

**PPP AGREEMENT IN RESPECT OF THE LISTER'S TEA ROOM PROJECT
IN THE TOKAI PRECINCT OF TABLE MOUNTAIN NATIONAL PARK**

between

SOUTH AFRICAN NATIONAL PARKS

and

[INSERT NAME OF PRIVATE PARTY]

TABLE OF CONTENTS

	Page No.
1. Definitions and interpretation	4
2. Introduction	15
3. Appointment of Private Party and grant of rights	16
4. Duration of this PPP Agreement	17
5. Project Site and Facility	18
6. Indemnity	21
7. Institution rights and limitations on liability	22
8. Warranties and undertakings	23
9. Project Deliverables	24
10. Insurance	25
11. Access to documents, copyright and related matters	26
12. General reporting and financial reporting requirements	29
13. Rights of access	31
14. Protected Area and Protected Area users	31
15. Changes in Control	32
16. Removal of personnel	32
17. PPP Fee	32
18. User charges in respect of Operation and Maintenance	33
19. Default interest	34
20. Force Majeure	34
21. Private Party Default	36
22. Institution Default	38
23. Corrupt gifts and fraud	39
24. Effects of Termination	40
25. Dispute resolution	43
26. Confidentiality	44
27. Miscellaneous matters	45
Schedule 1 - Works Specifications	53
Schedule 2 - Environmental Specifications	54
Schedule 3 - BEE Obligations	55
Schedule 4 - Project Site	69
Schedule 5 - PPP Fee	70
Schedule 6 - Institution Consents	71

Schedule 7 - User charge rates.....72
Schedule 8 - Private Party's Resolution.....73
Schedule 9 - Constitutional Documents.....74

DRAFT

1. Definitions and interpretation

1.1 In this Agreement and its Schedules, the following terms shall, unless inconsistent with the context in which they appear, have the following meanings and expressions derived from those terms shall bear corresponding meanings:

- 1.1.1 **"the Act"** - The National Environmental Act: Protected Areas Act, 2003 (Act No 57 of 2003) (as amended);
- 1.1.2 **"this Agreement"** - this agreement and its Schedules, as amended, extended, replaced and varied from time to time;
- 1.1.3 **"Black Economic Empowerment" or "BEE"** - an integrated and coherent socio-economic process that directly contributes to the economic transformation of South Africa and brings about significant increases in the number of Black People who manage, own and control the country's economy, as well as significant decreases in income inequalities, as defined in the Broad Based Black Economic Empowerment Act;
- 1.1.4 **"BEE Obligations"** - the Black Economic Empowerment requirements detailed in Schedule 3;
- 1.1.5 **"Business Day"** - any day that is not a Saturday, Sunday or official public holiday in South Africa;
- 1.1.6 **"Change in Control"** - any change whatsoever in Control, whether effected directly or indirectly;
- 1.1.7 **"Confidential Information"** - any and all:

- 1.1.7.1 information relating to the design of the Facility or to any Intellectual Property Rights of the Private Party;
- 1.1.7.2 other information which relates to the undertaking or finances of any of the Parties and which is identified by the Party releasing such information as being confidential or which by its nature is confidential and the release of which is made in connection with this PPP Agreement;
- 1.1.8 **"Consents"**
- all consents, permits, clearances, authorisations, approvals, rulings, exemptions, registrations, filings, decisions, licences, certificates required to be issued by or made with any Responsible Authority in connection with the performance of any of the Project Deliverables;
- 1.1.9 **"Constitutional Documents"**
- the Private Party's memorandum and articles of association, certificate of incorporation and certificate to commence business, as well as the Shareholders Agreement, all of which are attached to this Agreement as Schedule 9 and the terms of which are to be to the satisfaction of the Institution;
- 1.1.10 **"Control"**
- in relation to any entity, the ability directly or indirectly to direct or cause the direction of the votes attaching to the majority of its issued shares or interests carrying voting rights, or to appoint or remove or cause the appointment or removal of any directors (or equivalent

and perform its obligations included in the Project Deliverable;

- 1.1.17 **"Force Majeure"** - has the meaning ascribed to it in clause 20.1;
- 1.1.18 **"GAAP"** - generally accepted accounting practise in the Republic of South Africa as approved from time to time by the South African Accounting Standards Board;
- 1.1.19 **"Good Industry Practice"** - applying, in relation to the manner in which the Works are performed and the Operation and Maintenance are rendered, the standards, practices, methods and procedures conforming to applicable law, and exercising that degree of skill, care, diligence, prudence and foresight that would reasonably and ordinarily be expected from a skilled and experienced person engaged in a similar type of undertaking under similar circumstances;
- 1.1.20 **"Gross Revenue"** - any and all income or revenue received by or accruing to the Private Party, its Subcontractors or its cessionaries or successors-in-title from all activities carried on at or by virtue of the Project, in any manner, directly or indirectly, as is or would normally be included in gross revenue in terms of generally-accepted accounting practice, and including the deemed value of accommodation made available to Shareholders and third parties or sold forward as well as the deemed value of any payments or benefits received by the Private Party that take a form other than a monetary

form. Without derogating from its generality, the term "gross revenue" shall mean revenue before the deduction of:

- 1.1.20.1 bad debts (or provisions therefor);
 - 1.1.20.2 commissions or similar consideration paid or payable;
 - 1.1.20.3 cash, credit-card or similar discounts or commissions;
 - 1.1.20.4 costs and expenses other than trade discounts granted in circumstances that are not arm's-length or to a related party;
- and gross revenue shall include:
- 1.1.20.5 commissions received or receivable;
 - 1.1.20.6 rentals and other fees received or receivable;
- but shall exclude:
- 1.1.20.7 sales tax, value-added tax and any other similar impost levied on gross revenue (or any of its components) that is normally included in or added onto the tariffs or prices charged to guests or customers and which is not normally included in gross revenue in terms of generally-accepted accounting practice;
 - 1.1.20.8 interest received or receivable;

- 1.1.20.9 the proceeds of, profit or surpluses on the disposal of non-current assets;
- 1.1.20.10 transfers from reserves; and
- 1.1.20.11 bad debts recovered;
- 1.1.21 **"the Institution"** - South African National Parks;
- 1.1.22 **"Institution Assets"** - any assets and rights made available by the Institution to the Private Party for use in the Project Deliverables, including the Project Site;
- 1.1.23 **"Intellectual Property Rights"** - all registered or unregistered trade marks, service marks, patents, design rights (whether the aforementioned rights are registered, unregistered or formed pending applications), utility models, applications for any of the foregoing, copyrights (including copyright in any software programmes, data and documents), database rights, the sui generis rights of extraction relating to databases and any similar or analogous rights to any of the above, whether arising or granted under the Laws or any other jurisdiction;
- 1.1.24 **"Laws"** - the common law, Legislation, and all judicial decisions and any notifications or other similar directives made pursuant thereto that have the force of law, issued by any executive, legislative, judicial or administrative entity in South Africa or by the Institution or the municipality in which the Project is located;

- 1.1.25 **"Legislation"** - all applicable statutes, statutory instruments, by-laws, regulations, orders, rules, executive orders and other secondary, provincial or local legislation, treaties, directives and codes of practice having force of law in South Africa;
- 1.1.26 **"Losses"** - losses, damages, liabilities, claims, actions, proceedings, demands, costs, charges or expenses of any nature;
- 1.1.27 **"Minimum PPP Fee"** - that portion of the PPP Fee that is payable by the Private Party at all times after the Operation Commencement Date, regardless of the amount of the Gross Revenue, which amount is detailed in clause 17.1.1;
- 1.1.28 **"Operation Commencement"** - the actual commencement of the Operation and Maintenance;
- 1.1.29 **"Operation Commencement Date"** - the date of Operation Commencement which ties in the signature date of the agreement,
- 1.1.30 **"Operation Period"** - the period from the Operation Commencement Date to the Expiry Date, unless this Agreement is terminated earlier in accordance with its terms;
- 1.1.31 **"Operation and Maintenance"** - the undertaking of the operations, and maintenance of the Lister's Tea Room that is to be provided by the Private Party at the Facility;
- 1.1.32 **"Parties"** - the Institution and the Private Party;

- 1.1.39.4 the management and undertaking of the Operation and Maintenance,
- and the exercise and performance of all other rights and obligations of the Private Party under this Agreement from time to time;
- 1.1.40 **"Project Site"** - the land made available by the Institution to the Private Party for the conduct of the Project Deliverables, which land is further described in Schedule 4;
- 1.1.41 **"Project Term"** - the period from the Operation Commencement Date to the Expiry Date or the Termination Date, whichever occurs first;
- 1.1.42 **"Project Year"** - each period of 12 consecutive months, commencing on the Signature Date and thereafter commencing on the anniversary of the Signature Date;
- 1.1.43 **"Protected Area"** - Tokai Manor Precinct within Table Mountain National Park
- 1.1.44 **"Rand" or "R"** - the lawful currency of South Africa;
- 1.1.45 **"Reserve Management Plan"** - the Institution's management plan in respect of the Protected Area, which is attached as Schedule 2;
- 1.1.46 **"Responsible Authority"** - National and/or Provincial legislature, any agency, local Institution, department, inspectorate, minister, ministry, official or public or statutory person (whether autonomous or not) having jurisdiction over any or all of the Parties or the subject matter of this

