



**SUNDAYS RIVER CANOE AND ECO-
ADVENTURE ACTIVITIES CONCESSION
IN ADDO ELEPHANT NATIONAL PARK
DRAFT PPP AGREEMENT**

PUBLIC PRIVATE PARTNERSHIP AGREEMENT

FOR THE

CANOE AND ECO-ADVENTURE ACTIVITIES IN THE SUNDAYS

RIVER VALLEY CONCESSION

IN THE ADDO ELEPHANT NATIONAL PARK

APRIL 2008

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THIS PPP AGREEMENT is made the day of.....2008

BETWEEN

SOUTH AFRICAN NATIONAL PARKS (“SANParks”) as the Institution; and

[] as the Private Party.

WHEREAS

The Strategic Plan for Commercialisation of SANParks outlines the following:

- (A) SANParks wishes to generate income through the further commercialisation of parts of the National Parks.
- (B) SANParks has the object of, inter alia, the establishment, preservation, conservation and study in all National Parks of wild animals, plant life and objects of geological, archaeological, historical, ethnological, educational and other scientific interests and matters related and incidental thereto and to events in or the history of the National Parks, in such a manner that the area which constitutes each Park is, as far as may be and for the benefit and enjoyment of visitors, retained in its natural state.
- (C) SANParks wishes to expand the tourist and income generating potential of all National Parks by making various PPP Opportunities available to appropriate and reputable eco-tourism operators.
- (D) The Private Party has expertise in the provision of accommodation and related services for visitors to the National Parks and facilities in connection therewith.
- (E) SANParks wishes to enter into a PPP Agreement for the purposes of undertaking the Project with the Private Party.
- (F) The Parties desire to implement this PPP Agreement in the spirit of co-operation and mutual support to achieve the Private Party’s commercial objective of operating a profitable eco-tourism destination whilst at the same time allowing SANParks to conserve the Camp and Project Site as part and parcel of the Park as it is enjoined to do in terms of the Act.

In terms of the Sundays River canoe and eco-adventure activities concession in the Addo Elephant National Park the following outlines the value-for-money objectives of this PPP:

- (A) Tourism Promotion through the offering of diverse activities within the park, specifically around the Sundays River;

- (B) Revenue generation for SANParks;
- (C) Infrastructure Upgrades; and
- (D) BEE and Job creation.

NOW THEREFORE the Parties agree as follows -

1 DEFINITIONS AND INTERPRETATION

- 1.1 The headings 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 References in this PPP Agreement to an amount “(as at the Signature Date)” mean 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 the Signature Date will be maintained relative to the percentage year-on-year 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 have the meanings hereby assigned to them when said terms are used with a capitalised first letter:

“Act”

Protected Areas Act 57 of 2003

“Agent”	has the meaning described in the Loan Agreement;
“Annexure”	annexures hereto;
“Associated Agreements”	the contracts related to the design, construction, financing, operation, maintenance and management of the Camps, Project Sites and activity products or otherwise entered into by the Private Party in connection with the Project, including, but not limited to, those contracts listed in Annexure I;
“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;
“Bid and Development Bond”	a performance bond of the nature specified in Clause 3.11 and having the characteristics set out in Part C of Annexure VI;
“Bid Submission”	the bid for the Project submitted by the Private Party and accepted by SANParks;
“Business Day”	a normal business day excluding weekends and statutory public holidays;
“Calculated Annual PPP	has the meaning described in Clause 8.2;

Fee”

“Camp”

the camp/s stated in Schedule A and described in Schedule B situated in the Park and all associated facilities;

“Conservation Management”

the management of biodiversity in all its facets and fluxes in a manner that is consistent with the principles and objectives of the new Master Plan or Management Plan of the Park in question;

“Construction Contracts”

the design and construction contracts, entered into or to be entered into, for purposes of the design, construction, rehabilitation, repair and/or commissioning of the Camps and relevant Project Assets, and submitted to SANParks to enable SANParks to monitor environmental compliance;

“Construction Phase”

the phase(s) during which Construction Works are carried out;

“Construction Site”

that part of the Project Site required for the Construction Works;

“Construction Works”

design, construction, rehabilitation, repair and/or commissioning of the Camp and relevant Project Assets in accordance with this PPP Agreement and the Construction Contracts;

“Consumer Price Index”

the Consumer Price Index for all expenditure groups: Metropolitan and other urban areas (Base 1995 = 100) as published from time to time by Statistics SA (Statistical Release PO 141.1) provided that if:

- (i) such index should cease to be published, or

- (ii) the basis of the calculation of such index has changed and pursuant to such change one Party has notified the other that it is not satisfied therewith, or
- (iii) the Parties agree that, due to a change in circumstances, the index is no longer representative, or (in circumstances where the Parties are unable to reach such agreement) where such fact is confirmed in writing by an independent actuary in the Republic of South Africa (who shall act as expert and not as arbitrator) appointed for such purpose by the President for the time being of the Actuarial Society of South Africa, whose determination shall be final and binding upon the Parties,

then, in any such circumstances, the Parties will use such official information or index as may be available and acceptable to them, or failing such availability or acceptance, an index determined in writing as fair and reasonable by a majority decision of a panel of 3 (three) independent actuaries in the Republic of South Africa (who shall act as experts and not as arbitrators) appointed for such purpose by the President for the time being of the Actuarial Society of South Africa, whose determination shall be binding upon the Parties. Any determination made by the majority of such panel as to the date from which any revised index shall take effect and liability for the cost of determination of the index by the panel shall be binding upon the Parties;

“Contractor”

the party or parties designated as Contractor

	under the relevant Construction Contract;
“Detailed Design”	the detailed design for the Construction Works or part thereof prepared by the Contractor under the relevant Construction Contract;
“Development Period”	the period between the Signature Date of this PPP Agreement and the Effective Date;
“Developments”	commercial facilities outside of the Camp, excluding infrastructure related to the Operation, Management and Maintenance of the Camp and the Constructions Works, which are undertaken by the Private Party;
“Effective Date”	<p>The Effective Date will be determined based on the proposal as submitted by the Private Party. It should be noted that the main product of the PPP is the establishment of the canoe trail and eco-adventure activities product. However, proposals might differ substantially as to the nature of accommodation of the trail and hence the Effective Date will be dependent on this. In light of that the following should be used as a guide:</p> <ul style="list-style-type: none">- where low impact, tented accommodation forms the primary basis of the product, the Effective Date will be 6 months after contract signature;- where existing structures next to the river, i.e. farmhouses will be refurbished to form the primary basis of the product, the Effective Date will be 12 months after contract signature;- or a combination of the above.

“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;
“Environmental Guidelines”	the environmental guidelines for Private Parties operating within the South African National Parks set forth in Annexure V, as same may be revised and updated by SANParks from time to time;
“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 Party;
“Equity”	(i) any issued ordinary and/or preferential shares in the Private Party for which the Shareholders have subscribed; and/or (ii) any unsecured loans provided by the Shareholders to the Private Party, but does not include any funds or facilities provided by any Lender;
“Financial Year”	the financial year of the Private Party;
“Force Majeure”	has the meaning set forth in Clause 16;
“Generally Accepted Accounting Principles”	the generally accepted accounting principles developed by the South African Institute of Chartered Accountants as approved by the Accounting Practices Board in effect from time to time in the Republic of South Africa;
“Head Ranger”	the Ranger overseeing the Section Rangers under whose jurisdiction the Camps and Project Site falls. Due to the extent of the product and the distance that is covered by the river, this

	Section Ranger positions might be filled by different people, i.e. ranger of the Kabouga Section and Ranger of the Darlington Section;
“Institution Assets”	collectively the immovable assets owned by SANParks associated with or connected to the Camp and/or the Project Site as at the Effective Date or, if the context is appropriate, any one of them;
“Institution”	South African National Parks (SANParks);
“Land Acquisition Fund”	the National Parks Land Acquisition Fund established by Section 12A of the Act;
“Lender” or “Lenders”	any or all Persons providing loan facilities, credit facilities or guarantee facilities to the Private Party for the financing of the Project (specifically excluding any provider of Equity or other financing) 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;
“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 the financing of the Private Party's obligations under this PPP Agreement excluding Equity and/or Shareholders' loans;
“Material Damage”	used in the context of the environment means

any change in the environment within the Camp and Project Site caused by the Private Party as a result of any activity, whether engaged in by the Private Party or not, where the change results in a material adverse effect on the ecological integrity of the environment or on the ability of the eco-system within the Camp and Project Site 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;

“Minimum PPP Fee”

has the meaning described in Clause 8.2;

“Net Revenues”

any and all monies, in any manner, whether directly or indirectly generated by and/or flowing or arising from the Project and the PPP Agreement, received or receivable by the Private Party, excluding the commissions of travel agents and tour operators, damages, interest, insurance proceeds, capital gains realised on the disposal of movable assets, park entrance fees and Value Added Tax received by the Private Party. For any given Project Year, these Net Revenues must be consistent with the presentation of accounts for tax purposes for the appropriate Financial Years, calculated on a pro rata basis;

“New Project Assets”

collectively the movable and immovable assets acquired or constructed by the Private Party during the Development Period and Project Term or, if the context is appropriate, any one of them;

“Operation Commencement Date”

the date of actual commencement of the Operation, Management and Maintenance, subsequent to the issue of the completion

	certificate;
“Operation, Management and Maintenance”	all activities necessary for the operation, management and maintenance of the Camp and the Project Assets in accordance with this PPP Agreement;
“Operate, Manage and Maintain”	
“Park Management Plan”	the management plan appropriate to the Park in which the Camp and Project Site falls;
“Park Manager”	the manager of the Park in which the Camp and Project Site falls;
“Park”	the Addo Elephant National Park;
“Parties”	collectively, SANParks and the Private Party;
“Party”	SANParks or the Private Party, as the case may be;
“Performance Bond”	a performance bond of the nature specified in Clause 3.11;
“Person”	any individual, partnership, corporation, company, business organisation trust, governmental agency, parastatal, Relevant Authority or other entity;
“PPP Agreement”	this PPP Agreement between SANParks and the Private Party including the Annexures and Schedules hereto;
“PPP Offer”	the Private Party's financial offer included in the Bid Submission;
“PPP Rights”	all the rights conferred and obligations imposed on the Private Party pursuant to this PPP Agreement for the purposes of the Project, including, without limitation, the right to traverse

	and use, including to design, construct, rehabilitate, repair, finance, commission, Operate, Manage, Maintain, repair, charge, collect and raise revenues from the Project;
“Preliminary Design”	the preliminary design carried out by the Private Party and presented as part of the Private Party’s Bid Submission, and annexed hereto as Annexure IV;
“Private Party”	the counter party to SANParks hereunder;
“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;
“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 to be used by SANParks for purposes of environmental monitoring;
“Project Site”	the portion of the Park described in Schedule B and illustrated in the map in Annexure II;
“Project Term”	the period specified in Clause 2.2 and any extensions thereof in accordance with this PPP Agreement;
“Project Termination Equity Discount Rate”	the rate at which future forecast project cash flows net of income tax and all financing charges will be discounted if the project is terminated according to the provisions of Clause 17.2.3;
“Project Year”	has the meaning described in Clause 8.2.3;

“Project”	the design, construction, rehabilitation, repair, commissioning, financing, Operation, Management and Maintenance of the Camps, the canoeing product, other activities products as proposed and the Project Assets within the Project Site and the provision of accommodation and related services for paying visitors to the Camp and Project Site, under the terms of this PPP Agreement;
“Regulations”	regulations issued in terms of the Act;
“Regulatory Provisions”	(a) the Environmental Guidelines set forth in Annexure V; and (b) 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 includes the Park Regulations, Park Rules and Park Management Plan;
“Related Party Transactions”	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 enters into any contract, agreement, understanding, loan, advance or guarantee with, or for the benefit of, a Related Party (other than the Private Party);
“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 correlative to the foregoing;

“Relevant Authority” any ministry, department, provincial or local agency, authority or body of the 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;

“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;

“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, provided that the minimum rates of depreciation shall not be less than normal custom and practice;

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

“Rights of Way”	the route indicated on the map in Annexure II, and as described in Annexure III, in terms of which the Private Party will gain access to and egress from the Project Site (subject to Clause 2.4);
“SANParks’ Requirements”	the requirements set out in Annexure V hereto;
“SANParks”	South African National Parks and its lawfully designated representatives from time to time;
“Schedule”	a schedule hereto;
“Section Ranger”	the Section or Area Ranger under whose jurisdiction the Camps and Project Site falls. Due to the extent of the product and the distance that is covered by the river, this position might be filled by different people, i.e. ranger of the Kabouga Section and Ranger of the Darlington Section;
“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;
“Shareholders’ Agreement”	the contract made between the Shareholders and the Private Party relating to the formation of the Private Party and the conduct of its business, as amended from time to time;
“Shareholders”	the Persons listed in Annexure VII;
“Signature Date”	the date stated in Schedule A, being the date on which SANParks signs the PPP Agreement and from which date the PPP Agreement becomes legally binding on both SANParks and the

Private Party;

“State” the Government of the Republic of South Africa, acting directly or through its lawfully designated representatives; and

“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.

