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THE SOUTH AFRICAN NATIONAL PARKS ("SANParks")

PUBLIC PRIVATE PARTNERSHIP AGREEMENT FOR THE FINANCE, REFURBISHMENT, OPERATION AND MAINTENANCE OF THE MLUWATI CONCESSION AREA IN THE KRUGER NATIONAL PARK

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1. INTRODUCTION

1.1 SANParks is a juristic person established in terms of the now repealed section 5 of the National Parks Act, No. 57 of 1976 and continuing to exist as such in terms of section 54 of the National Environmental Management: Protected Areas Act, No. 57 of 2003 ("**Protected Areas Act**); and a public entity in terms of section 3(1)(b) of the Public Finance Management Act, No. 1 of 1999 (**"PFMA"**), and listed as such in Schedule 3: Part A of the PFMA.

1.2 SANParks has the objectives of, *inter alia*, ensuring sustainable conservation, diverse, responsible and quality tourism and socio-economic transformation. SANParks wishes to procure the Private Party to facilitate improved service delivery through increased efficiencies within the SANParks working environment, culture and internal processes.

1.3 In September 1998, the then Department of Environmental Affairs and Tourism, now Department of Forestry, Fisheries and the Environment ("**Department**") articulated the need for SANParks to prepare for a lesser dependence on state funding, which would increasingly be aimed at funding essential conservation requirements. This formed the basis of the Commercialisation Strategy adopted by SANParks in 2000, with the objective to reduce SANParks' dependence on state funding and improve existing operational efficiencies.

1.4 In the year 2000, SANParks concluded the Concession Contract which has reached the end of its term.

1.5 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 hotel, lodge and recreational operator to finance, refurbish, operate and maintain the Concession Area for the benefit of the public ("**Project**). Following a public tender process SANParks has awarded the tender to **[Name of Preferred Bidder Consortium]**, the Private

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Party, and has accordingly appointed the Private Party to perform the Project Deliverables on the terms and conditions as set out in this PPP Agreement.

1.6 SANParks has obtained the relevant approvals under the Treasury Regulations to implement the Project.

1.7 Accordingly, SANParks and the Private Party wish to enter into this Agreement to regulate the implementation of the Project on the terms and conditions set herein below.

1.8 The Private Party is, as recorded above, appointed to refurbish, finance, operate and maintain the Project. It shall not, in the course of such activities, acquire ownership of the Concession Area and SANParks Intellectual Property Rights as defined 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 **"Annual Financial Statements"** the audited annual financial statements of the Private Party setting out the statement of financial position, statement of profit or loss and income, statement of changes in equity, statement of cash flows, and the notes to the financial statements, prepared in accordance IFRS or such applicable accounting standards, and certified by the Private Party's independent external auditors, and submitted to SANParks by the Private

		Party for each reporting Financial Year;
2.1.2	**"Assessment Rates"**	all, assessment rates, fees, levies, or charges and any increase thereon, payable by the Private Party to any Responsible Authority having jurisdiction over the Concession Area or any building thereon by the owner thereof irrespective of the name by which they may be called;
2.1.3	**"B-BBEE Act"**	the Broad-Based Black Economic Empowerment Act, No. 53 of 2003, as amended by the Broad-Based Black Economic Empowerment Amendment Act, No. 46 of 2013 from time to time;
2.1.4	**"B-BBEE Obligations"**	the Black Economic Empowerment obligations imposed on the Private Party as set out in Schedule 5 (B-BBEE Obligations);
2.1.5	**"Bid Submission"**	the bid submitted by the Private Party and accepted by SANParks for the right to carry out the PPP opportunity;
2.1.6	**"Black Economic Empowerment" or "B-BBEE"**	shall have the meaning ascribed to it in the B-BBEE Act;
2.1.7	**"Black People"**	shall have the meaning ascribed to it

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		in the B-BBEE Act;
2.1.8	**"Business"**	the business of operating a lodge and recreational Concession Area that shall be conducted as a going concern upon the Facility;
2.1.9	**"Business Day"**	any day other than a Saturday, Sunday or national public holiday in South Africa;
2.1.10	**"Calendar Day"**	any day of the year, including a Saturday, Sunday, or public holiday, and **"Calendar Days"** shall have a corresponding meaning;
2.1.11	**"Capital Expenditure"**	any expenditure treated as capital expenditure under IFRS as used by the Private Party;
2.1.12	**"Capital Investment"**	all Capital Expenditure incurred by the Private Party for improvements to the immovable Concession Assets set out in SCHEDULE 24 (*concession* Assets) as approved by SANParks and recorded in the Private Party Annual Financial Statements;
2.1.13	**"Change in Control"**	any change whatsoever in Control whether effected directly or indirectly in the Private Party or the Shareholders other than a change in Control that arises out of any exercise

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		by the Lenders of any of their rights in terms of the Direct Agreement or the Financing Agreements;
2.1.14	**"Change in Ownership"**	any change in the shareholding of the Private Party which after implementation will result in the Technical Partner owning less than 30% equity interest in the Private Party;
2.1.15	**"Companies Act"**	the Companies Act, No. 71 of 2008, as amended from time to time;
2.1.16	**"Concession Area"**	the portion of the Concession Area described in SCHEDULE 1 - *DESCRIPTION OF* CONCESSION AREA)the camps and all associated facilities;
2.1.17	**"Concession Assets"**	the immovable assets shall mean buildings and all fixtures and fittings of a permanent nature, roads and bridges, all infrastructure associated with the provision of water supply and sanitation, including dams and boreholes and power lines that will be transferred from SANParks to the Private Party as set out fully in SCHEDULE 24 (concession Assets);
2.1.18	**"Concession Contract"**	a contract concluded between SANParks and the outgoing

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		concessionaire for the design, construction, repair, rehabilitation and operation of the Concession Area for provision of accommodation and related services for public and/or visitors to the KNP and connected Concession Area;
2.1.19	**"Conditions Precedent"**	the conditions to be fulfilled by the Parties prior to the Effective Date of the Agreement as set out in Schedule 27 (*Conditions Precedent*);
2.1.20	**"Confidential Information"**	any information or know-how in whatever form relating to the business affairs, trade secrets, products, operating, or marketing techniques, methods or processes, suppliers, customers or finances of either of the Parties;
2.1.21	**"Consents"**	all consents, permits, clearances authorisations, approvals, rulings, exemptions, registrations, filings, decisions, licences, certificates required to be issued by or made with any Responsible Authority in connection with the attainment of any of the Project Deliverables;
2.1.22	**"Constitutional Documents"**	the Private Party's memorandum of incorporation, certificate to commence business, shareholders' agreement,

