



**MALELANE HOTEL DEVELOPMENT  
PPP AGREEMENT**

**PUBLIC PRIVATE PARTNERSHIP AGREEMENT**

**FOR THE**

**MALELANE HOTEL DEVELOPMENT**

**IN THE**

**KRUGER NATIONAL PARK**

**JULY 2009**

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**MEMORANDUM OF AGREEMENT ENTERED INTO BY AND**

**BETWEEN**

**SOUTH AFRICAN NATIONAL PARKS (“SANParks”); and**

**[                    ] (“*the Private Party*”).**

**PREAMBLE:**

**WHEREAS**

- (A) SANParks wishes to generate income through the commercialisation of certain operations pertaining to South Africa’s National Parks and protected areas under its management;
- (B) SANParks has the object of, inter alia, protecting, conserving and controlling all protected areas under its management, including all biodiversity found therein;
- (C) SANParks wishes to expand the tourist and income generating potential of the protected areas under its management by making various Public Private Partnership (“*PPP*”) opportunities available to appropriate and reputable eco-tourism Operators;
- (D) A PPP opportunity has arisen in the Kruger National Park in connection with the Malelane Hotel Development;
- (E) The Private Party has expertise in the provision of accommodation and related services suitable for visitors to protected areas, and facilities in connection therewith;
- (F) The Private Party is desirous and SANParks is prepared to enter into a PPP Agreement for the commercial utilisation of the PPP opportunity that has arisen in connection with the Malelane Hotel Development, by the Private Party, whilst allowing SANParks to conserve the Kruger National Park, as it is enjoined to do;

**NOW THEREFORE** the Parties agree as follows -

**1. DEFINITIONS AND INTERPRETATION**

This PPP Agreement shall be interpreted according to the following provisions, unless the context requires otherwise:

- 1.1 The headings of clauses in this PPP Agreement, the Annexures and the Schedules are for convenience only and shall not be deemed part thereof or be taken into consideration in the interpretation or construction thereof.
- 1.2 Words importing the singular only, also include the plural and vice versa where the context requires.
- 1.3 Any reference to any agreement, Schedule or Annexure shall be construed as including a reference to any agreement, Schedule or Annexure amending or substituting that agreement, Schedule or Annexure.
- 1.4 If any definition in this Clause 1 contains a substantive provision conferring rights or imposing obligations on any Party, effect shall be given to such provision as if it were a substantive provision in the body of this PPP Agreement.
- 1.5 A reference in this PPP Agreement to an amount means that such amount shall, for the purposes of this PPP Agreement, be escalated on the Effective Date and annually thereafter in accordance with the Consumer Price Index in order that its value as at 1 July 2009 will be maintained relative to the percentage increase in the Consumer Price Index for such period.
- 1.6 In this PPP Agreement, the Annexures and the Schedules the following words and expressions shall, unless inconsistent with the context in which they appear, have the meanings hereby assigned to them and expressions derived from those words and expressions shall bear corresponding meanings:
- 1.6.1 **"Act"** - the National Environmental Management: Protected Areas Act, No 57 of 2003;

- 1.6.2 **“Agent”** - has the meaning described in the Loan Agreement;
- 1.6.3 **“Annual PPP Fee Payment** - has the meaning described in Clauses 8.3 and 8.4;
- 1.6.4 **“Annexure”** - annexures hereto;
- 1.6.5 **“Associated Agreements”** - the contracts related to the design, construction, fitting, equipping, installation, financing, operation, maintenance and management of the Malelane Hotel Development and the Project Site, or otherwise entered into by the Private Party in connection with the Project, including, but not limited to, those contracts listed in Annexure I – Associated Agreements;
- 1.6.6 **“BBBEE Act”** - the Broad Based Black Economic Empowerment Act, No. 53 of 2003;
- 1.6.7 **“BEE obligations / Empowerment obligations”** - the Private Party’s BEE obligations as detailed in Annexure X – BEE Obligations;
- 1.6.8 **“Best Industry Practice”** - the exercise of that degree of skill, diligence, prudence and foresight which would reasonably and ordinarily be expected from time to time from a skilled and experienced contractor or professional seeking in good faith to comply with his contractual obligations, complying with all applicable legislation and laws and engaged in the same type of undertaking and under the same or similar circumstances and conditions as those envisaged by this PPP Agreement, the

- intention being that an acceptable balance shall be maintained between tourism and conservation;
- 1.6.9 **“Biannual Environmental Monitoring And Audit Report”** - the environmental monitoring and audit report as required by SANParks and amended from time to time, to be used by the ECO for biannual reporting;
- 1.6.10 **“Bid and Development Bond”** - a bid and development bond of the nature specified in Clause 3.12 and having the characteristics set out in Annexure V Part C: Characteristics of the Bid and Development Bond;
- 1.6.11 **“Bid Evaluation Committee/Evaluation Committee;”** - the committee evaluating the Bid Submission;
- 1.6.12 **“Bid Submission”** - the bid for the Project submitted by the Private Party and accepted by SANParks, which forms an integral part of and extracts whereof are annexed to this Agreement;
- 1.6.13 **“Black Economic Empowerment/BEE”** - an integrated and coherent, socio economic process that directly contributes to the economic transformation of South Africa and brings about significant increases in the number of Black people who manage, own and control the country's economy, as well as significant decreases in income inequalities, as defined in the BBBEE Act;
- 1.6.14 **“Business Day”** - a normal business day excluding

- weekends and statutory public holidays;
- 1.6.15 **“Change in control”** - any change whatsoever in control, whether effected directly or indirectly;
- 1.6.16 **“Compliance Events”** - the events referred to in Clause 25 and detailed in Annexure VII – Compliance Events;
- 1.6.17 **“Concessionaire”** - a Concessionaire that manages, operates and maintains a PPP in the KNP;
- 1.6.18 **“Concession Operations Manual”** - the manual containing KNP Policies, Park Rules and Park Regulations and regulating the operations of Concessionaires, including the Private Party, in the KNP, by defining their roles, responsibilities and procedures with regard to inter alia housing, transport of staff, maintenance, infrastructural upgrades and expansions as well as employee beds;
- 1.6.19 **“Confidential information”** - has the meaning set forth in Clause 22.2;
- 1.6.20 **“Consents”** - all consents, permits, authorisations, approvals, rulings, exemptions, registrations, filings, decisions, licences and certificates required to be issued by or made with any Responsible Authority in connection with the performance of any of the Project Deliverables;
- 1.6.21 **“Conservation Management”** - the management of biodiversity in all its facets and fluxes in a manner that is consistent with the provisions, principles and objectives of the Management Plan of

the Kruger National Park;

- 1.6.22 **“Constitutional Documents”** - the Private Party’s memorandum and articles of association, certificate of incorporation and certificate to commence business, as well as the Shareholders Agreement, all of which are attached to this agreement as Annexure VI - Shareholding, Company Structure and Required Qualifications to Operate Project Site and the terms of which are to be to the satisfaction of the Institution;
- 1.6.23 **“Construction Contracts”** - the contracts entered into or to be entered into, for purposes of the design, construction, fitting, installation, equipping and/or commissioning of the Malelane Hotel Development and relevant Project Assets at the Project Site, and submitted to SANParks;
- 1.6.24 **“Construction Phase”** - the phase during which Construction Works are carried out;
- 1.6.25 **“Construction Site”** - that part of the Project Site required for the Construction Works;
- 1.6.26 **“Construction Works”** - the design, construction, fitting, installation, equipping and commissioning of the Malelane Hotel Development and relevant Project Assets at the Project Site in accordance with this PPP Agreement and the Construction Contracts;
- 1.6.27 **“Consumer Price Index/CPIX”** - the Consumer Price Index excluding interest on mortgage bonds, for metropolitan and other urban areas as

- published from time to time by Statistics SA;
- 1.6.28 **“Contractor”**
- the party or parties designated as Contractor under the relevant Construction Contract;
- 1.6.29 **“Control”**
- in relation to any entity, the ability directly or indirectly to direct or cause the direction of the votes attaching to the majority of its issued shares or interests carrying voting rights, or to appoint or remove or cause the appointment or removal of any directors (or equivalent officials) or those of its directors (or equivalent officials) holding the majority of the voting rights on its board of directors (or equivalent body);
- 1.6.30 **“DEAT”**
- Department of Environmental Affairs and Tourism;
- 1.6.31 **“Delivery Date”**
- the date of delivery of the Project Site to the Private Party, as referred to in Clause 6.2;
- 1.6.32 **“Design Plan”**
- the detailed Design Plan for the Construction Works to be conducted on the Project Site, as well as for the furniture, fittings and equipment for the Malelane Hotel Development, prepared in accordance with the prescripts of the KNP Sustainable Design Principles and Guidelines and the Hotel Minimum Development Specifications, submitted as part of the Bid Submission and attached as Annexure III - Design Plan;

- 1.6.33 **“Development and Environmental Proposal/Plan”** - the development and environmental proposal forming part of the Bid Submission, attached to this PPP Agreement as part of Annexure VIII – Development and Environmental Proposal and EIA Findings and Recommendations, detailing the Private Party’s planning proposal in respect of the environmental issues that apply to the Project.
- 1.6.34 **“Development Phase/Period”** - the period between the Signature Date of this PPP Agreement and the Effective Date;
- 1.6.35 **“DWAF”** - Department of Water Affairs and Forestry;
- 1.6.36 **“DWEA”** - Department of Water and Environmental Affairs;
- 1.6.37 **“Effective Date”** - the effective date will be either 18 (eighteen) months after the SANParks representative’s Signature Date, or the Operation Commencement Date, whichever comes earlier;
- 1.6.38 **“EIA” or “Environmental Impact Assessment”** - the process of assessing the environmental effects of a development and its subsequent operation, carried out in accordance with applicable Regulatory Provisions and guidelines;
- 1.6.39 **“EIA Regulations”** - the Regulations promulgated under NEMA, providing for an EIA and prescribing certain requirements in respect of developments such as the Project;

- 1.6.40 **‘EIA/Environmental Impact Assessment Report’** - the report which is an integral part of the EIA conducted in respect of the Project;
- 1.6.41 **“Environment”** - the aggregate of surrounding objects, conditions and influences that influence the life and habitats of humans or any other organism or collection of organisms, and including all or any of the following media: air (including the air within any building or the air within any other man-made or natural structure above or below ground), water (including inland water, groundwater and water in drains and sewers) and land;
- 1.6.42 **“Environmental Control Officer/ECO”** - the independent consultant appointed by and at the cost of the Private Party, who inter alia ensures that mitigation measures and other requirements set forth in the EMP are adhered to;
- 1.6.43 **“Environmental Guidelines”** - the environmental guidelines for Private Parties operating within the protected areas under the management control of SANParks, set forth in Annexure IV – Environmental Guidelines for Private Parties for the Construction and Operation of PPP Facilities within the Kruger National Park, as same may be revised and updated by SANParks from time to time, and in particular as they find application to the Park;
- 1.6.44 **“Environmental Management Plan/EMP”** - the Environmental Management Plan for the Project, prepared as part of the EIA Report, which plan contains detailed

- information on the management and mitigation measures in respect of environmental impacts at every stage of the Project;
- 1.6.45 **“Environmental Management System/EMS”** - the environmental management system to be developed by the Private Party, in terms whereof it systematically identifies environmental impacts, rates their significance, prioritises avoidance and mitigation, sets targets, implements, monitors, reviews and revises and trains and equips staff;
- 1.6.46 **“Equity Subscription Agreements”** - the agreements to be entered into between the Shareholders and the Private Party setting out the terms on which the Shareholders are to subscribe for Equity in the Private Equity;
- 1.6.47 **“Equity”** - (i) any issued ordinary and/or preferential shares in the Private Party for which the Shareholders have subscribed; and/or  
(ii) any loans provided by the Shareholders to the Private Party, but does not include any funds or facilities provided by any Lender;
- 1.6.48 **“FGASA”** - Field Guide Association of South Africa;
- 1.6.49 **“Financial Year”** - the financial year of the Private Party;
- 1.6.50 **“Force Majeure”** - has the meaning set forth in Clause 16;

- 1.6.51 **“Generally Accepted Accounting Principles/ GAAP”** - the generally accepted accounting principles in the Republic of South Africa as approved from time to time by the South African Accounting Standards Board or its successor;
- 1.6.52 **“Good BEE Contributor”** - a person which has scored in excess of 65 percent but less than 90 percent on the BEE scorecard under the Tourism Charter or Code as set out in Annexure X – BEE Obligations;
- 1.6.53 **“Gross Revenue”** - has the meaning ascribed to it in Clause 8.1;
- 1.6.54 **“Head Ranger”** - the Section or Area Ranger under whose jurisdiction the Malelane Hotel Development and Project Site fall;
- 1.6.55 **“Hotel Access Road”** - the road furnishing access from the existing roads in the KNP, to the Malelane Hotel Development, to be operated, managed and maintained by the Private Party as part of the Project Site;
- 1.6.56 **“Hotel Minimum Development Specifications”** - the minimum facility specifications for the Malelane Hotel Development, as reflected in Clause 9.1;
- 1.6.57 **“Hotel Site”** - that portion of the Project Site taken up by the Malelane Hotel Development and its grounds;
- 1.6.58 **“Hygiene Control Officer”** - the independent hygiene expert, proficient and qualified at assessing hygiene at the kind of business conducted by the Private

- Party by means of the Project;
- 1.6.59 **“IEM”** - Integrated Environmental Management;
- 1.6.60 **“Information Memorandum”** - the Information Memorandum on the Project prepared by SANParks in accordance with the guidelines for PPPs contained in National Treasury’s PPP Toolkit;
- 1.6.61 **“Institution”** - SANParks;
- 1.6.62 **“Institution/Institutional Assets”** - any assets and rights made available by SANParks to the Private Party for use in the Project in accordance with the terms of this Agreement;
- 1.6.63 **“Intellectual Property”** - all registered or unregistered trade marks, service marks, patents, design rights (whether the aforementioned rights are registered, unregistered or formed pending applications), utility models, applications for any of the foregoing, copyrights (including copyright in any software programmes, data and documents), database rights, the sui generis rights of extraction relating to databases and any similar or analogous rights to any of the above;
- 1.6.64 **“KNP Code of Conduct”** - the Code of Conduct applicable to the Kruger National Park, constituting part of the Regulatory Provisions;
- 1.6.65 **“KNP/Park/Protected Area”** - the Kruger National Park;

- 1.6.66 **“KNP Sustainable Design Principles and Guidelines”**
- the sustainable design principles and guidelines applicable to the KNP, prescribing sustainable design, planning, maintenance, environmental management and rehabilitation principles, set forth in Annexure II – KNP Sustainable Design Principles and Guidelines, as same may be revised and updated by SANParks from time to time;
- 1.6.67 **“Lender” or “Lenders”**
- any or all Persons providing loan facilities, credit facilities or guarantee facilities to the Private Party for financing the Project (specifically excluding any provider of Equity) in terms of the Loan Agreements, provided that for the purposes of this PPP Agreement, where the Lenders are required to take action, are to be given notice or are otherwise to be in receipt of something, the Agent (as defined in the Loan Agreement) shall be authorised to take such action and to receive such notice or other receipt, on behalf of the Lenders;
- 1.6.68 **“Loan Agreement”**
- such agreement or agreements as may be entered into by the Private Party and the Lenders in respect of loan facilities, credit facilities or guarantee facilities provided to the Private Party for financing of the Private Party’s obligations under this PPP Agreement, excluding Equity;
- 1.6.69 **“Material Damage”**
- used in the context of the environment means any change in the environment caused by the Private Party or any person

with whom it has contracted to fulfil any of its obligations in terms of this PPP Agreement, where the change results in a material adverse effect on the ecological integrity of the environment or on the ability of the ecosystem within the Kruger National Park to recover or which will have a material effect in the future, all of which shall be measured against the EIA or any subsequent EIA;

- 1.6.70 **“Malelane Hotel Development”** - the hotel located at the Project Site and referred to in Schedule A – Specific Conditions, to be designed, constructed, fitted, installed, equipped and commissioned in accordance with the provisions of this PPP Agreement, to enable the Private Party to exercise its rights and perform its obligations, including the Project Deliverables ;
- 1.6.71 **“Minimum PPP Fee”** - has the meaning described in Clause 8.2.1;
- 1.6.72 **“Monthly Operational Checklist”** - The monthly operational checklist as used by SANParks to audit Concessionaires, including the Private Party, and as amended from time to time;
- 1.6.73 **“NEMA”** - the National Environmental Management Act, No. 107 of 1998;
- 1.6.74 **“NEMPAA”** - the National Environmental Management: Protected Areas Act, No. 57 of 2003;
- 1.6.75 **“New Project Assets”** - collectively the movable and immovable assets acquired or constructed by the

- Private Party for purposes of the Project, but excluding the Institution Assets and cash, and including any books and records, any spare parts and tools, and the Intellectual Property, or if the context is appropriate, any one of the New project assets;
- 1.6.76 **“Operational Management Plan/OMP”** - the operational management plan prepared by the Private Party, which plan may be informed by a risk analysis conducted by the Private Party in respect of the Project, in order to ensure alignment of the Operation, Management and Maintenance of the Project with the Park Management Plan, corporate policies and all procedures and standards;
- 1.6.77 **“Operational Phase/Period”** - the phase commencing on the Operation Commencement Date and terminating upon termination of the Project Term;
- 1.6.78 **“Operation Commencement Date”** - the date of actual commencement of the Operation, Management and Maintenance of the Malelane Hotel Development and the Project Assets, subsequent to the issue of a completion certificate by an architect approved by SANParks in accordance with Clause 7.3;
- 1.6.79 **“Operation, Management and Maintenance” or “Operate, Manage and Maintain”** - all activities necessary for the operation, management and maintenance of the Malelane Hotel Development and the Project Assets in Accordance with this PPP Agreement;

- 1.6.80 **“Other Private Parties”** - private parties other than the Private Party, with whom SANParks has or will conclude PPP Agreements in respect of Projects in other parts of the Park;
- 1.6.81 **“Park and Ride Facility”** - the Park and Ride Facility at the Malelane Gate, forming part of the Project Site and Project Assets, to be designed, constructed, commissioned, managed and maintained by the Private Party in accordance with the provisions of this Agreement;
- 1.6.82 **“Park Manager”** - the manager of the Kruger National Park;
- 1.6.83 **“Park Plan/Park Management Plan/KNP Management Plan”** - the management plan for the Kruger National Park;
- 1.6.84 **“Park Regulations”** - the statutory regulations applicable to the Kruger National Park;
- 1.6.85 **“Park Rules”** - the park rules, including any Code of Conduct, regulating the Kruger National Park;
- 1.6.86 **“Parties”** - collectively, SANParks and the Private Party;
- 1.6.87 **“Party”** - SANParks or the Private Party, as the case may be;
- 1.6.88 **“Performance Bond** - a performance bond of the nature specified in Clause 3.12;
- 1.6.89 **“Person”** - any individual, partnership, close corporation, company, business trust,

- governmental agency, organ of state, Relevant Authority or other entity;
- 1.6.90 **“PFMA”** - the Public Finance Management Act, No. 1 of 1999;
- 1.6.91 **“PPP”** - Public Private Partnership;
- 1.6.92 **“the PPP Agreement/this Agreement”** - this PPP Agreement between SANParks and the Private Party including the Annexures and Schedules hereto;
- 1.6.93 **“PPP Fee”** - the fee payable by the Private Party to SANParks in respect of the Project, as detailed in Clause 8;
- 1.6.94 **“PPP Offer”** - the Private Party’s financial offer included in the Bid Submission;
- 1.6.95 **“PPP Rights”** - all the rights conferred on the Private Party pursuant to this PPP Agreement, for the purposes of the Project;
- 1.6.96 **“Pre-Construction Phase”** - the phase preceding the Construction Phase;
- 1.6.97 **“Private Party”** - the person concluding this PPP Agreement with SANParks;
- 1.6.98 **“Private Party Default”** - has the meaning assigned to it in Clause 17.1;
- 1.6.99 **“Project”** - the design, construction, fitting, installation, equipping, commissioning, Operation, Management and Maintenance of the Malelane Hotel Development and other Project Assets, under the terms of

this agreement, to provide accommodation and related services to visitors to the Kruger National Park;

1.6.100 “**Project Assets**”

- collectively the Institution Assets and the New Project Assets or, if the context is appropriate, any one of them, including both movable and immovable assets;

1.6.101 “**Project Deliverables**”

- means:
  - (i) the carrying out of the Construction Works;
  - (ii) the meeting of the BEE Obligations;
  - (iii) the installation, commissioning, operation, management and maintenance of the Project Assets, including the repair, renewal or replacement thereof; and
  - (iv) the exercise and performance of all other rights and obligations of the Private Party under this agreement from time to time;

1.6.102 “**Project Schedule**”

- the details for commencement and completion and carrying out of Construction Works (including all relevant milestone dates for completion and commissioning) set forth in the Bid Submission or as otherwise agreed with SANParks in writing, to be used by SANParks for purposes of monitoring the Construction Works;

- 1.6.103“**Project Site**”
- the site identified for the construction, Operation, Management and Maintenance of the Malelane Hotel Development and other Project Assets, including the Park and Ride Facility and the Hotel Access Road, described in Schedule B – Site Specific Description and Conditions and illustrated in Annexure III - Design Plan;
- 1.6.104“**Project Term**”
- the period specified in Clause 2.1.3;
- 1.6.105“**Project Year**”
- has the meaning described in Clause 8.2.3;
- 1.6.106“**Protected Names**”
- has the meaning ascribed to it in Clause 3.8.6;
- 1.6.107“**Regulations**”
- regulations issued under the Act;
- 1.6.108“**Regulatory Provisions**”
- (i) the Environmental Guidelines set forth in Annexure IV – Environmental Guidelines for Private Parties for the Construction and Operation of PPP Facilities within the Kruger National Park; and
  - (ii) collectively the prevailing laws, regulations, ordinances, policy directives and standards of the State and any Relevant Authority which in any way affect or apply to the Project and/or the activities of the Private Party and/or this PPP Agreement from time to time or, if the context is appropriate, any one of them and where appropriate include the Park

Regulations, Park rules, Park Management Plan and any statutory provisions applicable to the Park;

1.6.109 **“Related Party Transaction”** - any transaction relating in any way directly or indirectly to the Project in which the Private Party, or the Contractor leases, transfers or otherwise disposes of any of its properties or assets to, or purchases any property or assets from, or entered into any contract, agreement, understanding. Loan, advance or guarantee with, or for the benefit of, a Related Party (other than the Private Party);

1.6.110 **“Related Party”** - a Person who directly, or indirectly through one or more intermediaries, controls, or is controlled by, a Person who holds at least 25% Equity interest in the Private Party, or is under common control with any Person who holds at least a 25% Equity interest in the Private Party, and any Person who holds at least 25% Equity interest in the Private Party, where **“control”** with respect to any Person means the power to direct the management and policies of such Person, whether through the ownership of voting securities, by contract or otherwise, and the term **“controlled”** has the meaning commensurate with the foregoing;

1.6.111 **“Relevant Authority”** - a ministry, department, provincial or local agency, authority or any other organ of State and any other public authority, body,

entity or Person having jurisdiction under the laws of the State with respect to the Private Party or the Project and/or from whom consents are required for this Project;

**1.6.112 “Remedy Period”**

- the period granted by either party to the other, during which the one party must take action to make good the damage or rectify the notified default;

**1.6.113 “Residual Value”**

- the depreciated value of the immovable Project Assets, revalued for changes in the Consumer Price Index during the period that runs from the date they were first accounted for in the Private Party’s books until the date of termination of the PPP Agreement. Depreciation will be calculated in accordance with depreciation presented for income tax purposes, taking into consideration the unexpired portion of the period specified in Clause 2.1.3, provided that the minimum rates of depreciation shall not be less than normal custom and practice;

**1.6.114 “Responsible Person”**

- for the purposes of Clause 13, any Contractor, sub contractor at any level, agent, servant, officer or employee of the Private Party;

**1.6.115 “Responsible Tourism Standards”**

- (i) all applicable Responsible Tourism Standards as well as the “greening” principles and criteria derived from the existing standards set by SANParks for the Concessions as

- reflected in the SANParks Management Plan Policy Framework, the KNP Management Plans and the Concession Operations Manual;
- (ii) the National Responsible Tourism Guidelines DEAT (2002); and
- (iii) the National Responsible Tourism Standard and Accreditation System;
- 1.6.116“RFP” - the Request For Proposals in respect of the Project;
- 1.6.117“Roads Specifications Manual” - the specifications for the construction and maintenance of roads in the KNP, as amended from time to time;
- 1.6.118“SANParks” - South African National Parks and its lawfully designated representatives from time to time;
- 1.6.119“SANParks Requirements” - (i) the requirements set out in Annexure IV – Environmental Guidelines for Private Parties for the Construction and Operation of PPP Facilities within the Kruger National Park hereto;
- (ii) the Responsible Tourism Standards;
- (iii) the KNP Sustainable Design Principles and Guidelines;
- (iv) the Monthly Operational Checklist for Concessions used by SANParks to

- audit the Concessions; and
- (v) the Biannual Environmental Monitoring and Audit Report that is conducted on Concessionaires with the detailed criteria applicable;
- 1.6.120 **“Schedule”** - a schedule hereto;
- 1.6.121 **“Shareholder Distributions”** - at any date, all payments by the Private Party to the Shareholders in respect of the Equity, after the deduction of all applicable taxes, including, without limitation, by way of dividends or other return of capital;
- 1.6.122 **“Shareholders Agreement”** - the contract made between the Shareholders and the Private Party relating to the formation of the Private Party, the conduct of its business, and the relationship between the Shareholders, as amended from time to time;
- 1.6.123 **“Shareholders”** - the Persons listed in Annexure VI - Shareholding, Company Structure and Required Qualifications to Operate Project Site;
- 1.6.124 **“Signature Date”** - the date stated in Schedule A – Specific Conditions, being the date on which SANParks signs the PPP Agreement and with effect from which date the PPP Agreement becomes legally binding on both SANParks and the Private Party;
- 1.6.125 **“State”** - the Government of the Republic of South Africa, acting directly or through its lawfully

- designated representatives;
- 1.6.126“**Subcontractors**” - any subcontractor of the Private Party and/or a third party, who has contracted directly with the Private Party in respect of the Project;
- 1.6.127“**Substitute Entity**” - any Person nominated to replace the Private Party in this PPP Agreement and who has entered into the requisite agreements, all in accordance with the procedures set out in Clause 18 hereof;
- 1.6.128“**Termination Date**” - the date of termination of this PPP Agreement other than on expiry of the Project Term;
- 1.6.129“**TGCSA**” - Tourism Grading Council of South Africa;
- 1.6.130“**TOMSA**” - Tourism Marketing Levy for South Africa (Association incorporated under section 21);
- 1.6.131“**Tourism Charter**” - the Transformation Charter prepared in accordance with the provisions of the BBBEE Act and applicable to the Tourism Sector;
- 1.6.132“**Tourism Code**” - the Code issued under the provisions of Section 9 of the BBBEE Act and applicable to the Tourism sector;
- 1.6.133“**Utilities**” - all facilities serving the public, such as water, electricity, sewage, gas and telecommunications and where appropriate includes the relevant provider

thereof;

1.6.134“**Variable PPP Fee**” - has the meaning described in Clause 8.2.

## 2. **FRAMEWORK**

### 2.1 **Private Party Statements**

2.1.1 The Private Party shall undertake the Project at its own cost and risk in accordance with the provisions of this PPP Agreement, including the provisions of the Bid Submission. Neither SANParks, the State nor any Relevant Authority shall provide any guarantee or support to the Private Party except as otherwise specifically provided herein or as provided in law. This PPP Agreement shall not be deemed to grant the Private Party any right or impose any obligations on SANParks, the State or any Relevant Authority except as specifically stated in this PPP Agreement.

2.1.2 No instructions or approvals given by SANParks in accordance with the law and the provisions of this PPP Agreement will affect the Private Party's responsibility to undertake the Project. Notwithstanding that this PPP Agreement permits or requires the Private Party to engage third parties to perform part of the Project, such engagements shall not release the Private Party from any of its obligations and responsibilities to SANParks hereunder, and the Private Party shall be fully responsible for the acts and omissions of such third parties.

#### 2.1.3 **Project Term**

The Project Term shall be for 30 (thirty) years from the Effective Date, subject to termination in accordance with this PPP Agreement.

### 2.2 **PPP Agreement Legally Binding at Signature Date**

Notwithstanding the representations and warranties provided in Clause 22 or the Compliance Events, each Party hereto hereby represents and warrants that this PPP Agreement is legally valid and binding upon it from the Signature

Date.

### 2.3 **Project Site**

The location, dimensions and physical boundaries of the Project Site shall be that area defined in Schedule B – Site Specific Description and Conditions and illustrated in Annexure III - Design Plan.

### 2.4 **Payments**

2.4.1 Save as expressly provided in this PPP Agreement, SANParks shall not require payment by the Private Party for or in respect of the PPP Rights or otherwise for or in connection with the Project.

2.4.2 The Private Party will be responsible for all taxes of general application and without limiting the generality of the foregoing, any duties, fees or taxes assessed by any Relevant Authority in respect of the Malelane Hotel Development and Project Site, or in respect of activities conducted within the Malelane Hotel Development and Project Site or activities undertaken by SANParks relating to the regulation of this PPP Agreement. These taxes will include municipal property rates, if any, as well as tourism levies, but exclude any capital gains tax, income tax, VAT or other taxation on income which is earned by SANParks or, notwithstanding this PPP Agreement, any other tax payable by SANParks.

2.4.3 Neither SANParks, the State nor any Relevant Authority shall be liable for any payments except as expressly specified in this PPP Agreement or in any applicable law.

## 3. **PRIVATE PARTY COVENANTS**

### 3.1 **Registration**

3.1.1 The Private Party shall be an incorporated juristic person or an unincorporated joint venture or trust recognised in terms of the laws of the Republic of South Africa and shall remain as such for the entire

Development Period and Project Term.

- 3.1.2 The Private Party shall not amend, restate, supplement or otherwise modify its Certificate of Incorporation, Memorandum of Association, Articles of Association, founding statutes, Joint Venture Agreement or Trust Deed, unless otherwise agreed to in writing by SANParks.

3.2 **Environmental Compliance and Compliance with Laws, Regulations and Standards**

- 3.2.1 During the Development Period and the Project Term, the Private Party shall, and shall take all reasonable steps to ensure that its officers, employees, Contractors, sub-contractors at all levels, sub-agents, assignees, guests, invitees and patrons adhere to, abide by and comply with the Regulatory Provisions, all applicable health and safety standards, the SANParks Requirements, the KNP Sustainable Design Principles and Guidelines, the Environmental Guidelines generally in respect of the Kruger National Park as set out in Annexure IV – Environmental Guidelines for Private Parties for the Construction and Operation of PPP Facilities within the Kruger National Park and specifically in respect of the Malelane Hotel Development and Project Site, the EIA and any valid and enforceable directives or rules issued by the Park Manager or Head Ranger from time to time. To be valid and enforceable in terms of this PPP Agreement, directives or rules issued by the Park Manager or Head Ranger must not conflict with the letter or the spirit of the Regulatory Provisions, the Environmental Guidelines set in Annexure IV – Environmental Guidelines for Private Parties for the Construction and Operation of PPP Facilities within the Kruger National Park, the Park Management plan and the provisions of the EIA. In those instances where the Private Party believes that either the Head Ranger or the Park Manager has issued a directive or rule that is either not valid, or that impacts materially on the commercial soundness of the Project, the Private Party shall have the right of appeal within SANParks to the PPP Management Office, established by SANParks to regulate and administer this PPP and others like it in protected areas. The PPP Management Office will verify whether the directive or rule in question was valid, and

consistent with practice elsewhere in national parks. Pending the results of such an appeal, the Private Party shall abide by the said directive or rule. This internal process of appeal does not prejudice the rights of the Private Party to pursue its rights pursuant to Clause 19.

