



**PUBLIC PRIVATE PARTNERSHIP  
AGREEMENT  
FOR THE  
BOAT CRUISE OPERATION  
IN  
THE WILDERNESS SECTION OF THE  
GARDEN ROUTE NATIONAL PARK**

**August 2021**

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## 1. INTRODUCTION

- 1.1 SANParks is 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 section 54 of the Protected Areas Act.
- 1.2 In terms of the Protected Areas Act, SANParks is empowered to exercise control over the Protected Area and in accordance therewith, SANParks wishes to expand the income generation potential of the Protected Area by appointing a suitably experienced tourism operator for the set up and use of the Boat Cruise operation for commercial purposes in the Wilderness Section of the Garden Route National Park for the benefit of the public (“**the Project**”). This operation will offer boat cruises on the Touw River between the river mouth and north of the railway bridge at Ebb and Flow, in the Wilderness Section of the Garden Route National Park through a public private partnership agreement. The Operator will be responsible for the set-up, operation and maintenance of the proposed commercial boat cruise operation and must be done in consultation with SANParks.
- 1.3 Following a public tender process, SANParks has appointed the Private Party to undertake the Project.
- 1.4 Accordingly, SANParks and the Private Party wish to enter into this PPP Agreement to regulate the implementation of the Project on the terms and conditions set out below.

## 2. DEFINITION AND INTERPRETATION

- 2.1 In this PPP Agreement the following terms shall, unless inconsistent with the context in which they appear have the following meanings and expressions derived from those terms that shall bear corresponding meanings:
- 2.1.1 **“Affiliate”** any person that is directly or indirectly through any one or more intermediaries Controls, is Controlled by or is

|       |                                     |  |
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|       |                                     | under common Control with any person;  |
| 2.1.2 | <b>“Associated Agreement”</b>       | the Private Party’s contracts with subcontractors or sub-concessionaires related to the execution and/or fulfilment of the terms and conditions of this PPP Agreement; |
| 2.1.3 | <b>“Authorised Representatives”</b> | a Person(s) nominated by the Private Party to represent the Private Party’s interests in respect of this PPP Agreement;  |
| 2.1.4 | <b>“BBBEE Act”</b>                  | the Broad-Based Black Economic Empowerment Act, No. 53 of 2003, as amended from time to time;  |
| 2.1.5 | <b>“BEE Obligations”</b>            | the Black Economic Empowerment obligations imposed on the Private Party as set out in Schedule 5;  |
| 2.1.6 | <b>“Bid Submission”</b>             | the bid submitted by the Private Party and accepted by SANParks for the right to carry out the Project;  |

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| 2.1.7  | <b>“Black Economic Empowerment” or “BEE”</b> | shall have the meaning ascribed to it in the B-BBEE Act;   |
| 2.1.8  | <b>“Black People”</b>                        | shall have the meaning ascribed to it in the B-BBEE Act;   |
| 2.1.9  | <b>“Boat Cruise”</b>                         | a passenger vessel built or used for pleasure cruises, usually taking passengers on a cruise with occasional stops at interesting sightings; |
| 2.1.10 | <b>“Business”</b>                            | the business of the boat cruise with that shall be conducted as a going concern upon the agreed sites;                                       |
| 2.1.11 | <b>“Business Assets”</b>                     | the assets of the Business as set out in Schedule 17;  |
| 2.1.12 | <b>“Business Day”</b>                        | any day other than a Saturday, Sunday or national public holiday in South Africa;  |
| 2.1.13 | <b>“Capital Expenditure”</b>                 | any expenditure treated as capital expenditure under IFRS;   |
| 2.1.14 | <b>“Capital Investment Assets”</b>           | the assets of a capital nature procured by the Private Party for the purpose of the conduct  |

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|        |                                   | of the Business and includes the equipment, furnishings, fixtures and improvements relating thereto as set out in Schedule 18;   |
| 2.1.15 | <b>“Change in Control”</b>        | any change whatsoever in Control of the Private Party, whether effected directly or indirectly;  |
| 2.1.16 | <b>“Companies Act”</b>            | the Companies Act, No. 71 of 2008, as amended from time to time;   |
| 2.1.17 | <b>“Confidential Information”</b> | 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; |
| 2.1.18 | <b>“Consents”</b>                 | 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    |

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|        |                                   | with the attainment of any of the Project Deliverables;  |
| 2.1.19 | <b>“Constitutional Documents”</b> | 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; |
| 2.1.20 | <b>“Consumer Protection Act”</b>  | the Consumer Protection Act, No. 68 of 2008, as amended from time to time;   |
| 2.1.21 | <b>“Control”</b>                  | 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);

2.1.22                    **“Corrupt Act”**

shall have the meaning ascribed to it in Clause 28;

2.1.23                    **“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

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|        |                             | corresponding month in the previous period;  |
| 2.1.24 | <b>“Depreciated Value”</b>  | 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 4, provided that the minimum rates of depreciation shall not be less than normal custom and practice;  |
| 2.1.25 | <b>“Development Period”</b> | a period of up to 12 (twelve) months reckoned from the Signature Date, during which the Private Party will develop the boat cruise product in line with Private Party’s brand in order to commence with full trading activities during time periods prescribed by SANParks; provided that in the event the development is completed earlier than 12 (twelve) months from the Signature Date, this period shall be adjusted accordingly to such |

earlier date as may be stipulated by SANParks in writing. For avoidance of doubt the Development Period includes the period required to obtain any environmental approvals;

2.1.26                    **“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;

2.1.27                    **“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;

2.1.28 **“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;

2.1.29 **“Environmental Specifications”**

the requirements, conditions, obligations and specifications detailed in Schedule 7;

2.1.30 **“Equity”**

the entire issued share capital of the Private Party as at the relevant

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|        |                                 | date;  |
| 2.1.31 | <b>“Expiry Date”</b>            | the last day of the month in which the fifth (5 <sup>th</sup> ) anniversary of the Operation Commencement Date occurs;   |
| 2.1.32 | <b>“Financial Year”</b>         | the period from to in any given year for purposes of financial reporting of the Private Party;   |
| 2.1.33 | <b>“Financing Agreements”</b>   | the agreements relating to the financing provided by the Lenders to the Private Party in their form as at the Operation Commencement Date, as amended from time to time;   |
| 2.1.34 | <b>“Force Majeure”</b>          | has the meaning ascribed to it in Clause 25;   |
| 2.1.35 | <b>“Good Industry Practice”</b> | the exercise of that degree of skill, diligence, prudence and foresight which would reasonably and ordinarily be expected from time to time from a skilled and experienced contractor or professional, engaged in the same type of |

undertaking and under the same or similar circumstances and conditions as those envisaged by this PPP Agreement; seeking in good faith to comply with its contractual obligations herein and all applicable Regulatory Provisions;

2.1.36

**“IFRS”**

International financial reporting standards as approved from time to time by the International Accounting Standards Board (IASB) set common rules so that financial statements can be consistent, transparent and comparable around the world.

2.1.37

**“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;

2.1.38                    **“Laws”**

the common law, Legislation, judicial decisions and any notifications or other similar directives made pursuant thereto that have the force of law;

2.1.39                    **“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;

2.1.40                    **“Lenders”**

means any person providing financing to the Private Party for the Project, other than the

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|        |   | shareholders of the Private Party;  |
| 2.1.41 | <b>“Licensed Intellectual Property”</b> | 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;                                  |
| 2.1.42 | <b>“Local”</b>                          | the geographic area specified by SANParks in respect of the Project, 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; |
| 2.1.43 | <b>“Losses”</b>                         | 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;   |

- 2.1.44                      **“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 17.2;
- 2.1.45                      **“Minister”**                      Minister of Forestry, Fisheries and the Environment in South Africa or any minister that assumes the responsibility for the Protected Area in the future;
- 2.1.46                      **“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, for the Boat Cruise operation in accordance with the terms and conditions of this PPP Agreement;

- 2.1.47                      **“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;
- 2.1.48                      **“Park Manager”**                      the most senior manager of the Protected Area, designated as such by SANParks;
- 2.1.49                      **“Park Rules”**                      the Environmental rules in respect of the Protected Area, as may be revised and/or updated by SANParks from time to time;

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| 2.1.50 | <b>“Parties”</b>          | collectively, SANParks and the Private Party;  |
| 2.1.51 | <b>“Party”</b>            | SANParks or the Private Party, as the case may be;   |
| 2.1.52 | <b>“Performance Bond”</b> | 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; |
| 2.1.53 | <b>“Person”</b>           | any individual, partnership, corporation, company, business organisation, trust, governmental agency, parastatal, Relevant Authority or other entity;  |
| 2.1.54 | <b>“PFMA”</b>             | the Public Finance Management Act, No. 1 of 1999, as amended from time to time;  |
| 2.1.55 | <b>“PPP”</b>              | public private partnership, as defined in the Treasury Regulations;  |
| 2.1.56 | <b>“PPP Agreement”</b>    | this public private partnership agreement between SANParks and   |

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|        |                                | the Private Party, including the Schedules and any annexures hereto as amended, extended, replaced and varied from time to time;  |
| 2.1.57 | <b>“PPP Fee”</b>               | the fee payable by the Private Party to SANParks in respect of the Project, as detailed in Clause 17.2;   |
| 2.1.58 | <b>“PPP Rights”</b>            | the right to design, operate, maintain, and manage the Business as more specifically set out in Clause 5;   |
| 2.1.59 | <b>“Private Party Default”</b> | has the meaning ascribed to it in Clause 26;  |
| 2.1.60 | <b>“Private Party Parties”</b> | 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; |
| 2.1.61 | <b>“Private Party”</b>         | the counterparty to SANParks hereunder, namely, _____<br>_____, Company   |

- Registration  
Number\_\_\_\_\_
- \_\_\_\_\_, a limited liability company registered according to the company laws of South Africa;
- 2.1.62                    **“Project”**                    shall have the meaning assigned to that term in clause 1.2 above;
- 2.1.63                    **“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.;
- 2.1.64                    **“Project Deliverables”**                    the                    timeous achievement of the Operation Commencement Date; successful implementation of the Project, including the achievement of the BEE Obligations;
- 2.1.65                    **“Project Insurance”**                    those insurances that the Private Party is required by Law and in

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|        |                              | terms of this PPP Agreement to purchase and maintain in terms of Clause 21, upon the minimum terms set out in Schedule 10;  |
| 2.1.66 | <b>“Project Term”</b>        | the period from the Signature Date to the Expiry Date or the Termination Date, whichever occurs first, which is further described in Clause 4;                                  |
| 2.1.67 | <b>“Project Year”</b>        | each period of twelve (12) consecutive months, commencing on the Operation Commencement Date and thereafter commencing on every anniversary of the Operation Commencement Date; |
| 2.1.68 | <b>“Protected Area”</b>      | Wilderness Section, Garden Route National Park;   |
| 2.1.69 | <b>“Protected Areas Act”</b> | the National Environmental Management: Protected Areas Act, 2003 (Act No. 57 of 2003,) (as amended) from time to time);   |

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| 2.1.70 | <b>“Rand” or “R”</b>           | the South African Rand, the lawful currency of South Africa;   |
| 2.1.71 | <b>“Regulations”</b>           | regulations issued in terms of the Protected Areas Act;  |
| 2.1.72 | <b>“Regulatory Provisions”</b> | <p>(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</p> <p>(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;</p> |

- 2.1.73                      **“Residual Value”**                      the depreciated value (straight line method determined by building material used, i.e. brick and mortar = 50 years and wood and prefab = 20 years) of the immovable structures (approved by SANParks) built by the Private Party from the date they were first accounted for in the Private Parties books until the Termination Date or the Expiry Date, as the case may be;
- 2.1.74                      **“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 not include any Utility;
- 2.1.75                      **“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;

2.1.76

**“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;

2.1.77

**“SANParks Default”**

shall have the meaning ascribed to it Clause 27.1;

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| 2.1.78 | <b>“SANParks Employees”</b> | persons employed or contracted to SANParks and whose employment is regulated in terms of the Public Services Act, 1994;                          |
| 2.1.79 | <b>“Schedules”</b>          | the schedules to this PPP Agreement, as amended, replaced and varied from time to time;  |
| 2.1.80 | <b>“Shareholders”</b>       | the holders of the Equity from time to time;   |
| 2.1.81 | <b>“Signature Date”</b>     | the date of signature of this PPP Agreement by the last signing Party;   |
| 2.1.82 | <b>“Sites”</b>              | the area within the Wilderness Section of the Garden Route National Park identified and approved by SANParks for the operation of a Boat Cruise; |
| 2.1.83 | <b>“South Africa”</b>       | the Republic of South Africa;  |
| 2.1.84 | <b>“State”</b>              | the Government of South Africa, acting directly or through its lawfully designated representatives;  |

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| 2.1.85 | <b>“Subcontractors”</b>                               | any subcontractor of the Private Party who has contracted directly with the Private Party in respect of the any of the Project Deliverables;  |
| 2.1.86 | <b>“Suretyship”</b>                                   | the deed of suretyship which shall be executed by each of the Shareholders in favour of SANParks as more specifically set out in Schedule 19; |
| 2.1.87 | <b>“Termination Amount”</b>                           | the amount payable by the Private Party on termination of this PPP Agreement in terms of Clause 26.6;   |
| 2.1.88 | <b>“Termination Date”</b>                             | any date of termination of this PPP Agreement, in accordance with its terms;  |
| 2.1.89 | <b>“Treasury Regulations”</b>                         | the Treasury Regulations issued under the PFMA that apply to SANParks and/or this PPP Agreement;  |
| 2.1.90 | <b>“Transferrable Licenses Intellectual Property”</b> | any Licensed Intellectual Property that the Private Party is entitled to transfer to SANParks;  |

- 2.1.91                    **“Utilities”**                    all facilities serving the public, such as water, electricity, sewage, gas and telecommunications and, where appropriate, includes the relevant provider thereof;
- 2.1.92                    **“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 17.2 and Schedule 6;
- 2.1.93                    **“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
- 2.1.94                    **“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 2021 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**

- 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 Signature Date, and shall endure for the Project Term.

#### **5. PPP RIGHTS**

##### **5.1 Exclusive Grant of PPP Rights for operating Boat Cruises**

- 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 grant the PPP Rights or any other rights referred to in this Clause 5 to any third parties for the duration of the project term

##### **5.2 Boat Cruise Operation Rights**

- 5.2.1 The grant of the PPP Rights to the Private Party shall entitle the Private Party to:
- 5.2.2 the exclusive right to provide, operate, manage and maintain the Boat Cruise Operation at the Project Site within the Protected Area for the period of this Agreement and any extension thereof, subject to the carrying capacity and time periods specified in Schedule 1;

- 5.2.2.1 the right to operate related tourism and hospitality services which complement the Boat Cruise operation offering (as approved by SANParks) on an exclusive basis;
  - 5.2.2.2 generate, charge and collect revenues from the exercise of the PPP Rights;
  - 5.2.2.3 use the Boat Cruise operation in accordance with the terms of this PPP Agreement;
  - 5.2.2.4 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;
  - 5.2.2.5 provide sight-seeing boat cruises as part of its service offering to its guests, provided that such drives shall be conducted with vessels complying with the standards and requirements as may be determined by SANParks from time to time and subject to any limitations specified by SANParks; and
  - 5.2.2.6 introduce new services and thematic activities that are in line with the 'boat cruise' concept in accordance with the Private Party's Bid Submission, subject to SANParks' approval.
- 5.2.3 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.
- 5.2.4 Notwithstanding any provision of this Clause 5, SANParks shall have unfettered access to the tourism product offering within the Project Sites in the event of an emergency.

### 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 12.

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

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

The Private Party shall be obliged during the Project Term to undertake the operation, management and maintenance of the Boat Cruise operation project site and of all of the alterations and developments undertaken thereto by the Private Party in accordance with Good Industry Practice during the hours specified by SANParks from time to time.

The Private Party shall compile a status report in relation to the operation, management and maintenance of the Boat Cruise operation, 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.

The Private Party shall comply with the Environmental Specifications set forth in Schedule 7.

