MANAGEMENT AGREEMENT

FOR THE

KRAALBAAI HOUSEBOATS

IN THE

WEST COAST NATIONAL PARK

NOVEMBER 2014
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1. DEFINITION AND INTERPRETATION

1.1 In this MANAGEMENT Agreement and its Annexures, 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 “Act” - the National Environmental Management: Parks Act, 2003 (Act No. 57 of 2003) as amended;

1.1.2 “Annexures” - the annexures to this Management Agreement, as amended, replaced and varied from time to time;

1.1.3 “BEE Obligations” - the Black Economic Empowerment requirements detailed in Annexure 5;

1.1.4 “Bid Submission” - the bid for the right to carry out the Project submitted by the Operator and accepted by SANParks as part of the Tourism PPP process;
1.1.5 “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;

1.1.6 “Business Day” - a normal business day, excluding weekends and statutory public holidays;

1.1.7 “Change in Control” - any change whatsoever in Control, whether effected directly or indirectly;

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 Operator's memorandum of Incorporation, certificate of incorporation and certificate to commence business, as well as the Shareholders Management Agreement, equity subscription agreements and equity guarantees entered into and provided in respect of the Operator and any documents or agreements in respect of any debentures issued by the Operator, all of which are attached to this Management Agreement as Annexure 7 and the terms of which are to be to the satisfaction of SANParks;

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 officials) or those of its directors (or equivalent officials) holding the majority of the voting rights on its board of directors (or equivalent body);
1.1.11 “EIA” or “Environmental Impact Assessment” - the process of assessing the Environmental effects of a development or an activity and its subsequent operation, carried out in accordance with applicable Regulatory Provisions and guidelines;

1.1.12 “Environment” - the aggregate of surrounding objects, conditions and influences that influence the life and habitats of humans or any other organism or collection of organisms, and including all or any of the following media: air (including the air within any building or the air within any other man-made or natural structure above or below ground), water (including inland waters, groundwater and water in drains and sewers) and land;

1.1.13 “Environmental Laws” - any Laws in respect of the Environment, including (without limitation) at the Signature Date, the following statutes: the National Water Act 36 of 1998; the Water Services Act, 108 of 1997; the National Environmental Management Act, 107 of 1998; the National Environmental Management: Parks Act, 57 of 2003; the National Environmental Management: Air Quality Act; the Hazardous Substances Act, 15 of 1973; and the National Heritage Resources Act, 25 of 1999;

1.1.14 “Environmental Specifications” - the requirements, conditions, obligations and specifications detailed in Annexure 6;

1.1.15 “Expiry Date” - shall be 24h00 on the second (2nd) anniversary of the Operation Commencement Date,

1.1.16 “Force Majeure” - has the meaning ascribed to it in Clause 20;

1.1.1 “GAAP” - generally accepted accounting practice in the Republic of South Africa as approved from time to time by the South African Accounting Standards Board;
1.1.2 “Good Industry Practice” - the exercise of that degree of skill, diligence, prudence and foresight which would reasonably and ordinarily be expected from time to time from a skilled and experienced contractor or professional, engaged in the same type of undertaking and under the same or similar circumstances and conditions as those envisaged by this Management Agreement; seeking in good faith to comply with his contractual obligations and all applicable Regulatory Provisions, upholding the integrity of SANParks, the intention being that an acceptable balance shall be maintained between tourism and conservation;

1.1.3 “Gross Revenue” - gross revenue has the meaning as defined in Clause 14;

1.1.4 “Houseboats” - the Houseboats and other facilities together with all supporting infrastructure, plant and equipment at Kraalbaai, as required to enable the Operator to exercise its rights and perform its obligations included in the Project Deliverable; on the Operation Commencement Date and any new facilities constructed or developed by the Operator during the Project Term, which is further described in Annexure 1 and the attached site drawings in Annexure 2.

1.1.5 “Intellectual Property Rights” - all registered or unregistered trademarks, 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;
1.1.6 “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 SANParks or the municipality in which the Project is located;

1.1.7 “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;

1.1.8 “Losses” - losses, damages, liabilities, claims, actions, proceedings, demands, costs, charges or expenses of any nature;

1.1.9 “Management Agreement” - this agreement between SANParks and the Operator including the Annexures hereto as amended, extended, replaced and varied from time to time;

1.1.10 “Management Fee” - the fee payable by the Operator to SANParks in respect of the Project, as detailed in Clause 15;

1.1.11 “Management Rights” - the right to conduct and manage the Houseboats at Kraalbaai pursuant to this Management Agreement for the purposes of the Project;

1.1.12 “Minimum Management Fee” - that portion of the Management Fee that is payable by the Operator at all times after the Operation Commencement Date, regardless of the amount of the Gross Revenue, which amount is detailed in Clause 15;

1.1.13 “Operation Commencement Date” - the date of Operation Commencement, specifically 15 November 2014;

1.1.14 “Operator” - the counterparty to SANParks hereunder, specifically xxxxxx, a xxxx registered according to the company laws of South Africa with registration number xxxx/xxxx/xx;

1.1.15 “Operator Default” - has the meaning ascribed to it in Clause 17.1;
1.1.16 “Operator Parties” - the officers, directors, staff, employees, contractors, sub-contractors, agents, guests, visitors, invitees and patrons of the Operator or, where the context requires, any one or more of them;

1.1.17 “Park” - the West Coast National Park declared as such by the Minister under the National Parks Act No. 57 of 1976 and recognized and continuing to exist as such under the Act, alternatively declared in terms of Section 20 of the Act as a National Park or as part thereof;

1.1.18 “Park Management Plan” - the management plan developed by SANParks for the Park in consultation with other stakeholders and approved by the Minister as provided for in the Act, the objective of which is to ensure the protection, conservation and management of the Park in a manner which is consistent with the objectives of the Act and the purpose for which the Park was declared a national park;

1.1.19 “Park Manager” - the manager of the Park in which the Houseboats at Kraalbaai fall;

1.1.20 “Parties” - collectively, SANParks and the Operator;

1.1.21 “Party” - SANParks or the Operator, as the case may be;

1.1.22 “Person” - any individual, partnership, corporation, company, business organisation trust, governmental agency, parastatal, Relevant Authority or other entity;

1.1.23 “Project Assets” - all assets required to design, construct, develop, install, commission, operate and/or maintain the Project, including the Houseboats at Kraalbaai, any books and records, any spare parts and tools, as well as the Intellectual Property and SANParks Assets but excluding all cash and cash equivalents;
1.1.24 “Project Deliverables” - means:

- the installation, commissioning, operation and maintenance of the Houseboats at Kraalbaai, including the repair, renewal or replacement thereof;

- the management and undertaking of the Project including the execution of the Management Rights; and