2 FRAMEWORK

2.1 Private Party Statements

2.1.1 The Private Party will undertake the Project at its own cost and risk in accordance with the provisions of this PPP Agreement. 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.

2.2 Project Term

Where low impact, tented accommodation forms the primary basis of the product, the Project Term shall be 10 (ten) years from the Effective Date, subject to termination in accordance with this PPP Agreement.

Where existing structures next to the river, i.e. farmhouses will be refurbished to form an integral part of the product, the Project Term shall be 15 (fifteen) years from the Effective Date, subject to termination in accordance with this PPP Agreement.

2.3 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 after the Signature Date this PPP Agreement is legally valid and binding upon it.

2.4 Project Site

The legal definition of the location, dimensions and physical boundaries of the Project Site shall be that area defined in Schedule B. A map of the Project Site is provided in Annexure II. This map is provided for illustrative purposes only, however, and, in case of conflict with the written description in Schedule B, the written description shall be legally binding.

2.5 Payments

- 2.5.1 Except 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.
- 2.5.2 The Private Party will be responsible for all taxes of general application and without limiting the generality of the a foregoing, any duties, fees or taxes assessed by any Relevant Authority in respect of the Camp and Project Site, or in respect of activities conducted within the Camp and Project Site or activities undertaken by SANParks relating to the regulation of this PPP Agreement. These taxes will exclude any capital gains tax, income tax, VAT or other taxation on income which is earned by SANParks or, notwithstanding this PPP Agreement, any tax payable by SANParks.
- 2.5.3 For the avoidance of any doubt, 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 by SANParks in writing.

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, employees, guests, invitees and patrons adhere to, abide by and comply with the Regulatory Provisions, the Environmental Guidelines generally in respect of the Park as set out in Annexure V and specifically in respect of the Camp 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, directives or rules issued by the Park Manager or Head Ranger must not conflict with the letter or the spirit of the Regulatory Provisions, or the Environmental Guidelines set in Annexure V, or the Park Management plan, or the provisions of the EIA. In cases where the Private Party believes that either the Head Ranger or the Park Manager have 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 the National Parks. The PPP Management Office will verify whether the directive or rule in question was valid, and consistent with practice elsewhere in the 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 arbitration 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 Without prejudice 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 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 applicable Regulatory Provisions and guideline documents published by the South African Department of Environmental Affairs and Tourism (“**DEAT**”) and in accordance with the principles of Integrated Environmental Management adopted from time to time by DEAT, the provisions of the Environmental Guidelines, and subject to the Environmental Control Procedure detailed in Annexure IX.
- 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 third party for whom it is responsible, 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 Construction, Operation, Management and/or Maintenance of the Camp and Project Site or permit behaviour which, in the reasonable opinion of SANParks, may result in Material Damage to the environment, then, without prejudice to 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 Camp 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 appoint, at no cost to SANParks, an independent environmental control officer who shall be responsible for ensuring that 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. The Private Party shall deliver monthly reports prepared by the environmental control officer to SANParks during the Construction Phase and thereafter half yearly reports as detailed in Clauses 15.4 and 15.5 .
- 3.2.8 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 Camp and Project Site shall (as between the Parties) be the property of SANParks. 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.
- 3.2.9 Subject to complying with its obligations under Clause 3.2.8, 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

3.2.8 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.

3.2.10 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.

3.2.11 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 a safari business in a proclaimed nature area and shall adhere to the guidelines set out in the Regulatory Provisions, the Environmental Guidelines and the EIA. 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, camp fire placement, fauna and flora protection, acceptable practices for wildlife viewing and photography (commercial photography to be covered by SANParks photography policy and guests to the concession to abide by this), feeding or touching animals, preservation of water supply, minimising noise levels, visual impacts, the removal of 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.

3.2.12 Without limiting the generality of the responsibility of the Private Party described in Clause 3.2.11, 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 such 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.

3.2.13 The Private Party shall be entitled to:

- 3.2.13.1 exclusive access to the Project Site as illustrated in Annexure II;
- 3.2.13.2 non-exclusive access to the Park subject to normal Park operating rules and hours; and
- 3.2.13.3 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 Annexures V and IX.

3.2.14 The Private Party shall not have exclusive rights to traverse the Rhino Camp and shall not have rights on the Darlington Dam, unless negotiated with SANParks.

3.2.15 A maximum number of people to be accommodated overnight, to include both guests and staff, are indicated in Schedule B. This number has been determined by considering the likely environmental issues and the tourism product. The number of people that may be accommodated on the site may change substantially based on the findings of the EIA, as detailed in Annexure V. SANParks therefore does not warrant the site in this regard.

3.3 Single Purpose Private Party - No Subsidiaries

3.3.1 The Private Party shall be a single purpose corporation, joint venture or trust with the sole purpose of implementing the Project or, exceptionally, more than one similar project in the National Parks system as SANParks may agree in writing, and the Private Party shall not assume any liability other than in connection with the 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 by SANParks in writing, 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 fixed 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.

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 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, SANParks shall, on application by the Private Party, grant a non-exclusive right and licence to the Private Party to use SANParks' trademarks.
- 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, 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 therefrom in any material respect without SANParks' further written approval.
- 3.8.4 If at any time SANParks withdraws its approval for the specified use of any trademark or logo, 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 SANParks may withdraw approval immediately 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. The Private Party acknowledges that the names of the Park, Project Site and Camp (the "**Protected Names**") are associated with and peculiar to the Park, Project Site and Camp 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 with the prior written approval of SANParks.

3.8.6 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.

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

3.8.7.1 de-register the company bearing any of the Protected Names; or

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

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

3.8.9 In circumstances where the name chosen by the Private Party and approved by SANParks is not part of SANParks' intellectual property, then the rights of SANParks contemplated in this Clause 3.8 shall not be applicable and the

intellectual property shall be the sole property of the Private Party.

3.9 Transfer of Project Site, Camp, Project Assets and Developments

At the end of the Project Term or at such earlier time as may be provided herein, the Private Party shall hand over the Project Site, the Camp, all Project Assets (excluding all movable New Project Assets) and its rights or interest in the Developments 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, be entitled to payment of any compensation in connection therewith. For the avoidance of doubt, and for purposes of this Clause 3.9, only the following classes of assets shall be considered to be immovable: 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 but not power generators, windmills and waterholes and fencing.

3.10 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.

3.11 Bid and Development Bond and Performance Bond

3.11.1 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 bank or financial institution acceptable to SANParks substantially in the format specified in Annexure VI, Part C to be valid for 12 (twelve) months after Bid Date or until the effective date (earliest of). The amount of the Bid and Development Bond is set out in Annexure VI. The Private

Party shall maintain a valid Bid and Development Bond (in accordance with the provisions hereof) until and including the Effective Date.

- 3.11.2 On or before the Effective Date, 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 VI and shall be equal to R 22 500.00 (Twenty Two Thousand and Five Hundred Rands) in mid-2008 prices;
- 3.11.3 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 or earlier termination of this PPP Agreement.
- 3.11.4 Within 90 (ninety) Business Days of the expiry 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.
- 3.11.5 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 indicated in Clause 3.11.2 as adjusted to reflect changes in the Consumer Price Index since Bid Submission.
- 3.11.6 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 V) 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 or Penalties for failing to meet Empowerment Obligations. 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 3.9 and where SANParks is entitled to terminate this PPP Agreement in accordance with Clause

17.1.3.

3.11.7 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.

3.11.8 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 SANPARKS' CONTRIBUTION

Except as otherwise provided in this PPP Agreement, the contribution of SANParks shall be limited to the granting of the PPP Rights upon the terms and conditions set out herein and the Private Party shall not be entitled to receive by virtue of this PPP Agreement any financial assistance or payment from SANParks. SANParks' contribution is on the basis of the fulfilment of all the requirements set out in Clause 24.

5 SANPARKS' UNDERTAKINGS

5.1 SANParks Assistance

Except as otherwise provided in this PPP Agreement, 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.

5.2 Area and Product

The Unique Selling Feature of the Sundays River is the solitude and secluded nature of the area, its scenic beauty and status as a National Park. Exclusivity and non-exclusivity for this opportunity is granted as follows:

- 5.2.1 use of the Sundays River from Darlington Dam Wall (below the low water bridge to the south-east of the Fisherman Cottages) until where the river exits the park near Kirkwood will be for the exclusive use of the operator.
- 5.2.2 It should be noted that the rights of the water in the river, below the surface actually reside with the Department of Water Affairs and Forestry (DWAF), but SANParks and by extension the private party will have exclusive rights on the river, above the surface.
- 5.2.3 The private party should note that fishing rights in the river will at all times have to be cleared with SANParks, as changes to this practice may occur. Only select non-indigenous species may be permitted to be caught and removed, but clarification should be sought with the park manager;
- 5.2.4 Use of the upgraded structures along the river will also be for the exclusive use of the operator. Only structures that were upgraded in line with the Bid Submission from the Private Party will be allocated for exclusive use.
- 5.2.5 Activities in the surrounding valley will in all probability be for the exclusive use of the successful operator, but the park may elect to introduce other operators into the area to run activities that do not involve the river. The operator will be informed of any such activity and all efforts will be made to

enhance and compliment the concession's activity.

- 5.2.6 In terms of game viewing, SANParks' main obligation is Conservation Management as defined in the Park Management Plan. In light of this SANParks will have the sole right to re-introduce fauna into and remove fauna from the area.

5.3 Access

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 Park through certain gates. As the Section in which the concession falls does not have controlled access gates, it is very likely that the operator would be handed keys and will access the park through designated gates that are usually locked. In all likeliness the standards, quality and nature of the access routes and control points, in place at the time of the agreement being entered into, will remain the same during the Development Period and Project Term.

5.4 Security

SANParks shall use all reasonable endeavours to ensure that the Camp and Project Site are free from trespassers, including poachers and visitors to the Park who are not guests or invitees of the Private Party. However, due to the remoteness of the Concession Area, security cannot be guaranteed and SANParks will not be liable for any losses because of a security breach.

5.5 Assistance against Protest Action

Where at any time, the Park or the Project or any part thereof is subjected to protest 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 protest 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 protest action.

5.6 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 camps 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 camps: 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.

5.7 Visitor Levels

SANParks shall have no liability to the Private Party for the number of visitors to the Camp and/or the Project Site and/or the Park or for any reduction or fluctuation thereof.

Visitors to the Camp and/or the Project Site will be exempt from any gate limits, other than Park entrance fees, that SANParks may impose from time to time to limit the overall number of visitors entering the Park through any given point of access.

5.8 SANParks Competence

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

5.8.2 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, DELIVERY OF CAMP AND PROJECT SITE AND RIGHTS OF WAY, OWNERSHIP AND RISK

6.1 River, Camp and Project Site Acquisition

SANParks has possession of that land which constitutes the Camp and Project Site and the Rights of Way at the Effective Date, as specified in Annexures II

and III respectively. On request SANParks shall supply the Private Party with the required diagrams, copies of title deeds, if any, and information regarding the same, and the like to enable the Private Party to occupy the Camp and Project Site and to use the relevant Rights of Way.

There is a short portion of the river (+- 4km from the start) where the western bank of the river is private farm land. The surface of the river and the eastern bank are under the jurisdiction of SANParks. Concession staff and guests must be aware that during this section they will only be permitted to stop on the eastern bank.

6.2 Delivery of Camp and Project Site and Rights of Way

6.2.1 SANParks shall, as far as practically possible, on the Effective Date, deliver vacant possession of the Camp and Project Site to the Private Party and shall thereafter ensure that the Private Party continues to be entitled to such access to the Camp and Project Site and Rights of Way 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 Camp and Project Site and relevant Rights of Way without vacant possession by the Effective Date 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 land on which the Project is to be constructed 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 Camp and Project Site or the land on which the Project and 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 all rights with respect to the airspace above and the area below the surface of the Camps 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 Camp and Project Site or Project Assets

6.4.1 Upon delivery of the Project Site, the Camps or any portion thereof and the Institution Assets to the Private Party, the Project Site, the Camps or any portion thereof and such Institution Assets 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 prejudice to 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 Works or at any time during the Development Period and Project Term.

