaints Authority.
- 8.10 It is recorded that in carrying out its advertising business, the Concessionaire may utilise technology (electronic or otherwise). To the extent that such technology is owned by the Concessionaire, the Concessionaire hereby offers to ACSA for purchase such technology. ACSA may, at any time during the term of this Agreement, exercise such option to purchase the technology by way of written notice to the Concessionaire. The purchase price in respect of the technology shall be the fair market value calculated at the time the option is exercised. Where the Parties cannot agree on the fair market value of the technology within a period of 20 days from the date of exercise of the option,

the purchase price shall be determined by an Auditor agreed to by the Parties failing which the Auditor shall be nominated by the president for the time being of the South African Institute of Chartered Accountants or its successor-in-title. In the absence of patent or manifest error, the determination of the fair market value of the technology by the Auditor shall be final and binding upon the Parties. Within 10 days of either agreement on or determination of the purchase price for the technology, ACSA shall pay the Concessionaire the purchase price and the Concessionaire shall do all things necessary, including the signing of all necessary documents, in order to transfer ownership of the technology to ACSA.

- 8.11 To the extent that the Concessionaire does not own the technology contemplated in clause 8.10, the Concessionaire shall use its reasonable endeavours in order to procure that the owner sells the technology to ACSA on the same terms as contained in clause 8.10, the necessary changes having been made.

9. Access to the Sites

- 9.1 To the extent that any one or more of the Sites is situated on the airside of any Airport, the Concessionaire shall be required to conclude an Airside Service Provider Concession Agreement and the Concessionaire shall strictly abide by the rules and regulations contained therein.
- 9.2 Notwithstanding the above, access to the Site/s will only be exercised by the Concessionaire during such period(s) of time as ACSA has given its prior written approval for. In exercising its access to each of the Sites, the Concessionaire shall not interfere with the flow of passengers and visitors to the Airports nor will its access in any way impact negatively on the Airports' overall operational integrity.

10. Electrification

- 10.1 Electrification (if applicable) of any Site not electrified as at the Commencement Date may only be undertaken with the prior written approval of ACSA.
- 10.2 Any electrical cables, wires and the like (inclusive of labour) to bring electricity to a Site will be installed by ACSA (or by a contractor approved by ACSA) at

the cost of the Concessionaire which undertakes to pay such costs on demand.

- 10.3 The Concessionaire will be responsible to pay for all charges for the consumption of any electricity, calculated at the average metered rates and as billed by ACSA.

11. Broad-based black economic empowerment

- 11.1 It is recorded that ACSA and the Concessionaire are each committed to the principles contained in the Codes of Good Practice ("the Codes") published by the Minister of Trade and Industry in the Government Gazette from time to time pursuant to the Broad-Based Black Economic Empowerment Act, 53 of 2003, ("the BEE Act").
- 11.2 Accordingly, the Concessionaire shall take meaningful steps to promote all 7 elements of the Codes, namely employment equity, skills development, preferential procurement, enterprise development, socio-economic development, ownership and management control. Specifically, the Concessionaire shall ensure that in the operation of its business, it undertakes meaningful and sustainable skills transfer to black natural persons as contemplated in the Codes.
- 11.3 The Concessionaire undertakes to deliver to ACSA:
- 11.3.1 on the Signature Date, a written memorandum (relevant to the period of this Agreement) which outlines what steps the Concessionaire envisages taking in order to achieve meaningful broad-based black economic empowerment as espoused in the Codes, especially the elements contemplated in clause 11.2, against which memorandum the Concessionaire's progress will be measured; and
- 11.3.2 by no later than 31 December of each year, annual progress reports setting out the goals reached in its broad-based black economic empowerment programs and provide ACSA with details of the steps to be taken during the ensuing year in furtherance of this commitment.

12. Change of ownership

- 12.1 The Concessionaire shall not, without ACSA's prior written approval:

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- 12.1.1 cede, assign, transfer, alienate or otherwise dispose of any of its rights and/or obligations under this Agreement, or pledge or hypothecate its right, title and interest in this Agreement;
- 12.1.2 give up, either for a definite period or at all, occupation or possession of the Sites or any part thereof to any person or permit any person, whether as licensee, sub-tenant, agent, occupier, custodian or otherwise, to take possession or occupation of the Sites, or any part thereof, either for a definite period or at all;
- 12.1.3 alienate its business or any part thereof; or
- 12.1.4 change its trading name.
- 12.2 If the Concessionaire is a company whose shares are not listed on a recognised stock exchange:
 - 12.2.1 none of the shares in the Concessionaire shall be issued, transferred or allocated to any person after the Signature Date or the Commencement Date (which ever is the earlier);
 - 12.2.2 no further shares or debentures shall be issued by the Concessionaire; and
 - 12.2.3 no management agreement that will influence the management and/or control of the Concessionaire shall be entered into,

without the prior written approval of ACSA.

13. Claim by the Concessionaire

Where the Concessionaire intends to make any claim or other compensation pursuant to or relating to this Agreement and from whatsoever cause arising, it shall give notice of its intention to ACSA within 30 days after the event giving rise to the claim. Such claims shall be accompanied by such documentation and contemporaneous records as are appropriate to substantiate the claim. Failure by the Concessionaire to comply with the requirement of this clause 13 will result in the Concessionaire not being entitled to any compensation or other relief in respect of the relevant cause.

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14. Warranties, representations and undertakings by the Concessionaire

The Concessionaire warrants, represents and undertakes to ACSA that:

- 14.1 it is and shall remain validly incorporated in terms of the corporate laws applicable in the Republic of South Africa;
- 14.2 it has and shall continue to have the necessary legal capacity to enter into and perform each of its obligations under this Agreement and has taken all necessary corporate and/or internal action to authorise the execution and performance of this Agreement;
- 14.3 the execution of this Agreement and performance by the Concessionaire of its obligations hereunder does not and shall not:
 - 14.3.1 contravene any law or regulation to which the Concessionaire is subject; or
 - 14.3.2 contravene any provision of the Concessionaire's founding documents; or
 - 14.3.3 conflict with, or result in a breach of any of the terms of, or constitute a default under any agreement or other instrument to which the Concessionaire is a party or subject or by which it or any of its assets are bound;
- 14.4 the provisions of this Agreement are and shall remain legally binding on the Concessionaire and the execution and performance of all rights and obligations imposed on the Concessionaire pursuant to this Agreement constitute legal, valid, binding and enforceable rights and obligations of the Concessionaire.

15. Liability and insurance

- 15.1 The Concessionaire shall be responsible for (and hereby indemnifies ACSA against) any expense, cost, claim, action, proceeding, damages or liability (including any cost or expense incurred by ACSA in enforcing this indemnity) in respect of any personal or fatal injuries, death, loss, damage to any property or person (including property of ACSA, its employees, agents, contractors, customers or invitees) arising out of or incidental to or in

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connection with the performance, acts or omissions of the Concessionaire, unless such is proved to have arisen from the wilful misconduct or gross negligence of ACSA.

15.2 The Concessionaire shall effect and maintain with reputable insurers or underwriters a policy(ies) of insurance in the name of the Concessionaire in terms satisfactory to ACSA:

15.2.1 in respect of all matters covered by the provisions of clause 15.1 hereof (including the indemnity contained therein) for an amount of not less than that recorded in the Transaction Addenda in respect of any one claim and an amount of not less than that recorded in the Transaction Addenda for all claims in the same calendar year;

15.2.2 in respect of such Sites owned by the Concessionaire, to the full replacement value thereof:

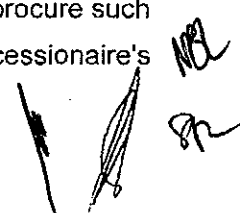
15.2.2.1 against such risk of loss or damage by fire, riot, flood, civil disturbance, earthquake and such other causes (whether or not similar to the foregoing) against which property of such nature is ordinarily insured otherwise than as contemplated in this clause; and

15.2.2.2 against risk of loss or damage by political riot, malicious damage and similar causes to the extent that such insurance is commercially available.