- 1.2 This Agreement shall be interpreted according to the following provisions, unless the context requires otherwise:
- 1.2.1 references to the provisions of any law shall include such provisions as amended, re-enacted or consolidated from time to time in so far as such amendment, re-enactment or consolidation applies or is capable of applying to any transaction entered into under this Agreement;
- 1.2.2 references to “Parties” shall include the Parties’ respective successors-in-title and, if permitted in this Agreement, their respective cessionaries and assignees;
- 1.2.3 references to a “person” shall include an individual, firm, company, corporation, juristic person, Responsible Authority, and any trust, organisation, association or partnership, whether or not having separate legal personality;
- 1.2.4 references to any “Responsible Authority” or any public or professional organisation shall include a reference to any of its successors or any organisation or entity, which takes over its functions or responsibilities;
- 1.2.5 the headings of clauses, sub-clauses and Schedules are included for convenience only and shall not affect the interpretation of this Agreement;
- 1.2.6 the Schedules to this Agreement are an integral part of this Agreement and references to this Agreement shall include the Schedules;
- 1.2.7 the Parties acknowledge that each of them has had the opportunity to take legal advice concerning this Agreement, and agree that no provision or word used in this Agreement shall be interpreted to the disadvantage of either Party because that Party was responsible for or participated in the preparation or drafting of this Agreement or any part of it;
- 1.2.8 words importing the singular number shall include the plural and vice versa, and words importing either gender or the neuter shall include both genders and the neuter;

- 1.2.9 references to “this Agreement” shall include this Agreement and its Schedules as amended, varied, novated or substituted in writing from time to time;
- 1.2.10 references to any other contract or document shall include (subject to all approvals required to be given pursuant to this Agreement for any amendment or variation to or novation or substitution of such contract or document) a reference to that contract or document as amended, varied, novated or substituted from time to time;
- 1.2.11 general words preceded or followed by words such as “other” or “including” or “particularly” shall not be given a restrictive meaning because they are preceded or followed by particular examples intended to fall within the meaning of the general words;
- 1.2.12 when a number of days is prescribed in this Agreement, such number shall be calculated including the first and excluding the last day, unless the last day falls on a day that is not a Business Day, in which case, the last day shall be the first succeeding day which is a Business Day.

2. Introduction

- 2.1 The Institution has the authority, power, control and responsibility in respect of the Lister’s Tea Room Facility in terms of the Act. In addition, the Act authorises the Institution to enter into public private partnerships in respect of the Lister’s Tea Room for the benefit of its visitors at the Tokai Precinct, the Project Assets, the Institution Assets and the Project Site.
- 2.2 The Institution wishes to procure the equipping, operation and maintenance of ***Lister’s Tea Room Facility within the Tokai Manor Precinct of Table Mountain National Park*** by way of a PPP, all in accordance with Good Industry Practice.
- 2.3 In terms of the Act, the Institution wishes to appoint the Private Party and the Private Party accepts the appointment to undertake the Project as a PPP and on the terms and conditions of this Agreement.
- 2.4 Accordingly, the Parties wish to enter into an agreement on the terms and conditions detailed below.

3. Appointment of Private Party and grant of rights

3.1 grant of rights

The Institution appoints the Private Party to undertake the Project on the terms and conditions contained in this Agreement. The Private Party accepts such appointment on the terms and conditions contained in this Agreement.

3.2 exclusivity of rights

Subject to the provisions of this Agreement, the right to undertake the Project and provide the Project Assets and Operation and Maintenance, to the Lister's Tea Room Facility within the Tokai Precinct of Table Mountain National Park and the rights in respect of the Project Deliverables are granted exclusively to the Private Party from the Signature Date until the termination or expiry of this Agreement in accordance with its terms.

3.3 Private Party's obligations

3.3.1 The Private Party shall undertake the Project at its own cost and risk in accordance with the terms of this Agreement.

3.3.2 The Institution shall not provide any bond, subsidy, grant or any financial support of any nature to the Private Party or in respect of the Project.

3.3.3 No Responsible Authority will provide any bond, subsidy, grant or any financial support of any nature to the Private Party or in respect of the Project, other than any relevant grants by any Responsible Authority to further Black Economic Empowerment.

3.3.4 This Agreement shall not grant and shall not be interpreted as granting the Private Party any rights or imposing any obligations or duties on the Institution or any Responsible Authority, except as expressly and specifically provided in this Agreement.

3.3.5 No instructions or approvals given by the Institution or any Responsible Authority in accordance with the Law and this Agreement in respect of any aspect of the Project or the Facility will affect, alleviate, excuse or provide relief from the Private Party's duties, obligations, liabilities and responsibilities under this Agreement and in respect of the Project.

3.4 **subcontracting**

The Private Party shall be responsible for the payment, performance, acts, defaults, omissions, breaches and negligence of all its Subcontractors. The Private Party shall be responsible for the management and supervision of any third parties appointed by it to perform any part of the Project. All references in this Agreement to any performance, payment, act, default, omission, breach or negligence of the Private Party shall be deemed to include any of the same by a Subcontractor of the Private Party.

3.5 **related party transactions**

3.5.1 The Private Party shall not enter into any arrangement or agreement with any of its members or any Affiliate of one of its members unless such transaction is:

3.5.1.1 on arm's-length and market related terms; and

3.5.1.2 meets with the prior written approval of the Institution.

3.5.2 For purposes of this clause, "Affiliates" means any person or entity that directly or indirectly through any one or more intermediaries controls, is controlled by or is under common control with any person or entity, where "control" means the ability to direct or cause the direction of the business affairs and management policies or practices of a person or entity;

4. **Duration of this PPP Agreement**

This Agreement and the rights and obligations of the Parties under this Agreement shall take effect on the Signature Date and shall endure until the earlier of the Expiry Date and the Termination Date. This is a five year contract. Province is developing a plan for the Tokai Manor Precinct, although Lister's falls outside of the designated precinct area, SANParks is giving input into it. If the Final plan impacts on the Listers Room facility, both parties need to agree on an amicable way forward.

5. Project Site and Facility

5.1 Project Site

- 5.1.1 The Private Party shall, for the term of this Agreement, have the right to use and occupy the Project Site, commencing on the Signature Date and ending on the earlier of the Expiry Date or the Termination Date.
- 5.1.2 The Institution shall provide the Protected Area, in accordance with the Laws that are applicable to such provision, management and maintenance from time to time and in accordance with the Reserve Management Plan.
- 5.1.3 The Private Party shall undertake the Works and deliver the Project Deliverables on the Project Site.
- 5.1.4 The Private Party accepts responsibility for the payment of all rates, taxes, charges, levies, assessments or any equivalent taxation which may at any time be levied by a Responsible Authority upon or in connection with the Project Site (including in respect of the Protected Area, a pro rata portion of all rates, taxes, charges, levies, assessments or any equivalent taxation imposed in respect of the Protected Area), in respect of the period covered by this Agreement, other than taxes imposed in relation to any amounts received by or accrued to the Institution as a result of or in connection with this Agreement or the land used by the Private Party.
- 5.1.5 The Private Party may object to any rates valuation made by any Responsible Authority of the land used by the Private Party or the land of which they form part. The Private Party shall be liable for all costs in prosecuting any such objection and the Private Party shall be entitled to any benefit accruing as a result of a successful objection.
- 5.1.6 If the Institution is obliged by the Responsible Authority to make payments referred to in clause 5.1.4, as a result of which the Institution makes such payments on behalf of the Private Party, the Institution shall notify the Private Party in writing about such payments and following such notice the Private Party shall, within 15 days after being called upon to do so, refund to the Institution such payments as the Institution may

have made in respect of the rates, taxes, charges, levies, assessments or equivalent taxes levied.

- 5.1.7 The Private Party shall use the Project Site solely for the uses and purposes contemplated in the Agreement in respect of the Project. The Private Party shall comply with the Reserve Management Plan.
- 5.1.8 The Private Party shall be responsible for maintaining the Project Site in good condition, fair wear and tear excepted, at no cost to the Institution. The Institution shall maintain the Protected Area, other than the Project Site, in good condition, fair wear and tear excepted, at the cost of Institution. The Parties shall meet and discuss any intended maintenance or repair activities so as to ensure that such activities are conducted in a manner that minimises any interference with the operations of the other Party.
- 5.1.9 The Private Party shall not transfer any of its rights in respect of the Project Site or the use thereof to any other person without the prior written consent of the Institution.
- 5.1.10 The Private Party shall, subject to the Institution's approval, provide for:
 - 5.1.10.1 the clearance of the Project Site; and
 - 5.1.10.2 the clearance, relocation and diversion of all Utilities on the Project Site,

from the date the Project Site is delivered to the Private Party and to the extent necessary for the execution of the Project.
- 5.1.11 The Private Party shall, at its cost, apply for all Consents required for the clearance of the Project Site.
- 5.1.12 The Private Party shall continue to be bound by and shall honour any existing agreements between the Institution and any person, which grant access or way-leaves to the Project Site. The Private Party may, however, apply to the Institution for any necessary modifications or cancellations of such agreements, such application to be made timeously in order to avoid any delay or additional cost. To the extent that the Institution has the right to modify or cancel such agreements, it shall

comply timeously with the Private Party's reasonable request to modify and/or cancel any such agreements.

5.1.13 The Private Party shall, throughout the progress of the Works and the conduct of the Project Deliverables, have regard for the safety of all persons at the Project Site (whether lawfully or not) to the extent required by law, and shall keep the Project Site, the Works and the Facilities in an orderly state as appropriate in accordance with Good Industry Practice to avoid danger to such persons.

5.2 **compliance with deeds, documents or certificates creating or conveying rights in respect of the Project Site**

The Private Party shall procure that:

5.2.1 all Project Deliverables carried out at the Project Site or those other parts of the Protected Area to which the Private Party has access, by or on behalf of the Private Party whether before, during or after the completion of the Works shall be carried out in a manner that does not breach any conditions of the title deeds, other deeds, documents or certificates creating or conveying rights in respect of the Project Site or the Protected Area; and

5.2.2 there shall be no conduct which gives rise to a right on the part of any person to obtain title to the Project Site or any part of it save in accordance with the terms of this Agreement.

5.3 **ownership and return of the Project Site and the Facility**

The Private Party agrees and acknowledges that the Project Site is registered in the name of **South African National Parks** who has delegated the power and authority to conduct the Lister's Tea Room Project on the Project Site and to grant the rights detailed in this PPP Agreement in respect of the Project Site to the Private Party.