The Private Party shall:

- 6.1.1 operate boat cruises with open vessels that accommodate a maximum of 10 (ten) guests per session;
- 6.1.2 operate the boat cruises 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;
- 6.1.3 use its best endeavors to maintain the highest standards in accordance with Good Industry Practice in all matters connected with the operation of the boat cruise operation 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 boat cruise project site;
- 6.1.4 at all times maintain the equipment used for the boat cruise operation in a clean, orderly and sanitary condition;
- 6.1.5 ensure that all personnel and staff employed by the Private Party for the boat cruise operation shall at all times be clean, cleanly and tidily clothed so as to maintain uniformly high standards of presentation and delivery;
- 6.1.6 at its own cost, conduct hygiene audits for the boat cruise operation at least twice a year (“**Hygiene Audit**”) and shall furnish SANParks with the outcomes of the Hygiene Audit within five (5) Business Days of its completion. In the event the Private Party fails to conduct a Hygiene Audit as contemplated in this Clause, then SANParks shall have the right to conduct or commission such an audit and the costs thereof shall be borne by the Private Party;
- 6.1.7 at all times score a minimum of at least seventy five percent (75%) on the Hygiene Audit total quality index;
- 6.1.8 ensure that:
- 6.1.8.1 a cleaning programme in respect of the project site is implemented, including a cleaning schedule and cleaning checklist;
- 6.1.8.2 the staff for the boat cruise operation is trained in hygiene practices;
- 6.1.8.3 hand washing facilities and proper cleaning chemicals are available;
- 6.1.8.4 the pest control measures such as screening, closure of windows and doors are implemented.
- 6.1.9 SANParks may, in its sole and absolute discretion; conduct regular quality audits at the boat cruise operation to ensure that the quality of the offering sold by the Private Party consistently meet the desired standards (“**Quality Audit**”). SANParks shall conduct the Quality Audits by way of “mystery guests”, spot checks, and customer questionnaires or any other quality control checks and measures as deemed necessary.

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

6.1.11 The Private Party shall ensure that all access to the boat cruise operation 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 boat cruise operation.

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 boat cruise operation. In the event any such Utilities are provided to the boat cruise operation 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 ensure that waste disposal facilities, including rubbish or waste removal bins, are clean and free from noxious or offensive odorous;

6.2.3.2 ensure that the waste disposal facility is not unsightly, 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 boat cruise operation 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 boat cruise operation 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 boat cruise operation 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 GRNP
- 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 boat cruise operation 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 26 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 because 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 on the boat cruise operation, 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 boat cruise operation
  - 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, at its absolute sole discretion. SANParks and/or such other person determined by SANParks will verify whether the directive or rule in question was valid and consistent with practice elsewhere in the Park. Pending the results of such an appeal, the 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 boat cruise operation 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 boat cruise operation or the environment caused by the operation of the boat cruise operation 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 boat cruise operation, 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 endeavors 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 the Shareholders legally and beneficially own all shares in the issued share capital of the Private Party.

## 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 compensated for that loss whether by way of Project Insurance payments or otherwise or is entitled to be compensated for that loss by way of Project Insurance.
- 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 Project Site and use of the Touw River**

- 12.1.1 The Private Party acknowledges that the Government holds all rights, title and interest in the boat cruise operation.
- 12.1.2 The location, physical boundaries and periods of operation of the boat cruise operation are 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 endeavors to ensure that for the duration of the Project Term, the Private Party and the Private Party Parties have such access to the boat cruise operation as is required by the Private Party for the carrying out of the Project, subject to 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 boat cruise operation shall automatically terminate and the Private Party shall be given access to the boat cruise operation only for purposes of giving effect to the provisions of Clause 29 (*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 of the boat cruise operation, including Environmental aspects. SANParks shall similarly make available to the Private Party all such similar information that 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 that may influence or affect the execution of the Project Deliverables. To the same extent, the Private Party shall be deemed at the Signature Date to have inspected and examined the Project Sites for the boat cruise operation, their surroundings, the above data and other available information. To this end, the climatic, hydrological, hydrogeological, ecological, environmental, geotechnical, geological, paleontological and archaeological conditions of the boat cruise operation ("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 to have –

12.3.2.1 carried out an investigation of all Project Site Conditions and of any

- extraneous material in the boat cruise operation 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 Project Site for the boat cruise operation and surroundings thereof;
- 12.3.2.3 satisfied itself as to the nature of the Project Site Conditions, the form and nature of the boat cruise operation , the risk of damage to property affecting the boat cruise operation , 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;
- 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 project site/ route for the boat cruise operation; 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 for the purpose of the boat cruise operation
- 12.3.2.5 satisfied itself as to the possibility of interference by persons (including pedestrian, vehicle, canoe traffic) with rights-of-way across, access to or use of the boat cruise operation with particular regard to the owners and users of any land adjacent to the boat cruise operation 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 boat cruise operation-
- 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 boat cruise operation ; 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 Project Site as well as the Touw River and the Associated Lake System**

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

### **13. THE ENVIRONMENT**

- 13.1 To the extent that the Private Party needs to construct infrastructure, buildings or any other structures (including the erecting of mobile structures) to support the carrying out of the Project which, pursuant to the relevant Regulatory Provisions/ requirements, the Private Party shall not commence such construction or erecting of structures until SANParks is satisfied that the said environmental requirements have been undertaken in compliance with the relevant Regulatory Provisions and to the satisfaction of the Responsible Authority.
- 13.2 The Private Party shall ensure that the Protected Area's Environmental Manager is involved in any process to identify environmental risks and the associated mitigation measures for the boat cruise operation. This includes processes pertaining to the environmental requirements, as well as subsequent environmental compliance auditing.
- 13.3 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.
- 13.4 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 boat cruise operation and the Protected Area.
- 13.5 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 public.
- 13.6 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 or by law, to minimise and rectify such pollution or degradation of the Environment.

## **14. SANPARKS' UNDERTAKINGS**

- 14.1 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.
- 14.2 SANParks shall continue, in the ordinary course of business, to market and promote the boat cruise operation and co-operate with the Private Party in preparing marketing and promotional material so as to ensure that the boat cruise activity is properly marketed and promoted as an integral part of the Park and the marketing and promotional programme for the Park as a whole.
- 14.3 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 boat cruise operation and will not engage in acts or omissions that may materially affect the rights or interests of the Private Party in respect of the boat cruise operation.
- 14.4 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.
- 14.5 SANParks' procurement processes in relation to the Project complied, to the best of SANParks knowledge and belief, in all material respects with:
- 14.5.1 all relevant legislation, regulations and the like governing such procurement processes; and
- 14.5.2 all current labour agreements, covenants and the like whether with individual employees or with employee organisations.

## **15. 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.

## **16. BLACK ECONOMIC EMPOWERMENT**

- 16.1 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.
- 16.2 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.

## **17. FINANCIAL PROVISIONS AND PAYMENT**

### **17.1 Gross Revenue**

- 17.1.1 For the purposes of this PPP Agreement Gross Revenue shall be defined as:
- 17.1.1.1 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 International Financial Reporting Standards (IFRS). Without derogating from its generality, the term “Gross Revenue” shall mean revenue before the deduction of:
- 17.1.1.1.1 bad debts (or provisions therefore);
- 17.1.1.1.2 commissions or similar consideration paid or payable;
- 17.1.1.1.3 cash, credit-card or similar discounts or commissions; and
- 17.1.1.1.4 costs and expenses other than trade discounts granted in

circumstances that are not arm's-length or to a related party;

17.1.1.2 **and gross revenue shall include:**

17.1.1.2.1 commissions received or receivable;

17.1.1.2.2 rentals and other fees received or receivable;

17.1.1.3 **but shall exclude:**

17.1.1.3.1 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;

17.1.1.3.2 interest received or receivable;

17.1.1.3.3 the proceeds of, profit or surpluses on the disposal of non-current assets;

17.1.1.3.4 transfers from reserves; and

17.1.1.3.5 bad debts recovered.

17.2 **PPP Fees**

17.2.1 The Private Party shall pay the PPP Fee to SANParks each month from the Operation Commencement Date, for each month of the Project Year.

17.2.2 The monthly PPP Fees payable by the Private Party to SANParks shall be the higher of the following two figures:

17.2.2.1 the Minimum PPP Fee set by SANParks increased annually by CPI; or

17.2.2.2 the Variable PPP Fee (the percentage of actual gross revenue earned by the Private Party in each Project Year).

17.2.3 The Minimum PPP Fee or the Variable PPP Fee will be calculated on the

turnover for the boat cruise operation, as listed in Schedule 6.

- 17.2.4 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 boat cruise operation 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.
- 17.2.5 For purposes of reconciling the PPP Fees payable by the Private Party in any given Financial Year, the Private Party shall, within 30 (thirty) days after the end of each Financial Year, furnish its audited financial statements to SANParks, where after SANParks shall verify and reconcile the PPP Fees due against the PPP Fees actually paid in the relevant Financial Year.
- 17.2.6 In the event that subsequent to the enquiry contemplated in clause 17.2.5 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.
- 17.2.7 All PPP Fees or other amounts payable by the Private Party to SANParks in terms of this PPP Agreement shall be exclusive of VAT.
- 17.2.8 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.
- 17.2.9 Interest shall accrue on all overdue amounts payable in terms of this PPP Agreement as per SANParks’ Financial Rules and Regulations.

17.3 **Taxes**

- 17.3.1 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 boat cruise operation, or in respect of the Project or any other activities conducted within the Protected Area 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 that is earned by SANParks or, notwithstanding this PPP Agreement, any tax payable by SANParks.

17.3.2 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.

17.4 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.

## **18. DEFAULT INTEREST**

Interests shall accrue on all overdue amounts payable in terms of this PPP Agreement as per SANParks' Financial Rules and Regulations.

## **19. PERFORMANCE BOND**

19.1 The Private Party shall provide to SANParks the Performance Bond that 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.

19.2 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.

- 19.3 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.
- 19.4 The amount to be guaranteed by the Performance Bond for the first twelve month period as from the Signature Date shall be the sum of R45 000 ( Forty Five Thousand Rand), exclusive of VAT.
- 19.5 The Performance Bond shall be reinstated in full and its amount adjusted annually within 90 (ninety) Business Days of the end of each Project Year such that the amount to be guaranteed by the Performance Bond for the relevant Project Year is not less than the figure indicated in Clause 19.4 as adjusted to reflect changes in the Consumer Price Index since Bid Submission.
- 19.6 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.
- 19.7 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.
- 19.8 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.

## **20. 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.

## **21. PROJECT INSURANCES**

- 21.1 The Private Party shall insure all insurable properties within the boat cruise operation including the Project Assets, with a reputable insurance company by no later than the Operation Commencement Date:
- 21.1.1 for not less than the full replacement value of the Project Assets;
  - 21.1.2 against the risk of fire, lightning, explosion, storm, flood, earthquake, riots (including political riot), strikes and malicious damage;
  - 21.1.3 environmental damage;
  - 21.1.4 property and casualty insurance;
  - 21.1.5 public liability and third party insurance;
  - 21.1.6 employer's liability insurance;
  - 21.1.7 business interruption insurance; and
  - 21.1.8 all risks cover and loss of 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.
- 21.2 The insurances required in terms of clause 21.1 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.

- 21.3 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.
- 21.4 Should the Private Party be in breach of the provisions of Clause 21.1, SANParks may, after consultation with the Private Party and giving the Private Party thirty (30) days within which to comply with Clause 21.1, procure and maintain, at the sole cost and expense of the Private Party, the insurances referred to in Clause 21.1 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.
- 21.5 The Private Party shall comply with all the terms and conditions embodied in the insurance policy or insurance policies referred to in Clause 21.1 and undertake not to commit any act or permit any act to be committed or omit to do anything that in any way affects or vitiates such insurance policy or policies.
- 21.6 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. REPORTING REQUIREMENTS**

### **22.1 General**

- 22.1.1 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.
- 22.1.2 In addition to the Private Party's reporting obligations stipulated in Clause 22.1.1, the Private Party shall, within 10 (ten) Business Days of the event occurring, report in writing to SANParks details of the following events -
- 22.1.2.1 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;

22.1.2.2 any transaction in respect of the Equity of the Private Party of which the Private Party is aware; or

22.1.2.3 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.

22.1.3 The Private Party shall, within 10 (ten) Business Days of the receipt of a written request from SANParks, provide SANParks with –

22.1.3.1 any information SANParks may reasonably request pertaining to the PPP Agreement or that SANParks is entitled to under any Law; and

22.1.3.2 names, identity numbers and any other relevant details of any employees of the Private Party or its Subcontractors who are engaged in respect of the Project and who have resigned or been dismissed during the relevant calendar year; and

22.1.3.3 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.

## 22.2 **Appointment of Private Party Auditors**

22.2.1 The Private Party will be obliged to appoint a reputable auditor, registered with the Independent Regulatory Board for Auditors, as the Private Party's auditors for the Project. Failure to do so may result in termination of this PPP Agreement.

22.2.2 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 IFRS 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.

22.2.3 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.

22.2.4 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 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 22.2.6 below.

22.2.5 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.

22.2.6 Notwithstanding the provisions of Clauses 22.2.4 and 22.2.5 above, if the investigations conducted conclude that the Private Party has committed a fraud or fraudulent misrepresentation, as contemplated in Clauses 22.2.4 and 22.2.5 above, then the Private Party shall be liable for the reasonable costs of meeting(s) and/or audit(s).

### 22.3 **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 the 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 IFRS consistently applied), which shall include –

- 22.3.1 a balance sheet of the Private Party's assets and liabilities;
- 22.3.2 an income statement; and
- 22.3.3 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 the period.

#### 22.4 **Annual Reports**

- 22.4.1 The Private Party shall furnish to SANParks as soon as practicable but in any event not later than 60 (sixty) Business Days after the end of the Financial Year which occurs after the Operation Commencement Date -
  - 22.4.1.1 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 IFRS consistently applied), together with an audit report thereon;
  - 22.4.1.2 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
  - 22.4.1.3 a reconciliation of the profit and loss account and the budget for that Financial Year, and an analysis thereof.

### 23. **INFORMATION AND AUDIT ACCESS**

- 23.1 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.

- 23.2 Without limiting the generality of the afore going, the Private Party shall:
- 23.2.1 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
- 23.2.2 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.
- 23.3 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 it shall be borne by the Private Party.

## **24. SANPARKS STEP-IN**

- 24.1 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.

24.2 If pursuant to Clause 24.1 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 -

24.2.1 the action it wishes to take;

24.2.2 its reasons for taking such action;

24.2.3 the date when it wishes to commence such action;

24.2.4 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

24.2.5 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.

24.3 Following the service of such notice, SANParks shall take such action as notified under Clause 24.2 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.

24.4 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 this prevents the Private Party from providing any part of the Project Deliverables:

24.4.1 the Private Party shall be relieved from such obligations; and

24.4.2 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).

- 24.5 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.
- 24.6 The relief of the Private Party's obligations as contemplated in Clause 24.5 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 26.3 requiring the Private Party to remedy the Private Party Default or to put forward a Remedial Programme.
- 24.7 Where the provisions of Clause 24.5 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 24.5.

## **25. FORCE MAJEURE**

### 25.1 Definition and Procedure

- 25.1.1 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:
- 25.1.1.1 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
- 25.1.1.2 nuclear contamination unless the Private Party and/or any Sub-contractor is the source or cause of the contamination; or
- 25.1.1.3 chemical or biological contamination of the boat cruise operation from

any of the events referred to in Clauses 25.1.1.1 and 25.1.1.2 above, that directly causes either Party to be unable to comply with all or a material part of its obligations under this PPP Agreement.

- 25.1.2 Subject to Clause 25.1.3, 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.
- 25.1.3 Where a Party is (or claims to be) affected by an event of Force Majeure:
- 25.1.3.1 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
- 25.1.3.2 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.
- 25.1.4 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.
- 25.1.5 A subsequent written notice shall be served by the Party claiming relief on the other Party within a further 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 25.1.3.1, 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.
- 25.1.6 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.

- 25.1.7 If, following the issue of any notice referred to in Clause 25.1.4, 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.
- 25.1.8 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.
- 25.1.9 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 25.2 if no such agreement is reached.

## 25.2 **Termination for Force Majeure**

If, in the circumstances referred to in Clause 25, 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.

## 26. **PRIVATE PARTY DEFAULT**

### 26.1 **Definition**

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

- 26.1.1 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;
- 26.1.2 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 fifteen (15) Business Days) upon, the whole or any material part of the assets of the Private Party (in any of these cases, where applicable, whether provisional or final, and whether voluntary or compulsory);
- 26.1.3 the Private Party ceasing to carry on business;
- 26.1.4 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);
- 26.1.5 the Private Party commits a breach of any of its material obligations under this PPP Agreement, which is not specifically mentioned in this Clause 26.1 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;
- 26.1.6 the Private Party fails to pay any sum or sums due to SANParks under this PPP Agreement (which sums are not bona fide in dispute) and such failure continues for 10 (ten) Business Days from receipt by the Private Party of a notice of non-payment from SANParks;
- 26.1.7 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 or officer;
- 26.1.8 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;
- 26.1.9 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 therefore in terms of a breach notice issued to it by SANParks in terms of this PPP Agreement;

26.1.10 the Private Party breaches any of the provisions relating to its financial obligations in terms of this PPP Agreement;

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

26.2 the Private Party fails to commence trading at the boat cruise on the Operation Commencement Date.

