



ASTRONOMY PPP AGREEMENT

PUBLIC PRIVATE PARTNERSHIP AGREEMENT

FOR THE

ASTRONOMY BID PACKAGE ____

IN THE

KRUGER NATIONAL PARK

DECEMBER 2020

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		concessionaires related to the execution and/or fulfilment of the terms and conditions of this PPP Agreement;
2.1.3	“Astronomy Facility”	the recreational facility located within the Protected Area as more fully described in Schedule 1. As this is a mobile product no physical building will be allocated but only an area where the product can be presented;
2.1.4	“BBBEE Act”	- the Broad-Based Black Economic Empowerment Act, No. 53 of 2003, as amended from time to time;
2.1.5	“BEE Obligations”	- the Black Economic Empowerment obligations imposed on the Private Party as set out in Schedule 5;
2.1.6	“Bid Submission”	- the bid submitted by the Private Party and accepted by SANParks for the right to carry out the Project;
2.1.7	“Black Economic Empowerment” or “BEE”	- shall have the meaning ascribed to it in the BBBEE Act;
2.1.8	“Black People”	- shall have the meaning ascribed to it in the BBBEE Act;
2.1.9	“Business”	- the business of an astronomy product to be presented at the

		facility/ies as outlined in Schedule 1;
2.1.10	“Business Assets”	the assets of the Business as set out in Schedule 21A;
2.1.11	“Business Day”	- any day other than a Saturday, Sunday or national public holiday in South Africa;
2.1.12	“Capital Expenditure”	- any expenditure treated as capital expenditure under GAAP or IFRS as used by the Private Party;
2.1.13	“Capital Investment Assets”	- the assets of a capital nature procured by the Private Party for the purpose of the conduct of the Business and includes the equipment, furnishings, fixtures and improvements relating thereto;
2.1.14	“Change in Control”	- any change whatsoever in Control of the Private Party, whether effected directly or indirectly;
2.1.15	“Companies Act”	- the Companies Act, No. 71 of 2008, as amended from time to time;
2.1.16	“Confidential Information”	- any information or know-how in whatever form relating to the business affairs, trade secrets, products, operating, or marketing techniques, methods or processes, suppliers, customers or finances of either of the Parties;

- 2.1.17 **“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 attainment of any of the Project Deliverables;
- 2.1.18 **“Constitutional Documents”**
- the Private Party's memorandum of incorporation and certificate to commence business, as well as the Private Party's shareholders' agreement, equity subscription agreements and/or equity guarantees entered into and provided in respect of the Private Party and any documents or agreements in respect of any debentures issued by the Private Party, all of which are attached to this PPP Agreement as Schedule 9 and the terms of which shall be to the satisfaction of SANParks;
- 2.1.19 **“Consumer Protection Act”**
- the Consumer Protection Act, No. 68 of 2008, as amended from time to time;
- 2.1.20 **“Control”**
- in relation to any entity, the ability, directly or indirectly to: (i) direct or cause the direction of the votes attaching to the majority of its issued shares or interests carrying voting rights; or (ii) 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);

2.1.21 **“Corrupt Act”**

- shall have the meaning ascribed to it in Clause 40;

2.1.22 **“CPI”**

- the average rate of change (expressed as a percentage) in the Consumer Price Index for all urban areas as published in the Government Gazette by Statistics South Africa, or such other index reflecting the official rate of inflation in South Africa as may replace it, which change shall be determined by comparing the most recently published index with the index published in respect of the corresponding month in the previous period;

2.1.23 **“Depreciated Value”**

- the value of assets calculated in accordance with depreciation presented for income tax purposes, taking into consideration the unexpired portion of the period specified in Clause 3, provided that the minimum rates of depreciation shall not be less than normal custom and practice;

- 2.1.24 **“Development Period”** a period of up to 12 (twelve) months reckoned from the Signature Date, during which the Private Party will prepare all equipment and purchase assets in preparation for opening of the product in line with the Private Party’s brand in order to commence with full trading activities thereat; provided that in the event the refurbishment is completed earlier than 12 (twelve) months from the Signature Date, this period shall be adjusted accordingly to such earlier date as may stipulated by SANParks in writing. For avoidance of doubt the Development Period includes the period required to obtain any environmental approvals;
- 2.1.25 **“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 the applicable Regulatory Provisions and guidelines;
- 2.1.26 **“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, including all or any of the following : 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;

- 2.1.27 **“Environmental Laws”**
- any Laws in respect of the Environment, including, without limitation, the following statutes: the National Water Act , No. 36 of 1998; the Water Services Act, No. 108 of 1997; the National Environmental Management Act, No. 107 of 1998; the National Environmental Management: Protected Areas Act, No. 57 of 2003; the National Environmental Management: Air Quality Act; the Hazardous Substances Act, No. 15 of 1973; and the National Heritage Resources Act, No. 25 of 1999;
- 2.1.28 **“Environmental Specifications”**
- the requirements, conditions, obligations and specifications detailed in Schedule 7;
- 2.1.29 **“Equity”**
- the entire issued share capital of the Private Party as at the relevant date;
- 2.1.30 **“Expiry Date”**
- the last day of the month in which the tenth (10th) anniversary of the Operation Commencement Date occurs;

Provisions;

- 2.1.36 **“Gross Revenue”** - shall have the meaning ascribed to it in Clause 19;
- 2.1.37 **“Handover Period”** - means the period commencing from the Signature Date, through the Development Period, up to and including the Operation Commence Date;
- 2.1.38 **“IFRS”** - International Financial Reporting Standards, being a set of accounting standards and interpretations developed by an independent, not-for-profit organization called the International Accounting Standards Board (IASB);
- 2.1.39 **“Intellectual Property Rights”** - all registered or unregistered trademarks, service marks, patents, design rights (whether the aforementioned rights are registered, unregistered or form part of pending applications), utility models, applications for any of the a 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;
- 2.1.40 **“KNP Tariffs”**
- the tariffs stipulated by SANParks for Utility Charges and any other fees, levies and the like, in respect of cost of recoveries incidental to goods and/or services provided by SANParks to the Private Party in the Protected Area, as may be reviewed by SANParks from time to time;
- 2.1.41 **“Laws”**
- the common law, Legislation, judicial decisions and any notifications or other similar directives made pursuant thereto that have the force of law;
- 2.1.42 **“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;
- 2.1.43 **“Lenders”**
- means any person providing financing to the Private Party for the execution of the Project by the Private Party, other than the shareholders of the Private Party;
- 2.1.44 **“Licensed Intellectual Property”**
- all Intellectual Property to be used in the provision of the Project Deliverables by the Private Party

- or a Subcontractor under licence from any third party, as replaced and/or upgraded from time to time;
- 2.1.45 **“Local”** - the geographic area specified by SANParks in respect of the Project, being either within a fifty kilometre (50 km) radius of the Astronomy Facility or within a thirty kilometre (30 km) reach of the boundary of the Protected Area fence (but excluding areas that fall within the boundaries of the neighbouring countries);
- 2.1.46 **“Losses”** - losses, damages, liabilities, claims, actions, proceedings, demands, costs, charges or expenses of any nature that have or may result in adverse financial consequences to the Project;
- 2.1.47 **“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 is stipulated in Clause 19;
- 2.1.48 **“Minister”** - Minister of Environmental Affairs in South Africa or any minister that assumes the responsibility for the Protected Area in the future;
- 2.1.49 **“Operation Commencement Date”** - the first Business Day after the

expiry of the Development Period, by which date the Private Party shall be required, alternatively be deemed, to have commenced the conduct of the Business, as the case may be, at the Astronomy Facility in accordance with the terms and conditions of this PPP Agreement;

2.1.50 **“Park Management Plan”**

- the management plan developed by SANParks for the Protected Area in consultation with the local authorities, organs of state and other stakeholders and approved by the Minister as provided for in the Protected Areas Act, the objective of which is to ensure the protection, conservation and management of the Protected Area in a manner which is consistent with the objectives of the Protected Areas Act and the purpose for which the Protected Area was declared a national park in terms of the Protected Areas Act;

2.1.51 **“Park Manager”**

- the most senior manager of the Protected Area, designated as such by SANParks from time to time;

2.1.52 **“Park Rules”**

- the Environmental rules in respect of the Protected Area, as may be revised and/or updated by

		SANParks from time to time;
2.1.53	“Parties”	- collectively, SANParks and the Private Party;
2.1.54	“Party”	- SANParks or the Private Party, as the case may be;
2.1.55	“Performance Bond”	- the guarantee to be issued by a financial institution in favour of SANParks on behalf of the Private Party, in respect of the Private Party's obligations to perform under this PPP Agreement substantially in the format specified in Schedule 11 hereto;
2.1.56	“Person”	- any individual, partnership, corporation, company, business organisation, trust, governmental agency, parastatal, Relevant Authority or other entity;
2.1.57	“PFMA”	- the Public Finance Management Act, No. 1 of 1999, as amended from time to time;
2.1.58	“PPP”	- public private partnership, as defined in the Treasury Regulations;
2.1.59	“PPP Agreement”	- this public private partnership agreement between SANParks and the Private Party, including the Schedules and any annexures hereto as amended, extended,

- replaced and varied from time to time;
- 2.1.60 **“PPP Fee”** - the fee payable by the Private Party to SANParks in respect of the Project, as detailed in Clause 19;
- 2.1.61 **“PPP Rights”** - the right to design, operate, maintain, and manage the Business as more specifically set out in Clause 5;
- 2.1.62 **“Private Party”** - _____, registration number _____, a profit private company registered in accordance with the company laws of South Africa;
- 2.1.63 **“Private Party Default”** - has the meaning ascribed to it in Clause 27;
- 2.1.64 **“Private Party Parties”** - the officers, directors, staff, employees, contractors, sub-contractors, agents, guests, visitors, invitees and patrons of the Private Party or, where the context requires, any one or more of them;
- 2.1.65 **“Project”** - shall have the meaning assigned to that term in clause 1.2 above;
- 2.1.66 **“Project Assets”** - all assets required to undertake the Project, including the Business Assets and the Capital Investment

- Assets, any books and records, any spare parts and tools, as well as the Intellectual Property pertaining to the Business, but excluding all cash and cash equivalents;
- 2.1.67 **“Project Deliverables”** - the timeous achievement of the Operation Commencement Date; successful implementation of the Project, including the achievement of the BEE Obligations;
- 2.1.68 **“Project Insurance”** - those insurances that the Private Party is required by Law and in terms of this PPP Agreement to purchase and maintain in terms of Clause 22, upon the minimum terms set out in Schedule 10;
- 2.1.69 **“Project Term”** - the period from the Signature Date to the Expiry Date or the Termination Date, whichever occurs first;
- 2.1.70 **“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;
- 2.1.71 **“Protected Area”** - Kruger National Park;
- 2.1.72 **“Protected Areas Act”** - the National Environmental

- Management: Protected Areas Act, 2003 (Act No. 57 of 2003,) (as amended) from time to time);
- 2.1.73 **“Rand” or “R”** - the South African Rand, the lawful currency of South Africa;
- 2.1.74 **“Regulations”** - regulations issued in terms of the Protected Areas Act;
- 2.1.75 **“Regulatory Provisions”** - (a) the Environmental guidelines (“Environmental Specifications”) for operators operating within the Protected Area which is further described in Schedule 7, as same may be revised and updated by SANParks from time to time, and (b) collectively the Laws, and standards of the State and any Relevant Authority which in any way affects or applies to the conduct of the Project and/or this PPP Agreement from time to time or, if the context is appropriate, any one of them and where appropriate includes the Regulations, Park Rules and Park Management Plan;
- 2.1.76 **“Residual Value”** - the depreciated value of the immovable structures (approved by SANParks) built by the Private Party from the date such structures were first accounted for in the Private Parties books until the Termination Date, as the case

may be. Depreciation shall be calculated in accordance with depreciation presented for income tax purposes;

2.1.77 **“Responsible Authority”**

- the South African national and/or provincial and/or local governmental authority having jurisdiction over any or all of the Parties or any subject matter of this PPP Agreement. A Responsible Authority shall, for the avoidance of doubt, not include any provider of Utilities;

2.1.78 **“Restricted Enterprise”**

- a person restricted from contracting with SANParks and/or a Responsible Authority as a result of being listed either on -
 - (i) the Register for Tender Defaulters compiled in terms of the regulations to the Prevention and Combating of Corrupt Activities Act, 2004;
 - (ii) the Disqualified Directors’ Register (maintained by the Companies and Intellectual Property Commission) in terms of Section 69(13) of the Companies Act; and/or
 - (iii) any other relevant listing required by Law;

- 2.1.79 **“Sale of Business”** - the sale of the Business, which forms an integral part of this PPP Agreement, in terms of which, *inter alia*, the Private Party sells and SANParks purchases the Business;
- 2.1.80 **“Sale of Business Agreement”** - the written agreement entered into by the Private Party and SANParks for the Sale of Business;
- 2.1.81 **“SANParks”** - South African National Parks, a juristic person established in terms of section 5 of the National Parks Act, No. 57 of 1976 and continuing to exist as such in terms of the provisions of section 54 of the Protected Areas Act;
- 2.1.82 **“SANParks Default”** shall have the meaning ascribed to it Clause 40.1;
- 2.1.83 **“SANParks Employees”** - persons employed or contracted to SANParks and whose employment is regulated in terms of the Public Services Act, 1994;
- 2.1.84 **“Schedules”** - the schedules to this PPP Agreement, as amended, replaced and varied from time to time;
- 2.1.85 **“Shareholders”** - the holders of the Equity from time to time;
- 2.1.86 **“Signature Date”** - the date of signature of this PPP

		Agreement by the last signing Party;
2.1.87	“Skills Development Spend”	- has the meaning as set out in Schedule 5;
2.1.88	“South Africa”	- the Republic of South Africa;
2.1.89	“State”	- the Government of South Africa, acting directly or through its lawfully designated representatives;
2.1.90	“Subcontractors”	- any subcontractor of the Private Party who has contracted directly with the Private Party in respect of any of the Project Deliverables;
2.1.91	“Suretyship”	the deed of suretyship which shall be executed by each of the Shareholders in favour of SANParks as more specifically set out in Schedule 23;
2.1.92	“Termination Amount”	- the amount payable by a Party on termination of this PPP Agreement in terms of this PPP Agreement;
2.1.93	“Termination Date”	- any date of termination of this PPP Agreement, in accordance with its terms;
2.1.94	“Treasury Regulations”	- the Treasury Regulations issued under the PFMA that apply to SANParks and/or this PPP Agreement;

- 2.1.95 **“Transferrable Intellectual Property”** **Licenses** - any Licensed Intellectual Property that the Private Party is entitled to transfer to SANParks;
- 2.1.96 **“ Utilities”** - facilities such as water, electricity, sewage, gas and telecommunications and, where appropriate, includes relevant provider thereof;
- 2.1.97 **“Utility Charges”** - charges or fees in respect of consumption of the Utilities used at the Astronomy Facility as provided by SANParks, the Relevant Authority or any other supplier;
- 2.1.98 **“Variable PPP Fee”** - that portion of the PPP Fee that is a percentage of the Gross Revenue of the Private Party, which percentage is detailed in Clause 19 and Schedule 6;
- 2.1.99 **“VAT”** - value added tax, as defined in the VAT Act or any similar tax which is imposed in place of or in addition to such tax; and
- 2.1.100 **“VAT Act”** - Value Added Tax Act, No. 89 of 1991, as amended from time to time.
- 2.2 This PPP Agreement shall be interpreted according to the following provisions, unless the context requires otherwise:

2.2.1 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 PPP Agreement;
- 2.2.2 for the purposes of any clause in this PPP Agreement, that makes reference to SANParks' approval, such approval shall be deemed to vest with the SANParks Managing Executive: Tourism Development and Marketing;
- 2.2.3 references to "indexed to CPI" in relation to any amount of money shall mean that such amount has been expressed in April 2020 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 CPI;
- 2.2.4 references to "Parties" shall include the Parties' respective successors-in-title and, if permitted in this PPP Agreement, their respective cessionaries and assignees;
- 2.2.5 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;
- 2.2.6 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;
- 2.2.7 the headings of clauses, sub-clauses and Schedules are included for convenience only and shall not affect the interpretation of this PPP Agreement;
- 2.2.8 the Introduction and Schedules to this PPP Agreement are an integral part of this PPP Agreement and references to this PPP Agreement shall include the Introduction and Schedules;
- 2.2.9 the Parties acknowledge that each of them has had the opportunity to take

legal advice concerning this PPP Agreement, and agree that no provision or word used in this PPP 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 PPP Agreement or any part of it;

2.2.10 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;

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

2.2.12 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; and

2.2.13 when a number of days are prescribed in this PPP 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.

3. APPOINTMENT AND PRECEDENT

3.1 SANParks hereby appoints the Private Party which accepts such appointment with effect from the Signature Date, to undertake and execute the Project in accordance with the terms and conditions set out in this PPP Agreement.

3.2 In the event of a dispute as to the nature, content and extent of the PPP Rights and the Business, the order of precedence in the interpretation of the rights and obligations of the Parties in terms hereof shall be as follows:

3.2.1 This PPP Agreement;

3.2.2 Its Schedules;

3.2.3 the RFP; and

3.2.4 the Bid Submission of the Private Party to the extent accepted by SANParks.

3.3 Where Schedules include provisions in respect of which the PPP Agreement is silent, then the provisions contained in such Schedule will apply.

3.4 The Private Party shall perform its obligations in terms of this PPP Agreement, unconditionally and without further attaching its own conditions thereto or making performance of its obligations subject to any terms or conditions contrary or in addition to the terms of the PPP Agreement.

4. PROJECT TERM

The Project shall commence on the Operation Commencement Date, and shall endure for the Project Term which is ten (10) years.

5. PPP RIGHTS

5.1 Exclusive Grant of PPP Rights at the Astronomy Facility

5.1.1 Subject to the terms of this PPP Agreement, SANParks hereby grants the PPP Rights to the Private Party, on an exclusive basis, for the Project Term.

5.1.2 For the duration of the Project Term, SANParks undertakes not to:

5.1.2.1 establish any other astronomy facility in the camps in the Kruger National Park outlined in this Agreement but can be presented in camps where the product is not presented;

5.2 Astronomy Facility Rights

5.2.1 The grant of the PPP Rights to the Private Party shall entitle the Private

Party the following:

The Private Party that secured Bid Package 1 will have the rights to provide an astronomy product in Punda Maria, Shingwedzi, Mopani, Letaba and Olifants (and could also present the products in smaller camps such as Bateleur, Shimuwini, Sirheni and Pafuri Border Camp);

The Private Party that secured Bid Package 2 will have the rights to provide an astronomy product in Satara and Lower Sabie (and could also present the products in smaller camps such as Crocodile Bridge, Talamati and Biyamiti); and

The Private Party that secured Bid Package 3 will have the rights to provide an astronomy product in Skukuza, Berg en Dal and Pretoriuskop.

- 5.2.1.1 the exclusive right to operate the Astronomy Facility in the camps outlined in 5.2.1 ;
- 5.2.1.2 Present talks and set-up star gazing equipment at the allocated area which could be in camp, or part of a sunset/night drive.
- 5.2.1.3 The Private Party will be required to market the product, assemble the product and disassemble the product;
- 5.2.1.4 No staff housing will be allocated to the Private Party. However, the Private Party will have the opportunity to build limited number of units in main camps that does have capacity for additional staff housing. In addition, the operator could be allocated tourism units or camps sites at a 40% discount (or more should the Hospitality Service Manager have the delegation to do this and if units are available that will then allow the product to be presented) per camp where the product will be presented.
- 5.2.1.5 The Private Party is required to put measures in place and work closely with SANParks to ensure the safety of guests;

- 5.2.1.6 Generate, charge and collect revenues from the exercise of the PPP Rights;
- 5.2.1.7 Use the Astronomy Facility / allocated area in accordance with the terms of this PPP Agreement;
- 5.2.1.8 Access by the Private Party and its employees to the Protected Area, subject to the normal Protected Area's operating rules and hours as set by SANParks from time to time.
- 5.2.2 All of the Private Party's rights in terms of this Clause 5 shall be exercised in accordance with the terms of this PPP Agreement and subject to the Regulatory Provisions, Environmental Laws, Environmental Specifications and all other Laws.

5.3 Service Delivery

The conduct of the Business pursuant to this PPP Agreement shall be:

- 5.3.1 in accordance with Good Industry Practice;
- 5.3.2 in line with the Bid Submission;
- 5.3.3 conducted in a professional, courteous and friendly manner; and
- 5.3.4 in accordance and compliance with the Laws, including, to the extent applicable, the provisions of Consumer Protection Act, and Schedule 14.

6. OPERATION, MANAGEMENT AND MAINTENANCE

6.1 Operation, Management and Maintenance by the Private Party

- 6.1.1 The Private Party shall be obliged during the Project Term to undertake the operation, management and maintenance of the Astronomy Equipment and of all of the alterations and developments undertaken thereto by the Private Party in accordance with Good Industry Practice.