15.3 The Concessionaire shall produce on written demand for inspection by ACSA at any time the said policy(ies) of insurance contemplated in clause 15.2 and proof that the premium in respect thereof has been paid.

15.4 The Concessionaire shall use its best endeavours to arrange to have ACSA's interests noted against the insurance policy(ies) referred to in clause 15.2 above as well as against any renewal thereof.

15.5 If the Concessionaire fails to secure any insurance as provided for in clause 15.2 or fails to produce proof of the relevant premiums having been paid by it on due date or fails to pay such premiums, then ACSA shall, without prejudice to any of its rights under this Agreement, be entitled to procure such insurance and/or effect payment of such premiums on the Concessionaire's

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behalf and to recover the cost of so doing from the Concessionaire on demand.

15.6 ACSA shall not, under any circumstances, be liable to the Concessionaire, its employees, agents, contractors, customers, invitees or any other person or legal entity:

15.6.1 for any loss or damage which may be sustained in or upon the Airport and/or the Sites caused by, or as a result of, any theft, burglary, pillage or similar cause, notwithstanding that ACSA will provide security guards and/or night watchmen at the Airport; and/or

15.6.2 for any accident, injury, loss, loss of life or damage (whether direct or indirect, consequential or otherwise) whatsoever, which may be sustained in or upon the Airport and/or the Sites caused to any of them or their property from whatsoever cause arising and without limiting the generality of the foregoing, any failure or defect in the Airport through or while upon or while using any portion of the Airport howsoever such accident, loss of life or damage may be caused (save and to the extent caused by the wilful misconduct or gross negligence of ACSA).

15.7 The Concessionaire, its employees, agents, contractors, customers or invitees shall not do or omit to do anything, or allow anything to be done which would or may constitute a contravention of the terms of any insurance policy held from time to time by ACSA in respect of the Airports or any building thereon or which may increase the insurance premium. Without prejudice to any other rights or remedies which ACSA may have as a result of any breach by the Concessionaire of this clause 15.7, ACSA may recover from the Concessionaire the full amount of any increase in insurance premiums in respect of the Airports, on demand. ACSA's insurance policy is available for inspection by the Concessionaire and the Concessionaire shall acquaint itself with the terms thereof.

16. Relocation

16.1 Should ACSA, in its sole and absolute discretion, consider it necessary for reasons of the development and/or upgrading of the Airport and/or for the operational requirements of the Airport and, as a result thereof, requires any

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of the Sites to be removed, it shall give the Concessionaire 30 days written notice of its intention to do so.

16.2 ACSA shall, in consultation with the Concessionaire, use its best endeavours to offer the Concessionaire alternative Sites at a comparable and no less advantageous location.

16.3 If, within a period of 30 days from the date on which the ACSA issues the notice referred to in clause 16.1:

16.3.1 the Parties are unable to agree on a new location for the Site; or

16.3.2 the Concessionaire refuses, on written notice addressed to ACSA, to accept the alternative Site offered by ACSA,

such dispute shall not be referred for resolution pursuant to clause 20 (dispute resolution) and the Concession Right pertaining to the effected Site shall automatically terminate with effect from the expiry of the 30 day period. All arrear obligations owing by the Parties to each other as at the date of such termination shall remain extant and neither Party shall have any claim against the other arising from or relating to such termination. Such termination of the Concession Right shall not affect any Concession Rights which the Concessionaire may be vested with in respect of any other Site.

16.4 Where no written notice is received by ACSA from the Concessionaire as contemplated in clause 16.3.2 within the 30 day period, the Concessionaire shall be deemed to have consented to the relocation of the Site/s.

16.5 In the case of relocation of any of the Sites pursuant to this clause 16:

16.5.1 the Concessionaire undertakes to furnish ACSA with the actual documented and invoiced costs pertaining to relocation of the Site no later than 60 days after relocation of the Site/s to a new location;

16.5.2 the actual documented and invoiced costs of so moving the Site/s will be shared in equal portions by the Parties, save the costs of ensuring that the new Site is supplied with electricity and restoring of the old Site to its original condition will be for the account of ACSA. For the avoidance of doubt, the Concessionaire shall still be liable for all charges in respect of electricity consumption at the new Site; and



16.5.3 the obligations of the Parties in terms of the provisions of this Agreement shall be suspended from the time the Site is removed until such time as the Site is relocated, installed and operational.

16.6 The Concessionaire shall have no claim against ACSA emanating from ACSA's decision to terminate the applicable Concession Rights pertaining to the effected Site or to relocate a Site to a new location.

17. Confidentiality

17.1 Each Party undertakes to keep confidential and not to disclose to any person except with the prior written consent of the other Party:

17.1.1 the details of this Agreement, the details of the negotiations leading to this Agreement and the information handed over to such Party during course of negotiations, as well as the details of all transactions or agreements contemplated in this Agreement; and

17.1.2 all information relating to the business or the operations and affairs of Parties (together "**Confidential Information**").

17.2 The Parties agree to keep all Confidential Information confidential and disclose it only to their officers, directors, employees, consultants and professional advisers who:

17.2.1 have a need to know (and then only to the extent that each such person has a need to know);

17.2.2 are aware that the Confidential Information shall be kept confidential;

17.2.3 are aware of the disclosing Party's undertaking in relation to such information in terms of this Agreement; and

17.2.4 have been directed by the disclosing Party to keep the Confidential Information confidential and have undertaken to keep the Confidential Information confidential.

17.3 The obligations of the Parties in relation to the maintenance and non-disclosure of Confidential Information in terms of this Agreement do not extend to information that:

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- 17.3.1 is disclosed to the receiving Party in terms of this Agreement but at the time of such disclosure such information is known to be in the lawful possession or control of that Party and not subject to an obligation of confidentiality;
- 17.3.2 is or becomes public knowledge, otherwise than pursuant to a breach this Agreement by the Party who discloses such Confidential Information; and
- 17.3.3 is required by the provisions of any law, statute or regulation, or during any court proceedings, or by the rules or regulations of any recognised stock exchange to be disclosed and subject to the provisions of clause 17.2, the Party required to make the disclosure has taken all reasonable steps to oppose or prevent the disclosure of and to limit, as far reasonably possible, the extent of such disclosure and has consulted with the other Party prior to making such disclosure.
- 17.4 Before any announcement or statement is made as required by law, statute or regulation, or the rules or regulations of any recognised stock exchange, the disclosing Party will provide the other Party with a written draft of the proposed announcement at least 24 hours before the proposed time of the announcement and the Parties will use their best endeavours to agree wording and timing of all public announcements and statements prior to their release. Copies of any public announcement or statement shall be given to each other in the most expeditious manner reasonably available.
- 17.5 The terms of this clause shall survive the termination of this Agreement.

18. Consequence of Termination

On termination of this Agreement for any reason whatsoever and without prejudice to any right either Party may have against the other arising from termination of this Agreement, the following provisions shall apply:

- 18.1 The Concessionaire agrees, in favour of ACSA that, notwithstanding anything to the contrary herein contained, it shall not dispose of ownership of the Sites and any associated electrical apparatus (to the extent that ACSA is not the owner) unless ACSA has first been offered, in writing and with reasonable notice, an opportunity to purchase the Sites and associated electrical

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apparatus and has declined to do so in writing, within a reasonable period after receipt of the said notice.