- 3.2.2 SANParks shall use all reasonable endeavours in assisting the Private Party to acquire the appropriate environmental permits, provided, however that SANParks shall bear no liability for any failure of the Private Party to obtain such permits.
- 3.2.3 Subject to Clause 3.2.1, the Private Party shall obtain all necessary environmental and other permits, approvals and/or licences in accordance with the Regulatory Provisions and shall comply with all conditions of any environmental or other permit, approval or licence granted by any Relevant Authority and shall take all other necessary action required under the Regulatory Provisions for the implementation and the operation, management and maintenance of the Project for the Development Period and Project Term.
- 3.2.4 Action which is prohibited in terms of the Regulatory Provisions, or non-compliance with any duty or obligation which is imposed by the Regulatory Provisions, shall be deemed to be a breach of this PPP Agreement. SANParks shall be entitled to give the Private Party notice to rectify any such breach, if such breach is capable of rectification, but in any event, SANParks shall be entitled to act on any such breach to protect its rights and interests. The Private Party shall and hereby does indemnify SANParks for any costs, losses and expenses suffered or incurred by SANParks as a result of SANParks so acting to protect its rights and interests.
- 3.2.5 The Private Party shall undertake an EIA in respect of the Project, to be prepared by an independent environmental consultant in accordance with the Environmental Guidelines, the EIA Regulations and other applicable Regulatory Provisions, the guideline documents published by DEAT/DWEA and in accordance with the IEM principles adopted from time to time by DEAT/DWEA. All EIA findings and recommendations, including the detailed EMP that addresses both the Development and Operational

Phases, shall form an integral part of this Agreement and be annexed as part of Annexure VIII – Development and Environmental Proposal and EIA Findings and Recommendations.

- 3.2.6 The Private Party shall bear all risks and costs with respect to Material Damage to the natural environment caused by the implementation of the Project during the Development Period and Project Term arising from any act or omission of the Private Party or any person with whom it has contracted to fulfil any of its obligations in terms of this PPP Agreement, save where such Material Damage is an unavoidable result of the Project as permitted in terms of this PPP Agreement. Should the Private Party fail to fulfil any obligations in respect of the fitting, installation, equipping, commissioning, construction, operation, management and/or maintenance of the Malelane Hotel Development and Project Site or permit behaviour which, in the reasonable opinion of SANParks, may result in Material Damage to the environment, then, without derogating from the Private Party's obligations hereunder and at law, SANParks shall be entitled to give written notice to the Private Party to immediately cease and desist from such conduct or behaviour, and in such notice shall set out in full its reasons therefore and SANParks shall be entitled forthwith to exercise any authority granted to it in terms of the Regulatory Provisions in respect of the Conservation Management of the Malelane Hotel Development and Project Site and the Private Party shall promptly make payment to SANParks for its costs, expenses and other damages suffered or incurred or reasonably expected to be suffered to incurred in connection with the execution of such authority.
- 3.2.7 The Private Party shall deliver those reports as detailed in Clauses 15.4, 15.5, 15.6, and 15.8. The Private Party shall promptly bring to the attention of SANParks any matter which may, in its view, have a detrimental impact on the Environment within the Park.
- 3.2.8 The Private Party shall appoint, at no cost to SANParks, an ECO who shall be responsible for ensuring that the Construction Works and Operations, Management and Maintenance are performed in accordance with SANParks' Requirements and relevant environmental Regulatory Provisions and for monitoring and ensuring the implementation and

effectiveness of mitigation measures and other requirements and targets set forth in the EIA and the EMP. The Private Party shall ensure delivery of monthly reports prepared by the ECO to SANParks during the Pre-Construction and Construction Phases and thereafter twice-yearly reports, as detailed in Clause 3.2.9.

3.2.9 During the Pre-Construction and Construction Phases the ECO shall submit monthly reports, and during the Operational Phase the ECO shall submit twice-yearly reports. The ECO shall utilise the Biannual Environmental Monitoring and Auditing Report Format or other format as determined by SANParks for his twice-yearly reports. Reports will be submitted to both SANParks and the Private Party. The ECO will report on an ad hoc basis to SANParks on environmental matters concerning the Project and will also be the contact person for all environmental matters that need to be dealt with, including any complaints lodged by guests of the Malelane Hotel Development and other members of the public, insofar as the Operation, Management and Maintenance of the Project is concerned.

3.2.10 Other than those duties enumerated in Clause 3.2.9, duties of the ECO will include the following:

3.2.10.1 Ensuring that the Construction Phase is completed without significant adverse impacts on the environment;

3.2.10.2 Ensuring that the Environmental Guidelines are effectively implemented;

3.2.10.3 Ensuring that the Project has a positive effect on the ecological functionality of the area surrounding the Project Site;

3.2.10.4 Ensuring the ongoing effective implementation of the EMP, including the mitigation measures and other requirements contained therein;

3.2.10.5 Using environmental appropriate facilities and activities to enhance environmental awareness and education;

3.2.10.6 Monitoring the liquid waste management plan contained in the EMP;

3.2.10.7 Ensuring that all environmental incidents concerning the Project be addressed in terms of the EMP and relevant Regulatory provisions;

and

- 3.2.10.8 Inducting all Contractors.
- 3.2.11 All fossils, coins, articles of value or antiquity, and structures and other remains or things of geological or archaeological interest or burial sites discovered within the project Site shall (as between the Parties) be the property of SANParks and the Private Party herewith cedes, transfers and waives in favour of SANParks any and all rights it may have regarding the said matter. The Private Party shall take reasonable precautions to prevent its staff, labour, Contractors or other Persons from removing or damaging any such article or thing. The Private Party shall, immediately upon discovery of such article or thing, advise SANParks which shall issue instructions for dealing with it.
- 3.2.12 Subject to complying with its obligations under Clause 3.2.11, the Private Party shall be required to minimise and mitigate, and to take reasonable steps to procure that its Contractors minimise and mitigate, to the maximum extent possible, the consequences of any such discovery as is referred to in Clause 3.2.11 and shall deal with the discovery in terms of the Environmental Guidelines and the EIA. If need be a revised EIA specific to the discovery can be called for by SANParks.
- 3.2.13 The Private Party shall take all reasonable steps in the performance of its obligations hereunder to prevent and limit the occurrence of any environmental health hazards and to ensure the health and safety of staff, guests, invitees and patrons and shall ensure that all staff, guests, invitees, and patrons are covered under an emergency medical evacuation policy.
- 3.2.14 During the Development Period and Project Term, the Private Party shall operate at all times in an environmentally responsible way by adopting appropriate operating methods and practices for conducting business in a proclaimed nature area and shall adhere to the guidelines set out in the Regulatory Provisions, the Responsible Tourism Standards, the Environmental Guidelines and the EIA. The Private Party shall comply with the undertakings made in its Development and Environmental Proposal, which is attached as part of Annexure VIII – Development and Environmental Proposal and EIA Findings and Recommendations and is

part of its Bid Submission. The Private Party shall have due regard for the under mentioned matters, and shall take them into account in conducting its business. The matters to be taken into account are all ecological aspects, including garbage disposal, human waste treatment, firewood collection and fuel self sufficiency, fire control, advertising standards, use of environmentally friendly cleaning and other materials, fauna and flora protection, acceptable practices for wildlife viewing and photography, feeding or touching animals, water conservation, minimising noise levels, visual impacts, the removal of aquatic life, plants, insects, rocks and the like, removal of souvenirs, social aspects, including local customs and traditions, permission to take photographs, address code, language, privacy, response to begging, use of technological equipment, bartering and bargaining, indigenous rights, local officials and off-limits areas. It shall be the Private Party's responsibility to bring any matter which may have a detrimental impact on the environment to the attention of the SANParks before implementation by the Private Party.

3.2.15 Without limiting the generality of the responsibility of the Private Party described in Clause 3.2.14, the Private Party has a statutory duty in terms of existing acts to take reasonable measures to prevent pollution or degradation from occurring, continuing or recurring, or, in so far as any harm to the environment is authorised by SANParks, the findings of the EIA or by law, to minimise and rectify such pollution or degradation of the environment.

3.2.16 The Private Party shall be entitled to:

3.2.16.1 exclusive access to the Project Site as illustrated in Annexure III - Design Plan;

3.2.16.2 non-exclusive access to the Park subject to normal Park operating rules and hours; and

3.2.16.3 special rights of access to the Park outside the Project Site, subject to the terms agreed in writing with the Park Manager;

all of which rights shall be exercised in accordance with the terms of this PPP Agreement, and subject to the Regulatory Provisions and as further set forth in Annexure IV – Environmental Guidelines for Private Parties for

the Construction and Operation of PPP Facilities within the Kruger National Park and Annexure VIII – Development and Environmental Proposal and EIA Findings and Recommendations.

3.2.17 The Private Party shall not have exclusive rights to traverse outside the Project Site. The Private Party shall be entitled to conduct game drives for its guests during the day or night on the public road network in the Park, subject to making use of SANParks' vehicles and guides and the provisions of this PPP Agreement.

3.2.18 The number of people to be accommodated overnight, to include both guests and staff, shall not be more than provided for in the Design Plan. A maximum number of people to be accommodated overnight, to include both guests and staff, will be determined as indicated in Schedule B and Annexure IV – Environmental Guidelines for Private Parties for the Construction and Operation of PPP Facilities within the Kruger National Park. The number of people that may be accommodated is subject to the findings of the EIA process and may change substantially in accordance with such findings.

### 3.3 **Single Purpose Private Party - No Subsidiaries**

3.3.1 The Private Party shall be a single purpose incorporated juristic person or unincorporated joint venture or trust, with the sole purpose of implementing this Project or, exceptionally, more than one similar project in the National Parks system as SANParks may agree to in writing and the Private Party shall not assume any liability other than in connection with this Project. The Memorandum and Articles of Association or founding statutes or Joint Venture Agreement or Trust Deed of the Private Party shall include a provision to such effect.

3.3.2 The Private Party shall have no subsidiaries or sub-trusts throughout the Development Period and Project Term except with the prior written consent of SANParks.

### 3.4 **Related Party Transactions**

3.4.1 Unless otherwise agreed to in writing by SANParks, the Private Party will enter into no material Related Party Transactions, other than Related Party Transactions which are no less favourable to the Private Party than those that could have been obtained in a comparable arm's-length transaction by the Private Party with an unrelated person.

3.4.2 SANParks shall have the right to review the basis for all costs charged, directly or indirectly, to the Private Party by a Related Party. The Private Party shall give prior written notice to SANParks of any Related Party Transaction prior to entry therein together with all relevant details relating thereto.

3.4.3 SANParks reserves the right to conduct a particularly thorough examination of the cost basis of Related Party Transactions involving the Private Party and any companies providing travel agent, booking agent, tourism operating or management services for a fee or commission. Such fees and commissions will be required to conform to normal industry practice.

### 3.5 **Limitation on Financial Indebtedness**

The Private Party shall not incur, assume or permit to exist any indebtedness, including guarantees issued to third parties and the creation of charges, pledges or other encumbrances over its assets, otherwise than in accordance with the Associated Agreements or in the ordinary course of business in furtherance of the Project or by operation of law, without the prior written consent of SANParks. The Private Party shall conduct its operations in such a fashion that they do not impact on SANParks and shall submit the requisite reports to SANParks as provided for in this Agreement.

### 3.6 **The Private Party to Make Documents Available to SANParks**

The Private Party shall, upon the written request of SANParks, and at no cost to SANParks, make available at all times documents which are or were required or brought into existence by the Private Party or supplied to the Private

Party from other parties to the Associated Agreements for the purposes of the Project, or which the Private Party is required to prepare in terms of this PPP Agreement.

### 3.7 **Conflicts**

Unless otherwise agreed to in writing by SANParks, the Private Party, and other parties to the Associated Agreements shall have no interest in nor receive remuneration in connection with the Project except as provided for in the PPP Agreement or the Associated Agreements. Subject to the proper enforcement of rights under the Associated Agreements, the Private Party shall not, and shall take all reasonable steps to ensure that other parties, including parties to the Associated Agreements, do not engage in any activity which might conflict with the interests of SANParks, unless such activity is carried out pursuant to the rights granted to the Private Party in terms of this PPP Agreement.

### 3.8 **Intellectual Property**

3.8.1 It is specifically recorded that all intellectual property rights whatsoever, whether capable of registration or not, regarding SANParks' name, logo, image and all other intellectual property matters relating to SANParks, its name, logo and/or image shall remain the sole property of SANParks.

3.8.2 Subject to existing rights and obligations and the provisions of this PPP Agreement, SANParks shall, on application by the Private Party, grant a non-exclusive right and licence to the Private Party to use SANParks' trademarks which relate to the Park, in connection with the Project. Should any of SANParks' trademarks, names, logos, images and all other intellectual property matters be required for use outside of this PPP Agreement, they will be subject to terms and conditions negotiated with SANParks. This includes the granting of licences to trade merchandise with SANParks' trademarks, names, logos, images and all other intellectual property matters outside of SANParks' retail facilities.

3.8.3 In order to establish and maintain high standards of style, quality and proprietary associated with SANParks, in the event, the Private Party desires to use SANParks' trademarks or logos in any way, the Private

Party shall first submit the concept or a sample of the proposed use to SANParks for approval. Under no circumstances shall any use of SANParks' trademarks or logos or the image or likeness of any trademark, logo or employee, which SANParks in good faith believes reflects unfavourably upon or disparages SANParks or the Park, be approved. SANParks shall use its best efforts to advise the Private Party of its approval or disapproval of the concept or sample within 15 (fifteen) Business Days of its receipt of the concept or sample. If SANParks approves the concept or sample, the Private Party shall not depart from it in any material respect without SANParks' further written approval.

3.8.4 SANParks may at any stage withdraw its approval for the specified use of any trademark or logo. Under such circumstances the Private Party shall forthwith discontinue all use of such SANParks trademark or logo and shall remove from public sale or distribution, any previously approved product in respect of which SANParks has rescinded approval.

3.8.5 Without derogating from the generality of Clause 3.8.4, SANParks may withdraw its approval for the specified use of any trademark or logo upon 5 (five) Business Days written notice to the Private Party if the Private Party or any of its officers, directors or employees commits any act or engages in any conduct which constitutes a crime, is contrary to any Regulatory Provision or offends against public morals and decency and in SANParks' reasonable opinion, materially prejudices the reputation and public goodwill of SANParks.

3.8.6 The Private Party acknowledges that the names of the Park, the Kruger National Park, the Project Site and Malelane Hotel Development (the "**Protected Names**") are associated with and peculiar to the Park, the Kruger National Park, the Project Site and Malelane Hotel Development and are the intellectual property of SANParks. Consequently, the Private Party agrees that the sole and exclusive ownership of the Protected Names shall vest in SANParks and should the Private Party utilise any of the Protected Names, it does so only in terms of this PPP Agreement and provided the prior written approval of SANParks is obtained for any specific use of the Protected Names. Any other name used for trading purposes or to market the Malelane Hotel Development will also form part of the

Protected Names and ownership of such name/s will be transferred to SANParks at the end of the Project Term or at Termination Date (whichever comes first).

3.8.7 In circumstances where the Private Party utilises any of the Protected Names, either singularly or in combination or association with any other name, it does so only in terms of this PPP Agreement and on termination of this PPP Agreement, the Private Party shall not be entitled to operate or conduct any business using any of the Protected Names in combination or association with any other name.

3.8.8 Within 30 (thirty) Business Days after the termination of this PPP Agreement and where the Private Party has operated a company or close corporation utilising any of the Protected Names with the permission of SANParks, the Private Party shall either:

3.8.8.1 de-register the company or close corporation bearing any of the Protected Names; or

3.8.8.2 change the name to a name not substantially similar to any of the Protected Names.

3.8.9 The naming of the Private Party's business operation shall be done in consultation with SANParks and subject to SANParks' approval.

3.8.10 The use of any branding, logo, trademark, trade name, get up, signage, outdoor advertising, livery, promotion, promotional or marketing material or other proprietary intellectual property in connection with the Malelane Hotel Development or the Project Site shall require the prior written approval of SANParks.

### 3.9 **Branding**

3.9.1 The Private Party shall not, in the operation, promotion or marketing of the Malelane Hotel Development, be entitled to use, directly or indirectly, any commercial branding similar to any branding used outside of the Park by the Private Party, or any of its associated companies or competitors, without the prior written consent of SANParks.

3.9.2 Any commercial branding developed by the Private Party in respect of the Malelane Hotel Development may not be used outside the Park without SANParks' prior written consent.

3.9.3 The Private Party will not be obliged to use the words "Malelane Hotel Development" or "Malelane" in the naming and branding of the Project.

3.10 **Transfer of Project Site, Malelane Hotel Development and Project Assets**

At the end of the Project Term or at such earlier time as may be provided herein, and without derogating from the generality of the foregoing, upon termination of this PPP Agreement, the Private Party shall hand over the Project Site, the Malelane Hotel Development, all Project Assets (excluding all movable New Project Assets) and its rights or interest in the Project to SANParks free of charges, liens, claims or encumbrances of any kind whatsoever, and free of any liabilities, in good condition, fair wear and tear excepted, in accordance with the standards set out in SANParks Requirements (as certified by SANParks). The Private Party shall not, other than as provided for in this PPP Agreement in respect of the Residual Value consequent upon termination prior to expiry of the Project Term, be entitled to payment of any compensation in connection therewith. Without derogating from the generality of the foregoing, the following shall not be considered to be movable: buildings and all fixtures and fittings of a permanent nature, roads and bridges, all infrastructure associated with the provision of water supply and sanitation, including dams and boreholes, power lines and cables as well as power generators, windmills and waterholes and fencing.

3.11 **Approvals**

The Private Party warrants and shall ensure that any decision, determination, instruction, inspection, examination, testing, consent, approval, expression of satisfaction, acceptance, agreement, exercise of discretion (whether sole or otherwise) or similar act by SANParks required in terms of this PPP Agreement, the Construction Contracts or other Associated Agreements shall be so applied for or requested promptly.

**3.12 Bid and Development Bond and Performance Bond**

- 3.12.1 The Private Party shall provide to SANParks an on demand guarantee (“the Bid and Development Bond”), as provided for in the Bid Submission, which shall be operative from the Bid Date as defined in the Bid Submission, in favour of SANParks, issued by a bank or financial institution acceptable to SANParks, substantially in the format specified in Annexure V Part C: Characteristics of the Bid and Development Bond, on signing this Agreement. The amount of the Bid and Development Bond is set out in Annexure V - Performance and Bid Bonds. The Private Party shall maintain a valid Bid and Development Bond (in accordance with the provisions hereof) in respect of the 18 (eighteen) months’ period after the Signature Date.
- 3.12.2 On or before the Effective Date, and prior to the Delivery Date occurring, the Private Party shall provide to SANParks an on demand guarantee (“the Performance Bond”), which shall be operative from the Effective Date, in favour of SANParks issued by a bank or financial institution acceptable to SANParks substantially in the format specified in Annexure V - Performance and Bid Bonds.
- 3.12.3 The Private Party shall maintain a valid Performance Bond (in accordance with the provisions hereof) from the Effective Date until 90 (ninety) Business Days after the expiry of the Project Term or earlier termination of this PPP Agreement.
- 3.12.4 Within 90 (ninety) Business Days of the expiry or the Project Term or earlier termination of this PPP Agreement, SANParks shall release all or so much of the Performance Bond as shall remain undrawn after such expiry or termination.
- 3.12.5 The amount to be guaranteed by the Performance Bond shall be equal to R250 000-00 (two hundred and fifty thousand rand).
- 3.12.6 The Performance Bond shall be reinstated in full and its amount adjusted annually within 90 (ninety) Business Days of the end of each Project Year such that the amount to be guaranteed by the Performance Bond for the

relevant Project Year is not less than the figure determined in accordance with the provisions of Clause 3.12.5 as adjusted, to reflect changes in the Consumer Price Index since 1 July 2009.

- 3.12.7 The Performance Bond shall secure the Private Party's performance under this PPP Agreement and may be called on by SANParks to the extent of any costs, losses, damages or expenses suffered or incurred by SANParks as a result of breach by the Private Party of this PPP Agreement, including, but not limited to, compensation to SANParks for any actions taken by SANParks as a result of breach by the Private Party of any Regulatory Provision(s) or Environmental Guidelines (as set forth in Clause 3.2 and Annexure IV – Environmental Guidelines for Private Parties for the Construction and Operation of PPP Facilities within the Kruger National Park) and payment obligations hereunder. The Performance Bond may also be called upon for any delay in the payment of sums due to SANParks in respect of PPP Fee Payments. It is furthermore expressly recorded that SANParks shall be entitled to call on the Performance Bond where the Private Party fails to comply with its obligations under Clause 3.10 and where SANParks is entitled to terminate this PPP Agreement in accordance with Clause 17.2.
- 3.12.8 Prior to enforcing the Performance Bond, SANParks shall give notice to the Private Party, informing the Private Party of the breach giving rise to the right of enforcement of the Performance Bond. If such breach is not remedied within the Remedy Period, SANParks may enforce the Performance Bond.
- 3.12.9 The Performance Bond may only be enforced to the extent of any costs, losses, damages or expenses suffered or incurred and/or reasonably expected to be suffered or incurred as a result of the breach that gave rise to the right to enforce the Performance Bond.

#### **4. PPP RIGHTS**

##### **4.1 Grant of PPP Rights**

- 4.1.1 Subject to the terms of this PPP Agreement, the PPP Rights for the purposes of the Project are granted by SANParks to the Private Party during the Project Term.
- 4.1.2 The Private Party is obliged to operate, manage and maintain the Malelane Hotel Development and Project Assets as public facilities for visitors to the Kruger National Park, open to paying guests and visitors, during the Project Term. The Private Party will not only cater for the foreign market, but also be aimed at national tourists.
- 4.1.3 Any activities offered by the Private Party are subject to the requirement that no portion of the Park, other than the Project Site, will be reserved for exclusive use by guests or visitors to the Malelane Hotel Development or Project Site and the requirements of the Park Management Plan.
- 4.1.4 The Private Party acknowledges that SANParks intends entering into or has entered into PPP Agreements in respect of PPP Projects in other parts of the Park. The Private Party acknowledges that it has no exclusive rights in respect of the kind of business opportunity presented by the Project. The Private Party undertakes in favour of SANParks and the Other Private Parties with whom SANParks has concluded PPP Agreements, that at no stage it, its officers, employees, contractors, sub-contractors, sub-agents, assignees, guests, invitees and patrons will infringe or negatively impact upon the rights and obligations of such Other Private Parties, due cognisance being taken of the rights and obligations of the Private Party and the Other Private Parties, flowing from their respective PPP Agreements, nor cause a nuisance for the Other Private Parties.
- 4.1.5 The exercise of the PPP Rights by the Private Party, its officers, employees, contractors, sub-contractors, sub-agents, assignees, guests, invitees and patrons, will at no time infringe upon the rights of other persons in the Park, including those of SANParks, its employees, any party with whom it has contracted in respect of facilities offered in the Park other than at the Project Site, its suppliers or Visitors to the Park.
- 4.1.6 The grant of the PPP Rights to the Private Party shall entitle and oblige the Private Party to Operate, Manage and Maintain for gain for the duration of

the PPP Agreement:

- 4.1.6.1 the Malelane Hotel Development and Project Assets in accordance with the provisions of this PPP Agreement, including achieving the Project Deliverables; and
- 4.1.6.2 generate, charge and collect revenues from the execution of such PPP Rights.
- 4.1.7 SANParks will grant the Private Party and its employees access to the Park, subject to the Park's operating rules and hours, on the same basis as SANParks' employees.

## 4.2 **Service Delivery**

The goods and services to be provided by the Private Party shall:

- 4.2.1 be in accordance with Best Industry Practice;
- 4.2.2 be delivered in a professional, courteous and friendly manner; and
- 4.2.3 be in accordance and compliance with the grading of the Tourism Grading Council, as specified in Clause 9.4.

## 4.3 **Quality Audits**

SANParks will be entitled to conduct regular quality audits to ensure that the quality of the goods and services provided by the Private Party consistently meet desired standards and comply with the provisions of this Agreement. Such quality audits shall be conducted by way of "mystery guests", spot checks, customer questionnaires and SANParks quality control checks or other measures as deemed necessary by SANParks.

## 4.4 **Appointment of a Hygiene Control Officer**

The Private Party shall be obliged to appoint a Hygiene Control Officer at its own costs, to assess the hygiene at the business being conducted by the Private Party by means of the Project on a quarterly basis, compile a report and forward a copy thereof to SANParks and the Private Party. The Hygiene

Control Officer shall be obliged to prepare his report in the format and in respect of those matters requested by SANParks.

## **5. SANPARKS' UNDERTAKINGS**

### **5.1 SANParks Assistance**

5.1.1 Without being obligated in terms of outcome or consequences, SANParks shall give reasonable assistance in the form of advice, introductions and documentary support to the Private Party in its dealings with Relevant Authorities and otherwise in connection with implementing the Project in accordance with the terms and conditions set forth herein.

5.1.2 SANParks will operate, manage and promote the Kruger National Park in such a manner as to ensure its continued viability and sustainability as a national park and as a sustainable and attractive tourism and conservation undertaking.

### **5.2 Access**

5.2.1 SANParks shall ensure that, for the duration of the PPP Agreement, the Private Party, its guests, employees, agents and invitees have reasonable access to the Malelane Hotel Development and Project Site, subject to the provisions of this PPP Agreement, the Park Rules and other regulations, or legislation, which may be in place from time to time.

5.2.2 The Private Party shall be obliged to manage a 24-hour reception at the Malelane Hotel Development and will therefore be granted 24 hour access to the Project Site.

5.2.3 Guests, invitees and patrons of the Malelane Hotel Development will access the hotel via the Malelane Gate, leave their vehicles at the Park and Ride Facility and be transported by the Private Party to the Malelane Hotel Development.

5.2.4 The Private Party shall be obliged to pay the requisite Conservation Levies

to SANParks for every guest, invitee and patron of the Malelane Hotel Development. These Conservation levies can be paid on a monthly basis or as otherwise arranged with SANParks.

### 5.3 **Security**

SANParks shall take such reasonable measures possible under the circumstances to ensure that the Malelane Hotel Development and Project Site are free from trespassers, including poachers and visitors to the Park who are not guests or invitees of the Private Party. The security of the Hotel Site itself, however, shall be the responsibility of the Private Party.

### 5.4 **Assistance against protestor action**

Where at any time, the Park or the Project or any part thereof is subjected to protestor action which has not resulted or arisen from any default or negligence on the part of the Private Party or any of its Contractors or sub-contractors, SANParks shall take all reasonable steps to minimise and mitigate the effect of such protestor action on the performance of the Private Party's obligations under this PPP Agreement but the Private Party shall not be entitled to any monetary compensation from SANParks nor to any other relief as a result of or in consequence of any such protestor action.

### 5.5 **Competing Products**

Nothing herein shall preclude or in any way limit the right of SANParks to grant such further or other PPPs or to enter into other agreements or to construct or procure the construction of other products outside of the Project Site as it in its sole discretion deems fit, nor shall the Private Party have any claim arising from the grant of such further or other PPPs or from the construction of such other products: provided that SANParks shall fulfil the obligations set out herein with due regard to the rights granted to the Private Party in terms of this PPP Agreement.

### 5.6 **Visitor Levels**

SANParks shall have no liability to the Private Party for the number of visitors to

the Malelane Hotel Development and/or the Kruger National Park or for any reduction or fluctuation thereof.

## 5.7 **SANParks Competence**

5.7.1 SANParks hereby represents and warrants that it has been duly empowered and authorised to implement the Project and to enter into and perform its obligations under the PPP Agreement.

5.7.2 All decisions, determinations, instructions, inspections, examinations, tests, consents, approvals, certifications, expressions of satisfaction, acceptances, agreements, exercises of discretion (whether sole or otherwise), nominations or similar acts of SANParks hereunder shall be given, made and done in writing.

## 6. **ACQUISITION AND DELIVERY OF PROJECT SITE AND OWNERSHIP AND RISK**

### 6.1 **Project Site Acquisition**

SANParks will have possession of that land which constitutes the Project Site and the land in the Park giving access to the same, on the Delivery Date. On request SANParks shall supply the Private Party with relevant diagrams in its possession and that relate to the Project Site, and information regarding the same, to enable the Private Party to occupy the Project Site.

### 6.2 **Delivery of Project Site**

6.2.1 SANParks shall, as far as practically possible, and as soon as the Compliance Events, referred to in Annexure VII – Compliance Events, have occurred, deliver vacant possession of the Project Site to the Private Party and shall thereafter ensure that the Private Party continues to be entitled to such access to the Project Site as is necessary for the Private Party to perform its obligations under this PPP Agreement, and to enjoy the PPP Rights, from the date of delivery to the termination or expiry of this PPP Agreement.

6.2.2 The Private Party acknowledges that delivery of the Project Site without vacant possession shall not be deemed a breach of SANParks' obligations in accordance with Clause 6.1 if it does not impinge on the ability of the Private Party to undertake the Construction Works as required or does not interfere with the construction programme for such works.

6.2.3 The rights of the Private Party under this Clause 6 are subject to the obligation of the Private Party to use all reasonable efforts to rearrange the Project Schedule in order to minimise, mitigate and/or otherwise avoid delay and increased cost and to require the relevant Contractor to co-operate in that regard.

### 6.3 **Private Party Without Ownership Interest**

6.3.1 Subject to the terms of this PPP Agreement, the Private Party has, and will have, no title to, or ownership interest in, or liens, or leasehold rights or any other rights (save for the PPP Rights) in the Project Site or in the Project Assets (other than movable New Project Assets). Title to such land and assets will be held, directly or indirectly, by SANParks or the State.

6.3.2 The Private Party has no and will have no rights with respect to the airspace above, or the area below the surface of, the Malelane Hotel Development and Project Site or the land on which any Project Assets are to be constructed, except the right to use such land for the sole purpose of the Project during the Development Period and Project Term, all in accordance with the terms of this PPP Agreement. SANParks reserves unto itself the right to grant to third parties and/or to the Private Party such rights it has with respect to the airspace above and the area below the surface of the Malelane Hotel Development and Project Site, provided that in exercising such right it shall have due regard to the rights granted to the Private Party in terms of this PPP Agreement.

### 6.4 **Damage to or Destruction of the Malelane Hotel Development and Project Site or Project Assets**

6.4.1 After delivery of the Project Site, the Malelane Hotel Development or any

portion thereof and any Institution Assets delivered to the Private Party, the Project Site and any New Project Assets shall be at the sole risk of and under the care, custody and control of the Private Party.

- 6.4.2 Without derogating from the generality of Clause 6.4.1, the Private Party shall bear all risks and costs with regard to any weather conditions (subject to the provisions of Clause 16), including, without limitation, floods, and with regard to physical conditions or obstructions (both above-ground and subsurface and whether artificial or not), whether foreseen or unforeseen, which are encountered during the Construction Phase or at any time during the Development Period and Project Term.
- 6.4.3 Should the Project Site, the Malelane Hotel Development or the Project Assets or any portion thereof be damaged or destroyed at any time during the Development Period or Project Term, the Private Party shall, within a reasonable period of time, at its own cost and expense, repair, rebuild or replace the same so that after such repair, rebuilding or replacing, the Project Site, the Malelane Hotel Development and such Project Assets shall be substantially in the same condition as prior to such damage or destruction. In the event that the extent or nature of such damage or destruction is such that it would be impossible or commercially undesirable to repair, rebuild or replace the relevant portion of the Project Site, the Malelane Hotel Development and/or the relevant Project Assets, the Private Party shall be excused from the obligation to so repair, rebuild or replace and SANParks or the Private Party shall have the right to proceed pursuant to Clause 16 on the basis that an event of Force Majeure shall be deemed to have occurred.
- 6.4.4 Should SANParks and the Private Party disagree with respect to what is “commercially undesirable” in Clause 6.4.3, either Party may request the other Party to agree within 7 (seven) Business Days on an independent expert to make a determination in that regard. Should the Parties be unable to agree on the identity of such expert within 7 (seven) Business Days of the second party being so requested, such expert shall be chosen by the Chairman of the Association of Law Societies of South Africa to make such determination. The person thus chosen shall act as an expert and not as an arbitrator and the determination by such expert shall be final

and binding on the Parties.