- the exercise and performance of all other rights and obligations of the Operator under this Management Agreement and the Annexures from time to time;

1.1.25 “Project Insurance” - those insurances that the Operator is required by Law and this Management Agreement to purchase and maintain in terms of Clause 16 a copy of which is attached as Annexure 8;

1.1.26 “Project Term” - the period from the Operation Commencement Date to the Expiry Date or the Termination Date, whichever occurs first, which is further described in Clause 3;

1.1.27 “Project Year” - each period of twelve (12) consecutive months, commencing on the Operation Commencement Date and thereafter commencing on every anniversary of the Operation Commencement Date;

1.1.28 “Project” - the project to operate, manage and maintain the Houseboats at Kraalbaai for purposes of SANParks’ commercial tourism product for the Park and to execute the Management Rights as detailed in this Management Agreement, and if so required by the Operator, finance, design, equip and/or refurbish the Houseboats at Kraalbaai subject to the approval of SANParks;

1.1.29 “Rand” or “R” - the lawful currency of South Africa;

1.1.30 “Regulations” - Regulations issued in terms of the Act;
1.1.31 “Regulatory Provisions” - (a) the Environmental guidelines ("Environmental Specifications") for operators operating within the Park which is further described in Annexure 6, as same may be revised and updated by SANParks from time to time; and
(b) collectively the prevailing laws, Regulations, ordinances, policy directives and standards of the State and any Relevant Authority which in any way affects or applies to the conducting of the Project and/or this Management Agreement from time to time or, if the context is appropriate, any one of them and where appropriate includes the Park Regulations, Park Rules and Park Management Plan;

1.1.32 “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 Management Agreement. A Responsible Authority shall not include any Utility operator or provider;

1.1.33 “SANParks” - South African National Parks, a statutory body established in terms of section 5 of the now repealed National Parks Act, No. 57 of 1976 and continuing to exist as a juristic person in terms of the provisions of section 54 of the National Environmental Management: Parks Act, 2003 (Act No. 57 of 2003) and its lawfully designated representatives from time to time;

1.1.34 “Signature Date” - the date of signature of this Management Agreement by the last signing Party;

1.1.35 “South Africa” - the Republic of South Africa;

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

1.1.37 “Termination Date” - any date of early termination of this Management Agreement, in accordance with its terms;
1.1.38 **“Utilities”** - all facilities serving the public, such as water, electricity, sewage, gas and telecommunications and, where appropriate, includes the relevant provider thereof;

1.1.39 **“VAT”** - Value Added Tax, as defined in the Value Added Tax Act, 1991 (Act No. 89 of 1991), (the “VAT Act”) or any similar tax which is imposed in place of or in addition to such tax;

1.2 This Management 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 Management Agreement;

1.2.2 references to “indexed to CPIX” in relation to any amount of money shall mean that such amount has been expressed in September 2007 prices and shall be escalated annually as at the Operation Commencement Date and each anniversary thereof with reference to the then most recent publication of the CPIX;

1.2.3 references to “Parties” shall include the Parties’ respective successors-in-title and, if permitted in this Management Agreement, their respective cessionaries and assignees;

1.2.4 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;

1.2.5 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;

1.2.6 the headings of Clauses, sub-Clauses and Annexures are included for convenience only and shall not affect the interpretation of this Management Agreement;
1.2.7 the Annexures to this Management Agreement are an integral part of this Management Agreement and references to this Management Agreement shall include the Annexures;

1.2.8 the Parties acknowledge that each of them has had the opportunity to take legal advice concerning this Management Agreement, and agree that no provision or word used in this Management 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 Management Agreement or any part of it;

1.2.9 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;

1.2.10 references to “this Management Agreement” shall include this Management Agreement and its Annexures as amended, varied, novated or substituted in writing from time to time;

1.2.11 references to any other contract or document shall include (subject to all approvals required to be given pursuant to this Management 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;

1.2.12 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;

1.2.13 when a number of days is prescribed in this Management 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 SANParks has the authority, power, control and responsibility in respect of the Houseboats by the Act.
2.2 SANParks has identified the Operator as an appropriate and reputable operator and wishes to grant to it the right to manage and operate the Houseboats in the Park, all in accordance with Good Industry Practice and the Operator’s Bid Submission in respect of the Houseboats.

2.3 In terms of the Act, SANParks wishes to appoint the Operator and the Operator accepts the appointment to undertake the Project on the terms and conditions of this Management Agreement.

2.4 Accordingly, the Parties wish to enter into the Management agreement on the terms and conditions detailed below.

3. PROJECT TERM

3.1 This agreement shall be for a period of twenty four (24) months commencing on 15 November 2014 terminating on 14 November 2016.

3.2 Prior to the expiry of the Project Term, either Party may on written notice of not less that 2 (two) months, give the other Party notice of termination of this Management Agreement, in which event this Management Agreement shall terminate.

4. STATUS OF THIS MANAGEMENT AGREEMENT

4.1 Notwithstanding the covenants provided in Clause 8, each Party hereto hereby represents and warrants that on and after the Signature Date this Management Agreement is legally valid and binding upon it.

4.2 The Operator will be responsible for all taxes of general application and without limiting the generality of the foregoing, any duties, fees or taxes assessed by any Relevant Authority in respect of the operation of the Houseboats. These taxes will exclude any capital gains tax, income tax, or other taxation on income which is earned by SANParks and, notwithstanding this Management Agreement, any tax payable by SANParks.

4.3 This Management Agreement imposes binding obligations upon the Parties and sets out the terms on which SANParks agrees that the Operator may operate the Houseboats.
5. MANAGEMENT RIGHTS

5.1 Exclusive Grant of Management Rights

5.1.1 Subject to the terms of this Management Agreement, the Management Rights to provide and manage the Houseboats are granted exclusively within the Kraalbaai Area to the Operator by SANParks, for the period of this Management Agreement and any extension thereof.

5.1.2 During the period of this Management Agreement, SANParks undertakes:

5.1.2.1 not to establish or operate any commercial houseboat facilities at Kraalbaai;

5.1.2.2 not to grant to any third parties the rights referred to in 5.1.2.1 and to ensure no third party operates or establishes any such facilities referred to in Clause 5.1.2.1.

5.2 Houseboats Facility Rights

5.2.1 The grant of the Management Rights to the Operator shall entitle and oblige the Operator to the exclusive right to operate the Houseboats for gain for the duration of the Management Agreement:

5.2.1.1 conduct and manage all facets of the Project and to operate and maintain the Houseboats, infrastructure and/or equipment used for or in connection with the Project;

5.2.1.2 generate, charge and collect revenues from the execution of such Management Rights;

5.2.1.3 the obligation to use the Houseboats in accordance with the terms of this Management Agreement;

5.2.1.4 access to the Park and access for the Operator’s employees, subject to the normal Park’s operating rules and hours on the same basis as SANParks’ employees;

5.3 Service Delivery

The commercial activities of the Houseboats to be provided by the Operator shall:

5.3.1 be of an acceptable standard and quality comparable to similar standards and
quality found in similar facilities outside of the Park; and

5.3.2 be delivered to the Houseboats user in a professional, courteous and friendly manner, given the circumstances.