18.2 The offer contemplated in clause 18.1 in respect of Sites shall be reasonable and ACSA shall be placed in possession of such Sites with effect from the relevant Termination Date.

18.3 In the event of the offer contemplated in clause 18.1 being accepted by ACSA and against discharge of the purchase price of the Sites, the Concessionaire shall deliver the Sites to ACSA by passing ownership of and risks and benefit of the Sites to ACSA.

19. Breach/cancellation

19.1 In the event that:

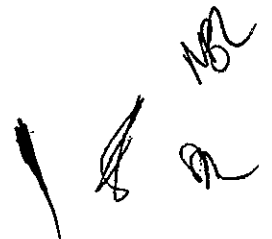
19.1.1 the Concessionaire fails to timeously lodge the security deposit with ACSA or fails to timeously lodge the additional security with ACSA as provided for in clause 7;

19.1.2 the Concessionaire fails to effect payment of the Rental or the Turnover Rental or other amount due by it in terms of this Agreement on due date and fails to remedy such breach within 7 days of having been required in writing to do so;

19.1.3 the Concessionaire breaches any of the other provisions of this Agreement (irrespective of whether such breach is material) and fails to remedy such breach within 14 days of having been notified in writing to do so;

19.1.4 the Concessionaire is liquidated, placed under judicial management or is sequestrated (whether provisionally or finally and whether voluntary or compulsorily);

19.1.5 the Concessionaire effects a general compromise with its creditors or any other arrangement with its creditors, necessitated by the inability of the Concessionaire to pay its debts;

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- 19.1.6 the Concessionaire suffers any judgment to be made or granted against it and fail to take steps to set aside or rescind same within 30 days of same having been so made or granted against it;
- 19.1.7 the Concessionaire disposes of its business or the whole or greater part of the assets comprising the business without ACSA's prior written consent to such disposal having been obtained and irrespective of the cause or method of such disposal;
- 19.1.8 the Concessionaire undergoes any change in the identity of any of its shareholders, members or partners without the prior written consent of ACSA to such change having been obtained and irrespective of the cause of such change; and/or
- 19.1.9 the Concessionaire defaults in respect of any other agreement entered into by it with ACSA which results in ACSA having a right to cancel such agreement;
- 19.1.10 the Concessionaire fails or refuse to execute a lawful instruction of ACSA or, in the opinion of ACSA acts contrary to the provision(s) of any law applicable to the Airport or the management rules or directive issued by ACSA from time to time;

ACSA shall be entitled, but not obliged notwithstanding any previous waiver or anything to the contrary herein provided, to either:

- 19.1.11 cancel this Agreement forthwith, eject the Concessionaire from the Airports and recover from the Concessionaire any damages suffered by ACSA as well as all costs for the removal of Sites (where applicable) and those which became due for payment by the Concessionaire hereunder prior to the date of such cancellation; or
 - 19.1.12 cancel this Agreement and permit the Concessionaire to remain in occupation at the Airports on a monthly basis, on the basis that the tenancy will be terminable by ACSA (but not by the Concessionaire) on 1 calendar month's written notice but subject otherwise to all the terms and conditions of this Agreement, changed as necessary.
- 19.2 Notwithstanding anything to the contrary provided in this Agreement, should:

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- 19.2.1 this Agreement be rendered invalid and unenforceable by any order of court or applicable statute or regulation; or
- 19.2.2 the Airside Service Provider Concession Agreement expire, or be terminated for an reason whatsoever or not, for any reason whatsoever, be entered into by the Concessionaire to the reasonable satisfaction of ACSA; or
- 19.2.3 ACSA have given to the Concessionaire any notice in terms of clauses 19.1.2 or 19.1.3 to remedy any breach on 2 occasions in any period for 12 consecutive calendar months, and subsequent thereto but in the same period, the Concessionaire commit a further breach of any terms of this Agreement, whether such breach goes to the root of this Agreement or not,

then there shall be no obligation on the part of ACSA to give notice to the Concessionaire to remedy such subsequent breach, as provided for in clauses 19.1.2 or 19.1.3 and ACSA shall be entitled, notwithstanding any previous waiver or anything to the contrary in this Agreement provided, to immediately avail itself of its rights under clause 19.1.11 and 19.1.12 without first giving such notice to the Concessionaire.

- 19.3 In the event of ACSA instructing its attorneys to take legal action to enforce any of its rights under this Agreement and ACSA being successful, the Concessionaire shall pay to ACSA the costs so incurred, calculated on attorney and own client scale. ACSA shall have the right to recover such costs (including collection charges) from the security deposit given by the Concessionaire in terms of clause 7 of this Agreement.
- 19.4 Should ACSA cancel this Agreement and the Concessionaire dispute ACSA's right to cancel:
 - 19.4.1 the Concessionaire shall, pending the determination of such dispute, continue to pay to ACSA all amounts payable hereunder on or before the date or dates on which such moneys would have been due but for the cancellation, and ACSA shall be entitled to accept and recover such payments and the acceptance thereof shall be without prejudice to and

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shall not in any way whatsoever affect ACSA's right to cancellation then in dispute;

19.4.2 the provisions of this Agreement, shall prevail as if there had not been a cancellation pending the determination of such dispute;

19.4.3 ACSA's right to claim damages suffered by it as a result of the Concessionaire's breach of this Agreement, or holding over of this Agreement, will not be affected.

19.5 The Concessionaire shall have no right to cancel this Agreement and shall only have a right to claim against ACSA as provided for in terms of clause 13 (claim by the Concessionaire).

20. **Dispute resolution**

20.1 Should any disputes or differences whatsoever arise, at any time, between the Parties concerning this Agreement or its construction or effect or as to the rights, duties and/or liabilities of the Parties or any of them under or by virtue of this Agreement or otherwise or as to any other matter in any way arising out of the subject matter of this Agreement, then either Party:

20.1.1 may declare a dispute by delivering the details of the dispute to the other Party; and

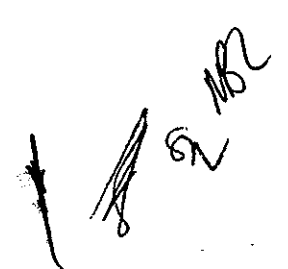
20.1.2 request that the Parties, without legal representation, refer the dispute to mediation by a single mediator at a place and time to be determined by him,

provided that ACSA may, at its sole option, not refer a dispute to mediation but may institute any action or application in the Magistrate's Court having jurisdiction in respect of the Concessionaire notwithstanding that the amount in issue may exceed the jurisdiction of the Magistrate's Court, alternatively in the High Court of South Africa.

20.2 Should the dispute proceed to mediation then the mediator shall be selected by agreement between the Parties, or, failing agreement within 14 days of any Party calling for such agreement, nominated on the application of any Party by the president for the time being of the Arbitration Foundation of Southern Africa, or its successor-in-title.

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- 20.3 The mediator shall, at his entire discretion, determine whether the reference to him shall be made in the form of written and/or oral representations providing that, in making this determination, he shall consult the disputing Parties and be guided by their desires of the form in which the representations are to be made.
- 20.4 The mediator shall, within a reasonable period after receiving the representations, express in writing an opinion on the matter and shall include his detailed reasons leading to the opinion.
- 20.5 The mediator shall deliver, within a reasonable period of time, a copy of his opinion to both Parties.
- 20.6 The opinion so expressed by the mediator shall be final and binding on the Parties unless any Party within 30 days of the delivery of the opinion, notifies the other Party of its unwillingness to accept the opinion.
- 20.7 The costs of mediation shall be determined by the mediator and shall comprise:
- 20.7.1 the mediator's expenses; and
- 20.7.2 a fee which shall have been previously agreed by the parties. The costs shall be borne equally by the Parties to the dispute and shall be due and payable to the mediator on presentation to them of his written account.
- 20.8 Each Party shall bear the costs of any legal advice that Party may have obtained in connection with the mediation.
- 20.9 The expressed opinion of the mediator shall not prejudice the rights of the Parties in any manner whatsoever in the event of their proceeding to arbitration.
- 20.10 Any evidence or representations given by any representative of the Parties in accordance with any provision of this Agreement prior to or during the mediation shall not disqualify him from being called as a witness and giving evidence before the arbitrator on any matter whatsoever relevant to the dispute or difference so referred to the arbitrator.