- 6.1.2 The Private Party shall compile a status report in relation to the operation, management and maintenance of the Astronomy Facility which shall be made available to SANParks promptly upon the finalisation thereof, but in any event not later than 5 (five) Business Days after every six (6) months of the Project Term.
- 6.1.3 The Private Party shall comply with the Environmental Specifications set forth in Schedule 7.
- 6.1.4 The Private Party shall:
- 6.1.4.1 operate the Astronomy Facility properly and strictly in accordance with the provisions of the agreed operating manuals and the undertakings made by the Private Party in its Bid Submission specifically acknowledging and taking the unique characteristics of the Protected Area into account;
 - 6.1.4.2 use its best endeavors to maintain the highest standards in accordance with Good Industry Practice in all matters connected with the operation of the Astronomy Facility 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 Astronomy Facility;
 - 6.1.4.3 at all times maintain the equipment used in the Astronomy Facility in a clean, orderly and sanitary condition;
 - 6.1.4.4 ensure that all personnel and staff employed by the Private Party at the Astronomy Facility shall at all times be clean, cleanly and tidily clothed so as to maintain uniformly high standards of presentation and delivery;
 - 6.1.4.5 where snacks and food forms part of the product, the Private Party shall 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;

6.1.5 The Private Party undertakes to operate the Astronomy Facility in line with SANParks' Procedure Manual. The Parties acknowledge that the aforementioned manuals' objective is to assist in the daily operations of the Astronomy Facility and allow for good cooperation between the Parties and may be changed from time to time by mutual agreement in order to satisfy their mutual objectives – especially as the manual does not focus on activities.

6.1.6 SANParks may, in its sole and absolute discretion, conduct regular quality audits at the Astronomy Facility to ensure that the quality of the products sold by the Private Party consistently meet the desired standards ("**Quality Audit**"). The Quality Audits shall be conducted by way of "mystery guests", spot checks, customer questionnaires or any other quality control checks and measures as deemed necessary by SANParks.

6.1.7 The Private Party shall comply with and subscribe to the minimum standards of responsible tourism as provided for in the *Responsible Tourism – SANS 1162*.

6.1.8 The Private Party shall ensure that all access to the Astronomy Facility complies with the universal accessibility standards stipulated by the Tourism Grading Council of South Africa from time to time.

6.2 **Assessment Rates and Utilities**

6.2.1 The Private Party shall be liable to reimburse SANParks for all the Assessment Rates, if any, that SANParks may pay to the Responsible Authority in respect of the Astronomy Facility.

6.2.2 The Parties record that the Private Party shall, where practicable, bear the primary responsibility to procure the provision of the Utilities to the Astronomy Facility. In the event any such Utilities are provided to the

Astronomy Facility through SANParks, SANParks shall charge, and the Private Party shall pay, all the Utility Charges in respect thereof.

- 6.2.3 Without limiting the generality of Clause 6.2.2 above, the Private Party shall, at its cost:
- 6.2.3.1 procure the maintenance of sufficient telephone services within the Astronomy Facility;
 - 6.2.3.2 ensure that waste disposal facilities, including rubbish or waste removal bins, are clean and free from noxious or offensive odorous;
 - 6.2.3.3 ensure 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 in accordance with SANParks' Waste Policies from time to time.
- 6.2.4 Should the Utilities within the Astronomy Facility or part thereof be provided by SANParks, then SANParks shall -
- 6.2.4.1 procure that sub-meters in respect of any Utilities are installed in order to monitor consumption or usage thereof by the Private Party. It will be the Private Party's responsibility to ensure within the first month of operation that the sub - meters read and function correctly in order to eliminate conflicts on meter readings during the Project Term; and
 - 6.2.4.2 the Private Party shall pay to SANParks, the Utility Charges as measured by such sub-meters, together with VAT thereon, within 7 (seven) days of receipt of an invoice in respect thereof from SANParks.
- 6.2.5 Should the Astronomy Facility or part thereof be served by a meter or sub-meter which also serves other areas of the Protected Area, then the Private Party shall pay to SANParks the Private Party's share of all the Utility Charges as measured by such meter or sub-meter expressed as a

percentage which the total area of the Astronomy Facility bears to the total area of the Protected Area serviced by such meter or sub-meter, together with the VAT thereon.

6.2.6 Notwithstanding anything to the contrary contained in this PPP Agreement, the Utility Charges due and payable by the Private Party shall be calculated according to the KNP Tariffs.

6.2.7 If the Private Party fails to pay any Utility Charges in accordance with this Clause 6.2, SANParks may, in its sole and absolute discretion and without derogating from any of its other rights in law, terminate the provision of the Utilities in relation thereto.

6.2.8 For the avoidance of doubt, the Parties specifically record that the provision of any Utilities by SANParks to the Private Party shall not be construed as an incident of possession or occupation of the Astronomy Facility by the Private Party. Accordingly: in the event that SANParks terminates the provision of any such Utilities on account of non-payment of the relevant Utility Charges as contemplated in this Clause 6.2, the Private Party shall not be entitled to claim or rely on the principle of spoliation (*mandament van spolie*) as a defence.

6.3 **Consumer Protection Act Requirements**

6.3.1 SANParks shall require the Private Party to comply with the provisions of the Consumer Protection Act that affect the Business.

6.3.2 In the event of the Private Party failing to comply with the provisions of the Consumer Protection Act applicable to it and fails to remedy such non-compliance before the expiry of the period referred to in a notice by SANParks, SANParks may terminate this PPP Agreement in accordance with Clause 27 by written notice to the Private Party.

6.4 **Unauthorised Payments**

The Private Party shall not:

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

6.5 **Third Party Contracts**

The Private Party may use a third party or third parties through sub-contracting to carry out all or part of its operation, and management obligations under this PPP Agreement only if approved by SANParks in writing and if SANParks is comfortable that the third party possesses the same experience, qualities and other attributes as the Private Party. The terms of any such sub-contract as aforementioned shall in all material respects reflect the relevant provisions of this PPP Agreement and be subject to the prior written notification and delivery of a copy of the relevant contract to SANParks, provided that the engagement of a third party shall not release the Private Party from any of its obligations hereunder.

7. LABOUR LAWS

- 7.1 The Private Party agrees to abide by the laws in force, as amended from time to time, relating to employees engaged in relation to the Business and shall use its best endeavours to ensure similar compliance by its contractors, sub-contractors at all levels, assignees and agents.

- 7.2 The Private Party undertakes to promptly notify SANParks upon its employees embarking on and/or participating in any form of strike or industrial action as a result of any dispute between the Private Party and its employees for any reason whatsoever.
- 7.3 The Private Party shall enter into a separate Housing Rental Agreement with SANParks in respect of the housing of its staff, if applicable.

8. PRIVATE PARTY COVENANTS

- 8.1 Subject to the provisions of this PPP Agreement, the Private Party shall conduct and manage the Project:
- 8.1.1 at its own cost and risk;
 - 8.1.2 in compliance with all applicable Laws, Regulatory Provisions and the Consents;
 - 8.1.3 in compliance with all applicable health and safety standards; and
 - 8.1.4 in accordance with Good Industry Practice.
- 8.2 The Private Party shall take all reasonable steps to ensure that all the Private Party Parties visiting or working at the Astronomy Facility, adhere to, abide by and comply with:
- 8.2.1 all Regulatory Provisions, the Environmental Specifications in respect of the Protected Area and specifically in respect of the Astronomy Facility and the EIA;
 - 8.2.2 the terms of this PPP 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 Private Party 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 Private Party shall have the right to appeal against such rule or directive with

SANParks and/or any other person determined by SANParks, in its sole and absolute 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 Private Party shall abide by the said directive or rule.

- 8.3 The Private Party shall be responsible for:
- 8.3.1 obtaining and keeping current all the Consents which may be required for the performance of its obligations under this PPP 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 PPP Agreement, all of its obligations within the time periods specified; and
 - 8.3.4 maintaining and keeping the Astronomy Facility clean including the area of responsibility described in Schedule 1 hereto.
- 8.4 Without prejudice to Clauses 8.3.1 and 8.3.2, the Private Party 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 Private Party shall bear all risks and costs with respect to material damage to the Astronomy Facility or the environment caused by the operation of the Astronomy Facility during the Project Term arising from any act whatsoever, including an omission by the Private Party.
- 8.6 The Private Party 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 the Private Party Parties.

- 8.7 Unless otherwise agreed in writing by SANParks, the Private Party and other parties to the Associated Agreements shall have no interest in nor receive remuneration in connection with the Astronomy Facility except as provided for in the PPP Agreement or the Associated Agreements.

9. WARRANTIES

9.1 Private Party Warranties

The Private Party warrants that:

- 9.1.1 it has taken all necessary actions to authorise its execution of this PPP Agreement;
- 9.1.2 the execution and performance of all of its obligations in terms of this PPP Agreement does not and will not contravene any provision of the Constitutional Documents of the Private Party as at the Signature Date and the Operation Commencement Date, or any order or other decision of any Responsible Authority or arbitrator that is binding on the Private Party as at the Signature Date and at the Operation Commencement Date;
- 9.1.3 for the Project Term, no encumbrances shall be granted or created in respect of the Project Assets (other than the Licensed Intellectual Property not owned by the Private Party), including that it has not registered or granted any security interests over the Project Assets which could in any manner (whether in contract or in Law) defeat or override SANParks' interest in the Project Assets;
- 9.1.4 all Consents required by the Private Party to meet the Project Deliverables shall be in full force and effect as at the Signature Date and as at the Operation Commencement Date, save for any Consents which are not required under applicable Law to be obtained by the Signature Date or the Operation Commencement Date (as the case may be), provided that the Private Party warrants that it knows of no reason (having used its best endeavours to enquire in this regard) why any such Consent will not be granted on reasonable terms by the time it is required to obtain such Consent;

- 9.1.5 as at the Operation Commencement Date all authorisations, approvals and licenses required in order to permit the Private Party or the Subcontractors to make use of the Licensed Intellectual Property and the Transferable Licensed Intellectual Property for purposes of performing the Project Deliverables have been validly granted and will remain effective for the remainder of the Project Term, unless the Licensed Intellectual Property and the Transferable Licensed Intellectual Property is required for a shorter period in which event the Private Party or the Subcontractors shall ensure that it has been validly granted and will remain effective for such shorter period of time;
- 9.1.6 no litigation, arbitration, investigation or administrative proceeding relating to the Private Party or any of its shareholders is in progress as at the Signature Date and as at the Operation Commencement Date or, to the best of the knowledge of the Private Party as at the Signature Date and as at the Operation Commencement Date having made all reasonable enquiries, threatened against it, which is likely to have a material adverse effect on the ability of the Private Party to meet the Project Deliverables;
- 9.1.7 as at the Signature Date and as at the Operation Commencement Date, the Private Party is not subject to any obligation, the non-compliance of which is likely to have a material adverse effect on its ability to meet the Project Deliverables;
- 9.1.8 as at the Signature Date and as at the Operation Commencement Date, no proceedings or any other steps have been taken or, to the best of the knowledge of the Private Party having made all reasonable enquiries, threatened for the winding-up or liquidation or business rescue proceedings (whether voluntary or involuntary, provisional or final), or deregistration of the Private Party or any of its shareholders, or for the appointment of a liquidator, business rescue practitioner or similar officer over it or over any of its assets;
- 9.1.9 all information disclosed by or on behalf of the Private Party to SANParks at any time up to the Signature Date and from the Signature Date up to the Operation Commencement Date, and, in particular, during the bid process preceding the award of this PPP Agreement to the Private Party, is true,

complete and accurate in all material respects and the Private Party is not aware of any material facts or circumstances not disclosed to SANParks which would, if disclosed, be likely to have an adverse effect on SANParks' decision (acting reasonably) to award this PPP Agreement to the Private Party;

9.1.10 it is not a Restricted Enterprise;

9.1.11 in being awarded its appointment under this PPP Agreement, it did not engage, either directly or indirectly, or in any manner participate in the perpetration of a Corrupt Act;

9.1.12 as at the Signature Date and as at the Operation Commencement Date:

9.1.12.1 the Private Party has an authorised and issued share capital as set out in the Constitutional Documents and all shares in the issued share capital of the Private Party are fully paid up; and

9.1.12.2 all shares in the issued share capital of the Private Party are legally and beneficially owned by the Shareholders.

9.2 **SANParks Warranties**

SANParks warrants that –

9.2.1 it has taken all necessary actions to authorise the execution of this PPP Agreement;

9.2.2 it has not knowingly omitted to disclose any material information in its possession or under its control relating to any of its assets related to this PPP Agreement;

9.2.3 it has lawfully secured the Consents required by it in terms of Law to conclude this PPP Agreement; and

9.2.4 no restrictive conditions of title exist over the Protected Area that would in any manner prevent or obstruct the Private Party from performing the

Project Deliverables.

10. PRIVATE PARTY INDEMNITIES

10.1 The Private Party indemnifies and shall keep SANParks indemnified at all times against all direct losses sustained by SANParks in consequence of –

10.1.1 any:

10.1.1.1 loss of or damage to property relating to the Project;

10.1.1.2 breach of a statutory duty by the Private Party or any of its Subcontractors arising under applicable Law relating to the Project;

10.1.1.3 claim for or in respect of the death or personal injury of any individual;
or

10.1.1.4 other claim, action, charge, cost, demand or expense by a third party,

(including, without limitation, any legal fees or reasonable costs) arising in connection with the performance or non-performance of any of the Project Deliverables save to the extent caused by the gross negligence or wilful misconduct of SANParks or any SANParks Employee (acting within the course and scope of its employment with SANParks) or by a breach by SANParks of an express provision of this PPP Agreement.

10.2 In the event of SANParks incurring a third party claim ("third party claim") for which the Private Party has indemnified it then SANParks shall notify the Private Party thereof within a period of 10 (ten) Business Days of SANParks becoming aware of such claim.

10.3 SANParks will provide the Private Party with all reasonable co-operation and assistance in relation to the third party claim.

10.4 Subject to the terms of any Project Insurances, the Private Party shall be entitled to dispute any such third party claim, at its own cost and risk, and

where necessary in the name of SANParks (with the prior written approval of SANParks), subject to the Private Party -

- 10.4.1 exercising due care in defending a third party claim so as not to bring the name of SANParks into disrepute;
- 10.4.2 keeping SANParks fully informed of the conduct of such third party claim; and
- 10.4.3 obtaining the written approval of SANParks (which shall not be unreasonably withheld or delayed) prior to settling any third party claim.

11. LIMITATIONS ON LIABILITY

- 11.1 Neither Party shall be entitled to recover (whether pursuant to an indemnity or otherwise) any loss to the extent that it has already been or is entitled to be compensated for that loss whether by way of Project Insurance payments or otherwise.
- 11.2 In particular, each Party shall be under an obligation to mitigate the consequences of any conduct in respect of which it is entitled to compensation under this PPP Agreement (whether by way of indemnity or otherwise).
- 11.3 Neither Party shall be liable to the other for any damages or any indemnity to the extent that the damages or the amount claimed under the indemnity is for or arises out of loss of profit, loss of use, loss of production, loss of business or loss of business opportunity or is a claim for consequential loss suffered or allegedly suffered by any person.

12. PROJECT SITE

12.1 Astronomy Facility

- 12.1.1 The Private Party acknowledges that the Government holds all right, title and interest in the Astronomy Facility.

12.1.2 The location and physical boundaries of the Astronomy Facility shall be the areas defined in Schedule 1.

12.2 Access Following Commencement

12.2.1 With effect from the Signature Date, SANParks grants to the Private Party and shall use all reasonable endeavours to ensure that for the duration of the Project Term, the Private Party and the Private Party Parties have such access to the Astronomy Facility as is required by the Private Party for the carrying out of the Project, subject at all times to the provisions of this PPP Agreement.

12.2.2 With effect from the Expiry Date or the Termination Date, as the case may be, the Private Party's interest in the Astronomy Facility shall automatically terminate and the Private Party shall be given access to the Astronomy Facility only for purposes of giving effect to the provisions of Clause 30 (*Effects of Termination*).

12.3 Project Site Conditions

12.3.1 It is recorded that SANParks has made available to the Private Party for its information, prior to the Signature Date, all relevant data in SANParks' possession on the conditions at the Astronomy Facility, including Environmental aspects. SANParks shall similarly make available to the Private Party all such similar information which comes into SANParks' possession after the Signature Date. The Private Party shall be responsible for interpreting all such data.

12.3.2 Notwithstanding the provisions of Clause 12.3, the Private Party shall be deemed at the Signature Date to have obtained all necessary information as to risks, contingencies and other circumstances which may influence or affect the execution of the Project Deliverables. To the same extent, the Private Party shall be deemed as at the Signature Date to have inspected and examined the Astronomy Facility, its surroundings, the above data and other available information. To this end, the climatic, hydrological, hydrogeological, ecological, Environmental, geotechnical, geological,

palaeontological and archaeological conditions of the Astronomy Facility ("**Project Site Conditions**") shall be the sole responsibility of the Private Party. Accordingly, without limiting any other obligations of the Private Party that are included in the Project Deliverables, the Private Party shall be deemed as at the Signature Date to have –

- 12.3.2.1 carried out an investigation of all Project Site Conditions and of any extraneous material in the Astronomy Facility including its surface, sub-soil, ground water and flood line;
- 12.3.2.2 for the purpose of such investigation in Clause 12.3.2, inspected and examined the Astronomy Facility and surroundings thereof;
- 12.3.2.3 satisfied itself as to the nature of the Project Site Conditions, the form and nature of the Astronomy Facility, the risk of damage to property affecting the Astronomy Facility, the nature of the materials (whether natural or otherwise) to be excavated, if any, and the nature of the design, works and material necessary for the execution of the Project Deliverables and the remedying of any defects; and
- 12.3.2.4 satisfied itself as to the adequacy of –
 - 12.3.2.4.1 its right of passage over, access to and through the Astronomy Facility; and
 - 12.3.2.4.2 any accommodation it may require for the purposes of fulfilling any of its obligations included in the Project Deliverables, such as any additional land or buildings located outside the Astronomy Facility;
- 12.3.2.5 satisfied itself as to the possibility of interference by persons (including pedestrian and vehicle traffic) with rights-of-way across, access to or use of the Astronomy Facility with particular regard to the owners and users of any land adjacent to the Astronomy Facility and the Protected Area; and

- 12.3.2.6 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 or the Environment.
- 12.4 To avoid doubt, the Private Party accepts full responsibility for all matters in Clause 12.3.2 and the Private Party shall, in respect of the Astronomy Facility -
- 12.4.1 from the Signature Date, not be entitled to make any claim against SANParks whether in contract, delict or otherwise on any ground relating to the matters in Clause 12.3.2; and
- 12.4.2 from the Operation Commencement Date be responsible for and shall indemnify SANParks against -
- 12.4.2.1 all direct losses sustained by SANParks in consequence of cleaning-up and otherwise dealing with any potentially hazardous materials (being any natural or artificial substance, whether in solid, gaseous or liquid form) capable of causing harm to any human or any other living organism supported by the Environment or capable of damaging the Environment or public health or posing a threat to public safety including any pollutants and any hazardous, toxic, radioactive, noxious, corrosive or dangerous substances and all substances for which in each case liability or responsibility is imposed under applicable Environment Law at the Astronomy Facility; and
- 12.4.2.2 any losses incurred by SANParks and/or a third party for any failure to implement, non-compliance or transgression whatsoever, whether intentional or negligent, and whether committed by the Private Party or any of its Subcontractors or contractors of the terms and conditions contained in the Environmental Specifications, it being recorded that the Private Party shall assume liability for such losses notwithstanding that it acts as agent on behalf of SANParks (as holder of the Environmental Specifications) in implementing the terms and conditions of the Environmental Specifications.
- 12.5 **Suitability and Condition of the Astronomy Facility**

SANParks makes no representation and gives no warranty to the Private Party in respect of the condition and suitability of the Astronomy Facility or any structures associated therewith or located therein, for the Project, and the Private Party accepts the Astronomy Facility and structures in their present condition.

13. SALE OF BUSINESS

13.1 The Private Party shall enter into a Sale of Business Agreement with SANParks on the terms and conditions as set out in the Sale of Business Agreement annexed hereto as Schedule 19.

13.2 For the avoidance of doubt, the Sale of Business as contemplated in the aforementioned Clause 13.1 shall be subject to this PPP Agreement.

13.3 Buy-Back Option

13.3.1 SANParks shall, subject to the provisions of Clause 28.3 and Clause 29.2 at the termination of this PPP Agreement for whatever reason, be entitled but not obliged to purchase the Business from the Private Party.

13.3.2 The terms of the purchase of the Business as contemplated in 13.3.1 shall be in accordance with the Sale of Business Agreement.

13.4 Insolvency Act Publication

13.4.1 The Parties agree that notice of the Sale of Business will not be published as contemplated in section 34 of the Insolvency Act, 1936 (Act No. 24 of 1936) (as amended) (the “**Insolvency Act**”).

13.4.2 SANParks indemnifies the Private Party against any loss or damage which the Private Party may suffer as a result of notice of the Sale of Business not being published in terms of the Insolvency Act.

13.4.3 The Private Party warrants to SANParks that on Operation Commencement Date it will be registered as a “vendor” in terms of the

VAT Act. The Private Party intends to carry on the Business continuously and regularly from the Operation Commencement Date and acknowledges that it reasonably expects this activity to result in taxable supplies in excess of R20 000 (twenty thousand Rand) over a period of 12 (twelve) months from the Operation Commencement Date.