6.4.3 Should the Project Site, the Camp or the Project Assets or any portion thereof be damaged or destroyed at any time during the Development Period and 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 Camp 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 Camp and/or the relevant Project Assets, or in the event the cost and expense to be incurred to repair, rebuild or replace exceeds the proceeds of any insurance available to the Private Party for such purpose, 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 expert 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 Camps shall be constructed or structures refurbished in accordance with the Detailed Design. The Private Party undertakes to procure the preparation of the Detailed Design in accordance with the Preliminary Design and the findings of the EIA. The Detailed Design shall be amended to take into account requirements of the EIA.

7.1.2 The Private Party shall undertake or procure the Construction Works in accordance with the Detailed Design and to meet the requirements of the PPP Agreement, in so far as they relate to the Construction Works, and, subject thereto, 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 Detailed Design which in

the Private Party's opinion would improve construction quality or safety to enable SANParks to monitor environmental compliance.

- 7.1.3 The location, design and construction of any points of access to and/or departure from the Construction Site during construction shall be subject to the provisions detailed in the EIA and subject to the prior written consent of SANParks.

7.2 Clearance of Construction Site for Construction Works

- 7.2.1 The Private Party shall be responsible, at its own cost and risk, for the clearance of the Construction Site, with the prior approval of SANParks, any diversions to and re-routing of roads not forming part of the Project and the clearance, relocation and diversion of any utilities within the Construction Site from the date on which possession of the Project Site is delivered to the Private Party. The Private Party may not mine or excavate any portion of the Park for the mining of gravel, stone, sand, clay, water and other material or substance or utilise borrow pits developed by SANParks without the prior written consent of SANParks.

- 7.2.2 The Private Party shall make the necessary applications to the Relevant Authorities for any and all approvals or authorisations required for the clearance of the Construction Site and for the relocation and diversion of any utilities.

7.3 Project Schedule

Subject to SANParks having provided to the Private Party the Project Site, the Private Party shall undertake the Construction Works subject to a Project Schedule of the Private Party's own choosing, as amended by the Private Party from time to time. The purpose of the Project Schedule is to enable SANParks to monitor the Construction Works from an environmental perspective. The only compellable legal obligation to SANParks that the Private Party will have in respect of the Project Schedule is that all construction activity will be completed within twelve (12) months from contract signature. In the event that Construction Works are still continuing as at that date, the Private Party shall be ordered to 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 by SANParks. Liable

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 Detailed Design, Construction Works, financing, Operation, Management and Maintenance of the Camp, 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.
- 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 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 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, 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 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 after the Compliance Events have taken place to the satisfaction of SANParks.

8 PPP FEES

8.1 The Private Party agrees to pay SANParks a PPP Fee every Project Year (the “Annual PPP Fee Payment”) as set out below.

8.2 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 Clause 38.1.1, escalated annually to compensate for inflation in accordance with the Consumer Price Index, as indicated in Clause 8.8 below;

8.2.2 “**Calculated Annual PPP Fee**” means, in respect of the Project Year in question, the bidded percentage of actual Net Revenues for that Project Year indicated in Clause 38.2 of Annexure X;

8.2.3 “**Project Year**” means for the first Project Year the period commencing on Effective Date and ending 365 days later, and for subsequent Project Years, the equivalent period.”

8.3 No Annual PPP Fee Payment is payable before Effective Date.

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

- the Minimum PPP Fee for that Project Year; or

- the Calculated Annual 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 quarterly in arrears within 30 (thirty) Business Days following the end of each quarter of the Project Year.

8.5.2 The Calculated Annual 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 Calculated Annual 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 Net Revenues which form the basis for the Calculated Annual PPP Fee must be consistent with both Private Party's tax statements and audited accounts and that there are certain 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 following a given Project Year comes to an end, the Private Party will make available its audited accounts to SANParks, which must clearly show taxable Net Revenue. The Net Revenue that is 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 Calculated Annual PPP Fee for the Project Year in question. If this figure is different from the Calculated Annual 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 or refunded by SANParks to the Private Party, as appropriate within 30 (thirty) Business Days. Such payments will be subject to the interest charges described in Clause 8.6 below.

- 8.6 Any overdue payment by either SANParks or the Private Party shall be subject to an interest charge of prime plus 2 (two) %.
- 8.7 All fees or other amounts payable in terms of this PPP Agreement shall be exclusive of Value Added Tax or any other transactional tax.
- 8.8 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 most recent published index for the Consumer Price Index 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 most recent published index for the Consumer Price Index and compare it to the published index of the Consumer Price Index at Signature Date and adjust the financial data accordingly.
- 8.9 The PPP fee will be payable monthly as per the schedule example as contained in ANNEXURE XII – Monthly Rental Schedule

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 Camps and of all related Construction Works and developments undertaken by the Private Party according to Best Industry Practice.
- 9.1.2 The Private Party shall furnish SANParks with a half-yearly report in an agreed format regarding the Operation, Management and Maintenance of the Camps and the product / activities as a whole.
- 9.1.3 The Private Party shall comply with the obligations in respect of the management and supply of water, electricity and communications set forth in Annexure V.

9.2 Third Party Contracts

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 the prior written notification and delivery of a copy of the relevant contract to SANParks, provided that the engagement of a third party shall not release the Private Party from any of its obligations hereunder.

9.3 Modifications during Project Term

9.3.1 Modifications to the Camps 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.

9.3.2 The Private Party shall not construct any additional exit or entry points to the Camp without the consent of SANParks.

10 CAMP AND PROJECT SITE MANAGEMENT

10.1 Other than the specified responsibilities assumed by the Private Party and set out in the Detailed Design, all veld management, including bush clearing and other modifications to the biosphere, erosion control, management of water points, development of new water points and controlled burning, will be undertaken by SANParks. The Private Party will be advised when and how these actions will take place.

10.2 The Private Party acknowledges that SANParks is entirely responsible for the Conservation Management of the Camps and Project Site which in turn is managed as part of the Park. Notwithstanding the provisions of this Clause 9.3.2, the Private Party shall be responsible at its cost for the maintenance and upkeep of all new roads to the camp site/s.

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

11.1 Change in Control by Private Party

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 XI; 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 Camps, Project Site and product 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 the Principles of Conservation and Commerce.

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 payable to the Land Acquisition Fund 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.

12.3 Existing Employees

12.3.1 Seeing that this is a new product, the Private Party will have no obligation to

employ existing employees as per Section 197 of the Labour Law.

13 LIABILITY WITH RESPECT TO THIRD PARTIES

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 Effective 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) within or in consequence of any act or omission within the Camp 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 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.

13.1.3 The provisions of this Clause 13.1 do not apply:

- 13.1.3.1 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;
- 13.1.3.2 Any obligation of the SANParks to pay Default Compensation Sum under Clause 17.2.3.

13.2 Private Party Acknowledgement

The Private Party acknowledges that the fauna and flora in the park, including the presence of dangerous animals, as well as the intrinsic features and environment of the park constitute a potential danger to people and property. The Private Party shall take steps to draw the attention of all guests, visitors, invitees, employees, contractors, patrons and the like to the dangers in the park and will obtain from such persons an indemnity and waiver in the format approved by SANParks from time to time. The requirements of this clause shall not effect, 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 Camp and Project Assets and its other insurable properties including 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 self 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 Camp, the Project Assets and other insurable properties, property and casualty insurance, including 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 acceptable 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 Camp and/or other insured Project Assets.

14.3.5 If the Private Party is unable to obtain insurance in the sums or on the terms required by Clauses 14.1 and 14.2, at a reasonable commercial rate, it shall immediately notify SANParks of any material areas of change in the terms or level of the insurance cover and shall restore the terms and level of cover to the required levels as soon as such become available.

14.3.6 Should SANParks and the Private Party disagree with respect to what is "commercially reasonable" in Clause 14.3.2 or as to what is "a reasonable

commercial rate” in Clause 14.3.5, 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 from among those leading international insurance brokers that are, at that time, active in the South African market to make such determination. The expert 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-vitiating 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 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

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 Camp 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 or new operational matters, which shall include a section on environmental matters.

15.5 The Private Party shall provide, on a confidential basis, a half-yearly report detailing compliance, or any failure to comply, with all environmental requirements stated herein and any environmental Regulatory Provision including the measures (if any) taken and/or proposed to be taken to remedy any such failure. The report shall also include details of any additional required EIA's undertaken or intended to be undertaken and any updates that have been made to the Private Party's Environmental Management Plan.

15.6 Periodic Reports

The Private Party shall furnish to SANParks, on a confidential basis, as soon as practicable but in any event not later than 180 (one hundred and eighty) Business Days after the end of each Financial Year, three 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 Generally Accepted Accounting Principles and consistently applied), together with an audit report thereon, all in accordance with the requirements of the laws and regulations pertaining to accounting.

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.

15.8.2 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.

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:

- (a) whose occurrence could not have been reasonably foreseen at the date of execution of this PPP Agreement; and
- (b) 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 Camp, 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
- (c) which:
 - (i) causes material physical damage or destruction to all or any material portion of the Camp, and/or the Project Assets, including, without limitation, its accommodation facilities or eco-

tourism functions; or

- (ii) materially interrupts the full and regular operation of all or any material portion of the Camp, including, without limitation, its accommodation facilities or eco-tourism functions.

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 Camp 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 Camp 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

17.1.1 SANParks shall have the right to terminate this PPP Agreement upon the occurrence of any of the following events:

- 17.1.1.1 the granting of any judgement 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, or the passing of any resolution, for the dissolution and/or judicial management and/or liquidation of the Private Party except for the purposes of amalgamation or reconstruction on terms approved in advance by SANParks in writing; or
- 17.1.1.2 the Private Party commences voluntary liquidation proceedings; or
- 17.1.1.3 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 which results in material damage to SANParks; or
- 17.1.1.4 the Private Party commits a material breach of this PPP Agreement; or
- 17.1.1.5 the Private Party or any of its officers or directors is found guilty of a crime involving fraud or dishonesty and is sentenced to a jail sentence with or without the option of a fine for a period in excess of one year and the Private Party has not within 30 (thirty) Business Days thereafter instituted appropriate steps for the object of terminating the appointment or employment as the case may be of that person, and to duly prosecute those proceedings to a final conclusion; or
- 17.1.1.6 the books of account of the Private Party are found, on more than one occasion to have been falsified or published in such a manner as to reflect a position that is materially different to the true financial position of the Private Party; or
- 17.1.1.7 the Private Party is in default under the Loan Agreements and there has

- been an acceleration of all amounts due under the Loan Agreements; or
- 17.1.1.8 any other provision of this PPP Agreement expressly entitles SANParks the right to terminate this PPP Agreement.
- 17.1.2 SANParks shall, prior to exercising its rights to terminate this PPP Agreement under this Clause 17.1, send a written notice to the Private Party notifying it of the event giving rise to such right and requesting the Private Party to remedy the event giving rise to such right of termination within the Remedy Period or any longer agreed period; provided, however, that no Remedy Period shall be required for the events described in Clauses 17.1.1.1 or 17.1.1.2.
- 17.1.3 If -
- 17.1.3.1 such events are not remedied by the Private Party by the expiry of the Remedy Period or the relevant event does not require a Remedy Period; and
- 17.1.3.2 a Substitute Entity has not been appointed in terms of Clause 18.2 within 90 (ninety) Business Days of the end of the Remedy Period or if the relevant event does not require a Remedy Period, within 90 (ninety) Business Days of the event entitling SANParks to terminate this PPP Agreement, SANParks shall terminate this PPP Agreement forthwith by notice in writing to the Private Party and the Lenders.
- 17.1.4 Upon any termination pursuant to Clause 17.1.3 above, the following provisions shall apply:
- 17.1.4.1 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;
- 17.1.4.2 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:
- 17.1.4.2.1 the cost and expense incurred or to be incurred in the reinstatement of the Camp to the standards required by SANParks' Requirements as at the date of termination; and

- 17.1.4.2.2 an amount equal to all damages recoverable by law; and
 - 17.1.4.2.3 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
 - 17.1.4.2.4 all costs and expenses incurred and/or reasonably expected to be incurred in re-launching the bid process; and
 - 17.1.4.2.5 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 17.1.3.
- 17.1.5 Should SANParks not exercise its rights to terminate pursuant to Clause 17.1.3, 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 17.1.1 and all costs and expenses incurred by SANParks in seeking or obtaining the appointment of a Substitute Entity pursuant to Clause 18.2.

17.2 Termination by Private Party

- 17.2.1 The Private Party shall have the right to terminate this PPP Agreement if:
- 17.2.1.1 SANParks commits a material breach in respect of the performance of any of its obligations hereunder; or
 - 17.2.1.2 the Private Party or any part(s) of the Project Site, the Camp and/or the Project Assets are nationalised, compulsorily acquired or expropriated from the Private Party by the State, which results in a material impairment of the PPP Rights; or
 - 17.2.1.3 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
 - 17.2.1.4 the Park no longer operates as a National Park.
- 17.2.2 The Private Party shall, before exercising its rights to terminate this PPP Agreement pursuant to Clause 17.2.1, give written notice to SANParks requiring SANParks to remedy the event referred to in Clause 17.2.1. 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.