5.4 **Project Site conditions**

5.4.1 The ecological and environmental conditions of the Project Site (the "**Project Site Conditions**") shall be the sole responsibility and risk of the Private Party.

5.4.2 In addition, the Private Party shall be deemed as at the Signature Date to have:

5.4.2.1 satisfied itself as to the adequacy of its right of passage over, access to and through the Project Site and it may require for the purposes of fulfilling any of its obligations included in the Project Deliverables.

5.4.2.2 satisfied itself as to the possibility of interference by persons with rights-of-way across, access to or use of the Project Site with particular regard to the owners and users of any land adjacent to the Project Site; and

5.4.2.3 satisfied itself as to the precautions, times and methods of working necessary to prevent or minimise nuisance or interference being caused to any third parties.

5.4.3 To avoid doubt, the Private Party accepts full responsibility for all matters in clauses 5.4.1 and 5.4.2 and the Private Party shall:

5.4.3.1 subject to the express terms of this Agreement, not be entitled to make any claim against the Institution whether in contract, delict or otherwise on any ground relating to the matters in clauses 5.4.1 and 5.4.2; and

5.4.3.2 be responsible for, and indemnify the Institution against, all direct Losses sustained by the Institution in consequence of cleaning up and otherwise dealing with any potentially hazardous materials at the Project Site.

5.5 **Utility way-leaves**

The Institution shall have the right to approve the establishment on or over and/or relocation from the Project Site, at the request of any public or private Utility, of Utility way-leaves including, but not limited to, power pylons or lines, water or gas pipes and telecommunication lines or pylons.

6. **Indemnity**

6.1 The Private Party indemnifies and shall keep the Institution indemnified at all times against all direct Losses sustained by the Institution in consequence of any:

- 6.1.1 Loss;
- 6.1.2 breach of a statutory duty arising under applicable law or of any provisions of this Agreement, by the Private Party; or
- 6.1.3 claim for or in respect of the death or personal injury of any individual, (including, without limitation, any legal fees or costs) arising in connection with the performance or non-performance of any Project Deliverables, save to the extent caused by the gross negligence or wilful misconduct of the Institution or by a breach by the Institution of an express provision of this Agreement.
- 6.2 The Institution shall have the right to claim, at any time, the amount of any direct Losses incurred by it as a result of rectifying or mitigating the effects of any Private Party Default in addition to any other express right of the Institution under this Agreement (including any express right to indemnification and to call a Private Party Default).
- 6.3 Nothing in clause 6.2 shall prevent or restrict the right of the Institution to seek any interdict or similar relief, any decree of specific performance or any other discretionary remedies of a court or to declare a dispute.

7. Institution rights and limitations on liability

- 7.1 Nothing in this Agreement shall prevent or in any manner limit the rights of the Institution or any other Responsible Authority from granting such further or other PPPs as it in its discretion deems fit in respect of the Project Site, nor shall the Private Party have any claim against the Institution or any other Responsible Authority arising from the grant of such further or other PPPs, provided that the Institution shall not be able to grant a PPP or similar right to any person to, operate a facility substantially similar to the Facility and to provide operation and maintenance substantially similar to the Operation and Maintenance at the Project Site. [For the avoidance of doubt, the Institution or any other Responsible Authority shall be entitled to grant a PPP or similar right to any person to operate a facility substantially similar to the Facility and to provide operation and maintenance substantially similar to the Operation and Maintenance elsewhere in the Protected Area.]
- 7.2 The Institution shall not be liable to the Private Party for the volume of demand for the Facility and the Operation and Maintenance.

7.3 No warranties, representations or undertakings are given as to the accuracy or completeness of any information provided by the Institution and/or its advisors. None of the Institution nor its advisors shall be liable for any error, misrepresentation or omission in any such information.

7.4 Notwithstanding anything else contained in this Agreement, the Private Party shall not in any way be relieved from any obligation under this Agreement nor shall it be entitled to claim against the Institution or any other Responsible Authority and/or their respective officers, employees, agents and/or representatives on grounds that any information, however and from whomever it is obtained, is incorrect or insufficient and shall make its own enquiries as to the accuracy and adequacy of that information.

8. Warranties and undertakings

8.1 registration

8.1.1 The Private Party shall be incorporated in South Africa in accordance with the provisions of the Companies Act, 1973. The Private Party shall remain validly incorporated and registered in accordance with the provisions of the Companies Act, 1973 from the Signature Date until the earlier of the Expiry Date or the Termination Date

8.1.2 The Private Party shall have the sole principal object and business of conducting the Project in accordance with the provisions of this Agreement.

8.1.3 The Private Party shall not have any subsidiaries.

8.2 compliance with Laws

8.2.1 The Private Party shall comply with the Laws applicable to it and the Project in all respects and shall obtain all Consents that are required in respect of it and all and any aspects or parts of the Project, in accordance with Laws.

8.2.2 The Private Party shall be responsible for:

8.2.2.1 obtaining all Consents **[(other than those listed in Schedule 6)]** which may be required in connection with the performance of the Project Deliverables;

- 8.2.2.2 maintaining in full force and effect all Consents **[(including those listed in Schedule 6)]**; and
- 8.2.2.3 implementing all Consents **[(including those listed in Schedule 6)]** in accordance with their respective terms within the period of their validity.
- 8.2.3 The Institution shall provide all such assistance to the Private Party as may be reasonably necessary for the Private Party to obtain all the Consents referred to in clause 8.2.2.1, provided, however, that the Institution shall incur no liability for the costs of obtaining or maintaining, or any delay, failure or inability of the Private Party to obtain or maintain any such Consents.

8.3 **Institution Warranties**

The Institution warrants that:

- 8.3.1 it has taken all necessary actions to authorise the execution of this Agreement; and
- 8.3.2 it has not knowingly omitted to disclose any material information in its possession or under its control relating to the Institution Assets.

9. **Project Deliverables**

9.1 The Private Party shall:

- 9.1.1 undertake and complete the Works, as specified in Schedule 1;
- 9.1.2 meet the Environmental Specifications set out in Schedule 2;
- 9.1.3 meet the BEE Obligations set out in Schedule 3;
- 9.1.4 provide the Project Assets;
- 9.1.5 provide the Operation and Maintenance,

in accordance with and in terms of this Agreement.

9.2 The Private Party shall commence the Works no more than **[x days/x months]** after the Signature Date and the Operation Commencement Date shall not be later than **[x]**.

- 9.3 Subject to, and in accordance with, the provisions of this Agreement, the Private Party shall exercise its rights and perform its obligations included in the Project Deliverables at its own cost and risk without recourse to the Institution save as otherwise expressly provided for in this Agreement.
- 9.4 Without limiting clause 9.1, the Private Party shall at its own cost and risk be solely responsible for procuring that the Project Deliverables are performed:
- 9.4.1 in accordance with Good Industry Practice;
 - 9.4.2 in a manner that is not likely to cause death, injury to health or damage to property or the environment;
 - 9.4.3 in a manner that is consistent with the Institution discharging its statutory functions and duties; and
 - 9.4.4 in compliance with the Laws and the Consents.
- 9.5 Each Party shall co-operate with the other in the exercise and performance of their respective rights and obligations under this Agreement.
- 9.6 The Private Party 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 any Responsible Authority or the Institution in respect of this Agreement or the Project shall be applied for or requested promptly by the Private Party.
- 9.7 The Institution shall have the right, at any time and in its discretion, to require the Private Party to appoint an expert to monitor the Private Party's compliance with its obligations in terms of this clause 9. The costs of such expert shall be borne by the Private Party. Before such expert is appointed by the Private Party, the Private Party shall notify the Institution of the identity of such expert and shall not appoint such expert unless the expert is to the Institution's satisfaction. Upon this appointment, the expert shall owe a duty of care solely to the Institution.

10. Insurance

- 10.1 The Private Party shall insure the Project Assets with a reputable insurance company by no later than the Signature Date:

- 10.1.1 for not less than the full replacement value of the Project Assets;
- 10.1.2 against the risk of fire, lightning, explosion, storm, flood, earthquake, riots (including political riot), strikes and malicious damage, public liability, business interruption as well as assets all risks cover and loss of PPP Fee for **[x]** months consequent upon the damage to or destruction of the Project Assets as a result of any of the aforesaid events and for any risks selected by the Institution which are freely insurable in the local South African insurance market.
- 10.2 All premiums, subsequent renewal premiums, all additional premiums and all stamp duties in respect of the relevant insurance policies, shall be paid by the Private Party.
- 10.3 Should the Private Party be in breach of the provisions of clause 10.1, the Institution may, in its sole discretion, but will not be obliged to, procure and maintain, at the sole cost and expense of the Private Party, the insurances referred to in clause 10.1 to the extent that the Institution deems necessary. In this event, the Private Party shall be obliged to refund to the Institution all premiums disbursed by the Institution on behalf of the Private Party within a period of **[x]** days of receiving written notice from the Institution to do so.
- 10.4 The Private Party shall comply with all the terms and conditions embodied in the insurance policy or insurance policies referred to in clause 10 and undertakes not to commit any act or permit any act to be committed or omit to do anything which in any way affects or vitiates such insurance policy or policies.
- 10.5 The Private Party undertakes to file certified copies of the certificates of insurance and appropriate insurance policies within **[x]** days of the Signature Date at the offices of the Institution, and thereafter before the anniversary date of the Signature Date during the entire currency of this PPP Agreement. Such certificates and policies shall reflect all insurance coverage stipulated by the Institution and any dispute regarding the scope and quantum of such insurance shall be resolved in terms of clause **[insert]**.

11. Access to documents, copyright and related matters

- 11.1 The Private Party shall provide to the Institution all information, documents, records and the like in the possession of, or available to, the Private Party as

may reasonably be requested by the Institution for the purpose of complying with any of its statutory reporting obligations including its reporting obligations under the Public Finance Management Act, 1999, the Promotion of Access to Information Act, 2000 and the Public Audit Act, 2004.