14. HANDOVER

14.1 It is a fundamental requirement by SANParks that the transfer of the Astronomy Facility is undertaken on the basis that:

14.1.1 there is no or minimal disruption in the provision of goods and services to visitors to the Protected Area and includes use of vehicles for products on offer to visitors to the Protected Area;

14.1.2 any structural alterations do not cause the Astronomy Facility to be closed unless alternatives are provided (unless it was closed in any event);

14.1.3 the handover shall be undertaken in such a manner to cause the least disruption and/or intrusion to SANParks and employees and then only in a manner which is mutually acceptable to both SANParks and the Private Party;

14.1.4 the business of the Astronomy Facility will be conducted in the usual manner throughout the Handover Period; and

14.1.5 SANParks shall not be liable for any claims or actions which arise during the Handover Period irrespective of the cause or nature of same.

14.2 During the Handover Period:

14.2.1 the Private Party and SANParks shall co-operate and work together to achieve an effective transfer of control and management of the Astronomy Facility to the Private Party on the Operation Commencement Date;

14.2.2 the Private Party shall be entitled to nominate one or more representatives to be stationed at the Astronomy Facility, to work with SANParks

management to effect a smooth handover. The Private Party's representatives shall however have no authority in relation to SANParks operations or employees during the Handover Period.

- 14.3 On the Operation Commencement Date, the Private Party shall assume full responsibility under this PPP Agreement for the operations, and expenses thereof, relating to the Astronomy Facility, and be entitled to the fruits hereof.

15. THE ENVIRONMENT

- 15.1 To the extent that the Private Party needs to construct infrastructure, buildings or any other structures to support the carrying out of the Project which, pursuant to the relevant Regulatory Provisions, requires an EIA, the Private Party shall not commence such construction until SANParks is satisfied that the said EIA has been undertaken in compliance with the relevant Regulatory Provisions and to the satisfaction of the Responsible Authority.
- 15.2 During the Project Term, the Private Party 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.
- 15.3 The Private Party shall promptly bring to the attention of SANParks any matter which may, in its view, have a detrimental impact on the Environment within the Astronomy Facility and the Protected Area.
- 15.4 The Private Party 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 Private Party Parties and the general public.
- 15.5 The Private Party shall comply with its statutory duties in terms of the Environmental Laws and at all times take reasonable measures to prevent pollution or degradation from occurring, continuing or recurring and in so far as such harm to the Environment is authorised by SANParks, the findings of the

EIA or by law, to minimise and rectify such pollution or degradation of the Environment.

16. SANPARKS' UNDERTAKINGS

- 16.1 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.
- 16.2 SANParks shall continue, in the ordinary course of business, to market and promote the Astronomy Facility and co-operate with the Private Party in preparing marketing and promotional material so as to ensure that the Astronomy Facility is properly marketed and promoted as an integral part of the Park and the marketing and promotional programme for the Park as a whole.
- 16.3 SANParks will co-operate with and assist the Private Party in any manner as may reasonably be necessary to ensure the continued viability of the Astronomy Facility and will not engage in acts or omissions which may materially affect the rights or interests of the Private Party in respect of the Astronomy Facility.
- 16.4 Without limiting the generality of Clause 16.3, SANParks reserves the right to, where a dispute that might have a negative effect on SANParks' guests arises as per clause 31, take reasonable actions to prevent inconvenience to SANParks' guests.
- 16.5 SANParks will operate and manage the Protected Area and will promote it in such manner as may reasonably be necessary to ensure the continued viability and sustainability of the Protected Area as a National Park and as a sustainable and attractive tourist and conservation undertaking.
- 16.6 SANParks' procurement processes in relation to the Project complied, to the best of SANParks knowledge and belief, in all material respects with:
- 16.6.1 all relevant legislation, regulations and the like governing such procurement processes; and

- 16.6.2 all current labour agreements, covenants and the like whether with individual employees or with employee organisations.

17. PROHIBITION OF EMPLOYMENT OF SANPARKS EMPLOYEES

The Private Party shall ensure that it does not make any unauthorised contact with any SANParks Employees other than as contemplated in this PPP Agreement. For the avoidance of doubt, the Private Party is prohibited from making any offers of employment to any SANParks Employees who were directly engaged in the procurement of the Project for a period of 24 (twenty four) months from the Signature Date.

18. BLACK ECONOMIC EMPOWERMENT

- 18.1 The Private Party shall ensure compliance with all Regulatory Provisions relating to Black Economic Empowerment and undertakes to implement the BEE Obligations set out in Schedule 5.
- 18.2 If the Private Party fails to implement its BEE Obligations in accordance with this PPP Agreement, SANParks may give the Private Party notice thereof and, if any such failure is not remedied within 14 (fourteen) Business Days (or such longer period as SANParks may, in its sole discretion, specify), SANParks shall be entitled to terminate this PPP Agreement in accordance with its terms.

19. FINANCIAL PROVISIONS AND PAYMENT

19.1 Gross Revenue

- 19.1.1 For the purposes of this PPP Agreement “**Gross Revenue**” shall mean:

- 19.1.1.1 any and all income or revenue received by or accruing to the Private Party, its Subcontractors or its cessionaries and successors-in-title from all activities carried on, at or by virtue of the Project, in any manner, directly or indirectly, as is or would normally be included in gross revenue in terms of IFRS or GAAP (depending on the principles / standards used by the Private Party). Without derogating from its

generality, the term “Gross Revenue” shall mean revenue before the deduction of:

- 19.1.1.1.1 bad debts (or provisions therefore);
 - 19.1.1.1.2 commissions or similar consideration paid or payable;
 - 19.1.1.1.3 cash, credit-card or similar discounts or commissions; and
 - 19.1.1.1.4 costs and expenses other than trade discounts granted in circumstances that are not arm's-length or to a related party;
- 19.1.1.2 **and Gross Revenue shall include:**
- 19.1.1.2.1 commissions received or receivable; and
 - 19.1.1.2.2 rentals and other fees received or receivable;
- 19.1.1.3 **but shall exclude:**
- 19.1.1.3.1 sales tax, value-added tax and any other similar impost levied on gross revenue (or any of its components) that is normally included in or added onto the tariffs or prices charged to guests or customers and which is not normally included in gross revenue in terms of IFRS or GAAP (depending on the principles / standards used by the Private Party);
 - 19.1.1.3.2 interest received or receivable;
 - 19.1.1.3.3 the proceeds of, profit or surpluses on the disposal of non-current assets;
 - 19.1.1.3.4 transfers from reserves; and
 - 19.1.1.3.5 bad debts recovered.

19.2 **PPP Fees**

- 19.2.1 The Private Party shall pay the PPP Fee to SANParks each and every month from the Operation Commencement Date.
- 19.2.2 The monthly PPP Fees payable by the Private Party to SANParks shall be the higher of:
- 19.2.2.1 the Minimum PPP Fee; or
- 19.2.2.2 the Variable PPP Fee.
- 19.2.3 The Minimum PPP Fee or the Variable PPP Fee will be calculated using the formula set out in Schedule 6.
- 19.2.4 The monthly Minimum PPP Fee and the Variable PPP Fee are set out in detail in Schedule 6 attached hereto. Irrespective of which of these elements determines the final amount payable in any given month, the PPP Fee payment will be the higher of the Minimum PPP Fee or the Variable PPP Fee for the Astronomy Facility and shall be payable by the Private Party to SANParks within 7 (seven) Business Days following the end of each month, free of deduction or set-off, to SANParks.
- 19.2.5 For purposes of reconciling the PPP Fees payable by the Private Party in any given Financial Year, the Private Party shall, within 120 (one hundred and twenty) days after the end of each Financial Year, furnish its audited financial statements to SANParks, whereafter SANParks shall verify and reconcile the PPP Fees due against the PPP Fees actually paid in the relevant Financial Year.
- 19.2.6 In the event that subsequent to the enquiry contemplated in clause 19.2.5 above, the PPP Fees paid by the Private Party are less than the PPP Fees due to SANParks in the relevant Financial Year (the “**Outstanding Fees**”), the Private Party shall pay the Outstanding Fees to SANParks upon demand.

19.2.7 All PPP Fees or other amounts payable by the Private Party to SANParks in terms of this PPP Agreement shall be exclusive of VAT.

19.2.8 The Private Party shall, notwithstanding any other provision of this PPP Agreement, not be obliged to pay rental for the period from the Signature Date up to the Operation Commencement Date, where after PPP Fees will be payable as provided for herein.

19.3 **Taxes**

19.3.1 The Private Party will be responsible for all taxes of general application and without limiting the generality of the a foregoing, any duties, PPP Fees or taxes assessed by any Relevant Authority in respect of the Astronomy Facility, 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 PPP Agreement. These taxes will exclude any capital gains tax, income tax; VAT or other taxation on income which is earned by SANParks or, notwithstanding this PPP Agreement, any tax payable by SANParks.

19.3.2 Notwithstanding that all consideration payable by the Private Party hereunder shall be deemed to be exclusive of VAT and any other rates, taxes, duties, charges or imposts which may be or become payable thereon, the Private Party shall be obliged, at all times, to pay VAT as required by the VAT Act.

19.3.3 All payments to be made to SANParks by the Private Party in terms of this PPP Agreement shall be free of set-off or any other deductions whatsoever and shall be paid by way of electronic funds transfer into the bank account specified by SANParks in its invoices or in otherwise in writing from time to time.

20. **PERFORMANCE BOND**

20.1 The Private Party shall provide to SANParks the Performance Bond which shall be operative from the Signature Date, in favour of SANParks issued by a bank

- or financial institution acceptable to SANParks substantially in the format specified in Schedule 11.
- 20.2 The Private Party shall maintain a valid Performance Bond (in accordance with the provisions hereof) from the Signature Date until 90 (ninety) Business Days after the expiry or earlier termination of this PPP Agreement.
- 20.3 Within 90 (ninety) Business Days of the expiry or earlier termination of this PPP Agreement, SANParks shall release all or so much of the Performance Bond as shall remain undrawn after such expiry or termination.
- 20.4 The amount to be guaranteed by the Performance Bond as from the Signature Date shall be R 60,000 (sixty thousand rand).
- 20.5 The Performance Bond shall be reinstated in full and its amount adjusted annually within 90 (ninety) Business Days of the end of each Project Year such that the amount to be guaranteed by the Performance Bond for the relevant Project Year is not less than the amount indicated in Clause 20.4 as adjusted to reflect changes in the CPI since Bid Submission.
- 20.6 The Performance Bond shall secure the Private Party's performance under this PPP Agreement and may be called on by SANParks to the extent of any costs, losses, damages or expenses suffered or incurred by SANParks as a result of breach by the Private Party of this PPP Agreement, including, but not limited to, compensation to SANParks for any actions taken by SANParks as a result of breach by the Private Party of any Regulatory Provision(s), Laws, Legislation or Environmental Specifications and payment obligations hereunder. The Performance Bond may also be called upon for any delay in the payment of sums due to SANParks in respect of PPP Fee payments.
- 20.7 Prior to enforcing the Performance Bond, SANParks shall give notice to the Private Party, informing the Private Party of the breach giving rise to the right of enforcement of the Performance Bond. If such breach is not remedied within the remedy period, SANParks may enforce the Performance Bond.
- 20.8 The Performance Bond may only be enforced to the extent of any costs, losses, damages or expenses suffered or incurred and/or reasonably expected to be

suffered or incurred as a result of the breach that gave rise to the right to enforce the Performance Bond.

21. SURETY

As additional security for its obligations under this PPP Agreement, the Private Party shall procure that each of the Shareholders shall, on or before the Signature Date, execute the Suretyship in terms of which each of the Shareholders shall bind itself as surety for the Private Party and co-principal debtor *in solidum* with the Private Party to SANParks for the due and punctual performance by the Private Party of its obligations under this PPP Agreement.

22. PROJECT INSURANCES

22.1 The Private Party shall insure all insurable properties within the Astronomy Facility including the Project Assets, the tram, the tram station and the train that will form the main attraction and which will be parked on the bridge, with a reputable insurance company by no later than the Operation Commencement Date, and such insurance shall:

22.1.1 be for not less than the full replacement value of the Project Assets;

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

22.1.3 cover environmental damage; and

22.1.4 include:

22.1.4.1 property and casualty insurance;

22.1.4.2 public liability and third party insurance;

22.1.4.3 employer's liability insurance;

22.1.4.4 business interruption insurance; and

- 22.1.4.5 all risks cover and loss of the PPP Fee for at least six (6) months consequent upon the damage to or destruction of the Project Assets as a result of any of the aforesaid events.
- 22.2 The insurances required in terms of clause 22.1. above must be approved by SANParks prior to the Operation Commencement Date and shall at all times be of nature and value stipulated by SANParks' insurance company from time to time.
- 22.3 All premiums, subsequent renewal premiums, all additional premiums and all stamp duties in respect of the relevant insurance policies, shall be paid by the Private Party.
- 22.4 Should the Private Party be in breach of the provisions of Clause 22.1, SANParks may, after consultation with the Private Party and giving the Private Party thirty (30) days within which to comply with Clause 22.1, procure and maintain, at the sole cost and expense of the Private Party, the insurances referred to in Clause 22.1 to the extent that SANParks deems necessary. In this event, the Private Party shall be obliged to refund to SANParks all premiums disbursed by SANParks on behalf of the Private Party within a period of fourteen (14) days of receiving written notice from SANParks to do so.
- 22.5 The Private Party shall comply with all the terms and conditions embodied in the insurance policy or insurance policies referred to in Clause 22 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.
- 22.6 The Private Party 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 PPP Agreement as Schedule 10. Such certificates and policies shall reflect all insurance coverage stipulated by SANParks.
- 22.7 SANParks shall insure any buildings or physical structures used for the Astronomy Facility with a reputable insurance firm.

23. REPORTING REQUIREMENTS

23.1 General

- 23.1.1 The Private Party shall be required to compile and deliver to SANParks comprehensive quarterly and annual reports in the form prescribed by SANParks from time to time for purposes of reporting on the implementation and performance of the Project Deliverables.
- 23.1.2 In addition to the Private Party's reporting obligations stipulated in Clause 23.1.1, the Private Party shall, within 10 (ten) Business Days of the event occurring, report in writing to SANParks details of the following events -
- 23.1.2.1 any encumbrance, lien or attachment imposed on any of the Private Party's property and any seizure thereof which encumbrance, lien, attachment or seizure materially affects, impedes or obstructs (whether directly or indirectly) the ability of the Private Party to perform the Project Deliverables;
- 23.1.2.2 any transaction in respect of the Equity of the Private Party of which the Private Party is aware; or
- 23.1.2.3 any receipt by the Private Party of a notice of default under any Financing Agreement from the Lenders, the circumstances thereof and possible results as viewed by the Private Party.
- 23.1.3 The Private Party shall, within 10 (ten) Business Days of the receipt of a written request from SANParks, provide SANParks with –
- 23.1.3.1 any information SANParks may reasonably request pertaining to the PPP Agreement or that SANParks is entitled to under any Law; and
- 23.1.3.2 a written report on any aspect of the Private Party's performance of the Project Deliverables or on its compliance with any other obligation under this PPP Agreement.

23.2 Appointment of Private Party Auditors

23.2.1 The Private Party will be obliged to appoint a reputable auditor for the Project. Failure to do so may result in termination of this PPP Agreement.

23.2.2 In furtherance of its reporting obligations as a company in terms of all applicable Laws, the Private Party shall at all times comply with the record keeping and reporting requirements of the Companies Act if failure to do so would be a breach of the Companies Act and shall ensure that by the Signature Date it has, at its own expense, procured the services of a reputable firm of auditors and that, by the Operation Commencement Date, the Private Party shall implement a suitable accounting and cost control system consistent with GAAP or IFRS (depending on the principles / standards used by the Private Party) so as to properly prepare and record all financial information relating to the Private Party's activities in respect of the Project. Copies of such accounts and reports shall be provided to SANParks on written request, and SANParks shall have the right to have access to and the right to remove such accounts and reports if acting within its rights and if so required in terms of applicable Laws.

23.2.3 The Private Party shall similarly cause the Subcontractors to make all information, books of accounts, records and other data relating to the Project available to SANParks on reasonable notice if so required in terms of applicable Laws and if reasonably required for this PPP Agreement.

23.2.4 SANParks may, on reasonable suspicion of fraud or fraudulent misrepresentation by the Private Party which has a direct impact on SANParks and without any prior notice to the Private Party, meet and consult with the Private Party's auditors regarding the Private Party's accounts and operations from time to time at the cost of SANParks, subject to Clause 23.2.6 below.

23.2.5 SANParks may also, on reasonable suspicion of fraud or fraudulent misrepresentation by the Private Party and without any prior notice to the Private Party, conduct or require that a firm of independent auditors conduct additional audits of the Private Party, at the cost of SANParks.

23.2.6 Notwithstanding the provisions of Clauses 23.2.4 and 23.2.5 above, if the investigations conducted conclude that the Private Party has committed a fraud or fraudulent misrepresentation, as contemplated in Clauses 23.2.4 and 23.2.5 above, then the Private Party shall be liable for the reasonable costs of meeting(s) and/or audit(s).

23.3 Bi-Annual Management Reports

The Private Party shall furnish to SANParks as soon as practicable, but in any event no later than 20 (twenty) Business Days after the sixth month in each Financial Year which occurs after the Operation Commencement Date, 1 (one) hardcopy and 1 (one) electronic copy of the Private Party's management accounts (which must be consistent with its books of account and prepared in accordance with GAAP or IFRS (depending on the principles / standards used by the Private Party) and consistently applied), which shall include –

23.3.1 a balance sheet of the Private Party's assets and liabilities;

23.3.2 an income statement; and

23.3.3 a cash flow statement as at the end of and for such period, and for the period from the beginning of such Financial Year to the close of such six monthly period.

23.4 Annual Reports

23.4.1 The Private Party shall furnish to SANParks as soon as practicable but in any event not later than 120 (one hundred and twenty) Business Days after the end of each Financial Year which occurs after the Operation Commencement Date -

23.4.1.1 3 (three) hardcopies and 1 (one) electronic copy of the Private Party's complete financial statements for such Financial Year as signed by a duly authorised officer of the Private Party, all in accordance with the requirements of accounting best practice (which must be consistent with the books of accounts and prepared in accordance with GAAP or IFRS (depending on the principles / standards used by the Private

Party) consistently applied), together with an audit report thereon;

- 23.4.1.2 a copy of any audit findings report sent by the Private Party's auditors to the Private Party or to its management in relation to the Private Party's financial, accounting and other systems, management and accounts; and
- 23.4.1.3 a reconciliation of the profit and loss account and the budget for that Financial Year, and an analysis thereof.

24. INFORMATION AND AUDIT ACCESS

- 24.1 The Private Party shall provide to SANParks all information, documents, records and the like (including all contracts concluded by it for the purposes of or ancillary to the implementation of this Project) in the possession of or available to the Private Party as may reasonably be requested by SANParks for the purpose of complying with any of its statutory reporting obligations including its obligations under the Promotion of Access to Information Act, 2000, the Promotion of Administrative Justice Act, 2000, the Promotion of Equality and Prevention of Unfair Discrimination Act, 2000, the PFMA and the Public Audit Act, 2004.
- 24.2 Without limiting the generality of the foregoing, the Private Party shall:
 - 24.2.1 provide and shall procure that its Subcontractors shall provide all such information as SANParks may reasonably require from time to time to enable SANParks to provide reports and returns as required by any Responsible Authority, including reports and returns regarding the physical condition of any building occupied by SANParks for purposes of the Project, health and safety, national security, and Environmental safety; and
 - 24.2.2 note and facilitate SANParks' compliance with the Promotion of Access to Information Act, 2000 in the event that SANParks is required to provide information to any person pursuant to that Act.

24.3 For a period of not less than 12 (twelve) months following the Termination Date or the Expiry Date, whichever is applicable, or otherwise in accordance with applicable Laws, the Private Party shall retain in safe storage (either electronically or in hardcopy) all records required in terms of this PPP Agreement, which were in existence at the Expiry Date or the Termination Date. Upon expiry of such period or such earlier date as may be requested by SANParks, the Private Party shall deliver all such records (or where such records are required by Law to remain with the Private Party or the Shareholders, copies thereof) to SANParks or to its nominee in such manner and at such location as SANParks shall specify. The costs relating to the retention of such records in safe storage and delivery of same shall be borne by the Private Party.

25. SANPARKS STEP-IN

25.1 If SANParks reasonably believes that it needs to take any action in connection with the Project Deliverables because a serious and urgent risk arises to the health or safety of persons or property, or to the Environment, or to national security and/or to discharge a statutory duty, then SANParks shall in its sole discretion be entitled to take action in accordance with the following provisions, provided that SANParks must cease to exercise its rights in terms of this Clause when the reason for the exercise of the rights no longer applies.

25.2 If pursuant to Clause 25.1 SANParks wishes to take action, it shall as soon as possible after reaching its determination to do so notify the Private Party in writing of -

25.2.1 the action it wishes to take;

25.2.2 its reasons for taking such action;

25.2.3 the date when it wishes to commence such action;

25.2.4 the time period (the "Step-in Period") which it reasonably believes will be necessary for such action and which must be a fixed period; and

25.2.5 to the extent practicable, the effect of such action on the Private Party and

its obligations to perform the Project Deliverables during the Step-in Period.