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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 – *PRIVATE PARTY CONSTITUTIONAL* DOCUMENTS) and the terms of which shall be to the satisfaction of SANParks;

2.1.23 **"Conservation Levy"** the daily fee payable by persons entering and or staying at the Protected Area;

2.1.24 **"Control"** in relation to any entity, the ability, directly or indirectly to:

2.1.24.1. direct or cause the direction of the votes attaching to the majority of its issued shares or interests carrying voting rights; or

2.1.24.2. 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

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directors (or equivalent body);

2.1.25 **"CPA"** the Consumer Protection Act, No. 68 of 2008, as amended from time to time;

2.1.26 **"CPI"** the Consumer Price Index excluding interest on mortgage bonds for metropolitan and other urban areas published from time to time by Statistics South Africa in Statistical Release P0141.1 or any other index replacing it;

2.1.27 **"Depreciated Value"** the value of the Capital Investment calculated in accordance with depreciation presented and applied for income tax purposes, taking into account the unexpired portion of the period of the Project Term specified in Clause 5, provided that the minimum rates of depreciation shall not be less than the generally accepted industry practice(s) . For the avoidance of doubt, Capital Investment shall exclude:

2.1.28.1. all costs of maintenance to the Project Asset; and

2.1.28.2. any expenditure that does not constitute Capital Expenditure for

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accounting or income tax purposes;

2.1.28 **"Default Interest Rate"** the Prime Rate plus 1% (one percent);

2.1.29 **"Effective Date"** the 5th Business Day from the scheduled Long Stop Date, being the last date of fulfilment or waiver of any outstanding Conditions Precedents;

2.1.30 **"Early Termination"** the termination of the PPP Agreement prior to the expiry of the Project Term as a result of:

2.1.31.1. SANParks Default;
2.1.31.2. Private Party Default;
2.1.31.3. Force Majeure; or
2.1.31.4. Corrupt Act;

2.1.31 **"Early Termination Date"** the date of Early Termination of this PPP Agreement prior to the scheduled expiry date of the Project Term;

2.1.32 **"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;

2.1.33 **"Environment"** the aggregate of surrounding objects, conditions and influences that influence the life and habitats of humans or any other organism or

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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;

2.1.34 **"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;

2.1.35 **"Environmental Provisions"** shall refer to—

2.1.36.1. the Environmental guidelines ("**Environmental Specifications**") for operators operating within the Protected Area, which is further described in

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Schedule 7, as same may be revised and updated by SANParks from time to time, and

2.1.36.2. 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 Deliverables and/or this PPP Agreement from time to time or, if the context is appropriate, any one of them and where appropriate includes the Regulations, Park Rules and Park Management Plan;

2.1.36	**"Environmental Specifications"**	the requirements, conditions, obligations and specifications detailed in SCHEDULE 7 – ENVIRONMENTAL *SPECIFICATIONS FOR THE OPERATION OF CONCESSION AREA WITHIN THE* PROTECTED AREAS);
2.1.37	**"Equity"**	the entire issued share capital of the Private Party as at the relevant date;
2.1.38	**"Facility"**	the recreational facility located within

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		the Protected Area as more fully described in Schedule 1 (*Description of Concession Area*) including the land, buildings and other Concession Area Assets together with all supporting infrastructure, plant and equipment, and any new immovable structures constructed or developed by the Private Party upon the designated site during the Project Term;
2.1.39	**"Financial Year"**	each period of twelve (12) consecutive months in any given year for purposes of financial reporting of the Private Party;
2.1.40	**"Financing Agreements"**	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;
2.1.41	**"Force Majeure"**	has the meaning ascribed to it in clause 25;
2.1.42	**"Good Industry Practice"**	the exercise of that degree of skill, diligence, prudence and foresight which would reasonably and ordinarily be expected from time to time from a skilled and experienced contractor or professional, engaged in the same type of undertaking and under the

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		same or similar circumstances and conditions as those envisaged by this PPP Agreement; seeking in good faith to comply with all its contractual obligations herein and all applicable regulatory provisions;
2.1.43	**"Gross Revenue"**	shall have the meaning ascribed in clause 16.2;
2.1.44	**"Handover Period"**	the period of twelve (12) months prior to the termination of this PPP Agreement on expiry of the Project Term, within which the Private Party will hand over the Concession Area to a new Private Party following a procurement process undertaken by SANParks for appointment of a new operator;
2.1.45	**"Handover Principles"**	has the meaning ascribed to in clause 11 below;
2.1.46	**"Hygiene Audit"**	specifically relating to the public area only, hygiene audits to be conducted at the Facility at least twice a year by the Private Party;
2.1.47	**"IFRS"**	the International Financial Reporting Standards, being a set of accounting standards and interpretations developed by an independent, not-for-profit organization called the

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		International Accounting Standards Board (**"IASB"**);
2.1.48	**"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;
2.1.49	**"Insolvency Act"**	the Insolvency Act, No. 24 of 1936 as amended from time to time;
2.1.50	**"KNP Tariffs"**	the tariffs stipulated by SANParks and any other fees, levies and the like as provided for in the document titled *SANParks Tariffs* in respect of cost of recoveries incidental to goods and/or services provided by SANParks to the Private Party in the Protected Area, as may be reviewed by SANParks from time to time. The KNP Tariffs is available on request;

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2.1.51	**"Laws"**	the common law, Legislation, judicial decisions and any notifications or other similar directives made pursuant thereto that have the force of law;
2.1.52	**"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;
2.1.53	**"Lenders"**	any person providing financing to the Private Party for the execution of the Project by the Private Party, other than the shareholders of the Private Party;
2.1.54	**"Licensed Intellectual Property"**	all Intellectual Property to be used in the provision of the Project Deliverables by the Private Party or a Subcontractor under licence from any third party, as replaced and/or upgraded from time to time;
2.1.55	**"Local"**	the geographic area specified by SANParks in respect of the Concession Area, being within a 100-kilometre (100 km) radius of the Concession Area;
2.1.56	**"Long Stop Date"**	10 (ten) Business Days from the

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		Signature Date of this Agreement;
2.1.57	**"Minimum PPP Fee"**	that portion of the PPP Fee that is payable by the Private Party from the Operation Commencement Date, regardless of the amount of the Gross Revenue;
2.1.58	**"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;
2.1.59	**"Operation Manual"**	the SANParks operations manual dated [insert], as updated from time to time;
2.1.60	**"Outgoing Concessionaire"**	the existing Mluwati Concession Consortium;
2.1.61	**"Operation Commencement Date"**	the first Business Day after the Effective Date by which date the Private Party shall be required, alternatively be deemed, to have commenced the conduct of the Business, as the case may be, at the Facility in accordance with the terms and conditions of this PPP Agreement;
2.1.62	**"Park Management Plan"**	the management plan developed by SANParks for the Protected Area in