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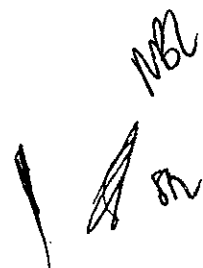
- 20.11 If either Party to this Agreement is unwilling to accept the opinion expressed by the mediator, then either Party may, by written notice delivered to the other, within 30 days of the issue of the mediator's opinion, require that the dispute be referred to arbitration.
- 20.12 Such arbitrator shall be selected by agreement between the Parties, or, failing agreement within 14 days of any Party calling for such agreement, nominated on the application of either Party by the president for the time being of the Arbitration Foundation of Southern Africa, or its successor-in-title.
- 20.13 The arbitrator shall have power to open up, review and revise any certificate, opinion, decision, requisition or notice relating to all matters in dispute submitted to him and to determine all such matters in the same manner as if no such certificate, opinion, decision, requisition or notice had been issued. The arbitration shall be conducted in the English at a place agreed to by the Parties failing which at a place determined by the arbitrator.
- 20.14 Upon every or any such reference, the costs of and incidental to the reference and award shall be in the discretion of the arbitrator, who may determine the amount of the costs, and shall direct by whom and to whom and in what manner they shall be borne and paid.
- 20.15 The award of the arbitrator shall be final and binding on the Parties and a Party shall be entitled to apply to the courts to have such award made an order of court. Nothing in this clause shall prevent ACSA seeking urgent relief in the High Court of South Africa.
- 20.16 Save as set out in this clause, the arbitration shall be conducted in accordance with the Commercial Rules of the Arbitration Foundation of Southern Africa.

21. Miscellaneous matters

21.1 Postal address

- 21.1.1 For the purposes of giving any written notice in connection with this Agreement, the Parties choose the following addresses:

- 21.1.1.1 in the case of ACSA:

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address : The Maples
Riverwoods Office Park
24 Johnson Road
Bedfordview
2007

fax no : 011 453 9693

21.1.1.2 in the case of the Concessionaire:

address : 4TH Floor
Falconview Place
Constantia Office Park
Cnr 14th Ave and Hendrik Potgieter Road
Weltevreden Park
1709

fax no : 011 475 2992


21.1.1.3 The notice shall be deemed to have been duly given 14 days after posting, if posted by registered post to the Party's address in terms of this clause;

21.1.1.4 on delivery, if delivered to the Party's physical address in terms of either this clause or clause 21.2;

21.1.1.5 on despatch, if sent to the Party's then fax and confirmed by registered letter posted no later than the next business day.

21.1.2 Each Party may change that Party's address for this purpose to another postal address in the Republic of South Africa, by notice in writing to the other Party. No notice shall be necessary in respect of a new or changed fax number.

21.1.3 Notwithstanding anything to the contrary contained herein, a written notice or communication actually received by a Party shall be adequate notice or communication to the Party notwithstanding that the notice or communication was not sent to or delivered at the Party's chosen address under this clause or clause 21.2.

Y  MBL
SR

21.2 Address for service of legal documents

21.2.1 For the purposes of serving any documents in connection with any legal proceedings relating to this Agreement, (ie, their *domicilia citandi et executandi*), the Parties choose the following addresses:

21.2.1.1 in the case of ACSA:

The Maples
Riverwoods Office Park
24 Johnson Road
Bedfordview
2007

21.2.1.2 in the case of the Concessionaire:

4th Floor
Falconview Place
Constantia Office Park
Cnr 14th Ave and Hendrik Potgieter Road
Weltevreden Park
1709

21.2.2 A Party may change that Party's address for this purpose to another physical address in the Republic of South Africa, by notice in writing to the other Party.

21.3 Change of name

ACSA shall be entitled, at any time during the currency of this Agreement and in its sole and absolute discretion, to change the name of any one or more of the Airport.

21.4 Interest on arrears

In the event that any amount due and owing by the Concessionaire to ACSA under this Agreement is not paid promptly on due date, then such overdue amount shall, without prejudice to any other rights or remedies which may vest in ACSA, attract interest at the prime rate plus 3%, from due date to date of payment. For the purposes of this clause, "*prime rate*" means the publicly quoted basic rate of interest per annum from time to time (as certified by any general manager of Nedbank Limited, whose appointment it shall not be

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NBZ
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necessary to prove) at which Nedbank Limited lends on overdraft to its best corporate customers.

21.5 Cession

- 21.5.1 The Concessionaire shall not be entitled to cede, assign or otherwise transfer any of its rights or obligations under this Agreement without the prior written consent of ACSA.
- 21.5.2 ACSA is entitled to cede, assign or otherwise transfer any of rights and obligations under this Agreement on 30 days written notice to the Concessionaire.

21.6 Prohibition against deduction or set off

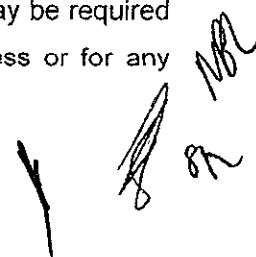
The Concessionaire shall not be entitled to deduct or set-off any amounts it may allege are owing to it by ACSA from whatsoever cause arising, from or against, such amounts as are due by the Concessionaire to ACSA in terms of this Agreement.

21.7 Entire contract

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.

21.8 No representations

- 21.8.1 No Party may rely on any representation which allegedly induced that Party to enter into this Agreement.
- 21.8.2 Specifically, ACSA does not warrant that:
- 21.8.2.1 the Sites will, at the Commencement Date, comply with any rules, regulations or requirements or any local authority applicable thereto and the affixing of Advertisements thereon; and
- 21.8.2.2 the Concessionaire shall be granted any licence, consent or permit or any renewal thereof from any lawful authority as may be required in order for the Concessionaire to operate its business or for any



change in respect of the use of the Sites or a change of any specifications which may be required by the Concessionaire.

21.9 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.

21.10 Indulgences

No indulgences, leniency or extension of time which ACSA may grant or show to the Concessionaire shall, in any way, prejudice ACSA or preclude ACSA from exercising any of its rights in the future.

21.11 Law to apply

This Agreement and all matters or disputes arising herefrom or incidental hereto shall be governed and construed in accordance with the laws of the Republic of South Africa.

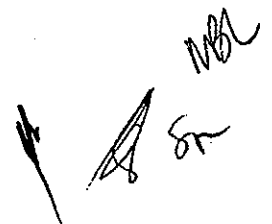
21.12 Severability

Any provision in this Agreement which is or may become illegal, invalid or unenforceable shall be treated *pro non scripto* and severed from the balance of the Agreement without invalidating the remaining provisions of the Agreement or affecting the validity or enforceability of such remaining provisions.

21.13 Consent not to be unreasonably withheld

Wherever this Agreement provides that a Party's consent is required for the performance of, or omission to perform, any act by the other Party and that the consent shall not be unreasonably withheld:

- 21.13.1 the onus shall be on the Party seeking the consent to prove that the consent should be given and that Party shall furnish to the other Party all information the other Party may reasonably need to make a decision; and

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- 21.13.2 if the Party whose consent is required believes in good faith that the consent may reasonably be withheld, the Party seeking the consent shall not be entitled to:
- 21.13.2.1 proceed as if the consent had been given until the dispute has been resolved; or
- 21.13.2.2 recover any loss suffered by that Party as a result of the consent having been withheld.