- 25.3 Following the service of the notice referred to in Clause 25.2 , SANParks shall take such action as notified thereunder and any ancillary action as it reasonably believes is necessary (the "**Necessary Action**") and the Private Party shall give all reasonable assistance to SANParks in the conduct of such Necessary Action.
- 25.4 If the Private Party is not in breach of any of its obligations under this PPP Agreement in respect of which the Necessary Action is proposed to be taken, then for so long as and to the extent that the Necessary Action is taken, and such action prevents the Private Party from providing any part of the Project Deliverables:
- 25.4.1 the Private Party shall be relieved from such obligations; and
- 25.4.2 in respect of the time period over which such Necessary Action is conducted and provided that the Private Party provides SANParks with such reasonable assistance as SANParks may need in the conduct of such Necessary Action (such assistance, however, to be at the expense of SANParks to the extent of any incremental costs).
- 25.5 If the Necessary Action is taken as a result of a breach by the Private Party of any of its obligations under this PPP Agreement, then for so long as and to the extent that such Necessary Action is taken and prevents the Private Party from performing any of its obligations, the Private Party shall be relieved from such obligation.
- 25.6 The relief of the Private Party's obligations as contemplated in Clause 25.5 above shall apply only if by the expiry of the Step-in Period, the breach still subsists and if it constitutes a Private Party Default, then SANParks must serve a notice in terms of Clause 25 (*SANParks' Options*) requiring the Private Party to remedy the Private Party Default or to put forward a Remedial Programme.

25.7 Where the provisions of Clause 25.5 apply, the Private Party shall be liable to SANParks for an amount equal to SANParks' reasonable costs of taking any Necessary Action as contemplated in Clause 25.5.

26. FORCE MAJEURE

26.1 Definition and Procedure

26.1.1 For the purposes of this PPP 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:

26.1.1.1 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

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

26.1.1.3 chemical or biological contamination of the Astronomy Facility from any of the events referred to in Clauses 26.1.1.1 and 26.1.1.2 above, that directly causes either Party to be unable to comply with all or a material part of its obligations under this PPP Agreement.

26.1.2 Subject to Clause 26.1.3, 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.

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

- 26.1.3.1 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 endeavors to remedy its failure to perform; and
- 26.1.3.2 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 22.
- 26.1.4 The Party claiming relief shall serve written notice on the other Party within fifteen (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.
- 26.1.5 A subsequent written notice shall be served by the Party claiming relief on the other Party within a further period of 5 (five) Business Days. 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 26.1.3.1, 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.
- 26.1.6 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.
- 26.1.7 If, following the issue of any notice referred to in Clause 26.1.4, 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.

26.1.8 Neither SANParks nor the Private Party shall have any right to payment or otherwise in relation to the occurrence of an event of Force Majeure.

26.1.9 The Parties shall endeavor 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. This PPP Agreement shall terminate in terms of Clause 26.2 if no such agreement is reached.

26.2 **Termination for Force Majeure**

If, in the circumstances referred to in Clause 26.1.9, the Parties have failed to reach agreement on any modification to this PPP Agreement pursuant to that Clause, within one hundred and eighty (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.

27. **PRIVATE PARTY DEFAULT**

27.1 **Definition**

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

27.1.1 any arrangement, composition or compromise with or for the benefit of creditors (including any voluntary arrangement as defined in the Insolvency Act, No. 24 of 1936 or the Companies Act) being entered into by or in relation to the Private Party;

27.1.2 a liquidator, business rescue practitioner or the like taking possession of or being appointed over, or any business rescue proceedings, winding-up, execution or other process being levied or enforced (and not being discharged within ten (10) 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);

- 27.1.3 the Private Party ceasing to carry on business;
- 27.1.4 a resolution being passed or an order being made for the business rescue proceedings, 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);
- 27.1.5 the Private Party commits a breach of any of its material obligations under this PPP Agreement, which is not specifically mentioned in this Clause 27.1. For the avoidance of doubt for the purposes of this PPP Agreement a failure to comply with any of the obligations imposed on the Private Party as set out in the Schedules to this PPP Agreement shall be deemed to be a breach of a material obligation;
- 27.1.6 the Private Party fails to pay any sum or sums due to SANParks under this PPP Agreement including but not limited to the requirements contained in Clauses 45.13, 6.2 and Schedule 6 (which sums are not bona fide in dispute) and such failure continues for 10 (ten) Business Days from receipt by the Private Party of a notice of non-payment from SANParks;
- 27.1.7 The Private Party or any of its directors or officers is found guilty of a criminal offence involving fraud or bribery or dishonesty, by a court of law, with punishment imposed of a fine of not less than R 500,000 (five hundred thousand Rand) or imprisonment for a period exceeding six (6) months unless such finding is the subject of an appeal that is being diligently pursued by the Private Party or relevant director of officer;
- 27.1.8 the Private Party or any of its directors or officers falsifies any report, document or information that is provided by the Private Party to SANParks;
- 27.1.9 breach of any provision of this PPP Agreement has occurred at least 3 (three) times in any Financial Year and the Private Party having failed to remedy such breach within the time stipulated therefor in terms of a breach notice issued to it by SANParks in terms of this PPP Agreement;
- 27.1.10 the Private Party breaches any of the provisions relating to its financial obligations in terms of this PPP Agreement;

27.1.11 the Private Party fails to obtain and maintain any Project Insurances as required in terms of this PPP Agreement; or

27.1.12 the Private Party fails to commence trading at the Astronomy Facility on the Operation Commencement Date.

27.2 SANParks' Options

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

27.2.1.1 in the case of the Private Party Default referred to in Clauses 27.1.1, 27.1.2, 27.1.3, 27.1.4, 27.1.6, 27.1.7, 27.1.8, 27.1.9 and 27.1.11 terminate this PPP Agreement in its entirety by notice in writing having immediate effect;

27.2.1.2 in the case of any other Private Party Default referred to in Clauses 27.1.5, 27.1.10 and 27.1.12, serve notice of default on the Private Party requiring the Private Party to remedy the Private Party Default referred to in such notice of default (if the same is continuing) within ten (10) Business Days of such notice of default; or

27.2.1.3 request that the Private Party put forward, within 10 (ten) Business Days of a notice of default, a reasonable programme for remedying the Private Party Default or to remedy the underlying cause of such Private Party Default ("**Remedial Programme**"). The Remedial Programme shall specify in reasonable detail the manner in and the latest date by which, such Private Party Default is proposed to be remedied. The Private Party shall only have the option of putting forward a Remedial Programme if it first notifies SANParks within 5 (five) Business Days of such notice of Private Party Default that it proposes to do so.

27.2.2 If the Private Party Default is notified to the Private Party in a notice of default in terms of Clause 27.2.1.2 and the Private Party Default is not remedied before the expiry of the period referred to in the notice, then

SANParks may terminate this PPP Agreement with immediate effect by written notice to the Private Party and the Lenders.

27.3 Remedy Provisions

27.3.1 Where the Private Party puts forward a Remedial Programme in accordance with Clause 27.2.1.3, SANParks shall have 20 (twenty) Business Days from receipt of the same within which to notify the Private Party that it does not accept the Remedial Programme, failing which SANParks shall be deemed to have accepted the Remedial Programme. SANParks shall act reasonably in rejecting the Remedial Programme and shall give reasons for its decision. Where SANParks notifies the Private Party that it does not accept the Remedial Programme, the Parties shall endeavour within the following 5 (five) Business Days to agree any necessary amendments to the Remedial Programme put forward. In the absence of agreement within 5 (five) Business Days, the question of whether the Remedial Programme (as the same may have been amended by agreement) will remedy the Private Party Default in a reasonable manner and within a reasonable time period.

27.3.2 If -

27.3.2.1 the Private Party Default is not remedied before the expiry of the period referred to in the notice; or

27.3.2.2 where the Private Party puts forward a Remedial Programme which has been accepted by SANParks, the Private Party fails to achieve any material element of the Remedial Programme or to complete the Remedial Programme by the specified end date for the Remedial Programme; or

27.3.2.3 any Remedial Programme put forward by the Private Party is rejected by SANParks as not being reasonable, and the dispute resolution procedure does not find against that rejection,

27.3.3 then SANParks may terminate this PPP Agreement in its entirety by written

notice to the Private Party with immediate effect; provided that for the purposes of Clause 27 if the Private Party's execution of the Remedial Programme is adversely affected by the occurrence of an event of Force Majeure, subject to the Private Party complying with the mitigation and other requirements in this PPP Agreement concerning Force Majeure, the time for execution of the Remedial Programme or any relevant element of it shall be deemed to be extended by a period equal to the delay caused by the Force Majeure event which is agreed by the Parties.

27.4 SANParks' Costs

27.4.1 The Private Party shall reimburse SANParks with all costs incurred by SANParks in exercising any of its rights in terms of this Clause 27 (including, without limitation, any relevant increased administrative expenses and attorney and own client costs, where applicable).

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

27.5 Termination Amount on Private Party Default

27.5.1 On termination of this PPP Agreement as a result of a Private Party Default, without derogating from any other rights which SANParks may have in law, SANParks shall pay the Private Party an amount equal to the Depreciated Value of the Capital Investments Assets, set out in the annual audited books of account of the Private Party on the date of such termination.

27.5.2 Subject to Clause 27.5.1, the following amounts shall be deducted from the amount payable in terms of Clause 27.5.1:

- 27.5.2.1 the cost and expense incurred or to be incurred in the reinstatement of the Astronomy Facility as at date of termination, fair wear and tear accepted;
- 27.5.2.2 an amount equal to any liquidated claims recoverable at law;
- 27.5.2.3 all costs and expenses incurred and/or reasonably expected to be incurred in restoring or remedying material damage to the Astronomy Facility and the Environment caused by the Private Party and/or any Person for whom it is legally responsible in terms of this PPP Agreement; and
- 27.5.2.4 any unpaid Assessment Rates and/or Utility Charges payable by the Private Party as at the date of termination.

28. SANPARKS DEFAULT

28.1 Definition

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

- 28.1.1 an expropriation of a material part of the Astronomy Facility and/or Project Assets of the Private Party by SANParks or other Responsible Authority; or
- 28.1.2 a breach by SANParks of the material obligations under this PPP Agreement which substantially frustrates or renders it impossible for the Private Party to perform its obligations under this PPP Agreement for a continuous period of at least three (3) months.

28.2 Termination for SANParks Default

- 28.2.1 On the occurrence of a SANParks Default, or within ten (10) days after the Private Party becomes aware of same, the Private Party may serve notice on SANParks of the occurrence (and specifying details) of such SANParks Default. If the relevant matter or circumstance has not been remedied or

rectified within thirty (30) Business Days of such notice, the Private Party may serve a further notice on SANParks terminating this PPP Agreement with immediate effect.

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

28.3 **Termination Amount for SANParks Default**

28.3.1 On termination of this PPP Agreement as a result of SANParks Default, without derogating from any other rights which the Private Party may have in law, SANParks shall pay the Private Party an amount equal to the Depreciated Value of the Capital Investment Assets, set out in the annual audited books of account of the Private Party on the date of such termination.

28.3.2 Subject to Clause 28.3.1 SANParks shall also pay to the Private Party the Residual Value of any staff houses that were built by the Private Party after the Operation Commencement Date.

29. **CORRUPT GIFTS AND FRAUD**

29.1 **Definition and Warranty**

The Private Party warrants that in entering into this PPP Agreement it has not committed any Corrupt Act. Any breach of this warranty shall entitle SANParks to terminate this PPP Agreement immediately in terms of Clause 27.1.5.

"Corrupt Act" means:

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

29.1.2 for doing or not doing (or for having done or not having done) any act in relation to the obtaining or performance of this PPP Agreement or any

- other contract with SANParks or any other organ of state; or
- 29.1.3 for showing or not showing favor or disfavor to any person in relation to this PPP Agreement or any other contract with SANParks or any other organ of state;
- 29.1.4 entering into this PPP Agreement or any other contract with SANParks or any other organ of state in connection with which commission has been paid or has been agreed to be paid by the Private Party or on its behalf, or to its knowledge, unless before the relevant contract is entered into particulars of any such commission and of the terms and conditions of any such contract for the payment of such commission have been disclosed in writing to SANParks;
- 29.1.5 committing any offence:
- 29.1.5.1 under any law from time to time dealing with bribery, corruption or extortion;
- 29.1.5.2 under any law creating offences in respect of fraudulent acts; or
- 29.1.5.3 at common law, in respect of fraudulent acts in relation to this PPP Agreement or any other contract with SANParks or any other public body; or
- 29.1.5.4 defrauding or attempting to defraud or conspiring to defraud SANParks or any other public body.
- 29.2 Termination Amount for Corrupt Gifts and Fraud**
- 29.2.1 The Private Party shall reimburse SANParks with all costs incurred by SANParks in exercising any of its rights in terms of this Clause 29 (including, without limitation, any relevant increased administrative expenses and attorney and own client costs, where applicable).
- 29.2.2 The rights of SANParks (to terminate or otherwise) under this Clause are

in addition (and without prejudice) to any other right which SANParks may have in law to claim the amount of loss or damages suffered by SANParks on account of the acts or omissions of the Private Party (or to take any action other than termination of this PPP Agreement).

30. EFFECTS OF TERMINATION

30.1 Termination

Notwithstanding any provision of this PPP Agreement, on service of a notice of termination, this PPP Agreement shall only terminate in accordance with the provisions of this Clause 30 (*Effects of Termination*).

30.2 Transfers to SANParks on Termination

On termination of this PPP Agreement for any reason in accordance with its terms after the Operation Commencement Date the Private Party shall:

30.2.1 procure that any Transferable Licensed Intellectual Property procured either by the Private Party or a Subcontractor and required for the continued performance of the Project Deliverables after the Termination Date shall be provided to SANParks and SANParks shall be granted a perpetual non-exclusive, royalty-free licence to use such Transferable Licensed Intellectual Property, irrespective of whether or not such Transferable Licensed Intellectual Property is owned by the Private Party or a Subcontractor, or not;

30.2.2 deliver to SANParks (as far as not already delivered to SANParks) one complete set of:

30.2.2.1 maintenance, operation and training manuals for the Astronomy Facility and where they do not exist, the Private Party has an obligation in terms of this PPP Agreement to acquire or prepare them; and

30.2.2.2 the historical operating data and plans of the Astronomy Facility, its

furniture, fittings and equipment in a format acceptable to SANParks;

- 30.2.3 use all reasonable endeavours to procure that the benefit of all manufacturer's warranties in respect of mechanical and electrical equipment used or made available by the Private Party under this PPP Agreement and included in the Project Assets are assigned, or otherwise transferred, to SANParks;
- 30.2.4 ensure that provision is made in all relevant contracts of any description whatsoever to which the Private Party or any Subcontractor is a party to ensure that SANParks will be in a position to exercise its rights, and the Private Party will be in a position to comply with its obligations in accordance herewith;
- 30.2.5 remove from the Astronomy Facility all property not required by SANParks and if it has not done so within 10 (ten) Business Days after any notice from SANParks requiring it to do so, SANParks 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;
- 30.2.6 deliver to SANParks:
- 30.2.6.1 any keys, remote access apparatus and computer access cards to the Astronomy Facility;
- 30.2.6.2 without prejudice to Clause 39 (*Intellectual Property of SANParks*), any copyright licences for any computer programmes (or licences to use the same) necessary for the operation of the Astronomy Facility, including without limitation, the Transferable Licensed Intellectual Property;
- 30.2.6.3 complete asset registers and data registers pertaining to the Project; and
- 30.2.6.4 vacate the Astronomy Facility and shall leave same in a safe, clean

and orderly condition.

30.3 Transitional Arrangements

30.3.1 For a period of 12 (twelve) months both before and after the Expiry Date or in the case of any earlier termination after the Operation Commencement Date for the period from the service of notice of termination to 12 (twelve) months after the Termination Date, the Private Party shall have the following obligations -

30.3.1.1 the Private Party shall co-operate fully with SANParks and/or any successor providing services to SANParks in the nature of any of the Project Deliverables or any part of thereof in order to achieve a smooth transfer and to avoid or mitigate in so far as reasonably practicable any inconvenience or any risk to the health and safety of SANParks Employees and members of the public;

30.3.1.2 if SANParks wishes to conduct a tender process with a view to entering into a contract for the provision of services (which may or may not be the same as, or similar to, the Project Deliverables or any of them) following the expiry or earlier termination of this PPP Agreement, the Private Party shall co-operate with SANParks fully in such tender process including (without limitation) by:

30.3.1.2.1 providing any information which SANParks may reasonably require to conduct such tender excluding any information which is commercially sensitive to the Private Party (and, for the purposes of this Clause 30.3.1.2.1, “commercially sensitive” shall mean information which would if disclosed to a competitor of the Private Party or Subcontractor give that competitor a competitive advantage over the Private Party or Subcontractor and thereby prejudice the business of the Private Party or Subcontractor); and

30.3.1.2.2 assisting SANParks by providing all (or any) participants in such tender process with access on reasonable notice and at reasonable times to the Astronomy Facility subject to the Private

Party's safety rules and regulations.

30.4 **Continuing Obligations**

Save as otherwise expressly provided in this PPP Agreement -

30.4.1 termination of this PPP Agreement shall be without prejudice to any accrued rights and obligations under this PPP Agreement as at the date of termination; and

30.4.2 termination of this PPP Agreement shall not affect the continuing rights and obligations of the Private Party and SANParks under this Clause 30 or under any other provision of this PPP Agreement which are expressed to survive termination or which are required to give effect to such termination or the consequences of such termination.

30.5 **Termination by reason of Expiry**

30.5.1 For the avoidance of doubt, the Parties agree that notwithstanding anything to the contrary in this PPP Agreement -

30.5.1.1 if this PPP Agreement terminates on the Expiry Date; or

30.5.1.2 if this PPP Agreement terminates as a result of a SANParks Default, a Private Party Default, an event of Force Majeure or a Corrupt Act,

other than the Private Party's right to receive the Termination Amount where Clause 30.5.1.2 applies, SANParks shall not be liable for payment of any compensation to the Private Party or any Subcontractor or any third party by virtue of any transfer or other effect of termination provided for in this Clause 30 (*Effects of Termination*).

31. **DISPUTE RESOLUTION**

31.1 **Referable Disputes**

The provisions of this Clause 31 shall, save where expressly provided otherwise, apply to any dispute arising in relation to or in connection with any aspect of this PPP Agreement between the Parties.

31.2 Internal Referral

31.2.1 If a dispute arises in relation to any aspect of this PPP Agreement, the Parties shall through mutual consultation, without involving any third parties, use their reasonable endeavours to resolve the dispute.

31.2.2 In the event that the dispute remains unresolved for a period of 10 (ten) Business Days after either Party has requested such consultation in writing, either Party shall be entitled to refer the matter to arbitration.

31.3 Arbitration

31.3.1 Any Party ("**the claimant**") may demand by written notice given to the other Party ("**respondent**") that a dispute be referred to arbitration (the "**arbitration notice**").

31.3.2 The arbitration shall be:

31.3.2.1 held and will be completed as soon as possible;

31.3.2.2 governed by the provisions of the Arbitration Act, 1965;

31.3.2.3 in accordance with the provisions of the Commercial Arbitration Rules of the Arbitration Foundation of Southern Africa ("**AFSA**");

31.3.2.4 in Gauteng;

31.3.2.5 conducted in the English language; and

31.3.2.6 in the presence of only the arbitrator/s, his assistant/s and recording staff the arbitrator/s so require/s, the legal and other representatives

of the claimant and respondent who wish to be present or represented, and only if and for so long as the arbitrator/s may permit, such witnesses as either of the claimant or respondent may wish to call to present expert or other evidence.

31.3.3 The Parties shall agree on the arbitrator within 7 (seven) Business Days of delivery of the arbitration notice, and failing such agreement, the arbitrator shall be appointed by the secretariat of AFSA on the basis that the arbitrator shall, if the matter in dispute is, or matters are, principally:

31.3.3.1 a legal or deemed legal matter, be a practising attorney or advocate of at least 15 (fifteen) years' standing;

31.3.3.2 an accounting matter, be a practising chartered accountant of at least 15 (fifteen) years standing; or

31.3.3.3 any other matter, be any independent person in the relevant field of not less than 10 (ten) years standing.

31.3.4 AFSA's decision regarding the appointment of the arbitrator, including the determination whether a dispute is principally a legal, accounting or other matter, shall be final and binding upon the Parties.

31.3.5 If two or more disputes are referred to arbitration at the same time, some being of an accounting or general nature and others of a legal nature, unless otherwise agreed and such disputes shall all be deemed to be legal matters.

31.3.6 The decisions of the arbitrator/s may be subjected to appeal by either Party in terms of the AFSA Rules. If no appeal is initiated, the arbitrator's award will be final and binding on the Parties, and at the instance of either of them may be made an order of any court to whose jurisdiction the Parties are or either of them is subject.