### 26.3 **SANParks' Options**

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

26.3.1.1 in the case of the Private Party Default referred to in Clauses 26.1.1; 26.1.2; 26.1.3; 26.1.4; 26.1.6; 26.1.7 26.1.8 26.1.9 and 26.1.11 terminate this PPP Agreement in its entirety by notice in writing having immediate effect;

26.3.1.2 in the case of any other Private Party Default referred to in Clauses 26.1.5 and 26.1.10, 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

26.3.1.3 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.

26.3.1.4 If the Private Party Default is notified to the Private Party in a notice of default in terms of Clause 26.3.1.2 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.

#### 26.4 Remedy Provisions

26.4.1 Where the Private Party puts forward a Remedial Programme in accordance with Clause 26.3.1.3, 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 endeavor 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.

26.4.2 If -

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

26.4.2.2 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

26.4.2.3 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,

26.4.2.4 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 26 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.

## 26.5 **SANParks' Costs**

26.5.1 The Private Party shall reimburse SANParks with all costs incurred by SANParks in exercising any of its rights in terms of this Clause 26 (including, without limitation, any relevant increased administrative expenses and attorney and own client costs, where applicable).

26.5.2 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).

## 26.6 **Termination Amount on Private Party Default**

26.6.1 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 immovable Capital Investments Assets, set out in the annual audited books of account of the Private Party on the date of such termination.

26.6.2 Subject to Clauses 26.6.1, the following amounts shall be deducted from the amount payable in terms of Clauses 26.6.1:

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

- the boat cruise operation as at date of termination, fair wear and tear accepted;
- 26.6.2.2 an amount equal to any liquidated claims recoverable at law;
- 26.6.2.3 all costs and expenses incurred and/or reasonably expected to be incurred in restoring or remedying material damage to the boat cruise operation 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
- 26.6.2.4 any unpaid Assessment Rates and/or Utility Charges payable by the Private Party as at the date of termination.

## **27. SANPARKS DEFAULT**

### **27.1 Definition**

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

- 27.1.1 an expropriation of a material part of the boat cruise operation and/or Project Assets of the Private Party by SANParks or other Responsible Authority; and
- 27.1.2 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.

### **27.2 Termination for SANParks Default**

- 27.2.1 On the occurrence of an 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.

27.2.2 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.

**27.3 Termination Amount for SANParks Default**

27.3.1 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 immovable Capital Investment Assets, set out in the annual audited books of account of the Private Party on the date of such termination.

**28. CORRUPT GIFTS AND FRAUD**

**28.1 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 26.1.5.

**"Corrupt Act"** means:

28.1.1 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:

28.1.2 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

28.1.3 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;

28.1.4 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;

28.1.5 committing any offence:

28.1.5.1 under any law from time to time dealing with bribery, corruption or extortion;

28.1.5.2 under any law creating offences in respect of fraudulent acts; or

28.1.5.3 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

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

## 28.2 Termination Amount for Corrupt Gifts and Fraud

28.2.1 The Private Party shall reimburse SANParks with all costs incurred by SANParks in exercising any of its rights in terms of this Clause 28 (including, without limitation, any relevant increased administrative expenses and attorney and own client costs, where applicable).

28.2.2 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).

## 29. EFFECTS OF TERMINATION

### 29.1 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 29 (*Effects of Termination*).

## 29.2 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:

- 29.2.1 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 license 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;
- 29.2.2 deliver to SANParks (as far as not already delivered to SANParks) one complete set of:
  - 29.2.2.1 maintenance, operation and training manuals for the Boat Cruise operation and where they do not exist, the Private Party has an obligation in terms of this PPP Agreement to acquire or prepare them; and
  - 29.2.2.2 the historical operating data and plans of the boat cruise , its furniture, fittings and equipment in a format acceptable to SANParks;
- 29.2.3 use all reasonable endeavors 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;
- 29.2.4 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;
- 29.2.5 remove from the boat cruise operation 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;

29.2.6 deliver to SANParks:

29.2.6.1 any keys, remote access apparatus and computer access cards relevant to the boat cruise operation;

29.2.6.2 without prejudice to Clause 33 (*Intellectual Property of SANParks*), any copyright licences for any computer programmes (or licences to use the same) necessary for the operation of the boat cruise operation, including without limitation, the Transferable Licensed Intellectual Property;

29.2.6.3 complete asset registers and data registers pertaining to the Project; and

29.2.7 vacate the project site for the boat cruise operation and shall leave same in a safe, clean and orderly condition.

### 29.3 **Transitional Arrangements**

29.3.1 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 -

29.3.1.1 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;

29.3.1.2 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:

- 29.3.1.2.1 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 29.3.1.2.1, “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
- 29.3.1.2.2 assisting SANParks by providing all (or any) participants in such tender process with access on reasonable notice and at reasonable times to the boat cruise operation subject to the Private Party’s safety rules and regulations.

#### 29.4 **Continuing Obligations**

Save as otherwise expressly provided in this PPP Agreement -

- 29.4.1 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
- 29.4.2 termination of this PPP Agreement shall not affect the continuing rights and obligations of the Private Party and SANParks under this Clause 29 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.

#### 29.5 **Termination by reason of Expiry**

- 29.5.1 For the avoidance of doubt, the Parties agree that notwithstanding anything to the contrary in this PPP Agreement -
  - 29.5.1.1 if this PPP Agreement terminates on the Expiry Date; or
  - 29.5.1.2 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 29.5.1.2 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 29 (*Effects of Termination*).

## **30. DISPUTE RESOLUTION**

### **30.1 Referable Disputes**

The provisions of this Clause 30 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.

### **30.2 Internal Referral**

30.2.1 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 endeavors to resolve the dispute.

30.2.2 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.

### **30.3 Arbitration**

30.3.1 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").

30.3.2 The arbitration shall be held and will be completed as soon as possible:

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

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

30.3.2.3 in Gauteng, in the English language; and

- 30.3.2.4 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.
- 30.3.3 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:
- 30.3.3.1 a legal or deemed legal matter, be a practising attorney or advocate of at least 15 years' standing;
- 30.3.3.2 an accounting matter, be a practising chartered accountant of at least 15 years standing; or
- 30.3.3.3 any other matter, be any independent person in the relevant field of not less than ten years standing.
- 30.3.4 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.
- 30.3.5 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.
- 30.3.6 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.
- 30.3.7 Notwithstanding the provisions of this Clause 30.3.7, 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 North Gauteng High Court of South Africa.

#### **30.4 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.

### **31. 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.

### **32. CESSION, TRANSFER AND SUBSTITUTED ENTITY**

#### **32.1 Transfer by the Private Party**

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

32.1.1 this PPP Agreement or any Associated Agreement; or

32.1.2 any of its rights, interests or obligations thereunder, save, in each case, to the extent required for the financing of the operation of the boat cruise operation as envisaged in the Financing Agreements, and in terms of the provisions of Clause 32.2.

32.2 Subject to the provisions of Clause 32.1, the Private Party may cede, delegate, assign, encumber or transfer the operation of the whole or a part of the boat cruise operation, provided that:

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

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

32.2.3 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.

### 32.3 **Substitute Entity**

32.3.1 Upon the occurrence of an event in Clause 26 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-

32.3.1.1 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

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

32.3.2 The Private Party shall reimburse SANParks with all costs incurred by SANParks in exercising any of its rights in terms of this Clause 32.3 (including, without limitation, any relevant increased administrative expenses and attorney and own client costs, where applicable).

32.3.3 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.

## 32.4 Disposal of Shares

- 32.4.1 SANParks will, notwithstanding the provisions of Clause 32, 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:
- 32.4.1.1 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;
- 32.4.1.2 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
- 32.4.1.3 SANParks cannot reasonably object to the sale for any reason.

## 33. INTELLECTUAL PROPERTY OF SANPARKS

- 33.1 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.
- 33.2 Subject to Clauses 33.1 and Clause 33.3, 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.
- 33.3 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.

- 33.4 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 33.5.
- 33.5 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.
- 33.6 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.
- 33.7 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.
- 33.8 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:
- 33.8.1 de-register the company bearing any of the Protected Names; or

- 33.8.2 change the name to a name not substantially similar to any of the Protected Names.
- 33.9 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 33 shall not be applicable and the intellectual property shall be the sole property of the Private Party.
- 33.10 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.
- 33.11 SANParks reserves the right to disallow the Private Party to apply its own name, logos or other branding to the boat cruise operation 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.

#### **34. INTELLECTUAL PROPERTY OF THE PRIVATE PARTY**

- 34.1 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 boat cruise operation, 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.

- 34.2 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 –
- 34.2.1 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
- 34.2.2 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.
- 34.3 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.
- 34.4 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 34.1, 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 –
- 34.4.1 grant to SANParks a non-exclusive license, on terms no less favourable than those applicable to the Private Party, to use that Intellectual Property for the Permitted Purposes, which licenses shall be capable of being further transferred by SANParks to third parties at no cost, for the Permitted Purposes; or

- 34.4.2 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.
- 34.5 If the owner of Intellectual Property contemplated in Clause 34.3 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.
- 34.6 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.

## **35. AMENDMENTS**

- 35.1 This PPP Agreement may not be varied or voluntarily terminated, except by an agreement in writing signed by duly authorised representatives of the Parties.

## **36. ENTIRE AGREEMENT**

- 36.1 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.
- 36.2 Each of the Parties acknowledges that:
- 36.2.1 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

36.2.2 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.

36.2.3 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.

## **37. VARIATION, CANCELLATION AND WAIVER**

37.1 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.

37.2 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).

37.3 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.

37.4 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.

### **38. 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.

### **39. GOVERNING LAW AND JURISDICTION**

- 39.1 This PPP Agreement is to be governed by and construed in accordance with the laws of South Africa.
- 39.2 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.

### **40. CONFIDENTIALITY**

- 40.1 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.
- 40.2 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.

- 40.3 The provisions of Clause 40.2 shall not apply to -
- 40.3.1 any disclosure of information that is reasonably required by persons engaged in the performance of the restricted Party's obligations under this PPP Agreement;
  - 40.3.2 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 40 (*Confidentiality*);
  - 40.3.3 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;
  - 40.3.4 any disclosure of information that is already lawfully in the possession of the receiving Party prior its disclosure by the disclosing Party;
  - 40.3.5 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;
  - 40.3.6 any disclosure by SANParks of information relating to the design, construction, set-up, operation and maintenance of the Project;
  - 40.3.7 any disclosure of information by SANParks to any Responsible Authority.
- 40.4 The disclosures permitted under Clauses 40.3.5, 40.3.6 or 40.3.7 may only be made subject to obtaining appropriate confidentiality restrictions consistent with the provisions of this Clause 40 (*Confidentiality*) from the intended recipients.

## 41. NOTICES

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

41.2 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: [●]

### **Private Party:**

Marked for the attention of the Directors:

Telephone:

Facsimile:

E-mail:

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

- 41.3.1 on the same day, if delivered by hand;
- 41.3.2 on the same day of transmission if sent by telex or e-mail.
- 41.4 Either Party may change its nominated address to another address in the Republic of South Africa by prior written notice to the other Party.

**42. 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, the Parties execute shall constitute a full original of this PPP Agreement for all purposes.

SIGNED AT ..... ON THE ..... 2021.

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

---

who warrants his authority hereto

SIGNED AT ..... ON THE ..... 2021.

For and on behalf of  
**PRIVATE PARTY**

---

who warrants his authority hereto

### **43. SCHEDULE 1 - DESCRIPTION OF BOAT CRUISE OPERATION**

43.1 The boat cruise operation will include the 'exclusive use' of the project site, within the designated area of the protected area, as well as the permitted route in the Touw River of the Wilderness section of the Garden Route National Park, which is not within the designated 'exclusive use' of the protected area.

43.2 The boat cruise operation:

43.2.1 To conduct boat cruises on the Touw River in the Wilderness section of the GRNP;

43.2.2 The facility shall only be operated for a period of five (5) years from the Operation Commencement Date;

43.2.3 The facility must be suitable for the identified site, which is located in the quiet and low intensity leisure use zones;

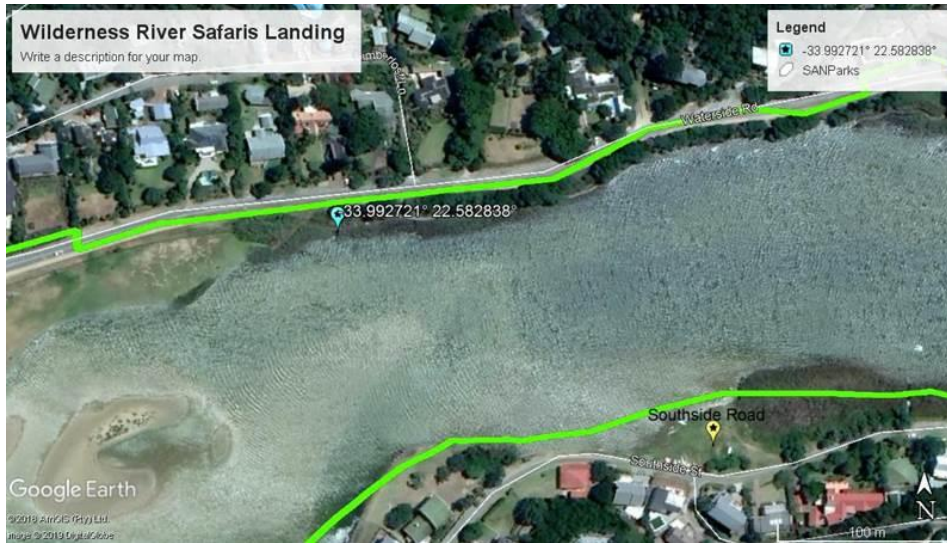
43.2.4 The maximum carrying capacity of the boat cruise operation is based on site-specific requirements; however, a minimum of 10 guest should be catered for in each vessel;

43.2.5 The boat cruises can be operated between 07h00 and 18h00 daily (the entire week and including Public Holidays)

43.2.6 **Location of Sites:**

43.2.6.1 Project site and route for the boat cruise on the Touw River and the surrounding lake system:

**Figure 1. Landing Site for the Boat Cruise Activity**



**Figure 2: Route for the Boat Cruise**



*Courtesy: Wilderness River Safaris*

#### **44. SCHEDULE 2 - RESPONSIBILITY IN TERMS OF MAINTENANCE OF THE FACILITY**

##### **44.1 Private Party Responsibility**

44.1.1 The Private Party shall be solely responsible for the maintenance of their assets i.e. movable equipment, among others as per their bid submission.

44.1.2 The Private Party shall ensure that the electrical supply and installations (if needed) are not of a permanent nature and comply with the required statutory standards (registered electrician to issue a certificate of compliance).

44.1.3 The Private Party shall be responsible for all equipment related to the boat cruise operation and the maintenance thereof.

44.1.4 The Private Party shall be required to implement mitigation measures to limit the environmental impact on the Project Sites. The Private Party shall be obliged to develop mitigation measures and implement rehabilitation activities in consultation with the Environmental Manager of the Protected Area.

##### **44.2 SANParks Responsibility**

44.2.1 SANParks gives the Private Party the use of the project site in the Wilderness section of the Garden Route National Park to generate revenue and pay SANParks accordingly as per the RFP. The Private Party carries the right throughout the duration of this concession period and is responsible for the maintenance of their tourism infrastructure. SANParks reserves the right to check that the maintenance of this tourism infrastructure and rehabilitation of the Project Site is to its current standards.