- 11.2 To this end, the Private Party shall use all reasonable endeavours to ensure that all such information in the possession of any Subcontractor or other counter-party to any Project Document shall be available to the Institution and the Private Party has included, or shall include, appropriate provisions to this effect in all Project Documents.
- 11.3 All intellectual property rights whatsoever, whether capable of registration or not, regarding the Institution's name, trademarks, logos, image and all other intellectual property matters relating to the Institution, including its name, trademarks, logos and/or image shall remain the sole property of the Institution.
- 11.4 In order to establish and maintain standards of quality and propriety acceptable to the Institution, if the Private Party wishes to use the Institution's trademarks or logos in any way, the Private Party shall first submit the concept or a sample of the proposed use to the Institution for approval, which shall be in its discretion. The Institution shall use reasonable endeavours to advise the Private Party of its approval or disapproval of the concept or sample within **[x]** Business Days of its receipt of the concept or sample.
- 11.5 If the Institution approves the concept or sample:
- 11.5.1 the Private Party shall not depart there from in any respect without the Institution's further prior written approval; and
- 11.5.2 subject to existing rights and obligations, the Institution shall grant a non-exclusive revocable right and licence to the Private Party to use the Institution's trademarks and logos for a period not to exceed the remainder of the Project Term.
- 11.6 If at any time the Institution revokes its approval for the specified use of any trademark or logo, the Private Party shall immediately discontinue all use of such trademark or logo and shall remove from public sale or distribution any previously approved product in respect of which the Institution has revoked its approval. The costs incurred by the Private Party as a result of such

revocation shall be borne by the Private Party if the grounds for the revocation include any ground described in clause 11.7.

- 11.7 The Institution may revoke its approval immediately upon **[5]** Business Days' written notice to the Private Party if the Private Party or any of its officers, directors or employees commits any crime or otherwise engages in conduct which violates any law, or engages in any conduct that offends against public morals and decency and, in the Institution's reasonable opinion, materially prejudices the reputation and public goodwill of the Institution.
- 11.8 Any and all names under which the Private Party provides the Operation and Maintenance and makes the Facility available, other than the full name of the Private Party that is registered with the Office of the Registrar of Companies, shall belong to the Institution.
- 11.9 The Private Party acknowledges that the name(s) of the Institution, including the names under which the Private Party provides the Operation and Maintenance and makes the Facility available as detailed in clause 11.8, (the "**Protected Names**") are the intellectual property of the Institution. Consequently, the Private Party agrees that the sole and exclusive ownership of the Protected Names shall vest in the Institution. For the avoidance of doubt, the Protected Names shall exclude any names or trademarks that are, at the Signature Date, used by any member of the Private Party in the conduct of a business that existed at and prior to the Signature Date.
- 11.10 In circumstances where the Private Party uses any of the Protected Names, either on its own or in combination or association with any other name, it shall do so only in terms of this Agreement and with the prior approval of the Institution. On termination or expiry of this Agreement, the Private Party shall not be entitled to operate or conduct any business using any of the Protected Names either on its own or in combination or association with any other name.
- 11.11 Within **[x]** Business Days after the termination for whatever reason or the expiry of this Agreement and where the Private Party has operated a company utilising any of the Protected Names with the permission of the Institution, the Private Party shall either:
- 11.11.1 de-register the company bearing any of the Protected Names; or

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

11.12 The naming of the Private Party's business operation shall be undertaken in consultation with the Institution and subject to the Institution's approval. Where the name chosen by the Private Party and approved by the Institution is not a Protected Name, then the rights of the Institution contemplated in clauses 11.10 and 11.11 shall not be applicable and the intellectual property shall be the sole property of the Private Party.

12. General reporting and financial reporting requirements

12.1 general reporting

12.1.1 Upon completion of the Works, the Private Party shall supply the Institution with all documents, drawings, data, reports, specifications and other information (whether in printed form or in electronic form) produced in respect of the Works, copies of all "as-built" drawings and such other technical and design information and completion records relating to the finished Works as the Institution may reasonably request.

12.1.2 From the Signature Date as well as during the Project Term, the Private Party shall provide the Institution with written reports in respect of the following matters, within **[●]** Business Days of the end of each calendar month:

12.1.2.1 the number and names, identity numbers and any other relevant details of any employees of the Private Party and its Subcontractors who are on the Project Site and/or engaged in respect of the Works or the Operation and Maintenance;

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

12.1.2.3 names, identity numbers and any other relevant details of any details of any new employees of the Private Party or its Subcontractors who have been retained in the relevant calendar

month in respect of the Works or the Operation and Maintenance, together with the details of any firearms registered to such employee;

12.1.2.4 the progress of the Works;

12.1.2.5 its compliance with the Environmental Specifications, the provisions of clause 10, its BEE Obligations contained in Schedule 3, and its compliance with Schedule 7.

12.1.3 Within 30 days of the end of each Project Year, the Private Party shall provide the Institution with an annual BEE report in respect of its compliance with the provisions of Schedule 3 during the course of that Project Year.

12.2 **annual financial reporting**

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

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

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

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

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

13. Rights of access

- 13.1 Subject to the reasonable safety requirements of the Private Party, the Institution and/or its representatives may, at their own risk, enter upon the Facility and the Project Site (or any other site or property used by the Private Party for the purposes of the Project) to inspect the Works, the Facility and the Operation and Maintenance, and to monitor compliance by the Private Party with its obligations under this Agreement.
- 13.2 The Institution and/or its representatives may at all times, but subject to the reasonable security and safety requirements of the Private Party, enter upon any property used by the Private Party as training or workshop facilities and places where work is being prepared or materials being obtained for the Project.
- 13.3 The Private Party shall procure that adequate facilities are made available to the Institution and/or its representatives and that reasonable assistance is given for the purposes of clauses 13.1 and 13.2, subject to the Private Party's construction or operational requirements not being adversely affected and to reimbursement of any reasonable costs or expenses of the Private Party.

14. Protected Area and Protected Area users

- 14.1 The Private Party shall fulfil its obligations, duties and responsibilities under this Agreement and in particular (without limitation) its duties in respect of the conduct of the Works and the Operation and Maintenance:
- 14.1.1 so as not to interfere with the use of the Protected Area and its facilities by other users of the Protected Area, other than as permitted by this Agreement; and
- 14.1.2 where such interference cannot reasonably be avoided, the Private Party shall ensure that appropriate traffic and other appropriate management measures are implemented to minimise the effect of any such disruption on users of the Protected Area; and
- 14.1.3 in compliance at all times with any by-laws, rules or directives in respect of the use of the Protected Area and, in particular, with the Area Reserve Management Plan.

- 14.2 The Institution shall use its reasonable endeavours to ensure that no other users of the Protected Area negatively affect the use of the Project Site by the Private Party.

15. Changes in Control

From the Signature Date as well as for the duration of the 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 the Institution, which approval shall not be unreasonably withheld, provided that no Change in Control may breach the provisions of Schedule 3 in any way.

16. Removal of personnel

The Institution may require the Private Party to remove any employee or other personnel of the Private Party or any Subcontractor from the Project Site and the Private Party shall do so (provided such removal is permitted under applicable law) if in the reasonable opinion of the Institution such employee or personnel engages in any conduct which might reasonably result in a breach of any provision of this Agreement or threaten public health, safety or security, and the Private Party shall as soon as reasonably possible replace such employee or personnel with suitable appropriately qualified and experienced replacements (provided such replacement is permitted under applicable law).

17. PPP Fee

- 17.1 With effect from the Operation Commencement Date and for the duration of the Project Term, the Private Party shall pay to the Institution the PPP Fee, which will be higher of:
- 17.1.1 the amount of R[insert amount] (indexed to CPIX), which amount shall be called the "**Minimum PPP Fee**"; and
 - 17.1.2 [x]% of the Gross Revenue earned in respect of the relevant Project Year, which amount shall be called the "**Variable PPP Fee**".
- 17.2 The Minimum PPP Fee shall be paid monthly in advance [on the [x] Business Day of the month preceding the month in respect of which that Minimum PPP Fee is being paid].

- 17.3 The Variable PPP Fee shall be paid within 30 Business Days of the end of each Project Year. Within 30 Business Days of the delivery of the Private Party's financial statements in terms of clause 12.2 in respect of each Project Year, the Parties shall together reconcile the amount of the Variable PPP Fee already paid with the amount of the Variable PPP Fee that said financial statements show ought to have be paid in respect of the relevant Project Year. If the amount of the Variable PPP Fee already paid is:
- 17.3.1 less than the amount of the Variable PPP Fee that said financial statements show ought to be paid, the Private Party shall pay the amount of the difference to the Institution within **[x]** Business Days of the reconciliation being completed; and
- 17.3.2 more than the amount of the Variable PPP Fee that said financial statements show ought to have been paid, the Institution shall pay the amount of the difference to the Private Party within **[x]** Business Days of the reconciliation being completed.

18. User charges in respect of Operation and Maintenance

- 18.1 The Private Party shall have the exclusive right and obligation for its benefit and risk to levy and collect user charges in respect of the Operation and Maintenance, with effect from the Operation Commencement Date.
- 18.2 The rates of the user charges that the Private Party will charge in respect of the Operation and Maintenance as at the Signature Date are the rates set out in Schedule 7, which rates will increase by CPIX from time to time. The Private Party shall be entitled to increase and reduce such rates as it wishes, provided that it shall not be entitled to increase or reduce such rates by more than 20% from the rates detailed in Schedule 7 without the prior written consent of the Institution.
- 18.3 None of the Institution or any other Responsible Authority shall incur or assume any liability for or in connection with the user charge charged in respect of the Operation and Maintenance, any system used in respect of such user charges or any defect or deficiency therein.
- 18.4 All costs and expenses related to and arising from the charging and collection of user charges shall be borne by the Private Party.
- 18.5 User charges shall be charged and collected by the Private Party in Rand.