17.2.3 If the PPP Agreement is terminated pursuant to this Clause 17 after the Effective Date, SANParks shall pay to the Private Party an amount (the “**SANParks Default Compensation Sum**”) equal to: the aggregate (without double counting) of:

17.2.3.1 all amounts outstanding to the Lenders under the Loan Agreements; and

17.2.3.2 all amounts properly due and payable under any contracts (including without limitation employment contracts) entered into by the Private Party in connection with the Project, for the purpose of discharging its obligations under this PPP Agreement, prior to the date of such termination (including amounts arising as a result of such termination) provided always that such contracts have been entered into on bona fide arm's length terms; and

17.2.3.3 the forecast future cash flows remaining life of the PPP Project net of income tax and all financing charges associated with the Loan Agreements discounted by the Project Termination Discount Rate. The forecast future cash flows used for this purposes shall be based on the following inputs: -

17.2.3.3.1 the forecast of revenues and room occupancy made by the Private Party, as presented at the bid date, adjusted for actual experience, if any, during the life of the Project to date;

17.2.3.3.2 the operating costs experience of the Private Party, if any, to date, or, if none, average industry practice in operating costs.

The cash flow forecast shall be produced according to the procedure set out in Clause 17.6.1.

17.2.4 The amount payable by SANParks under Clause 17.2.3 shall accrue interest at the rate specified in Clause 17.4.3 from the date of termination to the due date for payment as specified in Clause 17.4 and be paid on the due date for payment under Clause 17.4.

17.3 Effect of Termination

17.3.1 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):

17.3.1.1 this PPP Agreement (other than Clauses 3.6, 3.7, 16, 17, 18, 19 and 24) shall cease to have effect, subject to all rights and obligations of the Parties existing prior to such termination;

17.3.1.2 such rights as the Private Party may have over the Project Site, the Camp, the Project Assets (other than moveable New Project Assets) and the Developments and all other immovable property thereon shall terminate;

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

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

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

17.3.2.1 enter and take immediate operational control of the Camp, the Project Site, all Project Assets (other than moveable New Project Assets) and all Construction Works; and

17.3.2.2 select and substitute a new Private Party for the Private Party.

17.3.3 The provisions of this Clause 17.3 shall be suspended pending the final outcome of any arbitration or legal proceedings between the Parties concerning the validity of the termination of this PPP Agreement.

17.4 Payment Procedure

17.4.1 Except as otherwise provided for expressly 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.

17.4.2 Without prejudice to any other right or remedy, each Party shall be entitled to receive interest on an amount due under this PPP Agreement, at the rate referred to in Clause 17.4.3. Interest, which has accrued on an amount due under this PPP Agreement, shall be paid on the same date as payment of such amount.

17.4.3 For the purposes of Clause 17.4.2, interest shall accrue at a rate equal to the prime rate charged by SANParks' bankers. 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.

17.4.4 All payments to be made under this PPP Agreement shall be made in Rand.

17.5 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.

17.6 Calculations

17.6.1 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 appointed by the Parties. In the absence of agreement, each party shall nominate an independent expert, each of whom will produce its forecast or calculation. 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 which 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, that expert shall be appointed by the President of the South African Institute of Chartered Accountants.

17.6.2 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.

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 thereunder; 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 17.1.1 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 VII; 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 Part A of Annexure VII; 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, 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 Part A of Annexure VII.

18.5.2 SANParks shall only 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 Resolution of Disputes

19.2.1 Any dispute between the Parties in regard to:

19.2.1.1 the interpretation of;

19.2.1.2 the effect of;

19.2.1.3 the Parties respective rights and obligations under;

19.2.1.4 a breach of;

19.2.1.5 any matter arising out of this PPP Agreement shall -

19.2.1.5.1 in the first instance, be referred to the Parties respective representatives, who shall attempt to resolve the dispute amicably between themselves within 5 (five) Business Days of the dispute arising, and if the dispute is still unresolved, then

19.2.1.5.2 in the second instance, be referred to the Chief Executive Officer (“CEO”) of SANParks and the Chairman of the Private Party, who shall attempt to resolve the dispute within 10 (ten) Business Days, and if it still remains unresolved, then

19.2.1.5.3 as a last resort, be submitted to arbitration in the manner set out in this Clause 19.

19.2.2 The said arbitration shall be held subject to the provisions of this clause:

19.2.2.1 at Pretoria;

19.2.2.2 informally;

19.2.2.3 otherwise in accordance with the provisions of the Arbitration Act, 1965 (Act No. 42 of 1965), as amended;

19.2.2.4 it being the intention that if possible it shall be held and concluded within 21 (twenty one) Business Days after it has been demanded.

19.2.3 The arbitrator shall be, if the question in issue is -

19.2.3.1 primarily an accounting matter, an independent accountant agreed upon between the Parties;

19.2.3.2 primarily a legal matter, a practising Senior Counsel of no less than 10 (ten) years standing agreed upon between the Parties;

19.2.3.3 any other matter, a suitably qualified and experienced independent person agreed upon between the Parties.

19.2.4 If the Parties cannot agree upon a particular arbitrator in terms of Clause 19.2.3 above within 7 (seven) Business Days after the arbitration has been demanded, the nomination in terms of Clauses 19.2.3.1, 19.2.3.2 and 19.2.3.3, as the case may be, shall be made by the President of the Attorneys Association of Gauteng within 7 (seven) Business Days after the parties have so failed to agree.

19.2.5 The Parties irrevocably agree that the decision in these arbitration proceedings:

- 19.2.5.1 shall be binding on them;
- 19.2.5.2 shall be carried into effect; and
- 19.2.5.3 may be made an order of any Court of competent jurisdiction.

19.3 Obligations During Arbitration

Pending any attempt at amicable settlement or any award of an arbitral panel, both parties shall continue to perform their obligations hereunder unless agreed in writing.

19.4 Costs of Arbitration

The costs of arbitration shall be paid by the unsuccessful Party, irrespective of whether SANParks or the Private Party referred the matter to arbitration.

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:

- (a) derives economic value, actual or potential, from not being generally known to other Persons who can obtain economic value from its disclosure or use;
- (b) is the subject of efforts which are reasonable under the circumstances to maintain its secrecy; or
- (c) is identified as Confidential Information.

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

- (a) is or becomes generally known to the public through no fault of the Receiving Party;
- (b) is received without restriction from a third party not bound by any duty of confidentiality with respect to such Confidential Information;
- (c) 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;
- (d) is required to be disclosed in terms of any Regulatory Provision;
- (e) 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

c/o SANParks Project Officer
Groenkloof National Park
643 Leyds Street
Muckleneuk
Pretoria

Telephone:
(012) 426-5001

Facsimile:
(012) 343-9959

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 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 Part B of Annexure VII.

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 been given the opportunity to review and check as an expert the Camps and Project Site and its surroundings, and the physical condition of the Camps and 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 Park, the Camps and the Project Site and its rights and obligations thereunder and hereunder, and pursuant to such review the Private Party finds the Camps and 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 Camps, 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 Camp, 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. SANParks shall use its best endeavours to settle all valid land claims so that the land use is retained for conservation purposes.

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 VIII (“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 VIII 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 3.11 to the satisfaction of SANParks within 12 (twelve) months of the Signature Date, SANParks shall be entitled to terminate this PPP Agreement and Clause 17.1.4 shall apply.

24.3 If the Compliance Events are not fulfilled to the satisfaction of SANParks within 12 (twelve) 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 18 (eighteen) months after the Signature Date, any of the Compliance Events remain outstanding, SANParks shall be entitled to terminate this PPP Agreement and Clause 17.1.4 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.

Execution on behalf of SANParks:

SIGNED AT PRETORIA ON 2008.

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

who warrants his authority hereto

Execution on behalf of the Private Party:

SIGNED AT ON 2008.

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

who warrants his authority hereto

27 SCHEDULE A - SPECIFIC CONDITIONS

Clause Ref.	Description	Condition
1.6	Signature Date	
1.6	Name of relevant National Park	ADDO ELEPHANT NATIONAL PARK
1.6	Name of relevant Camp	Camps on the Sundays River that forms part of the Canoe trails and eco-adventure activities (the camps might be refurbished farmsteads or low impact tented camps on the banks of the river or a combination of both).
1.6	Name of Private Party	_____ _____ _____ _____
2.2	Project Term	7 (seven) years from Effective Date
12.2	Penalty for employee misconduct causing Private Party to breach PPP Agreement	R 10 000.00 (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 175 000.00 (as at the Signature Date).
17.1.1	Judgement threshold	R 2 500 000.00 (as at the Signature Date).
17.2.3.1	Project Termination Equity Discount Rate	15%.

Clause Ref.	Description	Condition
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

- Addo Elephant National Park -

28.1 Description

The Addo Elephant National Park (AENP) is the most extensive park in the Eastern Cape. The main tourism attraction in the park is the elephants that occur in large numbers in the vicinity of the AENP main camp as well as the recently re-introduced presence of lion and other large indigenous animals.

The AENP is divided into several sections / areas which include the following: Main Section, Kabouga Section, Zuurberg Section, Woody Cape Section, Darlington Section, Colchester Section, Nyati Concession and Kuzuko Contractual area. Various products / activities are presented in the park which includes but are not limited to self catering accommodation, luxury accommodation (concessionaires), self drive game viewing, guided game viewing, horse riding, 4x4 trails, rustic bush camps and hiking. Currently the Darlington section forms the exit/entry point for some of the 4x4 trails. In all likelihood this section will also form the entry point of the canoe trails product.

28.2 Location

Figure 1: AENP map outlining concession area in relation to rest of AENP, clearly outlines the canoe trail concession area in relation to the rest of the AENP. The Project Site will start at the low water bridge to the south of the Darlington Dam wall and follow the river past the Mvubu camping area up to where the river exits the Park. The camps could be refurbished farmsteads or low impact tented camps (maximum of 3) on the banks of the river

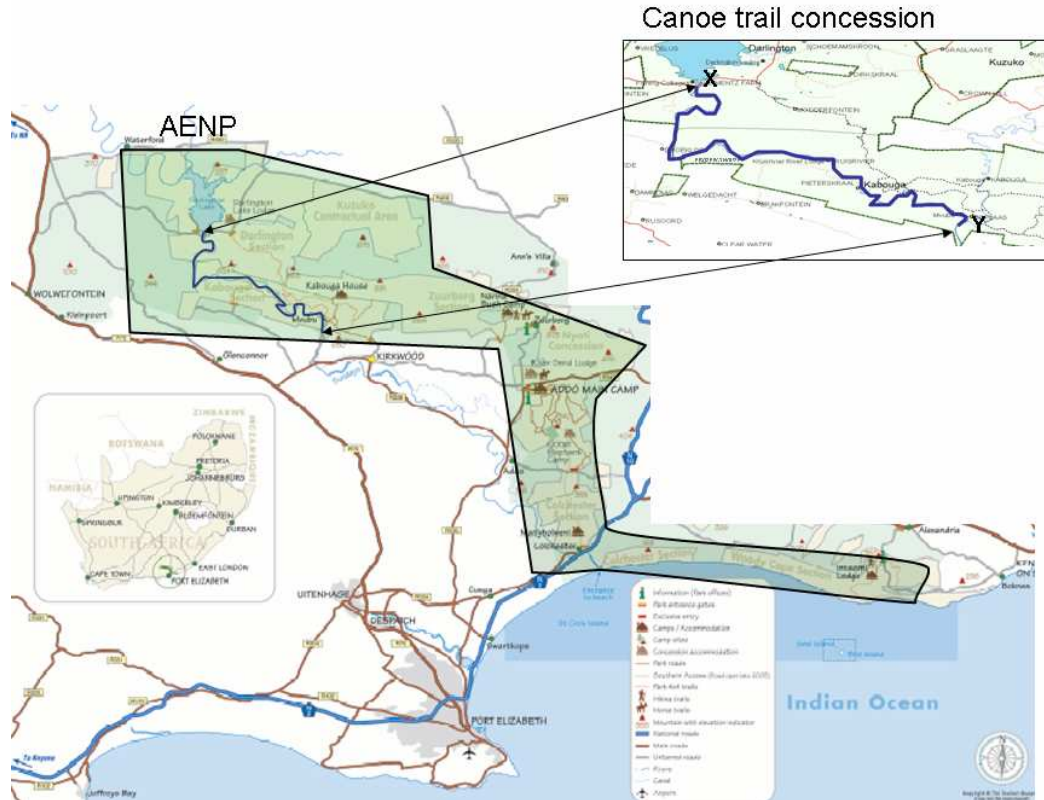


Figure 1: AENP map outlining concession area in relation to rest of AENP

In the event of park expansion towards to south, the concession will not be changed but will stop at the boundary as per park status in April 2008.