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		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;
2.1.63	**"Park Manager"**	the most senior manager of the Protected Area, designated as such by SANParks from time to time;
2.1.64	**"Park Rules"**	the Environmental rules in respect of the Protected Area, as may be revised and/or updated by SANParks from time to time;
2.1.65	**"Parties"**	collectively, SANParks and the Private Party;
2.1.66	**"Party"**	SANParks or the Private Party, as the case may be;
2.1.67	**"Performance Bond"**	the guarantee to be issued by a financial institution in favour of SANParks on behalf of the Private Party or cash amount deposited by the

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		Private Party into a SANParks' account in respect of the Private Party's obligations to perform under this PPP Agreement substantially in the format in Schedule 11 – *Performance* Bond) hereto;
2.1.68	**"Person"**	any individual, partnership, corporation, company, business organisation, trust, governmental agency, state owned entity, Relevant Authority or other entity;
2.1.69	**"PFMA"**	the Public Finance Management Act, No. 1 of 1999, as amended from time to time;
2.1.70	**"POPIA"**	the Protection of Personal Information Act, No. 4 of 2013;
2.1.71	**"PPP"**	public private partnership, as defined in the Treasury Regulations;
2.1.72	**"PPP Agreement"**	this public private partnership agreement between SANParks and the Private Party, including the Schedules and any annexures hereto as amended, extended, replaced and varied from time to time;
2.1.73	**"PPP Fee"**	the fee payable by the Private Party to SANParks in respect of the PPP opportunity, which amount shall be

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		made up of the Minimum PPP Fee and the Variable PPP Fee, as detailed in Clause 16.3. The PPP Fee shall exclude the Conservation Levy
2.1.74	**"PPP Rights"**	the right to refurbish, operate, finance, maintain, and manage the Business as more specifically set out in Clause 6 (PPP Rights);
2.1.75	**"Prime Rate"**	the arithmetic of the publicly quoted prime rate of interest (nominal annual compound monthly in arrears on a 365-day year, irrespective of whether or not the year is a leap year) of the Reference Banks, from time to time;
2.1.76	**"Private Party"**	the [•] Proprietary Limited, registration number [**insert registration number**], a for profit private company registered in accordance with the company laws of South Africa;
2.1.77	**"Private Party Default"**	shall have the meaning ascribed to in clause 27 below;
2.1.78	**"Private Party Parties / Representatives"**	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;

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2.1.79	**"Project"**	shall have the meaning assigned to that term in clause 1.5 above;
2.1.80	**"Project Assets"**	collectively, the Concession Assets and the Capital Investment on the Concession Assets, or if the context is appropriate, any one of them, including both movable and immovable assets;
2.1.81	**"Project Deliverables"**	the undertaking by the Private Party of its obligations in respect of the Project including inter alia:

2.1.83.1. the refurbishment and financing of the refurbishment of the Facilities;

2.1.83.2. provision of tourism accommodation and all its ancillary services;

2.1.83.3. financing the operations of the Facilities including the achievement of the B-BBEE Obligations; and

2.1.83.4. and the exercise and performance of all other rights and obligations of the Private Party under this PPP Agreement from time to time;

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2.1.82	**"Project Documents"**	all the agreements and documentation to be provided and executed by the Parties pursuant to the conclusion of the PPP Agreement which shall include, but not limited to: 2.1.84.1. this PPP Agreement and Schedules; 2.1.84.2. financing documents; and 2.1.84.3. required consents; .
2.1.83	**"Project Insurance"**	those insurances that the Private Party is required by Law and in terms of this PPP Agreement to purchase and maintain in terms of clause 18, upon the minimum terms set out In SCHEDULE 10 – *INSURANCE*);
2.1.84	**"Project Term"**	has the meaning ascribed to in clause 5 of this PPP Agreement;
2.1.85	**"Project Year"**	a period of twelve (12) consecutive months, commencing from the Effective Date and thereafter, each successive period of twelve (12) months ending on the day

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		immediately preceding the next anniversary of the Effective Date;
2.1.86	**"Protected Area/ KNP"**	the Kruger National Park;
2.1.87	"**Protected Areas Act**"	the National Environmental Management: Protected Areas Act, 57 of 2003, (as amended) from time to time);
2.1.88	**"Rand" or "R"**	the South African Rand, the lawful currency of South Africa;
2.1.89	**"Reference Banks"**	the four largest banks in South Africa by market capitalisation, from time to time;
2.1.90	**"Regulations"**	the regulations issued in terms of the Protected Areas Act;
2.1.91	**"Remedial Programme"**	the remedial programme to be submitted by the Private Party in the event of an occurrence of a Private Party Default setting out steps that the Private Party intends to take to remedy the underlying cause of such Private Party Default;
2.1.92	**"Responsible Authority"**	the South African national and/or provincial and/or local governmental authority having jurisdiction over any or all of the Parties or any subject matter of this PPP Agreement. A Responsible Authority shall, for the

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avoidance of doubt, not include any provider of Utilities;

2.1.93 **"Restricted Enterprise"** a person restricted from contracting with SANParks and/or a Responsible Authority as a result of being listed either on –

2.1.95.1. the Register for Tender Defaulters compiled in terms of the regulations to the Prevention and Combating of Corrupt Activities Act, 2004;

2.1.95.2. the Disqualified Directors' Register (maintained by the Companies and Intellectual Property Commission) in terms of Section 69(13) of the Companies Act; and/or

2.1.95.3. any other relevant listing required by Law;

2.1.94 **"SANParks"** South African National Parks, a juristic person established in terms of section 5 of the repealed 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;

2.1.95 **"SANParks Default"** shall have the meaning as ascribed in clause 27;

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2.1.96	**"SANParks Employees"**	persons employed or contracted to SANParks;
2.1.97	**"Schedules"**	the schedules to this PPP Agreement, as amended, replaced and varied from time to time;
2.1.98	**"Shareholders Agreement"**	the contract entered into between the Shareholders of the Private Party and that is legally binding among the Shareholders, defining their relationship, rights, responsibilities, and operation of the business of the Private Party;
2.1.99	**"Shareholders"**	the holders of the Equity in the Private Party from time to time, it being recorded that the initial shareholders shall be [insert];
2.1.100	**"Signature Date"**	the date of signature/signing of this PPP Agreement by the last signing Party;
2.1.101	**"Site Conditions"**	the climatic, hydrological, hydrogeological, ecological, Environmental, geotechnical, geological, palaeontological and archaeological conditions of the Concession Area;
2.1.102	**"Skills Development Spend"**	has the meaning as set out in SCHEDULE 5 – *B-BBEE*