19. Default interest

Interests shall accrue on all overdue amounts payable in terms of this Agreement at the prime overdraft interest rate charged by First National Bank of South Africa plus **[2]**% (two percent).

20. Force Majeure

20.1 definition and procedure

20.1.1 For the purposes of this PPP Agreement, "**Force Majeure**" means any of the following events to the extent that they are uninsurable:

20.1.1.1 war, civil war, armed conflicts or terrorism; or

20.1.1.2 nuclear contamination unless the Private Party and/or any Sub-contractor is the source or cause of the contamination; or

20.1.1.3 chemical or biological contamination of the Works at Lister's Tea Room Facility at Tokai Precinct at Table Mountain National Park from any of the events referred to in clauses 20.1.1.1 and 20.1.1.2 above,

that directly causes either Party to be unable to comply with all or a material part of its obligations under this PPP Agreement.

20.1.2 Subject to clause 20.1.3, the Party claiming relief shall be relieved from liability under this PPP Agreement to the extent that it is not able to perform all or a material part of its obligations under this PPP Agreement as a result of an event of Force Majeure.

20.1.3 Where a Party is (or claims to be) affected by an event of Force Majeure:

20.1.3.1 it shall take all reasonable steps to mitigate the consequences of such an event upon the performance of its obligations under this PPP Agreement, resume performance of its obligations affected by the event of Force Majeure as soon as practicable and use all reasonable endeavours to remedy its failure to perform; and

20.1.3.2 it shall not be relieved from liability under this PPP Agreement to the extent that it is not able to perform, or has not in fact performed, its

obligations under this PPP Agreement due to its failure to comply with its obligations under clause 20.1.3.1.

- 20.1.4 The Party claiming relief shall serve written notice on the other Party within 15 Business Days of it becoming aware of the relevant event of Force Majeure. Such initial notice shall give sufficient details to identify the particular event claimed to be an event of Force Majeure Event.
- 20.1.5 A subsequent written notice shall be served by the Party claiming relief on the other Party within a further 5 Business Days, which notice shall contain such relevant information relating to the failure to perform (or delay in performing) as is available, including (without limitation) the effect of the event of Force Majeure on the ability of the Party to perform, the action being taken in accordance with clause 20.1.3.1, the date of the occurrence of the event of Force Majeure and an estimate of the period of time required to overcome it and/or its effects.
- 20.1.6 The Party claiming relief shall notify the other as soon as the consequences of the event of Force Majeure have ceased and when performance of its affected obligations can be resumed.
- 20.1.7 If, following the issue of any notice referred to in clause 20.1.4, the Party claiming relief receives or becomes aware of any further information relating to the event of Force Majeure and/or any failure to perform, it shall submit such further information to the other Party as soon as reasonably possible.
- 20.1.8 The Private Party shall have no right to payment or otherwise in relation to the occurrence of an event of Force Majeure.
- 20.1.9 The Parties shall endeavour to agree any modifications to this PPP Agreement which may be equitable having regard to the nature of an event or events of Force Majeure. Clauses 25 shall not apply to a failure of the Parties to reach agreement pursuant to this clause 20.1.9, and this PPP Agreement shall terminate in terms of clause 20.2 if no such agreement is reached.

20.2 **termination for Force Majeure**

If, in the circumstances referred to in clause 20, the Parties have failed to reach agreement on any modification to this PPP Agreement pursuant to that

clause, within 180 days of the date on which the Party affected serves notice on the other Party in accordance with that clause, either Party may at any time afterwards terminate this PPP Agreement by written notice to the other Party having immediate effect, provided always that the effects of the relevant event of Force Majeure continue to prevent either Party from performing any material obligation under this PPP Agreement.

21. Private Party Default

21.1 definition

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

- 21.1.1 any arrangement, composition or compromise with or for the benefit of creditors (including any voluntary arrangement as defined in the Insolvency Act, 1936 or the Companies Act, 1973) being entered into by or in relation to the Private Party;
- 21.1.2 a liquidator, judicial manager or the like taking possession of or being appointed over, or any judicial management, winding-up, execution or other process being levied or enforced (and not being discharged within 15 Business Days) upon, the whole or any material part of the assets of the Private Party (in any of these cases, where applicable, whether provisional or final, and whether voluntary or compulsory);
- 21.1.3 the Private Party ceasing to carry on business;
- 21.1.4 a resolution being passed or an order being made for the administration or the judicial management, winding-up, liquidation or dissolution of the Private Party (in any of these cases, where applicable, whether provisional or final and whether voluntary or compulsory);
- 21.1.5 the Private Party commits a breach of any of its material obligations under this Agreement;
- 21.1.6 the Private Party breaches any of the provisions of Schedule 3 or clause 12.1.3;
- 21.1.7 the Private Party fails to pay any sum or sums due to the Institution under this Agreement (which sums are not bona fide in dispute) and such

failure continues for 20 Business Days from receipt by the Private Party of a notice of non-payment from the Institution;

21.1.8 the Private Party or any of its directors or officers is found guilty of an offence by a court of law, unless such finding of the relevant court is the subject of an appeal that is being diligently pursued by the Private Party or its relevant director or officer (as the case may be);

21.1.9 the Private Party or any of its directors or officers falsifies any report, document or information that is provided by the Private Party to the Institution;

21.1.10 any breach of any provision of this Agreement has occurred more than once and:

21.1.10.1 the Institution has given an initial warning notice to the Private Party describing that breach in reasonable detail and stating that if that breach persists or recurs then the Institution may take further steps to terminate the Agreement; and

21.1.10.2 the Institution has issued a second and final warning notice following the persistence or recurrence of that breach in the period of 90 days after the initial warning notice, stating that if that breach persists or recurs within the period of 30 days after the final warning notice then the Institution may terminate the Agreement on 30 days' notice to the Private Party.

21.2 **Institution's options**

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

21.2.1.1 in the case of the Private Party Default referred to in clauses 21.1.1, 21.1.2, 21.1.3, 21.1.4, 21.1.6, 21.1.7, 21.1.8 and 21.1.9 terminate this Agreement in its entirety by notice in writing having immediate effect;

21.2.1.2 in the case of any other Private Party Default referred to in clauses 21.1.5 and 21.1.10, serve notice of default on the Private Party requiring the Private Party at the Private Party's option to remedy the Private Party Default referred to in such notice of default (if the

same is continuing) within 20 Business Days of such notice of default.

21.2.2 If the Private Party Default is notified to the Private Party in a notice of default in terms of clause 21.2.1.2 and the Private Party Default is not remedied before the expiry of the period referred to in the notice, then the Institution may terminate this Agreement with immediate effect by written notice to the Private Party.

21.3 **Institution's costs**

21.3.1 The Private Party shall reimburse the Institution with all costs incurred by the Institution in exercising any of its rights in terms of this clause 21 (including, without limitation, any relevant increased administrative expenses).

21.3.2 The Institution shall not exercise, or purport to exercise, any right to terminate this Agreement except as expressly set out in this Agreement. The rights of the Institution (to terminate or otherwise) under this clause are in addition (and without prejudice) to any other right which the Institution may have in law to claim the amount of loss or damages suffered by the Institution on account of the acts or omissions of the Private Party (or to take any action other than termination of this Agreement).

21.4 **Termination Amount on Private Party Default**

On termination of this Agreement as a result of Private Party Default, the Institution shall not pay any amount to the Private Party.

22. **Institution Default**

22.1 **definition**

"Institution Default" means any one of the following events:

22.1.1 an expropriation of a material part of the Project Assets and/or shares of the Private Party by the Institution or other Responsible Authority;

22.1.2 a breach by the Institution of its obligations under this Agreement which substantially frustrates or renders it impossible for the Private Party to

perform its obligations under this Agreement for a continuous period of 3 months.

22.2 **termination for Institution Default**

22.2.1 On the occurrence of an Institution Default, or within 10 days after the Private Party becomes aware of same, the Private Party may serve notice on the Institution of the occurrence (and specifying details) of such Institution Default. If the relevant matter or circumstance has not been remedied or rectified within 20 Business Days of such notice, the Private Party may serve a further notice on the Institution terminating this Agreement with immediate effect.

22.2.2 The Private Party shall not exercise or purport to exercise any rights to terminate this Agreement (or accept any repudiation of this Agreement) except as expressly provided for herein.

22.3 **termination amount for Institution Default**

On termination of this Agreement as a result of an Institution Default, the Institution shall pay the Private Party an amount equal to the book value of the Sale of Assets, set out in the annual audited books of account of the Private Party on the date of such termination.

23. **Corrupt gifts and fraud**

23.1 **definition and warranty**

The Private Party warrants that in entering into this Agreement it has not committed any Corrupt Act. Any breach of this warranty shall entitle the Institution to terminate this Agreement immediately in terms of clause 21.1.5.

"Corrupt Act" means:

23.1.1 offering, giving or agreeing to give to the Institution or any other organ of state or to any person employed by or on behalf of the Institution or any other organ of state any gift or consideration of any kind as an inducement or reward:

23.1.1.1 for doing or not doing (or for having done or not having done) any act in relation to the obtaining or performance of this Agreement or any other contract with the Institution or any other organ of state; or

- 23.1.1.2 for showing or not showing favour or disfavour to any person in relation to this Agreement or any other contract with the Institution or any other organ of state;
- 23.1.2 entering into this Agreement or any other contract with the Institution or any other organ of state in connection with which commission has been paid or has been agreed to be paid by the Private Party or on its behalf, or to its knowledge, unless before the relevant contract is entered into particulars of any such commission and of the terms and conditions of any such contract for the payment of such commission have been disclosed in writing to the Institution;
- 23.1.3 committing any offence:
- 23.1.3.1 under any law from time to time dealing with bribery, corruption or extortion;
- 23.1.3.2 under any law creating offences in respect of fraudulent acts; or
- 23.1.3.3 at common law, in respect of fraudulent acts in relation to this Agreement or any other contract with the Institution or any other public body; or
- 23.1.3.4 defrauding or attempting to defraud or conspiring to defraud the Institution or any other public body.