Rights to run an activity centre (non-exclusively) adjacent to the river forms part of the concession but will be dependent on the following:

- Refurbishment of an activity centre base;
- The bid submission should contain proof of the ability to run such a centre.

If not part of the proposal, the Private Party will have no right to this in future.

28.3 Development and PPP Opportunity

A maximum of 16 guests can be accommodated per night per camp in this concession. Staff will be in accordance with the submitted staff housing plan in the bid submission.

[E.g. where a canoe trail will accommodate 16 guests at any time. With a staff component of 4, the maximum number of people at any time on a trail will be

20. Provision should be made for relief staff members to be accommodated in the staff accommodation alongside the active staff. If trails are run simultaneously, the maximum number of people at any one time in this concession example would be 63 – 48 guests, 12 active staff and 4 relief staff.] *(NB this example will be replaced once the successful bidder's model has been accepted).*

The Private Party will not be allowed to develop more than 3 new camps which can house 21 (including staff) each. The camps should be built according to touch the earth lightly principles (EIA processes and approval from SANParks will be required). Family of staff must not be accommodated at the trails camps, but rather at the separate staff housing.

Staff or guests can be housed in the following farmhouses:

- Prospect House;
- Kruisrivier River Lodge and nearby Breeknek Farmhouse; or
- Pietersenskraal.

Staff to be housed according to the staff housing plan as per the bid submission (bid submission to indicate which of the structures will be used and refurbished as staff accommodation in order to be allocated to the Private Party as part of the concession).

The Private Party may take guests in open vehicles on the Park road network, where normal Park regulations and conditions will apply. Night drives with spotlights will be permitted and normal Park regulations and conditions will apply. Vehicle standards and guide regulations detailed in **Annexure V: Environmental Guidelines for Private Party's Operation within the South African National Parks** will apply. Limited off road driving will be allowed and only as per guideline based on soil type. Under no circumstances will off-road driving be permitted in Nama Karoo vegetation. Guided walks may be undertaken in areas agreed in writing with the AENP manager and will be revised / reaffirmed every 2 years.

28.4 Roads and Tracks

The Private Party will be required to make use of the existing road network. No tarred roads exist along the river and due to difficulty of the terrain, suitable vehicles with high clearance able of river crossings are recommended.

The district municipality will be responsible to maintain the road that enters the park below the dam wall.

All management roads (which is used for game viewing) will be maintained by SANParks. However, driving on some management roads will be prohibited in certain weather conditions and in instances where roads were damaged badly by the Private Party because of irresponsible driving (i.e. driving shortly after excessive rains), the Private Party will be responsible to repair the roads to the original condition. The Private Party is also responsible to report roads that are degrading as a result of maintenance not occurring. This will prevent situations where the Private Party argues a case that the road was in a bad condition before they damaged it further.

28.5 Infrastructure

The Private Party will be allowed to extract water from the river for the following usages:

- Cooking;
- Cleaning; and
- Drinking.

The Private Party will be responsible to purify the water for these purposes.

In terms of electricity and water provision, SANParks would prefer that sustainable water and electricity usage are included in the design of the camps. In terms of this, initiatives such as solar power, water saving and water re-use devices are highly recommended. The camp sites will also be subject to the findings of the EIA, particularly with regards to visual as well as noise impacts on the Park.

The Private Party will be permitted to sink boreholes at the camp/farmhouse locations subject to an accompanying EIA.

29 ANNEXURE I - ASSOCIATED AGREEMENTS

Indicative list:

- 29.1 Any contracts in respect of the Preliminary Design and/or Detailed Design.
- 29.2 The Construction Contracts.
- 29.3 The Loan Agreements.
- 29.4 The Shareholders' Agreement/ Joint Venture Agreement.
- 29.5 The Equity Subscription Agreements.
- 29.6 The Certificate of Incorporation, Memorandum of Association and Articles of Association Partnership Agreement, Trust Deed or other founding statutes.
- 29.7 The policies to be subscribed by the Private Party pursuant to Clause 14.
- 29.8 Performance Bond.

30 ANNEXURE II - MAP OF PROJECT SITE



Figure 2: Map of Project site

The Sundays River Canoe trail and eco-adventures concession follows the river from the low water bridge below the Darlington Dam Wall up to where the river exits the park close to Kirkwood. The Private Party will have exclusive rights to activities that happen on the river and on the banks of the river (except for the Mvubu camping site which may be utilised by participants of the 4x4 trail). It should also be noted that the 4x4 trail crosses the river at 2 places hence vehicles could be seen at these spots on rare occasions (refer to map above).

The Private Party will also be allowed to present eco-adventure activities in the immediate surroundings of the Kruisrivier River Lodge (on a non-exclusive basis). In all probability if the Private Party is successfully conducting eco-adventure activities the park will grant them exclusive right to present such activities.

The Private Party will be allowed to conduct game drives in the Kabouga, Zuurberg and Darlington Sections of the AENP on a non-exclusive basis. Game drives can also be conducted in the main game viewing area of AENP around Main Camp.

The Darlington Dam will not form part of the Project site and no rights on the dam is granted to the Private Party.

31 ANNEXURE III – ACCESS AND WAY LEAVES



Figure 3: Project site access

Access to the Darlington, Kabouga and Zuurberg Sections of the Park will be through the access gates indicated as A, B or C of the map above. Access to the Main game viewing area will be through the AENP main gate.

There is also a tarred landing strip to the north of the Darlington Section – the strip is 1.2 kilometres in length. The strip may be used by the Private Party and guests, subject to the payment of any fees that may be applicable.

All guests will have to pay the normal Park entry fees.

32 ANNEXURE IV - PRELIMINARY DESIGN

33 ANNEXURE V - ENVIRONMENTAL GUIDELINES FOR PRIVATE PARTY'S OPERATION WITHIN THE SOUTH AFRICAN NATIONAL PARKS

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 authorisations. The different authorisations 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 services such as electricity, water, sewerage etc
- All EIA findings and recommendations, including the detailed Environmental Management Plan (EMP) that addresses both the Restoration, Renovation and Refurbishment and Operational and Maintenance Phases of the development, should be incorporated by reference and in full to this PPP agreement
- SANParks requires the Private Party to appoint an ECO during both the Construction, Operational and Maintenance 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 November 2006 but updates are made on a regular basis.

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

1. INTRODUCTION

Even though SANParks is granting a concession on the Sundays River, as the custodian for the Parks, SANParks will retain broad oversight responsibility for

these lands. In this context, SANParks has established Guidelines for both the Construction, Operational and Maintenance Phases of the opportunity.

1.1 **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.

Authorizations of any developments in a Protected Area are governed by the NEMA and the NEMPAA, and regulations. Any changes to infrastructure or operations require written approval from SANParks and are subject to the prescribed policies and procedures.

The process of development of camp sites will be undertaken as per SANParks internal policies and procedures, and authorizations given by the Department of Environmental Affairs and Tourism (where relevant) and by SANParks.

It should be noted that, where no policy for Addo exist, i.e. the water use policy, the Kruger National Park policy will apply.

Key requirements resulting from these various statutes are discussed below.

The South African Department of Environmental Affairs and Tourism (DEAT) has adopted an Integrated Environmental Management (IEM) Procedure¹ 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

¹ 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).

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 Environmental Impact Assessment (EIA) of the proposed development. Under the IEM framework, EIA's must be prepared for prescribed activities and/or activities that might affect a designated area such as a national park. In March 1994 DEAT published draft legislation for compulsory EIA's. In April 1998, under the authority of the Environment Conservation Act, DEAT promulgated a Guideline Document for implementing the EIA regulations.² The Guideline Document further specifies activities for which an EIA is required to include “*public and private resorts and associated infrastructure,*” where a resort is defined as “a place frequented by people for holiday, recreation, health or similar purpose.” Under the EIA Guidelines, EIA's must be prepared by an independent consultant.³

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.⁴ 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.

² Department of Environmental Affairs, 1998. *Guideline Document: EIA Regulations - Implementation of sections 21, 22 and 26 of the Environment Conservation Act.*

³ Under the Guidelines, the definition of 'independent consultant' is: "A consultant not in the permanent service of the applicant [i.e., the developer]. In addition a consultant ceases to be independent if (1) involved in any design or work of the same project; (2) earns more than 50% of his or her income from the same company; (3) payment depends on the successful authorisation of the application [i.e., the development].”

⁴ The recently promulgated *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)).

The EIA's for all Project Site developments will be reviewed by DEAT, the "relevant environmental authority" as defined in the EIA Guideline documents.⁵ SANParks also will have a role in the review of the EIA's, both as an IAP and as the regulatory authority with jurisdiction over the Parks. All EIA findings and recommendations, including the detailed Environmental Management Plan (EMP) that addresses both the Construction and Operational Phases of the development, will be incorporated by reference and in full to the PPP Agreement.

Apart from the EIA, SANParks might request the Private Party to compile an Operational Management Plan (OMP) according to SANParks requirements to ensure alignment with the park's management plan, corporate policies and all procedures and standards. Pre-ceding this, SANParks may request that a risk analysis be conducted and this will inform the contents of the OMP.

1.2 Guidelines Based on SANParks Internal Requirements

SANParks anticipates that national EIA regulations will adequately cover many of the issues that will arise during the assessment of Project Site developments within the Parks. In addition, SANParks has undertaken a review of its internal policies that may impact on Project Site developments. A large component of this effort focused on policies associated with the Kruger National Park (KNP) where, because of its size and importance within the Parks, planning efforts are more advanced than at many other Parks.

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 to provide clear guidance as to the allowable parameters for development by commercial operators. Where this occurred, SANParks undertook an internal effort to develop the necessary Guidelines.

⁵ In the case of the SANParks Project Sites, the 'relevant environmental authority' for review of EIA's conducted in National Parks is the national Department of Environmental Affairs and Tourism.

A series of workshops was held with conservation staff from within SANParks, 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 Development, 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 likely will be modified and refined over time, as and when needed to take into account new information, standards and conditions. Private Parties must be aware, therefore, 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.

1.3 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 concessioning process in a way that minimises the environmental risk to the national assets under its control.

2. ENVIRONMENTAL GUIDELINES

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

2.1 Preparation of an Environmental Management Plan

The Republic of South Africa's IEM Guidelines require that the EIA report for each Project Site include a detailed Environmental Management Plan (EMP).⁶ The EMP typically becomes part of the Record of Decision (ROD) prepared by the relevant environmental authority that reviews the EIA report (in this instance, DEAT). 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 both 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 Construction and Operational Phases.

2.2 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 will require all Private Parties to appoint an ECO during both the Construction 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 Guidelines (see fn. 3 above), 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.

2.3 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

⁶ See Department of Environmental Affairs, 1992. *Guidelines for Report Requirements* (volume 3), section 4.2 (p.17).

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, it is recommended that the Private Party considers arranging a pre-construction 'walk through' of the Development Site by a qualified archaeologist to identify undocumented cultural or archaeological resources.

In the event of 'chance finds' during construction, any such finds must be brought to the immediate attention of the Section Ranger or other relevant SANParks staff member.

If the Private Party discovers undocumented cultural sites or artefacts of any type at any time during the Development Period 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.

A survey of the natural resources occurring in the Project Site should 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.

2.4 Biosphere Manipulation

PPP Project Site developments and activities must adhere to all relevant SANParks rules regarding biosphere 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 Development 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. Baiting of wildlife is not permitted, unless specific fishing rights are arranged with park management. Any rogue animals (e.g. problem monkeys) must be reported to SANParks who has the sole mandate to deal with such animals.

2.5 Carrying Capacity

The Private Party must adhere to the bed limit that SANParks has established for the particular Project Site, as specified in Schedule B. It must be noted that the bed limit **includes** all staff beds used in SANParks rest camps, 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 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.

2.6 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. 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 '*pristine wilderness areas*' to '*high density development areas*.'

In terms of zoning, the Private Party should take cognisance of the zoning of the area in which the Concession falls as this will inform activities and development within the area.