6. **OPERATION, MANAGEMENT AND MAINTENANCE**

6.1 The Operator shall be obliged during the Project Period to undertake the Operation, Management and Maintenance of the Houseboats and of all of the alterations and developments according to Best Industry Practice during the hours specified by SANParks.

6.2 The Operator shall furnish SANParks with a quarterly report in an agreed format set out by Park Manager regarding the Operation, Management and Maintenance of the Houseboats.

6.3 The Operator shall comply with the Environmental Specifications set forth in Annexure 6.

6.4 The Operator shall:

6.4.1 operate the Houseboats properly and strictly in accordance with the provisions of the Operator’s current operating manuals and the undertakings made by the Operator in its Bid Submission specifically acknowledging and taking the unique characteristics of the Park into account;

6.4.2 use its best endeavours to maintain the highest standards in accordance with Good Industry Practice in all matters connected with the operation of the Houseboats and shall not sell, display for sale or consumption, deliver to the end user or provide any foodstuffs or products or anything else which does not conform with Good Industry Practice or any Regulatory Provisions with regard to the standard or quality of preparation, display or sale of any foodstuffs at the Houseboats;

6.4.3 shall at all times maintain the kitchen and other associated equipment used in the Houseboats in a clean, orderly and sanitary condition;

6.4.4 shall ensure that all personnel and staff employed by the Operator in the Houseboats shall at all times be clean, cleanly and tidily clothed so as to maintain uniformly high standards of presentation and delivery;
6.4.5 shall at all times ensure that any products or foodstuffs in stock are fresh, uncontaminated and hygienically and properly stored and shall ensure proper storage, disposal, serving and preparation of all foodstuffs and products.

6.5 SANParks shall conduct regular quality audits to ensure that the quality of the Houseboats offering provided and products prepared and sold by the Operator consistently meet the desired standards. Such quality audits shall be conducted by way of “mystery guests”, spot checks, customer questionnaires and SANParks quality control checks or other measures as deemed necessary by SANParks.

7. LABOUR LAWS

7.1 The Operator agrees to abide by the laws in force, as amended from time to time, relating to employees engaged in the business of operating the Houseboats and shall use its best endeavours to take all reasonable steps to ensure similar compliance by its contractors, sub-contractors at all levels, assignees and agents, and furthermore agrees to adhere to and ensure, as far as practicably possible, adherence to fair labour practices.

8. OPERATOR COVENANTS

8.1 Subject to the provisions of this Management Agreement, the Operator shall conduct and manage the Project:

8.1.1 at its own cost and risk;

8.1.2 in compliance with all applicable Regulatory Provisions and consents;

8.1.3 in compliance with all applicable health and safety standards; and

8.1.4 in accordance with Good Industry Practice; and

8.1.5 in accordance with SANParks tourism programme for the Park.

8.2 The Operator shall take all reasonable steps to ensure that all the Operator Parties visiting or working at the Houseboats, adhere to, abide by and comply with:

8.2.1 all Regulatory Provisions, the Environmental Specifications in respect of the Park and specifically in respect of the Houseboats;
8.2.2 the terms of this Management Agreement; and

8.2.3 any valid and enforceable directives or rules issued by the Park Manager from time to time. In cases where the Operator believes that the Park Manager has issued a directive or rule that is either not valid, or that impacts materially on the commercial soundness of the Project, the Operator shall have the right to appeal against such rule or directive with SANParks and/or any other person determined by SANParks, at its absolute sole discretion. SANParks and/or such other person determined by SANParks will verify whether the directive or rule in question was valid and consistent with practice elsewhere in the Park. Pending the results of such an appeal, the Operator shall abide by the said directive or rule.

8.3 The Operator shall be responsible for:

8.3.1 obtaining and keeping current all consents which may be required for the performance of its obligations under this Management Agreement;

8.3.2 implementing each consent within the period of its validity in accordance with its terms;

8.3.3 undertaking, according to the terms of this Management Agreement, all of its obligations within the time periods specified; and

8.3.4 maintaining and keeping the Houseboats clean including the area of responsibility described in Annexure 1 hereto.

8.4 Without prejudice to Clauses 8.3.1 and 8.3.2, the Operator shall obtain all necessary permits, approvals and/or licences in accordance with the Regulatory Provisions and shall comply with all conditions of any permit, approval or licence granted by any Relevant Authority and shall take all other necessary action required under the relevant Regulatory Provisions governing all facets of the conduct of the Project during the Project Term.

8.5 The Operator shall bear all risks and costs with respect to material damage to the Houseboats or the environment caused by the operation of the Houseboats during the Project Term arising from any act or omission of the Operator.

8.6 The Operator shall take all reasonable steps in the performance of its obligations hereunder to prevent and limit the occurrence of any environmental or health hazards and to ensure the health and safety of Operator Parties.
8.7 The Operator shall, upon the written request of SANParks, and at no cost to SANParks, make available at all times documents which are or were required or brought into existence by the Operator or supplied to the Operator from other parties to the Associated Agreements for the purposes of operating the Houseboats, or which the Operator is required to prepare in terms of this Management Agreement.

8.8 At the end of the Project Term or at such earlier time as may be provided herein, the Operator shall hand over the Houseboats and its rights or interest in the Houseboats to SANParks free of charges, liens, claims or encumbrances of any kind whatsoever, and free of any liabilities, in good condition, fair wear and tear excepted. The Operator shall not be entitled to payment of any compensation in connection therewith.

9. COMMERCIAL BRANDING

9.1 The Operator shall not, in the operation, promotion or marketing of the Houseboats, be entitled to use, directly or indirectly, any commercial branding similar to any branding used outside of the Park by the Operator, or any of its associated companies or competitors, without the prior written consent of SANParks;

9.2 Any commercial branding developed by the Operator in respect of the Houseboats may not be used outside the Park without SANParks’ prior written consent; and

9.3 The use of any branding, logo, trademark, trade name, get up, signage, outdoor advertising, livery, promotion, promotional or marketing material or other proprietary intellectual property in connection with the Houseboats shall require the prior written approval of SANParks

10. PROJECT SITE

10.1 Houseboats

The location and physical boundaries of the Houseboats shall be the areas defined in Annexure 1 and Annexure 2.