21.14 Counterparts

This Agreement may be signed by the Parties in one or more counterparts, provided that all such signed agreements shall be deemed to be one agreement enforceable in accordance with its terms.

21.15 Costs

- 21.15.1 The costs incidental to the negotiation, drafting and preparation of this Agreement shall be borne and paid for by the Concessionaire on demand.
- 21.15.2 Subject to the provisions of clause 20.14, the Concessionaire shall be responsible for all costs, charges and expenses of whatsoever nature which may be incurred by ACSA in enforcing its rights in terms hereof, including, without limitation, legal costs on the scale as between attorney and own client and collection commission, irrespective of whether any action has been instituted against the Concessionaire or not.

Handwritten signature and initials in the bottom right corner of the page.

THUS DONE AND SIGNED at Johannesburg on this
the 20th day of August 2010.

Witnesses:

1. _____
First name: _____
Surname: _____

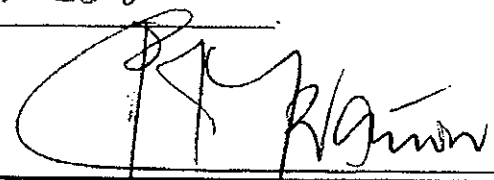

for and on behalf of
**AIRPORTS COMPANY SOUTH
AFRICA LIMITED**

First name: John
Surname: Barne
Designations: Consultant


THUS DONE AND SIGNED at Johannesburg on this
the 19th day of August 2010.

Witnesses:

1. _____
First name: _____
Surname: _____


for and on behalf of **PRIMEDIA (PTY)
LTD T/A PRIMEDIA OUTDOOR**

First name: Steve
Surname: Ratlou
Designation: Executive Chairman



Schedule 1

Resolution of the Concessionaire

Resolved that:

1. the terms and conditions of the advertising concession agreement entered into on or about _____ between Airports Company South Africa Limited, registration number 1993/004149/06) ("ACSA") and ~~XXX~~ Pty Ltd, registration number ~~XXX~~ ("the Concessionaire"), a copy of which was tabled at the directors meeting ("Advertising Concession Agreement"), be and are hereby approved, and resolved further that the Concessionaire enter into the Advertising Concession Agreement;
2. _____ or, failing him/her, _____, be and is hereby authorised to sign all documents and perform all acts on behalf of the Concessionaire that may be required in respect of the execution by the Concessionaire of the Advertising Concession Agreement and that all acts already taken in this regard by either of the aforementioned be and are hereby confirmed and ratified; and
3. the board of directors of the Concessionaire confirm and accept that the Concessionaire is bound by all of the terms and conditions of the Advertising Concession Agreement.

Full Name	Capacity / designation	Signature

Handwritten signatures and initials at the bottom right of the page, including a large signature, the initials 'MBL', and the initials 'SN'.

Schedule 2

Pro Forma Report

1 MB
1 1/2 hr

Schedule 3

Draft Audited Statement

We are the duly appointed auditors of _____ (Registration Number: _____) ("the Concessionaire") and have read the agreement with Airports Company South Africa Limited dated _____ (hereinafter referred to as "the agreement").

We have audited the accounts of the Concessionaire for its business at _____ for the period _____ to _____ inclusive, in relation to transactions covered by the agreement.

We have performed:

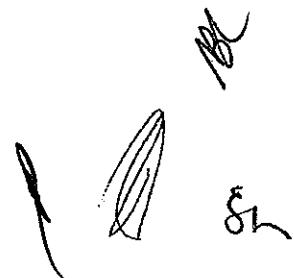
- (i) an examination of the system of internal control;
- (ii) tests of compliance with those systems; and
- (iii) substantive tests of certain transactions and balances.

In our opinion the attached statement shows accurately the revenue (as defined in the agreement) of transactions covered by the agreement, the amount(s) due to Airports Company South Africa Limited under the terms of the agreement and any adjustments thereto.

We acknowledge that we, in performing the audit herein referred to and in issuing the statement, owe a duty of care to the Airports Company South Africa Limited and accept that it will rely on the correctness of our audit and the contents of this statement.

Yours faithfully

[NAME OF AUDITOR]

Handwritten signatures and initials in the bottom right corner of the page. There are three distinct marks: a stylized signature, a signature that appears to be 'ABC', and initials 'SH'.

Schedule 4

Draft irrevocable payment guarantee in lieu of payment

(PAYMENT GUARANTEE NUMBER)

We, the undersigned _____ and _____ duly authorised thereto in our respective capacities as Manager and Assistant Manager of _____ Bank Limited, _____ Branch (hereinafter referred to as "the Bank") do hereby bind the said Bank irrevocably, as surety and co-principal debtor, jointly and severally, *in solidum* to Airports Company South Africa Limited (Registration Number 1993/004149/06) (hereinafter referred to as "ACSA") for and on behalf of _____, Registration number _____, (hereinafter referred to as the "Concessionaire"):

1. for the due performance, observance and fulfilment by the Concessionaire of its obligations undertaken in; and/or
2. for all losses, damages, expenses, costs and legal costs that may be suffered or incurred by ACSA resulting from,

an agreement concluded between ACSA and the Concessionaire on the ____ day of _____ 200____, a copy of which is attached hereto, having been duly initialled for purposes of identification.

The Bank hereby renounces all benefits from the legal exceptions '*non numeratae pecuniae*' (no value received), '*non causa debiti*' (no cause of indebtedness), '*errore calculi*' (error in calculation), '*beneficia excussionis et divisionis*' (benefit of excussion and division) and all other exceptions which might or could be pleaded against the validity of this payment guarantee, the meaning and effect of which exceptions the Bank declares itself to be fully acquainted with.

The liability of the Bank under this payment guarantee is limited to an amount of R_____ (amount in words) and will lapse on the written advice from ACSA that the aforesaid agreement has lapsed and is of no further force or effect and that the Concessionaire has settled all its indebtedness to ACSA.

The Bank shall advise ACSA in writing in the event of the Bank withdrawing from or terminating the payment guarantee or there being any amendment to the terms of the payment guarantee and the Bank shall furnish ACSA with written reasons therefor.

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Signed at _____ on this _____ day of _____ 200_____

For and on behalf of the Bank

Manager

Assistant Manager

As witnesses to the signatories

(1) _____

(2) _____


Schedule 5

Deed of suretyship

We, the undersigned, _____

[INSERT NAMES AND IDENTITY NUMBERS]
("the Sureties")

do jointly and severally hereby bind ourselves to

AIRPORTS COMPANY SOUTH AFRICA LIMITED
("ACSA")

and its successors and assigns as surety for and co-principal debtors with

PRIMEDIA (PTY) LTD T/A PRIMEDIA OUTDOOR
("the Concessionaire")

for the due and punctual fulfilment and performance by the Concessionaire of all its obligations to ACSA in terms of the advertising concession agreement to which this deed of suretyship is attached ("**the Advertising Concession Agreement**") which suretyship shall automatically lapse and be in no way binding on us on the 3rd anniversary of the signature date as such term is defined in the Advertising Concession Agreement ("**the Signature Date**") save in respect of any liabilities of the Concessionaire which may arise after the Signature Date but prior to the 3rd anniversary of the Signature Date, subject to the following provisions:

1. In this deed :

- 1.1 words in any one gender include the other and words signifying the singular shall include the plural and vice versa; and
- 1.2 a reference to the Sureties and the Concessionaire shall include a reference to their liquidator, judicial manager, trustee, executor, administrator and curator where applicable.