23.2 Termination Amount for corrupt gifts and fraud

On termination of this Agreement in accordance with clause 24, the Institution shall not pay the Private Party any amount.

24. Effects of Termination

24.1 transitional arrangements

On the expiry of this Agreement or earlier termination of this Agreement for any reason, for a period of **[x]** months both before and after that expiry or any earlier termination, the Private Party shall co-operate fully with the Institution and any person who is providing services in the nature of any of the Operation and Maintenance or any part of the Operation and Maintenance, in order to achieve a smooth transfer of the manner in which the Institution obtains services in the nature of the Operation and Maintenance and to avoid

or mitigate in so far as reasonably practicable any inconvenience or any risk to the health and safety of the employees of the Institution, the users of the Protected Area and members of the public.

24.2 transfer to Institution of Facility, Project Documents and other assets

On service of a notice of termination in accordance with this Agreement for any reason or not less than **[x]** days prior to the Expiry Date of this Agreement, the Private Party shall:

- 24.2.1 hand over to, and there shall vest in, the Institution, vacant possession of the Project Assets and any other assets or facilities owned by or if not owned by, in the possession of, the Private Party, free of charges, liens, claims or encumbrances of any nature whatsoever and free of any liabilities, and in accordance with the standards and requirements required by Good Industry Practice or detailed in the Environmental Specifications, to the Institution. The Private Party shall not be entitled to payment of any monies in connection with that delivery.
- 24.2.2 shall procure that any Intellectual Property Rights shall be provided to the Institution and the Institution shall be granted a perpetual nonexclusive, royalty-free licence to use such Intellectual Property Rights;
- 24.2.3 deliver to the Institution (as far as not already delivered to the Institution) one complete set of:
 - 24.2.3.1 "as built drawings" showing all alterations made to the Facilities since the commencement of operation of the Facility;
 - 24.2.3.2 any maintenance, operation and training manuals for the Facility;
and
 - 24.2.3.3 the historical operating data and plans of the Facility, its furniture, fittings and equipment in a format acceptable to the Institution;
- 24.2.4 use all reasonable endeavours to procure that the benefit of all manufacturer's warranties in respect of mechanical and electrical plant and equipment used or made available by the Private Party under this Agreement and included in the Facility are assigned, or otherwise transferred, to the Institution;

- 24.2.5 deliver to the Institution any information referred to in this Agreement, except where such documents are required by Law to be retained by the Private Party or any Subcontractor concerned, in which case complete copies shall be delivered to the Institution;
- 24.2.6 ensure that provision is made in all contracts of any description whatsoever to ensure that the Institution will be in a position to exercise its rights, and the Private Party will be in a position to comply with its obligations, under this clause 24.1;
- 24.2.7 remove from the Project Site all property not required by the Institution and if it has not done so within **[•]** Business Days after any notice from the Institution requiring it to do so, the Institution may (without being responsible for any loss, damage, costs or expenses) remove and sell any such property and shall hold any proceeds less all costs incurred for the credit of the Private Party;
- 24.2.8 deliver to the Institution:
- 24.2.8.1 any keys, remote access apparatus and computer access cards to the Facilities; and
- 24.2.8.2 without prejudice to clause 10, any copyright licences for any computer programmes (or licences to use the same) necessary for the operation of the Facilities (but excluding computer programmes which have been developed or acquired by the Private Party for its own use and not solely for the purposes of the Operation and Maintenance at the Facilities or the assignment or transfer of which is otherwise restricted); and
- 24.2.9 vacate the Project Site and (without prejudice to the other provisions of clause 24) shall leave the Project Assets in a safe, clean and orderly condition.

24.3 **termination**

On completion of the transfer required by clause 24.1 (except in so far as any of the requirements of that clause may be waived by the Institution), this Agreement shall terminate and, save as provided in clause 24.4.2, all rights and obligations of the Institution and the Private Party under this Agreement shall cease and be of no further force and effect.

24.4 continuing obligations

Save as otherwise expressly provided in this Agreement:

- 24.4.1 termination of this Agreement shall be without prejudice to any accrued rights and obligations under this Agreement as at the date of termination; and
- 24.4.2 termination of this Agreement shall not affect the continuing rights and obligations of the Private Party and the Institution under clauses 1, 6, 7, 10, 11, 24, 25, **Error! Reference source not found.**, 26 and 27 or under any other provision of this Agreement which is expressed to survive termination or which is required to give effect to such termination or the consequences of such termination.

25. Dispute resolution

25.1 referable disputes

The provisions of this clause 25 shall, save where expressly provided otherwise, apply to any dispute arising in relation to or in connection with any aspect of this Agreement between the Parties.

25.2 internal referral

- 25.2.1 If a dispute arises in relation to any aspect of this Agreement, the Parties shall attempt in good faith to come to an agreement in relation to the disputed matter, in accordance with the following informal process:
 - 25.2.1.1 all disputes shall first be referred to a meeting of the liaison officers or other designated executives from each Party who are actively involved in the Project, and have sufficient authority to be able (if necessary with consultation back to their respective organisations) to resolve it; and
 - 25.2.1.2 if the Parties have been unable to resolve the dispute within 30 days of referral to the persons specified in clause 25.2.1.1, either Party may refer the dispute for a decision by the Accounting Officer or Accounting Authority of the Institution and the Chief Executive Officer or equivalent officer of the Private Party.

25.2.2 In attempting to resolve the dispute in accordance with the provisions of this clause 25.2.2, the Parties shall (and shall procure that their employees and representatives shall) use reasonable endeavours to resolve such dispute without delay by negotiations or any other informal procedure which the relevant representatives may adopt. Those attempts shall be conducted in good faith in an effort to resolve the dispute without necessity for formal proceedings.

25.2.3 Any dispute which has not been resolved by the representatives contemplated in clause 25.2.1.2 within 30 days of the dispute being referred to them (or any longer period agreed between the Parties) shall be treated as a dispute in respect of which informal resolution has failed.

25.3 **performance to continue**

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

25.4 **litigation**

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

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

26. **Confidentiality**

26.1 Each Party shall keep all confidential information of the other Party confidential while this Agreement remains in force and for a period of 5 years after it terminates for any reason. Each Party shall also use reasonable endeavours to prevent its employees, agents and Subcontractors from making any disclosure to any person of any confidential information of the other Party while this Agreement remains in force and for a period of 3 years after it terminates for any reason.

26.2 Clause 26.1 shall not apply to:

- 26.2.1 any disclosure of information that is reasonably required by persons engaged in the performance of the restricted Party's obligations under this Agreement;
- 26.2.2 any matter which a Party can reasonably demonstrate is already generally available and in the public domain otherwise than as a result of a breach of this clause;
- 26.2.3 any disclosure as part of any attempt to resolve a dispute in accordance with clause 25;
- 26.2.4 any disclosure which is required by any law (including any order of a Court of competent jurisdiction), or the rules of any stock exchange or governmental or regulatory authority having the force of law;
- 26.2.5 any disclosure of information that is already lawfully in the possession of the receiving Party prior its disclosure by the disclosing Party;
- 26.2.6 any provision of information to the advisors of the receiving Party;
- 26.2.7 any disclosure by the Institution of information relating to the design, construction, operation and maintenance of the Project and any other information that may be reasonably required for the purpose of re-tendering of this Agreement;
- 26.2.8 any disclosure of information by the Institution to any Responsible Authority;
- 26.2.9 any disclosure made with the prior written consent of the disclosing Party.
- 26.3 The disclosures permitted under clauses 26.2.6, 26.2.7 or 26.2.8 may only be made subject to obtaining appropriate confidentiality restrictions consistent with the provisions of this clause from the intended recipients.

27. Miscellaneous matters

27.1 notices and legal service

- 27.1.1 All notices and any other communications whatsoever (including, without limitation, any approval, consent, demand, query or request) by either Party in terms of this Agreement or relating to it shall be given in writing

and sent by registered post, or delivered by hand, or transmitted by facsimile to the recipient Party at its relevant address set out below:

27.1.1.1 if to the Institution, at:

Physical Address:

Postal address:

Facsimile number:

marked for the attention of

27.1.1.2 if to the Private Party, at:

Physical Address:

Postal address:

Facsimile number:

marked for the attention of

27.1.2 Either Party may, by written notice to the other Party, change any of the addresses at which or the designated person for whose attention those notices or other communications are to be given.

27.1.3 Any notice or other communication given by any Party to the other Party which:

27.1.3.1 is sent by registered post to the addressee at its specified address shall be rebuttably presumed to have been received by the addressee on the 7th day after the date of posting; or

- 27.1.3.2 is delivered by hand to the addressee during the normal business hours of the addressee at its specified address shall be rebuttably presumed to have been received by the addressee at the time of delivery; or
- 27.1.3.3 is transmitted by facsimile to the addressee during the normal business hours of the addressee at its specified facsimile number shall be rebuttably presumed to have been received by the addressee on the date of transmission as indicated on the sender's facsimile transmission report; or
- 27.1.3.4 is transmitted by electronic mail to the addressee during the normal business hours of the addressee at its specified electronic mail address shall be rebuttably presumed to have been received by the addressee on the date of transmission as reflected on the sender's electronic mail records.
- 27.1.4 The previous provisions of this clause shall not invalidate any notice or other communication actually given and received otherwise than as described in those provisions.
- 27.1.5 The Parties choose their respective physical addresses in clause 27.1.1 as their respective domicilia citandi et executandi at which all documents relating to any legal proceedings to which they are a party may be served. If that address is changed to another address which is not a physical address in the Republic of South Africa, then the original address shall remain the domicilium citandi et executandi of the relevant Party until it nominates a new physical address within the Republic of South Africa in writing to be its new domicilium citandi et executandi.