10.2 Access Following Commencement

10.2.1 With effect from the Operation Commencement Date, SANParks shall grant to the
Operator and shall use all reasonable endeavours to ensure that for the duration of the Project Term the Operator and the Operator Parties have such access to the Houseboats as is required by the Operator for the carrying out of the Project therein, but subject always to the provisions of this Management Agreement.

10.2.2 The Operator, for the purposes of the Project, can traverse and carry out the Project in the Kraalbaai area and in addition, also traverse the shortest safe route to Langebaan for the sole purpose of discharging waste and filling water tanks.

10.3 **Suitability and Condition of the Houseboats**

SANParks makes no representation and gives no warranty to the Operator in respect of the condition and suitability of the Houseboats or any structures associated therewith or located therein, for the Project, and the Operator accepts such Houseboats and structures in their present condition and subject to all defects.

11. **THE ENVIRONMENT**

11.1 During the Project Term, the Operator shall conduct, manage and carry out the Project at all times in an Environmentally responsible way by adopting appropriate operating methods and practices for conducting such a Project in a proclaimed National Park and shall adhere to the Regulatory Provisions and the Environmental Specifications.

11.2 The Operator shall promptly bring to the attention of SANParks any matter which may, in its view, have a detrimental impact on the Environment within the Houseboats and the Park.

11.3 The Operator shall take all reasonable steps in the conducting of the Project to prevent and limit the occurrence of any Environmental or health hazards and to ensure the health and safety of the Operator Parties and the general public.

11.4 The Operator shall comply with its statutory duties in terms of the Environmental Laws to take reasonable measures to prevent pollution or degradation from occurring, continuing or recurring or, in so far as such harm to the Environment is authorised by SANParks or by law, to minimise and rectify such pollution or degradation of the Environment.
12. **SANPARKS’ REMEDIAL RIGHTS**

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

13. **SANPARKS’ UNDERTAKINGS**

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

13.2 SANParks shall continue, in the ordinary course of business, to market and promote the Houseboats and co-operate with the Operator in preparing marketing and promotional material so as to ensure that the Houseboats is properly marketed and promoted as an integral part of the Park and the marketing and promotional programme for the Park as a whole.

13.3 SANParks will co-operate with and assist the Operator in whatever reasonable manner possible to ensure the continued viability of the Houseboats and will not engage in acts or omissions which may materially affect the rights or interests of the Operator in respect of the Houseboats.

13.4 SANParks will operate and manage the Park and will promote it in such manner as to ensure the continued viability and sustainability of the Park as a National Park and as a sustainable and attractive tourist and conservation undertaking.

13.5 SANParks’ procurement processes both in relation to the Houseboats in question and in relation to the conduct of this tender and the conclusion of the Management Agreement comply to the best of SANParks knowledge and belief in all material respects with all relevant legislation, regulations and the like governing such
procurement processes.

14. BLACK ECONOMIC EMPOWERMENT

14.1 When making decisions affecting the performance of its obligations under this Agreement, the Operator will take into account SANParks and State policies and objectives on affirmative action and employment equity and the empowerment of Historically Disadvantaged Individuals and Historically Disadvantaged Groups (HDG’s).

14.2 The Operator shall make every effort and use all appropriate opportunities to foster the employment of HDGs, including but not limited to, creating business and employment opportunities for HDGs and empowering those HDGs living in communities in the vicinity of the Park.

15. FINANCIAL PROVISIONS AND PAYMENT

15.1 Management Fees

15.1.1 The Operator warrants and undertakes to SANParks a guaranteed return from the Projects during the currency of this Management Agreement in an amount equal to __________ (________ percent) of the gross monthly turnover of the Projects or the minimal monthly income fee of R ().

15.1.2 This amount shall be payable by the Operator to SANParks, monthly in arrear, on the seventh day of each and every calendar month following the month in which the turnover was derived. Payment to SANParks will be effective from 1 December 2014.

15.1.3 All amounts payable by the Operator to SANParks in terms of this Management Agreement shall be paid to SANParks free of deduction or bank commission or exchange at its address set forth in clause 27 below or to time nominate in writing.

15.1.4 The payment shall be accompanied by an accounting of the amount paid is calculated.

15.1.5 VAT shall be payable on the amounts due in terms of paragraph 15.1.
15.2 Deposit

15.2.1 As security for its obligations in terms of this agreement, the Operator will pay to SANParks the sum of R10 000,00 (Ten Thousand Rands) which sum will be held in an account by SANParks, with interest thereon to accrue to the Operator.

15.2.2 SANParks shall be entitled to retain the deposit for the duration of this Management Agreement and for the period of two months after its termination, upon which date and provided that the Operator has faithfully complied with its obligations in terms of the Management Agreement, SANParks shall refund the deposit, to the Operator.

15.2.3 SANParks shall be entitled to apply the whole, or any of the deposit towards the payment, in whole or in part, of any amount payable by the Operator to SANParks in terms of paragraph 15.2.1 of the Management Agreement and/or in payment of any of the other obligations of the Operator provided under this Management Agreement (including, but not limitation the cost of any maintenance and/or repairs of the Houseboats for which the Operator is liable), and whether or not the Operator disputes such liability.

15.2.4 Should SANParks so apply the deposit, then the Operator will forthwith pay to SANParks an amount equal to the part of the deposit so applied, so as to ensure that the deposit is at all times maintained in the amount of R10 000,00 (Ten Thousand Rands).

15.3 Taxes

15.3.1 The Operator will be responsible for all taxes of general application and without limiting the generality of the a foregoing, any duties, Management Fees or taxes assessed by any Relevant Authority in respect of the Houseboats, or in respect of the Project or any other activities conducted within the Park or activities undertaken by SANParks relating to the regulation of this Management Agreement. These taxes will exclude any capital gains tax, income tax; value added tax or other taxation on income which is earned by SANParks or, notwithstanding this Management Agreement, any tax payable by SANParks.

15.3.2 Notwithstanding that all Management Fees payable hereunder shall be deemed to be exclusive of value added tax payable in terms of the Value Added Tax Act, 1991 (Act No. 89 of 1991), as amended (“the Act”), and any other rates, taxes, duties, charges or imposts which may be or become payable thereon, the Operator shall be
obliged, at all times, to pay value added tax, as required by the Act.

15.4 All payments to be made to SANParks by the Operator in terms of this Management Agreement will be made free of set-off or any other deductions whatsoever.