2. Without derogating from the generality of any of the provisions of this deed of suretyship or the ambit of the obligations embraced, our liability shall cover all

claims for compensation or damages which ACSA may, at any time, have arising out of the enforcement, breach or cancellation of the Advertising Concession Agreement, including cancellation pursuant to the provisional or final liquidation or judicial management of the Concessionaire.

3. All judgments against the Concessionaire flowing from any principal indebtedness covered by this suretyship and all acknowledgements of debt and omission by the Concessionaire shall be binding on us.
4. We renounce all benefits arising from the legal exceptions '*non numeratae pecuniae*' (no value received), '*non causa debiti*' (no cause of indebtedness), '*errore calculi*' (error in calculation) and '*beneficia excussionis et divisionis*' (benefit of excussion and division), with the force and effect of which we declare ourselves to be fully acquainted and we agree that this suretyship is to be in addition to and without prejudice to any other suretyship and security now or hereafter to be held by ACSA and shall remain in force as a continuing security for any indebtedness of the Concessionaire to ACSA notwithstanding any immediate settlement of amounts owing by the Concessionaire, the termination of the Advertising Concession Agreement and notwithstanding our death or legal disability.
5. In the event of:
 - 5.1 any liquidation, judicial management or sequestration of the Concessionaire or any other surety for the Concessionaire; or
 - 5.2 any composition or compromise by the Concessionaire or any such surety, within the terms of company or insolvency law or under common law,

we bind ourselves not to file any claim against the Concessionaire or other surety until ACSA's claims against the Concessionaire have been paid in full.
6. As security for our obligations in terms hereof, we hereby cede to ACSA all the claims which we now have or may in the future have against the Concessionaire from any cause or indebtedness whatsoever (including those arising from payments made by us hereunder), hereby undertaking on demand by ACSA to deliver to ACSA all documents (duly endorsed where appropriate) evidencing or embodying or relating to any such claims.

Y A sn

7. Notwithstanding any part payment by us or on our behalf, we shall have no right to any cession of action in respect of such part payment and shall not be entitled to take any action against the Concessionaire or against any other surety for the Concessionaire in respect thereof unless and until the indebtedness of the Concessionaire to ACSA shall have been discharged in full.
8. For the purposes of any action against us hereunder, for provisional sentence or otherwise, a certificate by ACSA or its auditor as to the amount owing by the Concessionaire shall be prima facie proof thereof.
9. We hereby consent to the jurisdiction of the magistrate's court having jurisdiction in terms of section 28 of the Magistrates' Court Act of 1944, as amended, in respect of any action or application arising out of or in connection with our obligations under this suretyship notwithstanding that the amount in issue may exceed the jurisdiction of such court. ACSA may, however, in its sole and absolute discretion, elect to pursue any claim against us in either the Magistrates' Court or the High Court of South Africa.
10. We acknowledge that all amounts due and payable by the Concessionaire to ACSA shall be recoverable from and paid by us notwithstanding that the Concessionaire may have any claim or counterclaim of whatsoever nature and howsoever arising against ACSA.
11. ACSA shall be at liberty, without in any way affecting its rights against us or diminishing or otherwise affecting our obligations to it hereunder, to do any act or omit to do any act, whether pursuant to the provisions of any contract concluded with the Concessionaire or otherwise as it, in its sole discretion, may deem fit, notwithstanding that in doing or omitting to do any such acts, ACSA may have acted negligently (whether grossly or otherwise) or in a manner calculated to cause or in fact causing prejudice to us and, in particular, but without limiting the generality of the foregoing, ACSA shall, without in any way affecting its rights against us or diminishing or otherwise affecting our obligations to it, be entitled to:
 - 11.1 release securities and other sureties;
 - 11.2 give time to or compound to make any other arrangements with the Concessionaire or other parties aforesaid; and

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- 11.3 allow or grant the Concessionaire or any other surety any latitude or indulgence,

without reference to or approval by us.

12. We shall not be entitled to withdraw or cancel this suretyship unless or until all indebtedness, commitments and obligations (including contingent obligations) of the Concessionaire to ACSA shall have been fully discharged or extinguished and then only after the expiry of 14 days after the receipt of notice in writing given by us to ACSA.
13. ACSA shall be entitled to appropriate any monies received by it from us hereunder towards the payment of such causes of debt or amount owing by the Concessionaire to ACSA as it may determine in its absolute discretion.
14. For the purposes of the giving of any notice, the serving of any process and for any purposes arising from this deed of suretyship, we choose the following addresses as our *domicilium citandi et executandi* ("**domicilium**"):

For:	
For:	
For:	

15. Any notice given in terms of this deed of suretyship which:

- 15.1 is delivered by hand during normal business hours to our domicilium shall be presumed, to have been received by us at the time of delivery; and

- 15.2 is posted by prepaid registered post from an address within the Republic of South Africa to our domicilium shall be presumed to have been received by us on the 14th day after the date of posting.
16. No consensual cancellation, variation or modification of the terms of this deed of suretyship shall be binding on ACSA unless reduced to writing and signed by or on behalf of ACSA and ourselves.
17. We shall be responsible for all costs, charges and expenses of whatsoever nature which may be incurred by ACSA in enforcing its rights in terms hereof including legal costs on the scale between attorney and client and collection commission irrespective of whether any action has been instituted against us or not.
18. The costs of the preparation of this deed of suretyship shall be paid by ACSA.

Signed at _____ on _____

Signed at _____ on _____

Signed at _____ on _____

1/12/13

Schedule 6

Airside Service Provider Concession Agreement

Y / R M

Schedule 7

Debit Order Form

See attached ACSA Debit Order Instruction Form and Debit Order Payment Schedule. The amount inserted on the form must include Vat. This amount will escalate each year on the anniversary date of the concession agreement.

Handwritten signature and initials in the bottom right corner.

TRANSACTION ADDENDUM "A (Enter Number)"

This addendum forms an integral part of the concessionaire agreement entered into between Airports Company South Africa Limited and the concessionaire and is to be read in conjunction with the concessionaire agreement as detailed hereunder.

Concessionaire:.....

Agreement Number:

.....

Signed at..... **on**.....**20**.....

It is hereby agreed between the parties that the site as detailed hereunder be added to the abovementioned concessionaire agreement

1. **Airport:**XXXX

2. **Site Reference Number**

2.1 **ACSA Reference:**XXXX

2.2 **Client Reference:**XXXX

3. **Site Dimensions:**

3.1 **Height:**XXXX

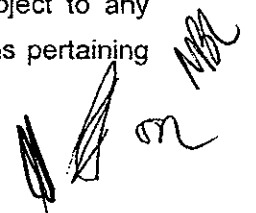
3.2 **Length:**XXXX

3.3 **Square Meters:**XXXX

4. **Location Description:**

5 **Media type :**

- 6 Owner of Advertising Structure/s:
- 7 Commencement Date:
- 8 Termination Date:
- 9 Guaranteed Minimum Consideration (per month):R_____
- 10 Annual escalation of Guaranteed Minimum Consideration:_____%
- 11 Turnover Rental Percentage:_____%
- 12 Security deposit:R_____
- 13 Minimum insurance cover:R_____
- 14 **Termination:** Upon the termination date as recorded above the site is to be vacated and all structures removed at the cost of the Concessionaire. Any site not removed within 5 days of the expiry date as recorded above will be removed by the Concession grantor and the costs thereof will be for the Concessionaire's account and will be due and payable upon presentation of invoice. Should any advertising media remain on site after the expiry the concessionaire will be liable for rental charged at three (3) times the minimum guaranteed rental as stipulated above at the date of expiry.
- 15 **Renewal:** No automatic renewal exists for this site. Three (3) months prior to the termination date as recorded above, the concessionaire may make application to the concession grantor for an extension of the lease period. Such renewal application will be at the sole discretion of the concession grantor and will be subject to any policies of the concession grantor ruling at the time as pertaining



to renewal or extension of lease agreements pertaining to advertising sites.