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OBLIGATIONS)

2.1.103	**"South Africa"**	the Republic of South Africa;
2.1.104	**"State"**	the Government of South Africa, acting directly or through its lawfully designated representatives;
2.1.105	**"Subcontractors"**	any subcontractor of the Private Party who has contracted directly with the Private Party in respect of any of the Project Deliverables;
2.1.106	**"Technical Partner"**	the equity holder in the Private Party which has the hospitality operations experience;
2.1.107	**"Termination Amount"**	the amount equal to the Depreciated Value of the Capital Investment as set out in Annual Financial Statements of the Private Party, which amount shall be payable only upon the occurrence of an Early Termination event contemplated in clause 25.2, 26.5 and 27.3 below;
2.1.108	**"Termination Date"**	the date of termination of this PPP Agreement on expiry of the Project Term, in accordance with its terms;
2.1.109	**"Treasury Regulations"**	the Treasury Regulations issued in terms of the PFMA, originally published in Government Gazette No. 22219 (Regulation Gazette No. 7048)

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on 9 April 2000;

2.1.110	**"Transferrable Intellectual Property" Licenses**	any Licensed Intellectual Property that the Private Party is obliged to transfer to SANParks;
2.1.111	**"Utilities"**	Utilities for the Concession Area which include water, electricity, sewage, gas and telecommunications and, where appropriate, includes relevant provider thereof;
2.1.112	**"Utility Charges"**	charges or fees in respect of consumption of the Utilities used at the Facility as provided by SANParks, the Relevant Authority or any other supplier;
2.1.113	**"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
2.1.114	**"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;

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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 "Parties" shall include the Parties' respective successors-in-title and, if permitted in this PPP Agreement, their respective cessionaries and assignees;

2.2.4 references to a "person" shall include an individual, firm, company, corporation, juristic person, Responsible Authority, and any trust, organisation, association or partnership, whether or not having separate legal personality;

2.2.5 references to any "Responsible Authority" or any public or professional organisation shall include a reference to any of its successors or any organisation or entity, which takes over its functions or responsibilities;

2.2.6 the headings of clauses, sub-clauses and Schedules are included for convenience only and shall not affect the interpretation of this PPP Agreement;

2.2.7 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;

2.2.8 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;

2.2.9 words importing the singular number shall include the plural and vice

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versa, and words importing either gender or the neuter shall include both genders and the neuter;

2.2.10 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;

2.2.11 general words preceded or followed by words such as "other" or "including" or "particularly" shall not be given a restrictive meaning because they are preceded or followed by particular examples intended to fall within the meaning of the general words; and

2.2.12 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. CONDITIONS PRECEDENT

3.1 This PPP Agreement is subject to the fulfilment or waiver, as the case may be, of the Conditions Precedent to be identified in SCHEDULE 27 *(Conditions precedents)* by not later than the scheduled Long Stop Date or such later date as the Parties may agree to in writing.

4. APPOINTMENT

4.1 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.

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5. PROJECT TERM

5.1 Subject to the provisions of this Agreement for Early Termination, this PPP Agreement shall commence on the Effective Date and shall continue to be in force for a period of 25 (twenty-five) years. This PPP Agreement shall terminate on the expiry of the Project Term, being the date falling on the 25th anniversary of the Effective Date.

6. PPP RIGHTS

6.1 Exclusive Granting of PPP Rights at the Concession Area

6.1.1 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.

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

6.1.2.1 establish any other accommodation facility on the Concession Area; and

6.1.2.2 grant the PPP Rights or any other rights referred to in this Clause 6 to a third party(s), provided that SANParks reserves the right to manage and operate the Concession Area and roads within the Protected Area and the Protected Area's gate opening and closing times.

6.2 Concession Area Use Rights

6.2.1 The granting of the Rights to the Private Party shall entitle the Private Party to:

6.2.1.1 the exclusive right to undertake the Business in the Concession Area (as approved by SANParks);

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6.2.1.2 generate, charge and collect revenues from the exercise of the PPP Rights;

6.2.1.3 use the Concession Area in accordance with the terms of this PPP Agreement;

6.2.1.4 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;

6.2.1.5 provide day and night drives as part of its service offering to its patrons, provided that such drives shall be conducted with vehicles complying with the standards and requirements as may be determined by SANParks from time to time

6.2.1.6 to the extent applicable undertake the refurbishment and infrastructural development as per the Capital Investment proposed in the Private Party's Bid Submission as detailed in SCHEDULE 12 – *CAPITAL EXPENDITURE* PLAN); and

6.2.1.7 undertake the operations, management and maintenance (at the Facility as proposed in the Private Party's Bid Submission as detailed in SCHEDULE 26 (*TECHNICAL SPECIFICATION*).

6.2.2 All of the Private Party's rights in terms of this clause 6 shall be exercised in accordance with the terms of this PPP Agreement, subject to the regulatory provisions, Environmental Laws, Environmental Specifications and all other applicable Laws.

6.3 **Concession Area Service Delivery**

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

6.3.1.1 in accordance with Good Industry Practice;

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6.3.1.2 in line with the Bid Submission;

6.3.1.3 conducted in a professional, courteous and friendly manner;

6.3.1.4 in accordance and compliance with the Laws, including, to the extent applicable, the provisions of the CPA, POPIA, Fire Arms Control Act 60 of 2000, Schedule 13, and 19 of this PPP Agreement, and

6.3.1.5 in accordance with the KNP Operating Manual.

7. PRIVATE PARTY UNDERTAKINGS

7.1 Subject to the provisions of this PPP Agreement, the Private Party shall conduct and manage the PPP opportunity:

7.1.1 at its own cost and risk;

7.1.2 in compliance with all applicable Laws, Environmental Provisions, regulatory provisions and the Consents;

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

7.1.4 in accordance with Good Industry Practice.

7.2 The Private Party shall take all reasonable steps to ensure that all the Private Party Parties visiting or working at the Concession Area, adhere to, abide by and comply with:

7.2.1 all regulatory provisions, the Environmental Specifications in respect of the Protected Area and specifically in respect of the Concession Area and the Environmental Authorisation ("**EA**");

7.2.2 the terms of this PPP Agreement; and

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7.2.3 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 PPP opportunity, the Private Party shall have the right to appeal against such rule or directive with SANParks and/or any other person determined by SANParks, in its sole and absolute discretion. SANParks and/or such other person determined by SANParks will verify whether the directive or rule in question was valid and consistent with practice elsewhere in the KNP Park. Pending the results of such an appeal, the Private Party shall abide by the said directive or rule.