16. INSURANCE

16.1 SANParks shall insure all immovable properties as well as the equipment acquired by SANParks.

16.2 The Operator shall insure all their insurable properties within the Houseboats with a reputable insurance company by no later than the Operation Commencement Date:

16.2.1 for not less than the full replacement value of the insurable property;

16.2.2 against the risk of fire, lightning, explosion, storm, flood, earthquake, riots (including political riot), strikes and malicious damage;

16.2.3 property and casualty insurance;

16.2.4 public liability and third party insurance;

16.2.5 employer’s liability insurance;

16.2.6 business interruption insurance; and

16.2.7 all risks cover and loss of Management Fee for six (6) months consequent upon the damage to or destruction of the Project Assets as a result of any of the aforesaid events.

16.3 All premiums, subsequent renewal premiums, all additional premiums and all stamp duties in respect of the relevant insurance policies, shall be paid by the Operator.

16.4 Should the Operator be in breach of the provisions of Clause 16.1, SANParks may, after consultation with the Operator and giving the Operator thirty (30) days within which to comply with Clause 16.2, but will not be obliged to, procure and maintain, at the sole cost and expense of the Operator, the insurances referred to in Clause 16.1 to the extent that SANParks deems necessary. In this event, the Operator shall be obliged to refund to SANParks all premiums disbursed by SANParks on
behalf of the Operator within a period of fourteen (14) days of receiving written notice from SANParks to do so.

16.5 The Operator shall comply with all the terms and conditions embodied in the insurance policy or insurance policies referred to in Clause 16 and undertake 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.

16.6 The Operator undertakes to provide SANParks with certified copies of the certificates of insurance and certified copies of the insurance policies within seven (7) days of the Operation Commencement Date to be attached to this Management Agreement as Annexure 8. Such certificates and policies shall reflect all insurance coverage stipulated by SANParks.

17. INDEMNITIES AND LIABILITY

17.1 Operator Indemnity

17.1.1 The Operator shall indemnify SANParks, and hold SANParks harmless from and shall be responsible to third parties for, any liability, loss, damage, damages, cost or costs of any kind whatsoever incurred or suffered by any third party or SANParks on or after the Operation Commencement Date, including any claim against SANParks by a Relevant Authority, as a result of any act or omission of the Operator or any Responsible Person, (including without limitation any default or failure by the Operator under this Management Agreement) with regard to the operation and management of the Houseboats except to the extent directly caused by any gross negligence, material default or material breach of statutory duty on the part of SANParks or such Relevant Authority.

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

17.1.2.1 death or injury to any Person; or

17.1.2.2 loss of or damage to any property;

arising out of any such act or omission by the Operator referred to in Clause 17.1.1 above.
It is recorded that notwithstanding the provisions of Clause 17.1.1 to and including 17.1.2 SANParks and the Operator shall be responsible for loss of, or damage to its own property or personal injury or death of its own employee and each party shall hold harmless the other and waive any right of recourse against the other party in respect of such loss and shall obtain the same waiver of right of recourse from its insurers. Each party shall obtain the agreement of its insurers in respect of the provisions of this Clause 17.1.2.

17.2 Legal Action

17.2.1 The Operator will erect and display a notice at the Houseboats to the effect that the Houseboats are operated by an independent operator under contract from SANParks.

18. FINANCIAL REPORTING REQUIREMENTS

18.1 The Operator shall furnish SANParks, as soon as practicable but in any event not later than 4 calendar months after the end of Project Term, with:

18.1.1 A copy of the Operator’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; and

18.1.2 a copy of any management letter or other communication sent by the auditors to the Operator or to its management in relation to the Operator’s financial, accounting and other systems, management and accounts.

19. DEFAULT INTEREST

Interests shall accrue on all overdue amounts payable in terms of this Management 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 Management Agreement, "Force Majeure" means any of
the following events or circumstances which are beyond the reasonable control of
the party giving notice of force majeure, including but not limited to:

20.1.1.1 War (whether declared or not), civil war, armed conflicts or
terrorism, revolution, invasion, insurrection, riot, civil
commotion, mob violence, sabotage, blockade, embargo,
boycott, the exercise of military or usurped power, fire,
explosion, theft, storm, flood, drought, wind, lightning or
other adverse weather condition, epidemic, quarantine,
accident, acts or restraints of Government imposition, or
restrictions of or embargos on imports or exports; or

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

20.1.1.3 chemical or biological contamination of the Houseboats
Facilities 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 Management Agreement.

20.1.2 Subject to Clause 20.1.3, the Party claiming relief shall be relieved from liability
under this Management Agreement to the extent that it is not able to perform all or a
material part of its obligations under this Management 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 Management 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 Management
Agreement to the extent that it is not able to perform, or has
not in fact performed, its obligations under this Management
Agreement due to its failure to comply with its obligations
20.1.4 The Party claiming relief shall serve written notice (the initial 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 (five) Business Days after the initial notice. The written 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 will be resumed.

20.1.7 If, following the issue of the initial 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 Neither SANParks nor the Operator shall have any right to payment or otherwise in relation to the occurrence of an event of Force Majeure.

20.1.9 The Parties shall endeavor to agree any modifications to this Management Agreement, which may be equitable having regard to the nature of an event or events of Force Majeure. Clause 26.2 shall not apply to a failure of the Parties to reach agreement pursuant to this Clause 20.1.9, and this Management 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 Management Agreement pursuant to that Clause, within 180 days of the date on which the Party affected served the initial notice on the other Party in accordance with that Clause, either Party may at any
time afterwards terminate this Management 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 Management Agreement.

21. BREACH OF THE MANAGEMENT AGREEMENT

21.1 In the event of a material breach of any of its obligations by either Party under this Management Agreement and that Party failing to remedy such breach within a period of 14 (fourteen) days (or such longer period as may be reasonably required to remedy such breach by the exercise of reasonable diligence and as agreed to between the Parties) of receipt of written notice from the aggrieved Party calling upon it to do so, the aggrieved Party shall be entitled to cancel this Management Agreement or to claim specific performance, in either event without prejudice to the aggrieved Party’s rights to claim damages or to claim such other remedy to which it might be entitled.

21.2 Should an application be made for the winding-up of either Party, or should an order be issued, whether provisional or final, for the winding-up of either Party, or should either Party enter into or propose any deed of assignment to any of its creditors for settlement of its debts, or if execution is issued against a Party by virtue of any judgement, or if either Party commits any act of insolvency, or, being a legal entity, is placed under business rescue, pass a resolution to commence business rescue or receive an application from a third party for it to go into business rescue, or commences to be wound up in a liquidation that is not merely a voluntary liquidation for the purpose of reconstruction, then the other Party may, without prejudice to its rights in terms of this Management Agreement or any other prevailing law, forthwith terminate this Management Agreement.

21.3 On termination this Management Agreement for whatsoever reason, the Private Party shall return to SANParks the Houseboats in the same condition as it was received, fair wear and tear expected,

22. CHANGES IN CONTROL

From the Signature Date as well as for the duration of the Project Term, the Operator shall procure that there is no Change in Control in the Operator (or in any company of which the Operator is a subsidiary) without the prior written approval of SANParks,
which approval shall not be unreasonably withheld, provided that no Change in Control may breach the provisions of Annexure 5 in any way.