## **7. CONSTRUCTION WORKS**

### **7.1 Design and Construction**

7.1.1 The Construction Works in respect of the Malelane Hotel Development shall be done in accordance with the Design Plan submitted as part of the Bid Submission. The Design Plan shall be subject to approval and amendments proposed by SANParks and shall take into account the requirements of the EIA, KNP Sustainable Design Principles and Guidelines, the Responsible Tourism Standards, the Hotel Minimum Development Specifications and the Park Management Plan.

7.1.2 The Private Party shall undertake or procure the Construction Works in accordance with the Design Plan and meet the requirements of the PPP Agreement, in so far as they relate to the Construction Works, and in accordance with the findings of the EIA. The Private Party bears sole responsibility for the procurement of all construction materials, the adequacy of the design in terms of construction quality and safety (including fire safety), SANParks' Requirements and compliance with the PPP Agreement and any Regulatory Provisions. The Private Party may submit to SANParks written proposals for modifications by the Private Party to the Design Plan which in the Private Party's opinion would improve construction quality or safety. Any modifications will be subject to the written approval of SANParks.

### **7.2 Consents for Construction Works**

The Private Party shall make the necessary applications to the Relevant Authorities for any and all consents required in respect of the Construction Site, including any actions in connection with the Utilities and for any activities undertaken in connection with the Construction Works.

### 7.3 **Project Schedule**

7.3.1 The Private Party shall undertake the Construction Works subject to a Project Schedule, incorporating the requirements of this PPP Agreement, prepared by the Private Party. The purpose of the Project Schedule is to enable SANParks to monitor the Construction Works. No construction activity shall commence prior to approval of the Design Plan by SANParks. All construction activity shall be completed prior to the effective Date. The Construction Works will only be complete once an architect, appointed by the Private Party for purposes only of certifying completion of the Construction Works, which architect's appointment is subject to written approval by SANParks, has certified that the Construction Works are complete.

7.3.2 In the event that Construction Works are not complete as at the Effective Date, the Private Party shall cease such works, and provide to SANParks a detailed explanation of the reasons for such delay, and a new time table for completion. Construction Works shall not recommence unless given separate approval is given by SANParks.

### 7.4 **Contracts**

7.4.1 The Private Party shall as soon as reasonably possible after the conclusion of this PPP Agreement enter into the Associated Agreements and such other contracts necessary to ensure the timely and proper completion of the Design Plan, Construction Works, fitting, equipping, installation, financing, Operation, Management and Maintenance of the Malelane Hotel Development, and such future design and construction as may be necessary to meet the Private Party's obligations in terms of the PPP Agreement. The Private Party must satisfy itself that the terms of such agreements fully describe the rights, obligations, risk allocation and protection of the Private Party's rights. SANParks and its advisers, the State and Relevant Authorities shall have no liability whatsoever arising from any of the Associated Agreements, unless SANParks, the State or any Relevant Authority shall have become a signatory to any such Associated Agreement and to the extent indicated in such agreement.

7.4.2 The Private Party shall take all reasonable steps to ensure that the Contractors perform the Construction Works in accordance with the terms of the relevant Construction Contracts.

7.5 **SANParks Monitoring**

SANParks or any of its designated representatives may from time to time, enter any part of the Project Site during the Construction Phase but, in respect of those parts of the Project Site on which Construction Works are being carried out, only at reasonable times and on reasonable prior notice to the Private Party and the relevant Contractor provided that SANParks or its designated representative must comply with the reasonable safety requirements of the Private Party or Contractor which generally apply.

7.6 **Information Relating to the Construction Works**

7.6.1 The Private Party shall furnish to SANParks a copy of every Construction Contract upon conclusion thereof. The Private Party shall furthermore furnish to SANParks or any of its designated representatives all such reports and other information relating to the Construction Works as SANParks may reasonably request from time to time.

7.6.2 Upon Construction completion and upon any modifications effected pursuant to an amendment of the Design Plan, the Private Party shall supply SANParks with copies of all as-built drawings and other technical and design information and completion records relating to the finished or altered Construction Works.

7.7 **Costs Recoverable from Contractors and Third Parties**

Where the Private Party is entitled under any Construction Contract or any contract for Operations, Management and Maintenance to recover costs which have been or are reasonably expected to be incurred by SANParks in connection with the Project, the Private Party shall enforce its rights to recover such costs and shall pay any amounts so recovered promptly to SANParks.

## 7.8 Commencement

Actual construction will only be permitted with effect from the Delivery Date.

## 7.9 Roads and Tracks

7.9.1 The Private Party shall either stabilize or upgrade the Hotel Access Road to a class C all-weather road, to provide access for guests, invitees and patrons to the Malelane Hotel Development.

7.9.2 The Private Party shall re-route the existing tourist road that it is not visible for guests, invitees and patrons at the Hotel Site. The new route will be subject to approval by SANParks. The re-routed road will be constructed to comply with the standards prescribed in the Roads Specifications Manual, applicable to roads of the same class.

## 8. FINANCIAL PROVISIONS AND PAYMENT

### 8.1 Gross Revenue

8.1.1 For the purposes of this PPP Agreement, its Schedules and Annexures, Gross Revenue shall be defined as:

8.1.1.1 any and all income or revenue received by or accruing to the Private Party, its Subcontractors or its cessionaries and successors-in-title from all activities carried on at or by virtue of the Project, in any manner, directly or indirectly, as is or would normally be included in gross revenue in terms of GAAP and including the deemed value of accommodation made available to Shareholders and third parties or sold forward as well as the deemed value of any payments or benefits received by the Private Party that take a form other than a monetary form. Without derogating from its generality, the term “**gross revenue**” shall mean revenue before the deduction of:

8.1.1.1.1 bad debts (or provisions therefore);

8.1.1.1.2 commissions or similar consideration paid or payable;

- 8.1.1.1.3 cash, credit-card or similar discounts or commissions;
- 8.1.1.1.4 costs and expenses other than trade discounts granted in circumstances that are not arm's-length or to a Related Party;
- 8.1.1.2 and gross revenue shall include;
  - 8.1.1.2.1 commissions received or receivable;
  - 8.1.1.2.2 rentals and other fees received or receivable;
- 8.1.1.3 but shall exclude;
  - 8.1.1.3.1 sales tax, value-added tax and any other similar impost levied on gross revenue (or any of its components) that is normally included in or added onto the tariffs or prices charged to guests or customers and which is not normally included in gross revenue in terms of generally-accepted accounting practice;
  - 8.1.1.3.2 interest received or receivable;
  - 8.1.1.3.3 the proceeds of, profit or surpluses on the disposal of non-current assets;
  - 8.1.1.3.4 transfers from reserves; and
  - 8.1.1.3.5 bad debts recovered.

## 8.2 Definitions

For the purposes of this Clause,

- 8.2.1 **“Minimum PPP Fee”** means, in respect of the Project Year in question, the Minimum PPP Fee stipulated by SANParks and indicated in Annexure IX - PPP Fees, escalated annually to compensate for inflation in accordance with the Consumer Price Index, as indicated in Clause 8.7 below;
- 8.2.2 **“Variable PPP Fee”** means, in respect of the Project Year in question, the

bidded percentage of actual Gross Revenue for that Project Year indicated in Annexure IX - PPP Fees;

8.2.3 “**Project Year**” means for the first Project Year a 1 (one) year period commencing on the Effective Date, and for subsequent Project Years, the equivalent subsequent period.

8.3 The Private Party agrees to pay SANParks a PPP Fee in respect of every Project Year (the “Annual PPP Fee Payment”) as indicated in this clause. No Annual PPP Fee Payment is payable before the Effective Date.

8.4 The Annual PPP Fee Payment payable by the Private Party to SANParks for any given Project Year shall be the higher of the following two figures:

8.4.1 the Minimum PPP Fee for that Project Year; or

8.4.2 the Variable PPP Fee for that Project Year.

8.5 Irrespective of which these elements determine the final amount payable in any given Project Year, the payment schedule will be as follows:

8.5.1 The Minimum PPP Fee shall accrue and be payable by the Private Party to SANParks in 12 (twelve) equal monthly payments, the first payable before or on the 7th (seventh) Business Day of the month following on the month during which the Project Year in question commenced and subsequent payments to be made before or on the 7th Business Day of each subsequent month, free of deduction or set-off. Should any payment not be made on due date, the remainder of the Minimum PPP Fee for the Project Year in question shall immediately become due and payable.

8.5.2 The Variable PPP Fee, shall be calculated by the Private Party for the Project Year in question on the basis of the Private Party’s unaudited accounts within 30 (thirty) Business Days of the end of the Project Year. If this figure is higher than the Minimum PPP Fee, it shall be the total amount payable under this Clause 8 by the Private Party to SANParks for the Project Year in question. The difference between the Variable PPP Fee thus determined and the aggregate of amounts already paid under the

Minimum PPP Fee, will be payable 60 (sixty) Business Days after the end of the Project Year in question.

8.5.3 It is noted that the Gross Revenue which forms the basis for the Variable PPP Fee must be consistent with both the Private Party's tax statements and audited accounts and that there are bound to be differences in timing between the Private Party's financial year and the Project Years. In order to ensure that the Private Party's tax statements are consistent with the basis of the Actual Annual PPP Fee, the following verification and adjustment process will be followed. When the financial year commencing during a given Project Year comes to an end, the Private Party will make available its audited accounts to SANParks, which must clearly show Gross Revenue calculated in accordance with the provisions of Clause 8.1. The Gross Revenue indicated in these audited accounts, and those of the previous year, will be used, on a direct pro rata basis, to produce a revised calculation of the Variable PPP Fee for the Project Year in question. If this figure is different from the Variable PPP Fee which has already been paid for that Project Year, the difference will be paid by means of an adjustment to the next payment due by the Private Party to SANParks, unless no further payments are due in which case the difference will be paid by the Private Party to SANParks within 30 (thirty) Business Days from the end of the financial year in question or, as appropriate, refunded by SANParks to the Private Party within 30 days of making available the relevant audited financial statements. Such payments will be subject to the interest charges described in Clause 8.5.4 below.

8.5.4 Any overdue payment by either SANParks or the Private Party in terms of Clause 8 shall be subject to an interest charge equal to the prime rate of interest charged by SANParks' bankers from time to time, plus 2 (two) %. Such interest shall be computed on a daily basis from the due date of payment until the relevant amount together with accrued interest is fully paid by the defaulting Party.

8.6 All fees or other amounts payable in terms of this PPP Agreement shall be exclusive of Valued Added Tax or any transactional tax.

- 8.7 Calculation of the Annual PPP Fee Payment requires certain financial data to be adjusted for inflation as measured by the Consumer Price Index, namely the Minimum PPP Fee. This adjustment for inflation will take place with effect from the first day of the Project Year in question, and the figures will then be applied for the entirety of the forthcoming Project Year. For all Project Years, except Project Year 1, the adjustment will take the published index for the Consumer Price Index effective in respect of the first day of the Project Year in question and compare it to the published index of the Consumer Price Index for exactly one year previously, and adjust the financial data accordingly. For Project Year 1, the adjustment will take the published index for the Consumer Price Index effective in respect of the Effective Date and compare it to the published index of the Consumer Price Index effective at 1 July 2009 and adjust the financial data accordingly.
- 8.8 Notwithstanding that all consideration payable hereunder shall be deemed to be exclusive of value added tax payable in terms of the Value Added Tax Act, 1991 (Act No. 89 of 1991), as amended, and any other rates, taxes, duties, charges or imposts which may be or become payable thereon, the Private Party shall be obliged, at all times, to pay value added tax.

## **9. OPERATION, MANAGEMENT AND MAINTENANCE**

### **9.1 Operation, Management and Maintenance by the Private Party**

- 9.1.1 The Private Party shall be obliged during the Development Period and Project Term to undertake the Operation, Management and Maintenance of the Malelane Hotel Development, the Project Site and all Project Assets, as well as all related Construction Works undertaken by the Private Party, according to Best Industry Practice and in accordance with the Regulatory Provisions.
- 9.1.2 The Private Party shall ensure that at least the following facilities, constituting the Hotel Minimum Development Specifications, are operated, managed and maintained during the Project Term:

<b>Hotel Minimum Development Specifications</b>	
Beds (the exact amount of beds to be in accordance with the approved Design Plan and to include guest and staff beds)	200 - 240
Conference (the amount of delegates capable of being accommodated)	180 delegates
Restaurant	A la carte & Buffet
Room Service	
Cocktail Bar	
Spa & Gym	
Outside cultural entertainment & dining area (Boma)	
Pool	
Special Features like Viewing Deck or Bird hide	
Covered Parking area for parking at the Park and Ride Facility and at the Malelane Hotel Development	
24 Hours Reception as well as a Lobby	
Porter service	
Housekeeping	
Laundry / Dry cleaning	Procured from outside the Park
Internal & External Communication systems	
TV/MNet/DSTV	
Air-conditioning	
Safety & Security	
Recognised Operating System & Software	
Business Centre Facilities	

- 9.1.3 The Private Party shall furnish SANParks with a report in the format and frequency required by SANParks, regarding the Operation, Management and Maintenance of the Malelane Hotel Development.
- 9.1.4 The Private Party shall comply with its obligations in respect of Utilities set forth in this Agreement and its Annexures as well as conduct its operations pertaining to the Utilities in accordance with the Regulatory provisions, the EMP and the Park Management Plan.
- 9.1.5 The Private Party shall be obliged to apply for and obtain a relevant liquor licence to enable it to trade in liquor with effect from the Operation Commencement Date. On the expiry or termination of this PPP Agreement or upon the appointment of a Substitute Entity in accordance with the provisions of Clause 18, the Private Party shall effect the transfer of this licence into the name of SANParks or any person nominated by it, free of charge.
- 9.1.6 The Private Party is required to operate according to the hours specified by SANParks.
- 9.1.7 The Private Party shall adhere to the SANParks normal operating hours for transporting of goods and service
- 9.1.8 The Private Party is responsible for the transport of its employees from their workplace to their living quarters and to the required medical facilities, where any of its staff is in need of any medical treatment. In the event that SANParks transport is utilized for such transport, this will, unless agreed to the contrary, be subject to SANParks' normal conditions for any person other than any of its employees, utilising its transport. The Private Party will furthermore be responsible for SANParks' normal costs, and in the absence of such normal costs, the reasonable costs of such transport.
- 9.1.9 The Private Party shall indemnify SANParks, its employees, contractors and agents and hold SANParks, its employees, contractors and agents harmless from and shall be responsible to third parties, including the Private Party's employees, for, any liability, loss, damage, damages, cost or costs of any kind whatsoever incurred or suffered by any such third

party or SANParks as a result of any act or omission of SANParks, its employees, contractors or agents, flowing from or in consequence of any act or omission relating to the transportation of the Private Party's employees by making use of SANParks transport.

9.1.10 In the event that any of the Private Party's employees rents any accommodation from SANParks or the Private Party rents such accommodation for any of its employees, the Private Party shall be responsible towards SANParks for payment of the rentals in respect of such accommodation and shall indemnify SANParks against any losses, damage, damages, cost or costs of any kind whatsoever incurred or suffered in this regard.

9.1.11 The Private Party is obliged to adhere to the provisions of the Concession Operations Manual as amended from time to time.

9.1.12 The Private Party is mutatis mutandis obliged to comply with and adhere to the following SANParks Policies and initiatives, namely its HIV/Aids policy and policy in respect of its Health and Safety Forum.

9.1.13 Subject to reasonable requirements regarding rights of access, the Private Party is obliged to provide universal access to members of the public in respect of the accommodation facilities at the Malelane Hotel Development.

## 9.2 **Third Party Contracts and Cession**

9.2.1 The Private Party may use a third party or third parties to carry out all or part of its Operation, Management and Maintenance obligations under this PPP Agreement. Any such sub-contract shall be an Associated Agreement and the terms of any such sub-contract shall in all material respects reflect the relevant provisions of this PPP Agreement and be subject to written notification, delivery of a copy of the relevant contract to SANParks, as well as prior written approval thereof by SANParks, provided that the engagement of a third party shall not release the Private Party from any of its obligations hereunder.

9.2.2 The Private Party may not without the prior written consent of SANParks, sub-let, cede, assign, transfer, pledge, hypothecate or otherwise encumber:

9.2.2.1 this PPP Agreement or any Associated Agreement; or

9.2.2.2 any of its rights, interests or obligations thereunder;

9.2.2.3 any of its assets;

save, in each case, to the extent required for the financing of the Project as envisaged in the Loan Agreements, and in terms of the provisions of Clause 9.2.3;

9.2.3 Subject to the provisions of Clause 9.2.1, the Private Party may either sub-let, cede, assign or transfer the operation of the whole or a part of the Project, provided that:

9.2.3.1 the period of the sub-lease, cession, assignment or transfer shall not exceed the unexpired portion of the Project Term;

9.2.3.2 the Private Party shall continue to be liable for the payment to SANParks of all monies due and payable in terms of the PPP Agreement and the fact that the Private Party enters into such an agreement shall not absolve the Private Party from any liability, existing or future, of the Private Party in terms of the PPP Agreement;

9.2.3.3 the sub-lessee shall be bound by all the same terms and conditions as set out in this PPP Agreement as if originally a party hereto.

9.2.4 In the event of a breach, default or transgression of the provisions of this PPP Agreement or applicable laws and regulations by any sub-contractor or the Private Party, SANParks shall be entitled to take the necessary action and directly intervene in the operations of the project in order to rectify such breach, default or transgression, provided that SANParks has given 30 days prior written notification to the Private Party and such sub-lessee of the breach, default or transgression and its intention to take the necessary action and directly intervene in the operations of the Project.

**9.3 Modifications during Project Term**

Modifications to the Malelane Hotel Development during the Project Term shall be preceded by an appropriate EIA and shall also be subject to the prior written consent of SANParks and subject to the provisions set forth in this PPP Agreement.

**9.4 Tourism Grading**

9.4.1 The Private Party shall obtain a 4-star or 5-star grading accreditation for the accommodation project offered in terms of the Project from the TGCSA.

9.4.2 The said grading will be obtained within 12 (twelve) months from the Operation Commencement Date and renewed thereafter on an annual basis.

9.4.3 Failure to obtain or renew the applicable grading constitutes grounds for termination of this PPP Agreement in accordance with the provisions of Clause 17.

9.4.4 The Private Party shall ensure that the requisite furniture, fittings and equipment required for the Malelane Hotel Development, in accordance with the Design Plan and in order to establish and maintain the grading referred to in Clause 9.4, be supplied and maintained.

9.5 The Private Party will ensure that in employing personnel other than senior management staff or strategically important personnel, operational staff will be sourced within a 50 kilometre radius from the Malelane Hotel Development. In the event that this is neither feasible nor possible, the Private Party shall nonetheless comply with the BEE obligations.

9.6 The Private Party will ensure that preference be granted to suppliers situated within a 50 kilometre radius from the Malelane Hotel Development.

## 9.7 **Unauthorised Payments**

The Private Party shall not:

- 9.7.1 offer or give or agree to give any person in SANParks' employment, any gift or consideration of any kind as an inducement or reward for doing or forbearing to do or for having done or forborne to do any act in relation to the execution of this or any other contract or agreement or for showing or forbearing to show favour or disfavour to any person in relation to this or any other contract or agreement for SANParks.
- 9.7.2 enter into this or any other contract or agreement with SANParks in connection with which commission has been paid or agreed to be paid by any person, either personally or on such person's behalf, or to their knowledge, unless before that agreement is made, particulars of such commission and of the terms and conditions of any agreement for the payment thereof, have been disclosed in writing to SANParks.

## 9.8 **Signs and Name Boards**

The Private Party shall be entitled to have its name and trading name placed at the Malelane Hotel Development and the Project Site, and if required by SANParks upon the termination or expiry of this Project, shall remove the same and make good any damage caused thereby, failing which SANParks will be entitled to do so and recover its costs from the Private Party. The nature and the size of the words depicting the name and trading name of the Private Party will be subject to the written approval of the SANParks Design Review panel.

## 9.9 **Tourism Activities**

### 9.9.1 **Game drives (Day & Night) and Guided Walks**

- 9.9.1.1 The Private Party shall not be entitled to offer tourism activities in the KNP for its guests, invitees, patrons, contractors and employees outside the Hotel Site, other than by making use of SANParks, in offering such activities.
- 9.9.1.2 SANParks shall offer its normal tourism activities, in respect of that

part of the KNP, for guests, invitees, patrons, contractors and employees of the Private Party that wish to make use of tourism activities in the KNP outside the Hotel Site. Where feasible such activities will include accompanied game drives (both during the day and at night) and guided walks.

9.9.1.3 SANParks shall be entitled, but not obliged, to make use of contractors or agents in offering such tourism activities to guests, invitees, patrons, contractors and employees of the Private Party.

9.9.2 **Private Party Indemnification**

9.9.2.1 The Private Party shall indemnify SANParks, its employees, contractors and agents and hold SANParks, its employees, contractors and agents harmless from and shall be responsible to third parties, including guests, invitees, patrons, contractors and employees of the Private Party, for, any liability, loss, damage, damages, cost or costs of any kind whatsoever incurred or suffered by any such third party or SANParks as a result of any act or omission of SANParks, its employees, contractors or agents, flowing from or in consequence of any act or omission relating to any SANParks' Tourism Activities made use of by guests, invitees, patrons, contractors and employees of the Private Party.

9.9.2.2 Without limiting the generality of the foregoing, the Private Party shall indemnify SANParks, its employees, contractors and agents against all liability, loss, damage, damages, cost or costs and claims by third parties, including guest, invitees, patrons, contractors and employees of the Private Party, against SANParks, its employees, contractors or agents, in respect of:

9.9.2.2.1 death or injury to any Person; or

9.9.2.2.2 loss of or damage to any property; or

9.9.2.2.3 any economic loss,

arising out of any such act or omission by SANParks, its employees, contractors or agents.

- 9.9.2.3 The Private Party shall obtain an indemnification and waiver from all its guests, invitees, patrons, contractors and employees and the like making use of the SANParks' Tourism Activities, in the format approved by SANParks from time to time. The requirements of this clause shall not affect, in any way, the indemnity provided under this Clause 9.9.2.

## 10. MALELANE HOTEL DEVELOPMENT LANDSCAPING AND GARDENS

The Private Party is responsible for the landscaping and gardening at the Hotel Site in accordance with the Design Plan. Any landscaping and gardening at the Hotel Site will take into account the Conservation Management of the Park, the Environmental Guidelines and EIA. Any landscaping and gardening at the Hotel Site will be established and maintained entirely at the costs and risk of the Private Party and in accordance with the Design Plan. Any changes to the landscaping at the Project Site in conflict with the Design Plan are subject to SANParks' written approval. Should SANParks at any stage require that changes be effected to any garden to take into consideration the Conservation Management of the Park or any changes to it, these must be effected as soon as possible.

## 11. CHANGES IN CONTROL AND BLACK EQUITY AND MANDATORY COMMUNITY TRUST EQUITY

- 11.1 For the duration of the Development Period and Project Term, the Private Party shall procure that there is no Change in Control in the Private Party (or in any company of which the Private Party is a subsidiary) without the prior written approval of SANParks.
- 11.2 The Private Party shall procure that for the duration of the Development Period and Project Term:
- 11.2.1 there is no sale, assignment, cession, transfer, exchange, renunciation or other disposal (at any time) of the whole or any part of the Equity and/or the Shareholder Loans of:
- 11.2.1.1 any Black Shareholder other than to another Black Shareholder, Black Person or Black Enterprise; or

- 11.2.1.2 the Mandatory Community Trust other than to another Mandatory Community Trust.
- 11.2.2 there is no dilution in the aggregate Equity holdings of the Black Shareholders below the Minimum Black Equity or of the Mandatory Community Trust below the Minimum Mandatory Community Trust Equity as defined in Annexure X – BEE Obligations; and
- 11.2.3 there is no Change in Control (at any time) in any Shareholder that is a Black Enterprise, which will result in that Shareholder no longer being a Black Enterprise.
- 11.3 For the purpose of this Clause 11, the term “subsidiary” shall have the meaning as defined in the Companies Act, 1973.

## 12. EMPLOYMENT ISSUES

### 12.1 Labour Laws

The Private Party agrees to abide by the laws in force, as amended from time to time, relating to the employment of employees employed in relation to the Malelane Hotel Development and Project Site and shall use its best endeavours to take all reasonable steps to ensure similar compliance by its Contractors, sub-contractors at all levels, assignees and agents, and furthermore agrees to adhere to and ensure, as far as practicably possible, adherence to fair labour practices.

### 12.2 Breach Caused by Employees and Penalty

- 12.2.1 During the Development Period and Project Term, the Private Party shall take all the necessary appropriate measures to ensure that its staff adhere to, abide by and comply with the Regulatory Provisions and sound conservation and commercial principles. Without derogating from the generality of the foregoing, sound conservation principles include the Conservation Management of the Park and sound commercial principles include such practices that enhance the Private Party's ability to conduct business in accordance with the provisions of the PPP Agreement.

12.2.2 In the event of any employee of the Private Party causing the Private Party to breach a provision of this PPP Agreement the following shall apply:

12.2.2.1 Subject to Clause 12.1, such employee shall be charged forthwith by the Private Party with committing a mandatory serious offence in terms of the Private Party's disciplinary code and failing the existence of the Private Party's disciplinary code, SANParks' disciplinary code, and shall be liable to dismissal in terms thereof.

12.2.2.2 The Private Party shall without delay furnish SANParks with a copy of the written record of such disciplinary proceedings, finding and sentence.

12.2.2.3 Without prejudice to SANParks' right to claim damages or otherwise in respect of any failure or breach of the Private Party, the Private Party shall be liable to pay a penalty in the amount stated in Schedule A for each and every occurrence of such misconduct.

12.2.2.4 Any penalty imposed by SANParks under this Clause 12 shall be paid within 5 (five) Business Days of the Private Party's receipt of written notice from SANParks of the imposition thereof.

12.2.3 The Private Party shall in any event be liable to remedy at its sole cost any environmental or other damage caused by such employee, in such manner and within 30 (thirty) Business Days or such longer period as may be agreed by SANParks.

## 13. INDEMNIFICATION

### 13.1 Private Party Indemnification

13.1.1 The Private Party shall indemnify SANParks, and hold SANParks harmless from and shall be responsible to third parties for, any liability, loss, damage, damages, cost or costs of any kind whatsoever incurred or suffered by any third party or SANParks on or after the Signature Date, including any claim against SANParks by a Relevant Authority, as a result of any act or omission of the Private Party or any Responsible Person (including, without limitation, any default or failure by the Private Party under this PPP Agreement), flowing from or in consequence of any act or

omission within the Malelane Hotel Development and Project Site, except to the extent directly caused by any gross negligence, material default or material breach of statutory duty on the part of SANParks or such Relevant Authority.

13.1.2 Without limiting the generality of the foregoing, the Private Party shall indemnify SANParks against all liability, loss, damage, damages, cost or costs and claims by third parties against SANParks in respect of:

13.1.2.1 death or injury to any Person; or

13.1.2.2 loss of or damage to any property; or

13.1.2.3 any economic loss,

arising out of any such act or omission by the Private Party or any Responsible Person.

13.1.3 The provisions of this Clause 13.1 do not apply to any amount incurred by SANParks in discharging its obligations under this PPP Agreement for which the Private Party is not otherwise liable, except to the extent that such amount is lost or incurred or arises from any gross negligence or material default or breach of statutory duty on the part of the Private Party or any Responsible Person;

## 13.2 **Other Indemnification**

The Private Party shall obtain an indemnification and waiver from all guests, visitors, invitees, employees, contractors, patrons and the like in the format approved by SANParks from time to time. The requirements of this clause shall not affect, in any way, the indemnity provided under Clause 13.1.

## 13.3 **Legal Action**

If any legal action is brought or claim is made against SANParks in respect of which SANParks is entitled to be indemnified under Clause 13.1, the Private Party shall, if required to do so by SANParks, defend any such action or claim at its own expense or provide SANParks with full co-operation in defending such action. If the Private Party defends such action or claim, SANParks shall

be entitled to specify which legal counsel shall be appointed and shall have the final say as to the manner in which the defence shall be conducted. SANParks may settle such action or claim without the consent of the Private Party or take over the conduct of the action from the Private Party at any time without relieving the Private Party of the obligation to indemnify SANParks under Clause 13.1.

## **14. INSURANCE**

### **14.1 Construction**

During the period of any Construction Works, the Private Party shall, to the reasonable satisfaction of SANParks, maintain and/or shall procure that the relevant Contractor maintains adequate insurance on the Malelane Hotel Development and Project Assets and its other insurable properties, which insurance shall include Contractor's all risks insurance, third party liability insurance, employer's liability insurance and, where appropriate, consequential loss/completion delay insurance. Adequate insurance cover means sufficient insurance cover to place SANParks in the position it would have been had SANParks itself insured in similar circumstances.

### **14.2 Operation**

During the period starting from Signature Date of the PPP Agreement and ending on the date of the termination or expiry of this PPP Agreement, the Private Party shall, to the reasonable satisfaction of SANParks, maintain or procure maintenance of adequate insurance on the Malelane Hotel Development, the Project Assets and other insurable properties, including property and casualty insurance as well as business interruption insurance, third party liability insurance and employer's liability insurance.

### **14.3 Covenants Relating to Insurance**

14.3.1 The Private Party shall provide the insurance policies set forth in Clauses 14.1 and 14.2 for the benefit of the Private Party and all relevant Contractors and consultants engaged in the Construction Works and

Operation, Management and Maintenance.

- 14.3.2 The Private Party will maintain the insurance at commercially reasonable levels.
- 14.3.3 The interest of SANParks and Lenders shall be noted on the policies set forth in Clauses 14.1 and 14.2. The Private Party shall provide SANParks with certified copies of the certificates of all such insurance and shall periodically review the extent and adequacy of the coverage provided by such insurance in the context of this Clause 14 and the prevailing conditions in the Republic of South Africa.
- 14.3.4 The proceeds of any claims under the all risks insurance policies referred to in Clause 14.1 and under the property and casualty insurance policies referred to in Clause 14.2 hereof shall be applied to the repair or restoration of the Malelane Hotel Development and/or other insured Project Assets.
- 14.3.5 Should SANParks and the Private Party disagree with respect to what is “commercially reasonable” in Clause 14.3.2, either Party may request the other Party to agree within 7 (seven) Business Days on an independent insurance expert to make a determination in that regard. Should the Parties be unable to agree on the identity of such expert within 7 (seven) Business Days of the second Party being so requested, such expert shall be chosen by the President of the Institute of Chartered Accountants or any body that has replaced it from among those leading international insurance brokers that are, at that time, active in the South African market to make such determination. The person so decided upon shall act as an expert and not as an arbitrator and the determination by such expert shall be final and binding on the Parties.

14.4 **Terms of Insurance**

- 14.4.1 The Private Party shall maintain the aforementioned insurances on the best terms available in the domestic insurance market which are authorised by the relevant State authorities to provide the respective coverage.