31.3.7 Notwithstanding the provisions of this Clause 31.3.7, the High Court of South Africa shall have jurisdiction to determine any proceedings instituted

by way of notice of motion by any of the Parties against any of the other Parties thereto in which interim relief, or urgent final relief, is claimed howsoever arising out of or in connection with this PPP Agreement. In respect of such applications, each of the Parties specifically submits itself to and consents to the exclusive jurisdiction of the High Court of South Africa, Gauteng Division, Pretoria.

31.4 Performance to Continue

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

32. CHANGES IN CONTROL

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 SANParks, which approval shall not be unreasonably withheld, provided that no Change in Control may breach the provisions of Schedule 5 in any way.

33. CESSION, TRANSFER AND SUBSTITUTED ENTITY

33.1 Transfer by the Private Party

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

33.1.1 this PPP Agreement or any Associated Agreement; or

33.1.2 any of its rights, interests or obligations thereunder,

save, in each case, to the extent required for the financing of the operation of the Astronomy Facility as envisaged in the Financing Agreements, and in terms of the provisions of Clause 33.2.

33.2 Subject to the provisions of Clause 33.1, the Private Party may cede, delegate, assign, encumber or transfer the operation of the whole or a part of the Astronomy Facility , provided that:

33.2.1 the period of the cession, delegation, assignment, encumbrance or transfer shall not exceed the unexpired portion of the Project Term;

33.2.2 the Private Party shall not be absolved from any liability, existing or future, of the Private Party in terms of this PPP Agreement;

33.2.3 the third party to whom the Private Party cedes, delegates, assigns or transfers its rights and/or obligations, as the case may be (“**Assignee**”), shall be bound by all the same terms and conditions as set out in this PPP Agreement as if originally a party hereto.

33.3 **Substitute Entity**

33.3.1 Upon the occurrence of an event in Clause 27 entitling SANParks to terminate this PPP Agreement, and upon the expiry of the remedy period (in the event a remedy period is provided), or, where no remedy period is provided, upon the occurrence of such event, SANParks shall have the right, subject to the PFMA, to appoint a substitute entity, that the substitute entity nominated by SANParks-

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

33.3.1.2 has the financial and technical capability sufficient to perform and assume the obligations of the Private Party under the PPP Agreement.

33.3.2 The Private Party shall reimburse SANParks with all costs incurred by SANParks in exercising any of its rights in terms of this Clause 33.3 (including, without limitation, any relevant increased administrative expenses and attorney and own client costs, where applicable).

33.3.3 The rights of SANParks under this Clause are in addition (and without prejudice) to any other right which SANParks may have in law to claim the amount of loss or damages suffered by SANParks on account of the acts or omissions of the Private Party.

33.4 Disposal of Shares

33.4.1 SANParks will, notwithstanding the provisions of Clause 33, approve any sale of shares or other beneficial interest in the Private Party and permit that the Shareholders or beneficiaries sell any such shares or beneficial interest where such change does not bring about a Change in Control and provided that:

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

33.4.1.2 the sale of such shares or beneficial interest does not alter the financial, BEE and technical capability of the Private Party to perform and assume the obligations of the Private Party in terms hereof; and

33.4.1.3 SANParks cannot reasonably object to the sale for any reason.

34. INTELLECTUAL PROPERTY OF SANPARKS

34.1 All intellectual property rights whatsoever, whether capable of registration or not, regarding SANParks' name, trademarks, logos, image and all other intellectual property matters relating to SANParks, including its name, trademarks, logos and/or image shall remain the sole property of SANParks.

34.2 Subject to Clauses 34.1 and Clause 34.3, SANParks shall, on prior written application by the Private Party and only to the extent necessary for the Private Party to perform the Project Deliverables, grant a non-exclusive revocable right and licence to the Private Party to use SANParks' trademarks and logos for a period not to exceed the remainder of the Project Term.

- 34.3 In order to establish and maintain standards of quality and propriety acceptable to SANParks, in the event that the Private Party desires to use SANParks' trademarks or logos in any way, the Private Party shall first submit the concept or a sample of the proposed use to SANParks for approval, which shall be in its sole and absolute discretion. SANParks shall use reasonable endeavours to advise the Private Party of its approval or disapproval of the concept or sample within 20 (twenty) Business Days of its receipt of the concept or sample. If SANParks approves the concept or sample, the Private Party shall not depart therefrom in any respect without SANParks' further prior written approval.
- 34.4 If at any time SANParks revokes its approval for the specified use of any trademark or logo, the Private Party shall forthwith discontinue all use of such trademark or logo and shall remove from public sale or distribution any previously approved product in respect of which SANParks 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 34.5.
- 34.5 SANParks may revoke its approval immediately upon 10 (ten) Business Days written notice to the Private Party if the Private Party, any Subcontractor or any of its or its Subcontractors' 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 SANParks' reasonable opinion, materially prejudices the reputation and public goodwill of SANParks.
- 34.6 The Private Party acknowledges that the name(s) of SANParks (the "**Protected Names**") are associated with and peculiar to SANParks and are the Intellectual Property of SANParks. Consequently, the Private Party agrees that the sole and exclusive ownership of the Protected Names shall vest in SANParks.
- 34.7 In circumstances where the Private Party utilises any of the Protected Names, either on its own or in combination or association with any other name, it does so only in terms of this PPP Agreement and with the prior approval of SANParks. On termination or expiry of this PPP 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.

34.8 Within 60 (sixty) Business Days after the Expiry Date or the Compensation Date and where the Private Party has operated a company utilising any of the Protected Names with the permission of SANParks, the Private Party shall either:

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

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

34.9 The naming of the Private Party's business operation shall be undertaken in consultation with SANParks and subject to SANParks' approval. In circumstances where the name chosen by the Private Party and approved by SANParks is not part of SANParks' intellectual property, then the rights of SANParks contemplated in this Clause 34 shall not be applicable and the intellectual property shall be the sole property of the Private Party.

34.10 SANParks may at its discretion allow its own name, logo and or other branding on the stationery of the Private Party, at cost to the Private Party. The Private Party may not use SANParks name, logo or other branding without written consent from SANParks for any reason whatsoever.

34.11 SANParks reserves the right to disallow the Private Party to apply its own name, logos or other branding to the Astronomy Facility in any manner, or otherwise to stipulate the placement and size of such names, logos or other branding. If so allowed by SANParks, the name, logo or other branding of the Private Party shall not conceal, obstruct, compete with the name or logo of SANParks, or be contrary to the professional image of SANParks at any time or in any manner. Any such branding of the Private Party shall be at cost to the Private Party.

35. INTELLECTUAL PROPERTY OF THE PRIVATE PARTY

- 35.1 The Private Party shall, in respect of all Intellectual Property that is owned by it and any of the Subcontractors, on termination of this PPP Agreement in accordance with its terms after the Operation Commencement Date, grant to SANParks a non-exclusive, royalty free licence to use such Intellectual Property for the Project or any operational and maintenance services to be provided in the future by or for SANParks in relation to the Astronomy Facility, or any facilities that succeed them (the "**Permitted Purposes**"). Those licences shall be capable of being freely transferred by SANParks to third parties at no cost, for the Permitted Purposes, but to no other parties without the prior written consent of the Private Party.
- 35.2 In the event that any Intellectual Property is not owned by the Private Party but was specifically developed for the Project, whether or not it is Licensed Intellectual Property, the Private Party shall ensure that it is at all times after the Operation Commencement Date entitled to –
- 35.2.1 grant to SANParks a non-exclusive licence, on terms no less favourable than those applicable to the Private Party, to use that Intellectual Property for the Permitted Purposes. Those licences shall be capable of being further transferred by SANParks to third parties at no cost, for the Permitted Purposes; or
- 35.2.2 assign all of its rights in and to that Intellectual Property to SANParks on the basis that those rights shall be capable of being further assigned to third parties for the Permitted Purposes.
- 35.3 In the event that any Licensed Intellectual Property is not owned by the Private Party but is specifically required in order to operate any of the Transferable Licensed Intellectual Property for the Permitted Purposes, the Private Party shall, upon termination of this PPP Agreement in accordance with its terms after the Operation Commencement Date, procure that a license for such Licensed Intellectual Property is issued in the name of SANParks for a period equal to the difference between the Termination Date and the Expiry Date had this Agreement not terminated early, provided that the Private Party shall not be

required to procure same where this PPP Agreement terminates on the Expiry Date.

- 35.4 In the event that the Private Party uses any Intellectual Property owned by any third party in the Project, other than Intellectual Property which is the subject of Clause 35.1, the Private Party shall prior to using any such Intellectual Property ensure the consent of the relevant owner in order to ensure that the Private Party is at all times after the Operation Commencement Date entitled to –
- 35.4.1 grant to SANParks a non-exclusive licence, on terms no less favourable than those applicable to the Private Party, to use that Intellectual Property for the Permitted Purposes, which licences shall be capable of being further transferred by SANParks to third parties at no cost, for the Permitted Purposes; or
- 35.4.2 assign all of the Private Party's rights in and to such Intellectual Property to SANParks, on the basis that those rights shall be capable of being further assigned by SANParks to third parties at no cost, for the Permitted Purposes.
- 35.5 If the owner of Intellectual Property contemplated in Clause 35.3 withholds or denies such consent, the Private Party shall not use any such Intellectual Property for the Project without the prior written approval of SANParks.
- 35.6 The Private Party indemnifies SANParks against any liability or costs which SANParks suffers or incurs as a result of the infringement of any third party rights arising from the use by SANParks, any Responsible Authority, or any third party who is licensed to use any Intellectual Property for the Permitted Purposes, or to whom any rights in respect of the Intellectual Property are assigned for the Permitted Purposes, in accordance with the provisions of that licence or assignment, save to the extent that such liability or cost was occasioned by any intentional act or omission by an indemnified party in question, or by its gross negligence.

36. AMENDMENTS

This PPP Agreement may not be varied or voluntarily terminated, except by an

agreement in writing signed by duly authorised representatives of the Parties.

37. ENTIRE AGREEMENT

37.1 Except where expressly provided otherwise in this PPP Agreement, this PPP 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 PPP Agreement.

37.2 Each of the Parties acknowledges that:

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

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

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

38. VARIATION, CANCELLATION AND WAIVER

38.1 No provision of this PPP 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 PPP Agreement, except (in

any such case) by an agreement in writing signed by the duly authorised representatives of the Parties.

- 38.2 Any relaxation or delay (together “**Relaxation**”) by either Party in exercising, or any failure by either Party to exercise, any right under this PPP 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).
- 38.3 The waiver of any right under this PPP 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.
- 38.4 The expiry or termination of this PPP Agreement shall not prejudice the rights of any Party in respect of any antecedent breach or non-performance of or in terms of this PPP Agreement.

39. SEVERABILITY

Whenever possible, each provision of this PPP Agreement shall be interpreted in a manner which makes it effective and valid under applicable Law, but if any provision of this PPP 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 PPP Agreement, all of which shall remain in full force.

40. GOVERNING LAW AND JURISDICTION

- 40.1 This PPP Agreement is to be governed by and construed in accordance with the laws of South Africa.
- 40.2 Each Party agrees that the High 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 PPP Agreement, and irrevocably submits to the jurisdiction of the High Court of South Africa.

41. CONFIDENTIALITY

- 41.1 For purposes of this Clause, "**Confidential Information**" means all information or data disclosed under and/or pursuant to this PPP Agreement, whether communicated orally or in writing by either Party to the other or by the representatives of one Party to the representatives of the other and shall include commercially sensitive information contained in any internal document of a Party regarding the nature of its business, operations, processes, intentions, product information, know-how, trade secrets, software, market opportunities, customer and business affairs, but shall exclude information which is prohibited from release for national security reasons.
- 41.2 Each Party shall keep all Confidential Information of the other Party confidential while this PPP Agreement remains in force and for a period of 10 (ten) years after it terminates for any reason. Each party 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 PPP Agreement remains in force and for a period of 10 (ten) years after it terminates for any reason.
- 41.3 The provisions of Clause 41.2 shall not apply to -
- 41.3.1 any disclosure of information that is reasonably required by persons engaged in the performance of the restricted Party's obligations under this PPP Agreement;
- 41.3.2 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 41 (*Confidentiality*);
- 41.3.3 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;
- 41.3.4 any disclosure of information that is already lawfully in the possession of the receiving Party prior its disclosure by the disclosing Party;

- 41.3.5 any provision of information to the advisors of the receiving Party, or to any funders or potential funders, but in the latter case, only to the extent reasonably necessary to enable a decision to be taken on whether that potential funder will become a funder;
- 41.3.6 any disclosure by SANParks of information relating to the design, construction, operation and maintenance of the Project; or
- 41.3.7 any disclosure of information by SANParks to any Responsible Authority.
- 41.4 The disclosures permitted under Clauses 31.3.5, 31.3.6 or 31.3.7 may only be made subject to obtaining appropriate confidentiality restrictions consistent with the provisions of this Clause 41 (*Confidentiality*) from the intended recipients.

42. NOTICES

- 42.1 Any notice or correspondence to be given under this PPP Agreement shall be in writing, in English, unless otherwise agreed and shall be delivered personally, sent by telefacsimile (fax) or electronic mail (e-mail) followed by the original delivered by hand.
- 42.2 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) 343-0155

E-mail: fahlaza.monaledi@sanparks.org

Private Party:

Marked for the attention of the Directors: _____

Telephone: _____

Facsimile: _____

E-mail: _____

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

42.3.1 on the same day, if delivered by hand;

42.3.2 on the same day of transmission if sent by fax or e-mail.

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

43. COUNTERPARTS

This PPP Agreement may be executed in any number of identical counterparts, all of which when taken together shall constitute one agreement. Any single counterpart or a set of counterparts taken together which, in either case, are executed by the Parties, shall constitute a full original of this PPP Agreement for all purposes.

SIGNED AT ON THE 20__.

For and on behalf of
SOUTH AFRICAN NATIONAL PARKS

who warrants his authority hereto

SIGNED AT ON THE 20__.

For and on behalf of
THE PRIVATE PARTY

who warrants his authority hereto

44. SCHEDULE 1 - DESCRIPTION OF FACILITY

The Astronomy Facility will include all the facilities and infrastructure within the following designated area.

Where the astronomy product will be presented in the camps, the following areas will be used.

44.1 Bid Package 1: Punda Maria, Shingwedzi, Mopani, Letaba and Olifants

Punda Maria – site to be identified if there is interest

Shingwedzi – to be presented on the high water bridge 1 km from camp:



Mopani – site to be identified if there is interest

Letaba – shared site with Olifants The site is the N’wamanzi View point 9 kms from Olifants:



Olifants – to be part of Bid Package 1. Shared site with Letaba. The site is the N’wamanzi View point 9 kms from Olifants:



44.2 Bid Package 2: Satara and Lower Sabie

Satara – Timbavati picnic site to be used as site



Lower Sabie – Cement dam approximately 3 kilometers from the camp to be used as site (changes required – safety, on top and below, facility to get on top, toilet, etc.)



44.3 Bid Package 3: Skukuza, Berg en Dal and Pretoriuskop

Pretoriuskop – Site next to swimming pool to be used for product



Berg en Dal – Day visitors site to be used – might require involvement with local communities who will also be involved in operating the site



Skukuza – Mathekenyane view point to be used as site



45. SCHEDULE 2 - RESPONSIBILITY IN TERMS OF MAINTENANCE OF THE FACILITY

45.1 Private Party Responsibility

45.1.1 The Private Party will be responsible to purchase one decent telescope per 10 people of at least 6 inch but preferably 8 inch. Where at least 40 people attend the astronomy talk at least two 8-inch telescopes are recommended. In addition infragreen pointers and decent computer equipment and screens are recommended.

45.1.2 The Private Party shall be solely responsible for the maintenance and insurance of the assets used for the astronomy product;

45.1.3 The Private Party shall be responsible to pay for water and electricity used for the operation of this product;

45.1.4 The Private Party shall be responsible to remove any waste generated from the park;

45.1.5 The Private Party shall be responsible to have toilet facilities available at the site outside camp;

45.1.6 The Private Party is responsible for security at the site outside the camp;

45.1.7 The Private Party is responsible to form a contractual relationship with a black women owned OSV company who will be responsible to transport the clients on OSV to the site outside the park.

45.2 SANParks Responsibility

45.2.1 SANParks shall be responsible for provision of a site per camp as well as the area outside camp where the superior product can be presented;

45.2.2 Where the sites that are allocated outside the camp, SANParks will be responsible to maintain the infrastructure.

SCHEDULE 3 – PRIVATE PARTY OPERATIONAL REQUIREMENTS

45.3 Promotion and conduct of business

45.3.1 In the conduct of the Business the Private Party shall actively promote the Astronomy Facility and use its best endeavors to further the mutual business interests of SANParks and the Private Party and, without limiting the generality of the foregoing, shall provide and promote the goods and/or services required of the Business as specified herein.

45.4 Standards of Astronomy Facility

45.4.1 In the conduct of the Business the Private Party shall at all times maintain the Astronomy Facility and all services provided therein to the highest standard and ensure that the premises are at all times clean and safe for customers.

45.5 Branding

45.5.1 Private Party's brand design must take cognisance of the Protected Area's ambience.

45.6 Service Provision

45.6.1 In the conduct of the Business the Private Party shall keep the Astronomy Facility to times communicated in line with the gate times and operational hours and the requirements of any relevant statute, bye-law or regulation relating to the Business.

45.7 Product Offering

45.7.1 The Design Plan submitted by the Private Party must be adhered to unless otherwise agreed by SANParks.

45.7.2 The Private Party is obliged to offer a quality astronomy product in either the camps identified as part of the Bid Packages (to be agreed with camp

management) or at any of the identified sites outside the camps;

45.7.3 The Private Party is obliged to offer astronomy options as outlined in the Private Party Bid Submission;

45.7.4 The Private Party is obliged to consider ways to accommodate guests that requires universal access;

45.7.5 The Private Party is obliged to use an OSV operator that is female and black owned to transport the clients to the site and to assist with security protocols at the site.

45.8 **Uniforms**

45.8.1 The Private Party is obliged to provide all staff with suitable and customised apparel in line with the theme proposed for the Astronomy Facility.

45.8.2 All apparel must be relevant to the specific function performed by staff members and comply with Legislation, Health, and Safety Standards.

45.8.3 Notwithstanding the generality of the foregoing Clause 45.8.2, any member of staff serving guests in the Astronomy Facility will not be permitted to wear open shoes or sandals.

45.8.4 The Private Party will be obliged to introduce and provide all staff with the applicable uniform on or before Operation Commencement Date.

45.9 **Loyalty Card Programme**

45.9.1 SANParks has an active loyalty program called the Wild Card. SANParks would like to encourage all commercial operators in National Parks to engage with the SANParks loyalty team and conclude sustainable benefits to customers.

45.10 **Customer Survey Programme**

A Customer Survey Programme including a Mystery Guest Programme could be implemented by SANParks to measure quality. The Private Party will be required to collaborate with SANParks in the implementation of such Programmes and/or other customer surveys in the Astronomy Facility.

45.11 Customer Feedback System

Where customer Feedback Systems are implemented, this will be done in conjunction/collaboration with the Private Party. The Private Party is required to achieve an average score of seventy-five percent (75%) for the experience at the Astronomy Facility.

45.12 Astronomy Facility Staff and Staff Transport

45.12.1 In the conduct of the Business the Private Party shall be solely responsible for all staffing requirements at the Astronomy Facility. The Private Party is responsible for the transport of their employees from the workplace to the living quarters, particularly after-hours transport where living quarters are logistically distanced from the Astronomy Facility. Where staff resides outside the park, SANParks will issue early entry and late exit permits to allow for after hour staff transport. The Private Party is responsible for the transport of their staff to the required medical facilities. In the event that SANParks' transport can be utilised, the related cost of transport will be for the Private Party's account.

45.12.2 The Private Party will be required to do standard background security checks (Inclusive of criminal record checks) for all employees that will work in the park.

45.12.3 The Private Party is required to institute integrity testing (Polygraph) as a Condition of Service before and employee takes up employment in the park (as per SANParks' current Policy and Procedures).

45.13 Staff Housing

45.13.1 No staff housing will be provided. However, the operator will be allowed to

build a limited number of houses i.e. two units in one of the main camps within the Bid Package (if space is available and after SANParks technical services has given approval).

45.14 Advertising

In the conduct of the Business the Private Party shall comply with all the reasonable advertising requirements as may be specified by SANParks from time to time.

45.15 Supplier Accounts

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

45.16 Meetings

To provide for a forum where the parties can resolve disputes and agree operational issues, it is encouraged that the Private Party and the Camp Hospitality Services Manager (HSM) agrees on a monthly meeting that will be attended by both parties.

45.17 Procedure Manuals

45.17.1 The Private Party is obliged to comply with the Private Party's Operational Manual submitted with the Private Party's Bid Submission. Any significant and material changes which could change operations drastically and thus cause the Private Party to deviate from the submitted Private Party's Operational Manual must be subject to the approval of SANParks.

45.17.2 The Private Party is obliged to adhere to SANParks' Procedure Manual as amended from time to time. The Procedure Manual will define the roles, responsibilities and procedures with regard to housing, transport of staff, maintenance, infrastructural upgrades and expansions etc.