23. INTELLECTUAL PROPERTY

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

23.2 Subject to existing rights and obligations, SANParks shall, on application by the Operator, grant a non-exclusive right and licence to the Operator to use SANParks’ trademarks which relate to the Park. Should any of SANParks’ trademarks, names, logos, images and all other intellectual property matters be required for use outside of this Management Agreement, they will be subject to terms and conditions negotiated with SANParks. This includes the granting of licences to trade merchandise with SANParks’ trademarks, names, logos, images and all other intellectual property matters outside of SANParks’ tourism facilities.

23.3 In order to establish and maintain high standards of style, quality and proprietary associated with the Park, in the event the Operator desires to use SANParks’ trademarks or logos which relate to the Park in any way, the Operator shall first submit the concept or a sample of the proposed use to SANParks for approval. Under no circumstances shall any use of SANParks’ trademarks or logos, which relate to the Park, or the image or likeness of any trademark, logo or image, which SANParks in good faith believes reflects unfavourably upon or disparages the Park, be approved. SANParks shall use its best efforts to advise the Operator of its approval or disapproval of the concept or sample within 15 (fifteen) Business Days of its receipt of the concept or sample. If SANParks approves the concept or sample, the Operator shall not depart therefrom in any material respect without SANParks’ further written approval.

23.4 If at any time SANParks withdraws its approval for the specified use of any trademark or logo, the Operator shall forthwith discontinue all use of SANParks’ trademark or logo and shall remove from public sale or distribution, any previously approved product in respect of which SANParks has rescinded approval.

23.5 SANParks may withdraw approval immediately upon 5 (five) Business Days written notice to the Operator if the Operator or any of its officers, directors or employees
commits any act or engages in any conduct which constitutes a crime, is contrary to any Regulatory Provision or offends against public morals and decency and in SANParks’ reasonable opinion, materially prejudices the reputation and public goodwill of SANParks. The Operator acknowledges that the name of the Park (the “Protected Name”) is associated with and peculiar to the Park and is the intellectual property of SANParks. Consequently, the Operator agrees that the sole and exclusive ownership of the Protected Name shall vest in SANParks and should the Operator utilise the Protected Name, it does so only in terms of this Management Agreement and with the prior written approval of SANParks.

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

23.7 Within 30 (thirty) Business Days after the termination of this Management Agreement and where the Operator has operated a company utilising the Protected Name with the permission of SANParks, the Operator shall either:

23.7.1 de-register the company bearing the Protected Name; or

23.7.2 change the name to a name not substantially similar to the Protected Name.

23.8 The naming and the exterior decoration of the Houseboats Facilities shall be done in consultation with SANParks and subject to SANParks’ approval.

23.9 In circumstances where the name chosen by the Operator and approved by SANParks is not part of SANParks’ intellectual property, then the rights of SANParks contemplated in this Clause 23 shall not be applicable and the intellectual property shall be the sole property of the Operator.

24. AMENDMENTS

This Management Agreement may not be varied, except by an agreement in writing signed by duly authorised representatives of the Parties.

25. ENTIRE AGREEMENT
25.1 Except where expressly provided otherwise in this Management Agreement, this Management 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 Management Agreement.

25.2 Each of the Parties acknowledges that:

25.2.1 it does not enter into this Management 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 Management Agreement or not) except those expressly contained in or referred to in this Management Agreement, and the only remedy available in respect of any misrepresentation or untrue statement made to it shall be a remedy available under this Management Agreement; and

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

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

26. GOVERNING LAW AND JURISDICTION

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

26.2 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 Management Agreement, and irrevocably submits to the jurisdiction of the Magistrates Court of South Africa.

27. NOTICES

27.1 Any notice or correspondence to be given under this Management Agreement
shall be in writing, in English, unless otherwise agreed and shall be delivered personally or sent by fax followed by the original delivered by hand.

27.2 The addresses for Notices are as follows:

**SANParks:**

Marked for the attention of the CEO:
c/o Legal Services
Groenkloof National Park
643 Leyds Street
Muckleneuk
Pretoria
Telephone: (012) 426-5000
Facsimile: (012) 343-3849

**XXXXXXXX:**

Marked for the attention of the Directors:

27.3 A notice sent by one Party to another Party shall be deemed to be received:

27.3.1 on the same day, if delivered by hand;

27.3.2 on the same day of transmission if sent by telex or telefax and if sent by telefax with receipt confirming completion of transmission.

27.4 Either Party may change its nominated address to another address in the Republic of South Africa by prior written notice to the other Party.
SIGNED AT ................ ON THE ........................................ 2014
For and on behalf of

SOUTH AFRICAN NATIONAL PARKS

.................................................................
who warrants his authority hereto

SIGNED AT ................ ON THE ........................................ 2014
For and on behalf of

.................................................................
who warrants his authority hereto
28. ANNEXURE 1 - DESCRIPTION OF HOUSEBOATS AT KRAALBAAI

28.1 Facilities

28.2 Equipment assessment
29. **ANNEXURE 2 – SITE DRAWINGS OF HOUSEBOATS AT KRAALBAAI**
30. **ANNEXURE 3 – PRIVATE PARTY OPERATIONAL REQUIREMENTS**

30.1 **Standards of Houseboats at Kraalbaai**

30.1.1 In the conduct of the Houseboats activities the Operator shall at all times maintain the Houseboats at Kraalbaai and all services provided therein to the highest standard and ensure that the premises are at all times clean and safe for customers, including public access areas and toilets adjacent to Houseboats at Kraalbaai.

30.2 **Service Provision**

The SANParks' houseboat will include all the facilities and infrastructure in respect of the existing operational management of the Houseboats. The Operator will be entitled to cater to the needs of park visitors as per their proposal submitted on xx xxx 2014 and as per the provisions of this agreement.

30.3 **Product Offering**

The Houseboats' offering includes accommodation, catering, activities and events as approved by SANParks. The operator will be responsible for the bookings, operation and maintenance of the project.

30.4 **Uniforms**

Staff must at all times be professional, neat and tidy and dressed in uniform.

30.5 **Benchmark Pricing and Control**

The operator to ensure that the pricing each fiscal is approved by SANParks and based on similar tourism products so as to ensure competitive pricing structures for the operation.

30.6 **Staff and Staff Transport**

SANParks will provide the operator with two “swipe cards” to facilitate access to the Park. The operator, their staff and contractors will be afforded the same arrangements that presently exist with residents of the Park.
30.7 Advertising

In the conduct of the Houseboats’ business the Operator shall comply with all the reasonable advertising requirements as may be specified by SANParks from time to time.