7.3 The Private Party shall be responsible for:

7.3.1 obtaining and keeping current all the Consents which may be required for the performance of its obligations under this PPP Agreement;

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

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

7.3.4 maintaining and keeping the Concession Area clean including the area of responsibility described in Schedule 1 hereto.

7.4 Without derogating from the provisions of clause 31 (*Change in Control and Change in Ownership*), the Private Party shall ensure that at all times a minimum of 30% of the equity in the Private Party is held by the technical/operational party in the Private Party, and must maintains and may improve the 30% shareholding by a technical/operational party throughout the term of the PPP Agreement.

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7.5 Without prejudice to Clauses 7.3.1 and 7.3.2, 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.

7.6 The Private Party shall bear all risks and costs with respect to material damage to the Concession Area or the environment caused by the operation of the Concession Area during the Project Term arising from any act whatsoever, including an omission by the Private Party.

7.7 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.

7.8 Unless otherwise agreed in writing by SANParks, which approval shall not be unreasonably withheld, the Private Party and other parties to the associated agreements shall have no interest in nor receive remuneration in connection with the Concession Area except as provided for in the PPP Agreement or the associated agreements.

7.9 **Protection of Personal Information Act Requirements**

7.9.1 The Private Party in the undertaking of Project Deliverables will receive and process third party personal information. The Private Party has an obligation to develop its POPIA compliance measures which shall be submitted to SANParks for consideration and approval before Operation Commencement Date. The Private Party shall ensure that its representatives and employees are adequately trained and are informed of the Private Party's POPIA manuals, policies, and implementation measures. Where the processing and storing of personal information will be through the services of third parties, the Private Party shall ensure

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that its POPIA compliance measures extends to and regulate the usage and storage of information by third parties as detailed in Schedule 19.

7.10 **Consumer Protection Act Requirements**

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

7.10.2 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.

7.11 **LABOUR LAWS**

7.11.1 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.

7.11.2 The Private Party undertakes to promptly notify SANParks upon its employees embarking on and/or participating in any form of strike or industrial action as a result of any dispute between the Private Party and its employees for any reason whatsoever.

7.11.3 The Private Party shall provide staff accommodation for its employees.

7.11.4 The Private Party acknowledges, confirms and accepts that the provisions of section 197 of the Labour Relations Act 66 of 1995, relating to the transfer of employment contracts, applies to this PPP Agreement, by operation of law. Accordingly, the Private Party undertakes, as of the Effective Date, to take transfer of the contracts of employment of all existing employees working exclusively in the Concession Area, in terms

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of the provisions of section 197 of the LRA and on terms and conditions that are, on the whole, no less favourable than those on which the transferring employee were employed immediately prior to the Effective Date.

7.11.5 SANParks shall give reasonable assistance in the form of advice, introductions and documentary support to the Private Party in its dealings with the Relevant Authorities and otherwise in connection with implementing the Project in accordance with the terms and conditions set forth therein.

7.11.6 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.

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

7.11.8 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 Concession Area and will not engage in acts or omissions which may materially affect the rights or interests of the Private Party in respect of the Concession Area.

7.11.9 Without limiting the generality of Clause 7.11.8, SANParks reserves the right to, where a dispute that might have a negative effect on SANParks' guests arises as per clause 30, take reasonable actions to prevent inconvenience to SANParks' guests.

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7.11.10 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.

7.11.11 SANParks' procurement processes in relation to the Project complied, to the best of SANParks knowledge and belief, in all material respects with:

7.11.11.1 all relevant legislation, regulations and the like governing such procurement processes; and

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

7.11.12 SANParks shall take such reasonable measures possible to ensure that the Concession Area is free from trespassers, including poachers and visitors to the KNP who are not Private Party Parties. The security of the Concession Area however shall be the responsibility of the Private Party.

8. WARRANTIES

8.1 Private Party Warranties

8.1.1 The Private Party warrants that:

8.1.1.1 it has taken all necessary actions to authorise its execution of this PPP Agreement;

8.1.1.2 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

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arbitrator that is binding on the Private Party as at the Signature Date and at the Operation Commencement Date;

8.1.1.3 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 and any encumbrances arising from the Financing Agreements, 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;

8.1.1.4 all Consents required by the Private Party to meet the Project Deliverables shall be in full force and effect as at the Signature Date and as at the Operation Commencement Date, save for any Consents which are not required under applicable Law to be obtained by the Signature Date or the Operation Commencement Date (as the case may be), provided that the Private Party warrants that it knows of no reason (having used its best endeavours to enquire in this regard) why any such Consent will not be granted on reasonable terms by the time it is required to obtain such Consent;

8.1.1.5 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;

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8.1.1.6 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;

8.1.1.7 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;

8.1.1.8 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;

8.1.1.9 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;

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8.1.1.10 it is not a Restricted Enterprise;

8.1.1.11 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; and

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

8.1.1.12.1. 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

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

8.2 **SANParks Warranties**

8.2.1 SANParks warrants, subject to Clause 9 that:

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

8.2.1.2 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;

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

8.2.1.4 no existing or pending land claims other than those disclosed to the Private Party as at the Signature Date exist; and

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8.2.1.5 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.

9. PRIVATE PARTY INDEMNITIES

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

9.1.1 any:

9.1.1.1 loss of or damage to property relating to the PPP opportunity;

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

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

9.1.1.4 other claim, action, charge, cost, demand or expense by a third party, (including, without limitation, any legal fees, on the scale as between party and party, 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 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.

9.2 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.

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

9.4 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, which approval should not be unreasonably withheld), subject to the Private Party -

9.4.1 exercising due care in defending a third-party claim so as not to bring the name of SANParks into disrepute;

9.4.2 keeping SANParks fully informed of the conduct of such third-party claim; and

9.4.3 obtaining the written approval of SANParks (which shall not be unreasonably withheld or delayed) prior to settling any third-party claim.

10. LIMITATIONS ON LIABILITY

10.1 Neither Party shall be entitled to recover (whether pursuant to an indemnity or otherwise) any loss to the extent that it has already been or is entitled to be compensated for that loss whether by way of Project Insurance payments or otherwise.

10.2 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).

10.3 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.

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11. HANDOVER PRINCIPLES

11.1 The Outgoing Concessionaire and SANParks have signed a Handover Agreement to regulate the handover of the Concession Area from the Outgoing Concessionaire to the Private Party. The Handover Agreement sets out the handover process in accordance with the principles set out in SCHEDULE 25 (*HANDOVER PRINCIPLES*) (("**Handover Principles**").

11.2 On termination of this PP Agreement on expiry of the Project Term or as a result of an Early Termination event, the Private Party shall handover the Concession Area in accordance with this clause 11 and Schedule 25 (*Handover Principles*).