- 14.4.2 Unless SANParks agrees otherwise such terms shall include:
- 14.4.2.1 waiver of subrogation against SANParks, its agents, servants, officers, employees and contractors;
  - 14.4.2.2 a provision whereby the insurance shall apply to each of the insured as if a separate policy had been issued to each of them other than in the event of exhaustion of the sum insured or limit or indemnity;
  - 14.4.2.3 a breach of a condition or warranty/severability/non-vitiation provisions acceptable to SANParks or if such provisions are not generally available in equivalent policies written in the South African insurance market, each of the Private Party and the Contractor(s) (if any) shall covenant, for the duration of such non-availability, with SANParks in writing that it will not make any misrepresentations to, or breach any condition or warranty made to, the insurer or take or omit to take any action which would cause the relevant insurance policy to fail;
  - 14.4.2.4 a provision which requires the insurer to send copies of all notices of cancellation or any other notices given under or in relation to the policy to SANParks;
  - 14.4.2.5 a provision whereby the policy shall only be cancelled subject to 90 (ninety) Business Days' notice, or 30 (thirty) Business Days' notice in respect of non-payment of premium;
  - 14.4.2.6 a provision that a notice of claim given to the insurer by SANParks in respect of the Private Party or any other insured under the policy, shall, in the absence of manifest error, be accepted by the insurer as valid notification of a claim in respect of the interests of all insured parties, a copy of which must be given to the other of them and any other insured; and
  - 14.4.2.7 a provision that such insurance shall be primary and no other policy shall be called into contribution.

## **15. FINANCIAL ACCOUNTS AND REPORTS, MANAGEMENT**

### **15.1 Appointment of Auditors**

The Private Party shall arrange at its own expense for an accounting and cost

control system consistent with Generally Accepted Accounting Principles and for the appointment as auditors of a firm of nationally recognised independent accountants. The accounts of the Private Party will be kept in Rand. The Private Party shall keep all such books and records for 6 (six) years and at all times within the Republic of South Africa. Such accounts and the reports of such accountants shall be provided to SANParks. SANParks may meet with the Private Party's auditors, together with the Private Party, regarding the Private Party's accounts and operations from time to time. SANParks may also conduct or require that a firm of independent accountants conduct reasonable additional audits of the Private Party, at SANParks' expense.

## 15.2 **Right of Inspection**

The Private Party shall furnish to SANParks, on a confidential basis, any information SANParks may reasonably request. The Private Party shall further permit representatives of SANParks to visit, at reasonable times and with minimum disruption to the Private Party, the Construction Works, the Malelane Hotel Development, any other part of the Project Site and any of the other offices where the business of the Private Party is conducted and to have access to its books of accounts, working papers and records, and all other data assembled in connection with the Project available to SANParks. The kind of information that SANParks may request, shall include, but not be limited to the following:

- 15.2.1 a copy of any management letter or other communication sent by the auditors to the Private Party or to its management in relation to the Private Party's financial, accounting and other systems, management and accounts;
- 15.2.2 an annual report by the auditors reporting that, based on its said financial accounting and other systems, management and accounts, the Private Party was in compliance with all its financial obligations under this PPP Agreement, including the computation of the PPP Fee, as of the end of the relevant fiscal year or, as the case may be detailing any non-compliance therewith;
- 15.2.3 a projected profit and loss account and the budget for the following year,

together with an analysis thereof.

15.3 The Private Party shall immediately report to SANParks, on a confidential basis, details of the following events:

15.3.1 any charge, lien or attachment imposed on any of the Private Party's property and any seizure thereof which charge, lien, attachment or seizure will have a material adverse effect on the ability of the Private Party to perform its obligations under this PPP Agreement;

15.3.2 any matter which might influence the validity of this PPP Agreement or any matter that constitutes a material breach, including without limitation, any possible termination event, the circumstances thereof, and possible results as viewed by the Private Party.

15.4 The Private Party shall provide a half-yearly written report to SANParks, on a confidential basis, with respect to significant and new operational matters, which shall include a section on environmental matters.

15.5 From the Operation Commencement Date and during the Project Term, the Private Party shall provide SANParks with written reports in respect of the following matters within 30 (thirty) Business Days of the end of each Project Year:

15.5.1 names, identity numbers and any other relevant details of any employees of the Private Party or its Subcontractors who are engaged in respect of the Project and who have resigned or been dismissed the relevant calendar month, together with the details of any firearms registered to such employees;

15.5.2 its compliance with the Environmental Specifications as detailed in Annexure IV – Environmental Guidelines for Private Parties for the Construction and Operation of PPP Facilities within the Kruger National Park and any environmental Regulatory Provision, including the measures (if any) taken regarding the foregoing;

15.5.3 the Insurance provisions of Clause 14;

15.5.4 its BEE Obligations contained in Annexure X – BEE Obligations, including its furnishing of a verification certificate in respect of its BEE status as determined by a reputable external verification agency; and

15.5.5 any other matter as required by SANParks.

## 15.6 **Annual Financial Reporting**

The Private Party shall furnish SANParks, as soon as practicable but in any event not later than 4 calendar months after the end of each financial year with:

15.6.1 three (3) copies of the Private Party's complete audited financial statements for such financial year (which are consistent with the books of accounts and prepared in accordance with GAAP), together with an audit report thereon, all in accordance with the requirements of the laws and Regulations pertaining to accounting;

15.6.2 a copy of any management letter or other communication sent by the auditors to the Private Party or to its management in relation to the Private Party's financial, accounting and other systems, management and accounts;

15.6.3 an annual report by its auditors certifying that, based on its said financial, accounting and other systems, management and accounts, the Private Party was in compliance with its financial obligations in respect of the Project as at the end of the relevant Project Year or detailing any non-compliance by the Private Party therewith; and

15.6.4 a reconciliation of the current year's profit and loss account and the budget for the year, and an analysis thereof.

## 15.7 **Delivery of Records**

For a period of not more than 120 (one hundred and twenty) Business Days following the termination of this PPP Agreement for whatever reason, the Private Party shall retain in safe storage all such records as are referred to in Clause 15.2, and all records relating to Operation and Maintenance, which

were in existence at the date of termination. Upon expiry of such 120 (one hundred and twenty) day period or such earlier date as may be requested by SANParks, the Private Party shall deliver at its costs, all such records (or where such records are required by legislation to remain with the Private Party or the Private Party's shareholders, copies thereof) to SANParks or to its order in such manner and at such location as SANParks shall specify. The costs of retaining such records in safe storage shall be borne by SANParks.

## 15.8 Reporting of Changes

15.8.1 The Private Party shall report to SANParks 35 (thirty five) Business Days prior to its entering into effect:

15.8.1.1 any material change in its corporate documents or Shareholders agreement or in its fiscal year;

15.8.1.2 any material change in the Private Party's organisational structure, or any other material change which might affect the fulfilment of the Private Party's obligations under this PPP Agreement;

15.8.1.3 subject to Clause 3.4, any contract to be executed by the Private Party with a Related Party;

15.8.1.4 subject to Clause 3.5, any contract or liability entered into or incurred not in the ordinary course of business;

15.8.1.5 any material change in the insurance policies contemplated in Clause 14; and

15.8.1.6 any claim brought or threatened, or any circumstance or event (including pertaining to the environment) which is reasonably likely to have a material adverse effect on the Private Party or an adverse impact on the environment or on the Private Party's ability to perform its obligations hereunder.

15.8.1.7 The Private Party shall notify SANParks as soon as practically possible before any significant change in the constitution of its board of directors, joint venture managers or trustees or its key personnel, namely the financial, general and conservation managers, as well as the ECO.

## 15.9 Other Reporting

The Private Party shall ensure that within 15 (fifteen) days after the expiration of each quarter of each Project Year a certificate of its auditors, confirming the monthly turnover of each month of the quarter of the Malelane Hotel Development, is delivered to SANParks.

## 16. FORCE MAJEURE

### 16.1 Force Majeure Defined

“Force Majeure” shall mean any material event beyond the control of the Party claiming the occurrence of Force Majeure:

16.1.1 whose occurrence could not have been reasonably foreseen at the date of execution of this PPP Agreement; and

16.1.2 which, despite the exercise of diligent efforts, such Party was unable to prevent, limit or minimise, including, but not limited to, war whether declared or not, revolution, riot, strikes (except strikes by or affecting employees of (i) the Private Party, (ii) any Contractor or any other Person undertaking any part of the Construction Works and (iii) any Contractor or any other Person undertaking any part of the operation, maintenance and/or management of the Malelane Hotel Development, which strike(s) are not part of or directly related to any more widespread or general strike or other industrial action), insurrection, protest and/or boycott action, civil commotion, invasion, armed conflict, hostile act of foreign enemy, act of terrorism, sabotage, radiation or chemical contamination, ionising radiation, Act of God, plague or other serious epidemic; and

16.1.3 which:

16.1.3.1 causes material physical damage or destruction to all or any material portion of the Malelane Hotel Development, and/or the Project Assets, including, without limitation, its accommodation facilities; or

16.1.3.2 materially interrupts the full and regular operation of all or any material portion of the Malelane Hotel Development, including, without

limitation, its accommodation facilities.

**16.2 Notice of Force Majeure**

16.2.1 Each Party shall promptly notify the other of the occurrence of a perceived event of Force Majeure and when such event has ceased. During the Construction Phase, SANParks will determine whether the perceived event of Force Majeure is an event of Force Majeure.

**16.3 Continuation of Construction or Operation**

16.3.1 Decisions concerning Force Majeure and the application of this Clause 16 shall be directed toward the completion of Construction Works and the continued Operation, Management and Maintenance of the Malelane Hotel Development for the full duration of the Project Term. In this regard the Private Party shall, to the maximum extent possible, continue to construct or operate (as the case may be) the Malelane Hotel Development during the occurrence of any event of Force Majeure, and shall notify SANParks of any proposals, including any reasonable alternative means for performance, but shall not effect such proposals without the consent of SANParks.

16.3.2 Subject to Clauses 16.2 and 16.4, the Party claiming the occurrence of the Force Majeure shall be excused from performance of its obligations under this PPP Agreement to the extent that it is unable to perform those obligations as a result of such Force Majeure and neither Party shall be entitled to:

16.3.2.1 terminate this PPP Agreement on account of such occurrence other than in accordance with the terms and conditions of Clause 16.5; and/or

16.3.2.2 claim damages, penalties or other compensation as a result of such failure to perform except in accordance with Clause 16.5.

**16.4 Insured Events of Force Majeure**

To the extent that the consequences of an event of Force Majeure fall within

the terms of the insurance cover required by Clauses 14.1 and 14.2, the Private Party shall forthwith make the appropriate claims thereunder and shall apply the proceeds as required by Clause 14.3.4.

**16.5 Consequences of Force Majeure**

16.5.1 If the Parties agree or it is determined under Clause 16.2 that an event of Force Majeure has occurred, SANParks and the Private Party shall promptly consult to agree a mutually satisfactory resolution to the changed circumstances resulting from the event of Force Majeure.

16.5.2 If an event of Force Majeure (or its consequences) continues for 180 (one hundred and eighty) or more consecutive days and the Parties do not reach a mutually satisfactory resolution to the changed circumstances and the effect of the Force Majeure continues, this PPP Agreement may, upon 25 (twenty five) Business Days prior notice, be terminated by SANParks or, where the event of Force Majeure is an uninsurable event or, if insured, there is a material shortfall in the proceeds of such insurance as contemplated in Clause 14, by the Private Party.

16.5.3 If the PPP Agreement is terminated pursuant to Clause 16.5 as a result of a Force Majeure event, SANParks shall not be obliged to pay to the Private Party any compensation other than the Residual Value.

16.5.4 The foregoing provisions of Clause 16 shall not excuse or release the Party claiming Force Majeure from obligations due or performable, or compliance required, under this PPP Agreement prior to the above-mentioned failures or delays in performance due to the occurrence of Force Majeure or obligations not affected by the event of Force Majeure. A Party excused from performance by the occurrence of Force Majeure shall continue its performance under the PPP Agreement when the effects of the event of Force Majeure are removed.

16.6 In the event that the eco-tourism industry in the Republic of South Africa suffers a calamitous and wide ranging disaster, on a regional or national scale, which has a substantial negative impact on some or all Private Parties, SANParks will enter into a process of renegotiation with the affected Private Parties, on an

equal basis, in an attempt to arrive at equitable new PPP Fee structures and related issues.

## 17. TERMINATION

### 17.1 Termination by SANParks for Fault of Private Party

**"Private Party Default"** means any of the following events or circumstances:

- 17.1.1 any arrangement, composition or compromise with or for the benefit of creditors (including any voluntary arrangement as defined in the Insolvency Act, 1936 or the Companies Act, 1973) being entered into by or in relation to the Private Party;
- 17.1.2 a liquidator, judicial manager, trustee or the like taking possession of or being appointed over, or any judicial management, winding-up, execution or other process being levied or enforced (and not being discharged within 15 Business Days) upon, the whole or any material part of the assets of the Private Party (in any of these cases, where applicable, whether provisional or final, and whether voluntary or compulsory);
- 17.1.3 the Private Party ceasing to carry on business;
- 17.1.4 a resolution being passed or an order being made for the administration or the judicial management, winding-up, liquidation, sequestration or dissolution of the Private Party (in any of these cases, where applicable, whether provisional or final and whether voluntary or compulsory) or the granting of any judgment in excess of the amount stated in Schedule A (which is not subject to review or appeal or, if it is, such review or appeal is not diligently pursued) which remains unpaid for a period of 6 (six) calendar months or is not set aside or rescinded within such period;
- 17.1.5 the Private Party commits a breach of any of its material obligations under this PPP Agreement, and without derogating from the generality of the foregoing, a failure to comply with any of the obligations imposed on the Private Party as set out in the Annexures to this PPP Agreement shall be deemed to be a breach of a material obligation;

- 17.1.6 the Private Party breaches any of the provisions of Annexure X – BEE Obligations or Clause 11;
- 17.1.7 the Private Party fails to pay any sum or sums due to SANParks under this PPP Agreement (which sums are not bona fide in dispute) and such failure continues for 20 Business Days from receipt by the Private Party of a notice of non-payment from SANParks;
- 17.1.8 the Private Party breaches the provisions of Clause 9.3;
- 17.1.9 the Private Party or any of its directors or officers is found guilty of an offence by a court of law, unless such finding of the relevant court is the subject of an appeal that is being diligently pursued by the Private Party or its relevant director or officer (as the case may be);
- 17.1.10 the Private Party or any of its directors or officers falsifies any report, document or information that is provided by the Private Party to SANParks;
- 17.1.11 any breach of any provision of this PPP Agreement has occurred more than once and;
  - 17.1.11.1 SANParks has given an initial warning notice to the Private Party describing that breach in reasonable detail and stating that if that breach persists or recurs then SANParks may take further steps to terminate the PPP Agreement; and
  - 17.1.11.2 SANParks has issued a second and final warning notice following the persistence or recurrence of that breach in the period of 90 days after the initial warning notice, stating that if that breach persists or recurs within the period of 30 days after the final warning notice then SANParks may terminate the PPP Agreement on 30 days' notice to the Private Party;
- 17.1.12 the Private Party breaches any of the provisions relating to its financial obligations in terms of this PPP Agreement;
- 17.1.13 the Private Party fails to report material Related Party Transactions in accordance with this PPP Agreement or if any material Related Party

Transaction is in breach of a term of this PPP Agreement and results in material damage to SANParks.

**17.2 SANParks' Options**

17.2.1 On the occurrence of a Private Party Default, or within a reasonable time after SANParks becomes aware of the same, SANParks may:

17.2.1.1 in the case of the Private Party Default referred to in Clauses 17.1.1, 17.1.2, 17.1.3, 17.1.4, 17.1.6, 17.1.7, 17.1.8, 17.1.9, 17.1.10, 17.1.11 and 17.1.13 terminate this PPP Agreement in its entirety by notice in writing having immediate effect;

17.2.1.2 in the case of any other Private Party Default referred to in Clauses 17.1.5 and 17.1.12, serve notice of default on the Private Party requiring the Private Party to remedy the Private Party Default referred to in such notice of default (if the same is continuing) within 20 Business Days of such notice of default.

17.2.2 If the Private Party Default is conveyed to the Private Party in a notice of Default in terms of Clause 17.2.1.2 and the Private Party Default is not remedied before the expiry of the period referred to in the notice, then SANParks may terminate this PPP Agreement with immediate effect by written notice to the Private Party and the Lenders.

17.3 Upon any termination pursuant to Clause 17.2 above, the following provisions shall apply:

17.3.1 if termination is effected before the Effective Date, SANParks shall be entitled to pursue all available remedies, including the recovery of any damages suffered by SANParks as a result of the default of the Private Party that gave rise to such termination which may be available to SANParks at law;

17.3.2 if termination is effected after the Effective Date, the Private Party shall be entitled to claim an amount equal to the Residual Value, less the following:

17.3.2.1 the cost and expense incurred or to be incurred in the reinstatement of

- the Malelane Hotel Development to the standards required by SANParks as at the date of termination; and
- 17.3.2.2 an amount equal to all damages recoverable by SANParks; and
- 17.3.2.3 all costs and expenses incurred and/or reasonably expected to be incurred in restoring or remedying Material Damage to the environment caused by the Private Party and/or any Person for whom it is legally responsible; and
- 17.3.2.4 all costs and expenses incurred and/or reasonably expected to be incurred in re-launching the bid process; and
- 17.3.2.5 all reasonably foreseeable economic losses suffered or reasonably expected to be suffered by SANParks as a result of the breach or breaches by the Private Party of this PPP Agreement which resulted in termination of this PPP Agreement pursuant to Clause 17.2.
- 17.3.3 Should SANParks not exercise its rights to terminate pursuant to Clause 17.2, the Private Party shall compensate SANParks for all damages suffered and costs and expenses incurred by SANParks as a result of the events set forth in Clause 17.1 including all costs and expenses incurred by SANParks in seeking or obtaining the appointment of a Substitute Entity pursuant to Clause 18.2.
- 17.4 **SANParks' Costs**
- 17.4.1 The Private Party shall reimburse SANParks with all costs incurred by SANParks in exercising any of its rights in terms of this Clause 17 (including, without limitation, any relevant increased administrative expenses).
- 17.4.2 SANParks shall not exercise, or purport to exercise, any right to terminate this PPP Agreement except as expressly set out in this PPP Agreement. The rights of SANParks (to terminate or otherwise) under this Clause, are in addition (and without prejudice) to any other right which SANParks may have in law to claim the amount of loss or damages suffered by SANParks on account of the acts or omissions of the Private Party (or to take any action other than termination of this PPP Agreement).

**17.5 Termination by Private Party**

- 17.5.1 The Private Party shall have the right to terminate this PPP Agreement if:
- 17.5.1.1 SANParks commits a material breach in respect of the performance of any of its obligations hereunder; or
  - 17.5.1.2 the Private Party or any part(s) of the Project Site, the Malelane Hotel Development and/or the Project Assets are nationalised, compulsorily acquired or expropriated from the Private Party by the State, to the extent that it results in a material impairment of the PPP Rights; or
  - 17.5.1.3 any action by any Relevant Authority renders the performance by the Private Party or SANParks of all or substantially all of its obligations hereunder illegal; or
  - 17.5.1.4 the Kruger National Park no longer operates as a national park.
- 17.5.2 The Private Party shall, before exercising its rights to terminate this PPP Agreement pursuant to Clause 17.5.1, give written notice to SANParks requiring SANParks to remedy the event referred to in Clause 17.5.1. If said event is not remedied before the expiry of the Remedy Period of 30 (thirty) Business Days or any agreed longer period, the Private Party may, upon expiry of the Remedy Period, terminate this PPP Agreement upon written notice to SANParks.
- 17.5.3 If the PPP Agreement is terminated pursuant to this Clause 17.5 after the Effective Date, SANParks shall pay to the Private Party an amount equal to the Residual Value.

**17.6 Termination by notice**

At any stage during the Project Term, SANParks may on written notice of not less than 6 (six) months, give the Private Party notice of termination of this PPP Agreement, in which event this PPP Agreement shall terminate. On termination of this PPP Agreement in accordance with this Clause 17.6 SANParks shall pay the Private Party an amount equal to the Residual Value.

**17.7 Corrupt gifts and fraud**

**17.7.1 Definition and Warranty**

The Private Party warrants that in entering into this PPP Agreement it has not committed any Corrupt Act. Any breach of this warranty shall entitle SANParks to terminate this PPP Agreement immediately pursuant to the provisions of Clause 17.1.5.

"Corrupt Act" means:

- 17.7.1.1 offering, giving or agreeing to give to SANParks or any other organ of state or to any person employed by or on behalf of SANParks or any other organ of state any gift or consideration of any kind as an inducement or reward;
- 17.7.1.2 for doing or not doing (or for having done or not having done) any act in relation to the obtaining or performance of this PPP Agreement or any other contract with SANParks or any other organ of state; or
- 17.7.1.3 for showing or not showing favour or disfavour to any person in relation to this PPP Agreement or any other contract with SANParks or any other organ of state;
- 17.7.1.4 entering into this PPP Agreement or any other contract with SANParks or any other organ of state in connection with which commission has been paid or has been agreed to be paid by the Private Party or on its behalf, or to its knowledge, unless before the relevant contract is entered into particulars of any such commission and of the terms and conditions of any such contract for the payment of such commission have been disclosed in writing to SANParks;
- 17.7.1.5 committing any offence:
  - 17.7.1.5.1 under any law from time to time dealing with bribery, corruption or extortion;
  - 17.7.1.5.2 under any law creating offences in respect of fraudulent acts; or
  - 17.7.1.5.3 at common law, in respect of fraudulent acts in relation to this PPP Agreement or any other contract with SANParks or any

other public body; or

17.7.1.5.4 defrauding or attempting to defraud or conspiring to defraud SANParks or any other public body.

## 17.8 **Effect of Termination**

17.8.1 On the expiry or termination of this PPP Agreement and/or the Project Term for whatever reason and without prejudice to any rights of the Parties hereto (subject as herein provided):

17.8.1.1 this PPP Agreement (other than Clauses 3.6, 3.7, 3.8, 17, 18, 19 and 21) shall cease to have effect, subject to all rights and obligations of the Parties existing prior to such termination;

17.8.1.2 such rights as the Private Party may have over the Project Site, the Malelane Hotel Development and the Project Assets (other than movable New Project Assets) and all other immovable property thereon shall terminate;

17.8.1.3 the Private Party shall forthwith relinquish any interest in any immovable property within the Project Site or constituting part of the Malelane Hotel Development and Project Assets in favour of SANParks and shall convey such immovable property free of all liens, charges, claims or encumbrances of any kind to SANParks;

17.8.1.4 the Private Party shall deliver all Project documentation to SANParks.

17.8.1.5 Upon termination of this PPP Agreement, SANParks shall have the right to:

17.8.1.6 enter and take immediate operational control of the Malelane Hotel Development, the Project Site, all Project Assets (other than movable New Project Assets) and all Construction Works; and

17.8.1.7 select and appoint a new Private Party.

## 17.9 **Payment Procedure**

17.9.1 Subject to what is otherwise expressly provided for in this PPP Agreement, whenever under this PPP Agreement an amount is required to be paid by

any Party, such Party shall make the same available to the other Party within 5 (five) Business Days to such account with such bank in the Republic of South Africa as the other Party may have specified for this purpose.

17.9.2 Subject to what is otherwise expressly provided for in this PPP Agreement and without prejudice to any other right or remedy, each Party shall be entitled to receive interest on an amount overdue under this PPP Agreement, at the rate referred to in Clause 17.9.3. Interest, which has accrued on an amount due under this PPP Agreement, shall be paid on the same date as payment of such amount.

17.9.3 For the purposes of Clause 17.9.2, interest shall accrue at a rate equal to the prime rate of interest charged by SANParks' bankers from time to time. Such interest shall be computed on a daily basis from the due date of payment until the relevant amount together with accrued interest is fully paid by the defaulting Party.

17.9.4 All payments to be made under this PPP Agreement shall be made in South African Rand.

#### 17.10 **Other Rights and Remedies**

No Party shall have any rights or remedies against any other Party arising on termination save for the rights and remedies specified in this PPP Agreement.

#### 17.11 **Calculations**

17.11.1 If any forecast or calculation is required to be made for the purposes of determining an amount payable by one Party to the hereunder, the same shall be made by agreement between the parties, and failing agreement, by an internationally recognised firm of accountants or an actuary appointed by the Parties. In the absence of agreement on the appointment of an expert, each party shall nominate an independent expert, each of whom will produce its forecast or calculation. The experts thus appointed will be actuaries, if the calculation is primarily actuarial, or accountants, if the calculation is primarily of an accounting nature. If the difference

between the results of both forecasts or calculations is 10% or less, then the amount payable shall be based on the average of both results. Should the difference exceed 10%, then both independent experts shall, by agreement, appoint a third independent expert who will make its own forecast or calculation, and the amount payable will be based on the average of the three results. In the absence of agreement on the appointment of the third independent expert, or the nature of the calculation to be made, the appointment of the third independent expert or the nature of the calculation shall be determined by the President for the time being of the South African Institute of Chartered Accountants.

- 17.11.2 Each forecast or calculation to be made by the independent expert shall be made in accordance with prevailing Best Industry Practice. For the purpose of making any such calculation or forecast, the independent expert shall not be obliged to rely on the information submitted by the Private Party prior to the effective date but must have reference to the actual financial experience of the Private Party during the existence of the PPP Agreement.

**17.12 Exit provisions**

The Private Party recognises and acknowledges that SANParks, on the termination of this PPP Agreement after the Operation Commencement Date for whatever reason, requires continuity in the conducting of the Project. The Private Party therefore irrevocably undertakes, on termination of this PPP Agreement after the Operation Commencement Date, if required:

- 17.12.1 to use its best efforts to assist SANParks to effect the orderly and uninterrupted transition of conducting the Project;
- 17.12.2 to assist SANParks and to provide advice to SANParks in respect of specific service management issues;
- 17.12.3 to commit available resources to effect the transition;
- 17.12.4 for the purpose of this Clause 17.12, to allow SANParks reasonable access to any employee/s of the Private Party who has been employed by

the Private Party in respect of conducting the Project;

- 17.12.5 to allow SANParks, the nominee or a new Private Party, to make offers of employment to employees of the Private Party who are, as at the termination of this PPP Agreement, employed by the Private Party for the purposes of conducting the Project;
- 17.12.6 to cede and assign to SANParks all of the contracts required by SANParks, concluded between the Private Party and third parties, in connection with the Project;
- 17.12.7 to make appropriate training available to the employees and/or agents of SANParks or the new Private Party;
- 17.12.8 to agree with SANParks the reasonable costs, including, but not limited to, overhead expenses and management PPP Fees, payable to the Private Party in respect of the functions and obligations undertaken by the Private Party in terms of this Clause 17.12; and
- 17.12.9 in the event that the Parties shall fail to come to an agreement in respect of any of the provisions of this Clause 17.12, the failure of the Parties shall be deemed to be a dispute, and shall be dealt with in accordance with Clause 19.2.

## **18. TRANSFER AND SUBSTITUTED ENTITY**

### **18.1 Transfer by the Private Party**

The Private Party may not without the prior written consent of SANParks, cede, assign or transfer:

- 18.1.1 this PPP Agreement or any Associated Agreement;
- 18.1.2 any of its rights, interests or obligations there under; or
- 18.1.3 any of its assets, save, in each case, to the extent required for the financing of the Project as envisaged in the Loan Agreements.

**18.2 Substitute Entity**

18.2.1 Upon the occurrence of an event in Clause 17.1 entitling SANParks to terminate this PPP Agreement, and upon the expiry of the Remedy Period (in the event a Remedy Period is provided), or, where no Remedy Period is provided, upon the occurrence of such event, SANParks shall have the right to appoint a Substitute Entity, subject to agreement by the Lenders, that the Substitute Entity nominated by SANParks

18.2.1.1 is legally and validly constituted and has the capability to enter into such agreements as may be reasonably required to give effect to the substitution;

18.2.1.2 has the financial and technical capability sufficient to perform and assume the obligations of the Private Party under the PPP Agreement and the Loan Agreements as demonstrated by its ability to meet the criteria set out in Part A of Annexure VI - Shareholding, Company Structure and Required Qualifications to Operate Project Site; and

18.2.1.3 has the financial capability to pay any damages or other sums outstanding which SANParks is entitled to receive from the Private Party before or at the time of such substitution.

18.2.2 If SANParks does not wish or is not able to nominate a Substitute Entity pursuant to Clause 18.2.1 or if there has been an event of default under the Loan Agreements and an acceleration of all amounts outstanding under the Loan Agreements, the Lenders shall have the right to appoint a Substitute Entity subject to agreement by SANParks that the Substitute Entity nominated by the Lenders

18.2.2.1 is legally and validly constituted and has the capability to enter into such agreements as may be reasonably required to give effect to the substitution;

18.2.2.2 has the financial and technical capability sufficient to perform and assume the obligations of the Private Party under the PPP Agreement and the Loan Agreements as demonstrated by its ability to meet the criteria set out in Annexure VI - Shareholding, Company Structure and Required Qualifications to Operate Project Site; and

18.2.2.3 has the financial capability to pay any damages or other sums outstanding which SANParks is entitled to receive from the Private Party before or at the time of such substitution.

**18.3 Cession and Delegation to a Substituted Entity**

Immediately following the agreement by the Lenders pursuant to Clause 18.2.2 or by SANParks pursuant to Clause 18.2.1 in respect of the nomination of the Substitute Entity, this PPP Agreement shall be ceded and delegated to such Substitute Entity and the Lenders shall procure that the Substitute Entity assumes all the obligations of the Private Party under the Loan Agreements as at the date of substitution.

**18.4 Dissolution of SANParks**

SANParks may not at any time, cede, delegate, assign, sub-contract or otherwise dispose of, in whole or in part, its rights and obligations under this PPP Agreement except to an assignee which has the legal capacity, power and authority to become a party to and perform the obligations of SANParks under this PPP Agreement.

**18.5 Disposal of Shares**

18.5.1 SANParks will, notwithstanding the provisions of Clause 18 and subject to the provisions of Clause 11, approve any sale of shares or other beneficial interest in the Private Party and permit that the Shareholders or beneficiaries sell any such shares or beneficial interest provided that:

18.5.1.1 the Private Party informs SANParks of its intention to sell or permit the sale of such shares or beneficial interest at least 30 (thirty) Business Days before such sale is scheduled to take place;

18.5.1.2 the sale of such shares or beneficial interest does not alter the financial and technical capability of the Private Party to perform and assume the obligations of the Private Party under the PPP Agreement and the Loan Agreements, as demonstrated by the Private Party's ability to meet the criteria set out in Annexure VI - Shareholding, Company Structure and Required Qualifications to Operate Project

Site.

- 18.5.2 SANParks shall have the right to refuse such sale of shares or beneficial interest if either of the two criteria above are not met, or if the proposed buyer has been convicted or otherwise fined in a court of law, or other Relevant Authority, for breaches of environmental regulations in the Republic of South Africa or elsewhere.

## 19. GOVERNING LAW AND RESOLUTION OF DISPUTES

### 19.1 Governing Law

This PPP Agreement shall be governed by the laws of the Republic of South Africa.

### 19.2 Referable Disputes

The provisions of these Clauses 19.2, 19.3, 19.4 and 19.5 shall, save where expressly provided otherwise, apply to any dispute arising in relation to or in connection with any aspect of this PPP Agreement between the Parties.