45.18 Quality Audit

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

45.19 **Games**

The Private Party shall not be entitled to introduce any arcade type amusement or gaming machines into the Astronomy Facility or play unappropriated music at the project site.

45.20 **Electrical Certificate of Compliance**

45.20.1 The Private Party shall supply SANParks with an electrical certificate of compliance (CoC) for the Astronomy Facility / houses that was built before handing the site back after Contract Termination.

45.21 **Problem Animal Management**

SANParks will be responsible to assist the Private Party with problem animals.

46. SCHEDULE 4 – PRIVATE PARTY BID SUBMISSION

The Private Party shall adhere to and comply with the Private Party's Bid Submission. Notwithstanding the generality of the a foregoing, the Private Party is obliged to adhere to the Business, Operational and Design Plan and Risk Matrix attached herewith.

46.1 Private Party Business Operational and Design Plan

46.2 **Private Party Risk Matrix**

47. SCHEDULE 5 – BEE OBLIGATIONS

In this Schedule, **B-BBEE Scorecard Definitions and Measurements**

All B-BBEE definitions used are consistent with those used in the *Amended Tourism B-BBEE Sector Code, 2015*, unless otherwise stated, with the following additions, where applicable:

Community trust

A not-for-profit trust created in terms of applicable law by volunteer members for channelling the proceeds of various activities and investments for the common good of persons ordinarily resident within a specific town, village or settlement. In line with the Amended Tourism B-BBEE Sector Code, a Community trust should adhere to requirements stipulated for Broad-Based Ownership Schemes and Trusts.

Local

A geographic area specified by SANParks, generally defined as being within a 100 km reach of the boundary of the Protected Area fence (but excluding boundaries to the neighbouring countries), or as otherwise specified by SANParks / the relevant Park-specific Department.

Through the relevant Department, SANParks will assist in determining the relevant Local Communities for the Private Party to engage with in fulfilling the obligations of the B-BBEE Proposal. Various factors could inform this, such as identifying Local Communities located nearest to the PPP project, or identifying Local Communities most in need of economic development.

All measurements of scores are calculated consistently with those used in the Amended Tourism B-BBEE Sector Code, 2015 with the following additions / amendments, where applicable:

Ownership:

For the purposes of Measurement for Voting Rights and

Economic Interest, *Local Community Trust* is an additional category of Participants in the SPV, where beneficiaries of the Trust are Black People from Local Communities.

Management Control:

For the purposes of Management Control Indicators for Board Participation, *Local People* refers to the Voting Rights in the hands Black People from Local Communities.

For the purposes of all other Management Control Indicators, *Local People* refers to Black Employees from Local Communities for the relevant indicators.

For the purposes of *Local People* and for Measurements of the “All Employees” Indicator only, the demographic representation of Black People as defined in the Regulations of the Employment Equity Act and the Commission for Employment Equity (CEE) report are not applicable to the calculation of scores.

For clarity on the above, the following criteria for **Large Enterprises** are subject to the Measurements as per the *Amended Tourism Sector Code, 2015*, and targets must be split according to the economically active population / demographic representation of Black People as defined in the Regulations of the Employment Equity Act and the CEE report:

- Black Employees in Senior Management as a percentage of all Senior Management;
- Black Female Employees in Senior Management as a percentage of all Senior Management;
- Black Employees in Middle Management as a percentage at all Middle Management;
- Black Female Employees in Middle Management as a percentage of all Middle Management;
- Black Employees in Junior Management as a percentage of all Junior Management; and
- Black Female Employees in Junior Management as a percentage of all Junior Management.

As per the *Amended Tourism B-BBEE Sector Code, 2015*, the demographic representation of Black People as defined in the Regulations of the Employment Equity Act and the CEE report are not applicable to the calculation of scores under the QSE Scorecard.

Skills Development

As per the *Amended Tourism B-BBEE Sector Code, 2015*, the demographic representation of Black People as defined in the Regulations of the Employment Equity Act and the CEE report are not applicable to the calculation of scores under the QSE Scorecard.

Enterprise and Supplier Development

For the purposes of Preferential Procurement, Supplier Development and Enterprise Development Indicators, *Local* refers to Black Owned Entities that have their main business address listed as from a relevant Local Community, or as otherwise specified by SANParks.

Socio-economic Development

For the purposes of the Socio-economic Development Indicator, *Local* refers to qualifying contributions taking place in a relevant Local Community and benefiting Black People from that Local Community, or as otherwise specified by SANParks.

Large Enterprise Scorecard

Element	Element Weighting	Indicator	Measurement Category & Criteria	Weighting Points	Compliance Targets	Bid Offered	Score
Ownership	27	Voting Rights	Exercisable Voting Rights in the entity in the hands of Black People	3	30%		
			Exercisable Voting Rights in the entity in the hands of Black Women	2	15%		
			Exercisable Voting Rights in the entity in the hands of a Local Community Trust (<i>mandatory</i>)	1	10%		
		Economic Interest	Economic Interest in the entity to which Black People are entitled	4	30%		

Element	Element Weighting	Indicator	Measurement Category & Criteria	Weighting Points	Compliance Targets	Bid Offered	Score
			Economic Interest in the entity to which Black Women are entitled	2	15%		
			Economic Interest in the entity to which a Local Community Trust is entitled to (<i>mandatory</i>)	7	10%		
		Realisation Points	Net Value	8	As per Codes		
		Score out of 27					
Management Control	19 (+2 Bonus)	Board Participation	Exercisable Voting Rights of Black Board Members as a percentage of all Board Members	1	50%		
			Exercisable Voting Rights of Black Female Board Members as a percentage of all Board Members	0.5	30%		
			Exercisable Voting Rights of Local People who are Board Members as a percentage of all Board Members	0.5	20%		
			Black Executive Directors as a percentage of all Executive Directors	1	50%		
			Black Female Executive Directors as a percentage of all Executive Directors	0.5	30%		
		Other Executive Management	Black Executive Management as a percentage of all Other Executive Management	1	60%		
			Black Female Executive Management as a percentage of all Other Executive Management	0.5	30%		
		Senior Management	Black Employees in Senior Management as a percentage of all Senior Management <i>Targets for Black People must be split according to the Economically Active Population</i>	2	60%		
			Black Female Employees in Senior Management as a percentage of all Senior Management <i>Targets for Black People must be split according to the Economically Active Population</i>	1	30%		
		Middle Management	Black Employees in Middle Management as	1	75%		

Element	Element Weighting	Indicator	Measurement Category & Criteria	Weighting Points	Compliance Targets	Bid Offered	Score
			a percentage of all Middle Management <i>Targets for Black People must be split according to the Economically Active Population</i>				
			Black Female Employees in Middle Management as a percentage of all Middle Management <i>Targets for Black People must be split according to the Economically Active Population</i>	0.5	38%		
			Local People in Senior / Middle Management as a percentage of all Senior and Middle Management	2	25%		
		Junior Management	Black Employees in Junior Management as a percentage of all Junior Management <i>Targets for Black People must be split according to the Economically Active Population</i>	0.5	80%		
			Black Female Employees in Junior Management as a percentage of all Junior Management <i>Targets for Black People must be split according to the Economically Active Population</i>	0.5	40%		
			Local People in Junior Management as a percentage of all Junior Management	0.5	45%		
		Employees with disabilities	Black Employees with Disabilities as a percentage of all Employees	2	2%		
		All Employees	Black Employees as a percentage of all Employees (excluding Board and Executive Management)	1	75%		
			Black Female Employees as a percentage of all Employees (excluding Board and Executive Management)	1	40%		
			Local People as a percentage of all Employees (excluding Board and Executive Management)	2	60%		
		Bonus Points	Number of Black	2	1% (over		

Element	Element Weighting	Indicator	Measurement Category & Criteria	Weighting Points	Compliance Targets	Bid Offered	Score
			Employees with Disabilities over and above the 2% target for Black Employees with Disabilities, as a percentage of all Employees		and above 2% target above)		
Score out of 19 (+2 bonus)							
Skills Development	20 (+5 Bonus)	Skills Development Expenditure on any programme specified in the Learning Programme Matrix for Black People as a percentage of the Leviable Amount	Skills Development Expenditure on Learning Programmes specified in the Learning Programme Matrix for Black People in any of the following three tourism sub-sectors as a percentage of Leviable Amount: - Accommodation; - Hospitality and related services; - Travel and related services. <i>Targets for Black People must be split according to the Economically Active Population</i>	5	6%		
			Skills Development Expenditure on Learning Programmes specified in the Learning Programme Matrix for Black People with Disabilities in any of the above three tourism sub-sectors as a percentage of Leviable Amount	3	0.3%		
		Learnerships, Apprenticeships, and Internships	Number of Black Employees participating in Learnerships, Apprenticeships and Internships paid for by the measured entity as a percentage of total Employees <i>Targets for Black People must be split according to the Economically Active Population</i>	8	3.5%		
			Number of Black Unemployed Learners participating in Learnerships, Apprenticeships and Internships paid for by the measured entity as a percentage of number of total Employees <i>Targets for Black People must be split according to the Economically Active Population</i>	4	3%		
		Bonus Points	Number of Black People absorbed by the	5	100%		

Element	Element Weighting	Indicator	Measurement Category & Criteria	Weighting Points	Compliance Targets	Bid Offered	Score
			measured and/ or industry entity at the end of the Learnerships/ internship or Apprenticeship programme				
Score out of 20 (+5 bonus)							
Enterprise and Supplier Development	40 (+ 2 Bonus)	Preferential Procurement	B-BBEE Procurement Spend from all Empowering Suppliers based on the B-BBEE Procurement Recognition Levels as a percentage of Total Measured Procurement Spend	5	80%		
			B-BBEE Procurement Spend from all local Empowering Suppliers that are Qualifying Small Enterprises based on the applicable B-BBEE Procurement Recognition Levels as a percentage of Total Measured Procurement Spend	3	15%		
			B-BBEE Procurement Spend from all local Exempted Micro Enterprises based on the applicable B-BBEE Procurement Recognition Levels as a percentage of Total Measured Procurement Spend	4	15%		
			B-BBEE Procurement Spend from Empowering Suppliers that are at least 51% Black Owned based on the applicable B-BBEE Procurement Recognition Levels as a percentage of Total Measured Procurement Spend	9	40%		
			B-BBEE Procurement Spend from Empowering Suppliers that are 30% Black Women Owned based on the applicable B-BBEE Procurement Recognition Levels as a percentage of Total Measured Procurement Spend	4	12%		
		Supplier Development	Annual value of all qualifying Supplier Development contributions to local entities made by the measured entity as a percentage of the target	10	3% of NPAT		
		Enterprise	Annual value of all	5	0.5% of		

Element	Element Weighting	Indicator	Measurement Category & Criteria	Weighting Points	Compliance Targets	Bid Offered	Score
		Development	qualifying Enterprise Development contributions and Sector Specific Contributions to local entities made by the measured entity as a percentage of the target		NPAT		
		Bonus Points	Bonus point for graduation of one or more qualifying Enterprise Development beneficiaries to graduate to the Supplier Development level	1	Yes		
			Bonus point for creating one or more jobs directly as a result of qualifying Supplier Development and Enterprise Development contributions by the measured entity	1	Yes		
<i>Score out of 40 (+2 bonus)</i>							
Socio-economic Development	5 (+3 Bonus)	Socio-economic Development	Annual value of all local Qualifying Socio-Economic Development contributions by the measured entity as a percentage of the target	2.5	0.5% of NPAT		
			CSI contribution to SANParks (<i>mandatory</i>)	2.5	0.5% of NPAT		
		Bonus Points	Status as TOMSA levy collector	3	Yes		
<i>Score out of 5 (+3 bonus)</i>							
Total Points	111 (+12 Bonus)			111 (+12 Bonus)	Score out of 111		
Minimum Threshold						90 / 95 / 100*	

*Dependent on anticipated total annual revenue of SPV

Qualifying Small Enterprise Scorecard

Element	Element Weighting	Indicator	Measurement Category & Criteria	Weighting Points	Compliance Targets	Bid Offered	Score
Ownership	26	Voting Rights	Exercisable Voting Rights in the entity in the hands of Black People	3	30%		
			Exercisable Voting Rights in the entity in the hands of Black Women	2	15%		
			Exercisable Voting Rights in the entity in the hands of a Local Community Trust	2	10%		

Element	Element Weighting	Indicator	Measurement Category & Criteria	Weighting Points	Compliance Targets	Bid Offered	Score		
		Economic Interest	Economic Interest in the entity to which Black People are entitled	5	30%				
			Economic Interest in the entity to which Black Women are entitled	3	15%				
			Economic Interest in the entity to which a Local Community Trust is entitled	3	10%				
		Realisation Points	Net Value	8	As per Codes				
<i>Score out of 26</i>									
Management Control	15 (+2 Bonus)	Executive Management	Black representation at Executive Management	2	60%				
			Black Female representation at Executive Management	1	30%				
			Local People representation at Executive Management	1	20%				
		Senior, Middle and Junior Management	Black representation at Senior, Middle and Junior Management	4	60%				
			Black Female representation at Senior, Middle and Junior Management	2	30%				
			Local People representation at Senior, Middle and Junior Management	2	25%				
		All Employees	Black Employees as a percentage of all Employees (excluding Executive Management)	1	75%				
			Black Female Employees as a percentage of all Employees (excluding Executive Management)	1	40%				
			Local People as a percentage of all Employees (excluding Executive Management)	1	60%				
		Bonus Points	Number of Black Employees with Disabilities as a percentage of all Employees	2	1%				
		<i>Score out of 15 (+2 bonus)</i>							
		Skills Development	25 (+5 Bonus)	Skills Development Expenditure on any programme specified in the Learning Programme Matrix for Black People as a percentage of	Skills Development Expenditure on Learning Programmes specified in the Learning Programme Matrix for Black People in any of the following three tourism sub-sectors as a percentage of Leivable Amount:	10	3%		

Element	Element Weighting	Indicator	Measurement Category & Criteria	Weighting Points	Compliance Targets	Bid Offered	Score
		the Leviable Amount	- Accommodation; - Hospitality and related services; - Travel and related services.				
			Skills Development Expenditure on Learning Programmes specified in the Learning Programme Matrix for Black Females in any of the above three tourism sub-sectors as a percentage of Leviable Amount.	9	1.5%		
		Learnerships, Apprenticeships, and Internships	Number of Black People participating in Learnerships, Apprenticeships and Internships specified in the Learning Matrix paid for by the measured entity as a percentage of total Employees	6	2.5%		
		Bonus Points	Number of Black People absorbed by the measured and/ or industry entity at the end of the Learnerships/ internship or Apprenticeship programme	5	100%		
Score out of 25 (+5 bonus)							
Enterprise and Supplier Development	30	Preferential Procurement	B-BBEE Procurement Spend from all Empowering Suppliers based on the B-BBEE Procurement Recognition Levels as a percentage of Total Measured Procurement Spend	8	60%		
			B-BBEE Procurement Spend from Empowering Suppliers that are at least 51% Black Owned based on the applicable B-BBEE Procurement Recognition Levels as a percentage of Total Measured Procurement Spend	5	30%		
			B-BBEE Procurement Spend from all local Empowering Suppliers that are Exempted Micro Enterprises or Qualifying Small Enterprises based on the applicable B-BBEE Procurement Recognition Levels as a percentage of Total Measured Procurement Spend	5	15%		

Element	Element Weighting	Indicator	Measurement Category & Criteria	Weighting Points	Compliance Targets	Bid Offered	Score
		Supplier Development	Annual value of all qualifying Supplier Development contributions to local entities made by the measured entity as a percentage of the target	7	2% of NPAT		
		Enterprise Development	Annual value of all qualifying Enterprise Development contributions to local entities made by the measured entity as a percentage of the target	5	1% of NPAT		
<i>Score out of 30</i>							
Socio-economic Development	5 (+3 Bonus)	Socio-economic Development	Annual value of all local Qualifying Socio-Economic Development contributions by the measured entity as a percentage of the target	2.5	0.5% of NPAT		
			Mandatory CSI contribution to SANParks	2.5	0.5% of NPAT		
		Bonus Points	Status as TOMSA levy collector	3	Yes		
<i>Score out of 5</i>							
Total Points	101 (+10 Bonus)			101 (+10 Bonus)	Score out of 101		
Minimum Threshold						80	

47.1 Private Party's BEE Proposal

48. SCHEDULE 6 – PPP FEE

48.1 Variable PPP Fee

48.1.1 The Variable PPP Fee shall be expressed as a flat percentage of Gross Revenue generated by the Astronomy Facility included under the PPP Agreement.

48.1.2 The Variable PPP Fee shall be as follows:

VARIABLE PPP FEE =

_____ % of GROSS REVENUE Minimum PPP Fee

The following Minimum PPP Fees (applicable to Bid Package 1, 2, 3 and 4) are expressed in April 2020 South African Rand, and will be adjusted throughout the Project Term of the PPP Agreement according to movement in the Consumer Price Index:

MINIMUM PPP FEE	
Per Month (Excl VAT)	Per Annum (Excl VAT)
R 5,000	R 60,000

48.2 Private Party PPP Fee Offer

49. SCHEDULE 7 – ENVIRONMENTAL SPECIFICATIONS FOR THE OPERATION OF ASTRONOMY FACILITY WITHIN THE PROTECTED AREAS

49.1 Introduction

49.1.1 This is an undertaking by the Private Party to 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.

49.1.2 The Private Party undertakes to take all reasonable steps in 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 Private Parties and the general public.

49.2 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: Protected Areas Act, 2003 (Act No. 57 of 2003) (NEMPAA); the National Water Act 36 of 1998; the Water Services Act, 108 of 1997; the National Environmental Management Act, 107 of 1998 (NEMA); the National Environmental Management: Air Quality Act; the Hazardous Substances Act, 15 of 1973; and the National Heritage Resources Act.

Authorization of any development in a Protected Area 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 Astronomy Facility 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 Astronomy

Facility . However, given that the development is taking place within a protected area such as a National Park, SANParks requires environmental scoping to be conducted on any proposal to expand or modify the existing Astronomy Facility or shop that is 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

Private Party proposing significant expansions or structural modifications should anticipate that an EIA will be required, and should factor the cost of carrying out the EIA into their financial projections.

SANParks will have a role in the EIA process, both as an Interested and Affected Party (IAP), and as the regulatory authority with jurisdiction over the Protected Area. It will be DEA's responsibility to determine whether, on the basis of information provided in the scoping report, a detailed EIA needs to be carried out.

49.3 Guidelines Based on SANParks Internal Requirements

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

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

A series of workshops were held with SANParks conservation staff, and specifically from KNP, who assisted in establishing standards to be applied to commercial tourism developments within the Parks. Draft standards were reviewed by a wide range of professionals within SANParks, including the

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 and Tourism.

Manager, Environmental Management, and Park rangers and staff from Scientific Services, Conservation Services, Park Planning and Technical Services. The Guidelines contained herein are the result of these efforts.

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

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

49.4 **Precautionary Principle**

Ecological and natural resource processes are not always clearly understood, nor are the interactions among such processes. SANParks recognises that issues may arise suddenly, or circumstances change, due to limitations in current knowledge. SANParks has endeavoured to identify these limitations wherever possible, and to design the concession process in a way that minimises the environmental risk to the national assets under its control. However, situations may arise where changes which have not been anticipated may cause SANParks to require adaptations to the management of the area.

49.5 **Code of Conduct**

49.5.1 The Private Party undertakes to induct all staff employed on the Parks Code of Conduct.

49.5.2 The Private Party confirms that the Code of Conduct is understood and will be complied with.

49.6 **Environmental Impact**

49.6.1 The Private Party undertakes to bring to the attention of SANParks any matter which may, in its view, have a detrimental impact on the Environment within the Astronomy Facility and the Protected Area.

49.7 Water Management and Guidelines

49.7.1 The Private Party undertakes to implement water conservation measures in the design and implementation of their operations;

49.7.2 The Private Party undertakes to:

49.7.2.1 Monitor the use of water;

49.7.2.2 Educate staff via on-site notices on the use of water;

49.7.2.3 Set water usage targets (monitored weekly/monthly) and manage these targets;

49.7.2.4 Aim to avoid accidental loss through effective maintenance, installing quality storage and reticulation systems and implementing leak detection systems

49.8 Chemical Substances

49.8.1 The Private Party undertakes to not sell or use (including staff of the Private Party) any of the chemicals that are banned from use in National Parks (as determined by any Environmental Manager in National Parks);

49.8.2 The Private Party acknowledges that all chemicals listed as “Prohibited” may not be brought into, sold or used in any National Park. The products include items such as Rattex, Finale, Dyant, Doom and Target (an extensive list is attached herein as Schedule 15);

49.8.3 The Private Party undertakes to ensure safe storage and disposal of chemicals and their containers;

49.8.4 The Private Party undertakes to have a specific disposal system for toxic or other waste regarded as being dangerous under supervision of the Technical Services Department;

49.8.5 The Private Party undertakes to use environmentally friendly and biodegradable detergents and cleaning agents;

49.9 **Waste Management**

49.9.1 Liquid Wastes

49.9.1.1 Liquid waste refers to sewerage as well as grey water;

49.9.1.2 The Private Party undertakes to manage liquid waste in accordance with national and local legislation requirements;

49.9.1.3 The Private Party undertakes to design management techniques to be both economically viable and environmentally sustainable;

49.9.1.4 The Private Party undertakes to implement waste procedures that optimize the principles of waste reduction and waste recycling and ensures that the end product do not pollute the environment;

49.9.1.5 The Private Party undertakes to install a grease trap for:

49.9.1.5.1 Pot and Rinse Sinks attached to Dish Washers;

49.9.1.5.2 Fixtures or drains through which significant amount of fats, oils or grease may be introduced;

49.9.1.5.3 Soup Kettles or similar devices;

49.9.1.5.4 All sinks that are used to clean any dishes, pots, pans or cooking utensils.

- 49.9.1.6 The Private Party undertakes to implement processes and procedures which stipulates the following:
 - 49.9.1.6.1 Kitchen staff should inspect grease traps and interceptors at least monthly and maintain a log sheet of each trap inspection detailing condition of the trap and any maintenance activity;
 - 49.9.1.6.2 that grease traps are cleaned when 25% of the liquid level of the trap is grease or oil; and
 - 49.9.1.6.3 That waste recovered from the grease traps be removed from the park and disposed of at an authorized facility.