All other terms and conditions of the concessionaire agreement mentioned above remain in full force and affect.

Signed at _____ on _____.

for and on behalf of **Airports Company South Africa Limited**

Signature: _____

Name : _____

Capacity: _____

Signed at _____ on _____.

for and on behalf of the **XXX Pty Ltd** who warrants that he is duly authorised hereto.

Signature: _____

Name : _____



Capacity: _____

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NBL

- 7 Commencement Date: 01 August 2012
- 8 Termination Date: 31 August 2012
- 9 Guaranteed Minimum Consideration (per month):  MB
- 10 Annual escalation of Guaranteed Minimum Consideration: N/A
- 11 Turnover Rental Percentage: N/A
- 12 Security deposit: N/A
- 13 Minimum insurance cover:  MB

14 Termination: Upon the termination date as recorded above the site is to be vacated and all structures removed at the cost of the Concessionaire. Any site not removed within 5 days of the expiry date as recorded above will be removed by the Concession grantor and the costs thereof will be for the Concessionaire's account and will be due and payable upon presentation of invoice. Should any advertising media remain on site after the expiry the concessionaire will be liable for rental charged at three (3) times the minimum guaranteed rental as stipulated above at the date of expiry.

15 Renewal: No automatic renewal exists for this site. Three (3) months prior to the termination date as recorded above, the concessionaire may make application to the concession grantor for an extension of the lease period. Such renewal application will be at the sole discretion of the concession grantor and will be subject to any policies of the concession grantor ruling at the time as pertaining to renewal or extension of lease agreements pertaining to advertising sites.



All other terms and conditions of the concessionaire agreement mentioned above remain in full force and affect.

Signed at O.R. TAMBO INTERNATIONAL on 3 August 2012

for and on behalf of Airports Company South Africa Limited

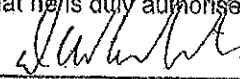
Signature: 

Name : A.R. WILLIAMS

Capacity: MANAGER: ADVERTISING (ACTING)

Signed at Rodeport on 03 August 2012

for and on behalf of the PRIMEDIA OUTDOOR - A DIVISION OF PRIMEDIA (PTY) LTD who warrants that he is duly authorised hereto.

Signature: 

Name : Dawie Roberts

Capacity: CEO



TRANSACTION ADDENDUM "A (049)"

This addendum forms an integral part of the concessionaire agreement entered into between Airports Company South Africa Limited and the concessionaire and is to be read in conjunction with the concessionaire agreement as detailed hereunder.

Concessionaire: PRIMEDIA OUTDOOR – A DIVISION OF PRIMEDIA (PTY) LTD

Agreement Number: PRIMEDIA ADHOC 004

Signed at : *Walterville Park* on *3 Aug* 2012.....

It is hereby agreed between the parties that the site as detailed hereunder be added to the abovementioned concessionaire agreement

1. Airport: O.R Tambo International Airport
2. Site Reference Number
 - 2.1 ACSA Reference: International Arrivals Pillars
 - 2.1 Client Reference: TBA Pw1016
3. Site Dimensions:
 - 3.1 Height: 2.00
 - 3.2 Length: 1.00
 - 3.3 Square Meters: 2.00 mtrs
4. Location Description: International Arrivals – Carousel Area
- 5 Media type: Pillars x10
- 6 Owner of Advertising Structure/s: Primedia Outdoor, A division of Primedia Pty Ltd

[Handwritten signatures]




**President Zuma
can save
her life.**

**Our lions are being slaughtered
to make bogus sex potions for
Asia. Will President Zuma save
them?**

**Urge him to stop the deadly lion
bone trade now.**

Avaaz.org/lions

AVAAZ.org



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Avaaz.org/lions

AVAAZ.org
THE POWER OF PEOPLE



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Avaaz.org/lions

AVAAZ.org
THE POWER OF PEOPLE



"AA3"

SOUTH GAUTENG HIGH COURT, JOHANNESBURG

Case No: 34974/12

In the matter between:

AVAAZ FOUNDATION

Applicant

and

PRIMEDIA (PTY) LIMITED

First Respondent

AIRPORTS COMPANY OF SOUTH AFRICA LIMITED

Second Respondent

CONFIRMATORY AFFIDAVIT

I, the undersigned,

Michelle Kalkwarf

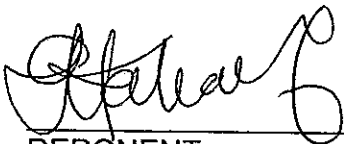
do hereby make oath and state:

- 1 I am an adult female Head of Department: Information in the Customer Care Department and employed as such by the second respondent and presently stationed at the OR Tambo International Airport, Kempton Park.

12/11/12
OK
RV

2. The facts hereinafter contained are, unless otherwise indicated or where it appears in the context hereof to the contrary, within my own personal knowledge and are both true and correct.
3. I have perused the Founding Affidavit of Haroon Jeena and confirm that the facts therein stated are true and correct in so far as they relate to me.

DEPONENT



DEPONENT

I certify that this affidavit was signed and sworn to before me at JOHANNESBURG on this the 25th day of October 2012 by the deponent who acknowledged that he knew and understood the contents of this affidavit, had no objection to taking this oath, considered this oath to be binding on his conscience and uttered the following words: 'I swear that the contents of this affidavit are both true and correct, so help me God.'

PT 172343 CS

R. N. GABANE
COMMISSIONER OF OATHS

Name: Rafael Nkomo Singesani

Address: 1 Jule Road Komatien Park

Capacity: CONSTABLE

SOUTH AFRICAN POLICE SERVICE
O R TAMBO INTERNATIONAL AIRPORT SECTOR
2012 -10- 25
CLIENT SERVICE CENTRE DIVISION, OPERATIONAL RESPONSE SERVICES
SUID AFRIKAANSE POLISIEDIENS

2


"AA4"

SOUTH GAUTENG HIGH COURT, JOHANNESBURG

Case No: 34974/12

In the matter between:

AVAAZ FOUNDATION

Applicant

and

PRIMEDIA (PTY) LIMITED

First Respondent

AIRPORTS COMPANY OF SOUTH AFRICA LIMITED

Second Respondent

CONFIRMATORY AFFIDAVIT

I, the undersigned,

Adele Williams

do hereby make oath and state:

- 1 I am an adult female Key Account Manager: Advertising and Marketing and employed as such by the second respondent and presently stationed at OR Tambo International Airport, Kempton Park.

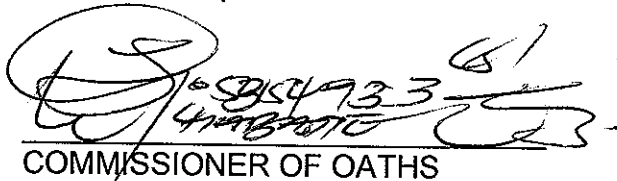
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AW
MBL

2. The facts hereinafter contained are, unless otherwise indicated or where it appears in the context hereof to the contrary, within my own personal knowledge and are both true and correct.
3. I have perused the Founding Affidavit of Haroon Jeena and confirm that the facts therein stated are true and correct in so far as they relate to me.



DEPONENT

I certify that this affidavit was signed and sworn to before me at JOHANNESBURG on this the 25th day of OCTOBER 2012 by the deponent who acknowledged that he knew and understood the contents of this affidavit, had no objection to taking this oath, considered this oath to be binding on his conscience and uttered the following words: 'I swear that the contents of this affidavit are both true and correct, so help me God.'