## **45. SCHEDULE 3 – PRIVATE PARTY OPERATIONAL REQUIREMENTS**

### **45.1 Preparation and Removal of Project Assets from Project Sites**

- 45.1.1 The Private Party shall be responsible, at their own cost, for preparation of the Project Site preceding the set-up of the boat cruise operation. SANParks may have specific requirements must be adhered to during preparation, operation and maintenance of the boat cruise operation, to minimise impact to the environment and ensure the safety of guests and staff at all times.
- 45.1.2 Prior to the Operation Commencement Date, the Private Party will cooperate with SANParks in compiling a monitoring checklist that encompasses all environmental conditions and health and safety requirements.
- 45.1.3 The Private Party shall have access to the slipway for the launching of boat(s) to access the Touw River, which must adhere to the SANParks Classification. The Private Party shall use the slipway in a responsible manner for the duration of the Project Term. The usage of the slipway as it is within the Protected Area and the subsequent maintenance activities are subject to requirements specified by the Technical Services Department, Environmental Manager and local Section Ranger of the Protected Area.
- 45.1.4 Any structure erected in the project site must be temporary in nature. As per the Bid Submission, the Private Party is obliged to remove all Project Assets, with exception of permissible immovable Capital Investment Assets, from the Project Site within timelines agreed to with SANParks following end of project term of operation of the boat cruise operation.
- 45.1.5 On removal of the Project Assets, the Private Party will restore, and leave the Project Site in its previous condition, as specified in their Bid Submission and EMP, or as otherwise agreed to with SANParks.

## 45.2 **Promotion and conduct of business**

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

## 45.3 **Standards of the boat cruise operation**

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

45.3.2 The private part must comply with the South African Maritime Safety Authority (SAMSA) membership's regulation related to vessels by the obtaining the certificate below:

45.3.2.1 The SAMSA vessel certificate

## 45.4 **Branding**

Private Party's brand design must take cognisance of the Protected Area's ambience. This includes the colour of the tourism infrastructure should not be overly visible due to the colour scheme when at the Project Site for the boat cruise operation.

## 45.5 **Service Provision**

45.5.1 In the conduct of the Business, the Private Party shall operate the boat cruises in accordance with the periods specified in Schedule 1, or as otherwise agreed to with SANParks, and the requirements of any relevant statute, by-law or regulation relating to the Business.

45.5.2 The Private Party shall consult with SANParks on the dates and timelines for the set-up and removal of the boat cruise operation from the Project Site prior to operation in that Project Year.

## 45.6 **Product Offering**

- 45.6.1 The concept outlined in the Bid Submission submitted by the Private Party must be adhered to unless otherwise agreed by SANParks.
- 45.6.2 The Private Party is obliged to offer boat cruises in the Touw River and surrounding lake system.
- 45.6.3 The Private Party is obliged to provide all necessary safety equipment (i.e. safety jackets) to their guests.
- 45.6.4 The Private Party is obliged to maintain and utilise the tourism infrastructure as outlined in the Private Party's Bid Submission and is not contrary to SANParks requirements, or as otherwise agreed to by SANParks.
- 45.6.5 The Private Party is obliged to provide universal access at the boat cruise operation.
- 45.6.6 Guests of the boat cruise operation at the Wilderness Section of the National Park, who are minors, must be accompanied by an adult.
- 45.6.7 The Private Party undertakes to educate visitors to the boat cruise operation on responsible tourism and to ensure safety of guests and staff at all times, in line with the Bid Submission or as specified by SANParks from time to time.

## 45.7 **Uniforms**

- 45.7.1 The Private Party is obliged to provide all staff with suitable and customised apparel in line with the theme proposed for the boat cruise operation.
- 45.7.2 All apparel must be relevant to the specific function performed by staff members and comply with Legislation, Health, and Safety Standards.
- 45.7.3 Notwithstanding the generality of the foregoing Clause 45.7.2, any member

of staff attending to guests in the boat cruise operation will not be permitted to wear open shoes or sandals.

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

**45.8 Loyalty Card Programme**

45.8.1 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.

**45.9 Customer Survey Programme**

45.9.1 SANParks could implement a Customer Survey Programme including a Mystery Guest Programme 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 boat cruise operation.

**45.10 Customer Feedback System**

45.10.1 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 boat cruise operation.

**45.11 Boat Cruise Operation Staff and Staff Transport**

45.11.1 In the conduct of the Business, the Private Party shall be solely responsible for all staffing requirements at the boat cruise operation. 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 Advertising**

45.12.1 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.

**45.13 Maintain Stocks**

45.13.1 In the conduct of the Business, the Private Party shall at all times keep the Business adequately stocked in such quantity to ensure visitors to the park are properly catered for.

**45.14 Supplier Accounts**

45.14.1 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.

**45.15 Utilities**

The Private Party is responsible for all utility charges i.e. electricity/energy, water, waste and refuse removal and sewerage. Where SANParks will charge the utilities to the Private Party on a monthly basis (based on the relevant Protected Area's Tariffs document), the Private Party is obliged to settle such accounts within 30 (thirty) days.

45.15.1 Telephone accounts - In the conduct of the Business the Private Party shall at their own cost procure and maintain sufficient mobile telecommunication services within the boat cruise operation. The Private Party shall be solely responsible for the payment of all accounts related to telecommunication for the boat cruise operation.

45.15.2 Electricity – the Private Party shall be permitted use of a generator (if need be) with a low decibel rating in the Wilderness Section of the Garden Route National Park, subject to requirements specified by the Technical Services Department. The Private Party must adhere to SANParks' policies and requirements for the operation of diesel generators and storage of diesel at the Project Site.

- 45.15.3 Waste - The Private Party must ensure that waste disposal facilities, including rubbish or waste removal bins, are clean and free from noxious or offensive odorous, that the waste disposal facility is not unsightly and the waste is frequently removed and the area surrounding the waste disposal facility is clean, neat and tidy. The Private Party must adhere to SANParks' Waste Policies, as amended from time to time. The Private Party will be responsible for the costs of all solid and liquid waste processing.
- 45.15.4 The Private Party shall remove all waste from the Project Site and dispose of waste at an authorised waste facility, either at an approved and allocated waste disposal site within the Protected Area or an approved disposal site outside the Protected Area. Tariffs for processing of waste at SANParks' waste disposal facilities shall be based on the rates specified in the latest approved Tariffs document of the Protected Area, and adjusted based on the capacity required to process waste generated by the Private Party.
- 45.15.5 Water: There is no potable water available on site. The Operator can access water and ablution facilities at the nearby Tarentaal Day Visitors Area. Should additional water be required, the operator can acquire potable water at their own expense.

#### 45.16 **Meetings**

- 45.16.1 To provide for a forum where the parties can resolve disputes and agree operational issues, it is encouraged that the Private Party and the Protected Area and Tourism Managers/ Park Manager/ HSM Manager of the Protected Areas agree on a monthly meeting that will be attended by both parties, during the operation of the boat cruise operation within the Protected Area.

#### 45.17 **Procedure Manuals**

- 45.17.1 The Private Party is obliged to comply with the Private Party's proposed operating standards and procedures submitted with the Private Party's Bid Submission. Any significant and material changes that could change

operations drastically and thus cause the Private Party to deviate from the Private Party's bid submission must be subject to the approval of SANParks.

45.17.2 The Private Party is obliged to develop an Operational Management Plan and Standard Operating Procedures for the boat cruise operation, based on the Operating Standards and proposed Procedures Manuals submitted with the Private Party's Bid Submission. The Operational Management Plan and Standard Operating Procedures must guide daily operations, clearly state the roles and responsibilities of the Private Party and SANParks and must be developed in consultation with SANParks.

45.17.3 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 etc.

#### 45.18 **Quality Audit**

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

#### 45.19 **Games**

45.19.1 The Private Party shall not be entitled to introduce any arcade type amusement or gaming machines into the boat cruise operation without the prior written approval of SANParks.

#### 45.20 **Problem Animal Management**

The Private Party will be required to implement the following measures to avoid the "development" of problem animals.

45.20.1 The Problem Animal Policy of the Protected Area will apply to the Private Party with the following strategy:

45.20.1.1 To have functional fences around facilities, waste storage facilities and along borders.

- 45.20.1.2 To remove or secure potential food sources, where possible, to prevent attracting unwanted attention which might corrupt animals and birds and cause them to become problematic.
- 45.20.1.3 To prevent animals from gaining access to these food sources, and
- 45.20.1.4 To educate and sensitise staff, contractors, guests and visitors on the issues related to problem animals.
- 45.20.2 No food or food waste may be left unattended.
- 45.20.3 All solid and wet waste must be stored in bins in scavenger-proof storage areas, and cleared regularly.
- 45.20.4 The scent of food left lying around also attracts animals. For this reason, the bins that are used for storing waste must seal as tightly as possible in order to reduce odours. When the bins are emptied, they must be washed and disinfected thoroughly.

**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 and Operational Plan and Risk Matrix attached herewith.

## **46.1 Private Party Business and Operational Plan**

## 46.2 Private Party Risk Matrix

## 47. SCHEDULE 5 – BEE OBLIGATIONS

In this Schedule,

- 47.1 any term, defined in the Broad-based Black Economic Empowerment Act, No. 53 of 2003 ("BEE Act"), or in terms of any Codes of Good Practice issued in terms of section 9 of the BEE Act, when used in the scorecard below shall have the same meaning as there defined, save where such meaning may be in conflict with the provisions of the Amended Tourism B-BBEE Sector Code and Scorecard, in which case the provisions of the Amended Tourism B-BBEE Sector Code and Scorecard will prevail.
- 47.2 If the SPV qualifies as a Large Enterprise (SPV total annual revenue of R45 million or above), as defined by the *Amended Tourism B-BBEE Sector Code*, the Large Enterprise Scorecard applies. The minimum threshold for the Large Enterprise scorecard is based on the SPV's total annual revenue, as determined by SANParks, which is as follows:
- 47.2.1 SPV total annual revenue  $\geq$  R150 million: 100 points
- 47.2.2 SPV total annual revenue  $\geq$  R100 million but  $<$  R150 million: 95 points
- 47.2.3 SPV total annual revenue  $\geq$  R45 million but  $<$  R100 million: 90 points
- Or;
- 47.3 If the SPV qualifies as a Qualifying Small Enterprise ("QSE") (SPV total annual revenue of less than R45 million or above R5 million), as defined by the *Amended Tourism B-BBEE Sector Code*, the QSE Scorecard applies. The minimum threshold for the QSE scorecard is 80 points, as determined by SANParks.
- Or;
- 47.3.1 If the SPV qualifies as an Exempted Micro Enterprise ("EME") (SPV total annual revenue of R5 million or below), as defined by the *Amended Tourism B-BBEE Sector Code*, the B-BBEE scorecard does not apply. On

an annual basis, the SPV must confirm that the total annual revenue of the SPV was R5 million or below, as well as confirm the percentage black ownership in the SPV.

47.3.2 Where the SPV's annual revenue exceeds or falls short of the thresholds for a Large Enterprise, QSE or EME, SANParks may require the Private Party to submit a revised B-BBEE Proposal. In this case, a maximum transitional period of one year will be allowed for the SPV to achieve the new targets.

#### 47.4 Milestones and Targets Going Forward

47.4.1 The B-BBEE Milestones and Targets for the duration of the PPP Term shall be determined by the restructured editions of the *Tourism Charter and Scorecard* as gazetted from time to time.

47.4.2 The milestones and targets of the *Tourism B-BBEE Charter and Scorecard* could thus be amended from time to time and the provisions of this Section and PPP Agreement would be modified accordingly. The Private Party would receive notification of such amendments and be provided a maximum transitional period of one year for the SPV to address the amendments.

#### 47.5 External B-BBEE Verification

47.5.1 Following signature of the PPP Agreement:

47.5.1.1 For SPVs qualifying as EMEs (as per SANParks' B-BBEE requirements), the Private Party shall submit a sworn affidavit or certificate issued by the Companies and Intellectual Property Commission (CIPC) on an annual basis to confirm that the SPV's total annual revenue is within the EME threshold, as per the B-BBEE Proposal, and confirm the SPV's level of Black Ownership. A copy of such affidavit or CIPC certificate shall be provided to SANParks within 15 (fifteen days) after the end of each Financial Year of the SPV.

47.5.1.2 SANParks reserves the right to monitor and audit the Private Party's B-BBEE status. The Private Party shall co-operate in any monitoring

or audit activity and provide SANParks with all information, documents, records and the like to enable SANParks to conduct such audits, or any other monitoring activities.

47.5.1.3 In the event of default by the SPV/s to comply with this provisions and the default is not remedied before the expiry of the period referred to in the notice by SANParks, SANParks will have the right to terminate the PPP Agreement with immediate effect by written notice to the SPV/s.

**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 boat cruise operation included under the PPP Agreement.

48.1.2 The Variable PPP Fee shall be as follows:

**VARIABLE PPP FEE = \_\_\_\_\_ % of GROSS REVENUE.**

**48.2 Minimum PPP Fee**

The following Minimum PPP Fees are expressed in April 2021 South African Rand, and will be adjusted throughout the Project Term of the PPP Agreement according to movement in the Consumer Price Index:

| <b>MINIMUM PPP FEE</b>      |                             |
|-----------------------------|-----------------------------|
| <b>Per Month (Excl VAT)</b> | <b>Per Annum (Excl VAT)</b> |
| R 3 750.00                  | R 45 000.00                 |

### **48.3 Private Party PPP Fee Offer**

## **49. SCHEDULE 7 – ENVIRONMENTAL SPECIFICATIONS FOR THE OPERATION OF BOAT CRUISE OPERATION 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 must 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 Act, 107 of 1998 (NEMA); the National Environmental Management Biodiversity Act, 10 of 2004 (NEM:BA); National Environmental Management: Protected Areas Act, 2003 (Act No. 57 of 2003) (NEM:PAA); the National Water Act 36 of 1998; the Water Services Act, 108 of 1997; the National Environmental Management: Air Quality Act; the Hazardous Substances Act, 15 of 1973; and the National Heritage Resources Act.

Authorisation of any development in a Protected Area is governed by Section 24 of NEMA *Environmental Authorisations* and Environmental Impact Assessment (EIA) Regulations and Listing Notices 2014 (as amended). Any changes to infrastructure or operations require written approval from SANParks and are subject to the prescribed policies and procedures.

The process for the development or refurbishment of any commercial facilities will be undertaken as per SANParks internal policies and procedures, and authorisations given by the Department of Environment, Forestry and Fisheries (DEFF), where relevant and SANParks.

Given that the development is taking place within a National Park, a Basic Assessment Report (BAR) must be submitted to DEFF, the "competent authority" as defined in the EIA Guideline documents.<sup>1</sup>

A Private Party proposing any significant expansions or structural modifications should anticipate that a Basic Assessment Report (BAR) will be required, and should factor the cost of carrying this out into their financial projections.

SANParks will have a role in the BAR process, both as an Interested and Affected Party (IAP), and as the regulatory authority with jurisdiction over the Protected Area. It will be DEFF's responsibility to determine whether, on the basis of information provided in the BAR, if the activity would receive a positive outcome and an environmental authorisation or Record of Decision (ROD).

#### 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 Private Parties. Where this occurred, SANParks undertook an internal effort to develop the necessary Guidelines.

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

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<sup>1</sup>In the case of the SANParks, the 'relevant environmental authority' for review of EIAs conducted in National Parks is the national Department of Environment, Forestry and Fisheries (DEFF).

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 all 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 **Legislative Requirements**

49.5.1 All legislative requirements must be understood and complied with.

#### 49.6 **Regulatory Provisions**

49.6.1 The Private Party must adhere to the Regulatory Provisions and the Environmental Specifications, as amended from time to time.

49.6.2 The Private Party must comply with its statutory duties in terms of the Environmental Laws and to take reasonable measures to prevent pollution or degradation from occurring, continuing or recurring or, in so far as such harm to the Environment is authorised by SANParks, to minimise and

rectify such pollution or degradation of the Environment.

**49.7 SANParks Requirements**

49.7.1 The Private Party must comply at all times with SANParks Environmental Guidelines as they may change from time to time.

49.7.2 The Private Party must comply with the accreditation in terms of the National Standard for Responsible Tourism, once complete as well as any other applicable Responsible Tourism Standards as required by SANParks.

**49.8 Environmental Responsibility**

49.8.1 SANParks has an active role to play in Responsible Tourism and expects the same from Private Parties that operate in National Parks. SANParks subscribes to the minimum standard of Responsible Tourism (SANS 1162) and expects the same from Private Parties that operate commercial outlets in National Parks.

49.8.2 The Private Party must conduct, manage and carry out the Project at all times in environmentally responsible way by adopting appropriate operating methods and practices for conducting such a Project in a proclaimed National Park.

49.8.3 The Private Party must 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 public.

**49.9 Environmental Impact**

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

49.9.2 The Private Party must subscribe to the South African Seafood Initiative (SASSI) and only sell/include fish on the menu with green status or SASSI

certified.