11.3 The Handover Principles shall inform the terms of a new handover agreement and shall regulate all matters relating to handover of the Concession Area from the Private Party to a new operator appointed by SANParks.

11.4 Notwithstanding the provisions of 12.3 the Parties may at the expiry of the Project Term amend the Handover Principles to provide for additional circumstances which may arise at the Expiry of the Project Term.

11.5 **Warranties and Undertakings**

11.5.1 The Private Party hereby undertakes to adhere to the Handover Principles to affect an orderly and efficient handover of the Concession Assets.

11.5.2 The Parties agree to comply with the negotiated and agreed terms of the Handover Principles and acknowledge that this handover process and Handover Principles constitute a material contractual obligation of this Agreement.

11.5.3 The Private Party acknowledges that it is fundamental in the transfer of the Concession Area that:

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11.5.3.1 there is minimal to no interruption in the provision of goods and services to visitors in the Concession Area and Protected Area including the use of vehicles I in the Protected Area;

11.5.3.2 to the extent possible and on prior written consent and/or approval by writing SANParks, structural alterations shall not cause closure of the Concession Area;

11.5.3.3 the handover shall be undertaken in such a manner that requires minimal involvement by SANParks, its employees and representatives and minimal interference;

11.5.3.4 the business of the Concession Area will be conducted in the usual manner throughout the Handover Period; and

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

12. SITE

12.1 Concession Area

12.1.1 The Private Party acknowledges that the Government of the Republic of South Africa holds all right, title and interest in the Concession Area.

12.1.2 The location, dimension and physical boundaries of the Concession Area shall be the areas defined in Schedule 1 (Description of the Concession Area).

12.1.3 SANParks has possession of the land, which constitutes the Concession Area, and the surrounding land in the Protected Area, and shall give the Private Party access to the land on Signature Date.

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12.1.4 SANParks shall deliver vacant possession of the Concession Area to the Private Party and shall thereafter ensure that the Private Party continues to be entitled to such access to the Concession Area, as is necessary for the Private Party to perform its obligations under this PPP Agreement, and to enjoy the PPP Rights, from Operation Commencement Date to the Termination Date.

12.2 **Access Following Commencement**

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

12.2.2 With effect from the Termination Date, as the case may be, the Private Party's interest in the Concession Area shall automatically terminate and the Private Party shall be given access to the Concession Area only for purposes of giving effect to the provisions of Clause 29 (Effects of Termination).

12.3 **Site Conditions**

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

12.3.2 Notwithstanding the provisions of Clause 12.3, the Private Party shall be

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deemed at the Signature Date to have obtained all necessary information as to risks, contingencies and other circumstances which may influence or affect the execution of the Project Deliverables. To the same extent, the Private Party shall be deemed as at the Signature Date to have inspected and examined the Concession Area, its surroundings, the above data and other available information. To this end, the Project Site Conditions the climatic, hydrological, hydrogeological, ecological, Environmental, geotechnical, geological, palaeontological and archaeological conditions of the Concession Area ("Project Site Conditions") shall be the sole responsibility of the Private Party. Accordingly, without limiting any other obligations of the Private Party that are included in the Project Deliverables, the Private Party shall be deemed as at the Signature Date to have –

12.3.2.1 carried out an investigation of all Project Site Conditions and of any extraneous material in the Concession Area 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 Concession Area and surroundings thereof;

12.3.2.3 satisfied itself as to the nature of the Project Site Conditions, the form and nature of the Concession Area, the risk of damage to property affecting the Concession Area, the nature of the materials (whether natural or otherwise) to be excavated, if any, and the nature of the design, works and material necessary for the execution of the Project Deliverables and the remedying of any defects; and

12.3.2.4 satisfied itself as to the adequacy of –

12.3.2.4.1 its rite of passage over, access to and through the Concession Area; and

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12.3.2.4.2 any accommodation it may require for the purposes of fulfilling any of its obligations included in the Project Deliverables, such as any additional land or buildings located outside the Concession Area;

12.3.2.5 satisfied itself as to the possibility of interference by persons (including pedestrian and vehicle traffic) with rights-of-way across, access to or use of the Concession Area with particular regard to the owners and users of any land adjacent to the Concession Area 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 For avoidance of doubt, the Private Party accepts full responsibility for all matters in Clause 12.3.2 and the Private Party shall, in respect of the Concession Area **-**

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

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substances and all substances for which in each case liability or responsibility is imposed under applicable Environment Law at the Concession Area; 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 Concession Area**

12.5.1 SANParks makes no representation and gives no warranty to the Private Party in respect of the condition and suitability of the Concession Area or any structures associated therewith or located therein, for the PPP opportunity, and the Private Party accepts the Concession Area and structures in their present condition.

12.6 **Assessment Rates and Utilities**

12.6.1 The Private Party shall be liable to reimburse SANParks for all the Assessment Rates, if any, that SANParks may pay to the Responsible Authority, payable from time to time after the Signature Date in respect of the Concession Area.

12.6.2 The Parties record that the Private Party shall, where practicable, bear the primary responsibility to procure the provision of the Utilities to the Concession Area. In the event any such Utilities are provided to the Concession Area through SANParks, SANParks shall charge, and the

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Private Party shall pay, all the Utility Charges in respect thereof.

12.6.3 Without limiting the generality of Clause 12.2.2 above, the Private Party shall, at its cost:

12.6.3.1 procure the maintenance of sufficient telephone services within the Concession Area;

12.6.3.2 ensure that waste disposal Concession Area, including rubbish or waste removal bins, are clean and free from noxious or offensive odorous; and

12.6.3.3 ensure that the waste disposal facility is not unsightly and the waste is frequently removed and the area surrounding the waste disposal facility is clean, neat and tidy in accordance with SANParks' Waste Policies from time to time.

12.6.4 Should the Utilities within the Concession Area or part thereof be provided by SANParks, then SANParks shall -

12.6.4.1 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

12.6.4.2 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.

12.6.5 Should the Concession Area or part thereof be served by a meter or sub-meter which also serves other areas of the Protected Area, then the Private

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

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

12.6.7 If the Private Party fails to pay any Utility Charges in accordance with this Clause 12.6, 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.

12.6.8 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 Concession Area 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 12.6, the Private Party shall not be entitled to claim or rely on the principle of spoliation (*mandament van spolie*) as a defence.

13. OPERATION, MANAGEMENT AND MAINTENANCE

13.1 Operation, Management and Maintenance by the Private Party

13.1.1 The Private Party shall be obliged during the Project Term to undertake the operation, management and maintenance of the Concession Area 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.

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13.1.2 The Private Party shall report on the operation, management and maintenance of the Concession Area which shall be made available to SANParks promptly upon the in accordance with the process set out in Schedule 2.