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4933

COMMISSIONER OF OATHS

Name: E.S. Tshabang

Address: O. R. Tambo Airport

Capacity: CSC

SOUTH AFRICAN POLICE SERVICE
O R TAMBO INTERNATIONAL AIRPORT SECTOR
2012 -10- 25
CLIENT SERVICE CENTRE CRIMINAL, OPERATIONAL RESPONSE SERVICES
SUID AFRIKAAMSE POLISIEDIENS

"AA5"

SOUTH GAUTENG HIGH COURT, JOHANNESBURG

Case No: 34974/12

In the matter between:

AVAAZ FOUNDATION

Applicant

and

PRIMEDIA (PTY) LIMITED

First Respondent

AIRPORTS COMPANY OF SOUTH AFRICA LIMITED

Second Respondent

CONFIRMATORY AFFIDAVIT

I, the undersigned,

Solomon Makgale

do hereby make oath and state:

- 1 I am an adult male Group Manager: Communications employed as such by the second respondent and presently stationed at its corporate head office situated at 24 Johnson Road, Riverwoods Park, Bedfordview.

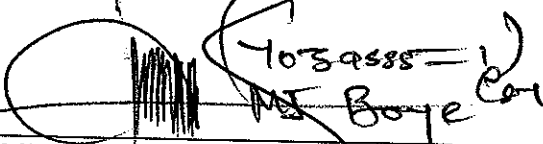
1
Smm
MBT

2. The facts hereinafter contained are, unless otherwise indicated or where it appears in the context hereof to the contrary, within my own personal knowledge and are both true and correct.
3. I have perused the Founding Affidavit of Haroon Jeena and confirm that the facts therein stated are true and correct in so far as they relate to me.

DEPONENT


DEPONENT

I certify that this affidavit was signed and sworn to before me at JOHANNESBURG on this the 25 day of October 2012 by the deponent who acknowledged that he knew and understood the contents of this affidavit, had no objection to taking this oath, considered this oath to be binding on his conscience and uttered the following words: 'I swear that the contents of this affidavit are both true and correct, so help me God.'


COMMISSIONER OF OATHS

Name: Motshitshi Jan Boye

Address: Ground level Int. Arrival. K/Park (ORTIA)

Capacity: Constable.

SOUTH AFRICAN POLICE SERVICE
O.R TAMBO INTERNATIONAL AIRPORT
SECTOR
2012 -10- 25
CLIENT SERVICE CENTRE
DIVISION OPERATIONAL RESPONSE SERVICES
SUID AFRIKAANSE POLISIEDIENS

2


"AA6"

SOUTH GAUTENG HIGH COURT, JOHANNESBURG

Case No: 34974/12

In the matter between:

AVAAZ FOUNDATION

Applicant

and

PRIMEDIA (PTY) LIMITED

First Respondent

AIRPORTS COMPANY OF SOUTH AFRICA LIMITED

Second Respondent

CONFIRMATORY AFFIDAVIT

I, the undersigned,

Tebogo Mekgoe

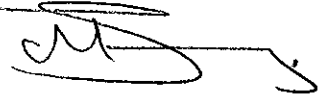
do hereby make oath and state:

- 1 I am an adult male General Manager employed as such by the second respondent and presently stationed at OR Tambo International Airport, Kempton Park.

1
MBL
MT
[Signature]

2. The facts hereinafter contained are, unless otherwise indicated or where it appears in the context hereof to the contrary, within my own personal knowledge and are both true and correct.
3. I have perused the Founding Affidavit of Haroon Jeena and confirm that the facts therein stated are true and correct in so far as they relate to me.

DEPONENT



DEPONENT

I certify that this affidavit was signed and sworn to before me at JOHANNESBURG on this the 25 day of October 2012 by the deponent who acknowledged that he knew and understood the contents of this affidavit, had no objection to taking this oath, considered this oath to be binding on his conscience and uttered the following words: 'I swear that the contents of this affidavit are both true and correct, so help me God.'

COMMISSIONER OF OATHS

Name: Motshwari Ian Boye

Address: Ground level Int. Arrival - K / Park (ORTIA)

Capacity: Constable

SOUTH AFRICAN POLICE SERVICE
O.R TAMBO INTERNATIONAL AIRPORT
SECTOR
2012 -10- 25
CLIENT SERVICE CENTRE
DIVISION OPERATIONAL RESPONSE SERVICES
SUID AFRIKAANSE POLISIEDIENS

"AA7"

SOUTH GAUTENG HIGH COURT, JOHANNESBURG

Case No: 34974/12

In the matter between:

AVAAZ FOUNDATION

Applicant

and

PRIMEDIA (PTY) LIMITED

First Respondent

AIRPORTS COMPANY OF SOUTH AFRICA LIMITED

Second Respondent

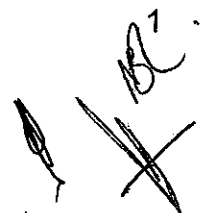
CONFIRMATORY AFFIDAVIT

I, the undersigned,


Bonginkosi Mfusi

do hereby make oath and state:

- 1 I am an adult male Group Legal Counsel employed as such by the second respondent and presently stationed at its corporate head office situated at 24 Johnson Road, Riverwoods Park, Bedfordview.


Handwritten signature and initials, possibly "BC" or "BL", with a large "X" mark.

2. The facts hereinafter contained are, unless otherwise indicated or where it appears in the context hereof to the contrary, within my own personal knowledge and are both true and correct.
3. I have perused the Founding Affidavit of Haroon Jeena and confirm that the facts therein stated are true and correct in so far as they relate to me.



DEPONENT

I certify that this affidavit was signed and sworn to before me at JOHANNESBURG on this the 25 day of OCTOBER 2012 by the deponent who acknowledged that he knew and understood the contents of this affidavit, had no objection to taking this oath, considered this oath to be binding on his conscience and uttered the following words: 'I swear that the contents of this affidavit are both true and correct, so help me God.'



COMMISSIONER OF OATHS

Name: MOCEBOGE, B. LEKWANE

Address: BLOCK C, NO 7, ETON ROAD, SANDHURST

Capacity: PRACTISING ATTORNEY

"AA8"

SOUTH GAUTENG HIGH COURT, JOHANNESBURG

Case No: 34974/12

In the matter between:

AVAAZ FOUNDATION

Applicant

and

PRIMEDIA (PTY) LIMITED

First Respondent

AIRPORTS COMPANY OF SOUTH AFRICA LIMITED

Second Respondent

CONFIRMATORY AFFIDAVIT

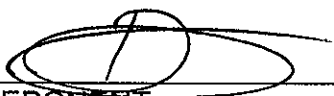
I, the undersigned,

Bongani Machobane

do hereby make oath and state:

- 1 I am an adult male Legal Counsel employed as such by the second respondent and presently stationed at its corporate head office situated at 24 Johnson Road, Riverwoods Park, Bedfordview.

2. The facts hereinafter contained are, unless otherwise indicated or where it appears in the context hereof to the contrary, within my own personal knowledge and are both true and correct.
3. I have perused the Founding Affidavit of Haroon Jeena and confirm that the facts therein stated are true and correct in so far as they relate to me.



DEPONENT

I certify that this affidavit was signed and sworn to before me at JOHANNESBURG on this the 25 day of OCTOBER 2012 by the deponent who acknowledged that he knew and understood the contents of this affidavit, had no objection to taking this oath, considered this oath to be binding on his conscience and uttered the following words: 'I swear that the contents of this affidavit are both true and correct, so help me God.'



COMMISSIONER OF OATHS

Name: MOLEBOUE. B. LEKWANE

Address: BLOCK C, NO 1 EDUN ROAD, SANDHURST

Capacity: PRACTISING ATTORNEY