#### 49.10 **Code of Conduct**

49.10.1 The Private Party must induct all staff employed on the Kruger National Park's Code of Conduct.

49.10.2 The Code of Conduct must be understood by the Private Party and complied with.

#### 49.11 **Water Management and Guidelines**

49.11.1 Water conservation measures must be implemented by the Private Party in the design and implementation of their operations;

The Private Party must:

49.11.1.1 Monitor the use of water;

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

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

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

#### 49.12 **Energy use**

49.12.1 The Private Party must:

49.12.1.1 To measure energy use and continuously aim to implement measures to reduce energy usage until optimal levels are reached;

49.12.1.2 Monitor the use of energy;

49.12.1.3 Educate staff via on-site notices on the use of energy;

49.12.1.4 Set energy usage targets (monitored weekly/monthly) and manage these targets.

### 49.13 **Chemical Substances**

- 49.13.1 The Private Party must 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);
- 49.13.2 All chemicals listed as “Prohibited” may not be brought into, sold or used in any National Park by the Private Party. The products include items such as Rattex, Finale, Dyant, Doom and Target (an extensive list is available);
- 49.13.3 The Private Party must ensure safe storage and disposal of chemicals and their containers;
- 49.13.4 The Private Party must have a specific disposal system for toxic or other waste regarded as being dangerous under supervision of the Technical Services Department;
- 49.13.5 The Private Party must use environmentally friendly and biodegradable detergents and cleaning agents;

### 49.14 **Waste Management**

#### 49.14.1 Liquid Wastes

- 49.14.1.1 Liquid waste refers to sewerage as well as grey water;
- 49.14.1.2 The Private Party must manage liquid waste in accordance with national and local legislation requirements;
- 49.14.1.3 The Private Party must design management techniques to be both economically viable and environmentally sustainable;
- 49.14.1.4 The Private Party must implement waste procedures that optimise the principles of waste reduction and waste recycling and ensures that the end product do not pollute the environment;
- 49.14.1.5 The Private Party must install a grease tap for:
  - 49.14.1.5.1 Pot and rinse sinks attached to dish washers;
  - 49.14.1.5.2 Fixtures or drains through which significant amount of fats, oils or

- grease may be introduced;
- 49.14.1.5.3 Soup kettles or similar devices;
- 49.14.1.5.4 All sinks that are used to clean any dishes, pots, pans or cooking utensils.
- 49.14.1.6 The Private Party must implement processes and procedures which stipulate the following:
  - 49.14.1.6.1 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;
  - 49.14.1.6.2 That grease traps are cleaned daily; and
  - 49.14.1.6.3 That waste recovered from the grease traps be removed from the park and disposed of at an authorised facility.
- 49.14.2 Solid Wastes
  - 49.14.2.1 The Private Party must manage all waste that are generated in such a way that direct and indirect impacts are kept to a minimum.
  - 49.14.2.2 The Private Party must achieve Solid Waste Management Best Practices, which implies the following:
    - 49.14.2.2.1 Manage solid waste from source to disposal;
    - 49.14.2.2.2 Strive to eliminate non-recyclable or hazardous packaging or containers at the procurement phase;
- 49.14.3 The Private Party must include the following policies in the waste management:
  - 49.14.3.1 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;
  - 49.14.3.2 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 minimised, but also that it is

stored and discarded in a safe and legal way.

49.14.4 The Private Party will follow the following guidelines to minimise the effect of the solid waste on the ecosystem:

49.14.4.1 Minimise solid waste production at all sources, by striving for the minimisation of all waste.

49.14.4.2 Maximise 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 authorised waste disposal site.

49.14.4.3 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 authorised waste site is strictly prohibited and failure to comply may result in a penalty.

49.14.4.4 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.

49.14.4.5 Waste storage areas must remain visually hidden from visitors to the park.

49.14.4.6 Packaging and containers given to visitors to the park must be environmentally friendly, bio-degradable and recyclable.

49.14.4.7 The distribution of plastic bags to guests is strictly prohibited and only brown paper bags are allowed to be given for the purpose of carrying items purchased.

49.14.4.8 The Private Party must continuously strive towards eliminating plastic water bottles and single-use plastics in their operations.

49.14.4.9 In terms of packaging the Private Party must not use the following in outside seating and eating areas as this pollutes the park:

49.14.4.9.1 Sachets (for sugar, tomato sauce, salt and pepper, etc.);

49.14.4.9.2 Paper serviettes;

49.14.4.9.3 Butter tubs/pads;

49.14.4.9.4 Plastic straws; and

49.14.4.9.5 Plastic cutlery.

49.14.4.10 The Private Party must ensure that the all areas are kept free of litter by:

49.14.4.10.1 Promoting an ethic amongst guests and staff alike.

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

#### 49.15 **Pest Control**

49.15.1 The Private Party must comply with the SANParks Integrated Pest Management Plan.

49.15.2 Where and if required the Private Party must control bats as outlined in the KNP Bat Management Guidelines.

49.15.3 The Private Party must make use of accredited Pest Control Operators and preferred pest control chemicals as prescribed by SANParks.

#### 49.16 **Visual Impacts**

49.16.1 The Private Party must obtain approval, where appropriate, for building materials to be used (where applicable) for all structures;

49.16.2 The Private Party must minimise the visual impacts of the development, including lighting;

49.16.3 The visual impacts of lightning arrestors and radio masts (where applicable) must be minimised;

49.16.4 Brand signage and colours must be adapted to complement the environment; and

49.16.5 The Private Party must implement mitigation measures in order to reduce the visual impact in the park.

**49.17 Monitoring**

- 49.17.1 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 on a quarterly basis; and
- 49.17.2 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.
- 49.17.3 SANParks has the right to undertake necessary conservation management activities in all of the Project Sites.
- 49.17.4 The Private Party must participate in any relevant SANParks-Private Parties forums and comply with any standards thereby agreed or established.

49.18 **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 following outlines the major areas of qualification:

### **50.1 Financial Capacity**

- 50.1.1 The Bidder must have a business with a turnover not exceeding R2.5 million per annum. Failure to comply with the above conditions will invalidate the bid. If there are multiple entities bidding as a consortium, the bidder must demonstrate with reference to the proportion of their shareholding that the combined turnover of the bidder does not exceed R2.5 million.
- 50.1.2 Given that the project may entail risk to both the preferred bidder and SANParks, it is important that interested parties demonstrate financial strength. In this regard the gross asset value of the interested party must be at least R 100 000.00, with a minimum business turnover of R 100 000.00 per annum.
- 50.1.3 As the preferred bidder must be a Special Purpose Vehicle (SPV), it must demonstrate financial strength with reference to the turnover of its shareholders in proportion to their shareholding. The interested party must also demonstrate, to SANParks' satisfaction, that its shareholders are solvent. Audited financial statements, along with a letter confirming that the turnover does not exceed the stipulated amount and that the shareholders are solvent, must be provided if demanded by SANParks in order to illustrate any assertion made by an interested party in this regard.
- 50.1.4 The bidder must demonstrate the ability to source suitable funding to perform under the PPP Agreement.

## 50.2 Financial Requirements

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

50.2.1.1 audited or independently reviewed financial statements corresponding to the last two (2) years;

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

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

## 50.3 Tourism Experience

50.3.1 The project is likely to require interested parties with experience and expertise in the tourism market. Interested parties are therefore required to provide examples of projects conducted by the interested parties. If the interested party is an unincorporated SPV or new company incorporated for purposes of the PPP Opportunity, then it can meet this criterion with reference to the qualifications of any one of its parent shareholder, if the shareholder holds at least 30% of the total equity in the proposed SPV or company that will undertake this PPP opportunity. The interested party must be able to meet this tourism track-record requirement in the following ways:

50.3.1.1 Number of functional boat cruise operation(s): Operate at least one (1) boat (accommodating 10 guests) cruise business.

50.3.1.2 The bidder must have been operating the boat cruise business for at least two (2) years. The definition “operating” includes ownership, leasing or concession arrangements and management contracts for tourism products. It will not include employment at a tourism

establishment, at however senior level.

**50.4 Tourism Track Record**

50.4.1 The qualifying tourism Operator(s) or individuals, shareholders or partners, of each Submitting Company, who are being used to meet the criteria regarding tourism experience, must provide a general description of the Tourism activity they have operated, including, (i) the number of years in active existence; (ii) the nature of the boat cruise operation; and (iii) size of the boat cruise operation

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

**50.5 B-BBEE Qualification Criteria**

50.5.1 The Private Party must commit to employing a staff from the local community and submit a skills development plan indication how the employee(s) will be developed.

## **50.6 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 design, construction, fitting, installation, equipping, commissioning, financing, operation, management and maintenance of the SANParks boat cruise operation at the Wilderness Section of the Garden Route 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 12 (twelve) 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:

---

- 4.2 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 \_\_\_\_\_ 2021

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 – 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 advice on CPA.

### **54.1 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:-

- 54.1.1 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;
- 54.1.2 reducing and ameliorating any disadvantages experienced in accessing any supply of goods or services by consumers:-
  - 54.1.2.1 who are low-income persons or persons comprising low-income communities;
  - 54.1.2.2 who live in remote, isolated or low-density population areas or communities;
  - 54.1.2.3 who are minors, seniors or other similarly vulnerable consumers; or
  - 54.1.2.4 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;
  - 54.1.2.5 promoting fair business practices;
  - 54.1.2.6 protecting consumers from:-
    - 54.1.2.6.1 unconscionable, unfair, unreasonable, unjust or otherwise improper trade practices; and
    - 54.1.2.6.2 deceptive, misleading, unfair or fraudulent conduct.

The Private Party shall in the course of operating the boat cruise operation in the Protected Area observe the following procedures:

**54.2 Disclosure and Information**

**54.2.1 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

**54.2.2 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 boat cruise operation, the price of which should be expressed in South African currency (Rand), and in the following manner:

54.2.2.1 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

54.2.2.2 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.

**54.2.3 Product labelling and trade descriptions**

The Private Party shall not:

54.2.3.1 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

54.2.3.2 alter, deface, cover, remove or obscure a trade description or trade mark applied to any products in a manner calculated to mislead consumers;

54.2.3.3 not offer for sale, or display any particular products if the Private Party knows, reasonably could determine or has reason to suspect that:-

54.2.3.3.1 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

54.2.3.3.2 a trade description or trade mark applied to the products has been altered

54.2.3.4 Private Party shall be required to display a notice that discloses the presence of any genetically modified ingredients in products provided or to be sold at the boat cruise operation, such notice shall be in a manner and form as described in CPA and related legislations.

54.2.4 Sales records

54.2.4.1 Private Party shall provide a written record of each transaction to the consumer to whom any products are sold.

54.2.4.2 The record must include at least the following information:

54.2.4.2.1 Private Party's full name, or registered business name, and VAT registration number;

54.2.4.2.2 the address of the premises at which, or from which, the products were sold;

54.2.4.2.3 the date on which the transaction occurred;

54.2.4.2.4 a name or description of any products sold or to be sold;

54.2.4.2.5 the unit price of any particular products sold or to be sold;

54.2.4.2.6 the quantity of any particular products sold or to be sold;

54.2.4.2.7 the total price of the transaction, before any applicable taxes;

54.2.4.2.8 the amount of any applicable taxes; and

54.2.4.2.9 the total price of transaction, including any applicable taxes.

54.3 **Fair and Honest Dealing**

54.3.1 Unconscionable conduct

54.3.1.1 Private Party or any of its representatives or employees during the course of conducting the Business in the boat cruise operation 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.

54.3.2 False, misleading or deceptive representations

54.3.2.1 **Private shall not, by words or conduct:**

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

54.3.2.1.2 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

54.3.2.1.3 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.

54.4 **Quality Service**

54.4.1 Private Party shall be expected to provide timely service and in a manner and quality that persons are generally entitled to expect. The service shall entail:

54.4.1.1 making sure that the consumer does not wait for too long, when the consumer is purchasing some product items at the boat cruise operation;

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

54.4.2 If a Private Party fails to perform a service to the standards contemplated in Clause 54.4.1 above, the consumer is entitled to demand from the Private Party, to either:-

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

54.4.2.2 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.

**55. SCHEDULE 13 – PROHIBITED CHEMICAL SUBSTANCES**

| CHEMICAL  | TRADE NAME  | NOTES   |
|---|---|---|
| Atrazine  | Atrazine<br>Gesaprim<br>Atraflo<br>Bladex<br>Terbutal                         | Toxicity group III  |
| Parathion<br><br>Diethyl (p –nitropheny) phosphothioate | Folidol<br>Parafos<br>Agrithion   | An organophosphate. Extremely toxic, Toxic group I. Banned in 17 countries, restricted use status in RSA.               |
| PCP<br><br>Pentachlorophenol<br><br>Pentachlorophenyl   | Woodprufe<br><br>Timerlife<br><br>Borcide<br><br>Timbertret<br><br>Anti-stain | An organochloride   |
| Chlordane<br><br>Octahoro-a hexahydror-methiodene       | Termidan<br><br>Chlorsdasol   | An organochlorine insecticide. Moderately, toxic, toxic group I<br><br>Banned in 25 countries, restricted status in RSA |
| Aldicard<br><br>Methyl-(methylthio)-propinaldehyne      | Termik  | A N-Methyl Carbonate insecticide. Extremely toxic, Toxic group I  |

| CHEMICAL   | TRADE NAME  | NOTES  |
|--|---|--|
| Methylcarbonmoy oxine  |   |  |
| EDB<br><br>Dibromoethane   | Edabrom<br><br>Gerbex<br><br>Aquamix<br><br>Bacfume | A halocarbon pesticide.<br>Toxic group II.<br><br>Banned in 14 countries.<br>Restricted status in RSA.                     |
| Dieldrin<br><br>Hexachloro-hexahydro-dimethanonaphthalene<br><br>Plus derivities Aldrin and Endrin | Aldrin<br><br>HHDN<br><br>Shelldrite                | An organochlorine insecticide. Highly toxic,<br>Toxic group I.<br><br>Banned in 34 countries.<br>Restricted status in RSA. |
| DDT<br><br>Dichloro-diphenyl trichloro-ethane plus derivities DDE and DDD                          |   |  |
| Difethialone   | Rattex  |  |
| Brodifacoum  | Finale  |  |
| Difenacoum   | Tornadel  |  |
| Flocoumafen  | Tornadel  |  |
| Chlorofluoro-carbon<br><br>CFC-11 , CFC-12 ,<br>CFC-113 , CFC-114 ,<br>CFC-115                     |   | Total phase-out by 1996.<br>Manreal protocol 1987,<br>amended Copenhagen<br>1992.  |
| Halon gas  |   | Total phase-out by 1996.   |

| CHEMICAL                                     | TRADE NAME   | NOTES   |
|--|--|---|
| Halon -1211 ,<br>Halon1301 , Halon -<br>2402 |  | Manreal protocol 1987,<br>amended Copenhagen<br>1992.                             |
| Carbon – tetrachloride<br>CC14               |  | Total phase-out by 1996.<br>Manreal protocol 1987,<br>amended Copenhagen<br>1992. |
| Methyl-chloroform<br><br>CH3CC13             |  | Total phase-out by 1996.<br>Manreal protocol 1987,<br>amended Copenhagen<br>1992. |
| Hydrochloro-fluocarbon<br>HBFC's             |  | Total phase-out by 1996.<br>Manreal protocol 1987,<br>Copenhagen 1992.            |
| Methyl bromide<br><br>CH3Br                  |  | Freeze by 1995.<br>Copenhagen protocol 1992.                                      |
| Gamma – BHC<br><br>Hexachlorocyclohexane     | Dyant<br><br>Bexadust<br><br>Fumitabs<br><br>Ant and<br>garden spray<br><br>Nexit<br><br>Lindane<br><br>Anticide<br><br>Gardit | An irganochloride<br>insecticide. Moderately toxic,<br>Class II                   |

| CHEMICAL  | TRADE NAME   | NOTES  |
|---|--|--|
|   | Ants<br>Everdeath<br>Lindastof<br>Agronex<br>Linden<br>Woodprufe<br>Blue death<br>Servidol |  |
| Paraquat<br>Dimethyl-bipyridinium<br>dichloride | Paraquat<br>Chloride<br>Preeglone<br>WPK<br>PARAQUAT<br>Gramoxone                          | A bipyriyl herbicide.<br>Moderately toxic, Toxic<br>Group II |
| Hydrochloro-<br>fluorocarbon : HCF's            |  | Total phase out by 2030.<br>Copenhagen protocol 1992.        |

## 56. SCHEDULE 14 – PEST MANAGEMENT PLAN

### 56.1 INTRODUCTION AND BACKGROUND

56.1.1 PEST CONTROL: Aiming towards natural and barrier methods (mechanical control) as opposed to chemical control.

All chemicals that are artificially introduced into the natural environment may create an imbalance and have a negative effect on that environment. These effects can range from slight to catastrophic, but will be largely dependent on the type of chemical, the method of application and the dosage applied. Chemicals must be controlled and used in such a way as to impact as little as possible on the natural diversity and functioning of ecosystems.