Overview of the use zones of Addo Elephant National Park:

The following outlines the zoning plan for the Sundays River concession:

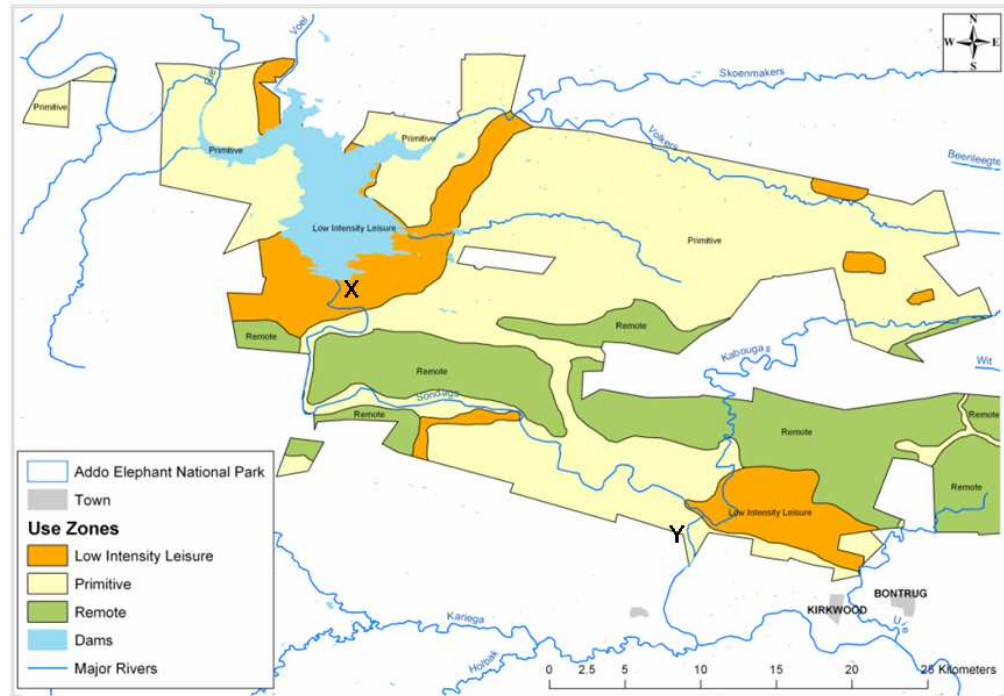


Figure 4: Zoning of the area in which the Sundays River Concession falls

The following provides an overview on the zoning as well as a summary of the activities and facilities allowed in each zone and the conservation objectives of each zone:

Remote Zone: This is an area retaining an intrinsically wild appearance and character, or capable of being restored to such and which is undeveloped and roadless. There are no permanent improvements or any form of human habitation. It provides outstanding opportunities for solitude, with awe-inspiring natural characteristics with sight and sound of human habitation and activities barely discernable and at far distance. The conservation objectives for this zone require that deviation from a natural/pristine state should be minimized, and existing impacts should be reduced. The aesthetic/recreational objectives for the zone specify that activities which impact on the intrinsically wild appearance and character of the area, or which impact on the wilderness characteristics of the area (solitude, remoteness, wildness, serenity, peace etc) will not be tolerated. In Addo Elephant NP, *Remote Areas* were designated in the mountainous areas of the Zuurberg and in sections of the Woody Cape dunefields, which are both landscapes with high environmental sensitivity and value.

Primitive Zone: The prime characteristic of the zone is the experience of wilderness qualities with access controlled in terms of numbers, frequency and size of groups. The zone shares the wilderness qualities of the *Remote Zone*, but with limited access roads (mostly 4x4) and hiking trails, and the potential for basic small-scale self-catering accommodation facilities such as a small bushcamp. Views of human activities and development outside of the park may be visible from this zone. The conservation objectives for this zone require that deviation from a natural/pristine state should be small and limited to restricted impact footprints, and that existing impacts should be reduced. The aesthetic/recreational objectives for the zone specify that activities which impact on the intrinsically wild appearance and character of the area, or which impact on the wilderness characteristics of the area (solitude, remoteness, wildness, serenity, peace etc) should be restricted and impacts limited to the site of the facility. Ideally visitors should only be aware of the facility or infrastructure that they are using, and this infrastructure/facility should be designed to fit in with the environment within which it is located in order to avoid aesthetic impacts. In Addo Elephant NP, *Primitive Areas* were designated to buffer *Remote Areas* and to protect most of the remaining sensitive areas from high levels of tourist activity. *Primitive Areas* were also designated in areas with relatively low environmental sensitivity to allow access into remote mountainous areas. Most contractual park sections were designated *Primitive*, as the controlled access associated with *Primitive* is compatible with the activities undertaken by the concessionaires. Controlled access trail areas (such as the Alexandria hiking trail) fall within this zone. In areas where *Remote Zones* border on the park boundary, a 100m wide *Primitive Zone* was designated to allow park management access to fences.

Quiet Zone: This zone is characterized by unaccompanied non-motorized access. Visitors are allowed unaccompanied access, mainly on foot, for a wide range of experiences. Larger numbers of visitors are allowed than in the *Primitive Zone* and contact between visitors is frequent. The conservation objectives for this zone specify some deviation from a natural/pristine state is allowed, but care should be taken to restrict the development footprint. The aesthetic/recreational objectives for the zone specify that activities which impact on the relatively natural appearance and character of the area should be restricted, though the presence of larger numbers of visitors and the facilities they require, may impact on the feeling of “wildness” found in this zone. In Addo Elephant NP, *Quiet Areas* were designated in the Kwaihoek section (close to Kenton on sea). This zone

has limited application in the park due to the widespread presence of dangerous animals which preclude unaccompanied pedestrian access in many areas.

Low Intensity Leisure Zone: *the Low Intensity Leisure Zone* is characterized by relatively high levels of tourist activity, motorized self-drive access to certain areas, and the potential for small basic camps without facilities such as shops and restaurants. Facilities along roads are limited to basic self catering picnic sites with toilet facilities. Low intensity leisure does not imply motorized access to beaches. The conservation objectives for this zone specify that although deviation from a natural/pristine state should be minimized and limited to restricted impact footprints as far as possible, it is accepted that some damage to the biophysical environment associated with tourist activities and facilities will be inevitable. The aesthetic/recreational objectives for the zone specify that although activities and facilities will impact on the wild appearance and reduction of the wilderness characteristics of the area (solitude, remoteness, wildness etc) is inevitable, these should be managed and limited to ensure that the area still provides a relatively natural outdoor experience. *Low Intensity Leisure Areas* were designated in the current and future game viewing areas (the current main section, Kabouga, Nyathi, and around Darlington Dam), in relatively high use recreational areas such as Alexandria forest around the administrative area, and the beaches east of the Sunday's River and also west of Cannon Rocks. Low intensity leisure areas were only designated if relatively high tourist activity did not conflict with the underlying landscape sensitivity and value analysis.

These definitions suggest that no developments should be visible from pristine wilderness areas, but that it would be acceptable if such developments were visible from primitive wilderness areas. It is assumed that 'visible' means to the naked eye. The structures also must not be visible from existing public Park roads. For those Parks where zonation or management plans are not yet available, these principles will apply within the context of the particular Park, and the location and design of the development. That is, the developments may not be visible from other tourism developments or facilities or in the Park generally.

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 will 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 'wilderness' 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 assess the visual impacts of all structures, 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 (refer Touch the Earth Lightly principles). The height of buildings is important. Only single story structures are permitted.

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.

2.6.1 Building Materials

The use of building materials gathered on site in the park will not be permitted as a general rule. In exceptional circumstances, it may be appropriate to use certain of these materials. 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.

2.6.2 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. Similarly, lights at artificial water features, if these are permitted, must be positioned so as to minimise visual impacts. The design must consider the need to obscure fires and other light sources away from areas of the Park where they may be visible.

2.6.3 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."

2.7 Bulk Infrastructure

2.7.1 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.

If the Project Site is one for which electricity from the national grid must be reticulated over long distances, and/or through sensitive areas or restricted zones, the Private Party is unlikely to use this energy source, as the cost likely will be prohibitive. Electricity brought to the Development Site must be transmitted along the route with the lowest cumulative impacts, as determined by the EIA.

SANParks envisages that, for some Project Sites, alternative energy sources will be the only viable option. 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.

2.7.2 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, SANParks encourages 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. Strong consideration must be given to recycling, especially if water holes, garden irrigation and other water-intensive amenities are to be provided. 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. Artificial water features 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,⁷ 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

⁷ Government of South Africa, 1998. *National Water Act (No, 36 of 1998)*.

sources within and outside of the Park. SANParks will monitor all water extraction points. The Private Party must therefore ensure that requisite 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 -- for example, by outsourcing high use activities such as laundry. 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.

2.7.3 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 all 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.

2.8 Communications Infrastructure

2.8.1 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 Private Party must arrange for service with the appropriate telephone company.

2.8.2 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 Republic of South Africa's EIA Guidelines.

2.9 Waste Management

2.9.1 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) must 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 Construction and Operational Phases, which will be monitored by the ECO.

2.9.2 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 incinerators or in approved waste sites outside the Park. SANParks will process Private Parties' biodegradable wastes in its incinerators, where these are available and providing the units have sufficient capacity. SANParks will charge the Private Party a fee for this service on a cost recovery basis. The Private Party will be required to transport wastes to these units in a responsible manner.

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. If the Private Party anticipates it will need to construct an incinerator on site, this requirement also must be included in the Development and Environment Proposal. Ash from incinerators must be removed from the Project Site and Park and properly disposed of. The EIA must consider the design and capacity of the unit to be installed, as well as the suitability of the Development Site to this type of facility.

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 Construction and Operational Phases, including site rehabilitation after construction is completed, must be addressed in the EIA and included as items in the EMP.

2.10 Roads and Tracks

SANParks recognises that the type of tourism product likely to be offered at the Project Site will necessitate a certain network of road and tracks, both for access to and from the Project Site for guests and supplies, as well as for guided game viewing for guests. The Private Party may utilise existing roads and tracks in its Project Site. These will be maintained by SANParks. In the event that new roads/tracks are created (after EIA completion and SANParks approval) the Private Party will be responsible for the maintenance of such roads/tracks. If the Private Party identifies certain Park roads or tracks that it does *not* wish to utilise during the Development Period and Project Term, this must be indicated to both SANParks and the EIA consultant at the time the EIA is undertaken.

2.10.1 Positioning and Design of new Roads and Tracks

Roads and tracks can have a major impact on ecosystems, particularly in terms of erosion and sedimentation of local watercourses. To minimise these impacts, the positioning of new roads and tracks must take into account the type(s) of soils, presence of water, and other factors related to the degree of impact they will have. New roads and tracks for game viewing purposes shall be limited to the amount that SANParks has established for each Project Site. All new roads and tracks 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.

2.10.2 Standards for Roads and Tracks

The types of roads and tracks built must be consistent with the use for which they are 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 these roads. The design, layout, construction and maintenance of roads will vary among Project Sites (refer 28.4).

All tracks for game viewing purposes 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. All roads and tracks must be designed with minimal disturbance to the environment as a priority. SANParks expects that construction of two-spoor tracks for game viewing purposes will need to be done largely manually, to prevent unnecessary disturbance to the environment. The use of heavy machinery to construct tracks is permitted only where it is absolutely essential, in consultation and with the approval of SANParks.

Where possible, roads 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 Project Sites, however, it may be necessary to import gravel for hardening and capping certain roads 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 address 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 limit of new road development specified in Schedule B. Detailed siting, alignment and 'ground truthing' of the road and track network for each Project Site will be done at the time the EIA is conducted, in conjunction with the relevant Section Ranger and SANParks soil scientist.

2.11 Fire Management

Fire management is an important concern at all Parks, and a major policy and operational issue at Parks such as Kruger and Golden Gate. 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:

- (1) lightning ('natural') fires in the AENP must be allowed to burn;
- (2) consistent with current policy, however, SANParks will endeavour within its capacity to ensure that no more than 50% of any Project Site burns due to one particular lightning fire; and
- (3) the Private Party must implement fire prevention and life safety measures

that comply fully with South African standards (SABS 0400).

Within a Project Site, natural fires may not be controlled, except in the immediate surrounds of the Development Site / camp, and/or to save human life or property. Control of natural fires that occur elsewhere in 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.

Should a significant portion of a Project Site burn in one season, SANParks will permit traversing in other nearby areas, in consultation with Park staff, until the burned areas have recovered sufficiently. If this is in a 'general public area,' normal rules and conditions applicable to the public will prevail. The Private Party must familiarise itself with the relevant fire policies and procedures of the Park in which its Project Site is located.

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.

2.12 Staff Issues

2.12.1 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 the Private Party to maintain close communication and co-ordination with Parks staff throughout the Construction Phase.

2.12.2 Staff Accommodation

As per 28.3, staff can be accommodated at the tented camps or in the refurbished farmhouses. Where farmhouses are refurbished, the accommodation must comply with national building regulations and standards. SANParks will allow only single accommodation units; no dormitory structures will be permitted. 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.

2.12.3 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 Construction 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.

2.12.4 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.

2.13 Access

2.13.1 Park Entrance Gates

All guests, deliveries and other vehicles entering Parks will have to do so through SANParks designated or otherwise agreed entrance gates, as described in

Schedule B. 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 with the relevant section ranger. All Project Site guests must pay relevant Park entry fees, 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 will not pay Park entry fees.