- 49.9.2 Solid Wastes
 - 49.9.2.1 The Private Party undertakes to manage all waste that are generated in such a way that direct and indirect impacts are kept to a minimum.
 - 49.9.2.2 The Private Party undertakes to achieve Solid Waste Management Best Practices which implies the following:
 - 49.9.2.2.1 Manage solid waste from source to disposal;
 - 49.9.2.2.2 Strive to eliminate non-recyclable or hazardous packaging or containers at the procurement phase;

- 49.9.3 The Private Party undertakes to include the following policies in the waste management:
 - 49.9.3.1 Green Procurement Policy: This policy defines the procedures that the Private Party will implement to ensure that all produce, containers and packaging comes from suppliers that under-write environmental principles, and that waste be recyclable as far as possible;
 - 49.9.3.2 Hazardous Waste Policy: The Hazardous Waste Policy defines procedures that the Private Party will implement to manage any

hazardous waste, to ensure that it is firstly minimized, but also that it is stored and discarded in a safe and legal way.

- 49.9.4 The Private Party will follow the following guidelines to minimize the effect of the solid waste on the ecosystem:
- 49.9.4.1 Minimize solid waste production at all sources, by striving for the minimization of all waste
 - 49.9.4.2 Maximize the recycling of solid waste. Glass, tin, paper and cardboard must be sorted on site for recycling, while actual recycling will take place off site at the approved camp waste disposal site.
 - 49.9.4.3 All waste must be removed to the respective approved camp waste disposal site and incinerator for disposal and recycling. The dumping and disposal of waste other than at the approved waste site is strictly prohibited and failure to comply may result in a penalty.
 - 49.9.4.4 Waste storage and sorting areas must be properly constructed and maintained. Back-of-house waste cages and waste storage areas must remain clean and secure from problem animals.
 - 49.9.4.5 Waste storage areas must remain visually hidden from visitors to the park.
 - 49.9.4.6 Packaging and containers given to visitors to the park must be environmentally friendly, bio-degradable and recyclable.
 - 49.9.4.7 The distribution of plastic bags to visitors is strictly prohibited and only brown paper bags are allowed to be given for the purpose of carrying items purchased.
 - 49.9.4.8 Ensure that the all areas are kept free of litter by:

49.9.4.8.1 Promoting an ethic amongst guests and staff alike.

49.9.4.8.2 Soliciting the co-operation of all staff to pick up litter wherever they find it.

49.10 Pest Control

49.10.1 The Private Party undertakes to comply with the integrated pest management plan as outlined in Schedule 16.

49.10.2 Where and if required the Private Party undertakes to control bats as outlined in Schedule 17.

49.10.3 The Private Party undertakes to make use of preferred pest control chemicals as outlined in Schedule 18.

49.11 Visual Impacts

49.11.1 Describe building materials to be used (where applicable) for all structures and obtain approval from SANParks where appropriate;

49.11.2 Describe efforts to minimise the visual impacts of the development, including lighting;

49.11.3 Provide locations of lightning arrestors and radio masts (where applicable) and how the visual impacts of these will be minimised;

49.11.4 Specifically outline how brand signage and colors will be mitigated to complement the environment; and

49.11.5 The Private Party undertakes to implement mitigation measures in order to reduce the visual impact in the park.

49.12 Monitoring

49.12.1 The Private Party agrees to cooperate with SANParks in compiling a

monitoring checklist that encompasses all environmental conditions. The checklist would be used for auditing purposes and would be conducted once every 4 months; and

49.12.2 The Private Party agrees that SANParks will monitor, evaluate and score the operations (based on the line items in the checklist) and that a score of less than 85% for three (3) consecutive audits would imply material breach of the PPP Agreement.

49.12.3 Where required SANParks may request the Private Party to appoint an Environmental Control Officer (ECO) with the cost of the ECO borne by the Private Party. The individual appointed must be an independent consultant. The appointment of the ECO is to ensure that mitigation measures and other requirements are adhered to. All findings in the report from the ECO is to be corrected by the Private Party before the next audit.

49.13 Private Party Environmental Proposal

50. SCHEDULE 8 – PRIVATE PARTY PREQUALIFICATION RESOLUTION

The Private Party shall for the duration of the PPP Agreement adhere to and comply with the Private Party's Prequalification Resolution as part of their Bid Submission and attached hereto.

The areas of qualification are those as is outlined in the Request for Proposal document.

50.1 Private Party Prequalification Resolution

51. SCHEDULE 9 – PRIVATE PARTY CONSTITUTIONAL DOCUMENTS

52. SCHEDULE 10– INSURANCE

53. SCHEDULE 11 – PERFORMANCE BOND

53.1 PART A: FORM OF PERFORMANCE BOND

To be provided to South African National Parks having its principal place of business at 643 Leyds Street, Muckleneuk, Pretoria (hereinafter called “**SANParks**”)

Whereas:

- (a) SANParks has awarded a PPP Agreement for the presentation of an astronomy product in the Kruger National Park under a PPP Agreement (hereinafter called the “**PPP Agreement**”) to [] (hereinafter called the “**Private Party**”); and
- (b) The Private Party is obliged by the terms of the PPP Agreement to provide this Bond to SANParks to secure the performance of its obligations under the PPP Agreement.

We, the undersigned

_____ and _____
(Name) (Name)

acting herein as

_____ and _____
(Position) (Position)

of

_____ (hereinafter called the “**Bank**”)

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

1. The Bank shall pay an amount not exceeding 3 (three) months' payments of the Minimum PPP Fee, namely an amount of [.....] in aggregate (the "**Maximum Amount**") without delay, on receipt by the Bank of the first written demand of SANParks that the amount is due and payable and without proof of any breach or other default. The Bank shall pay such amount(s) to **SANParks** upon receipt of a certificate in the form attached signed by an authorised representative of SANParks certifying that SANParks is entitled to draw on this Bond pursuant to the provisions of the PPP Agreement (the "**Certificate**"). SANParks may make partial and/or multiple demands under this Bond provided that the aggregate of amounts paid under this Bond shall not exceed the Maximum Amount.
2. The demand for payment together with this Bond (or a certified copy hereof) and the Certificate shall constitute prima facie proof of the Bank's indebtedness hereunder for the purposes of any proceedings including but not limited to provisional sentence proceedings instituted against the Bank in any court of law having jurisdiction.
3. Neither the failure of SANParks nor of the Private Party respectively to enforce strict or substantial compliance by the Private Party or any contractor or sub-contractor with their respective obligations nor any act, conduct, or omission by SANParks or Private Party prejudicial to the interests of the Bank including, without limitation, the granting of time or any other indulgence to the Private Party, any contractor or sub-contractor or any other person or by amendment to or variation or waiver of terms of the PPP Agreement, any sub-contract or any ancillary or related document (the "Underlying Documents") will discharge the Bank from liability under this Bond. For the avoidance of doubt, the Bank's liability under this Bond will not be discharged notwithstanding the winding up, dissolution or judicial management of the Private Party, any contractor or sub-contractor or any other Person and the Bond shall be honoured regardless of the invalidity, illegality or unenforceability of the Underlying Documents.
4. This Bond shall:

- 4.1 remain in full force and effect from the date hereof, and shall expire on the earlier of:
 - 4.1.1 the issuance of a replacement Bond in accordance with the terms of the PPP Agreement;
 - 4.1.2 90 (ninety) Business Days after the expiry or earlier termination of the PPP Agreement; or
 - 4.1.3 the date when the Bank has paid to SANParks an amount which is equal to (or amounts which in aggregate total) the Maximum Amount;
- 4.2 exist independently of the PPP Agreement or any amendment, variation or novation thereof;
- 4.3 not be ceded, assigned or otherwise transferred by SANParks, or otherwise dealt with in any manner whatsoever (save for the purposes and in the manner referred to above) which has or may have the effect of transferring or encumbering or alienating SANParks' rights hereunder;
- 4.4 be returned to the Bank on its expiry, cancellation, withdrawal or this Bond being fully drawn; and
- 4.5 be governed by the laws of the Republic of South Africa.
5. The Bank shall deposit any payment made under this Bond into an account designated by SANParks.
6. The Bank shall make any payment demanded under this Bond free, clear of and without any deduction, withholding, counterclaim or set-off of any kind. If the Bank is required by law to make payments subject to the deduction or withholding of tax, it will make such further payments as are necessary to ensure that the amounts paid to SANParks equal the amounts that would have been paid to SANParks had no such deduction or withholding been made or been required to be made.

7. The obligations of the Bank under this Bond shall not in any way be affected by the invalidity, illegality or unenforceability for any reason of the obligations of the Private Party.
8. The Bank shall have no right of recourse or claim of whatever nature against SANParks arising out of its obligation to pay or arising out of actual payment under this Bond to SANParks.

9. Addresses and Notices:

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

SANParks:

Groenkloof National Park
643 Leyds Street
Muckleneuk
Pretoria

Telephone: (012) 426-5027

Facsimile: (012) 343-3849

The Bank:

Telefax:

- 9.2 Any party hereto shall be entitled to change its *domicilium* from time to time, provided that any new *domicilium* selected by it shall be a physical address in the Republic of South Africa, and any such change shall only be effective upon receipt of notice in writing by the other party of such change.
- 9.3 All notices, demands, communications or payments intended for any party shall be made or given at such party's *domicilium* for the time being.

- 9.4 Any notice required or permitted to be given under this Bond shall be valid and effective only if in writing.
- 9.5 A notice sent by one party to another party shall be deemed to be received
 - 9.5.1 on the same day, if delivered by hand;
 - 9.5.2 on the same day of transmission, if sent by telefax with a receipt confirming completion of transmission.
- 9.6 Notwithstanding anything to the contrary herein contained a written notice or communication actually received by a party shall be an adequate written notice or communication to it notwithstanding that it was not sent to or delivered at its chosen *domicilium citandi et executandi*.

SIGNED ON _____ 20 ____

AT

(Place)

SIGNATURE _____ SIGNATURE _____

[NAME] [NAME]

[TITLE] [TITLE]

WITNESS 1 _____ WITNESS 2 _____

53.2 **PART B: FORM OF CERTIFICATE**

To:[Name and address of Bank]

Attention:

From:South African National Parks

Address:

Dated:

Dear Sirs

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

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

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

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

Yours faithfully,

.....

for and on behalf of

South African National Parks

53.3 Private Party Performance Bond

54. SCHEDULE 12 – CAPITAL EXPENDITURE PLAN

54.1 Introduction

54.1.1 The Private Party shall be obliged to comply with and adhere to the Capital Expenditure Plan as proposed with the Private Party's Bid Submission.

54.1.2 Failure by the Private Party to comply with the provisions of this Schedule 12 to the PPP Agreement and the Private Party Default is not remedied before the expiry of the period referred to in the notice by the Institution; the Institution may terminate this PPP Agreement with immediate effect by written notice to the Private Party.

55. SCHEDULE 13 – EMPLOYEE HOUSING AND RENTALS

- 55.1 Not applicable as the Private Party will build one or two units in one of the main camps per Bid Package.

56. SCHEDULE 14 – CONSUMER PROTECTION ACT

This Schedule set out certain provisions as contained in CPA that apply to the activities of the Business. The said provisions are adopted as minimum norms and standards that need to be strictly adhered to by the Private Party in executing the Project, and may lead to the termination of the PPP agreement if the Private Party does not adhere to these standards, thus fails to remedy the breach when notified by SANParks. However, it is advisable that the Private Party obtains the full version of the CPA, and professional legal advise on CPA.

56.1 Purpose and Policy of CPA

The purposes of CPA are to promote and advance the social and economic welfare of consumers in South Africa by:-

- 56.1.1 establishing a legal framework for the achievement and maintenance of a consumer market that is fair, accessible, efficient, sustainable and responsible for the benefit of consumers generally;
- 56.1.2 reducing and ameliorating any disadvantages experienced in accessing any supply of goods or services by consumers:-
 - 56.1.2.1 who are low-income persons or persons comprising low-income communities;
 - 56.1.2.2 who live in remote, isolated or low-density population areas or communities;
 - 56.1.2.3 who are minors, seniors or other similarly vulnerable consumers; or
 - 56.1.2.4 whose ability to read and comprehend any advertisement agreement, mark, instruction, label, warning, notice or other visual representation is limited by reason of low literacy, vision impairment or limited fluency in the language in which the representation is produced, published or presented;

- 56.1.2.5 promoting fair business practices;
- 56.1.2.6 protecting consumers from:-
 - 56.1.2.6.1 unconscionable, unfair, unreasonable, unjust or otherwise improper trade practices; and
 - 56.1.2.6.2 deceptive, misleading, unfair or fraudulent conduct.
- 56.1.2.7 The Private Party shall in the course of operating the Astronomy Facility in the Protected Area observe the following procedures:

56.2 Disclosure and Information

- 56.2.1 Information in plain and understandable language - Private Party shall be required to produce, provide or display any notice, document or visual representation of anything connected with the Business in plain language
- 56.2.2 Disclosure of price of products - Private Party shall be required to adequately display a written indication of price in relation to any products to be sold by the Private Party at the Astronomy Facility , the price of which should be expressed in South African currency (Rand), and in the following manner:
 - 56.2.2.1 the price should be annexed or affixed to, written, printed, stamped or located upon, or otherwise applied to the products or to any band, ticket, covering, label, package, reel, shelf or other thing used in connection with the products or on which the products are mounted for display or exposed for sale; or
 - 56.2.2.2 in any way represented in a manner from which it may reasonably be inferred that the price represented is a price applicable to the products in question.
- 56.2.3 Product labelling and trade descriptions - The Private Party shall not:

- 56.2.3.1 knowingly apply to any products a trade description that is likely to mislead the consumer as to any matter implied or expressed in that trade description; or
- 56.2.3.2 alter, deface, cover, remove or obscure a trade description or trade mark applied to any products in a manner calculated to mislead consumers;
- 56.2.3.3 not offer for sale, or display any particular products if the Private Party knows, reasonably could determine or has reason to suspect that:-
 - 56.2.3.3.1 a trade description applied to the products is likely to mislead the consumer as to any matter implied or expressed in that trade description; or
 - 56.2.3.3.2 a trade description or trade mark applied to the products has been altered
- 56.2.3.4 Private Party shall be required to display a notice that discloses the presence of any genetically modified ingredients in products to be sold at the Astronomy Facility , such notice shall be in a manner and form as described in CPA and related legislations.
- 56.2.4 Sales records
 - 56.2.4.1 Private Party shall provide a written record of each transaction to the consumer to whom any products are sold.
 - 56.2.4.2 The record must include at least the following information:
 - 56.2.4.2.1 Private Party's full name, or registered business name, and VAT registration number;
 - 56.2.4.2.2 the address of the premises at which, or from which, the products were sold;

- 56.2.4.2.3 the date on which the transaction occurred;
- 56.2.4.2.4 a name or description of any products sold or to be sold;
- 56.2.4.2.5 the unit price of any particular products sold or to be sold;
- 56.2.4.2.6 the quantity of any particular products sold or to be sold;
- 56.2.4.2.7 the total price of the transaction, before any applicable taxes;
- 56.2.4.2.8 the amount of any applicable taxes; and
- 56.2.4.2.9 the total price of transaction, including any applicable taxes.

56.3 **Fair and Honest Dealing**

56.3.1 **Unconscionable conduct**

56.3.1.1 Private Party or any of its representatives or employees during the course of conducting the Business in the Astronomy Facility shall not use physical force against a consumer, coercion, undue influence, pressure, duress or harassment, unfair tactics or any other similar conduct, in connection with any marketing and/or the offering for sale of any products.

56.3.2 **False, misleading or deceptive representations**

56.3.2.1 Private shall not, by words or conduct:

56.3.2.1.1 directly or indirectly express or imply a false, misleading or deceptive representation concerning a material fact to a consumer;

56.3.2.1.2 use exaggeration, innuendo or ambiguity as to a material fact, or fail to disclose a material fact if that failure amounts to a deception; or

56.3.2.1.3 fail to correct an apparent misapprehension on the part of a consumer, amounting to a false, misleading or deceptive representation, or permit or require any other person to do so on behalf of the Private Party.

56.4 Quality Service

56.4.1 Private Party shall be expected in the sale of its products to provide timely service and in a manner and quality that persons are generally entitled to expect. The service shall entail:

56.4.1.1 making sure that the consumer does not wait for too long in the queue, when the consumer is purchasing some product items at the Astronomy Facility ;

56.4.1.2 ensuring that the product items provided for sale in the Astronomy Facility are free of defects such as freshness, safe, not hazardous to health and are of quality that the consumers are generally entitled to expect.

56.4.2 If a Private Party fails to perform a service to the standards contemplated in Clause 56.4.1 above, the consumer is entitled to demand from the Private Party, to either:-

56.4.2.1 remedy any defect in the quality of the service performed or goods bought; or

56.4.2.2 refund to the consumer a reasonable portion of the price paid for the services performed and goods supplied, having regard to the extent of the failure.

57. SCHEDULE 15 – PROHIBITED CHEMICAL SUBSTANCES

58. SCHEDULE 16 – PEST MANAGEMENT PLAN

59. SCHEDULE 17 – BAT MANAGEMENT GUIDELINES

60. SCHEDULE 18 – PREFERRED PEST CONTROL CHEMICALS

61. SCHEDULE 19 – SALE OF BUSINESS AGREEMENT

61.1 PREAMBLE

61.1.1 The Private Party agrees to dispose of the Business to SANParks on the Transfer Date on the terms and conditions contained in this Sale of Business Agreement.

61.1.2 The Private Party, as the seller, and SANParks (or any person nominated by SANParks), as the purchaser, wish to record their agreement in writing.

61.2 INTERPRETATION

In this Sale of Business Agreement unless clearly inconsistent with or otherwise indicated by the context –

61.2.1 “**Business**” means the tourism and recreational facilities operation and management business conducted as a going concern on the Astronomy Facility as at the Termination Date including the Business Assets but shall exclude the Excluded Assets;

61.2.2 “**Excluded Assets**” means the assets of the Business set out in Schedule 21B, including the Stock and Goodwill;

61.2.3 “**Goodwill**” means all goodwill in and relating to the Business as at the Transfer Date;

61.2.4 “**Insolvency Act**” means the Insolvency Act, No. 24 of 1936, as amended from time to time;

61.2.5 “**Liabilities**” means all liabilities and obligations of the Business, incurred in the normal course, in respect of any period prior to the Operation Commencement Date or in respect of which the cause of action shall have arisen prior to the Operation Commencement Date, whether then due or not, including, but not by way of limitation, all actual and/or contingent liabilities, for payment of money, performance of services and obligations,

supply of products and/or other performances;

- 61.2.6 **“Labour Relations Act”** means the Labour Relations Act, No. 66 of 1995, as amended from time to time;
- 61.2.7 **“Purchase Price”** means the purchase consideration payable by SANParks for the Business in accordance with Clause 61.4;
- 61.2.8 **“Stock”** means the inventory stock of the Business as listed in Schedule 20;
- 61.2.9 **“Transfer Date”** means the first Business Day following the Expiry Date or the Termination Date, whichever occurs first; and
- 61.2.10 terms and expressions used in this Sale of Business Agreement and not otherwise defined herein shall bear the meaning assigned to them in the PPP Agreement.

61.3 **SALE**

- 61.3.1 The Private Party hereby sells the Business to SANParks and the SANParks hereby purchases the Business as a going concern with effect from the Transfer Date for a purchase consideration equal to the Purchase Price on terms and conditions of this Sale of Business Agreement.
- 61.3.2 Subject to Clause 61.3.3, ownership, risk and benefit in and to the Business will pass to SANParks on and with effect from the Transfer Date.
- 61.3.3 None of the Liabilities of the Business incurred prior to the Transfer Date will be transferred to SANParks and will remain those of the Private Party. The Private Party indemnifies SANParks against any loss or damage that SANParks may incur as a result of the Private Party failing to discharge any of the Liabilities.
- 61.3.4 It is recorded that the Private Party and SANParks agree that the Business is:-

- 61.3.4.1 an enterprise capable of separate operation; and
- 61.3.4.2 being sold as a going concern.
- 61.3.5 SANParks and the Private Party agree that the Business will constitute an income-earning activity following the end of the Project Term; and
- 61.3.6 the Business Assets necessary to carry on the Business are being disposed of by the Private Party to SANParks in terms of this Sale of Business Agreement
- 61.3.7 the sale contained in this Sale of Business Agreement falls within the ambit of Section 11(1)(e) of the VAT Act and therefore VAT is payable at the rate of zero percent.
- 61.3.8 Should the Commissioner for Inland Revenue rule that VAT is payable in respect of the sale of the Business as contemplated in this Sale of Business Agreement or any of the assets sold at a rate exceeding zero percent pursuant thereto, SANParks shall pay that VAT.