#### 56.1.2 WARNING ON THE USE OF CHEMICALS

Pesticides are poisonous. Always read carefully and follow all precautions and safety recommendations given on the container label. Store all chemicals in the original labelled containers in a locked cabinet or shed, away from food and out of reach of children and unauthorized persons. Consult the pesticide label to determine active ingredients and signal words. Pesticides applied in your home and landscape can move and contaminate streams, lakes and rivers. Confine chemicals to the property being treated and never allow them to reach drainage areas. Do not place containers containing pesticide into the rubbish bin, down the sink, toilet or outside drain. Either use the pesticide according to the label until the container is empty, or take unwanted pesticide to a household hazardous waste collection site. Dispose of empty containers by following label directions. Never reuse or re-burn the containers or dispose of them in such a manner that they may contaminate water supplies or natural waterways.

### 56.2 TERMINOLOGY

**Pest:** Any organism occurring in unnaturally high numbers due to human development, which has a deleterious effect on the human population in terms of health and wellbeing.

**Pesticide:** A species specific chemical component designed to combat a particular pest species that is deemed as having deleterious effects on the resident human population.

**Herbicide:** A chemical component designed to eliminate a specific type or species of vegetation.

**Active ingredient:** the chemical compound within the pesticide that produces the required negative effect on the target species

**Synergist:** Substance added to pesticide in order to make the active ingredient more effective by performing a catalytic function.

**Wetter (spreader):** enables the chemical to stick evenly onto the target.

**Colouring agent:** used to discourage birds, animals and people from consuming the pesticide.

**Bitter compound:** prevents animals from swallowing the compound.

**Carrying medium:** usually inactive and will not have an effect on the pest.

**Pesticide toxicity:** All pesticides must be considered toxic. The relative toxicity, however, varies considerably as does the susceptibility of the human being, animal or plant. Species, age, sex, physical and nutritional state and type of formulation are some of the more important factors influencing the potential toxicity and hazard.

**LD50:** The toxicity of a chemical is expressed as an LD50 value. This is the lethal dosage expressed as mg per kg body mass, which will kill 50 % of a random sample of a population of test animals (usually white laboratory rats). This standard makes comparison of toxicity possible. The potential hazard of a pesticide may not be judged only by its oral toxicity, as many pesticides can be absorbed through the skin, eyes and or lungs.

**Pesticide hazard:** Both the concentration of a pesticide and its formulation affect the hazard of a remedy. The higher the concentration of an active ingredient, the more hazardous it becomes. A pesticide formulated as a solution or as an emulsifiable concentrate, is more hazardous than when formulated as a dust or as a wettable powder.

**Pesticide formulations:** Nearly all pesticides have to be formulated in order to enhance their efficacy and to make them suitable for application in a particular manner. Sometimes certain materials such as sticking or wetting agents are added to increase the terminal effectiveness.

AE – Aerosol dispenser

AL – Other liquids to be applied

BB – Bait block

CB – Bait concentrate (solid or liquid for dilution before used as a bait)

CS – Capsule suspension (normally diluted in water)

DP – Dusting powder

EC – Emulsifiable concentrate (applied as liquid after dilution in water)

EW – Emulsion, oil in water (pesticide within oil droplets in water)

FD – Smoke tin

FK – Smoke candle

FT – Smoke tablet

FU – Smoke generator

GA – Gas

GB – Granular bait

GE – Gas generating product

GR – Granule

HN – Hot fogging concentrate

KN – Cold fogging concentrate

OL – Oil miscible liquid – dilute in an oil before application

PA – Paste (water based film forming)

SC – Suspension concentrate

SL – Soluble concentrate

SP – Water soluble powder

RB – Ready bait

TB – Tablet

UL – Ultra low volume liquid

VP – Vapour releasing product

WP – Wettable powder

**First generation poison:** A poison that will only affect the target species, in that it requires multiple feeds to be fatal.

**Second generation poison:** A poison that will have immediate deadly effects on the target population, as well as any predatory populations feeding on the dead target or other effected animals.

### 56.3 CHEMICAL CLASS OF ACTIVE INGREDIENT

**Chemical class:** Classification of chemicals based on the composition of the active ingredient.

Organochlorine: E.g. DDT. These compounds take a long time to decompose (e.g., 8 tonnes of DDT will take 90 years to decompose). This means that the long-term effects are much worse than short-term effects, due to the build-up in the environment. All these products should be banned from use in terms of the environmental damage caused. Organochlorine should not be permitted for use in a National Park.

Organophosphate: These are acutely toxic in most cases, however, only to animals not plants. Organophosphates should not be permitted for use within a National Park.

Pyrethroid: These compounds are made from the carnation flower, by extracting pyrethrin from the oil. They are made in Kenya. They are mostly highly toxic to insects, fish and amphibians, but not so toxic to reptiles, birds and mammals. When used correctly, this is the least harmful class of all chemicals. When chemicals are used within a National Park, it is preferable that they are Pyrethroid in nature.

Carbamate: These compounds are medium in toxicity when compared to organophosphates but more toxic than pyrethroids. They do however break down rapidly (chemicals last 4 weeks indoors and only a few days outdoors) and are not very toxic to fish and amphibians. Carbamates should not be used in a National Park.

### 56.3.1 RESTRICTED USE OF CHEMICALS WITHIN A National Park

A management plan for the use of chemicals within National Parks was written by D.A. Zeller and L.E.O. Braak in January 1995. This document contained policies regarding the use of chemicals within National Parks as well as list of restricted chemicals, prohibited chemicals and chemicals to be phased out. This list has since been updated by L. Foxcroft in January 2004. The new edition has one list of chemicals, for which the importation and use of within National Parks are strictly prohibited. A second list has been included outlining chemicals that are not recommended for use within National Parks, based on the chemical class of their active ingredients. Although the prohibited list has been part of the management plans since 1995, a large number of pesticides containing chemicals on these restricted and prohibited lists, are currently available and being sold within both staff and tourist retail outlets inside National Parks.

### 56.3.2 RATS AND MICE

#### 56.3.2.1 General information

Rats and mice are mostly active at night. They have poor eyesight, but they make up for this with their keen senses of hearing, smell, taste and touch. Rats and mice constantly explore and learn about their environment memorizing the locations of pathways, obstacles, food and water, shelter and other elements in their domain. They quickly detect and tend to avoid new objects placed in a familiar environment. Thus, objects such as traps and baits are often avoided for several days or more following their initial placement. Mice and young rats can squeeze beneath a door with only 2cm gap. If the door is made of wood, rats may gnaw to enlarge the gap. Rats and mice eat a variety of foods including cereal grains, meats, fish, nuts, fruits, slugs and snails. When searching for food, rats and mice can travel up to 150m from their nests or burrows. Females can wean between 3 – 6 litters per year, each litter containing between 3 – 5 young. Rats consume and contaminate foodstuffs and damage storage containers. They can also cause damage by gnawing electrical wires and wooden structures.

#### 56.3.2.2 Management

Three elements are necessary for a successful rat and mouse management program: sanitation, building construction and rodent proofing and, if necessary, population control.

56.3.2.3 Mechanical Control

56.3.2.3.1 *Sanitation: Sanitation is fundamental to rat control and must be continuous. If sanitation measures are not properly maintained, the benefits of other measures will be lost and rats will quickly return. Good housekeeping in and around buildings will reduce available shelter and food sources for rats and mice. Neat, off-the-ground storage of pipes, timber, crates, boxes, gardening equipment and household goods will help reduce the suitability of the area for rats and will also make their detection easier. Garbage and garden refuse should be collected frequently and all garbage containers should have tight fitting covers. Thinning dense vegetation will make the habitat less desirable including climbing hedges such as jasmine and ivy. Trees with branches hanging closer than 1m to the roof should be trimmed.*

56.3.2.3.2 *Building construction and rodent proofing: The most successful and long lasting form of rat control in buildings is to “build them out”. Seal off cracks and openings in building foundations, and any openings for water pipes, electric wires, sewer pipes, drain spouts and vents. No hole larger than 7mm should be left unsealed. Make sure doors, windows and screens fit tightly. Their edges can be covered with sheet material if gnawing is a problem. Coarse steel wool, wire screen and lightweight sheet material are excellent materials for plugging gaps and holes. Plastic sheeting, wood, caulking and other less sturdy materials are likely to be gnawed away. Because rats and house mice are good climbers, openings above ground level must all be plugged; especially all access points in the roof. Chimneys should be covered with wire netting or gauze to prevent rat and mice entry. Check all screens on windows, doors, and air vents are in good condition. Make sure all exterior doors are tight fitting and weatherproofed at the bottom.*

56.3.2.3.3 *Trapping: This is the safest and most effective way of controlling rats in and around homes. Traps can be used more than once therefore it is a cost effective but more labour-intensive method. The kind of bait used for the trap is important. Dried fruit or bacon makes excellent bait for rats. The bait should be fastened securely to the trigger of the trap with a light string or bit of glue. Soft baits such as peanut butter or cheese can also be used, but rats sometimes take soft baits without setting off the trap. Leaving traps baited but unset until the bait has been taken at least once improves*

*trapping success by making the rodents more accustomed to the traps. Set traps so the trigger is sensitive and will spring easily. The best places to set traps are in secluded areas where rats are likely to travel and seek shelter. Droppings, gnawing and damage indicate the presence of rodents and areas where such evidence is found are usually the best places to set traps, especially when these areas are located between their nests and food sources. Place traps in natural traveling paths such as along a wall, so the rodents will pass directly over the trigger of the trap. Position traps along a wall at right angles, with the trigger end nearly touching the wall. If traps are set parallel to the wall, they should be set in pairs to intercept rodents traveling from either direction. If a rat sets off a trap without getting caught, it will be very difficult to catch the rat with the trap again. Other good places for traps are behind objects, in dark corners, on ledges, shelves, branches, fences, pipes or overhead beams. In overhead places, the traps should be attached securely with screws or wire. In areas where children or birds and other animals might contact traps, place the trap in a box or use a barrier to keep them away. Use as many traps as are practical so trapping time will be short and decisive. A dozen or more traps for a heavily infested home may be necessary. Place rat traps about 5-10 meters apart. Dispose of dead rats by burying them. Do not touch the dead rodent with bare hands and wash thoroughly after handling traps. Live traps are not recommended because trapped rats must either be killed or released elsewhere. Releasing rat's outdoors is not recommended because of health concerns.*

#### 56.3.2.4

##### Chemical control

While trapping is generally recommended for controlling rats indoors, when the number of rats around a building is high, it may be necessary to use toxic baits to achieve adequate control, especially if there is a continuous infestation from surrounding areas. Most toxic baits for rodents contain active ingredients that work as an anticoagulant, causing death by internal bleeding. Most anticoagulant baits have been considered as relatively safe baits to use around the house and garden because they require multiple feedings to be effective. This is referred to as a first generation poison, as only the target animal will be killed. Some of the more lethal rodent poisons that are prohibited for use in a National Park, contain a single feed, second generation poison, that will result in death to anything that eats the poison directly from the baits, or indirectly, by

eating the dead rodents (e.g. Predators including owls, genets etc.). Rodent bait should only be used, when placed in a bait station (Rodent bait station made by Bayer). These bait stations protect the bait from weather and restrict accessibility to rodents, providing a safeguard for people and other animals. Place bait stations next to walls or in places where rats will encounter them. Stations that may be accessible to children must be made of sturdy, tamper resistant material and be secured in a way that they cannot be tipped. All bait stations should be clearly labelled. The use of bait stations help rats to feel secure when feeding. Place all bait stations in rat travel-ways or near their burrows. Do not expect rats to go out of their way to find the bait. If you place bait stations above the ground (on fences, eaves), make sure they are securely fastened, and will not fall onto the floor where children may find them. Because rats are often suspicious of new or unfamiliar objects, it may take several days for them to enter and feed in bait stations. For best results, make sure there is a continuous supply of bait until feeding stops. It usually takes 5 days or more once the rats start feeding for them to succumb. During the baiting process, dispose of dead rodents by burying them, or placing them in a marked plastic bag, and putting them in the rubbish for incineration at the dump. Use gloves and wash hands thoroughly after handling dead rodents, traps or bait stations. Additionally, poisoned rats often die in inaccessible locations within a building, leading to persistent and unpleasant odours, so rodent proof the building before you use toxic baits outside. A successful bait formula that can be administered in a Bayer Rodent Bait station can be made up as follows: Dilute 1 part **Racumin** (made by Bayer) in 30-40 parts water (8g/l). Dilute 1litre of lecol pinenut with 7 litres of water, and add 40ml of Racumin. Keep this available for 16 days and refill as required. This is a first generation poison, so animals need multiple feeds to die. It will therefore not affect predators feeding on them. Rats drink every 24 hours, therefore bait after dark, in secluded spots to minimize contaminating other small animals. Remove bait stations during the day.

### 56.3.3 COCKROACHES

#### 56.3.3.1 General information

Cockroaches may become pests in any structure that has food preparation or storage areas. They contaminate food and eating utensils, destroy fabric and paper products, and impart stains and unpleasant odours to surfaces they contact. They may transmit bacteria that cause food poisoning. The skin shed

by cockroaches may cause asthma in children if inhaled. In South Africa, the exotic German cockroach is the main pest. Cockroaches are common in kitchens and bathrooms because they favour warm, humid areas that are close to food and water. The German cockroaches are the fastest reproducing of all the pest cockroaches and a single female and her offspring can produce over 30,000 individuals in a year. Egg laying occurs more frequently during warm weather. The female carries around a light tan egg case (6mm long) for about 28 days (1-2 days before the eggs hatch), when she drops it. Each case contains about 30 young and a female may produce a new egg case every few weeks. Young or immature cockroaches undergo gradual metamorphosis resembling the adult visually and in feeding habits, but do not have fully developed wings and are not reproductively active. Cockroaches are white after moulting, but their outer covering thickens and darkens as it hardens within hours. Cockroaches are nocturnal; hiding in dark, warm areas especially narrow spaces where surfaces touch them on both sides.

#### 56.3.3.2 Management

Cockroaches are tropical and like warm hiding places with access to water. If cockroaches have access to food, baits will have limited effect. Sprays alone will also not be effective against cockroaches. An integrated approach is required. The keys to controlling cockroaches are sanitation and exclusion: cockroaches will continue to re-invade as long as the habitat is suitable for them (i.e. available food, water and shelter). In addition to sanitation and exclusion, baits can be effective. Sprays or dusts that are registered for use on cockroaches may temporarily suppress populations, but they do not provide long-term solutions.

#### 56.3.3.3 Mechanical control

Sanitation: Cockroaches thrive where food and water are available to them. Even tiny amounts of crumbs or liquids caught between cracks provide a food source

Important sanitation measures include:

- Store food in insect-proof containers such as glass jars or sealed plastic containers
- Keep rubbish in containers with tight fitting lids. Remove rubbish,

newspapers, magazines, piles of paper bags, rags, boxes and other items that provide hiding places. Do not store rubbish indoors or close to the house.

- Eliminate plumbing leaks and correct other sources of free moisture. Increase ventilation where condensation is a problem.
- Vacuum cracks and crevices to remove food and debris. Be sure surfaces where food or beverages have been spilled are cleaned up immediately. Vacuuming also removes cockroaches, shed skins and egg capsules. Removing cockroaches reduces their numbers and slows development.
- Trim shrubbery around buildings to increase light and air circulation, especially near vents, and eliminate ivy or other dense ground covers near the house as these may harbour cockroaches.
- Remove trash and stored items such as piles of wood that provide hiding places for cockroaches from around the outside of buildings.

Exclusion and removal of hiding places: During the day, cockroaches hide in cupboard cracks, stoves, crawl spaces, outdoor vegetation and many other locations. They invade kitchens at night. Limiting hiding areas or avenues of access to living areas is an essential part of an effective management strategy. False-bottom cupboards, hollow walls and similar areas are common cockroach refuges. Prevent access to the inside of buildings through cracks, conduits, under doors or through other structural flaws:

- Seal cracks and other openings to the outside
- Look for other methods of entry such as from items being brought into the building, especially appliances, furniture and items that have been in storage.
- Look for egg sacs glued to undersides of furniture, in refrigerator and other appliance motors, boxes and other items. Remove and destroy any that are located.
- Locate and seal cracks inside the treatment area where cockroaches can hide.