### 19.3 Internal Referral

- 19.3.1 If a dispute arises in relation to any aspect of this PPP Agreement, the Parties shall attempt in good faith to come to an agreement in relation to the disputed matter, in accordance with the following informal process:

19.3.1.1 all disputes shall first be referred to a meeting of the liaison officers or other designated executives from each Party who are actively involved in the Project, and have sufficient authority to be able (if necessary with consultation back to their respective organisations) to resolve it; and

19.3.1.2 if the Parties have been unable to resolve the dispute within 30 days of referral to the persons specified in Clause 19.3.1.1, either Party may refer the dispute for resolution by the Accounting Officer or Accounting Authority of SANParks and the Chief Executive Officer or equivalent officer of the Private Party.

19.3.2 In attempting to resolve the dispute in accordance with the provisions of this Clause 19.3.2 the Parties shall (and shall procure that their employees and representatives shall) use reasonable endeavours to resolve such dispute without delay by negotiations or any other informal procedure which the relevant representatives may adopt. Those attempts shall be conducted in good faith in an effort to resolve the dispute without necessity for formal proceedings.

19.3.3 Any dispute which has not been resolved by the representatives contemplated in Clause 19.3.1.2 within 30 days of the dispute being referred to them (or any longer period agreed between the Parties) shall be treated as a dispute in respect of which informal resolution has failed.

#### 19.4 **Performance to Continue**

No reference of any dispute to any resolution process in terms of this Clause shall relieve either Party from any liability for the due and punctual performance of its obligations under this PPP Agreement.

#### 19.5 **Litigation**

19.5.1 Save where any dispute has been expressly referred for determination, if informal resolution of any dispute has failed, then the dispute may be referred to litigation in the courts by either Party.

19.5.2 Neither Party is limited in any proceedings before the court to the information, evidence or arguments used in the informal attempts to resolve the dispute.

### 20. **SUPPORT**

The parties undertake at all times to do all such things, to perform all such acts and to take all such steps and to procure the doing of all such things, the performance of all such actions and the taking of all such steps as may be open to them and necessary for or incidental to the putting into effect or maintenance of the terms, conditions and import of this PPP Agreement.

## 21. MISCELLANEOUS PROVISIONS

### 21.1 Primacy of this PPP Agreement

21.1.1 This PPP Agreement shall govern all aspects of, and all contractual relationships relating to, the Project as between the Parties. In the event of conflict between this PPP Agreement and any Associated Agreement on a matter affecting the Parties, including all questions of interpretation, this PPP Agreement shall prevail.

21.1.2 The Schedules and Annexures attached hereto shall be deemed a part of this PPP Agreement and shall have binding effect. If the content of any of the Annexures is in conflict with the content of this PPP Agreement, the content of this PPP Agreement shall prevail.

### 21.2 Confidentiality

21.2.1 **Confidential Information Defined:** As used in this PPP Agreement, the term “**Confidential Information**” shall mean information, including trade secrets, technical or non-technical data, a formula, pattern, strategy, compilation, program, device, method, technique, drawing, process, financial data, or list of actual or potential customers or suppliers, which:

21.2.1.1 derives economic value, actual or potential, from not being generally known to other Persons who can obtain economic value from its disclosure or use;

21.2.1.2 is the subject of efforts which are reasonable under the circumstances to maintain its secrecy; or

21.2.1.3 is identified as Confidential Information.

21.2.2 **Exclusions:** Confidential Information shall not include any information which:

21.2.2.1 is or becomes generally known to the public through no fault of the Receiving Party;

21.2.2.2 is received without restriction from a third party not bound by any duty

- of confidentiality with respect to such Confidential Information;
- 21.2.2.3 the Receiving Party subsequently developed through its own efforts and which can be documented as having been developed without the use of any Confidential Information;
- 21.2.2.4 is required to be disclosed in terms of any Regulatory Provision;
- 21.2.2.5 a Party uses or discloses in order to pursue any legal remedies available to it.
- 21.2.3 **Importance of Non-Disclosure:** Each Party recognises and acknowledges that:
- 21.2.3.1 Confidential Information of the other Parties may be commercially valuable proprietary property of such Party, the design and development of which may have involved the expenditure of substantial amounts of money and the use of skilled development experts over a long period of time and which afford such Party a commercial advantage over its competitors;
- 21.2.3.2 the loss of this competitive advantage due to unauthorised disclosure or use of Confidential Information may cause great injury and harm to such Party; and
- 21.2.3.3 the restrictions imposed upon the Parties under this PPP Agreement are necessary to protect the confidentiality of Confidential Information and to prevent the occurrence of such injury and harm.
- 21.2.4 **Identification of Confidential Information:** Each Party shall take appropriate steps to enable the other Party to identify information provided by it, which should be protected as Confidential Information. Accordingly, each Party shall use its best efforts to legend or otherwise designate any Confidential Information provided to any other Party. In addition, any information involving Confidential Information, which is communicated orally, shall be identified as Confidential Information or proprietary in such communication.
- 21.2.5 **Protection of Confidential Information:** To protect the Confidential Information of the Parties, each Party shall adopt and maintain basic security measures of the kind commonly observed in industries which rely

extensively on proprietary information. Such security measures shall include, to the extent appropriate, physical security measures, restrictions on access by unauthorised personnel, use of confidentiality agreements with personnel, legending, systematic segregation and appropriate record retention systems.

21.2.6 **Prohibitions and Indemnities:** Each Party receiving Confidential Information (the “**Receiving Party**”) shall not, without the prior written consent of the Party from whom such Confidential Information was obtained (the “**Disclosing Party**”), disclose or divulge to or permit any Person not authorised to receive such Confidential Information to obtain any Confidential Information disclosed to the Receiving Party or any of its employees, agents, advisors or other third parties acting on behalf of the Receiving Party by the Disclosing Party (whether or not such Confidential Information is in tangible or intangible form) for as long as the Confidential Information remains Confidential Information. Each Receiving Party shall use any Confidential Information disclosed by the Disclosing Party hereunder (whether or not such Confidential Information is in tangible or intangible form) only for purposes of this PPP Agreement. Each Receiving Party hereby indemnifies and holds harmless the Disclosing Party and its affiliates from and against all claims, losses, damages, liabilities, costs and expenses (including without limitation reasonable expenses of investigation and reasonable legal fees on an attorney and client scale, and pre- and post-judgement interest and penalties) arising from any such unauthorised disclosure or use by the Receiving Party or any of its employees, agents, advisors or other third parties acting on behalf of the Receiving Party.

21.2.7 **Avoidance of Unnecessary Disclosure:** In providing information hereunder, each Party shall take care, and shall ensure that its respective representatives take care, to avoid the overboard disclosure of competitively sensitive financial, operating or similar data, if any, as to which disclosure would have adverse consequences to the other or both Parties.

21.2.8 **Procedures Prior to Disclosure:** The Parties acknowledge that each of them may be required to disclose Confidential Information to governmental

agencies or authorities by operation of law, and each Party shall take advice of counsel and otherwise endeavour to limit disclosure of Confidential Information to that purpose. Each Party will give the other Parties prior written notice of any disclosure of Confidential Information, which notice shall specify so far as possible all material aspects of any such disclosure, so that the other Parties can seek a protective order or other action preventing such disclosure. The Receiving Party shall refrain for as long as reasonably possible from disclosing such Confidential Information so as to allow the other Party to seek such protective order or other action.

21.2.9 **Applicability to Contractors, Sub-Contractors and Shareholders:** The Private Party shall take all reasonable steps to ensure that its Contractors, sub-contractors and Shareholders comply with the provisions of this Clause 21.2.

### 21.3 **Variations in Writing**

All additions, amendments, variations and any consensual cancellation of this PPP Agreement shall be binding only if in writing and signed by duly authorised representatives of each of the Parties.

### 21.4 **Entire Agreement**

This PPP Agreement, including the Schedules and Annexures attached thereto, represents the entire agreement between the Parties in relation to the subject matter thereof and supersedes any request for proposal or actual tender, and any or all previous agreements or arrangements, whether oral or written, between the Parties in respect of the Project, and the PPP Rights or the other contents of this PPP Agreement. No representations, warranties or other terms and conditions of whatever nature not contained or recorded herein have been made or agreed to.

### 21.5 **No Waiver**

No waiver by either Party of any default or variation by the other in the performance of any of the provisions of this PPP Agreement shall operate or be

construed as a waiver of any other or further default or variation whether of a like or different character, or shall be effective, unless in writing duly executed by an authorised representative of such Party.

**21.6 Time and Indulgence**

Any time or other indulgence allowed by one Party to the other in which to perform its duties and obligations hereunder or to remedy any breach hereof shall not be, and shall not be construed as, a waiver by the Party giving such time or indulgence of any of its rights hereunder.

**21.7 No Third Party Beneficiaries**

This PPP Agreement is made exclusively for the benefit of SANParks and the Private Party and no third party shall have any rights hereunder or be deemed to be a beneficiary hereof except as may be expressly provided herein.

**21.8 Language**

This PPP Agreement has been drawn up and shall be construed in the English language.

**21.9 Notices**

21.9.1 Any notice or correspondence to be given under this PPP Agreement shall be in writing in English unless otherwise agreed and shall be delivered personally or sent by registered or certified mail, return receipt requested, or sent by fax followed by the original delivered by hand or sent by registered or certified mail, return receipt requested.

21.9.2 The addresses for Notices are as follows:

SANParks:

Marked for the attention of the CEO

Physical address:

**South African National Parks**

Groenkloof National Park

643 Leyds Street

Muckleneuk

Pretoria

Telephone: (012) 426-5027

Facsimile: (012) 343-3849

**Private Party:**

To the address stated in Schedule A.

21.9.3 Either Party may change its nominated address to another address in the Republic of South Africa by prior written notice to the other Party.

21.9.4 Any notice of breach given by SANParks shall be copied by SANParks to the Lender.

21.10 **Severability**

If any one or more of the covenants, agreements, provisions or terms of the PPP Agreement shall be held wholly or partly invalid, illegal or unenforceable for any reason whatsoever, then those covenants, agreements, provisions or terms shall be deemed severable from the remaining covenants, agreements, provisions or terms of the PPP Agreement and shall in no way affect the validity, legality or enforceability of the PPP Agreement. The Parties shall meet as soon as possible and negotiate in good faith upon a replacement provision that is legally valid and that achieves as nearly as possible the objective of the PPP Agreement and produces an equivalent economic effect.

21.11 **Representatives**

21.11.1 The Private Party shall be represented by its Managing Director, or such

other representative as shall from time to time be notified to SANParks.

21.11.2 The representative of SANParks shall be the CEO, or such other representative as shall from time to time be notified to the Private Party.

21.12 **SANParks' Remedial Rights**

Without prejudice to SANParks' rights hereunder and at law, and without derogating from the generality of the foregoing, without prejudice to SANParks' rights in terms of Clause 17, if the Private Party fails to perform its obligations and responsibilities in accordance with this PPP Agreement or the Regulatory Provisions, SANParks may give the Private Party notice thereof and, if any such failure is not remedied within 14 (fourteen) Business Days (or such longer period as SANParks may, in its sole discretion, specify), SANParks shall be entitled to remedy such failure and to protect its rights and interests, at the expense of the Private Party which shall promptly make payment to SANParks for its costs, expenses or other damages suffered or incurred or reasonably expected to be suffered or incurred in connection with such remedial acts.

21.13 **Consent**

SANParks shall not unreasonably withhold or delay the giving of any consent, approval or expression of satisfaction referred to in this PPP Agreement, and shall exercise its rights to consent, approve or express satisfaction reasonably and fairly. In any circumstance where consent or approval is required to be given by SANParks in terms of this PPP Agreement, such consent or approval shall not be unreasonably withheld.

**22. REPRESENTATIONS AND WARRANTIES**

22.1 **Representations and Warranties by the Private Party**

The Private Party hereby represents and warrants to SANParks as follows:

22.1.1 The Private Party is duly organised under the laws of the Republic of South Africa with all requisite juristic power to carry out its obligations under this PPP Agreement and to execute and deliver this PPP

Agreement, and acknowledges that, except as SANParks may otherwise agree in writing, its sole purpose is to implement the Project.

- 22.1.2 The Private Party has as its shareholders or beneficiaries the Shareholders specified in Annexure VI - Shareholding, Company Structure and Required Qualifications to Operate Project Site.
- 22.1.3 This PPP Agreement has been duly authorised by all necessary legal and corporate action, is legally valid and binding upon itself and does not require approval in any form in order to give full effect thereto.
- 22.1.4 The Private Party is not prevented or restrained legally, commercially or otherwise from entering into and undertaking the provisions of this PPP Agreement in accordance with its terms.
- 22.1.5 The Private Party has fully familiarised itself with all aspects of the Project and has all the knowledge, experience, ability (particularly financial ability) to carry out the Project in accordance with the terms of this PPP Agreement.
- 22.1.6 The Private Party has reviewed and checked as an expert the Project Site and its surroundings, and the physical and geological condition of the Project Site and its surroundings and is fully familiar with the terms of all relevant laws and regulations including without limitation all laws and regulations relating to the Kruger National Park, the Park, the Malelane Hotel Development and the Project Site and its rights and obligations there under and hereunder, and pursuant to such review the Private Party finds the Project Site suitable for the fulfilment of its obligations and undertakings under this PPP Agreement, including without limitation, the completion of the design and construction of the Malelane Hotel Development, the Project Assets and the Project. The Private Party further acknowledges its willingness to enter into this PPP Agreement with full awareness of, among other things, the rights and obligations derived from the physical position of the Project Site and the Malelane Hotel Development, the provisions of this PPP Agreement and its ability to fulfil all of its obligations under this PPP Agreement adequately and in a timely manner.

- 22.1.7 The Private Party has conducted a full inquiry and has satisfied itself, and accordingly accepts responsibility for the fact that the execution of the Project or any part thereof shall not involve any infringement of any patent or trade secret or know how or copyright belonging to any third party.
- 22.1.8 The Private Party has evaluated all factors that may reasonably be deemed to affect the carrying out of its obligations under this PPP Agreement, including geological conditions, technical risks, tourism risks, and any other risk involved herein, and such other conditions that may reasonably be deemed to affect the progress or completion of the Project in accordance with the terms of this PPP Agreement.
- 22.1.9 All representations, warranties, information and data of the Private Party contained in any written statement (including financial statements), certificate, exhibit or schedule or any other document delivered pursuant to any pre-qualification questionnaire, request for proposals, or in connection with this PPP Agreement, shall be true and correct in all material respects as of the date hereof.

## 22.2 **Representations and Warranties of SANParks**

SANParks hereby represents and warrants to the Private Party as follows:

- 22.2.1 In executing the PPP Agreement for the purposes of accepting the benefits hereof and the granting of the PPP Rights, the CEO of SANParks acts for and on behalf of SANParks and in accordance with law.
- 22.2.2 SANParks is duly established under the Act and the PPP Agreement is legally valid and binding upon SANParks and enforceable in accordance with its terms.
- 22.2.3 As at the Signature Date of this PPP Agreement, SANParks is not aware of any land claims in regard to the Project Site or the grant of the PPP Rights in regard thereto.
- 22.2.4 There are no servitudes or restrictions noted against the title to the Project Site, which will impede on the operating activities of the Private Party in the

Project Site or prevent the Private Party from operating in the Project Site and the Project Site is not under threat of expropriation.

### 23. **EFFECTIVENESS**

This PPP Agreement shall become of full legal force and effect with effect from the Signature Date, save where otherwise mentioned by the said provisions or required by the context.

### 24. **COMPLIANCE EVENTS**

24.1 The continued existence of this PPP Agreement is dependent upon the happening of certain events detailed in Annexure VII – Compliance Events and no construction and operational activities can commence until the fulfilment of the Compliance Events. The Private Party undertakes to use its best endeavours to ensure that the Compliance Events detailed in Annexure VII – Compliance Events are fulfilled to the satisfaction of SANParks as soon as is reasonably possible after the Signature Date.

24.2 If the Private Party fails to deliver the Performance Bond in the form defined in Clause 3.12 to the satisfaction of SANParks within 18 (eighteen) months of the Signature Date, SANParks shall be entitled to terminate this PPP Agreement and Clause 17.3 shall apply.

24.3 If the remainder of the Compliance Events are not fulfilled to the satisfaction of SANParks within 24 (twenty four) months from the Signature Date, but the Private Party has delivered the Performance Bond to SANParks, SANParks shall not, for lack of fulfilment of the Compliance Events, be entitled to terminate this PPP Agreement. If, however, after delivery of the Performance Bond and after a period of 30 (thirty) months after the Signature Date, any of the Compliance Events remain outstanding, SANParks shall be entitled to terminate this PPP Agreement and Clause 17.3 shall apply.

### 25. **COUNTERPARTS**

This PPP Agreement may be executed in any number of counterparts, but all of such counterparts taken together shall be deemed to constitute one and the same

instrument.

**26. STIPULATIONS FOR THE BENEFIT OF THE LENDERS**

The Parties agree that the provisions of this PPP Agreement that refer to the Lenders comprise stipulations for the benefit of the Lenders and that the Lenders may at any time accept such stipulations in their favour provided that they accept the obligations imposed upon them in terms of this PPP Agreement and provide the Parties with their addresses for notices. Upon receipt of acceptance by the Lenders of the rights and obligations imposed upon them in this PPP Agreement, the Lenders shall be bound by the provisions of this PPP Agreement that relate to them. The Lenders' consent shall be required in respect of any variation or amendment to any provision of this PPP Agreement that directly confers rights and/or imposes obligations on the Lenders or that reduces the Project Term and such consent may not unreasonably be withheld.

**Execution on behalf of SANParks:**

SIGNED AT PRETORIA ON ..... 2009.

For and on behalf of **SOUTH AFRICAN  
NATIONAL PARKS**

---

who warrants his authority hereto

**Execution on behalf of the Private Party:**

SIGNED AT ..... ON ..... 2009.

For and on behalf of the **PRIVATE PARTY**

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who warrants his authority hereto

**27. SCHEDULE A – SPECIFIC CONDITIONS**

<b>Clause Ref.</b>	<b>Specific Condition</b>	<b>Description</b>
1.6	Signature Date	
1.6	Name of relevant Protected Area	Kruger National Park
1.6	Name of relevant Project	Malelane Hotel Development
1.6	Name of Private Party	_____
		_____
		_____
		_____
2.1.3	Project Term	30 (thirty) years from Effective Date
12.2	Penalty for employee misconduct causing Private Party to breach PPP Agreement	R 12 500.00 (as at the Signature Date) for each and every occurrence.
15	Reporting threshold in respect of potential payment or aggregate payments under material contracts	R 125 000.00 (as at the Signature Date).
17	Judgment threshold	R 250 000.00 (as at the Signature Date).

<b>Clause Ref.</b>	<b>Specific Condition</b>	<b>Description</b>
21.9.2	Private Party's address for Notices	For the attention of:  _____  Physical address:  _____  _____  _____  _____  Telephone:  _____  Facsimile:  _____

## 28. SCHEDULE B – SITE SPECIFIC DESCRIPTION AND CONDITIONS

### 28.1 Malelane Hotel Development Proposed Sites

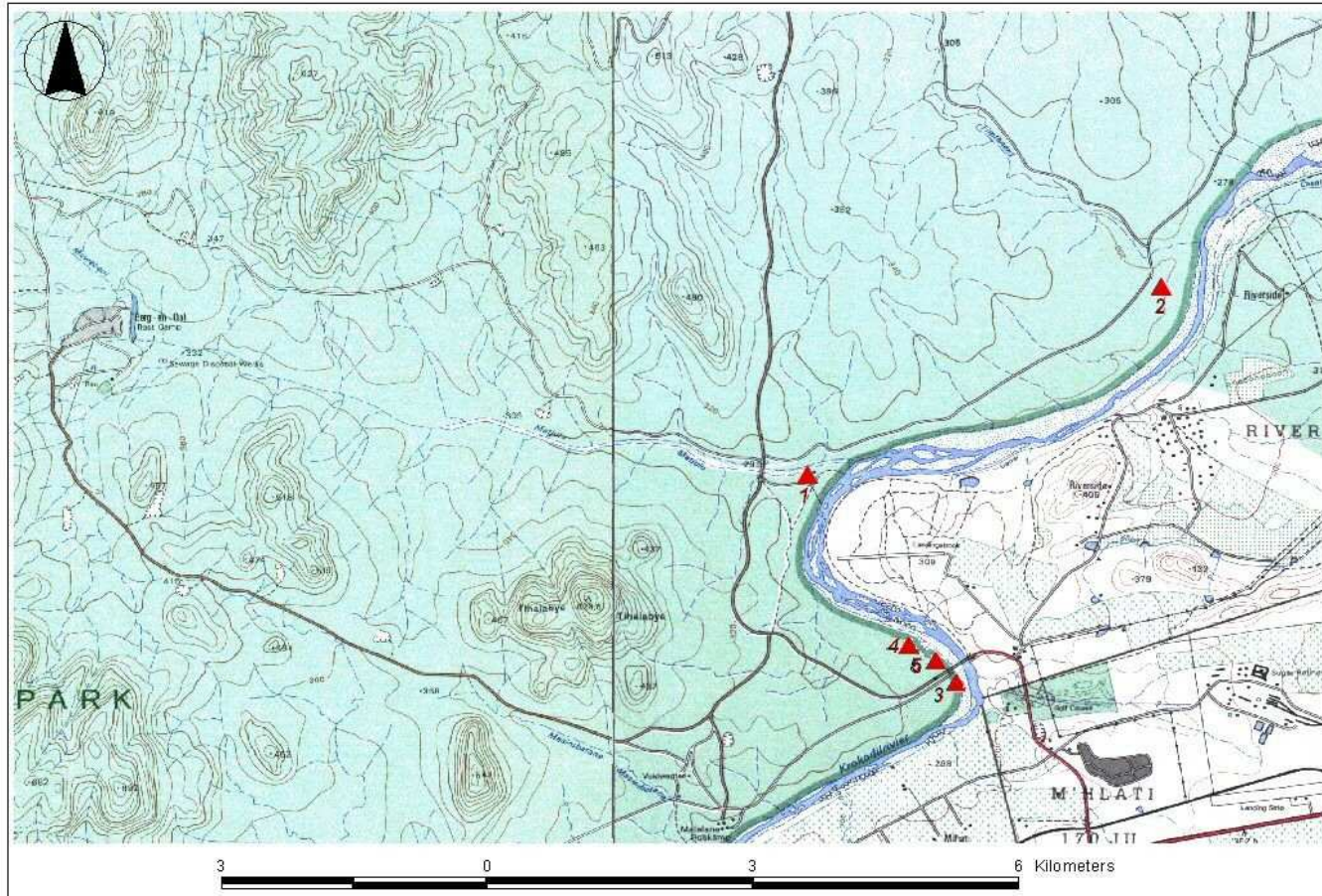
SANParks has identified five possible sites for the Malelane Hotel Development. The Bidders will be provided the opportunity to assess the different sites, the indications of the limitations on developments and activities to be permitted on each of the sites with regard to access, road network, carrying capacity, water, electricity, and telecommunications. Bidders, in their Bid Submission, will include a detailed Design Plan for site selected by them. However, Bidders should be aware, therefore, that should they win the bid, their detailed proposals will still be subject to a full Environmental Impact Assessment (EIA) of proposed developments.

EIAs must be prepared for certain prescribed activities, or activities that might affect designated areas such as a national park. All EIAs must be prepared by an independent consultant. Given the financial cost and time required, EIAs will only be undertaken by the successful bidder for their selected site. The environmental clearance given by the Evaluation Committee at the time of the bid does not absolve the winning bidder from the need to go through this process, and offers no guarantee that EIA clearance will be given. Any changes to the site selection, procedures or design that are required by the EIA process will be at the cost of the winning bidder – there will be no recourse to SANParks.

28.2 SANParks will not prescribe the dimensions or physical boundaries of the Project Sites. As it is green-fields sites, the GPS co-ordinates of the sites have been provided in this Schedule B – Site Specific Description and Conditions. The bidder will submit conceptual drawings as part of its Design Plan that will indicate the footprint or extent of the development. This should form part of the bid and will form part of the EIA process. The Private Party will be required to adhere to all the applicable Responsible Tourism Standards and the KNP Sustainable Design Principles and Guidelines. The smaller the footprint of the development, the more environmental friendly the proposal will be.

### 28.3 Location Map of Proposed Sites

The following maps details the location of the five proposed sites:



## 28.4 **Site 1 Specific Conditions and Description**

### 28.4.1 **Location**

This is a rehabilitated area at the confluence of the Matjulu River and Crocodile River on the southern boundary of the Kruger National Park (KNP). This proposed site was previously used as a roads construction camp and was accessed via a gravel management road. GPS co-ordinates S 25°26'40.0"; E031°31'53.0"

### 28.4.2 **Description**

The proposed site is bordered from the north by the scenically attractive Matjulu River that could be used to focus the development of the hotel. Apart from huge trees on the river-bank, the site offers excellent game viewing, including common sightings of the 'Big 5,' with seasonal water in the Matjulu River and perennial water in the Crocodile River. If the Crocodile River frontage is used sights of infrastructure at Leopard Creek across the river will be visible. The site is located on reasonably flat topography and the soils are deep relatively soft and stable alluvial soil (mainly Oakleaf soil form). The vegetation can be described as riparian woodland with some spectacular large trees that can form focal points in the design.

### 28.4.3 **Hotel Opportunities**

SANParks has determined that the hotel will be operated from the Malelane Entrance Gate "park and ride" facility. This will allow all guests to the hotel to store their private vehicles or busses at the Malelane Entrance Gate facilities and be transported in open game viewing vehicles 24 hours per day, 7 days per week to and from the hotel. Activities from the hotel will include both day and night drives in open, 4X4 vehicles on existing tourist roads accompanied by a qualified guide. Accompanied walks with suitably qualified guides are also possible in some areas, provided the Operator obtains approval from SANParks for the trail/s to be walked.

SANParks has determined provisionally that the hotel can accommodate a maximum of 240 guest beds and onsite essential staff. The opportunity exists, therefore, for a larger hotel facility, as most staff and support infrastructure could easily be accommodated off site, outside the KNP boundary, and transported to the hotel on a daily basis.

The area is zoned as 'High Intensity Leisure' in the Recreational Opportunity Zoning (ROZ) section of the KNP Management Plan.

#### 28.4.4 **Development Site**

As noted above, SANParks has identified site 1 as an excellent development site within the definition of peripheral development and easy access for 24/7 guest accommodation. The site does lend itself to the development of a 4\*star hotel with the challenge to design the focus areas to be hidden from the visual impacts from developments outside of the KNP boundaries, offering guests an attractive and secluded wildlife experience. The selection of this site as well as the other alternative proposed sites will however, be subject to the findings of the EIA.

#### 28.4.5 **Infrastructure Present**

This site does not offer any existing infrastructure, with the exception of a few redundant concrete slabs and a management road. The management road could be upgraded as the access road to the new hotel.

#### 28.4.6 **Roads and Tracks**

There are only one gravel management road leading from the tar road ( H3) and the site is approximately 4km from the Malelane Entrance gate. The proposed site is  $\pm 500$ m from the existing tar road (H3). There is a tourist gravel road (S114) directly north of the proposed site that is visible and that will have to be re-routed if this site is approved as the final site. The re-routing of the tourist gravel road will form part of this project and will form part of the EIA.

All roads to be upgraded or new roads will conform to the road specifications manual for KNP.

#### 28.4.7 **Access**

The existing gravel management road ( $\pm 500$ m) could be upgraded to a class C all-weather road to provide access to the proposed site. Guest access to the site will be via the "park and ride" facility at the Malelane Entrance Gate, where guests will leave their vehicles from where they will be transported in open game viewing vehicles to the hotel. All guests will have to pay requisite Park entry fees.

## 28.4.8 **Support Infrastructure**

### 28.4.8.1 **Water**

There is no potable water on site, but the site is bordered by the perennial Crocodile River, although it may dry up during periods of extreme low rainfall. Water for the development will be either from the Crocodile River or boreholes, however the quantity and quality of underground water is not known. A permit will be required from the Department of Water Affairs and Forestry (DWAF) to extract water either from the Crocodile River or from boreholes. The bulk water supply lines will be installed underground and will follow the existing roads footprints to limit the environmental impact.

### 28.4.8.2 **Electricity**

There is no electricity available on the site, but ESKOM power is available at the Malelane substation directly across the Malelane Rangers Post on the southern side of the Crocodile River. The maximum load required will determine the upgrading of the overhead supply across the Crocodile River to the Malelane distribution point. The bulk electrical supply line from the Malelane distribution point will follow the existing road footprint and will be installed underground.

### 28.4.8.3 **Waste**

Solid waste will be recycled on site and transported to an approved landfill site outside the Kruger National Park and approved re-cycling depots.

Sewerage will be treated on site and grey water will be used for irrigation and or water for game. A permit will be required from the Department of Water Affairs and Forestry (DWAF) to operate the purification plant and dispose off the effluent.

All the bulk and reticulation systems must conform to the guidelines set out in the Environmental Guidelines for Concessionaire's Operation within the South African National Parks.

### 28.4.8.4 **Communications**

No Telkom phones are available; however, cellular signals are available

at the proposed site. The signal strength does vary and will have to be tested.

#### 28.4.9 **Guest Activities**

28.4.9.1 Game drives (Day & Night) and Guided Walks – Such activities will not be operated by the Private Party as with the other KNP Concessions but the Private Party will be required to make use of SANParks' vehicles and guides to provide this service to their guests.

28.4.9.2 Private Party will be required to develop, manage and maintain a “Park & Ride” Facility at the Malelane Hotel Development and guests to the hotel will not be permitted to conduct game drives in their private vehicles.

#### 28.5 **Site 2 Specific Conditions and Description**

##### 28.5.1 **Location**

This is a “green field” site in the southern eastern corner of the Kruger National Park (KNP). This proposed site is situated at the confluence of the Timfene Spruit and the Crocodile River on the southern boundary of the Park. GPS co-ordinates S 25°24'41.5”; E031°34'43.3”.

##### 28.5.2 **Description**

The proposed site is bordered from the north by the scenically attractive Timfene Spruit that could be used to focus the development of the hotel. Apart from huge trees on the river-bank, the site offers excellent game viewing, including common sightings of the 'Big 5,' with seasonal water in the Timfene Spruit and perennial water in the Crocodile River. The site is located on reasonably flat topography.

##### 28.5.3 **Hotel Opportunities**

SANParks has determined that the hotel will be operated from the Malelane Entrance Gate “park and ride” facility. This will allow all guests to the hotel to store their private vehicles or busses at the Malelane Entrance Gate facilities and be transported in open game viewing vehicles 24 hours per day, 7 days per week to and from the hotel. Activities from the hotel will include both day and night drives in open, 4X4 vehicles on existing tourist roads accompanied by a qualified guide. Accompanied walks with suitably qualified guides are also

possible in some areas, provided the Operator obtains approval from SANParks for the trail/s to be walked.

SANParks has determined provisionally that the hotel can accommodate a maximum of 240 guest beds and onsite essential staff. The opportunity exists, therefore, for a larger hotel facility, as most staff and support infrastructure could easily be accommodated off site, outside the KNP boundary, and transported to the hotel on a daily basis.

The area is located in the ‘High Intensity Leisure’ zones in the Recreational Opportunity Zoning (ROZ) section of the KNP Management Plan.

#### 28.5.4 **Development Site**

As noted above, SANParks has identified this site as a possible development site within the definition of peripheral development and easy access for 24/7 guest accommodation. The site does lend itself to the development of a 4\*star hotel with the challenge to design the focus areas to be hidden from the visual impacts from developments outside of the KNP boundaries, offering guests an attractive and secluded wildlife experience. The selection of this site as well as the other alternative proposed sites will however, be subject to the findings of the EIA.

#### 28.5.5 **Infrastructure Present**

This site does not offer any existing infrastructure.