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

13.1.4 The Private Party shall:

13.1.4.1 operate the Concession Area 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;

13.1.4.2 use its best endeavours to maintain the highest standards in accordance with Good Industry Practice in all matters connected with the operation of the Concession Area 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 Concession Area. This includes adhering to Tourism Grading Council of Southern Africa applicable grading on an annual basis;

13.1.4.3 at all times maintain the equipment used in the Concession Area in a clean, orderly and sanitary condition;

13.1.4.4 ensure that all personnel and staff employed by the Private Party at the Concession Area shall at all times be clean, cleanly and tidily clothed so as to maintain uniformly high standards of presentation and delivery;

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13.1.4.5 at all times ensure that any products or foodstuffs in stock are fresh, uncontaminated and hygienically and properly stored and shall ensure proper storage, disposal, serving and preparation of all foodstuffs and products;

13.1.4.6 at its cost, and specifically relating to the public area only, conduct hygiene audits at the Concession Area bi-annually ("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;

13.1.4.7 at all times score a minimum of at least seventy five percent (75%) on the Hygiene Audit total quality index;

13.1.4.8 ensure that:

13.1.4.8.1 it implements measures to prevent pathogens to be detected on food samples;

13.1.4.8.2 the Concession Area acquires and maintains a certificate of acceptability;

13.1.4.8.3 a cleaning programme in respect of the Concession Area is implemented, including a cleaning schedule and cleaning checklist;

13.1.4.8.4 the staff at the Concession Area is trained in hygiene practices;

13.1.4.8.5 hand washing Concession Area and proper cleaning chemicals are available;

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13.1.4.8.6 food areas are zoned as per food type;

13.1.4.8.7 the pest control measures and health and safety of the Private Party Parties and the general public.

13.2 The Private Party shall comply with its statutory duties in terms of the Environmental Laws and at all times take reasonable measures to prevent pollution or degradation from occurring, continuing or recurring and in so far as such harm to the Environment is authorised by SANParks, the findings of the EIA or by law, to minimise and rectify such pollution or degradation of the Environment.

13.3 **Security for Maintenance Obligations**

13.3.1 Establishment of Maintenance Reserve Account

13.3.1.1 The Private Party shall, within 30 (thirty) Business Days of the Operation Commencement Date, establish and thereafter maintain throughout the Project Term a dedicated interest-bearing bank account in the Republic of South Africa with a registered commercial bank, to be known as the Maintenance Reserve Account.

13.3.1.2 The sole purpose of the Maintenance Reserve Account shall be to fund:

13.3.1.2.1 major maintenance, refurbishment, replacement and lifecycle maintenance of the Concession Area, Concession Assets and all related infrastructure;

13.3.1.2.2 deferred maintenance remediation;

13.3.1.2.3 asset preservation measures required under this PPP Agreement; and

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13.3.1.2.4 any maintenance obligations required to ensure compliance with the Handover Principles and the handback requirements of this PPP Agreement.

13.3.2 Funding of Account

The Private Party shall:

13.3.2.1 deposit into the Maintenance Reserve Account an amount equal to not less than [●]% of Gross Revenue generated from the Concession Area during each month; or such other amount as may be specified in Schedule [●];

13.3.2.2 ensure that the balance of the Maintenance Reserve Account is at all times sufficient to meet the forecast maintenance obligations identified in the approved lifecycle maintenance plan;

13.3.2.3 replenish the Maintenance Reserve Account whenever withdrawals reduce the balance below the minimum required amount; and

13.3.2.4 ensure that all interest accruing on the Maintenance Reserve Account remains credited to the Maintenance Reserve Account.

13.3.3 Maintenance Plan

The Private Party shall prepare and submit to SANParks, on an annual basis, an updated lifecycle maintenance plan setting out:

13.3.3.1 all planned maintenance works;

13.3.3.2 projected maintenance expenditure for the next 5 (five) years;

13.3.3.3 anticipated withdrawals from the Maintenance Reserve Account; and

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13.3.3.4 the adequacy of the Maintenance Reserve Account balance having regard to the condition of the Concession Assets and infrastructure.

13.3.4 Access and Reporting

The Private Party shall provide SANParks with:

13.3.4.1 quarterly bank statements for the Maintenance Reserve Account;

13.3.4.2 annual reconciliation statements showing all deposits, withdrawals and accrued interest;

13.3.4.3 unrestricted audit access to records relating to the Maintenance Reserve Account; and

13.3.4.4 written notice of any withdrawal exceeding R[●].

13.3.5 Security Interest in Favour of SANParks

As security for the due performance of the Private Party's maintenance obligations, the Private Party hereby:

13.3.5.1 cedes and assigns in securitatem debiti all of its rights, title and interest in and to the Maintenance Reserve Account to SANParks;

13.3.5.2 undertakes to procure that the account-holding bank acknowledges SANParks' security interest and agrees to comply with any lawful direction issued by SANParks pursuant to this clause; and

13.3.5.3 shall not pledge, cede, encumber or otherwise deal with the Maintenance Reserve Account without SANParks' prior written consent.

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13.3.6 Rights of SANParks upon Termination or Early Termination

Upon:

13.3.6.1 termination of this PPP Agreement on expiry of the Project Term;

13.3.6.2 Early Termination; or

13.3.6.3 the occurrence of a Private Party Default relating to maintenance obligations,

SANParks shall be entitled, upon written notice to the Private Party and the account-holding bank, to assume sole control of the Maintenance Reserve Account.

13.3.7 Application of Funds Following Termination

SANParks shall apply amounts standing to the credit of the Maintenance Reserve Account towards:

13.3.7.1 remedying deferred maintenance;

13.3.7.2 repairing defects, deterioration or damage to the Concession Assets;

13.3.7.3 carrying out maintenance work that the Private Party was obliged to perform but failed to perform;

13.3.7.4 restoring the Concession Area to the condition required under this PPP Agreement and the Handover Principles; and

13.3.7.5 meeting any reasonable professional, technical, supervisory or contractor costs associated with such works.

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After completion of all outstanding maintenance and handover obligations and settlement of all amounts properly due to SANParks under this clause, any remaining balance in the Maintenance Reserve Account shall be released to the Private Party within 90 (ninety) Business Days, provided that there are no unresolved claims relating to maintenance obligations.

13.3.8 Condition Assessment

Following termination or Early Termination, SANParks may appoint an independent technical expert to conduct a condition assessment of the Concession Area and determine any outstanding maintenance liabilities. The reasonable costs of such assessment may be paid from the Maintenance Reserve Account.

13.3.9 Survival

The provisions of this clause shall survive termination or expiry of this PPP Agreement until all outstanding maintenance obligations have been discharged and all funds in the Maintenance Reserve Account have been applied or released in accordance with this clause.