#### 56.3.3.3.1

#### Chemical control

Insecticides are most effective in controlling cockroaches when combined with sanitation and exclusion practices that limit the cockroaches' ability to establish or re-invade; **chemical control alone will not solve the problem**. If insecticides are used, they must always be used with extreme care. Indoor chemical control is warranted only if the cockroach population is established but not for an incidental intruder or two.

- Fendona (*Made by Cyanamid, active ingredient = Alpha-cypermethrin*) should be diluted at the specified rate, and sprayed onto surfaces frequented by cockroaches. Use a higher rate for longer residual action or where infestation is severe. Repeat when necessary.
- Staryside (*made by Bayer, active ingredient = Triflumuron*) should be diluted at 10ml per 10l, and applied simultaneously (in the same sprayer) with the adult treatment. In summer, it can be effective for up to 3 months, and in winter, up to 6 months.
- Premise cockroach bait gel (*made by Bayer, active ingredient = imidacloprid*). Use in pistol gun, apply in small cracks and holes. Very effective and long lasting. Most insecticides used in baits are slow-acting; cockroaches quickly learn to avoid fast acting ones.

Consequently, an effective bait programme does not give immediate results, but may take 7 days or longer. Baits can be quite effective for long-term control of cockroaches unless the cockroaches have other food sources available to them. Baits do not control all cockroaches equally. Female cockroaches with egg cases do very little feeding and avoid open spaces; consequently they are less likely to be immediately affected by bait. Baits do not attract cockroaches, so place them near hiding places or where cockroaches are likely to encounter them while foraging. Bait can also be placed near to faecal specks and droppings of cockroaches, which contain a natural aggregation pheromone. Look for these faecal specks and droppings under kitchen counters, behind kitchen drawers and in the back of cabinets. The German cockroach has developed resistance (or tolerance) to many insecticides used for their control. If cockroaches seem to be unaffected a day after the application of the spray, a different material or strategy may be required. After a cockroach control programme has been started, evaluate the effectiveness visually. If populations persist, re-evaluate the situation. Look for other sources of infestation, making sure all

possible entryways are blocked, be certain that food and water sources are eliminated as much as possible, and continue sealing and eliminating hiding places. When populations are under control, continue monitoring on a regular basis to make sure re-infestation is not taking place. Maintain sanitation and exclusion techniques to avoid encouraging a new infestation. If severe re infestations continue to occur, consider having the infested area modified or remodelled to reduce the amount of suitable habitat for cockroaches.

#### 56.3.4 FISH MOTHS

##### 56.3.4.1 General information

Fish moths hide during the day, but are active at night looking for food and water. Fish moths eat cereals, moist wheat flour, books, paper on which there is glue or paste, wall paper, book bindings and starch in clothing. They can live for several months without food. Fish moths live and develop in damp cool places particularly in basements and laundry rooms.

##### 56.3.4.2 Management

###### 56.3.4.2.1 Mechanical control

To keep fish moths away, keep basements, laundry rooms and bathrooms (especially shower stalls) clean and dry. Plug or putty holes or spaces around pipes. Repair leaks and drips in plumbing. Clean out closets periodically. Collections of magazines, papers and books provide food for them. Move books around in bookcases occasionally. Keep foods in containers with tight lids.

###### 56.3.4.2.2 Chemical control

Fish moths can be controlled using the same chemicals used to control cockroaches. A properly and thoroughly applied insecticide will show results in a few weeks. If control is not achieved in 2 or 3 weeks, fish moths are probably coming from untreated areas. Seek these areas out for treatment and also eliminate water sources. Large populations of fish moths cannot be controlled unless their water sources are eliminated. Chemical control advised for cockroaches will also work on fish moths, no additional pesticides are necessary.

## 56.3.5 BED BUGS

### 56.3.5.1 General information

Female bedbugs lay from 200-500 eggs (in batches of 10 – 50) on rough surfaces such as wood or paper. Eggs are covered in a glue and hatch in about 10 days. There are five progressively larger nymph stages each requiring a single blood meal before moulting to the next stage. The entire life cycle from egg to adult requires anywhere from 5 weeks to 4 months, depending on temperature. Nymphs and adults generally feed at night and hide in crevices during the day. Common hiding places include seams in mattresses and box springs, cracks in bed frames, under loose wallpaper, behind picture frames and inside furniture and upholstery. Bed bugs can go without feeding for 80-140 days; older stages can survive longer without feeding than younger ones. Adults have survived without food for as long as 550 days. A bed bug can take 6 times its weight in blood and feeding can take 3 – 10 minutes. Adults live about 10 months and there can be 3-4 generations of bed bugs per year. In addition to leaving a bite wound on their hosts, bed bugs have stink glands that leave odours; they also leave faecal spots on bed sheets and around their hiding places.

### 56.3.5.2 Management

Infestations of bed bugs can be detected by looking for their faecal spots, egg cases and shed skins under wallpaper, behind picture frames, and inside cracks and crevices near beds.

#### 56.3.5.2.1 Mechanical control

Indirect measures can go a long way in controlling bed bugs: keep bats and birds away from houses; clean furnishings, launder bedding and mattress pads and steam-clean mattresses; and prevent bed bugs from getting into homes by removing debris from around the house, repairing cracks in walls, and caulking windows and doors. Simple physical control methods include standing the legs of beds in soapy water, coating the legs with petroleum jelly or double-sided sticky tape. Bed bugs cannot climb polished glass or metal easily and they do not fly. Legs of beds can also be placed inside glass jars or metal cans. Heating to 50 degrees C, or freezing to below zero will kill most bed bugs.

56.3.5.2.2 Chemical control

Doom dual Action Fogger Insecticide (made by Robertson's homecare, and contains pyrethroid active ingredients) lasts for about 6 months. Also kills adult cockroaches. Ignite and let smoulder for 2-3 hours.

56.3.6 TERMITES

56.3.6.1 General information

Termites are small white, tan or black insects that can cause severe destruction to wooden structures. They belong to the insect order Isoptera, dating back more than 100 million years. Although many people think termites have only negative impacts, in nature they make positive contributions to the world's ecosystems. Their greatest contribution is the role they play in recycling wood and plant material. Their tunneling efforts also help to ensure that soil are porous, contain nutrients and are healthy enough to support plant growth. Termites are very important in the Sahara desert where their activity helps to reclaim soils damaged by drying heat and wind and overgrazing by livestock. Termites have become a problem where they consume structural timber. Termites may also damage utility poles, food, books and household furniture. Termites are social and can form large nests or colonies consisting of very different looking individuals (castes). Physically, the largest individual is the queen. Her function is to lay eggs, sometimes thousands in a single day. A king is always at her side. Other individuals have large heads with powerful jaws, or a bulblike head that squirts liquid. These individuals are called soldiers. The largest groups of termites in a colony are the workers. They work long hours tending to the queen, building the nest or gathering food. While other species of social insects have workers, termites are unique in that they have both male and female workers. Termites can be long-lived: queens and kings can live for decades while individual workers can survive several years.

56.3.6.2 Management

Successful termite management requires special skills including a working knowledge of building construction and an understanding of termite biology. An integrated programme is required to manage termites. Combine methods such as modifying habitats, excluding termites from the building by physical and chemical means, and using mechanical and chemical means to destroy existing colonies.

56.3.6.2.1            Inspection: Before beginning a control program, thoroughly inspect the building. Verify that there are termites, identify them, and assess the extent of their infestation and damage. Look for conditions in and around buildings that promote termite attack, such as excessive moisture or wood in contact with the soil.

56.3.6.2.2            **Mechanical control**

Prevention: Building design may contribute to termite invasion. Keep all substructural wood at least 30 cm above the soil beneath the building. Alternatively, sink subterranean wood in concrete as a barrier against termites. Identify and correct other structural deficiencies that attract or promote termite infestations. Keep foundation areas well ventilated and dry. Reduce chances of infestation by removing or protecting any wood in contact with the soil. Look for and remove tree stumps, stored wood, untreated fence posts and buried scrap wood near the structure that may attract termites. Foundation sand barriers can be used for subterranean termite control. Sand with particle size in the range of 10-16 mesh, is used to replace soil around the foundation of a building. Subterranean termites are unable to construct their tunnels through the sand and therefore cannot invade wooden structures resting on the foundation.

56.3.6.2.3            Chemical control

Pre-infection treatment of wood: Wood used in foundations and other wood in contact with the soil may be chemically treated to help protect against termite damage in areas where building designs cannot be altered or concrete or sand cannot be used. Treated wood is toxic to termites and discourages new kings and queens from establishing colonies in it. If susceptible wood is used above the treated wood, subterranean termites can build their shelter tubes over chemically treated wood and infest untreated wood above. Use only “exterior grade” treated wood for areas that are exposed to weather; otherwise, the chemical that is in the wood may leach from the wood. All topical (applied to wood by painting on) treatments that will be exposed to weather must also have a sealer coat to prevent leaching into the soil following rain. Also, because they contain pesticides, disposal of treated wood requires special handling. CCA (chromated copper arsenate) can be used to treat wood prior to construction. It gives the wood a green tint. Although this is a natural poison, it will not leach much into the soil. **Creosote** is a natural treatment. Wood can be soaked in a

hot bath (almost boiling) of creosote until it has penetrated 1/3 of the way into the wood.

*Post-infection treatment of wood:* Subterranean termites in structures cannot be adequately controlled by fumigation, heat treatment or freezing because the reproductives or nymphs are concentrated below ground level in structures out of reach of these control measures. The primary methods of controlling these termites are the application of insecticides. Treating infested wood in a structure requires drilling and injecting chemicals into the wood to reach the colony. Alternatively, the infested wood can be sprayed liberally with the insecticide (**Premise**). Spray wood at least 1 m above ground level, and spray the soil all around the infected wooded structure. Use of insecticides should be supplemented with the destruction of their access points or nests. To facilitate control of subterranean termites, destroy their shelter tubes whenever possible to interrupt access to wooden substructures and to open colonies to attack from natural enemies such as ants.

*Treatment of soil:* Insecticides are applied to the soil either in drenches or by injection. Special hazards are involved when applying insecticides to the soil around and under buildings. Applications in the wrong place can cause insecticide contamination of plumbing used for water under the treated building. Soil type, weather and application techniques influence the mobility of insecticides in the soil. Soil applied insecticides must not leach through the soil profile to contaminate groundwater. **Premise** (made by Bayer) is effective in combating subterranean termites. It is expensive, but very concentrated and long lasting. One application should be effective for up to 6 years. Dilute as specified (350g/l) and apply in a trench around the building along foundations (6 x 6 inches wide). For existing buildings, apply 3 – 6 l per linear meter (trench treatment). Where possible, treat similarly treat inside along outer foundation walls (suspended floors), or, if impossible, (solid floors), drill through floor adjacent to outer foundation walls, flood soil below by injecting emulsion through holes and seal. Ensure that soil along the whole length of the foundation walls, is thoroughly treated. For new buildings, prior to construction, apply as an overall drench to soil under floor area at 5l per square meter. Use higher rate on heavy (clay e.g. basalt) soils. Apply to bottom of foundation and service trenches, and to soil on both sides of outer foundation walls at 6l per linear meter (trench treatment). For infested wooden structures, apply **Premise** in a

spray (mix as above) liberally to the infested wood, and surrounding soil.

## 56.3.7 ANTS

### 56.3.7.1 General information

Ants are among the most prevalent pests in the household. They are found in any environment where they have food and water. Once ants have established a colony inside or near a building, they may be difficult to control. On outdoor (and sometimes indoor) plants, ants protect and care for honeydew-producing insects such as aphids, increasing damage from these pests. Ants also perform many useful functions in the environment, such as feeding on other pests (e.g. Fleas, caterpillars and termites), dead insects, and decomposing tissue from dead animals. Ants are close relatives of bees and wasps, and are often confused with termites. Three main characteristics distinguish ants from termites:

- The ant's abdomen is constricted where it joins the thorax, giving it the appearance of having a thin waist; the termite's abdomen is broad where it joins the thorax.
- The ant's hind wings are smaller than its front wings; the termites' front and hind wings are about the same size (shortly after their flights to find new colonies, both ants and termites remove their wings so wings may not always be present).
- Winged female ants and worker ants have elbowed antennae; the termite's antennae are never elbowed.

Ants undergo complete metamorphosis, passing through egg, larval, pupal and adult stages. Larvae are immobile and wormlike and do not resemble adults. Ants are social insects with duties divided among different types or castes of adult individuals. Queens conduct the reproductive functions of a colony and are larger than any other ants: they lay eggs and sometimes participate in the feeding and grooming of larvae. Female workers, who are sterile, gather food, feed and care for the larvae, build tunnels and defend the colony; these workers make up the bulk of the colony. Males do not participate in colony activities; their only apparent purpose is to mate with the queens. Few in number, the males are fed and cared for by the workers. Inside a building, household ants

feed on sugars, syrups, honey, fruit juice, fats and meats. Long trails of thousands of ants may lead from nests to food sources, causing considerable concern among building occupants. Outdoors they are attracted to sweet, sticky secretions, or honeydew, produced by aphids. Ant usually nest in soil; nests are often found next to buildings, along sidewalks, or in close proximity to food sources such as trees and plants that harbour honeydew producing insects. They also construct nests under boards, stones, tree stumps or plants, and sometimes under buildings or other protected places. Ants enter buildings seeking food and water, warmth and shelter, or a refuge from dry, hot weather or flooded conditions. They may appear suddenly in buildings of other food sources become unavailable or weather conditions change. A single newly mated queen typically establishes a new colony. After weeks or months of confinement underground, she lays her first eggs. After the eggs hatch, she feeds the white, legless larvae with her own metabolized wing muscles and fat bodies until they pupate. Several weeks later the pupae transform into sterile female adult workers, and the first workers dig their way out of the nest to collect food for themselves, for the queen (who continues to lay eggs) and for subsequent broods of larvae. As numbers increase, new chambers and galleries are added to the nest. After a few years, the colony begins to produce winged male and female ants, which leave the nest to mate and form new colonies.

#### 56.3.7.2 Management

Ant management requires diligent efforts and the combined use of mechanical, cultural, sanitation and sometimes chemical methods of control. It is unrealistic and impractical to attempt to eliminate ants from an outdoor area. Focus your management efforts on excluding ants from buildings and eliminating their food and water sources. Become aware of the seasonal cycle of ants in your area and be prepared for annual invasions by sealing the building in time.

##### 56.3.7.2.1 Mechanical control

*Exclusion and sanitation:* To keep ants out of buildings, seal cracks and crevices around foundations that provide entry from the outside, using silicon. Ants prefer to make trails along structural elements, such as wires or pipes, and frequently use them to enter and travel within a structure to their destination. Indoors, eliminate cracks and crevices wherever possible especially in kitchens

and other food preparation and storage areas. Store attractive food items such as sugar, syrup, honey and other sweets in closed containers that have been washed to remove residues from outer surfaces. Rinse out empty soft drink containers and remove them from the building. Thoroughly clean up grease and spills. Do not store rubbish indoors. Look for indoor nesting sites such as potted plants. If ants are found, remove containers from the building and submerge the pot for 20 minutes in standing water that contains a few droplets of liquid soap. Ant nests may be associated with plants that support large populations of honeydew producing insects. Avoid planting such trees and shrubs near to buildings.

#### 56.3.7.2.2 Chemical control

**Coopex ant dust** (made by AgrEvo) is the only chemical that is legal to use against ants in National Parks. Dust freely along runs and around nests, repeating where necessary. **Fendona** (see cockroach control) is also an effective and approved chemical used in ant control. **This however, is for use on man-made structures only, not for application to vegetation/in gardens etc.**

#### 56.3.8 BEES

Bees play a vital role in the functioning of the ecosystem.

##### 56.3.8.1 Management

###### 56.3.8.1.1 Mechanical control

Bees can be smoked out in most cases. Once the bees have been removed, (either by smoke or pesticide), **Coltar** (carbolic acid) can be sprayed onto the area to get rid of the smell of the pheromones. If not removed, the pheromones could attract the bees back to the same place. **Jays fluid** can be applied to the area after the Coltar to further clean it. These can then be washed off using soapy water. **Brown vinegar** is a bee repellent. Once bees have been removed, it can be applied directly to the area. Pieces of cloth swabbed in brown vinegar can be left in the area to repel the bees.