#### 28.5.6 **Roads and Tracks**

There are no management or other road leading from the gravel (S114) to the proposed site. The proposed site is  $\pm 500\text{m}$  from the existing gravel road (S114).

#### 28.5.7 **Access**

A new class C all-weather road ( $\pm 0.5\text{km}$ ) from the gravel road (S114) will be required to provide access to the proposed site. The turnoff from the S114 – gravel road is approximately 9 km from the Malelane Entrance gate. Guest access to the site will be via the “park and ride” facility at the Malelane Entrance Gate, where guests will leave their vehicles from where they will be transported in open game viewing vehicles to the hotel. All guests will have to

pay requisite Park entry fees.

## 28.5.8 **Support Infrastructure**

### 28.5.8.1 **Water**

There is no potable water on site. The closest perennial river is the Crocodile River, although it may dry up during periods of extreme low rainfall. Water for the development will be either from the Crocodile River or boreholes, however the quantity and quality of underground water is not known. A permit will be required from the Department of Water Affairs and Forestry (DWAF) to extract water either from the Crocodile River or from boreholes. The bulk water supply lines will be installed underground and will follow the existing roads footprints to limit the environmental impact.

### 28.5.8.2 **Electricity**

There is no electricity available on the site, but ESKOM power is available at the Malelane substation directly across the Malelane Rangers Post on the southern side of the Crocodile River. The maximum load required will determine the upgrading of the overhead supply across the Crocodile River to the Malelane distribution point. The bulk electrical supply line from the Malelane distribution point will follow the road footprint and will be installed underground.

### 28.5.8.3 **Waste**

Solid waste will be recycled on site and transported to an approved landfill site outside the Kruger National Park and approved re-cycling depots.

Sewerage will be treated on site and grey water will be used for irrigation and or water for game. A permit will be required from the Department of Water Affairs and Forestry (DWAF) to operate the purification plant and dispose off the effluent.

All the bulk and reticulation systems must conform to the guidelines set out in the Environmental Guidelines for Concessionaire's Operation within the South African National Parks.

28.5.8.4           **Communications**

No Telkom phones and cellular signals are available at the proposed site.

28.5.9           **Guest Activities**

28.5.9.1           Game drives (Day & Night) and Guided Walks – Such activities will not be operated by the Private Party as with the other KNP Concessions but the Private Party will be required to make use of SANParks' vehicles and guides to provide this service to their guests.

28.5.9.2           Private Party will be required to develop, manage and maintain a "Park & Ride" Facility at the Malelane Hotel Development and guests to the hotel will not be permitted to conduct game drives in their private vehicles.

28.6           **Site 3 Specific Conditions and Description**

28.6.1           **Location**

This is a "Green Fields" area close to the tar road (H3) and just southwest of the existing Malelane Entrance Gate in the southern portion of the Kruger National Park (KNP). GPS co-ordinates S 25°27'76.2"; E031°32'15.0"

28.6.2           **Description**

The proposed site is next to the tar road (H3), next to the existing Malelane Entrance Gate and on the banks of the Crocodile River. The site is located on a flat topography and the soils are deep red alluvial sandy clays. The vegetation can be described as Grewia shrubveld with few large trees. No large riparian trees occur.

28.6.3           **Hotel Opportunities**

SANParks has determined that the hotel will be operated from the Malelane Entrance Gate "park and ride" facility. This will allow all guests to the hotel to store their private vehicles or busses at the Malelane Entrance Gate facilities and be transported in open game viewing vehicles 24 hours per day, 7 days per week to and from the hotel. Activities from the hotel will include both day and night drives in open, 4X4 vehicles on existing tourist roads accompanied by a qualified guide. Accompanied walks with suitably qualified guides are also possible in some areas, provided the Operator obtains approval from SANParks for the trail/s to be walked.

SANParks has determined provisionally that the hotel can accommodate a maximum of 240 guest beds and onsite essential staff. The opportunity exists, therefore, for a larger hotel facility, as most staff and support infrastructure could easily be accommodated off site, outside the KNP boundary, and transported to the hotel on a daily basis.

The area is located on the border of the 'High Intensity Leisure' zones in the Recreational Opportunity Zoning (ROZ) section of the KNP Management Plan.

#### 28.6.4 **Development Site**

As noted above, SANParks has identified this site as a possible development site within the definition of peripheral development and easy access for 24/7 guest accommodation. The site does lend itself to the development of a 4\*star hotel with the challenge to design the focus areas to be hidden from the visual impacts from developments outside of the KNP boundaries. The selection of this site as well as the other alternative proposed sites will however, be subject to the findings of the EIA.

#### 28.6.5 **Infrastructure Present**

This site does not offer any existing infrastructure apart from the infrastructure at the Malelane Entrance Gate that will be directly adjacent to this site.

#### 28.6.6 **Roads and Tracks**

There are no management or other road leading from the tar road (H3) to the proposed site. The proposed site is  $\pm 500\text{m}$  from the existing tar road (H3) and next to the Malelane Entrance Gate. All roads to be upgraded or new roads will conform to the road specifications manual for KNP.

#### 28.6.7 **Access**

A new class C all-weather road ( $\pm 500\text{m}$ ) from the tar road (H3) will be required to provide access to the proposed site. The turnoff from the H3 –tar road is approximately 100m from the Malelane Entrance gate. Guest access to the site will be via the "park and ride" facility at the Malelane Entrance Gate, where guests will leave their vehicles from where they will be transported in open game viewing vehicles to the hotel. All guests will have to pay requisite Park entry fees.

## 28.6.8 **Support Infrastructure**

### 28.6.8.1 **Water**

There is no potable water on site. The closest perennial river is the Crocodile River, although it may dry up during periods of extreme low rainfall. Water for the development will be either from the Crocodile River or boreholes, however the quantity and quality of underground water is not known. A permit will be required from the Department of Water Affairs and Forestry (DWAF) to extract water either from the Crocodile River or from boreholes. The bulk water supply lines will be installed underground and will follow the existing roads footprints to limit the environmental impact.

### 28.6.8.2 **Electricity**

There is no electricity available on the site, but Eskom power is available at the Malelane substation directly across the Malelane Rangers Post on the southern side of the Crocodile River. The maximum load required will determine the upgrading of the overhead supply across the Crocodile River to the Malelane distribution point. The bulk electrical supply line from the Malelane distribution point will follow the existing road footprint and will be installed underground.

### 28.6.8.3 **Waste**

Solid waste will be recycled on site and transported to an approved landfill site outside the Kruger National Park and approved re-cycling depots.

Sewerage will be treated on site and grey water will be used for irrigation and or water for game. A permit will be required from the Department of Water Affairs and Forestry (DWAF) to operate the purification plant and dispose off the effluent.

All the bulk and reticulation systems must conform to the guidelines set out in the Environmental Guidelines for Concessionaire's Operation within the South African National Parks.

### 28.6.8.4 **Communications**

No Telkom phones are available; however, cellular signals are available

at the proposed site. The signal strength does vary and will have to be tested.

#### 28.6.9 **Guest Activities**

28.6.9.1 Game drives (Day & Night) and Guided Walks – Such activities will not be operated by the Private Party as with the other KNP Concessions but the Private Party will be required to make use of SANParks' vehicles and guides to provide this service to their guests.

28.6.9.2 Private Party will be required to develop, manage and maintain a "Park & Ride" Facility at the Malelane Hotel Development and guests to the hotel will not be permitted to conduct game drives in their private vehicles.

#### 28.7 **Site 4 Specific Conditions and Description**

##### 28.7.1 **Location**

This is a "Green Fields" area close to the tar road (H3) and just northwest of the existing Malelane Entrance Gate in the southern portion of the Kruger National Park (KNP). GPS co-ordinates S 25°27'44.8"; E031°31'98.7"

##### 28.7.2 **Description**

The proposed site is next to the tar road (H3), next to the existing Malelane Entrance Gate and on the banks of the Crocodile River. The site is located on a flat topography and the soils are deep red alluvial sandy clays. The vegetation can be described as Grewia shrubveld with few large trees. No large riparian trees occur.

##### 28.7.3 **Hotel Opportunities**

SANParks has determined that the hotel will be operated from the Malelane Entrance Gate "park and ride" facility. This will allow all guests to the hotel to store their private vehicles or busses at the Malelane Entrance Gate facilities and be transported in open game viewing vehicles 24 hours per day, 7 days per week to and from the hotel. Activities from the hotel will include both day and night drives in open, 4X4 vehicles on existing tourist roads accompanied by a qualified guide. Accompanied walks with suitably qualified guides are also possible in some areas, provided the Operator obtains approval from SANParks for the trail/s to be walked.

SANParks has determined provisionally that the hotel can accommodate a maximum of 240 guest beds and onsite essential staff. The opportunity exists, therefore, for a larger hotel facility, as most staff and support infrastructure could easily be accommodated off site, outside the KNP boundary, and transported to the hotel on a daily basis.

The area is located on the border of the 'High Intensity Leisure' zones in the Recreational Opportunity Zoning (ROZ) section of the KNP Management Plan.

#### 28.7.4 **Development Site**

As noted above, SANParks has identified this site as a possible development site within the definition of peripheral development and easy access for 24/7 guest accommodation. The site does lend itself to the development of a 4\*star hotel with the challenge to design the focus areas to be hidden from the visual impacts from developments outside of the KNP boundaries. The selection of this site as well as the other alternative proposed sites will however, be subject to the findings of the EIA.

#### 28.7.5 **Infrastructure Present**

This site does not offer any existing infrastructure apart from the infrastructure at the Malelane Entrance Gate that will be directly adjacent to this site.

#### 28.7.6 **Roads and Tracks**

There are no management or other road leading from the tar road (H3) to the proposed site. The proposed site is  $\pm 500\text{m}$  from the existing tar road (H3) and next to the Malelane Entrance Gate. All roads to be upgraded or new roads will conform to the road specifications manual for KNP.

#### 28.7.7 **Access**

A new class C all-weather road ( $\pm 500\text{m}$ ) from the tar road (H3) will be required to provide access to the proposed site. The turnoff from the H3 –tar road is approximately 100m from the Malelane Entrance gate. Guest access to the site will be via the "park and ride" facility at the Malelane Entrance Gate, where guests will leave their vehicles from where they will be transported in open game viewing vehicles to the hotel. All guests will have to pay requisite Park entry fees.

## 28.7.8 **Support Infrastructure**

### 28.7.8.1 **Water**

There is no potable water on site. The closest perennial river is the Crocodile River, although it may dry up during periods of extreme low rainfall. Water for the development will be either from the Crocodile River or boreholes, however the quantity and quality of underground water is not known. A permit will be required from the Department of Water Affairs and Forestry (DWAF) to extract water either from the Crocodile River or from boreholes. The bulk water supply lines will be installed underground and will follow the existing roads footprints to limit the environmental impact.

### 28.7.8.2 **Electricity**

There is no electricity available on the site, but Eskom power is available at the Malelane substation directly across the Malelane Rangers Post on the southern side of the Crocodile River. The maximum load required will determine the upgrading of the overhead supply across the Crocodile River to the Malelane distribution point. The bulk electrical supply line from the Malelane distribution point will follow the existing road footprint and will be installed underground.

### 28.7.8.3 **Waste**

Solid waste will be recycled on site and transported to an approved landfill site outside the Kruger National Park and approved re-cycling depots.

Sewerage will be treated on site and grey water will be used for irrigation and or water for game. A permit will be required from the Department of Water Affairs and Forestry (DWAF) to operate the purification plant and dispose off the effluent.

All the bulk and reticulation systems must conform to the guidelines set out in the Environmental Guidelines for Concessionaire's Operation within the South African National Parks.

### 28.7.8.4 **Communications**

No Telkom phones are available; however, cellular signals are available

at the proposed site. The signal strength does vary and will have to be tested.

#### 28.7.9 **Guest Activities**

28.7.9.1 Game drives (Day & Night) and Guided Walks – Such activities will not be operated by the Private Party as with the other KNP Concessions but the Private Party will be required to make use of SANParks' vehicles and guides to provide this service to their guests.

28.7.9.2 Private Party will be required to develop, manage and maintain a "Park & Ride" Facility at the Malelane Hotel Development and guests to the hotel will not be permitted to conduct game drives in their private vehicles.

#### 28.8 **Site 5 Specific Conditions and Description**

##### 28.8.1 **Location**

This proposed site is close to the tar road (H3) and just northwest of the existing Malelane Entrance Gate in the southern portion of the Kruger National Park (KNP). GPS co-ordinates S 25°27'32.8"; E031°31'53.7".

##### 28.8.2 **Description**

The proposed site is next to the tar road (H3), next to the existing Malelane Entrance Gate and on the banks of the Crocodile River. The site is located on a flat topography and the soils are deep red alluvial sandy clays. The vegetation can be described as Grewia shrubveld with few large trees. No large riparian trees occur.

##### 28.8.3 **Hotel Opportunities**

SANParks has determined that the hotel will be operated from the Malelane Entrance Gate "park and ride" facility. This will allow all guests to the hotel to store their private vehicles or busses at the Malelane Entrance Gate facilities and be transported in open game viewing vehicles 24 hours per day, 7 days per week to and from the hotel. Activities from the hotel will include both day and night drives in open, 4X4 vehicles on existing tourist roads accompanied by a qualified guide. Accompanied walks with suitably qualified guides are also possible in some areas, provided the Operator obtains approval from SANParks for the trail/s to be walked.

SANParks has determined provisionally that the hotel can accommodate a maximum of 240 guest beds and onsite essential staff. The opportunity exists, therefore, for a larger hotel facility, as most staff and support infrastructure could easily be accommodated off site, outside the KNP boundary, and transported to the hotel on a daily basis.

The area is located on the border of the 'High Intensity Leisure' zones in the Recreational Opportunity Zoning (ROZ) section of the KNP Management Plan.

#### 28.8.4 **Development Site**

As noted above, SANParks has identified this site as a possible development site within the definition of peripheral development and easy access for 24/7 guest accommodation. The site does lend itself to the development of a 4\*star hotel with the challenge to design the focus areas to be hidden from the visual impacts from developments outside of the KNP boundaries. The selection of this site as well as the other alternative proposed sites will however, be subject to the findings of the EIA.

#### 28.8.5 **Infrastructure Present**

This site does not offer any existing infrastructure apart from the existing rangers housing as well as the infrastructure at the Malelane Entrance Gate that will be directly adjacent to this site. Bidders who wish to utilise the existing rangers housing for part of their operations must indicate such in the development plan included in their Bid documents. The existing residence would then be available for the Concessionaire's use. If the successful Bidder wants to make use of the facilities or demolish them, they will be required to replace them elsewhere at a location selected by SANParks. The new residences must be of a size and quality comparable to the existing structures, as agreed to by SANParks, and the cost of construction must be borne by the Concessionaire.

#### 28.8.6 **Roads and Tracks**

There are no management or other road leading from the tar road (H3) to the proposed site. The proposed site is ±200m from the existing tar road (H3) and next to the Malelane Entrance Gate. All roads to be upgraded or new roads will conform to the road specifications manual for KNP.

#### 28.8.7 **Access**

A new class C all-weather road ( $\pm 200\text{m}$ ) from the tar road (H3) at the Malelane Entrance Gate will be required to provide access to the proposed site. Guest access to the site will be via the “park and ride” facility at the Malelane Entrance Gate, where guests will leave their vehicles from where they will be transported in open game viewing vehicles to the hotel. All guests will have to pay requisite Park entry fees.

## 28.8.8 **Support Infrastructure**

### 28.8.8.1 **Water**

There is no potable water on site. The closest perennial river is the Crocodile River, although it may dry up during periods of extreme low rainfall. Water for the development will be either from the Crocodile River or boreholes, however the quantity and quality of underground water is not known. A permit will be required from the Department of Water Affairs and Forestry (DWAF) to extract water either from the Crocodile River or from boreholes. The bulk water supply lines will be installed underground and will follow the existing roads footprints to limit the environmental impact.

### 28.8.8.2 **Electricity**

There is electricity available on the site and ESKOM power is also available at the Malelane substation directly across the Malelane Rangers Post on the southern side of the Crocodile River. The maximum load required will determine the upgrading of the overhead supply across the Crocodile River to the Malelane distribution point. The bulk electrical supply line from the Malelane distribution point will follow the existing road footprint and will be installed underground.

### 28.8.8.3 **Waste**

Solid waste will be recycled on site and transported to an approved landfill site outside the Kruger National Park and approved re-cycling depots.

Sewerage will be treated on site and grey water will be used for irrigation and or water for game. A permit will be required from the Department of Water Affairs and Forestry (DWAF) to operate the purification plant and dispose off the effluent.

All the bulk and reticulation systems must conform to the guidelines set out in the Environmental Guidelines for Concessionaire's Operation within the South African National Parks.

**28.8.8.4 Communications**

No Telkom phones are available; however, cellular signals are available at the proposed site. The signal strength does vary and will have to be tested.

**28.8.9 Guest Activities**

28.8.9.1 Game drives (Day & Night) and Guided Walks – Such activities will not be operated by the Private Party as with the other KNP Concessions but the Private Party will be required to make use of SANParks' vehicles and guides to provide this service to their guests.

28.8.9.2 Private Party will be required to develop, manage and maintain a "Park & Ride" Facility at the Malelane Hotel Development and guests to the hotel will not be permitted to conduct game drives in their private vehicles.

**28.9 Project Description/Labelling**

Due to the Malelane Hotel Development being the first PPP hotel development within the boundaries of a National Park and the ecological sensitivities surrounding such, SANParks debated the labelling of the project. Initially it was proposed that the project is labelled as a Safari Lodge opposed to a Hotel. However, subsequently it was felt a Safari Lodge could be viewed to be similar to the concessions lodges, whilst it does not have any exclusivity i.t.o. of traversing or bush activities. Secondly, it could be viewed by the critics as a scope creep on the initial concession programme and thirdly it could be viewed as unfair competition by other especially neighbouring concession holders.

Another option was to use the term Hotel but with an appropriate prefix i.e. Eco-hotel; Wilderness Hotel ; Safari Hotel.

However, SANParks finally determined that the Private Party will be requested to suggest an appropriate name for the hotel but SANParks will reserve the final right of approval.

## 28.10 **Responsible Tourism Standards**

### 28.10.1 **Responsible Tourism**

Responsible Tourism is a tourism management strategy embracing planning, management, product development and marketing to bring about positive economic, social, cultural and environmental impacts. Responsible Tourism provides for the following:

- generates economic benefits for local people and enhances the well-being of host communities;
- improves working conditions and access to the industry;
- involves local people in decisions that affect their lives and life chances;
- makes positive contributions to the conservation of natural and cultural heritage to the maintenance of the world's diversity;
- provides more enjoyable experiences for tourists through more meaningful connections with local people and a greater understanding of local cultural, social and environmental issues;
- minimises negative economic, environmental and social impacts; and
- is culturally sensitive, engenders respect between tourists and hosts, and builds local pride and confidence.

### 28.10.2 **National Responsible Tourism Guidelines**

In 2002, the Department of Environmental Affairs and Tourism (“DEAT”) published National Responsible Tourism Guidelines, reflecting South Africa’s vision to manage tourism in a way that contributes to the quality of life of all South Africans. The Guidelines aim to set benchmark standards for accommodation and transport operators, tourism associations and custodians of our cultural and natural heritage. The objective is to ensure that our tourism sector keeps pace with international trends towards responsible business practice – and gains market advantage in doing so. In 2003, DEAT published the Responsible Tourism Handbook, which took it one step further by giving practical examples of how tourism operators can improve their economic, social and environmental practices.

Various institutions/organisations offer environmental management consulting

and accreditation services to all business sectors interested in implementing environmentally friendly business practices and hence offer Environmental Rating Programmes. Such eco-labelling schemes include:

- ISO 14001
- Green Globe
- Blue Flag
- NEAP
- Heritage
- Ecoquest
- Fair Trade in Tourism

#### 28.10.3 **National Responsible Tourism Standard & Accreditation System**

DEAT has recently commenced with the development of a National Standard for Responsible Tourism, a national accreditation scheme that tourism operators will be accredited by. The Private Party shall be obliged to comply with the accreditation in terms of the National Standard for Responsible Tourism, once completed. Such accreditation will be compulsory and should be obtained within 12 months from Operation Commencement Date and renewed thereafter on an annual basis.

#### 28.10.4 **SANParks Responsible Tourism Strategy**

South African National Parks is also in the process of drafting a Responsible Tourism Strategy. The purpose of developing this responsible tourism strategy and implementation plan is to consistently integrate the principles of the national responsible tourism guidelines (DEAT, 2002) into South African National Parks operations.

This strategy and plan will help to reduce fragmentation of responsible tourism activities by SANParks and its business partners, by providing a framework for a coordinated approach. It will also reduce the disparity between levels of responsible tourism practiced, monitored and reported between SANParks tourism operations and concessionaires (who are contractually required to practice responsible tourism). Implementation of strategy and plan will help address potential future problems, such as mitigation and adaptation to climate change. The strategy is also a response to the increased market demand for

responsible holidays from tourists, and will enable SANParks to put into place the conditions that are required to position the national park systems as responsible destinations.

The responsible tourism strategy is divided into three sections:

- The alignment of the principles of Responsible Tourism with existing corporate values and actions, with amendments to policies and procedures to accommodate Responsible Tourism values and indicators
- Recommended additions to the SANParks scorecard to include Responsible Tourism indicators
- Processes required to embed awareness of and decision-making and actions aligned with Responsible Tourism throughout the organization.

#### 28.10.4.1

#### **Objectives of the Responsible Tourism Strategy**

The objectives of the responsible tourism strategy and implementation plan aim to provide a basis for decision-making, and guidance for divisions to develop action plans that comply with this policy. The objectives are:

- Align SANParks operations with the national policy on responsible tourism;
- Enhance responsible tourism awareness and management skills among protected area managers and tourism officers and business partners within SANParks;
- Enhance responsible tourism awareness and skills among SANParks' external stakeholders, including communities, and suppliers;
- Integrate responsible tourism principles and actions into management plans for each national park in South Africa;
- Establish a practical framework for monitoring, evaluation and reporting in national park destinations; and
- Integrate responsible tourism into the performance management frameworks of the organisation, individual parks and individual staff

members.

#### 28.10.4.2 **Guiding Principles of the Responsible Tourism Strategy**

The guiding principles of the responsible tourism strategy and implementation plan are that they are:

- based on the national responsible tourism guidelines (DEAT, 2002);
- aligned with the national Minimum Standards for Responsible Tourism;
- aligned with SANParks Corporate Strategic Business Plan, and cognisant of the Conservation Development Framework and Park Management Plans;
- easy to understand and implement;
- adaptive and flexible;
- monitored at both a corporate and operational level;
- developed and implemented through a participatory process by a broad range of SANParks stakeholders, including business partners;
- initially focus on quick wins, that can be used to promote the responsible tourism agenda throughout the organization;
- address initiatives that facilitate the achievement of SANParks core objectives (e.g. better relations with local communities, reducing poaching, helping park expansion)

#### 28.10.5 **Private Party Requirements**

The Private Party will be required to adhere to all the applicable Responsible Tourism Standards as well as the “greening” principles and criteria derived from the existing standards set by SANParks for the Concessions as reflected in the SANParks Management Plan Policy Framework, the KNP Management Plans, the Concession Operations Manual as well as the following:

- The National Responsible Tourism Guidelines DEAT (2002);
- The Environmental Guidelines and monitoring systems as detailed in Annexure IV – Environmental Guidelines for Private Parties for the Construction and Operation of PPP Facilities within the Kruger National Park;
- The KNP Sustainable Design Principles and Guidelines;
- The Monthly Operational Checklist for Concessions used by SANParks to audit the Concessions; and
- The Biannual Environmental Monitoring and Audit Report that is conducted on Concessionaires with the detailed criteria applicable.

**29. ANNEXURE I – ASSOCIATED AGREEMENTS**

Indicative list:

- 29.1 Any contracts in respect of the Design Plan.
- 29.2 The Construction Contracts.
- 29.3 The Loan Agreements.
- 29.4 The policies to be subscribed by the Private Party pursuant to Clause 14.

## 30. ANNEXURE II – KNP SUSTAINABLE DESIGN PRINCIPLES AND GUIDELINES

### 30.1 Sustainable Design and Planning Principles.

#### 30.1.1 Ecological Sensitivities

30.1.1.1 The type of development will determine the level of permanence and should if necessary, be easily removed from the landscape with minimum impact or permanent damage to the site category of development.

30.1.1.2 The site selection and foundation conditions need to enhance the application of ecological sensitivity principles.

30.1.1.3 Natural materials, textures and colours should be utilized wherever possible to ensure structures blend into the natural landscape.

30.1.1.4 The natural landscapes should in effect “flow” through and over structures where possible.

#### 30.1.2 Green Building Principles

30.1.2.1 Passive design principles should allow for maximum use of natural renewable resources like light and ventilation, etc. to reduce energy requirements.

30.1.2.2 Passive as well as energy efficient designs should be applied holistically to all the development components, including the support services.

30.1.2.3 The promotion of usage of re-usable, recyclable and non-hazardous materials in designs.

#### 30.1.3 Operational Efficiency Principles

30.1.3.1 Designs should be cost effective in terms of the life cycle of the development.

30.1.3.2 Designs should incorporate material specification that will sustain the infrastructure throughout its life expectancy.

30.1.3.3 Designs should incorporate all latest innovative technology.

30.1.4 **Natural & Cultural Resource Optimization Principles**

30.1.4.1 Designs must follow an iterative process that is strongly underpinned by a thorough analysis and understanding of all natural, biophysical, socio-economic attributes and the legal requirements of the site.

30.1.4.2 Designs should not compete with or detract from the historical and cultural values of the site and the immediate surrounding areas. This should not preclude cultural elements from being incorporated into designs.

30.1.4.3 Designs should promote the visitors sense of wilderness experience.

30.1.5 Refer to the design norms and standards as detailed in the “Sustainable design principles and norms for Technical Services”

30.1.6 Ensure compliance in terms of design and planning requirements as per all relevant South African National Standards Codes of Practice.

30.2 **Technical Services procedures guidelines**

Ensure compliance of the Kruger National Park Technical Services procedures manual regarding planning, design, upgrading, renovations and new projects.

30.3 **Maintenance Principles**

- Buildings
- Water provisioning
- Waste sites
- Electrical reticulation
- Roads

Each category should detail the following principles:

30.3.1 Systematic / Routine Maintenance - Maintain all infrastructures to set standards and specifications – services, roads, bridges, dams, waterlines, sewer lines, sewer works.

30.3.2 Renovation works - Apply cycled renovation of all infrastructures including replacement to Pre – determined intervals.

30.3.3 Upgrading works - Apply cycled renovation of all infrastructures including replacement programs in terms of pre – determined life cycle planning and costing.

30.3.4 Ensure compliance with all known engineering maintenance principles and procedures.

30.4 **Safe working procedures**

30.4.1 Ensure compliance with Technical Services safe working procedures.

30.4.2 Ensure compliance with National Construction safety regulations.

30.5 **Environment Management Principles**

30.5.1 Ensure compliance with current environment management practices legislation.

30.5.2 Ensure compliance with project specific environment management plans – project specific.

30.5.3 Ensure compliance with generic environment management plans – renovations, upgrading, replacement programs.

30.6 **Rehabilitation of redundant infrastructure**

30.6.1 Ensure compliance to planning and removed programs, annually of all declared redundant infrastructure.

30.6.2 Ensure removal programs in terms of pre-determined planned implementation.

### 31. ANNEXURE III - DESIGN PLAN

- 31.1 The Private Party's Design Plan, which is subject to approval and amendments proposed by SANParks and is part of its Development and Environmental Bid Submission, will be appended as Annexure III.
- 31.2 SANParks will not prescribe the dimensions or physical boundaries of the Project Sites. As it is green-fields sites, the GPS co-ordinates of the sites have been provided in Schedule B – Site Specific Description and Conditions. The bidder will submit conceptual drawings as part of its Design Plan that will indicate the footprint or extent of the development. This should form part of the bid and will form part of the EIA process.
- 31.3 The Private Party will be required to adhere to all the applicable Responsible Tourism Standards and the KNP Sustainable Design Principles and Guidelines. The smaller the footprint of the development, the more environmental friendly the proposal will be.
- 31.4 The Design Plan should have detail regarding the design, location and orientation of structures on the Project Site and Hotel Site to enable evaluation of the visual impacts of the proposed development including but not limited to:
- 31.4.1 A map showing location of the Project Site including the Hotel Access Road and the Park and Ride Facility;
  - 31.4.2 A photograph or architect's drawing of development 'footprint;'
  - 31.4.3 Conceptual and layout architect's drawings of all structures and associated infrastructure;
  - 31.4.4 A description of building materials to be used in construction of all structures;
  - 31.4.5 A description of additional efforts Bidder intends to undertake to minimise visual impacts of Malelane Hotel Development, including lighting;
  - 31.4.6 The location of lightning arrestors and radio masts within Project Site and how

visual impacts of these structures will be minimised; and

- 31.4.7 Sketch drawings showing the overall appearance, the planned theme of the facilities, the internal and external décor, soft furnishings and signage and the landscaping and gardening.
- 31.5 The evaluation of the Design Plan is to ensure that bidders understand and have fully planned for the prevailing environmental issues that apply to the investment area, the Environmental Guidelines and all applicable Responsible Tourism Standards and have factored those issues into their plans.
- 31.6 Approval by the evaluation committee of the Design Plan will not be taken to mean that the individual details of the proposal can be implemented – in all cases, the proposal must go through the Environmental Impact Assessment process.

**32. ANNEXURE IV – ENVIRONMENTAL GUIDELINES FOR PRIVATE PARTIES FOR THE CONSTRUCTION AND OPERATION OF PPP FACILITIES WITHIN THE KRUGER NATIONAL PARK**

**Part 1 – Institution’s Environmental Guidelines for the Protected Area and Project Site:**

The Private Party should outline the Environmental Guidelines that will be applied to the Protected Area and Project Site – as referenced in the RFP under the Development and Environmental proposal. The following is the minimum that should be contained in the PPP Agreement:

- The process that the Private Party will follow to obtain the required Consents. The different Consents should also be outlined;
- The Development and Environment Proposal must be sufficiently detailed regarding key aspects of the development to enable evaluation at the time the Bids are reviewed. Development and Environment Proposals lacking sufficient detail may be disqualified. These should include but are not limited to the location of all bulk Utilities such as electricity, water, sewerage, etc;
- All EIA findings and recommendations, including the detailed Environmental Management Plan (EMP) that addresses both the Development and Operational Phases of the Project, should be incorporated by reference and in full in the PPP Agreement; and
- SANParks requires the Private Party to appoint an ECO for the Development and Operational Phases.

**Part 2 – Park Management Plan**

The Park Management Plan forms an integral part that should be taken into consideration when operating in a park. It should be noted that the Park Management Plan was completed in 2008 but updates are made on a regular basis.

**Part 3 - The Specific Environmental Requirements and Guidelines for the Project**

**32.1 Introduction**

SANParks, in line with its Strategic Plan for Commercialisation, is granting a concession for a Hotel in the Malelane area of the Kruger National Park. As the custodian of the KNP, however, SANParks will retain broad oversight responsibility for the land on which the facilities will be built. In this context, SANParks has established Guidelines for the Construction, Operational and Maintenance phases of the PPP opportunity.

### 32.2 **Legislative Basis for these Guidelines**

SANParks is bound by a number of statutes with relevance to environmental and conservation management of Parks, including (without limitation) the National Environmental Management: Protected Areas Act, 2003 (Act no. 57 of 2003) (NEMPAA); the National Water Act 36 of 1998; the Water Services Act, 108 of 1997; the National Environmental Management Act, 107 of 1998 (NEMA); the National Environmental Management: Air Quality Act; the Hazardous Substances Act, 15 of 1973; and the National Heritage Resources Act.