61.4 PURCHASE PRICE

- 61.4.1 In consideration for the sale of the Business by the Private Party, SANParks shall pay the Private Party a nominal purchase price of R100 (one hundred Rand) on the Transfer Date.
- 61.4.2 The Purchase Price shall be paid in full by or on behalf of SANParks by way of an electronic funds transfer of immediately available funds, without deduction or setoff, into a banking account specified by the Private Party.
- 61.4.3 The Parties agree that payment of the Purchase Price as outlined in this clause 61.4 shall constitute full and final discharge of SANParks' obligation to pay the Purchase Price to the Private Party.

61.5 **OPTION TO PURCHASE THE EXCLUDED ASSETS**

61.5.1 The Private Party hereby irrevocably and unconditionally grants to SANParks an irrevocable right and option, which right and option SANParks accepts, to purchase from the Private Party all or some of the Excluded Assets at a price to be negotiated and agreed upon by the Parties ("**Option to Purchase**"). Should Parties fail to reach agreement on price within 30 days of commencement of such negotiations, the price shall be determined by an independent accountant to be appointed by the South African Institute of Chartered Accountants or its successor at the request of either Party ("the Accountant"). The Accountant shall act as an expert, but not arbitrator and his decision shall, in the absence of a manifest error, be final binding upon the Parties. The cost of appointment of the Accountant shall be borne by the Party requesting the appointment.

61.5.2 The Option to Purchase shall be exercisable by SANParks by written notice to the Private Party on any day between the Transfer Date and 90 (ninety) days thereafter stipulating the Excluded Assets that SANParks has elected to purchase, (the "**Purchase Notice**").

61.5.3 The Parties shall, within 90 (ninety) days of receipt by the Private Party of the Purchase Notice, negotiate in good faith the purchase consideration for the Excluded Assets that SANParks has elected to purchase pursuant to the Purchase Notice, provided that the value of the train coaches of the Business will be determined in accordance with the Residual Value.

61.5.4 The Private Party hereby unconditionally represents and warrants to and in favour of SANParks that as at the date of the Purchase Notice:

61.5.4.1 it shall be the sole registered and beneficial owner of the Excluded Assets;

61.5.4.2 it shall be entitled and able to give free and unencumbered title of the Excluded Assets; and

61.5.4.3 no person shall have any existing or future right (including any option,

pre-emptive right, right of first refusal or similar right of any nature) to acquire all or any part of the Excluded Assets.

61.6 POSSESSION

61.6.1 On the Transfer Date -

61.6.1.1 the Private Party shall place SANParks in possession of the Business;
and

61.6.1.2 with the exception of the Liabilities, ownership of, risk in and benefit attaching to the Business shall pass to SANParks.

61.6.2 Signature by the Private Party and SANParks of this Sale of Business Agreement shall constitute, with effect from the Transfer Date, delivery to SANParks of all of the Private Party's rights in the Business and no further formalities shall be required to give effect to such delivery.

61.6.3 The Private Party undertakes that until the Transfer Date it will -

61.6.3.1 not pledge or otherwise encumber nor alienate, sell or otherwise dispose of the Business except with the prior written consent of SANParks;

61.6.3.2 not remove or permit the removal of any of the Business Assets from the Astronomy Facility, other than in the normal course of Business;

61.6.3.3 continue to keep the Business Assets in good order and condition;
and

61.6.3.4 continue to insure the Stock and assets against the risk of loss or damage attributable to storm, fire, theft or riot and to also keep them insured under the equivalent of an "all risks" policy over them which covers them while they are not at the Astronomy Facility .

61.7 DEBTORS

The Parties hereby record that all debts owed to the Business as at the Transfer Date shall be collected by and be for the account of the Private Party with effect from that date.

61.8 INSOLVENCY ACT PUBLICATION

61.8.1 The Parties agree that notice of this transaction will not be published as contemplated in section 34 of the Insolvency Act.

61.8.2 The Private Party indemnifies SANParks against any loss or damage which SANParks may suffer as a result of notice of this transaction not being published in terms of the Insolvency Act.

61.8.3 SANParks shall be entitled to elect to satisfy any claim made by any unsatisfied creditor in which event the Private Party undertakes to reimburse SANParks for the amount concerned.

61.9 WARRANTIES

61.9.1 The Private Party gives SANParks the warranties in Clause 61.9 (in addition to those given by it elsewhere in this Sale of Business Agreement) and no other warranties, ("**Warranties**").

61.9.2 Each Warranty is material and given as at the Transfer Date unless the context clearly indicates a contrary intention.

61.9.3 To the extent that the warranties in this Sale of Business Agreement become effective as of a date which results in the use of any tense being inappropriate, the warranties shall be read in the appropriate tense, changing the provisions as necessary.

61.9.4 Each warranty shall remain in force notwithstanding completion of other matters provided for in this Sale of Business Agreement, and shall be a separate and independent warranty and in no way limited or restricted by reference to or inference from the terms of any other warranty or by any

other provision in this Sale of Business Agreement.

- 61.9.5 The Private Party warrants, to the best of its knowledge and belief -
- 61.9.5.1 all provisions of the Occupational Health & Safety Act, Act No. 85 of 1993, (as amended), have been adhered to by the Private Party in respect of the Business;
 - 61.9.5.2 the Business and its assets will be insured against the risks to which they are subject for amounts which accord with sound business practice for a period terminating not earlier than 40 (forty) Business Days after the Transfer Date;
 - 61.9.5.3 the Private Party will not be in breach of any of its statutory or other legal obligations in respect of the Business;
 - 61.9.5.4 no transaction will have been entered into in connection with the Business save in the ordinary and regular course of conduct of the Business;
 - 61.9.5.5 all VAT, duties and other levies due and payable as at the Transfer Date to the State in respect of the Business will have been paid in full as at the Transfer Date. The Private Party further indemnifies SANParks in respect of any and all claims for VAT, duties and other levies which shall have accrued up to, but not due and payable as at, the Transfer Date;
 - 61.9.5.6 the Private Party is not in default of any material obligations affecting the Business;
 - 61.9.5.7 the Private Party has discharged all material obligations of any nature owing as at the Transfer Date to the employees transferring to SANParks pursuant to Section 197 of the Labour Relations Act;
 - 61.9.5.8 the relevant books, accounts and records of the Private Party in

- respect of the Business do and will until the Transfer Date continue to accurately reflect all of the material transactions entered into by the Private Party in respect of the Business;
- 61.9.5.9 no person who has any claim in connection with the Business, has instituted proceedings in a division of the High Court having jurisdiction in the district in which the Business is carried on or in the Magistrate's Court of the district nor is the Private Party aware of any circumstances which may give rise thereto prior to the Transfer Date and which would have the effect of prohibiting the Private Party from transferring the Business to SANParks;
- 61.9.5.10 all contracts concerning the employees of the Business will be lawfully terminable, subject to the Labour Relations Act, on notice not exceeding 1 (one) month;
- 61.9.5.11 nothing contained in this Sale of Business Agreement will relieve the Private Party from its obligation to make those disclosures which it is in law obliged to make;
- 61.9.5.12 all instructions which have from time to time been issued by any inspector appointed in terms of the applicable law have been carried out in respect of the premises from which the Business is conducted;
- 61.9.5.13 all transactions contemplated in this Agreement does not constitute a breach of any of the contractual obligations of the Private Party in respect of the Business nor will it entitled any person to terminate any contract to which the Private party is a party in respect of the Business; and
- 61.9.5.14 that it complies with all applicable conditions, limitations, obligations, prohibitions and requirements contained in relevant environmental legislation and the Private Party is not aware of any facts or circumstances which may lead to any breach of any environmental legislation.

61.10 EMPLOYEES

- 61.10.1 With effect from the Transfer Date, all employees of the Private Party specified in Schedule 13 will automatically have their employment transferred to SANParks in accordance with Section 197 of the Labour Relations Act.
- 61.10.2 SANParks undertakes to assume and discharge all obligations of the Private Party to those of its employees who are transferred to SANParks as envisaged in Clause 61.10.
- 61.10.3 SANParks confirms that it will recognise all previous years of service of employees of the Private Party who become employed by SANParks in the Business from the Transfer Date.
- 61.10.4 It is recorded that certain of the employees so specified in Schedule 13 might be entitled to post-retirement medical aid company contributions in accordance with Private Party employment conditions. SANParks shall assume and acknowledges that these employees will continue to enjoy the benefit of post-retirement medical aid contributions and that the financial and administrative aspects of executing this benefit will be the responsibility of SANParks.
- 61.10.5 The Private Party undertakes to procure that the actuarially valued balance of all employees retirement fund entitlements (whether the pension, provident or other) including any surplus or accumulated benefits shall be transferred in the normal course to SANParks' pension fund without delay after the Transfer Date. SANParks will have the right to appoint its own actuary for the purpose of verifying the value of each member's share of the Private Parties retirement fund.
- 61.10.6 SANParks will assume the obligations in respect of the existing housing subsidy scheme operated by the Private Party in respect of the employees specified in Schedule 13.

61.11 **INCORPORATION OF THE PROVISIONS OF THE PPP AGREEMENT**

The provisions of Clauses 2 (Definition and *Interpretation*), 13 (*Sale of Business*), 27 (*Private Party Default*), 29 (*Corrupt Gifts and Fraud*), 31 (*Dispute Resolution*), 33 (*Cession, Transfer and Substituted Entity*), 36 (*Amendments*), 37 (*Entire Agreement*), 38 (*Variation, Cancellation and Waiver*), 39 (*Severability*), 40 (*Governing Law and Jurisdiction*), 41 (*Confidentiality*), 42 (*Notices*), 43 (*Counterparts*) of the PPP Agreement are incorporated, *mutatis mutandis*, into this Sale of Business Agreement so that the parties to this Sale of Business Agreement are bound by the provisions of those clauses as fully and effectively as if those clauses were repeated in this Sale of Business Agreement.

SIGNED AT ON THE 20__.

For and on behalf of
THE PRIVATE PARTY

who warrants his authority hereto

SIGNED AT ON THE 20__.

For and on behalf of
SANPARKS

who warrants his authority hereto

62. SCHEDULE 20 – STOCK

63. SCHEDULE 21A – BUSINESS ASSETS

64. SCHEDULE 21B – EXCLUDED ASSETS

65. SCHEDULE 22 - COMPLIANCE EVENTS

The following Compliance Events will apply to the Project:

- 65.1 Provision by the Private Party of a Performance Bond in the amount and form indicated in Clause 20.
- 65.2 The commencement of operations within three (3) months from Signature Date.

66. **SCHEDULE 23 – DEED OF SURETYSHIP**

We, the undersigned,

Name:
Identity Number/ Registration number:

Name:
Identity Number/ Registration number:

Name:
Identity Number/ Registration number:

hereinafter referred to as the “**Sureties**”,

1. On the terms set out in this suretyship, hereby individually, but jointly and severally, irrevocably and unconditionally stand as surety and guarantee in favour of **SANParks** and its successors-in-title, cessionaries and assigns (“**the Creditor**”) for the due and punctual performance of all obligations of any nature which may be owed or become owing in the future to the Creditor by the Private Party, (“**the Debtor**”) pursuant to or howsoever arising (including from contract, delict, enrichment, restitution or other legal theory) directly or indirectly in connection with:

1.1. the Public Private Partnership Agreement concluded or to be concluded by the Creditor and the Debtor contemporaneously with this guarantee and suretyship and to which this guarantee and suretyship is a Schedule, including any component terms or agreements incorporated therein by way of any of annexures or schedules; and

1.2. the obligations and liabilities arising in respect of any of the other sureties under this guarantee and suretyship, and any subsequent amendment thereto or novation or substitution thereof,

collectively, referred to as the “**Secured Obligations**”.

2. We indemnify the Creditor against any loss, liability, damage, cost (including, without limitation, legal costs on a scale as between an attorney and his own client) or expense which the Creditor may suffer or incur howsoever arising in respect of or in connection with the Secured Obligations.
3. The rights of the Creditor under this guarantee and suretyship shall in no way be affected or diminished if the Creditor at any time obtains additional suretyships, guarantees, securities or indemnities in connection with the Secured Obligations unless such additional suretyship, guarantee, security or indemnity is an agreement between the Sureties and the Creditor and specifically provides for such rights to be affected or diminished.
4. The liability of each of the Sureties is joint and several, each Surety being liable to the full extent in respect of the Secured Obligations, and will not be diminished if:
 - 4.1. any intended person (including a Surety) does not sign this suretyship or another agreement of guarantee, indemnity, suretyship or other form of intercession for the debts of another;
 - 4.2. any surety or co-principal debtor is released (whether in respect of then existing or future debts or both) or ceases to be bound for any other reason; or
 - 4.3. any intended security may not be obtained or protected or may be released or may cease to be held for any other reason.
5. This guarantee and suretyship shall remain in full force and effect as continuing covering security notwithstanding any temporary fluctuation in or extinction of the Secured Obligations and may not be terminated other than with the written consent

of the Creditor, which consent the Creditor shall be obliged to issue upon the full, final and unconditional settlement of the Secured Obligations.

6. No alteration or variation of this guarantee and suretyship, or any other present or future agreement between the Debtor and the Creditor shall in any way release the sureties from their liability hereunder.
7. The Creditor shall be entitled, whether before or after the due dates for payment or performance of the Secured Obligations, without reference or notification to the Sureties and without affecting its rights and the Sureties' liability hereunder to:
 - 7.1. release (or omit to perfect) any other securities (including suretyships and guarantees) held by it in respect of the Secured Obligations;
 - 7.2. grant the Debtor extensions of time for payment; and
 - 7.3. compound, or to make any other arrangements, with the Debtor for the reduction or discharge of the Debtor's indebtedness.
8. If the Debtor is liquidated, submits an offer of compromise, placed under business rescue proceedings or its obligations to its creditors are affected by any insolvency law or in terms of the common law ("**the Insolvent Debtor**"):
 - 8.1. no Surety shall file any claim against such Insolvent Debtor, save with the prior written consent of the Creditor; and
 - 8.2. the Sureties' liabilities in terms of this guarantee and suretyship shall not be discharged or reduced and the Secured Obligations of the Insolvent Debtor immediately prior to such sequestration, compromise, composition or similar legal disability shall, for the purposes of this guarantee and suretyship, be deemed to be unaffected by such event.
9. Upon receipt by a Surety of any written notice from the Creditor stating that any amount is payable by such Surety, or that such Surety is obliged to perform any obligation to the Creditor, in terms of this guarantee and suretyship, the Sureties shall immediately:

- 9.1. perform such obligation; and/or
 - 9.2. pay such amount, in cash, without set-off or deduction of any nature whatsoever, into the bank account stipulated by the Creditor in writing for this purpose.
10. The Surety/ies shall not be entitled to withhold such payment or performance or security even if the Surety/ies contend/s that they/it are/is not obliged to make such payment or performance or tender such security on the basis of any fact or allegation which would constitute a legal defence to or discharge of any claim by the Creditor under this guarantee and suretyship, provided that in the event that the defence is upheld and/or resolved in favour of the Surety or Sureties, the Creditor shall be obliged to repay any amounts, the payment of which have been successfully disputed, paid pursuant to clause 10, together with interest thereon at the prime interest rate as from date of payment to the date on which it is repaid to the Sureties.
 11. Each Surety shall use its respective best endeavours to procure the fulfilment by the Debtor of the Secured Obligations and shall refrain from taking or permitting to be taken any action which may prevent, hamper or detrimentally affect the fulfilment by the Debtor of the Secured Obligations.
 12. Each Surety hereby absolves the Creditor absolutely from any liability for any loss or damage which the Sureties may suffer as a consequence, directly or indirectly, of the Creditor lawfully exercising any of its rights set out in this guarantee and suretyship.
 13. Each Surety chooses the place at which a summons or any legal notices shall be served to be the address set out in Annexure 1 to this suretyship, to which address all process relating to this guarantee and suretyship may be served and all notices and communications may be addressed to the Sureties and which shall be deemed to have reached the Sureties on the date of physical delivery thereto.
 14. A certificate under the hand of any Manager or Director of the Creditor or any legal advisor of the Creditor, as to the existence and amount of the indebtedness of the Debtor and/or of the Sureties to the Creditor at any time, as to the fact that such

amount is due and payable, the amount of interest accrued thereon, the rate of interest applicable thereto and as to any other fact, matter or thing relating to the indebtedness of the Debtor and/or of the Sureties to the Creditor shall be, on the face value, proof of the contents and correctness thereof and the amount of the Sureties' indebtedness hereunder for the purpose of provisional sentence or summary judgment or any other proceedings against the Sureties in any competent court, and shall be valid as a liquid document for those purposes. It shall not be necessary to prove the appointment or capacity of the person signing any such certificate.

15. As part of the Sureties' liability in terms hereof, the Sureties shall pay the amount of any reasonable costs, charges and expenses of whatever nature incurred by the Creditor in securing or endeavouring to secure fulfilment of the Secured Obligations as well as the Sureties' obligations hereunder, including, without limitation, collection commission and legal costs on the scale as between an attorney and his own client, insurance premiums, broking costs, storage charges, costs and expenses of valuation, maintenance, advertising, realization (including agent's and auctioneer's commissions and other charges and disbursements), stamp duties, taxes and other fiscal charges.
16. This document constitutes the sole record of the guarantee and suretyship agreement between the Creditor and the Sureties in regard to the subject matter hereof.
17. Neither the Sureties nor the Creditor shall be bound by any express or implied term, representation, warranty, promise or the like relating to this guarantee and suretyship not recorded herein, but the provisions hereof are without prejudice to such other rights as the Creditor may have at law.
18. No addition to, variation, or unilateral or consensual cancellation of this of this clause, this guarantee and suretyship shall be of any force or effect in respect of the Creditor and a Sureties unless such is recorded in writing and signed by or on behalf of the Creditor and the Sureties in respect of whom the amendment is to apply.
19. No indulgence which may be granted to a Surety by the Creditor shall constitute a waiver of any of the rights of the Creditor and the Creditor shall not thereby be

precluded from exercising any right against the Sureties (or any other Surety) which may have arisen in the past or which may arise in the future.

20. If any provision of this guarantee and suretyship should be found by a competent court to be wholly or partly invalid or unenforceable then this guarantee and suretyship shall be severable in respect of the provision in question (to the extent that it is invalid, unenforceable or unlawful) and the remaining provisions of this guarantee and suretyship shall remain in full force and effect.
21. This guarantee and suretyship shall in all respects (including, without limitation, its existence, validity, interpretation, implementation, termination and enforcement) be governed by the law of the Republic of South Africa.
22. The costs of this guarantee and suretyship, including any stamp duty payable hereon, shall be borne and paid by the Sureties jointly and severally.
23. The Creditor shall be entitled to cede (whether out and out or by way of a security cession) all or any portion of its rights in terms of this guarantee and suretyship to any one or more third party/ies (“**Cessionary/ies**”) without notice or reference to the Sureties and whether such cession is made to one or more Cessionaries. If the Creditor cedes all or any of its rights in terms of this guarantee and suretyship, all references to the Creditor in this guarantee and suretyship (including, but without limitation, in this clause 25 and in clause 12) shall be deemed to include references to the Cessionary/ies.
24. If it is required that the Sureties sign any document or do anything in order for the provisions hereof to be implemented or for the Creditor to be able to exercise its rights in terms hereof, then the Sureties shall, forthwith upon demand, sign or do, or cause to be signed or done, such document or thing.
25. This guarantee and suretyship shall in no manner whatsoever be prejudiced, terminated or limited by any other security held by the Creditor in respect of the Secured Obligations on the date of signature of this guarantee and suretyship or received by the Creditor after the signature of this guarantee and suretyship unless the Creditor has specifically so agreed in writing under the signature of its duly authorised representative.

We, **SANParks** by the signature of our duly authorised representative in the space provided immediately hereunder, accept the benefits and rights conferred upon us in terms of this suretyship:

SIGNED AT **ON THIS THE _____ DAY OF APRIL 20__**

Witness: for **SOUTH AFRICAN NATIONAL PARKS**

.....

The signatory by his signature warrants that he is duly authorised hereto

We, the Sureties, by our signatures in the space provided immediately hereunder, grant this guarantee and suretyship.

SIGNED AT **ON THIS THE _____ DAY OF APRIL 20__**

.....
Witness: for _____

.....
Witness: for _____

.....
for _____

Witness: for _____

.....

Consent by spouse, if married in community of property

Name:Signature:

Name:Signature:

66.1 ANNEXURE 1 – SURETIES' DOMICILIUM