30.8 Maintain stocks

The Operator to ensure that stock levels are maintained according to good industry practice as per similar tourism offerings like the Houseboats.

30.9 Supplier Accounts

In the conduct of the Houseboats business the Operator shall pay properly as and when due all supplier accounts received by the Operator pertaining to the Houseboats activities in accordance with accepted business procedures.

30.10 Utility Charges

The Operator is responsible for all utility charges i.e. electricity, water, waste and refuse removal and sewerage. SANParks will charge the utilities to the Operator on a monthly basis and the Operator is obliged to settle such accounts within 7 (seven) days.

30.10.1 Telephone accounts - In the conduct of the Houseboats activities the Operator shall procure the maintenance of sufficient telephone services within the Houseboats at Kraalbaai. The Operator shall be responsible for the payment of all telephone accounts at the Houseboats at Kraalbaai.

30.10.2 Waste – The Operator must ensure that waste disposal facilities, including rubbish or waste removal bins, are clean and free from noxious or offensive odorous, that the waste disposal facility is not unsightly and the waste is frequently removed and the area surrounding the waste disposal facility is clean, neat and tidy. The Operator must adhere to SANParks’ Waste Policies as amended from time to time. The Operator will be responsible for the costs of all solid and liquid waste processing.

30.10.3 Water – Water meters are installed at the Houseboats at Kraalbaai to monitor the water usage by the Operator. The related cost will be for the account of the Operator.
30.11 Quality Audit

The Operator shall participate in and work together with SANParks in conducting and establishing quality audits.

30.12 Institutional Policies and Objectives

The Operator is obliged to comply with and adhere to SANParks' Policies and Initiatives as amended from time to time i.e. HIV Aids Policy, Health and Safety Forums etc.

30.13 Publications

The Operator may not display, offer for sale or sell any offensive reading material and shall be obliged, at no cost to SANParks, to promote SANParks’ publications, magazines or other publication material.

30.14 Refurbishment of the Houseboats

SANParks has provided an existing facility and will be responsible for the upkeep of the building unless damaged through unreasonable use by the Operator. Any changes to the interiors would be for the account of the Operator subject to the approval by SANParks.

31. ANNEXURE 4 – PRIVATE PARTY BID SUBMISSION

The Operator shall adhere to and comply with the Operator's Bid Submission.
32. **ANNEXURE 5 – OPERATOR BEE OBLIGATIONS**

32.1 **Local Community Involvement**

It is envisaged that this opportunity should provide employment opportunity to local community members. The Operator should liaise with park management to leverage their community links to ensure that a suitable BEE and social development agenda is achieved.

32.2 **Operator BEE Obligations as per the Bid Submission**
33. ANNEXURE 6 – ENVIRONMENTAL SPECIFICATIONS FOR THE OPERATION OF HOUSEBOATS AT KRAALBAAI WITHIN THE PARKS

33.1 Introduction

South African National Parks (SANParks) in 2001, embarked on an initiative to commercialise certain of its operations. One aspect of this effort is the outsourcing out of services within the National Parks to private operators. As the custodian for the Parks, SANParks will retain broad oversight responsibility for the operation of the outsourced facilities. In this context, SANParks has established Environmental Specifications to ensure that the operation of the Houseboats at Kraalbaai continues to be and is seen to be an integral part of the Park.

33.2 Legislative Basis for these Guidelines

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

Authorization of any development in a Park is governed by the NEMA and the NEMPAA, and regulations. Any changes to infrastructure or operations require written approval from SANParks and are subject to the prescribed policies and procedures.

The process for upgrading or refurbishment of facilities will be undertaken as per SANParks internal policies and procedures, and authorizations given by the Department of Environmental Affairs and Tourism where relevant and SANParks.

The EIA laws and Regulations do not specifically require an EIA for a development such as the refurbishment and/or expansion of a building. However, given that the development is taking place within a Park such as a National Park, SANParks requires environmental scoping to be conducted on any proposal to expand or modify the existing Houseboats that are being bid for. Modifications include both structural changes to the facility and additions to the facility or its environs, including signage. The scoping report must be submitted to DEA, the “relevant
environmental authority” as defined in the EIA Guideline documents.¹

33.3 Environmental Specifications

SANParks anticipates that national Legislation together with the OMP will adequately cover many of the environmental issues that will arise. In the interim, SANParks has developed internal Specifications for the operational components of the Houseboats at Kraalbaai that must be adhered to by the Operator. These Specifications are developed in-line with Corporate and the parks’ management plan and internal operational policies, procedures and standards. However, the Operator must be aware; therefore, that the terms and conditions set forth in the Specifications are subject to amendment. Private Parties will be expected to comply at all times with the provisions of the Environmental Specifications as amended from time to time.

33.3.1 Visual Impacts

33.3.1.1 Any development within the Park must take due cognisance of the visual impacts it may have on surrounding areas and other Park users. SANParks has based its Specifications for visual impacts on interpretations of existing management documents. It is assumed that ‘visible’ means to the naked eye. Private Parties proposing to modify existing Facilities must consider the issue of visual impacts, and include in their proposals sufficient detail regarding the design of all structures to enable evaluation during the Bid evaluation process. Depending on the extent of the proposed modifications, an EIA may be required to assess the visual impacts, including signage, advertising, get up and the like, of the proposal and recommend mitigation measures, if necessary.

33.3.1.2 The building style -- structure, materials and design -- must be in harmony with the environment. The height of buildings is important. Structures more than two stories in height are not permissible.

¹In the case of the SANParks, the ‘relevant environmental authority’ for review of EIAs conducted in National Parks is the national Department of Environmental Affairs.
33.3.2 Building Materials

The use of building materials sourced inside the Park will not be permitted as a general rule. In exceptional circumstances, it may be appropriate to use such materials. In those instances, the Operator must obtain written approval from SANParks.

33.3.3 Lighting

Developments that blend into the landscape during daylight hours may nonetheless be visible over long distances at night as a result of artificial lighting. The Operator shall therefore take the impacts of lighting into consideration in any modifications to existing structures, as well as in its operation of the facility. Lights illuminating pathways and other areas must be low to the ground and directed downwards. If a braai is part of a Houseboats’ menu, it will be important to obscure fires and other light sources away from areas of the Park where they may be visible. The OMP for the facility should detail how lighting impacts will be minimised. Private Parties bidding on facilities where the existing lighting does not meet these criteria must describe how the lighting will be altered to ensure that it conforms to the Specifications discussed above.

33.3.4 Lightning Arrestors and Radio Masts

33.3.4.1 If the Operator proposes to erect new structures, these must be (where possible) included in the Bid Submission. Construction of radio masts is a prescribed activity under South Africa’s EIA Regulations.