Consents in respect of any developments in a Protected Area are governed by the NEMA and the NEMPAA, and regulations promulgated under these and other acts. Any changes to infrastructure or operations require written approval from SANParks and are subject to the prescribed policies and procedures. This includes the Kruger National Park water use policy.

The process of development of a hotel in the Malelane area will be undertaken as per SANParks' internal policies and procedures as well as Consents given by DEAT/DWEA (where relevant) and by SANParks.

Key requirements resulting from these various statutes are discussed below.

DEAT has adopted an IEM Procedure<sup>1</sup> to guide the planning and implementation of development proposals. According to DEAT, the purpose of the IEM procedure is *“to ensure that the possible environmental consequences of development proposals are investigated and understood before decisions are taken, enabling informed decision-making and accountability for decisions taken.”* The IEM procedure applies to a prescribed set of activities, as well as to any development that might affect a *“designated area or feature,”* one of which is *“national, provincial and*

*municipal nature reserves.”*

A key component of the IEM procedure is the preparation of an EIA in respect of the proposed development. The EIA Regulations provide for an obligatory EIA in respect of “resorts, lodges, hotels, or other tourism and hospitality facilities” in a Protected Area, to be prepared by an independent consultant.

The EIA for each Project Site must rely on detailed information provided by the Private Party in the Development and Environment Proposal, supplemented by specialists' reports and input from interested and affected parties (IAPs) during the EIA process.<sup>2</sup> The Development and Environment Proposal must be sufficiently detailed regarding key aspects of the development to enable evaluation at the time the Bids are reviewed. Development and Environment Proposals lacking sufficient detail may be disqualified.

The EIAs for all Project Site developments will be reviewed by DEAT/DWEA, the “competent authority” as defined in the EIA Regulations. SANParks also has a role in the review of the EIA, both as an IAP and as the regulatory authority with jurisdiction over the KNP. All EIA findings and recommendations, including the detailed EMP that addresses both the Development and Operational Phases of the development, will be incorporated by reference and in full in the PPP Agreement.

Apart from the EIA, SANParks may request the Private Party to compile an OMP to ensure alignment of the Operation, Management and Maintenance of the Project with the Park Management Plan, corporate policies and all procedures and standards. SANParks may furthermore request that a risk analysis be conducted which will precede the OMP and inform its contents.

### 32.3 Guidelines Based on SANParks Internal Requirements

The EIA Regulations cover many of the issues that will arise during the assessment of Project Site developments within National Parks. In addition, SANParks undertook a review of its internal policies that may impact on Project Site

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•<sup>1</sup> See Department of Environment Affairs, 1992. *The Integrated Environmental Management Procedure* (Guideline document 1) and the *Integrated Environmental Management Guideline Series* (Guideline documents 2-6).

•<sup>2</sup> The *National Environmental Management Act* (No. 107 of 1998) reiterates the need to consider input from IAPs: “The participation of all interested and affected parties in environmental governance must be *promoted* (chapter 1(4)(f), emphasis added); and “Decisions must take into account the interests, needs and values or all interested and affected parties...” (chapter 1(4)(g)).

developments.

As a result, some of the Guidelines contained herein flow from internal SANParks management documents, such as the Kruger National Park Management Plan. In some instances, however, these documents were neither sufficiently comprehensive nor sufficiently detailed as to the allowable parameters for development by commercial operators. Where this occurred, SANParks undertook an internal effort to develop the necessary Guidelines.

A series of workshops were held with SANParks conservation staff, and specifically from KNP, who assisted in establishing standards to be applied to commercial tourism developments within the Parks. Draft standards were reviewed by a wide range of professionals within SANParks, including the Manager, Environmental Management, and Park rangers and staff from Scientific Services, Conservation Services, Park Planning and Technical Services. The Guidelines contained herein are the result of these efforts.

The Environmental Guidelines set out and referred to in this document must be regarded as a first step in SANParks' efforts to compile a comprehensive Environmental Management System (EMS) for the entire Parks. Once in place, the EMS will likely be modified and refined over time, as and when needed to take into account new information, standards and conditions. Private Parties must therefore be aware that the terms and conditions set forth in these Guidelines are subject to amendment. Private Parties will be expected to comply at all times with the provisions of the Environmental Guidelines as they may change from time to time.

The remainder of this document presents the specific standards or parameters that the Private Party will be expected to apply to activities in its Project Site.

### 32.3.1 **Precautionary Principle**

Ecological and natural resource processes are not always clearly understood, nor are the interactions among such processes. SANParks recognises that issues may arise suddenly, or circumstances change, due to limitations in current knowledge. SANParks has endeavoured to identify these limitations wherever possible, and to design the concession process in a way that minimises the environmental risk to the national assets under its control.

However, situations may arise where changes which have not been anticipated may cause SANParks to require adaptations to the management of the area.

### 32.3.2 **Preparation of an Environmental Management Plan**

The EIA Regulations require that the EIA report for each Project Site includes a detailed EMP. The EMP typically becomes part of the Record of Decision (ROD) prepared by the relevant competent authority that reviews the EIA report (in this instance, DEAT/DWEA). The ROD is a legally binding agreement between the project developer and the environmental authority, and becomes the basis for monitoring compliance with the recommendations of the EIA both during the Construction and Operational Phases. The EMP will form the basis of the environmental performance conditions in the PPP Agreement between the Private Party and SANParks. The EMP must address both the Development and Operational Phases.

### 32.3.3 **Appointment of an Environmental Control Officer**

Sponsors of many large scale developments undertaken in the Republic of South Africa in recent years have appointed an Environmental Control Officer (ECO) to ensure that mitigation measures and other requirements set forth in the EMP are adhered to. SANParks endorses this measure and requires all Private Parties to appoint an ECO during both the Development and Operational Phases. The cost of the ECO shall be borne by the Private Party. The individual appointed must be an independent consultant, as defined by the EIA Regulations and be acceptable to SANParks. During the Construction Phase the ECO shall submit monthly reports, and during the Operational Phase the ECO shall submit twice-yearly reports. In both cases, reports must be submitted to both SANParks and the Private Party.

### 32.3.4 **Code of Conduct**

The KNP Code of Conduct provides comprehensive rules and regulations applicable to KNP and the Private Parties alike. The Code of Conduct is considered to be internal rules and regulations in terms of NEMPAA and is legally binding. All staff and personnel associated with the Private Party are obliged to comply to the requirements of the KNP Code of Conduct at all times.

## 32.4 **Environmental Guidelines and Specifications**

Environmental impacts will occur during both the Development and Operational Phases of the development. These impacts and the Guidelines that apply to each are described below.

### 32.4.1 **Cultural and Natural Resources**

SANParks is not presently aware of any cultural or archaeological sites within the Project Site that will preclude development. A more detailed survey will be required during the EIA process, however, and must include a specialist report on the cultural and archaeological resources that occur in the Project Site. Prior to commencement of the Construction Phase, the Private Party shall be responsible for arranging a pre-construction 'walk through' of the Project Site by a qualified archaeologist to identify undocumented cultural or archaeological resources.

The Private Party's construction supervisors and crews must be trained to recognise cultural resources, in the event of 'chance finds' during construction. If the Private Party discovers undocumented cultural sites or artefacts of any type at any time during the Development Phase and Project Term, these must not be disturbed, damaged or removed. All such finds shall be brought to the immediate attention of the Section Ranger or other relevant SANParks staff member and this could lead to the construction temporarily being stopped.

### 32.4.2 **Natural Environment Manipulation**

PPP Project Site developments and activities must adhere to all relevant SANParks rules regarding natural environment modification and habitat manipulation. In the context of commercial tourism developments, several requirements must be emphasised. No bush clearing is allowed, either to enhance game viewing, obtain firewood, or for any other purpose. Limited bush clearing will be allowed within the Project Site for the purposes of clearing and levelling prior to the Construction Phase, subject to any restrictions identified by the EIA and included in the EMP. Introduction of alien vegetation is not permitted under any circumstances.

During the Project Term gardening must *mutatis mutandis* be according to the

KNP Code of Conduct, as follows:

**“Large rest camps, gates and border posts:** Landscaping and cultivation are allowed, but only within the following limits:

- I. Trees: All trees are to be restricted to those known to be indigenous within the landscape in which the camp is situated, i.e. indigenous tree species that occur within a 20 km range from the camp.
- II. Shrubs: Any shrub occurring naturally in the KNP.
- III. Flowers: Flowerbeds must be restricted to the absolute minimum and only flowers indigenous to the Lowveld and the Mpumalanga and Limpopo escarpment ecosystems, as well as adjoining river catchments are allowed. The planting of indigenous aloes is encouraged.
- IV. Lawns: Lawns should be restricted to Couch Grass or “Kweek” (*Cynodon dactylon* – preferred lawn grass due to its resistance to droughts) and Coastal Buffalo Grass (*Stenotaphrum secundatum*) in sunny areas and L. M. Grass (*Dactyloctenium australe*) in shady areas. Kikuyu Grass is an alien and not allowed.”

Baiting of wildlife is not permitted.

A survey of the natural resources occurring in the Project Site must be undertaken by appropriate specialists during the EIA. The purpose of such a survey is to ensure that no rare, threatened or endangered species or habitats will be affected by construction-related disturbances to the natural environment.

#### 32.4.3 **Carrying Capacity**

The Private Party must adhere to the bed limit that SANParks has established for the particular Project Site. SANParks has determined provisionally that the Project Site can accommodate a maximum of 240 people, including both guests and resident staff. The opportunity exists, therefore, for a larger tourism facility, as most staff could easily be accommodated off site, outside the KNP boundary, and transported to the Project Site on a daily basis.

The final number will, however, be determined by the findings of the EIA, subject to provisions and conditions in Annexure IV – Environmental

Guidelines for Private Parties for the Construction and Operation of PPP Facilities within the Kruger National Park.

It must be noted that the bed limit **includes** all staff beds used and relates to the ***maximum number of persons on the Project Site at any point in time.*** The Development and Environment Proposal must include (i) the number of guest and staff beds the Private Party intends to have within the Project Site, and (ii) the number of staff the Private Party intends to house elsewhere.

SANParks acknowledges that tourism operations of the type to be operated in these PPPs generally have approximately 25% of their resident staff on leave at any given time. SANParks will take this 25% leave factor into account in determining the actual number of beds at each PPP. In other words, *if a site has a carrying capacity of 100, of which 70 beds are allocated to guests and 30 to staff, then a design that proposes 40 staff beds (to accommodate the 25% leave factor) will be acceptable.* SANParks will expect that the limit of 100 persons is respected, however, and failure to respect it will constitute a breach of the contract. *This factor applies to all PPPs.*

#### 32.4.4 **Visual Impacts**

Any development within the Parks must take due cognisance of the visual impacts it may have on surrounding areas and other Park users. The Private Party will be provided with a selected site, however, the site will be subject to the findings of the EIA process.

SANParks has based its guidelines for visual impacts on interpretations of existing management documents, specifically on the KNP Management Plan section on *Recreational Opportunity Zoning (ROZ)*. ROZ zoned all of KNP into categories of 'Recreational Opportunities' representing different degrees of 'wilderness qualities' ranging from 'wilderness areas' to 'high density development areas.'

In terms of zoning, the Private Party should take cognisance of the following:

*"High Intensity Leisure zones"* are defined as follows: *"Large camps with fully equipped self contained units. Interpretative centres, restaurant, shops ..."*. Wilderness is defined as an area *"...in which small groups can hike on foot and overnight anywhere in self-carried tents with a 'no trace left' camping ethic"*.

These definitions suggest that no developments should be visible from wilderness areas. It is assumed that '*visible*' means visible to the naked eye as well as glares of lights at night. The structures must also not be visible from existing public Park roads.

Irrespective of the zonation designation of the area, SANParks believes that visual impacts must be reduced further by utilising aesthetically pleasing structures that blend into the environment. For example, structures that break the skyline will be more visible than those that lie below the treeline. Careful design both reduces visibility over large distances and affords the Private Party an attractive product that satisfies guests' desire to enjoy a 'wild' experience. Developments that are well hidden within broken topography, hills, or mountains result in less visual impact than those situated on hilltops or plains. The EIA must specifically address the visual impacts of all structures, lights, signage and other significant aspects of the development, and the Private Party must implement the mitigation measures set forth in the EIA in regard to visual impacts. The Development and Environment Proposal must contain sufficient detail regarding the design, location, and orientation of all structures to enable evaluation during the Bid evaluation process.

The building style -- structure, materials and design -- must be in harmony with the environment including relief, local culture and physiognomy. The height of buildings is important. SANParks will consider double story structures, but the maximum height will be limited to a maximum height of 11m (double volume 3m + 3m + 5m roof (45° on 10m width) or single volume 3m + 8m roof (45° on 16m width) from the final floor-level. This height restriction should not supersede the importance of the visual impacts as captured in the design principles and as determined by the site attributes.

There are many 'unnatural' features visible from within many Project Sites, and the Private Party must consider these features in siting the development, so as to reduce their visual impact on guests.

#### 32.4.4.1 **Building Materials**

The use of building materials sourced from within the KNP will as a general rule not be permitted. In exceptional circumstances, it may be appropriate to use certain local materials such as thatch. In such instances, the use of such materials must be subject to the findings of the

EIA, and the Private Party must obtain written approval from SANParks.

32.4.4.2 **Lighting**

Developments that blend into the landscape during daylight hours may nonetheless be visible over long distances at night as a result of artificial lighting. The Private Party shall therefore take the impacts of lighting into consideration in siting and designing the development. Such impacts can be minimised, for example, by utilising reflected light off low reflective surfaces. Lights illuminating pathways and other areas must be low to the ground and directed downwards. The design must consider the need to obscure fires and other light sources away from areas of the Park where they may be visible.

32.4.4.3 **Lightning Arrestors and Radio Masts**

Such structures likely will be required at most developments to comply with insurance provisions and ensure adequate communications. If the Private Party envisages a need for such structures, same shall be included in the Development and Environment Proposal. The visual impacts of any and all such structures must be assessed fully in the EIA.

SANParks is well aware that standards and "best practices" with regard to telecommunications technology are currently changing at a rapid pace. SANParks is currently in the process of determining which sorts of communications are most appropriate within a National Park. The Private Party acknowledges, therefore, that SANParks' determination as to what is acceptable may change over time, and that it will be expected to comply at all times with recommended "best practices."

32.4.5 **Bulk Infrastructure**

32.4.5.1 **Electricity**

Provision of electricity from the national grid to a Project Site can have a significant environmental impact. The Private Party shall ensure, therefore, that if electricity is brought into the Project Site, the environmental impacts of doing so are considered fully.

For this development only underground cables from the national grid will

be considered. These must be brought to the Development Site along the route with the lowest cumulative impacts, as determined by the EIA, but preferably along the access road.

SANParks envisages that, for some Project Sites, alternative energy sources will be the only viable alternative option, especially in the light of frequent power cuts. Solar power or generators generally will be the most practical of these. Some Project Sites already have solar power that may prove adequate for the proposed development. If new solar panels are installed, their visual impacts must be considered, along with the disposal of batteries and their by-products, in the context of the EIA. The size of the development must take into account the limitations of these alternative sources, with the likely result that smaller developments will be most appropriate for certain Project Sites. Generators will be permitted, although the potential environmental impacts (noise, potential contamination from oil and fuel spills) must be considered in the EIA and effective mitigation measures implemented to address these impacts.

#### 32.4.5.2

#### **Water**

Reliable water of good quality and sufficient quantity is essential for any tourism development. Identification of an adequate source of water must be a key factor in determining where a development should be sited. Water is a limiting factor throughout the Republic of South Africa, and the Project Site's 'carrying capacity' in respect to available water resources must be a major issue for consideration in the EIA.

Given constraints on water supplies in many areas where National Parks are located, and especially along the Crocodile River, SANParks will insist on systems that enable reuse of treated water. Indeed, no matter how abundant the water supply, SANParks encourages Private Parties to implement water conservation measures in the design of their developments. This will include recycling of grey water for flushing of toilets and water for garden irrigation and other water-intensive amenities. As a general rule, total water extraction from any and all sources within the Park must be limited as per the KNP water policy for concessionaires. The number contained in this policy must be viewed as a *maximum*, and Bidders are encouraged to take steps to keep actual water use below this

amount. Gardens, lawns and water features must be designed to meet this limit.

The proposed source(s) of water for both the Construction and Development Phases must be presented in the Development and Environment Proposal. It is envisaged that this will be from the Crocodile River. One artificial water feature to attract game may be supplied from an additional quota, subject to the capacity of the water source(s) as determined by the EIA. Under the provisions of the National Water Act, No. 36 of 1998, South African law requires that a permit be obtained from the Department of Water Affairs and Forestry (DWAf) for use of water from both surface and underground sources. The DWAf permit requirement applies to both new Project Sites and existing developments, and to sources within and outside of the Park. SANParks will monitor all water extraction points. The Private Party must therefore ensure that appropriate meters are installed at all extraction points and that these are functional at all times. If the extraction limit proves insufficient, the Private Party must reduce water use. High use activities such as laundry must be outsourced from the inception of the project. In extreme cases the number of tourists accommodated at a particular Project Site may have to be reduced, either permanently or temporarily during severe dry periods. In cases where certain activities of the Private Party are being undertaken away from the Project Site (e.g., laundry) but on other SANParks property, the overall quota will apply *collectively* to all water sources used by the Private Party.

If water is supplied to the Project Site from a distant source, the EIA must consider the impacts of the supply pipeline. It is important to remember that elephants occur in abundance in the KNP and any underground water pipes must be buried to a minimum depth of 1 meter to ensure that they are not unearthed or otherwise damaged.

#### 32.4.5.3

#### **Water Sources for Attracting Wildlife**

SANParks reserves the right to close any water features as necessary to carry out its Park management activities. Every effort will be made not to close water features in the Project Sites over the life of the Development Period and Project Term. The EIA must include an assessment of any

artificial water features. The exact design, size and location of new water features must be determined in consultation with SANParks.

In cases where an artificial water feature is destroyed by natural causes, SANParks will allow the Private Party to develop an alternative source for the remainder of the Development Period and Project Term. The location of this alternative feature must be determined in consultation with SANParks, and the cost of developing it will be for the Private Party's account, as will routine maintenance of all such features.

#### 32.4.6 **Communications Infrastructure**

##### 32.4.6.1 **Telephones**

Given the increasingly widespread availability of microwave and other wireless telephone systems, Private Parties must make use of these types of systems for their telephonic communication needs. The Ruhrtel system used by Telkom is available in most Project Sites. The Private Party must arrange for service with the appropriate telephone company.

##### 32.4.6.2 **Radios**

Most Private Parties will require radios for communicating with their staff in the field, and for maintaining contact with relevant SANParks staff in the event of emergencies. It must be noted that, in addition to normal South African licensing laws, the Private Party will require permission from SANParks to operate any radio frequency within a National Park.

Private Parties may not utilise SANParks radio networks. SANParks will, however, add the Private Party's channel to the relevant Park's radio network, to enable the Private Party to contact both the Section Ranger and Regional Ranger in the event of an emergency. The cost of adding a channel to SANParks' network will be for the Private Party's account. Installation of radio masts is a prescribed activity under the EIA Regulations.

## 32.4.7 **Waste Management**

### 32.4.7.1 **Liquid Wastes**

The Private Party must provide a wastewater management system capable of ensuring that liquid wastes are treated to a level that meets or exceeds South African water quality regulations prior to discharge or reuse. Sufficient detail regarding the proposed sewerage system must be provided at the time the EIA is undertaken to enable the EIA consultant to evaluate the soundness of the proposed approach. SANParks prohibits the use of either French drains or French drains used in conjunction with septic tanks at any Project Site. Given constraints on water supplies in many areas where National Parks are located, SANParks encourages the use of systems that enable reuse of treated water. The Private Party must make provision for monitoring the quality of wastewater discharge, on at least a monthly basis, by a qualified, independent body acceptable to SANParks. Monthly monitoring reports must be made available to SANParks, which will oversee compliance with relevant standards.

Fuels, solvents and other liquid wastes (e.g., used oils from vehicles) may be stored on site in vessels equipped with secondary containment structures to prevent contamination of soil, groundwater and surface waters due to accidental spills or releases. These must be removed from the Project Site and disposed of in accordance with all applicable national, local or SANParks requirements.

The Development and Environment Proposal must include an estimate of the approximate volume of wastewater that the development will produce daily, as well as a description of the method of treatment and recycling that the Private Party intends to install.

The EMP must include a liquid waste management plan for both the Development and Operational Phases, which will be monitored by the ECO.

### 32.4.7.2 **Solid Wastes**

SANParks encourages Private Parties to implement a policy of sorting and recycling solid wastes. Wastes that cannot be recycled must be removed

from both the Project Site and the Park and disposed of appropriately. Landfills are not permitted in any Project Sites. Biodegradable wastes must be disposed of in approved waste sites outside the Park.

The Private Party must include in the Development and Environment Proposal estimates of the volumes of solid waste, for different waste categories, that the development is expected to generate. Solid wastes may need to be stored before being processed or removed from the Project Site. In these instances, the storage facilities must be secured from wildlife and ensure pollution does not arise. SANParks has developed appropriate design standards and specifications for such storage facilities. The EIA must address the siting and design of all storage facilities.

Solid waste management during both the Development and Operational Phases, including site rehabilitation after construction is completed, must be addressed in the EIA and included as items in the EMP.

#### 32.4.8 **Roads and Tracks**

SANParks will allow the construction of one road to the Project Site, both for access to and from the Project Site for guests and supplies. The Private Party must take responsibility for maintaining same to SANParks' satisfaction (as per the SANParks Roads Manual).

##### 32.4.8.1 **Siting and Design of Access Road**

Roads and tracks can have a major impact on ecosystems, particularly in terms of erosion and sedimentation of local watercourses, creating corridors for alien vegetation, disrupting migration routes, road kills, etc. To minimise these impacts, the siting of the new road must take into account the type(s) of soils, presence of water, and other factors related to the degree of impact it will have. The new road must be subjected to a detailed assessment as part of the EIA process. Roads shall be sited on soils conducive to road development (such as those that are not highly erodable or with lower clay contents) and which will enable access throughout the year. Such roads will generally entail the lowest cost both in terms of construction and maintenance, and likely will result in fewer

negative environmental impacts.

#### 32.4.8.2 **Standards for Roads and Tracks**

The type of road built must be consistent with the use for which it is intended, and must comply with relevant Park standards. The Private Party must indicate in its Development and Environment Proposal the type and quantity of traffic that is expected on this road. The design, layout, construction and maintenance of roads will vary among Project Sites (refer SANParks Roads Manual).

The road must be kept to the narrowest width possible to accommodate one vehicle at a time. Wide roads are costly, not in keeping with the type of product being offered, and typically have greater environmental impacts and higher costs. The road must be designed with minimal disturbance to the environment as a priority.

If possible the road must be built with in situ material rather than by importing gravel into the area, because of the potential environmental impacts, possible introduction of alien species, and cost of transporting such materials. In some areas, however, it may be necessary to import gravel for hardening and capping certain sections of the road to ensure year-round access. The location of 'borrow pits' or quarries for this purpose must be done in consultation with Park staff and subject to an EIA, which will also addresses maintenance, management and final reclamation of all roads and tracks. If gravel must be imported from outside the Park, the Private Party must notify SANParks, and SANParks will ensure that the gravel comes from an acceptable source.

The Private Party must indicate in its Development and Environment Proposal that it agrees to abide by the limits set for the new road to be developed. Detailed siting, alignment and 'ground truthing' of the road will be done at the time the EIA is conducted, in conjunction with the relevant Section Ranger and SANParks soil scientist.

#### 32.4.9 **Fire Management**

Natural veld fire management is an important concern at all Parks, and a major policy and operational issue at Parks such as Kruger and Golden Gate. The

KNP uses a patch mosaic fire policy and certain areas are burnt by rangers on an annual basis. SANParks recognises the need to balance the intent of its fire management policies with the understandable desire of the Private Party to protect its investment in the event of a major fire. SANParks agrees that:

- lightning ('natural') fires in the KNP must be allowed to burn;
- consistent with current policy, however, SANParks will endeavour within its capacity to ensure that the area in the vicinity of the Project Site do not burn every year as a result of the approved patch mosaic programme, although it may still burn due to lightning; and
- the Private Party must implement fire prevention and life safety measures on the Project Site that comply fully with South African standards (SABS 0400).

Natural fires may not be controlled, except in the immediate surrounds of the Project Site, and/or to save human life or property. Control of natural fires that occur elsewhere in the vicinity of the Project Site is the responsibility of SANParks. Under no circumstances may a Private Party attempt to control natural fires without SANParks consent and direction. SANParks encourages Private Parties to train their staffs in fire protection and response techniques, and to make staff available to assist SANParks in fire response activities.

The EIA must address issues relating to fire safety and management as they apply to the Project Site. At the time the EIA is undertaken, the Private Party must subject its designs and safety specifications to a 'fire safety audit' carried out by a qualified fire safety expert. Should this expert make any modifications or recommendations, these must be incorporated into the EMP.

#### 32.4.10 **Staff Issues**

##### 32.4.10.1 **Construction Workers**

SANParks will make arrangements for gate access to the Project Site for all permanent and casual workers involved in the Construction Phase. The total number of people to be employed on site during Construction must be provided and addressed in the EIA. The EIA will assess all of the key Construction issues, including access to site, temporary

accommodation, source of water, provisions for solid and liquid waste removal, etc. The Private Party must abide by all of the recommendations presented in the EMP. SANParks will require the Private Party to maintain close communication and co-ordination with Parks staff throughout the Construction Phase.

#### 32.4.10.2 **Staff Accommodation**

The Private Party must accommodate as many staff as practical off-site, as doing so commonly reduces the environmental and social impacts of the development. Only staff that are essential for the operation of the Project after normal KNP gate closing times are to be housed on site. All staff accommodation must comply with national building regulations and standards. SANParks will allow only single accommodation units; no dormitory structures will be permitted. This restriction applies to all Project Sites, including those utilising tented structures. On-site staff accommodation requirements, including design and location of all units and associated facilities, must be included in the Development and Environment Proposal. The Development and Environment Proposal also must indicate the number of people to be accommodated on site, including family members. The health and safety of staff and their families must be ensured at all times, including when commuting between accommodation facilities and place of work.

#### 32.4.10.3 **Collection of Natural Resources by Staff**

No natural resources may be collected and used within any Park without written approval from SANParks. Specifically, the collection of firewood for cooking and other uses is not permitted, during either the Development or Operational Phase. If firewood is brought in from outside the Park, it must be done in accordance with relevant Park policies. Some Parks may only permit the use of firewood from approved alien vegetation clearing operations.

#### 32.4.10.4 **Staff Health and Safety**

The Private Party must implement a staff medical plan that complies with

the Health and Safety Act. The Private Party also must have an emergency medical evacuation policy that covers both guests and staff in the event of a serious injury or acute medical emergency. Relevant staff must be trained in and aware of this policy. All buildings, vehicles, machinery and other structures (including their operation) must comply with relevant South African legislation and standards. The design, construction and layout of facilities must take cognisance of dangerous animals that occur at all the Project Sites.

#### 32.4.11 **Access**

##### 32.4.11.1 **Park Entrance Gates**

All guests, deliveries and other vehicles entering the KNP will have to do so through SANParks designated or otherwise agreed entrance gates. In general, standard opening and closing times will apply. The Private Party may negotiate special provisions with SANParks to accommodate late guest arrivals or to allow staff to leave the Park outside of normal hours. Such provisions must be agreed in writing by the relevant Park Manager. All Project Site guests must pay relevant Conservation levies, although SANParks will allow Private Parties to pay these fees on a monthly basis rather than at the time of entry. Such entry fees are separate from and in addition to the PPP Fee. Private Party staff commuting to and from the Project Site to carry out the terms of their employment do not pay Conservation levies.

Control of gates lies with SANParks. For some Project Sites, access by guests and staff may be required beyond normal gate opening times. SANParks will allow extended access times under the following conditions:

Extended gate opening times to accommodate late arriving or early departing guests, as well as staff commuting to and from work, will be permitted subject to the approval of SANParks.

Any additional costs that SANParks may incur as a result will be for the Private Party's account.

An extended permit to enter or leave outside of normal gate times must be

obtained from the Park Manager. This permit may impose additional limitations to those defined herein, such as speed limits, type of vehicles permitted, and other operational provisions.

The Private Party must ensure that only designated staff are permitted to transfer guests and staff. All designated staff must be identified on the SANParks permit. Such staff must observe all normal speed limits and other traffic regulations. In addition, staff must be made aware of the environmental and conservation issues relating to night driving, especially with regard to other Park users (i.e., on night drives), and animals and birds that may be temporarily blinded by vehicle headlights. Deviating from the designated route will not be permitted.

#### 32.4.11.2 **Access by Private Aircraft**

Air traffic over and into all National Parks is limited by law. No private aircraft may land except at designated landing areas. As a general rule, private airstrips or helipads will not be permitted within the Project Sites.

The Private Party is entitled to use the 1.2 kilometre airstrip that is situated about 10 kilometres north of the current lodge at the Malelane. The airstrip is a private owned airstrip and the Private Party should negotiate the usage and condition of usage of the airstrip directly with the owners of the airstrip, alternatively KMIA could be considered.

#### 32.4.11.3 **Access to Project Sites by SANParks staff**

SANParks staff or their agents will have access to all Project Sites at all times for the purpose of carrying out normal management activities.

#### 32.4.12 **Private Party Vehicles**

##### 32.4.12.1 **Vehicle Standards**

All Private Party vehicles must conform to minimum standards, as detailed below.

- All drivers must be in possession of a license for the category of vehicle they are operating, and of SANParks permits for both the

vehicle and the driver;

- All vehicles must be licensed with the relevant authorities, and operators must ensure they are roadworthy;
- All vehicles must be fully insured against all perils and third party liabilities;
- Prior to commencing operations, the Private Party must provide SANParks and the relevant Section Ranger with a list of all of its vehicles, including the vehicle specifications and registration numbers of each;
- Vehicles may not exceed the size of a typical LWB Toyota Land Cruiser with a 1-ton net capacity. The exception to this restriction is a delivery vehicle travelling on the main designated arterial access road;
- Basic tools for typical repairs and first aid kits must be carried on all vehicles;
- All vehicles must be fitted with a two-way radio that is in communication with the Private Party's base facility at all times;
- A rack for carrying a firearm must be fitted in an appropriate place;
- Seating must be fixed to the vehicle. Loose seats are not permitted;
- Vehicles must have an appearance that suits the character of the experience being offered;
- Guests may not stand up in the vehicle while at a sighting of a dangerous animal;
- Vehicles must be designed and built to ensure visitor safety at all times, especially from wild animals;
- An overhead cover for rain and sun is advised; and
- Protection of guests must be provided on the sides of the vehicle

where appropriate.

SANParks will provide the Private Party with a detailed "Operations Manual" prior to the commencement of the Operational Phase, which will contain all relevant standards and codes of conduct in force at that time. SANParks may update this Operations Manual as needed, and will provide the Private Party with updated copies of the Manual in due course.

32.4.12.2 **Other vehicles**

Only SANParks management vehicles are permitted on game viewing tracks. All Private Party vehicles must remain on the main designated arterial access route(s) or official public roads within the Parks.

32.4.13 **Game drives (Day & Night) and Guided Walks**

The primary guest activities for the Malelane Hotel Development will be accompanied game drives (both during the day and at night) and guided walks.

Such activities will not be operated by the Private Party as with the other KNP Concessions but the Private Party will be required to make use of SANParks' vehicles and guides to provide this service to their guests.