27.2 **certificate of indebtedness**

A certificate signed by any officer, manager or employee of the Institution, the appointment of which officer or manager or employee need not be proved, reflecting:

- 27.2.1 any monies owing by the Private Party to the Institution under this Agreement;
- 27.2.2 any obligations owing by the Private Party to the Institution under this Agreement; and

27.2.3 the due date for payment of such monies or for performance of such obligations;

shall be *prima facie* proof thereof.

27.3 entire contract

27.3.1 Except where expressly provided otherwise in this Agreement, this Agreement constitutes the entire agreement between the Parties in connection with its subject matter and supersedes all prior representations, communications, negotiations and understandings concerning the subject matter of this Agreement.

27.3.2 Each of the Parties acknowledges that:

27.3.2.1 it does not enter into this Agreement on the basis of and does not rely, and has not relied, upon any statement or representation (whether negligent or innocent) or warranty or other provision (in any case whether oral, written, express or implied) made or agreed to by any person (whether a Party to this Agreement or not) except those expressly contained in or referred to in this Agreement, and the only remedy available in respect of any misrepresentation or untrue statement made to it shall be a remedy available under this Agreement; and

27.3.2.2 this clause shall not apply to any statement, representation or warranty made fraudulently, or to any provision of this Agreement which was induced by fraud, for which the remedies available shall be all those available under the law governing this Agreement.

27.4 conflicts with other contracts

In the event of any conflict between this Agreement and any document, contract or agreement in respect of the Project, the provisions of this Agreement will prevail.

27.5 rights and remedies

The rights and remedies of the Institution under this Agreement are cumulative, may be exercised as often as the Institution requires and are in

addition to any other rights and remedies which the Institution may have under the Law.

27.6 further undertakings

The Institution and the Private Party shall perform, or procure the performance, of all further things, and execute and deliver (or procure the execution and delivery) of all further documents, as may be required by the Law or as may be desirable or necessary to implement or give effect to the Project, this Agreement and the transactions contemplated therein.

27.7 no representations

A Party may not rely on any representation which allegedly induced that Party to enter into this Agreement, unless the representation is recorded in this Agreement.

27.8 variation, cancellation and waiver

27.8.1 No provision of this Agreement (including, without limitation, the provisions of this Clause) may be amended, substituted or otherwise varied, and no provision may be added to or incorporated in this Agreement, except (in any such case) by an agreement in writing signed by the duly authorised representatives of the Parties.

27.8.2 Any relaxation or delay (together "**Relaxation**") by either Party in exercising, or any failure by either Party to exercise, any right under this Agreement shall not be construed as a waiver of that right and shall not affect the ability of that Party subsequently to exercise that right or to pursue any remedy, nor shall any Relaxation constitute a waiver of any other right (whether against that Party or any other person).

27.8.3 The waiver of any right under this Agreement shall be binding on the waiving Party only to the extent that the waiver has been reduced to writing and signed by the duly authorised representative(s) of the waiving Party.

27.8.4 The expiry or termination of this Agreement shall not prejudice the rights of any Party in respect of any antecedent breach or non-performance of or in terms of this Agreement

27.9 **indulgences**

27.9.1 The grant of any indulgence by a Party under this Agreement shall not constitute a waiver of any right by the grantor or prevent or adversely affect the exercise by the grantor of any existing or future right of the grantor.

27.9.2 If any Party at any time breaches any of that Party's obligations under this Agreement, the other Party ("**the Aggrieved Party**"):

27.9.2.1 may, at any time after that breach, exercise any right that became exercisable directly or indirectly as a result of the breach, unless the Aggrieved Party has expressly elected in writing not to exercise the right. If the Aggrieved Party is willing to relinquish that right the Aggrieved Party will on request do so in writing. In particular, acceptance of late performance shall, for a reasonable period after performance, be provisional only, and the Aggrieved Party may still exercise that right during that period;

27.9.2.2 shall not be estopped (ie prevented) from exercising the Aggrieved Party's rights arising out of that breach, despite the fact that the Aggrieved Party may have elected or agreed on one or more previous occasions not to exercise the rights arising out of any similar breach or breaches.

27.10 **invalidity and severability**

Whenever possible, each provision of this Agreement shall be interpreted in a manner which makes it effective and valid under applicable law, but if any provision of this Agreement is held to be illegal, invalid or unenforceable under applicable law, that illegality, invalidity or unenforceability shall not affect the other provisions of this Agreement, all of which shall remain in full force

27.11 **cession and delegation**

27.11.1 This Agreement shall be binding on, and shall inure to the benefit of, them and their respective successors-in-title and permitted transferees and assigns.

27.11.2 Save as expressly permitted hereunder, the Private Party shall not, without the prior written approval of the Institution, assign, cede, delegate, transfer or otherwise dispose of any right or obligation under this Agreement to which it is a party to any other person.

27.11.3 The Institution shall not assign, cede, delegate, transfer or otherwise dispose of any right or obligation under this Agreement to any other person, save with the prior written approval of the Private Party (such approval not to be unreasonably withheld or delayed) or to give effect to any mandatory requirement of any applicable law.

27.12 **set-off**

Either Party shall be entitled to set off against monies owed by them to the other Party, monies that the other Party owes to them.

27.13 **governing law and jurisdiction**

27.13.1 This Agreement is to be governed by and construed in accordance with the laws of the Republic of South Africa.

27.13.2 Subject to clauses 25 and **Error! Reference source not found.**, each Party agrees that the Magistrates Court of South Africa shall have exclusive jurisdiction to hear and decide any application, action, suit, proceeding or dispute in connection with the Project and this Agreement, and irrevocably submits to the jurisdiction of the Magistrates Court of South Africa.

27.14 **language**

All notices or communications under or in connection with the Project shall be in English.

Signed at _____ on _____ 200.

Witnesses: _____ for **South African National Parks**

.....

Signed at _____ on _____ 200.

Witnesses: _____ for **[Insert name of Private Party]**

.....

DRAFT

Works Specifications

[This Schedule is to contain 2 parts. Part A should contain details of the Works to be undertaken by the Private Party, which details are to be derived from the Private Party's bid. Part B should contain a programme for the Works and the Operation Commencement Date]

To be completed after Procurement process is done and bidder appointment

DRAFT

Environmental Specifications

- 1) the Institution's Environmental Guidelines for the Protected Area;***
- 2) Operational Environmental Management Plan;***

DRAFT

BEE Obligations

[To be derived from the preferred bidder's tender submission and to deal with the following matters]

1. In this Schedule,
 - 1.1 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.
 - 1.2 The following terms, as used herein, shall have the following meanings:
 - 1.2.1 "**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;
 - 1.2.2 "**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;
 - 1.2.3 "**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;
 - 1.2.4 "**Black Women**" means female Black People;
 - 1.2.5 "**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;

- 1.2.6 "**Community Trust**" means the *[insert name of community trust]* , a trust registered in terms of the Trust Property Control Act, Master reference [];
- 1.2.7 "**Community Trust Ownership**" means Equity in the Private Party which must, as a mandatory provision of the Project, be acquired by *[insert name of community trust]*;
- 1.2.8 "**Direct Ownership**" means ownership of an equity interest in an enterprise where such equity interest comprises :
- 1.2.8.1 the right to participate in the voting rights in that enterprise;
- 1.2.8.2 the right to receive unencumbered economic interest (such as dividends) flowing to the shareholders of that enterprise; and
- 1.2.8.3 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;
- 1.2.8.4 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;
- 1.2.9 "**Discretionary Procurement**" includes all amounts expended by an enterprise subject to measurement. Discretionary procurement excludes:
- 1.2.9.1 employment related expenditure;
- 1.2.9.2 procurement from public utilities and natural monopolies; and
- 1.2.9.3 facilitated procurement by travel agencies or other travel distribution providers where the choice of service providers remains with the consumer;

- 1.2.10 **"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;
- 1.2.11 **"Enterprise Development"** may take a variety of forms, including:
- 1.2.11.1 direct investment in Black Owned and Black Empowered SMMEs;
 - 1.2.11.2 joint ventures with Black Owned and Black Empowered SMMEs that result in "substantive" skills transfer;
 - 1.2.11.3 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
 - 1.2.11.4 twinning initiatives with Black Owned and Black Empowered SMMEs which result in cost savings or revenue generation for those SMMEs;
- 1.2.12 **"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;
- 1.2.13 **"Learnership"** refers to learnerships as defined in the Skills Development Act, No. 97 of 1998, amended in 2003;
- 1.2.14 **"Local"** means the geographic area specified by the Institution in the Request for Proposals issued by the Institution in respect of the Project, being either within ***[Institution to insert number]*** kilometre radius of the Project Site or the following villages, town or settlement within such radius: ***[Institution to insert names]***;
- 1.2.15 **"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;

- 1.2.16 **"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;
- 1.2.17 **"Preferential Procurement"** refers to all spend with BEE compliant suppliers, to be calculated as follows:
- 1.2.17.1 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
- 1.2.17.2 fifty cents (50c) for every one Rand (R1) spent with Satisfactory BEE Contributors;
- all of which terms are defined as follows:
- 1.2.17.3 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;
- 1.2.17.4 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;
- 1.2.17.5 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;
- 1.2.17.6 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;
- 1.2.17.7 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

- 1.2.17.8 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;
- 1.2.18 "**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;
- 1.2.19 "**Supervisory**" refers to the junior management and professional staff;
- 1.2.20 "**TOMSA (Tourism Marketing South Africa) Levy Collectors**" refers to tourism enterprises who are registered to raise funds on behalf of the trust;
- 1.2.21 "**Total Employee Time**" refers to the total working hours calculated as the product of the total number of employees and their standard working hours;
- 1.2.22 "**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.
- 1.3 The Private Party shall comply with the commitments and undertakings set out in the following table.