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

33.4 Bulk Infrastructure
33.4.1 Electricity

Provision of electricity from the national grid is already in place for most of the facilities proposed for outsourcing, except picnic sites. Some Private Parties may wish to utilise alternative energy sources, including solar power or generators. If new solar panels are installed, their visual impacts must be considered, along with the disposal of batteries and their by-products. Generators are permitted, although potential environmental impacts (noise, potential contamination from oil and fuel spills) must be considered in the OMP and EMP and, if approved, effective mitigation measures implemented to address these impacts.

33.4.2 Water

33.4.2.1 Water is a scarce resource in South Africa, and the facilities’ size in respect to available water resources must be considered, particularly if the Bidder intends to expand the facility significantly. Given constraints on water supplies in many National Parks, SANParks encourages systems that enable reuse of treated water. The water allocation and requirements should also be determined by the OMP and subjected to subsequent audits.

33.4.2.2 Under the provisions of the National Water Act, South African law requires that a permit be obtained from the Department of Water Affairs and Forestry (DWAF) for use of water from both surface and underground sources. The DWAF permit requirement applies to existing developments. SANParks will monitor the use of all water. In circumstances where there is insufficient water the Operator will be required to reduce consumption accordingly.

33.4.2.3 It is important to remember that elephants occur in abundance in several Parks and any underground water pipes must be buried to a minimum depth of 1 meter to ensure that they are not unearthed or otherwise damaged.

33.5 Communications Infrastructure
33.5.1 Telephones

33.5.1.1 The Operator must arrange for service with the appropriate telephone company.

33.5.1.2 Private Parties may not utilise SANParks’ radio networks, other than at picnic sites, where the existing radio network can be used for emergencies.

33.6 Waste Management

33.6.1 Liquid Wastes

*All kitchen drains must be equipped with fat or grease traps.* Fuels, solvents, cleansers and other liquids must be stored in areas equipped with secondary containment structures to prevent contamination of soil, groundwater and surface waters due to accidental spills. These must be removed from the facility and disposed of in accordance with all applicable national, local or SANParks’ requirements.

33.6.2 Solid Wastes

33.6.2.1 Private Parties must use biodegradable packaging wherever possible and specifically may not use plastic shopping bags or polystyrene or aluminium foil take away container or “doggy bag”. SANParks requires Private Parties to implement a policy of sorting and recycling solid wastes. Wastes that cannot be recycled must be removed from the Park and disposed of appropriately. Burning or incinerating in the Park by the Operator is prohibited. New landfills are not permitted. Biodegradable wastes must be disposed of in incinerators or in approved waste site outside the Park. SANParks will process Private Parties’ biodegradable wastes in its incinerators, where these are available and providing the units have sufficient capacity. SANParks will charge the Operator a fee for disposal services, on a cost recovery basis. The Operator will be required to transport wastes to these units in a responsible manner.

33.6.2.2 Solid wastes may need to be stored before being processed or removed from the Facilities. All such storage facilities must be secured from wildlife and constructed to ensure that pollution does not occur.

33.6.2.3 Solid waste management during both the Construction and Operational Phases must be included as items in the EMP and OMP.

33.6.3 Noxious Fumes

The Operator must ensure that the level of smoke and noxious or other fumes emanating from the Facilities are acceptable in the context of a Park and the OMP.

33.7 Fire Management

33.7.1 Fire management is an important concern in all Parks and is a major policy and operational issue in the West Coast National Park. The Operator must familiarise itself with the relevant fire policies and procedures of the Park in which the Houseboats at Kraalbaai are located.

33.7.2 The Operator must subject the existing designs plus any proposed modifications to a ‘fire safety audit’ carried out by a qualified fire safety expert. Recommendations made in the audit report must be incorporated into the EMP and OMP.

33.8 Staff Issues

33.8.1 Construction Workers

SANParks will make arrangements for gate access to the Facilities for all permanent and casual workers involved in the construction and operational phases of the Houseboat Facilities on the same basis as for SANParks’ contractors, if applicable. The total number of people to be employed on site during construction must be provided and addressed in the EIA. The Operator must abide by all of the recommendations presented in the construction phase EMP. The Operator must maintain close communication and co-ordination with Park staff throughout the construction phase.

33.8.2 Collection of Natural Resources by Staff

No natural resources may be collected and used within any Park without
written approval from SANParks. Specifically, the collection of firewood for cooking and other uses is not permitted, during either the construction or operational Phase. If firewood is brought in from outside the Park, it must be done in accordance with relevant Park policies. Some Parks may only permit the use of firewood from approved alien vegetation clearing operations. Campfires, gas cookers and outdoor recreation facilities will only be allowed as agreed with SANParks in writing.

33.8.3 Staff Health and Safety

The health and safety of staff and their families must be ensured at all times, including when commuting between accommodation facilities and places of work. The Operator must implement a staff medical plan that complies with current Legislation. The Operator also must have an emergency medical evacuation policy that covers both guests and staff in the event of a serious injury or acute medical emergency. Relevant staff must be trained in and aware of this policy. All buildings, vehicles, machinery and other structures (including their operation) must comply with relevant South African Legislation and SANParks standards. The design, layout and operation of all Facilities must take cognisance of dangerous animals that occur at all the Facilities.

33.9 Access

33.9.1 All deliveries and other vehicles entering Parks will have to do so through SANParks designated or otherwise agreed entrance gates and will be subject to the same rules and Regulations applicable to SANParks’ personnel. Standard opening and closing times will apply. The travelling times to and from the picnic sites are restricted to half an hour before and after the closing times from rest camps to reduce the traffic in the park after hours.

33.9.2 The Operator must ensure that its contractors, suppliers and the like adhere to all the access rules and Regulations applicable to SANParks personnel. Wherever possible the Operator and anyone claiming title through them must try and reduce the volume of traffic on the roads.

33.9.3 The road deaths of animals inside the Park have shown a dramatic increase over the last few years. Accordingly, should suppliers to the Operator receive 3 (three) traffic offences within the Park, such suppliers shall be blacklisted and entry to the Park shall be prohibited for a period of 2 (two) years. The Operator should ensure that their suppliers are aware of travel times and speed limits to avoid them being
banned from the Park.

33.10 Monitoring

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

33.10.2 The Operator will be obliged to develop a comprehensive monitoring, auditing and review system and implement the system in the Facilities at their own cost.

33.11 Meteorological Equipment

The Operator shall not be permitted to interfere with existing weather and/or measuring equipment at formal or informal weather stations.
34. ANNEXURE 7 – PRIVATE PARTY CONSTITUTIONAL DOCUMENTS
35. ANNEXURE 8 – INSURANCE