The Private Party shall indemnify SANParks against any liability in the event of an accident or other incident involving a guest to the Project Site.

32.4.14 **Campfires**

No natural resources may be collected and used within any National Parks without written approval from SANParks. In this regard specifically the collection of firewood for campfires, cooking or any other use is not permitted. If firewood is brought in from outside it should comply with policies that may be in place for different Parks. For this development only the use of cleared alien vegetation from approved clearing operations is to be used for fires. Campfires and/or gas cookers will be allowed only in designated areas and at specified times, as authorised by SANParks in writing.

32.4.15 **Monitoring of Compliance with Codes of Conduct**

Private Parties must take reasonable steps to ensure that guests are aware of

all provisions and standards of performance. This shall be done by posting these standards in guest rooms and in other areas where they will be visible to guests. SANParks will provide a letter to guests welcoming them to the Park and advising them of relevant Park Rules and Regulations. Provision must be made for guests to report to the Private Party and SANParks on their experiences while visiting the Park and Project Site. This may be accomplished by providing an evaluation form and requesting all guests to complete this form before they depart. Both SANParks and the Private Party will review comments received in this manner.

**32.4.16 General guest safety**

The Private Party must have an emergency medical evacuation policy that covers both guests and staff in the event of a serious injury or acute medical emergency. Relevant staff must be trained in and aware of this policy.

All buildings, vehicles, machinery and other structures including their operation must comply with the relevant legislation and standards in the Republic of South Africa.

The Project Sites are located in areas where dangerous animals occur and design, construction and layout of the facilities must bear this in mind

**32.4.17 Other activities**

Private Parties wishing to fund and/or undertake research projects within the Project Site must first obtain approval for the project and all of its details from Park management and the SANParks Scientific Services Department. Any commercial wildlife filming that takes place in the Project Site is governed by SANParks' filming policy, and must be undertaken after discussions with and approval of SANParks. SANParks will consider the use of Web cams within Project Sites within the framework of SANParks' agreement with Africam or any other similar or substitute service provider.

SANParks will permit Private Parties to undertake any necessary security precautions in the Project Site and its immediate surroundings. Security outside the Project Site, e.g., against poachers, is the responsibility of Park personnel. Private Parties will be expected to report any poaching activity or other incursions into the Project Site to the appropriate Section Ranger.

#### 32.4.18 **Monitoring**

All of the issues discussed and described in this document will require monitoring. SANParks reserves the right to monitor all these issues according to the standards set out in these Guidelines, the findings of the EIA, and/or in a manner agreed between the parties as the process develops.

SANParks reserves the right to undertake all conservation management activities -- including monitoring, culling, capture, and research -- in all of the Project Sites. Where such activities have been adversely impacted by a Private Party's activities, any additional costs to SANParks resulting from these impacts shall be borne by the Private Party. Should the adverse impacts be of a level unacceptable to SANParks, the Private Party will be considered in material breach of the contract and SANParks will have the right to terminate the contract with immediate effect.

If certain Project Site standards are difficult to determine, SANParks will, in conjunction with the Private Party, facilitate the establishment of a Private Parties' forum. This forum will establish a process whereby standards of performance, within thresholds of acceptable change can be discussed and agreed to (issues might include, for example, gate opening and closing times; modifications to SANParks game drive vehicle standards; routine infrastructure issues associated with waste disposal, etc.). The Private Party must comply with any standards thereby established.

The purpose of the environmental monitoring and auditing procedure is to assess compliance of the construction and operational phase of the Concession with the various procedures and requirements developed during the EIA process. Such includes, but is not limited to, the provisions of the Record of Decision (ROD) and the Environmental Management Plan (EMP). The EMP is monitored for compliance and audited for effectiveness.

The monitoring process includes a Monthly Operational Checklist and a Bi-annual Environmental Monitoring and Audit Report as amended by SANParks from time to time.

The monitoring and auditing process is guided by, and frequently refers to, a number of reports, policy documents, etc. as appropriate. These include:

- 32.4.18.1 Specifications for the Construction of Roads in the KNP and Concession Areas (June 2001) ('Roads Spec. Manual');
- 32.4.18.2 Concession Final Scoping Report;
- 32.4.18.3 Concession Final Environmental Impact Report;
- 32.4.18.4 Concession Environmental Management Plan;
- 32.4.18.5 Record of Decision;
- 32.4.18.6 Concessions Operations Manual (Including all KNP Policies, Regulations and Codes of Conduct) (May 2002);
- 32.4.18.7 Various 'activity specific' EMP's, including
  - EMP - River sand and gravel abstraction;
  - EMP - Borehole drilling;
  - EMP - Vehicle Servicing; and
  - EMP's - Road construction (various).
- 32.4.18.8 Concession procedures and codes of conduct.

**33. ANNEXURE V - PERFORMANCE AND BID BONDS**

**33.1 Annexure V Part A: Form of Performance Bond**

To be provided to South African National Parks having its principal place of business at [ ] (hereinafter called “**SANParks**”)

Whereas:

- (a) SANParks has awarded a PPP Agreement for the design, construction, fitting, installation, equipping, commissioning, financing, Operation, Management and Maintenance of the Malelane Hotel Development in the Kruger National Park under a PPP Agreement (hereinafter called the “**PPP Agreement**”) to [ ] (hereinafter called the “**Private Party**”); and
- (b) The Private Party is obliged by the terms of the PPP Agreement to provide this Bond to SANParks to secure the performance of its obligations under the PPP Agreement.

We, the undersigned

\_\_\_\_\_ and \_\_\_\_\_  
(Name) (Name)

acting herein as

\_\_\_\_\_ and \_\_\_\_\_  
(Position) (Position)

of \_\_\_\_\_  
(hereinafter called the “**Bank**”)

being duly authorised to sign and incur obligations in the name of the Bank under and in terms of a Resolution of the Board of Directors of the Bank, a certified copy of which is annexed hereto, hereby irrevocably and unconditionally guarantee and undertake on behalf of the Bank that:

- 1. The Bank shall pay amounts not exceeding R250 000-00 (two hundred and fifty thousand rand) in aggregate (the “**Maximum Amount**”) without delay, on receipt by the Bank of the first written demand of SANParks that

the amount is due and payable and without proof of any breach or other default. The Bank shall pay such amount(s) to **SANParks** upon receipt of a certificate in the form attached signed by an authorised representative of SANParks certifying that SANParks is entitled to draw on this Bond pursuant to the provisions of the PPP Agreement (the “**Certificate**”). SANParks may make partial and/or multiple demands under this Bond provided that the aggregate of amounts paid under this Bond shall not exceed the Maximum Amount.

2. The demand for payment together with this Bond (or a certified copy hereof) and the Certificate shall constitute prima facie proof of the Bank's indebtedness hereunder for the purposes of any proceedings including but not limited to provisional sentence proceedings instituted against the Bank in any court of law having jurisdiction.
3. Neither the failure of SANParks nor of the Private Party respectively to enforce strict or substantial compliance by the Private Party or any contractor or sub-contractor with their respective obligations nor any act, conduct, or omission by SANParks or Private Party prejudicial to the interests of the Bank including, without limitation, the granting of time or any other indulgence to the Private Party, any contractor or sub-contractor or any other person or by amendment to or variation or waiver of terms of the PPP Agreement, any sub-contract or any ancillary or related document (the “Underlying Documents”) will discharge the Bank from liability under this Bond. For the avoidance of doubt, the Bank's liability under this Bond will not be discharged notwithstanding the winding up, dissolution or judicial management of the Private Party, any contractor or sub-contractor or any other Person and the Bond shall be honoured regardless of the invalidity, illegality or unenforceability of the Underlying Documents.
4. This Bond shall:
  - 4.1 remain in full force and effect from the date hereof, and shall expire on the earlier of:
    - 4.1.1 the issuance of a replacement Bond in accordance with the terms of the PPP Agreement;

- 4.1.2 90 (ninety) Business Days after the expiry or earlier termination of the PPP Agreement; or
- 4.1.3 the date when the Bank has paid to SANParks an amount which is equal to (or amounts which in aggregate total) the Maximum Amount;
- 4.2 exist independently of the PPP Agreement or any amendment, variation or novation thereof;
- 4.3 not be ceded, assigned or otherwise transferred by SANParks, or otherwise dealt with in any manner whatsoever (save for the purposes and in the manner referred to above) which has or may have the effect of transferring or encumbering or alienating SANParks' rights hereunder;
- 4.4 be returned to the Bank on its expiry, cancellation, withdrawal or this Bond being fully drawn; and
- 4.5 be governed by the laws of the Republic of South Africa.
- 5. The Bank shall deposit any payment made under this Bond into an account designated by SANParks.
- 6. The Bank shall make any payment demanded under this Bond free, clear of and without any deduction, withholding, counterclaim or set-off of any kind. If the Bank is required by law to make payments subject to the deduction or withholding of tax, it will make such further payments as are necessary to ensure that the amounts paid to SANParks equal the amounts that would have been paid to SANParks had no such deduction or withholding been made or been required to be made.
- 7. The obligations of the Bank under this Bond shall not in any way be affected by the invalidity, illegality or unenforceability for any reason of the obligations of the Private Party.
- 8. The Bank shall have no right of recourse or claim of whatever nature against SANParks arising out of its obligation to pay or arising out of actual payment under this Bond to SANParks.
- 9. Addresses and Notices:

- 9.1 The parties hereto choose *domicilium citandi et executandi* for all purposes of and in connection with this PPP Agreement as follows:

SANParks:

Groenkloof National Park  
643 Leyds Street  
Muckleneuk  
Pretoria

Telephone: (012) 426-5027

Facsimile: (012) 343-3849

The Bank:

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Telefax:

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- 9.2 Any party hereto shall be entitled to change its *domicilium* from time to time, provided that any new *domicilium* selected by it shall be a physical address in the Republic of South Africa, and any such change shall only be effective upon receipt of notice in writing by the other party of such change.
- 9.3 All notices, demands, communications or payments intended for any party shall be made or given at such party's *domicilium* for the time being.
- 9.4 Any notice required or permitted to be given under this Bond shall be valid and effective only if in writing.
- 9.5 A notice sent by one party to another party shall be deemed to be received
- 9.5.1 on the same day, if delivered by hand;
- 9.5.2 on the same day of transmission, if sent by telefax with a receipt confirming completion of transmission.

9.6 Notwithstanding anything to the contrary herein contained a written notice or communication actually received by a party shall be an adequate written notice or communication to it notwithstanding that it was not sent to or delivered at its chosen *domicilium citandi et executandi*.

SIGNED ON \_\_\_\_\_ 2009

AT \_\_\_\_\_

(Place)

SIGNATURE \_\_\_\_\_ SIGNATURE \_\_\_\_\_

[NAME] [NAME]

[TITLE] [TITLE]

WITNESS 1 \_\_\_\_\_ WITNESS 2 \_\_\_\_\_

33.2 **Annexure V Part B: Form of Certificate**

To:[Name and address of Bank]

Attention:

From:South African National Parks

Address:

Dated:

Dear Sirs

**Performance Bond Dated [insert date] (the "Bond")**

We refer to the above Bond issued by you. Terms defined in the Bond shall have the same meaning when used in this Certificate.

SANParks is entitled to call on this Bond under the PPP Agreement and we demand payment of the sum of R[.....] under the Bond. Payment is to be made in accordance with the provisions of the Bond.

Payment must be made without delay to [**SANParks** bank account details].

Yours faithfully,

.....

for and on behalf of

**South African National Parks**

33.3 **Annexure V Part C: Characteristics of the Bid and Development Bond**

To: South African National Parks (SANParks)

[Name of bidder] (“the Bidder”) is to submit to you a bid to enter into a PPP Agreement with you for the purpose of the development and operation of the Malelane Hotel Development in the Kruger National Park.

And you require the bidder to include in the bid a bid bond for R250 000-00 (Two Hundred and Fifty Thousand Rand);

And we have agreed to give you such a bid bond;

We hereby irrevocably and unconditionally undertake to pay you, upon your first written demand and without objection or argument, the sum of R250 000-00 (Two hundred and Fifty Thousand Rand), upon any or all of the following occurrences:

- Any material misrepresentation made by the bidder in its bid submission or any other information and documentation submitted by it under the request for qualifications or the request for proposals;
- The withdrawal or modification of its bid during the period of bid validity;
- Failure to assume operations as determined in the PPP Agreement;
- Failure by the preferred bidder to furnish the required performance bond under the PPP Agreement in accordance with the provisions of the PPP Agreement;
- Failure to sign the sign the PPP Agreement or withdrawing from the PPP Agreement before signature thereof by SANParks.

This bond shall be valid in respect of the 18 (eighteen) months’ period after the Signature Date. This bid bond shall be governed by the laws of the Republic of South Africa.

SIGNATURE AND SEAL

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Name of Bank\_\_\_\_\_

Address\_\_\_\_\_ Date\_\_\_\_\_

**33.4 Annexure V Part D: Private Party's Performance and Bid Bonds**

The Private Party's Performance and Bid Bonds are to be appended as Part D of Annexure V.

**33.4.1 Private Party Performance Bond**

33.4.2 **Private Party Bid Bond**

**34. ANNEXURE VI - SHAREHOLDING, COMPANY STRUCTURE AND REQUIRED QUALIFICATIONS TO OPERATE PROJECT SITE**

**34.1 Annexure VI Part A: Required Qualifications to Operate Site**

In order to participate in the bidding process, bidders are required to meet the following qualification criteria:

**34.1.1 Financial capacity**

34.1.1.1 Given the fact that the project is of a high value and may entail risk to both the preferred bidder and SANParks, it is important that interested parties demonstrate financial strength. In this regard the minimum asset value of the interested parties for the Malelane Hotel Development must be R50 (fifty) million.

34.1.1.2 As the preferred bidder must be a SPV, it must demonstrate financial strength with reference to the asset value of its shareholders in proportion to their shareholding. The interested party must also demonstrate, to SANParks' satisfaction, that its shareholders are solvent. Audited financial statements, along with a letter confirming that the asset value exceeds the stipulated amount and that the shareholders are solvent, must be provided to illustrate any assertion made by an interested party in this regard.

**34.1.2 Tourism experience**

34.1.2.1 The project is likely to require interested parties with substantial experience and expertise in the tourism market. Interested parties are therefore required to provide examples of similar projects conducted by the interested parties. The interested party must be able to meet this tourism track record requirement in the following ways:

34.1.2.1.1 The interested bidder must have proven hotel management experience in Africa of no less than 10 to 15 years;

34.1.2.1.2 The bidding company must presently be operating a minimum number of 1500 rooms; and

34.1.2.1.3 It must have a well recognized brand in the hotel industry.

**34.2 Annexure VI Part B: Private Party Judicial Status, Shareholding Structure and Qualifications to Operate Project**

The following documents of the Private Party are appended as Part B of Annexure VI:

- 34.2.1 Copies of the share certificates in respect of all issued shares;
- 34.2.2 The Shareholders agreement/ Joint Venture Agreement/Partnership Agreement/Trust Deed;
- 34.2.3 The Equity Subscription Agreements;
- 34.2.4 The Certificate of Incorporation, Certificate to Commence Business, Memorandum of Association and Articles of Association, Partnership Agreement, Trust Deed or other founding statutes;
- 34.2.5 The Private Party's Financial Documents submitted as part of its Bid Submission; and
- 34.2.6 The Private Party's Tourism Track Record submitted as part of its Bid Submission.
- 34.2.7 Over and above the foregoing, the following must be appended:
  - 34.2.7.1 The name, address, telephones and fax numbers of Bidder, and the trading name of the Bidder if different from the registered name;
  - 34.2.7.2 Directors/Partners/Trustees and their responsibilities.
  - 34.2.7.3 Place of registration.
  - 34.2.7.4 Direct shareholder(s) joint venture, partner or beneficiary and percentage shareholding or other beneficial interest or participation held by each; if there is more than one class or share or funding the percentages held by each.
  - 34.2.7.5 A letter confirming that the Bidder and each of its members has irrevocably waived any right it may have to seek and obtain a writ of injunction or prohibition or restraining order against SANParks to prevent or restrain the Tender or any proceedings related to it. Such waiver shall

be without prejudice to the right of a disqualified or losing Bidder to question the lawfulness of their disqualification or the rejection of its Bid by appropriate administrative or judicial processes not involving the issuance of a writ or injunction or prohibition or restraining order.

**35. ANNEXURE VII – COMPLIANCE EVENTS**

The following Compliance Events will apply to the Project:

- 35.1 The Approval of an Environmental Impact Assessment and the granting of the ROD in respect of the Project, by the Relevant Authority.
- 35.2 Provision by the Private Party of a Performance Bond in the amount and form indicated in Clause 3.12.
- 35.3 Approval of the Design Plan by SANParks.

**36. ANNEXURE VIII – DEVELOPMENT AND ENVIRONMENTAL PROPOSAL AND EIA FINDINGS AND RECOMMENDATIONS**

The Private Party's Development and Environmental Proposal, which is part of its Bid Submission, as well as the EIA findings and recommendations, including the ROD, the EIA Report and the EMP, will be appended as Annexure VIII.

**36.1 Development and Environmental Proposal**

36.2 **EIA Findings and Recommendations and the ROD**

**36.3 EIA Report (excluding the EMP)**

36.4 **EMP**

## 37. ANNEXURE IX - PPP FEES

### 37.1 Minimum PPP Fee

37.1.1 The Minimum PPP Fee is determined relative to 1 July 2009, and shall be adjusted to take cognisance of inflation, in accordance with the provisions of this PPP Agreement. The minimum PPP Fee for each Project Year is as follows:

- Project Year 1 : R600 000-00;
- Project Year 2 : R800 000-00;
- Project Year 3 : R1 000 000-00;
- Project Year 4 : R1 300 000-00;
- Project Years 5 – 20: R1 500 000-00.

37.1.2 The Minimum PPP Fee shall escalate on an annual basis throughout the Project Term in accordance with changes in the Consumer Price Index, by the method defined in Clause 8 of this PPP Agreement.

### 37.2 Variable PPP Fee = X% of GROSS REVENUE

Gross Revenue is:

37.2.1 any and all income or revenue received by or accruing to the Private Party, its Subcontractors or its cessionaries and successors-in-title from all activities carried on at or by virtue of the Project, in any manner, directly or indirectly, as is or would normally be included in gross revenue in terms of GAAP and including the deemed value of accommodation made available to Shareholders and third parties or sold forward as well as the deemed value of any payments or benefits received by the Private Party that take a form other than a monetary form. Without derogating from its generality, the term “gross revenue” shall mean revenue before the deduction of:

37.2.1.1 bad debts (or provisions therefore);

37.2.1.2 commissions or similar consideration paid or payable;

- 37.2.1.3 cash, credit-card or similar discounts or commissions;
- 37.2.1.4 costs and expenses other than trade discounts granted in circumstances that are not arm's-length or to a Related Party;
- 37.2.2 and gross revenue shall include;
  - 37.2.2.1 commissions received or receivable;
  - 37.2.2.2 rentals and other fees received or receivable;
- 37.2.3 but shall exclude;
  - 37.2.3.1 sales tax, value-added tax and any other similar impost levied on gross revenue (or any of its components) that is normally included in or added onto the tariffs or prices charged to guests or customers and which is not normally included in gross revenue in terms of generally-accepted accounting practice;
  - 37.2.3.2 interest received or receivable;
  - 37.2.3.3 the proceeds of, profit or surpluses on the disposal of non-current assets;
  - 37.2.3.4 transfers from reserves; and
  - 37.2.3.5 bad debts recovered.

**37.3 Private Party's PPP Offer**

The Private Party's Bid Submission PPP Offer is appended as Clause 37.3.

## 38. ANNEXURE X – BEE OBLIGATIONS

### 38.1 Definitions

In this Section any term, defined in the Broad-based Black Economic Empowerment Act, No. 53 of 2003 ("**BEE Act**"), or in terms of any Codes of Good Practice issued in terms of Section 9 of the BEE Act, when used in the scorecard below shall have the same meaning as there defined, save where such meaning may be in conflict with the provisions of the Tourism BEE Charter and Scorecard, in which case the provisions of the Tourism BEE Charter and Scorecard will prevail.

The following terms, as used herein, shall have the following meanings:

- 38.1.1 "**Black Empowered SMME**" means a small, medium or micro enterprise (with a turnover of up to R10 million per annum) which has between 25 percent and 50 per cent direct ownership and management by Black People;
- 38.1.2 "**Black Owned SMME**" means a small, medium or micro enterprise (with a turnover of up to R10 million per annum) which has more than 50 per cent direct ownership and management by black people;
- 38.1.3 "**Black People**" is as defined in the BEE Act, save that it is limited to South African citizens. In other words, Black People are Africans, Coloureds and Indians who are South African citizens. For avoidance of doubt, this term does not include juristic persons or any form of enterprise other than a sole proprietor.
- 38.1.4 "**Black Person**" means any such citizen;
- 38.1.5 "**Black Women**" means female Black People;
- 38.1.6 "**Board Representation**" refers to membership by Black People of the duly constituted board of directors (or equivalent structure) of an enterprise and is calculated upon the basis of the percentage that black directors hold to the total number of directors of that enterprise;
- 38.1.7 "**Community Trust**" means the a trust registered in terms of the Trust Property Control Act;

- 38.1.8       **"Direct Ownership"** means ownership of an equity interest in an enterprise where such equity interest comprises:
- 38.1.8.1       the right to participate in the voting rights in that enterprise;
  - 38.1.8.2       the right to receive unencumbered economic interest (such as dividends) flowing to the shareholders of that enterprise; and
  - 38.1.8.3       Broad-based BEE schemes, employee share option schemes (ESOPs) and other employee share schemes, where the beneficiaries have the unconditional right to receive economic benefits and the capacity to elect and remove trustees, are specifically recognised as direct ownership. The flow-through principle will be applied to determine the level of black ownership represented by the employee share option scheme;
  - 38.1.8.4       Direct ownership is measured as being the lower of the level of black participation in voting rights and black participation in the unencumbered economic interest of an enterprise, measured using the flow-through principle;
- 38.1.9       **"Discretionary Procurement"** includes all amounts expended by an enterprise subject to measurement. Discretionary procurement excludes:
- 38.1.9.1       employment related expenditure;
  - 38.1.9.2       procurement from public utilities and natural monopolies; and
  - 38.1.9.3       facilitated procurement by travel agencies or other travel distribution providers where the choice of service providers remains with the consumer.
- 38.1.10      **"Employees with no prior working experience"** refers to those employees who have no formal employment experience prior to joining an enterprise in tourism. Formal employment does not include learnerships, traineeships or short-term and temporary assignments;
- 38.1.11      **"Enterprise Development"** may take a variety of forms, including:
- 38.1.11.1       direct investment in Black Owned and Black Empowered SMMEs;
  - 38.1.11.2       joint ventures with Black Owned and Black Empowered SMMEs that result in "substantive" skills transfer;
  - 38.1.11.3       support and funding for the grading of emerging tourism companies, as well as providing mentorship, business relationships and linkages which, in turn,

- provide business opportunities to these enterprises; and
- 38.1.11.4 twinning initiatives with Black Owned and Black Empowered SMMEs which result in cost savings or revenue generation for those SMMEs;
- 38.1.12 "**Executive Representation**" refers to the participation by Black People in the senior non-board level management of an enterprise and more specifically, targets management levels which influence the strategic and operational management of an enterprise. Participation is measured upon the basis of the percentage that black executive managers hold to the total number of executive managers of that enterprise;
- 38.1.13 "**Learnership**" refers to learnerships as defined in the Skills Development Act, No. 97 of 1998, amended in 2003;
- 38.1.14 "**Local**" means the geographic area being within a 50 km kilometre radius of the Project Site or Park;
- 38.1.15 "**Local Community Trust Ownership**" means Equity in the Private Party which must, as a mandatory provision of the Project, be acquired by a Local Community Trust;
- 38.1.16 "**Management**" refers to all senior and middle management who do not form part of the executive management of the board of directors of the Private Party;
- 38.1.17 "**Ownership**" refers to equity participation and the ability to exercise rights and obligations, including voting rights and the rights to the flow of economic benefits, which accrue under such ownership;
- 38.1.18 "**Preferential Procurement**" refers to all spend with BEE compliant suppliers, to be calculated as follows:
- 38.1.18.1 one Rand (R1) for every one Rand (R1) spent with Excellent BEE Contributors, Good BEE Contributors, BEE Compliant SMMEs and Black Women Owned BEE Contributors; and
- 38.1.18.2 fifty cents (50c) for every one Rand (R1) spent with Satisfactory BEE Contributors;

all of which terms are defined as follows:

- 38.1.18.3 an Excellent BEE Contributor means a company which has scored in excess of 90 percent on a BEE scorecard under a scorecard governing that company's sector or a BEE scorecard issued in the Codes of Good Practice and under the BEE Act;
- 38.1.18.4 a Good BEE Contributor means a company which has scored in excess of 65 percent, but less than 90 percent, on a BEE scorecard under a scorecard governing that company's sector or a BEE scorecard issued in the Codes of Good Practice and under the BEE Act;
- 38.1.18.5 a Satisfactory BEE Contributor means a company which has scored in excess of 40 percent but less than 65 percent, on a BEE scorecard under a scorecard governing that company's sector or a BEE scorecard issued in the Codes of Good Practice and under the BEE Act;
- 38.1.18.6 a Limited BEE Contributor means a company which has scored less than 40 percent, on a BEE scorecard under a scorecard governing that company's sector or a BEE scorecard issued in the Codes of Good Practice and under the BEE Act;
- 38.1.18.7 a BEE Compliant SMME means a small, medium or micro enterprise (with a turnover of up to R10 million per annum) which is either an Excellent, Good or Satisfactory Contributor to BEE; and
- 38.1.18.8 a Black Women Owned BEE Contributor is a company which is more than 30 percent owned by black women and which is also an Excellent, Good or Satisfactory contributor to BEE;
- 38.1.19 "**Skills Development Spend**" refers to investment in skills development initiatives through both external training providers and the quantifiable costs of accredited internal training programmes. Internal training spend does not include the opportunity cost of employees attending the skills development initiatives;
- 38.1.20 "**Supervisory**" refers to the junior management and professional staff;
- 38.1.21 "**TOMSA** (Tourism Marketing South Africa) Levy Collectors" refers to tourism enterprises who are registered to raise funds on behalf of the trust;

38.1.22 **"Total Employee Time"** refers to the total working hours calculated as the product of the total number of employees and their standard working hours;

38.1.23 **"Total Staff"** refers to all employees and/or contractors, excluding those accounted for under Strategic Representation, from whom the tourism enterprise is responsible for the collection and payment of applicable employee tax. The intention of the scorecard below is to include temporary staff in the definition of total staff, since tourism is an industry that relies heavily on temporary, casual and seasonal staff.

## 38.2 2014 Milestones and Targets

38.2.1 The Private Party shall from Effective Date to 31 December 2014 comply with the commitments and undertakings set out in the following table.

Indicator	2014 Weightings		2014 MILESTONES	
	Weighting	Sub-weighting	Indicators to measure BEE achievement	2014 Milestone
				Target
				C
A	B			
<b>Ownership</b>	20%	13%	Percentage share of economic benefits as reflected by direct shareholding by black people	20%
		7.0%	Local Community trust ownership	10%
<b>Strategic representation</b>	12%	2.5%	Black people as a percentage of board of directors	50%
		2.5%	Black women as a percentage of board of directors	25%
		2.0%	Local people as a percentage of board of directors	20%
		2.5%	Black people as a percentage of executive management	50%
		2.5%	Black women as a percentage of executive management	25%
<b>Employment equity</b>	12%	1.0%	Black people as a percentage of management	50%
		1.0%	Black women as a percentage of management	25%
		2.0%	Local people as a percentage of management	25%
		1.0%	Black people as a percentage of supervisors, junior and skilled employees	65%

Indicator	2014 Weightings		2014 MILESTONES	
	Weighting	Sub-weighting	Indicators to measure BEE achievement	2014 Milestone
				Target
				C
A	B			
		1.0%	Black women as a percentage of supervisors, junior and skilled employees	35%
		2.0%	Local people as a percentage of supervisors, junior and skilled employees	45%
		1.0%	Black people as a percentage of total staff	75%
		1.0%	Black women as a percentage of total staff	40%
		2.0%	Local people as a percentage of total staff	60%
<b>Skills development</b>	18%	4.5%	Percentage of payroll spend on skills development (including skills development levy) on all accredited training	3%
		4.5%	Percentage of skills development spend on all black employees	75%
		4.5%	Number of learnerships as a percentage of total employees	2%
		4.5%	Number of black learners as a percentage of total learners	80%
<b>Preferential procurement</b>	18%	12.0%	Spend on BEE compliant companies as a percentage of total procurement spend	50%
		6.0%	Spend on local BEE compliant companies as a percentage of total procurement spend	25%
<b>Enterprise development</b>	10%	5.0%	The sum of percentage spend of post-tax profits on enterprise development and percentage employee time contributed to enterprise development over total management time	1%
		5.0%	Enhanced revenue and/or cost savings and/or twining initiatives facilitated for black owned SMMEs, as a percentage of revenue.	1%

Indicator	2014 Weightings		2014 MILESTONES	
	Weighting	Sub-weighting	Indicators to measure BEE achievement	2014 Milestone
				Target
	A	B		C
<b>Social development and industry specific</b>	10%	6.0%	Percentage CSI spend of post-tax profits on education, community programmes, job creation, training, health, conservation, community tourism and marketing activities to develop local black tourist market (or percentage management time over total employee time)	1%
		1.0%	Percentage of new recruits with no prior work experience	10%
		3.0%	Status of TOMSA levy collector	Yes
<b>Total BEE points</b>	<b>100</b>	<b>100</b>		

### 38.3 Milestones and Targets Post-2014

- 38.3.1 The BEE Milestones and Targets for the duration of the PPP Term and in particular for the period from 1 January 2015 to the end of the PPP Term shall be determined by the restructured editions of the Tourism Charter and Scorecard as gazetted from time to time.
- 38.3.2 The Tourism BEE Charter was developed to be in line with the Department of Trade and Industry's first phase of the Codes of Good Practice. Once the Codes of Good Practice has been gazetted, the Tourism Charter will be guided of how best it can be aligned to the final draft Codes of Good Practice.
- 38.3.3 The milestones and targets of the Tourism BEE Charter and Scorecard could thus be amended from time to time and the provisions of this Section and PPP Agreement would be modified accordingly. The Private Party would receive notification of such amendments and be provided with a satisfactory remedy period to address the amendments.

**38.4 External BEE Verification**

- 38.4.1 The Private Party shall appoint a reputable external verification agency to determine the Private Party's BEE status and a copy of such an independent verification certificate shall be provided to SANParks within 15 (fifteen days) after the end of each Project Year.
- 38.4.2 The BEE Verification Certificate will categorise the Private Party according to the Private Party's contribution to BEE.
- 38.4.3 The Private Party shall be obliged in terms of the PPP Agreement to, at a minimum, comply with the category of a Good BEE Contributor for each Project Year.
- 38.4.4 In the event of default by the Private Party to comply with this provisions and the Private Party default is not remedied before the expiry of the period referred to in the notice by SANParks, SANParks will have the right to terminate the PPP Agreement with immediate effect by written notice to the Private Party.

**38.5 Private Party's BEE Proposal**

The Private Party's BEE Proposal is appended as Clause 38.5.

**39. ANNEXURE XI – FINANCING AND CAPITAL PLAN, BUSINESS AND OPERATIONAL PLAN AND RISK MATRIX**

The Financing and Capital Plan, the Business and Operational Plan as well as the Risk Matrix constituting part of the Private Party's Bid Submission, are appended as part of Annexure XI.

**39.1 Financing and Capital Plan**

39.2 **Business and Operational Plan**

**39.3 Risk Matrix**