Control of gates will in most cases lie 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 up till 23h30 and from 03hr30.
- 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 section ranger. 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, either in Private Party vehicles or in a convoy between the Project Site and a specified exit/entry point to the Park. 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.

2.13.2 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 Darlington Lake Lodge.

2.13.3 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.

2.14 Private Party Vehicles

2.14.1 Vehicle Standards

All game drive vehicles and game drive activities 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 game drive 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;
- 4X4 capability is essential (UNIMOG type vehicle might be required);

- 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.

2.14.2 Other vehicles

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

2.15 Project Site Activities

The primary guest activity for this concession is the canoe trails. However, complimentary activities such as game drives (day and night), abseiling, etc.

could form part of the product. In the instance where the bid submission outlined the establishment of an activities centre, i.e. where the River Lodge are being used as activities centre, the Private Party will be allowed to present activities. It should be noted that the list of activities and qualifications to present these activities have to be approved by SANParks prior to this business being established. ***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.***

2.15.1 Game Drives

Game drives are only permitted on designated tracks within the Project Site. Within Project Sites, the following rules shall apply:

- Driving after dark is permitted in agreed areas up to 22hr00. Driving later than this time requires SANParks approval;
- All routes to be utilised for night drives must be planned in liaison with SANParks Management and must be submitted to SANParks management for final approval;
- Guests may alight from the vehicle only under instruction from the Guide and not move more than 50m from the vehicle. Should they wish to move beyond this distance, this must be done with the concurrence of the Guide, and the Guidelines for Walks (see section 2.15.4) will then apply to this activity;
- Guests may not stand up while driving or at game sightings;
- Only Private Party staff are permitted to sit or track on the 'tracker seat' located on the bonnet, and they must move inside the vehicle when approaching dangerous game;
- Noise levels on a drive must to be kept to a minimum and controlled by the Guide;
- Calling of any nature, baiting or any other activity the purpose of which is to attract animals' attention is not permitted;

- Guides must have attained Field Guides Association of South Africa (FGASA) Level 1 standard (or an equivalent qualification, as agreed by SANParks).

2.15.2 Sighting Procedures

The following procedures must be observed at sightings in a Project Site:

- Only one vehicle may move into, around, or away from a sighting at any one time;
- The Guide who first arrives at a sighting will take charge and control of the sighting, and will hand over to another Guide upon leaving the sighting;
- A maximum of three vehicles is permitted at a sighting at any one time;
- Escape routes from the sighting must be assessed before entering;
- All animals must be regarded as potentially dangerous and caution must be observed at all times;
- Sighting must be approached in the appropriate gear;
- Guests may not remove or damage vegetation or artefacts; and
- Areas where guided walks may be conducted must be avoided.

2.15.3 Off-road driving

Off-road driving is **prohibited** except with prior exceptional permission (and then only over accommodating soil types and with commitment to follow up rehabilitation procedures).

2.15.4 Walks

Walking excursions with guests must comply with the following standards:

- These are permitted anywhere within the Project Site, although specific provisions may vary depending on the Park in question;

- Depending on the introduction of game, guides will be required to have attained FGASA level 3 SKS ('dangerous game') qualifications, or an equivalent qualification, as agreed by SANParks; The following guidelines will apply when game that form part of the big five is present:
- The Guide must carry a rifle of a minimum caliber of .375, which must be loaded with suitable ammunition. The Guide also must carry a minimum of 10 rounds of additional ammunition;
- The maximum number of guests on a trail may not exceed eight guests plus two Guides, or a total of 10 (ten) people. If a Private Party wants to utilise additional staff on any given walk, the number of guests must be decreased commensurately. One of the Guides must have attained FGASA level 3 (or an equivalent qualification as agreed by SANParks); the other must have extensive local knowledge of the area, be competent to handle the firearm carried by the main Guide, be able to utilise the radio, and be trained in basic medical first aid;
- All trailists must sign an indemnity form before proceeding on a trail and dangers and safety procedures must be explained to all trailists;
- Walking is only permitted between sunrise and sunset; and
- Dangerous game may not be tracked.

2.15.5 Campfires

No natural resources may be collected and used within any Parks without written approval from SANParks. Specifically in this regard, 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. Some Parks only permit the use of cleared alien vegetation from approved clearing operations to be used for fires. Campfires and/or gas cookers will be allowed only in designated areas and at specified times, as agreed to by SANParks in writing.

2.15.6 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 (especially those discussed in

sections 2.14 and 2.15). 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.

2.15.7 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

2.15.8 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 permit Private Parties to undertake any necessary security precautions in the Development Site and its immediate surroundings. Security in the rest of 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.

2.16 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 at present, 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 agreed established.

34 ANNEXURE VI - 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 (of tented camps), refurbishment (of certain farmstead buildings), Operation, Management and Maintenance of the Canoe Trail and eco-adventure product in the Sundays River in the Addo Elephant 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 R 90,000 (Ninety Thousand Rand) in aggregate (the “**Maximum Amount**”) without delay, on receipt by the Bank of the first written demand by

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:

Telefax:

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 _____ 2007

AT

(Place)

SIGNATURE _____ SIGNATURE _____

[NAME]

[NAME]

[TITLE]

[TITLE]

WITNESS 1 _____ WITNESS 2 _____

34.1 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

34.2 PART C: CHARACTERISTICS OF THE BID AND DEVELOPMENT BOND

To: South African National Parks (SANParks)

WHEREAS [name of bidder] (the “Bidder”) is to submit to you a bid to enter into a PPP Agreement with SANParks for the purpose of the Canoe Trail and eco-adventure activities in the Sundays River Valley in the Addo Elephant National Park;

WHEREAS you require the bidder to include in the bid a bid bond for R 90,000 (Ninety Thousand Rand);

AND WHEREAS we have agreed to give you such a bid bond;

NOW THEREFORE we hereby irrevocably and unconditionally undertake to pay you, upon your first written demand and without objection or argument, the sum of R 90,000 (Ninety 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 this request for proposals;
- The withdrawal or modification of its bid during the period of validity;
- Failure by the preferred bidder to furnish the required performance bond under the PPP Agreement in accordance with the provisions of the PPP Agreement.

This bond shall be valid for 12 (twelve) months after the Bid Date.

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

SIGNATURE AND SEAL

Name of Bank_____

Address_____

Date_____

35 ANNEXURE VII - SHAREHOLDING, COMPANY STRUCTURE AND REQUIRED QUALIFICATIONS TO OPERATE LODGING SITE

35.1 PART A: REQUIRED QUALIFICATIONS TO OPERATE PRODUCT

The Private Party shall be permitted to modify the shareholding and institutional structure of its operating arrangements from time to time as it pleases, with the approval of SANParks, according to Clause 18.5 in the PPP Agreement, provided at all times during the life of the PPP Project it continues to abide by the following criteria:

35.2 Financial Requirements

35.2.1 The Submitting Company shall submit the following economic and financial documentation:

35.2.1.1 audited financial statements corresponding to the last two (2) years;

35.2.1.2 annual reports for the last two (2) years;

35.2.2 If the qualification criteria are being met by reference to any other companies, whether current or intended Shareholders or partners, then these companies must submit the same information.

35.2.3 If the financial criteria are being met by companies which are privately held, and do not produce audited statements, or by private individuals, then these companies or individuals must produce a statement of assets, with confirmation of ownership, certified by a qualified auditor.

35.3 Eco-tourism Track Record

35.3.1 The qualifying Eco-tourism Operator(s) or individuals, shareholders or partners, of each Submitting Company, who are being used to meet the criteria regarding eco-tourism experience or the generation of turnover, must provide a general description of the Eco-Tourism/Hotel facilities and services they have operated, including, (i) the number of years in active existence; (ii) the nature of the product sold; and (iii) the total number of canoe seats and beds such facilities or services

comprised.

35.3.2 In the event that the Submitting Company is satisfying the requirements under this Section by using the qualifications of a Partner, Shareholder or parent, these indicators must also be certified in the above-mentioned manner. Additionally, each of the members of the Partnership, or the Shareholder or subsidiary as the case may be, must demonstrate that such Shareholder, parent or partner is willing and able to support the technical operations of the Submitting Company for the concession site or sites involved.

**35.4 PART B: PRIVATE PARTY JUDICIAL STATUS, SHAREHOLDING STRUCTURE
AND QUALIFICATIONS TO OPERATE THE PRODUCT**

36 ANNEXURE VIII - COMPLIANCE EVENTS

The following Compliance Events will apply to the Project:

36.1 The Approval of an Environmental Impact Assessment by the Relevant Authority;

36.2 The granting of any necessary authorisations, permits and/or licences;

36.3 Provision by the Private Party of a Performance Bond in the amount and form indicated in Clause 3.11.

36.4 Proof of relevant licenses for all performing staff for canoe guiding and other activities offered by the Private Party in the Concession.

37 ANNEXURE IX - ENVIRONMENTAL CONTROL PROCEDURE FOR BIDDERS

It is anticipated that the following procedure will be followed by Bidders with respect to their bid and compliance with environmental conditions:

- 37.1 Bidders must sign and agree to the environmental standards and conditions as set out in the documents.
- 37.2 Bidders must submit with their bid an architects sketch, showing what the structures will look like, where they will be located on the landscape and what material will be used. Location of all bulk services such as electricity, water, sewerage etc must also be detailed.
- 37.3 SANParks can then initially evaluate this to ensure there are no basic problems. If there are problems they must be brought to their attention by SANParks and corrected before final plans are prepared. At this stage they must have obtained initial screening clearance from their independent environmental consultant/s.
- 37.4 Bidders must submit details of who their environmental consultant/s is/are. This is only required so that SANParks knows who they will be dealing with.
- 37.5 The completed environmental impact assessment which has been prepared by the independent consultants must then be submitted to SANParks for final approval before being send to DEAT. SANParks will provide formal feedback within 14 (fourteen) Business Days of submission.
- 37.6 Construction and site activity can only commence once final approval has been obtained from DEAT. This and the EIA report must be made available to SANParks.
- 37.7 Monthly reports by the Environmental Control Officer must be submitted to SANParks during construction and half yearly thereafter. Steps must be taken to mitigate any impacts identified by the ECO and these must be communicated to SANParks who may wish to inspect/review them.

38 ANNEXURE X - PPP FEES

38.1 Minimum PPP Fee

38.1.1 The Minimum PPP Fee will amount to R 90,000 (Ninety Thousand Rand) per annum payable monthly.

38.1.2 Figures will be provided in mid-2008 prices, and will update throughout the Project Term on an annual basis according to movement in the Consumer Price Index, by the method defined in the PPP Agreement.

38.2 Calculated Annual PPP Fee = _____ % of NET REVENUES

Net Revenues amounts to any and all monies, in any manner, whether directly or indirectly generated by and/or flowing or arising from the Project and the PPP Agreement, received or receivable by the Private Party, excluding the commissions of travel agents and tour operators, damages, interest, insurance proceeds, capital gains realised on the disposal of movable assets, park entrance fees and Value Added Tax received by the Private Party. For any given Project Year, these Net Revenues must be consistent with the presentation of accounts for tax purposes for the appropriate Financial Years, calculated on a pro rata basis.

39 ANNEXURE XI – BEE OBLIGATIONS

In this Annexure,

39.1 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.

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

39.2.1 "**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;

39.2.2 "**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;

39.2.3 "**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. "**Black Person**" means any such citizen;

39.2.4 "**Black Women**" means female Black People;

39.2.5 "**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;

39.2.6 "**Community Trust**" means the Mayibuye Ndlovu Community Trust - A not-for-profit trust created in terms of the Trust Property Control Act by volunteer members for channelling the proceeds of various activities and investments for

the common good of persons ordinarily resident within a specific town, village or settlement;

39.2.7 "**Community Trust Ownership**" means Equity in the Private Party which must, as a mandatory provision of the Project, be acquired by a Community Trust;

39.2.8 "**Direct Ownership**" means ownership of an equity interest in an enterprise where such equity interest comprises:

39.2.8.1 the right to participate in the voting rights in that enterprise;

39.2.8.2 the right to receive unencumbered economic interest (such as dividends) flowing to the shareholders of that enterprise; and

39.2.8.3 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;

39.2.8.4 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;

39.2.9 "**Discretionary Procurement**" includes all amounts expended by an enterprise subject to measurement. Discretionary procurement excludes:

39.2.9.1 employment related expenditure;

39.2.9.2 procurement from public utilities and natural monopolies; and

39.2.9.3 facilitated procurement by travel agencies or other travel distribution providers where the choice of service providers remains with the consumer;

39.2.10 "**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;

- 39.2.11 **"Enterprise Development"** may take a variety of forms, including:
- 39.2.11.1 direct investment in Black Owned and Black Empowered SMMEs;
 - 39.2.11.2 joint ventures with Black Owned and Black Empowered SMMEs that result in "substantive" skills transfer;
 - 39.2.11.3 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
 - 39.2.11.4 twinning initiatives with Black Owned and Black Empowered SMMEs which result in cost savings or revenue generation for those SMMEs;
- 39.2.12 **"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;
- 39.2.13 **"Learnership"** refers to learnerships as defined in the Skills Development Act, No. 97 of 1998, amended in 2003;
- 39.2.14 **"Local"** means the geographic area being within 70 kilometres from any point on the AENP border (as per the border line on 1 March 2007);
- 39.2.15 **"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;
- 39.2.16 **"Mandatory Community Trust"** refers to Equity in the Private Party which must, as a mandatory provision of the PPP, be acquired by the Community Trust defined;
- 39.2.17 **"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;
- 39.2.18 **"Preferential Procurement"** refers to all spend with BEE compliant suppliers, to be calculated as follows:

- 39.2.18.1 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
- 39.2.18.2 fifty cents (50c) for every one Rand (R1) spent with Satisfactory BEE Contributors;
- all of which terms are defined as follows:
- 39.2.18.3 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;
- 39.2.18.4 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;
- 39.2.18.5 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;
- 39.2.18.6 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;
- 39.2.18.7 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
- 39.2.18.8 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;
- 39.2.19 **"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;
- 39.2.20 **"Supervisory"** refers to the junior management and professional staff;

39.2.21 **"TOMSA (Tourism Marketing South Africa) Levy Collectors"** refers to tourism enterprises who are registered to raise funds on behalf of the trust;

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

39.2.23 **"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.