###### 56.3.8.1.2 Chemical control

It not policy for pesticides to be used to remove bees from any man-made structure except in extreme circumstances. If the bees are posing a threat to humans and the option of smoking them out is not viable, the pesticide *Raidyard* can be used to kill the bees. This can be sprayed from 6m away to avoid danger to the person applying the pesticide. *Permethrin* spray is also a good repellent, and can be sprayed on the cleaned area to repel the bees from re-occupying the space.

## 56.3.9 SPIDERS

### 56.3.9.1 General information

Unlike mosquitoes, spiders do not seek people in order to bite them. Generally, a spider does not try to bite a person unless it is being squeezed, lain on or simply provoked to defend itself. Moreover, the jaws of most spiders are so small that the fangs cannot penetrate the skin of an adult person. Sometimes when a spider is disturbed in its web, it may bite instinctively because it mistakenly senses an insect has been caught. Spiders are primarily beneficial and their activities should be encouraged in the garden. Pesticide control is difficult and rarely necessary. The best approach to controlling spiders in and around the home is to remove hiding spots for reclusive spiders and regularly clean webs off the house with brushes and vacuums.

### 56.3.9.2 Management

#### 56.3.9.2.1 Mechanical control

Spiders may enter houses and other buildings through cracks and openings. They may also be carried in on plants, wood and boxes. Regular vacuuming or sweeping of windows, corners of rooms, storage areas and basements and other seldom used areas helps remove spiders and their webs. Vacuuming spiders can be an effective control technique because their soft bodies usually do not survive this process. Indoors, a web on which dust has gathered is an old web that is no longer being used by a spider. Individual spiders can also be removed from indoor areas by placing a jar over them and slipping a piece of paper under the jar that then seals off the opening of the jar when it is lifted up. To prevent spiders from coming indoors, seal crack in the foundation and other parts of the structure and gaps around windows and doors. Good screening will keep out spiders but will also keep out the insects that attract the spiders in the

first place. In indoor storage spaces, place boxes off the floor and away from walls, where possible, to help reduce their usefulness as a harbourage for spiders. Sealing the boxes with tape will prevent spiders from taking up residence within. Clean up clutter in garages, sheds, basements and other storage areas. Outdoors, eliminate places for spiders to hid and build their webs by keeping the area next to the foundation free of trash, leaf litter, heavy vegetation and other accumulations of materials. Trimming plant growth away from buildings will discourage spiders from first taking up residence near the structure and then moving indoors. Outdoor lighting attracts insects, which in turn attracts spiders. If possible, keep lighting fixtures off structures and away from windows and doorways. Sweep, mop, hose and vacuum spiders and webs off buildings regularly.

#### 56.3.9.2.2 Chemical control

Insecticides will not provide long-term control and should not generally be used against spiders. Pesticide control of spiders is difficult unless you actually see the spider and are able to spray it. If you spray a spider, it will be killed only if the spray lands directly on it; the spray residual does not have a long-lasting effect. This means a spider can walk over a sprayed surface a few hours after treatment and not be effected. Control by spraying is only temporary if not accompanied by housekeeping. It is just as easy and much less toxic to catch and remove the spider from the building, or to simply vacuum it up.

### 56.3.10 SCORPIONS

#### 56.3.10.1 **General information**

Scorpions are nocturnal, predatory animals that feed on a variety of insects, spiders and centipedes. Although they have two eyes in the center of the head and usually from two to five more along the margin on each side, they do not see well and depend on touch. Scorpions that hide under stones and other objects during the day tend to carry their stinger to one side, whereas burrowing scorpions hold their stinger up over their backs. Scorpions grow slowly. Depending on the species, they may take between 1-6 years to reach maturity. On average, scorpions may live 3-5 years, but some species can live as long as 10 – 15 years. Scorpions have an interesting mating ritual that may last several hours, with the male grasping the female's pincers in his and leads her in a

courtship dance. The male then deposits a sperm packet and manoeuvres the female over it. The sperm packet is drawn into the females opening located near the front on the underside of her abdomen. The female stores the sperm packet, and the sperm is later used to fertilize the eggs. After mating, unless he is quick and able to escape, the male is often eaten by the female. Once impregnated, the gestation period may last several months to a year and a half, depending on the species. A single female may produce 25-35 young. Scorpions are born live and the young climb onto their mothers back. The young remain on their mother's back until the first moult. They assume an independent existence once they leave their mothers back. Scorpions moult five or six times until they become fully grown adults. Scorpions generally hunt at night using their stinger to paralyze prey. However, if the scorpion is strong enough to overpower its prey, instead of injecting venom, it will simply hold the prey and eat it alive. This conserves venom which can take up to 2 weeks to regenerate, during which time the scorpion's main defence is inactive. Outside during the day, scorpions hide in burrows or debris, under wood, stones or tree bark and under floors of buildings in crawl spaces. Indoors, scorpions may be found in cracks and crevices of woodwork, behind baseboards, in closets and attics, and inside walls. Scorpions gain entry into buildings through poorly sealed doors and windows, cracks in foundations, vents that are not properly screened and through plumbing and other openings.

#### 56.3.10.2 Management

##### 56.3.10.2.1 Mechanical control

To prevent stinging encounters with scorpions, do not leave shoes, boots, clothing items or wet towels outdoors where scorpions can hide. Shake all clothing/bed linen and towels before use. Portable UV lights can be used to detect scorpions as they glow luminously under this light and are easily seen. Outdoor lights attract insects and thus the scorpions that feed on insects. Yellow outdoor lighting is less attractive to insects and is recommended in areas where scorpions are prevalent. The first strategy for control is to modify the area surrounding a house because scorpions are difficult to control with insecticides. Use the following checklist to protect a building:

- (a) Clean the area by removing all rubbish, logs, stones, brick and other objects from around the foundation of the building.

- (b) Prune overhanging tree branches away from the house because they can provide a path to the roof for scorpions.
- (c) Install weather stripping (rubber seal) around loose fitting doors, between doors and floors and around windows.
- (d) Seal all eaves, pipes and other cracks that allow entrance into the home.
- (e) Make sure window screens fit tightly in the window frame and keep them in good repair.

How to safely capture a scorpion

Scorpions can be captured by placing a medium sized jar over the scorpion and sliding a sheet of heavy paper under the jar, trapping the scorpion. With the sheet of paper securely over the mouth of jar, invert the jar and the scorpion will fall to the bottom of the jar. Scorpions can also be picked up safely with forceps (10-12 inches) or with other long mechanical devices made for picking up small objects.

56.3.10.2.2 Chemical control

Chemical control of scorpions is not recommended. Apart from the unnecessary negative effects on the environment, pesticides are not very effective against scorpions as they hide in cracks and crevices during the daylight hours. Adult scorpions are difficult to kill with pesticides because of their larger body size and thicker cuticle.

56.3.11 SAFE AND EFFECTIVE PESTICIDE USE

All pesticides are considered to be potentially poisonous and must be handled accordingly. On the label of each remedy, the minimum requirements for safe handling are given. In the case of many pesticides, it is sufficient to follow a few basic rules. These may be summarized as follows:

- a) Wear rubber gloves when pouring or measuring a concentrate before dilution. This should be done in such a manner that any fumes or dust will drift away from the applicator. Immediately wash off any spillage on the body with soap and lots of water.
- b) Wear an overall or other old clothing that will cover most of the body. These

should be regularly washed especially when applying pesticide over an extended period of time. When applying, always keep out of the spray drift or dust cloud.

- c) Never smoke, eat or drink during application. Wash at least the hands and face before doing so, during a break.
- d) Take a bath after completing the application and change into clean clothes never continue with another job while still wearing clothes contaminated by a pesticide.
- e) In the case of highly poisonous pesticides it is imperative that additional precautions be taken. Special protective clothing in good repair, rubber gloves and boots, headgear, goggles and mask or respirator must be worn. The eyes and respiratory tract must be adequately protected.

#### 56.4 REFERENCES

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**57. SCHEDULE 15 – PREFERRED PEST CONTROL CHEMICALS**

| PEST          | SPECIES      | MORPHOLOGICAL PHASE | PESTICIDE ACTIVE INGREDIENT | PESTICIDE/CHEMICAL CLASS |
|---------------|--------------|---------------------|-----------------------------|--------------------------|
| Cockroaches   | Various spp. | Adult               | Alpha cypermethrin          | Pyrethroid               |
|               |              |                     | Deltamethrin                | Pyrethroid               |
|               |              |                     | Cyfluthrin                  | Pyrethroid               |
|               |              |                     | Beta-cyfluthrin             | Pyrethroid               |
|               |              | Larvae              | Triflumuron                 | Benoylurea               |
| Bed Bugs      | Various spp. | n/a                 | Permethrin                  | Pyrethroid               |
| Rats and Mice | n/a          | n/a                 | Coumatetralyl               | Coumarin anti-coagulant  |
|               |              |                     | Warfarin/Sulphaquinoxaline  | Coumarin anti-coagulant  |
| Termites      | Sub-         | n/a                 | Imidacloprid                | Chloronicotin            |

| PEST         | SPECIES                   | MORPHOLOGICAL PHASE   | PESTICIDE ACTIVE INGREDIENT   | PESTICIDE/CHEMICAL CLASS   |
|--------------|---------------------------|---|---|--|
|              | terranean wood destroying |   |   | yl   |
| Thatch mites | n/a                       | n/a   | Permethrin  | Pyrethroid   |
| Bees         | n/a                       | n/a   | Permethrin  | Pyrethroid   |
| Ants         | n/a                       | n/a   | Permethrin<br>See Cockroach   | Pyrethroid<br>See Cockroach  |
| Mosquitoes   | n/a                       | Smooth walls<br><br>Rough walls<br><br>Mozzie nets/clothing | Beta-cyfluthrin<br>Deltamethrin<br>Cyfluthrin<br>Lambda-cyhalothrin<br>Alpha cypermethrin | Pyrethroid<br>Pyrethroid<br>Pyrethroid<br>Pyrethroid<br>Cyanamid<br><br>Pyrethroid |

| PEST      | SPECIES | MORPHOLOGICAL PHASE | PESTICIDE ACTIVE INGREDIENT                            | PESTICIDE/CHEMICAL CLASS                      |
|-----------|---------|---------------------|--|---|
|           |         |                     | Permethrin<br>Propoxur<br>Cyfluthrin<br><br>Cyfluthrin | Carbomate<br><br>Pyrethroid<br><br>Pyrethroid |
| Fleas     |         |                     | See Cockroach  | See Cockroach                                 |
| Fishmoths |         |                     | See Cockroach  | See Cockroach                                 |
| Ticks     |         |                     |  | Pyrethroid                                    |

| PESTICIDE | FORM | COMPANY NAME | GRAMS PER ACTIVE INGREDIENT | DOSAGE    |
|-----------|------|--------------|-----------------------------|-----------|
| Fendona   | AL   | Cyanamid     | 1g/l                        | Undiluted |
|           | SC   | Cyanamid     | 100g/l                      | 25-50ml   |
|           |      |              | 60g/l                       | 40-85ml   |

| PESTICIDE                        | FORM     | COMPANY NAME | GRAMS PER ACTIVE INGREDIENT | DOSAGE  |
|----------------------------------|----------|--------------|-----------------------------|---|
| K-Othrine                        |          | AgrEvo       |                             |   |
| Responsar                        | EW or HN | Bayer        |                             |   |
| Tempo                            | SC       | Bayer        | 125g/l                      | 20-40ml                                       |
| Starycide                        | SC       | Bayer        | 480g/l                      | 10ml/10l                                      |
| Coopex maxi/mini smoke generator | FD       | AgrEvo       | 135g/kg                     | 1 tin/120-1000m3                              |
| Coopex dust                      | DP       | AgrEvo       | 5g/kg                       | na  |
| Racumin                          | CB (l)   | Bayer        | 7.5g/kg                     | 1 part in 15-20 parts bait material undiluted |
| Kill-it?Rinoxin                  |          |              |                             |   |
| Premise                          | SC       | Bayer        | 350g/l                      | 145ml   |
| Coopex maxi/mini smoke generator | FD       | AgrEvo       | 135g/kg                     | 1tin/120-1000m3                               |
| Raidyard                         | Spray    |              |                             |   |
| Coltar or Jays fluid             |          |              |                             |   |

| PESTICIDE       | FORM             | COMPANY NAME         | GRAMS PER ACTIVE INGREDIENT | DOSAGE                                       |
|-----------------|------------------|----------------------|-----------------------------|--|
| Coopex ant dust | DP               | AgrEvo               | 5g/kg na                    | Na   |
| Fendona         | See<br>Cockroach | See<br>Cockroach     | See<br>Cockroach            | See<br>Cockroach                             |
| Tempo           | SC               | Bayer                | 125g/l                      | 20-40ml                                      |
| K-Othrin        |                  |                      |                             |  |
| Responsar       | EW or<br>HN#     | Bayer                |                             |  |
| Icon            |                  | Zeneca               | 100g/kg                     | 78g (1<br>sachet of<br>62.5g/8l of<br>water) |
| Fendona         | WP<br>AL<br>SC   | Cyanamid<br>Cyanamid | 1g/l<br>100g/l              | Undiluted<br>25-50ml<br>40-85ml              |
| Coopex          | WP               | AgrEvo               | 250g/kg                     | 25-50g                                       |
| Baygon          | WP               | Bayer                | 500g/kg                     | ?  |
| Baythroid       | WP               | Bayer                | 100g/kg                     | 20-40g                                       |
| Solfac          | EW               | Bayer                | 50g/l                       | 40-80ml                                      |

| PESTICIDE        | FORM             | COMPANY NAME     | GRAMS PER ACTIVE INGREDIENT | DOSAGE           |
|------------------|------------------|------------------|-----------------------------|------------------|
| Peripell         |                  |                  | 50g/l                       | 66ml             |
| See<br>Cockroach | See<br>Cockroach | See<br>Cockroach | See<br>Cockroach            | See<br>Cockroach |
| See<br>Cockroach | See<br>Cockroach | See<br>Cockroach | See<br>Cockroach            | See<br>Cockroach |
| Bayticol         |                  |                  |                             |                  |

**58. SCHEDULE 16 - COMPLIANCE EVENTS**

The following Compliance Events will apply to the Project:

The granting of any necessary authorisations, permits and/or licences by the Relevant Authority.

Provision by the Private Party of a Performance Bond in the amount and form indicated in Clause 18.

The commencement of operations within twelve (12) months from Signature Date.

**59. SCHEDULE 17 – BUSINESS ASSETS**

**60. SCHEDULE 18 – CAPITAL INVESTMENT ASSETS (IMMOVABLE AND MOVABLE)**

**61. SCHEDULE 19 – 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**”,

- 61.1 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:

- 61.2 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
- 61.3 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”**.
- 61.4 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.
- 61.5 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.
- 61.6 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:
- 61.6.1 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;
- 61.6.2 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
- 61.6.3 any intended security may not be obtained or protected or may be released or may

cease to be held for any other reason.

- 61.7 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.
- 61.8 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.
- 61.9 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:
- 61.9.1 release (or omit to perfect) any other securities (including suretyships and guarantees) held by it in respect of the Secured Obligations;
- 61.9.2 grant the Debtor extensions of time for payment; and
- 61.9.3 compound, or to make any other arrangements, with the Debtor for the reduction or discharge of the Debtor's indebtedness.
- 61.10 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**"):
- 61.10.1 no Surety shall file any claim against such Insolvent Debtor, save with the prior written consent of the Creditor; and
- 61.10.2 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.

- 61.11 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:
- 61.11.1 perform such obligation; and/or
  - 61.11.2 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.
- 61.12 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.
- 61.13 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.
- 61.14 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.
- 61.15 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.
- 61.16 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.

- 61.17 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.
- 61.18 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.
- 61.19 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.
- 61.20 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.
- 61.21 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.

- 61.22 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.
- 61.23 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.
- 61.24 The costs of this guarantee and suretyship, including any stamp duty payable hereon, shall be borne and paid by the Sureties jointly and severally.
- 61.25 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/lies (“**Cessionary/lies**”) 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/lies.
- 61.26 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.
- 61.27 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 \_\_\_\_\_ 2021**

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 \_\_\_\_\_ 2021**

.....

Witness:for \_\_\_\_\_

.....

Witness:for \_\_\_\_\_

.....

for \_\_\_\_\_

Witness:for \_\_\_\_\_

.....

Consent by spouse, if married in community of property

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Name:Signature:

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Name:Signature:

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**ANNEXURE 1 – SURETIES' DOMICILIUM**