Indicator	Indicators to measure BEE achievement	Private Party commitments as at Signature Date	Private Party commitments as at [x] years after Signature Date
Ownership	% share of economic benefits as reflected by direct shareholding by Black People		
	[Community Trust Ownership]		
Strategic	Black People as a % of Board of Directors		

Indicator	Indicators to measure BEE achievement	Private Party commitments as at Signature Date	Private Party commitments as at [x] years after Signature Date
representation	Black Women as a % of Board of Directors		
	Local People as a % of Board of Directors		
	Black People as a % of executive management		
	Black Women as a % of executive management		
	Local People as a % of executive management		
Employment equity	Black People as a % of management		
	Black Women as a % of management		
	Local People as a % of management		
	Black People as a % of supervisors, junior & skilled employees		
	Black Women as a % of supervisors, junior & skilled employees		
	Local People as a % of supervisors, junior & skilled employees		
	Black People as a % of total staff		
	Black Women as a % of total staff		
	Local People as a % of total staff		
Skills Development	% of payroll spend on skills development (including skills development levy) on all accredited training		
	% of skills development spend on all black employees		
	Number of learnerships as a % of total employees		
	Number of learnerships as a % of total learners		
Preferential Procurement	Spend on BEE compliant companies as a % of total procurement spend		
	[Spend on Local BEE compliant companies as a % of total procurement spend]		

Indicator	Indicators to measure BEE achievement	Private Party commitments as at Signature Date	Private Party commitments as at [x] years after Signature Date
Enterprise Development	The sum of % spend of post tax-profits on enterprise development and % employee time contributed to enterprise development over total management time		
	Enhanced revenue and/or cost savings and/or twinning initiatives facilitated for black owned SMMEs, as a % of revenue of the company measured.		
Social Development and industry specific	% 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 % management time over total employee time)*		
	% of new recruits with no prior work experience		
	Status of TOMSA levy collector		

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

2.1 **Ownership**

The Private Party shall ensure that:

2.1.1 from the Signature Date to [x] years after the Signature Date **[first period]**:

2.1.1.1 no less than [x] 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

- 2.1.1.2 [no less than **[x]** 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];
- 2.1.2 from the end of **[first period]** to **[x] [second period]**:
- 2.1.2.1 no less than **[x]** 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
- 2.1.2.2 [no less than **[x]** 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];
- 2.1.3 the Black Shareholders and the Community Trust shall be entitled to earn a return on their investment in the Project through their participation in:
- 2.1.3.1 the dividends and other distributions declared by the Private Party from time to time in respect of the Ownership; and
- 2.1.3.2 the payments made to the Shareholders in respect of the Shareholder Loans;
- 2.1.4 the Private Party shall furnish the Institution annually within **[x]** 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:
- 2.1.4.1 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);
- 2.1.4.2 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);
- 2.1.4.3 the voting rights attaching to all classes of Ownership owned by that Shareholder in that financial year; and
- 2.1.4.4 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.
- 2.1.5 The Private Party shall procure that for the duration of **[period]**:
- 2.1.5.1 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:
- 2.1.5.1.1 another Black Shareholder, Black Person or Black Enterprise;
or
- 2.1.5.1.2 the Community Trust other than to another Community Trust
- 2.1.6 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
- 2.1.7 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.
- 2.2 Strategic representation**
- 2.2.1 The Private Party shall ensure that, by no later than **[date]**, no less than **[number/percentage]** of the Private Party's Board Representation shall be filled by Black People [and that the percentage proportion of Black People in such positions shall increase by no less than **[number/percentage]** every **[period]** thereafter during the Development Period and the Project Term until the end of the Project Term].
- 2.2.2 The Private Party shall ensure that, by no later than **[date]**, no less than **[number/percentage]** of the Private Party's Board Representation shall

be filled by Black Women [and that the percentage proportion of Black Women in such positions shall increase by no less than **[number/percentage]** every **[period]** thereafter during the Development Period and the Project Term until the end of the Project Term].

2.2.3 The Private Party shall ensure that, by no later than **[date]**, no less than **[number/percentage]** of the Private Party's Executive Representation shall be filled by Black People [and that the percentage proportion of Black People in such positions shall increase by no less than **[number/percentage]** every **[period]** thereafter during the Development Period and the Project Term until the end of the Project Term].

2.2.4 The Private Party shall ensure that, by no later than **[date]**, no less than **[number/percentage]** of the Private Party's Executive Representation shall be filled by Black Women [and that the percentage proportion of Black Women in such positions shall increase by no less than **[number/percentage]** every **[period]** thereafter during the Development Period and the Project Term until the end of the Project Term].

2.3 Employment Equity

2.3.1 The Private Party shall ensure that, by no later than **[date]**, no less than **[number/percentage]** of the Private Party's Management shall be filled by Black People [and that the percentage proportion of Black People in such positions shall increase by no less than **[number/percentage]** every **[period]** thereafter during the Development Period and the Project Term until the end of the Project Term].

2.3.2 The Private Party shall ensure that, by no later than **[date]**, no less than **[number/percentage]** of the Private Party's Management shall be filled by Black Women [and that the percentage proportion of Black Women in such positions shall increase by no less than **[number/percentage]** every **[period]** thereafter during the Development Period and the Project Term until the end of the Project Term].

2.3.3 The Private Party shall ensure that, by no later than **[date]**, no less than **[number/percentage]** of the Private Party's Management shall be filled by Local people [and that the percentage proportion of Local people in such positions shall increase by no less than **[number/percentage]**

every **[period]** thereafter during the Development Period and the Project Term until the end of the Project Term].

2.3.4 The Private Party shall ensure that, by no later than **[date]**, no less than **[number/percentage]** of the Private Party's supervisors, junior and skilled workers shall be Black People [and that the percentage proportion of Black People in such positions shall increase by no less than **[number/percentage]** every **[period]** thereafter during the Development Period and the Project Term until the end of the Project Term].

2.3.5 The Private Party shall ensure that, by no later than **[date]**, no less than **[number/percentage]** of the Private Party's supervisors, junior and skilled workers shall be Black Women [and that the percentage proportion of Black Women in such positions shall increase by no less than **[number/percentage]** every **[period]** thereafter during the Development Period and the Project Term until the end of the Project Term].

2.3.6 The Private Party shall ensure that, by no later than **[date]**, no less than **[number/percentage]** of the Private Party's supervisors, junior and skilled workers shall be Local people [and that the percentage proportion of Local people in such positions shall increase by no less than **[number/percentage]** every **[period]** thereafter during the Development Period and the Project Term until the end of the Project Term].

2.3.7 The Private Party shall ensure that, by no later than **[date]**, no less than **[number/percentage]** of the Private Party's Total Staff shall be Black People [and that the percentage proportion of Black People shall increase by no less than **[number/percentage]** every **[period]** thereafter during the Development Period and the Project Term until the end of the Project Term].

2.3.8 The Private Party shall ensure that, by no later than **[date]**, no less than **[number/percentage]** of the Private Party's Total Staff shall be Black Women [and that the percentage proportion of Black Women shall increase by no less than **[number/percentage]** every **[period]** thereafter during the Development Period and the Project Term until the end of the Project Term].

2.3.9 The Private Party shall ensure that, by no later than **[date]**, no less than **[number/percentage]** of the Private Party's Total Staff shall be Local people [and that the percentage proportion of Local people shall increase by no less than **[number/percentage]** every **[period]** thereafter during the Development Period and the Project Term until the end of the Project Term].

2.3.10 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 the Institution with:

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

2.3.10.2 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 **[x]** days following the date of submission of that report.

2.4 Skills Development

2.4.1 The Private Party shall implement its skills development plan [which is attached as Schedule 5A hereto] in accordance with Schedule 5.

2.4.2 Specifically, the Private Party shall:

2.4.2.1 apply no less than an amount to Skills Development Spend equal to **[x]** percent of its annual payroll expenditure in any financial year towards the costs of implementing its skills development targets for that financial year.

2.4.2.2 apply no less than an amount to Skills Development Spend on Black People equal to **[x]** percent of its annual payroll expenditure in any financial year towards the costs of implementing its skills development targets for that financial year.

2.4.2.3 ensure that the number of Learnerships as a percentage of total employees is **[x]** percent.

2.4.2.4 ensure that the number of Black People in Learnerships as a percentage of Learnerships is **[x]** percent.

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

2.4.3.1 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;

2.4.3.2 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

2.4.3.3 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.

2.5 **Preferential procurement**

The Private Party shall ensure that:

2.5.1 no less than **[x]** percent of the total procurement spend to be incurred by the Private Party shall be expended under subcontracts with BEE Compliant companies;

2.5.2 no less than **[x]** percent of the total procurement spend to be incurred by the Private Party shall be expended under subcontracts with Local BEE Compliant companies.

2.6 **Enterprise Development Initiatives**

The Private Party shall ensure that:

2.6.1 no less than **[x]** percent of post-tax profits will be spent on Enterprise Development Initiatives.

2.6.2 no less than **[x]** percent of Total Employee Time will be spent on Enterprise Development Initiatives.

2.6.3 the total revenue generated or costs saved by Black Owned SMMEs as a result of Enterprise Development Initiatives will be no less than **[x]**.

2.7 **Social Development and industry specific**

The Private Party shall ensure that:

2.7.1 no less than **[x]** percent of post tax profits will be spent on Social Development Contributions.

2.7.2 no less than **[x]** percent of Employees with no prior working experience will be employed by it as new recruits.

2.7.3 it will be registered/continue to be registered as a TOMSA Levy Collector.

DRAFT

Project Site

[Description of Project Site and map]

Please find enclosed map and locality plan

DRAFT

PPP Fee

DRAFT

Institution Consents

[To list Consents that the Institution will obtain.]

DRAFT

User charge rates

DRAFT

Private Party's resolution

DRAFT

Constitutional Documents

[These documents will be derived from the actual constitutional documents of the Private Party and derived from the term sheets submitted as part of the preferred bid submission.]

DRAFT