39.3 2009 Milestones and Weightings

39.3.1 The Private Party shall from Effective Date to 31 March 2010 (**"First Period"**) comply with the commitments and undertakings set out in the following table.

Indicator	2009 Weightings		2009 MILESTONES	
	Weighting	Sub-weighting	Indicators to measure BEE achievement	2009 Milestone
				Target
				C
A	B			
Ownership	15%	10%	Percentage share of economic benefits as reflected by direct shareholding by black people	14%
		5%	Community trust ownership	7%
Strategic representation	14%	3.0%	Black people as a percentage of board of directors	30%
		3.0%	Black women as a percentage of board of directors	15%
		2.0%	Local people as a percentage of board of directors	15%
		3.0%	Black people as a percentage of executive management	30%
		3.0%	Black women as a percentage of executive management	15%
Employment equity	14%	1.5%	Black people as a percentage of management	35%
		1.5%	Black women as a percentage of management	18%
		1.5%	Local people as a percentage of management	15%
		1.5%	Black people as a percentage of supervisors, junior and skilled employees	45%
		1.5%	Black women as a percentage of supervisors, junior and skilled employees	23%

Indicator	2009 Weightings		2009 MILESTONES	
	Weighting	Sub-weighting	Indicators to measure BEE achievement	2009 Milestone
				Target
				C
A	B			
		1.5%	Local people as a percentage of supervisors, junior and skilled employees	35%
		1.5%	Black people as a percentage of total staff	53%
		1.5%	Black women as a percentage of total staff	28%
		2%	Local people as a percentage of total staff	50%
Skills development	20%	5%	Percentage of payroll spend on skills development (including skills development levy) on all accredited training	3%
		5%	Percentage of skills development spend on all black employees	75%
		5%	Number of learnerships as a percentage of total employees	2%
		5%	Number of black learners as a percentage of total learners	80%
Preferential procurement	15%	10%	Spend on BEE compliant companies as a percentage of total procurement spend	40%
		5%	Spend on local BEE compliant companies as a percentage of total procurement spend	20%
Enterprise development	14%	7%	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%
		7%	Enhanced revenue and/or cost savings and/or twining initiatives facilitated for black owned SMMEs, as a percentage of revenue.	1%
Social development and industry specific	8%	3%	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%
		2%	Percentage of new recruits with no prior work experience	10%
		3%	Status of TOMSA levy collector	Yes
Total BEE points	100	100		

39.4 2104 Milestones and Targets

39.4.1 The Private Party shall from 1 April 2010 to 31 March 2014 (“**Second Period**”) 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
	A	B		C
Ownership	20%	13%	Percentage share of economic benefits as reflected by direct shareholding by black people	20%
		7.0%	Community trust ownership	10%
Strategic representation	12%	2.0%	Black people as a percentage of board of directors	30%
		2.0%	Black women as a percentage of board of directors	15%
		3.0%	Local people as a percentage of board of directors	25%
		2.5%	Black people as a percentage of executive management	30%
Employment equity		2.5%	Black women as a percentage of executive management	15%
	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	60%
		1.0%	Black women as a percentage of supervisors, junior and skilled employees	30%
		2.0%	Local people as a percentage of supervisors, junior and skilled employees	50%
		1.0%	Black people as a percentage of total staff	60%
Skills development	18%	1.0%	Black women as a percentage of total staff	40%
		2.0%	Local people as a percentage of total staff	50%
		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%	
Preferential procurement	18%	10.0%	Spend on BEE compliant companies as a percentage of total procurement spend	40%
		8.0%	Spend on local BEE compliant companies as a percentage of total procurement spend	20%

Indicator	2014 Weightings		2014 MILESTONES	
	Weighting	Sub-weighting	Indicators to measure BEE achievement	2014 Milestone
				Target
A	B		C	
Enterprise development	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%
Social development and industry specific	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
Total BEE points	100	100		

In accordance with its BEE commitments in the above tables, the Private Party agrees to the following.

39.5 Ownership

The Private Party shall ensure that:

39.5.1 For the **First Period** (Effective Date to 31 March 2010):

39.5.1.1 no less than **14%** percent of the Direct Ownership from time to time shall be directly and beneficially owned by Black People and/or Black Enterprises (the "**Minimum Black Ownership**") and such ownership shall rank *pari passu* with the equity held by the Shareholders who are not Black People or Black Enterprises; and

39.5.1.2 no less than **7%** percent of the Direct Ownership from time to time shall be directly and beneficially owned by the Community Trust (the "**Minimum Community Trust Ownership**") and such ownership shall rank *pari passu* with the equity held by other Shareholders];

39.5.2 from the end of **First Period** to the end of the **Second Period**

- 39.5.2.1 no less than **20%** percent of the Direct Ownership from time to time shall be directly and beneficially owned by Black People and/or Black Enterprises (the “**Minimum Black Ownership**”) and such ownership shall rank *pari passu* with the equity held by the Shareholders who are not Black People or Black Enterprises; and
- 39.5.2.2 no less than **10%** percent of the Direct Ownership from time to time shall be directly and beneficially owned by the Community Trust (the “**Minimum Community Trust Ownership**”) and such ownership shall rank *pari passu* with the equity held by other Shareholders];
- 39.5.3 the Black Shareholders and the Community Trust shall be entitled to earn a return on their investment in the Project through their participation in:
- 39.5.3.1 the dividends and other distributions declared by the Private Party from time to time in respect of the Ownership; and
- 39.5.3.2 the payments made to the Shareholders in respect of the Shareholder Loans;
- 39.5.4 the Private Party shall furnish SANParks annually within **30** Business Days after the end of each financial year of the Private Party with a report certified by the Private Party’s auditors (“**Annual BEE Report**”) detailing, in relation to each Shareholder:
- 39.5.4.1 the Ownership of that Shareholder and details of all changes whatsoever in such ownership in that financial year (including, without limitation, changes effected through any acquisition or disposal of issued shares, or through any subscription for new shares);
- 39.5.4.2 the Shareholder Loans of that Shareholder and details of all changes in the amount of such Shareholder Loans in that financial year (including, without limitation, changes effected through repayments);
- 39.5.4.3 the voting rights attaching to all classes of Ownership owned by that Shareholder in that financial year; and
- 39.5.4.4 details of all dividends and other distributions declared to and received by that Shareholder in respect of its Ownership, as well as all payments made to that Shareholder in respect of any Shareholder Loans, in that financial year.

39.5.5 The Private Party shall procure that for the duration of **Periods One and Two:**

39.5.5.1 there is no sale, assignment, cession, transfer, exchange, renunciation or other disposal (at any time) of the whole or any part of the Ownership and/or the Shareholder Loans of any Black Shareholder other than to:

39.5.5.1.1 another Black Shareholder, Black Person or Black Enterprise; or

39.5.5.1.2 the Community Trust other than to another Community Trust

39.5.6 there is no dilution in the aggregate Ownership of the Black Shareholders below the Minimum Black Ownership or of the Community Trust below the Minimum Community Trust Ownership; and

39.5.7 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.

39.6 Employment Equity

39.6.1 The Private Party shall comply with the Employment Equity Act, 1998 and implement its current employment equity plan, as substituted from time to time in accordance with that statute. The Private Party shall furnish SANParks with:

39.6.1.1 each successive employment equity plan submitted by the Private Party in accordance with that statute within **14** days following the date of submission of that plan; and

39.6.1.2 a copy of each report submitted by the Private Party to the Department of Labour (or its successor) pursuant to section 21 of that statute within **14** days following the date of submission of that report.

39.7 Skills Development

39.7.1 The Private Party shall include in its Annual BEE Report for each financial year:

39.7.1.1 a complete statement of all targets set forth in the skills development plan for that financial year that have been achieved by the Private Party in that financial year, together with details of the costs incurred by the Private Party in that financial year in respect of such targets;

39.7.1.2 a complete statement of all targets (if any) set forth in the skills

development plan for that financial year that have not been achieved by the Private Party in that financial year, together with the Private Party's reasons for not achieving these targets; and

- 39.7.1.3 details of the portion (if any) of its agreed Annual Skills Development Spend for that financial year not applied by the Private Party towards the implementation of any of its skills development targets for that financial year, together with the Private Party's reasons for not applying the full Annual Skills Development Spend in that financial year.

39.8 Milestones and Targets Post-2014

39.8.1 The BEE Milestones and Targets for the duration of the PPP Term and in particular for the period from 1 April 2014 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.

39.8.2 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.

39.8.3 The milestones and targets of the Tourism BEE Charter and Scorecard could thus be amended from time to time and the provisions of this Annexure VI 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.

39.9 External BEE Verification

39.9.1 The Private Party shall ensure compliance with all Regulatory Provisions relating to Black Economic Empowerment and undertakes to implement the BEE Obligations set out in Annexure XI.

39.9.2 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.

39.9.3 The Private Party shall be obliged in terms of this PPP Agreement to, at a minimum, obtain a overall weighted score of 50% from the external verification agency for each Project Year.

39.9.4 In the event of default by the Private Party to comply with the provisions of the foregoing Clause 39.9.3, 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 terminate this PPP Agreement in accordance with its terms.

39.9.5 The Private Party shall have the right to appeal against any notice of breach, or intention to terminate the contract, for reasons related to the Private Party's failures to fulfil empowerment obligations. The appeal will be heard by a committee of 3 (three) people experienced in promoting empowerment in other areas of economic life in the Republic of South Africa. The Parties shall each nominate one person to the committee and the two nominees shall agree on the third, failing which the President of the Attorneys' Association of Gauteng shall nominate such third person. The unsuccessful party shall pay all costs of the appeal process. The committee shall act as experts and not as arbitrators and the determination by such committee shall be final and binding on the Parties.

40 ANNEXURE XII – MONTHLY RENTAL SCHEDULE

The following outlines and example of the monthly payment schedule that will be used as back-up of monthly PPP fee payments to SANParks:

SANParks - AENP Canoe Concession									
Monthly Rental Schedule - Sundays River Canoe Trail and Eco-adventure activities								Month:	To be completed
West Coast									
Private Party debtor code: C999999 (to be determined - TBD)	Cost Centre	Category Code	Minimum Rental				Rental Due	VAT	TOTAL RENTAL
				%	Actual Turnover*	% Turnover Rental		14%	PAYABLE
Sundays River Canoe Trail and Eco-adventure activities	X-X-XX-XX-X (TBD)	9999 (TBD)	7,500.00	3.0%	200,000.00	6,000.00	7,500.00	1,050.00	8,550.00
			7,500.00	3.0%	200,000.00	6,000.00	7,500.00	1,050.00	8,550.00
					-	-			
					200,000.00	6,000.00	7,500.00	1,050.00	8,550.00
		TOTAL	7,500.00					TOTAL	8,550.00
Please Note									
1. This sheet must be emailed to the following people by the 5th of each month:									
Giju Varghese - gjuv@sanparks.org									
Ibraheem Dockrat - ibraheemd@sanparks.org									
James Daniels - jamesd@sanparks.org									
Duduzile Taole - duduzilet@sanparks.org									
2. Payments to SANParks must be VAT inclusive									
3. Payments to SANParks must be made before the 7th of each month									
CONFIRM									
4. Payments must be made to the following bank account:									
FNB Corporate (Main)									
Account No: 6202 932 3053									
Branch Code: 253 145									

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