14. PROHIBITION OF EMPLOYMENT OF SANPARKS EMPLOYEES

14.1 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.

15. BLACK ECONOMIC EMPOWERMENT

15.1 The Private Party shall ensure compliance with all regulatory provisions relating to Black Economic Empowerment and undertakes to implement the B-BBEE Obligations set out in Schedule 5.

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15.2 If the Private Party fails to implement its B-BBEE Obligations in accordance with this PPP Agreement, SANParks shall impose penalties in terms of the Operations Manual.

16. FINANCIAL PROVISIONS AND PAYMENT

16.1 Gross Revenue

16.2 For the purposes of this PPP Agreement and its Schedules "**Gross Revenue**" shall mean:

16.2.1 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 PPP opportunity, in any manner, directly or indirectly, as is or would normally be included in gross revenue in terms of IFRS (depending on the principles / standards used by the Private Party). Without derogating from its generality, the term "Gross Revenue" shall mean revenue before the deduction of:

16.2.1.1 bad debts (or provisions therefore);

16.2.1.2 commissions or similar consideration paid or payable;

16.2.1.3 cash, credit-card or similar discounts or commissions;

16.2.1.4 costs and expenses granted in circumstances that are not arm's-length;

16.2.1.5 trade discounts granted in circumstances that are at arm's length;

16.2.2 **and Gross Revenue shall include:**

16.2.2.1 commissions received or receivable; and

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16.2.2.2 rentals and other fees received or receivable;

16.2.3 **but shall exclude:**

16.2.3.1 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 (depending on the principles / standards used by the Private Party);

16.2.3.2 interest received or receivable;

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

16.2.3.4 transfers from reserves; and

16.2.3.5 bad debts recovered.

16.3 **PPP Fees**

16.3.1 Subject to clause 16.3.4, The Private Party shall pay the PPP Fee to SANParks each and every month from the Operations Commencement Date.

16.3.2 The monthly PPP Fees payable by the Private Party to SANParks shall be the higher of:

16.3.2.1 the Minimum PPP Fee; or

16.3.2.2 the Variable PPP Fee.

16.3.3 The Minimum PPP Fee or the Variable PPP Fee will be calculated using the formula set out in SCHEDULE 6 – *PPP* FEE).

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16.3.4 The monthly Minimum PPP Fee and the Variable PPP Fee are set out in detail in SCHEDULE 6 – PPP FEE) 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 Concession Area 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 except as provided for in clause 16.3.4.

16.3.5 For purposes of reconciling the PPP Fees payable by the Private Party in any given Financial Year, the Private Party shall, within 120 (one hundred and twenty) days after the end of each Financial Year, furnish its audited financial statements to SANParks, whereafter SANParks shall verify and reconcile the PPP Fees due against the PPP Fees actually paid in the relevant Financial Year.

16.3.6 In the event that subsequent to the enquiry contemplated in clause 16.3.5 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.

16.3.7 In the event that subsequent to an enquiry contemplated in clause 16.3.5 above, the PPP Fees paid by the Private Party are in excess of the PPP Fees due to SANParks in the relevant Financial Year (the "PPP Fees Paid"), SANParks shall be liable to the repayment of any excess PPP Fees Paid to the Private Party upon demand.

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

16.3.9 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

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will be payable as provided for herein.

16.4 **Taxes**

16.4.1 The Private Party will be responsible for all taxes of general application and without limiting the generality of the aforegoing, any duties, PPP Fees or taxes assessed by any Relevant Authority in respect of the Concession Area, 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, which is earned by SANParks or, notwithstanding this PPP Agreement, any tax payable by SANParks.

16.4.2 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.

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

16.5 **Default Interest**

16.5.1 Notwithstanding the provisions of clause 26.1.1.6, in the event the Private Part fails to pay the PPP Fee in terms of this PPP Agreement, SANParks shall be entitled to levy, as a penalty, a Default Interest Levy.

16.5.2 In the event the Private Party has failed to pay the PPP Fee and Default Interest Rate has been levied for 3 (three) months consecutively,

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SANParks has an election to terminate the PPP Agreement.

16.5.3 In the event the Agreement is terminated then the provision of clause Consequences of termination due to Private Party Default shall come into effect.

16.6 **Domestic Market Discounts**

16.6.1 In order to increase domestic visitors to the Protected Area and to the various facilities in the Concession Area, SANParks encourages the Private Party to liaise with SANParks on marketing initiatives, including promoting discounted rates to domestic visitors from time to time.

17. **PERFORMANCE BOND**

17.1 The Private Party shall provide to SANParks the Performance Bond which shall be operative from the Signature Date by providing a guarantee in favour of SANParks issued by a bank or financial institution acceptable to SANParks substantially in the format specified in Schedule 11 (*Performance Bond*).

17.1.1

17.2 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.

17.3 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.

17.4 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 R [●].

17.5 The Performance Bond shall be reinstated in full and its amount adjusted

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annually within 90 (ninety) Business Days of the end of each Project Year such that the amount to be guaranteed by the Performance Bond for the relevant Project Year is not less than the amount indicated in Clause 17.4 as adjusted to reflect changes in the CPI since Bid Submission.

17.6 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.

17.7 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.

17.8 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.

18. PROJECT INSURANCES

18.1 The Private Party shall insure all remaining insurable properties within the Concession Area including the Project Assets, with a reputable insurance company by no later than the Operation Commencement Date, and such insurance shall:

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

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

18.2.1 cover environmental damage; and

18.2.2 include:

18.2.2.1 property and casualty insurance;

18.2.2.2 public liability and third-party insurance;

18.2.2.3 employer's liability insurance;

18.2.2.4 business interruption insurance; and

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

18.3 The insurances required in terms of clause 18.1 and clause 18.2 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.

18.4 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.

18.5 Should the Private Party be in breach of the provisions of Clause 18.1, SANParks may, after consultation with the Private Party and giving the Private Party thirty (30) days within which to comply with Clause 18.1, procure and maintain, at the sole cost and expense of the Private Party, the insurances referred to in Clause 18.1 to the extent that SANParks deems necessary. In this event, the Private Party shall be obliged to refund to SANParks all

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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.

18.6 The Private Party shall comply with all the terms and conditions embodied in the insurance policy or insurance policies referred to in Clause 18 and undertake not to commit any act or permit any act to be committed or omit to do anything which in any way affects or vitiates such insurance policy or policies.

18.7 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) Business 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.

19. REINSTATEMENT

19.1 Any insurance proceeds received under any policy referred to in Schedule 10 (Insurances) in respect of loss or damage to the Facility ("**Material Damage Policies**") shall be applied to repair, reinstate or replace each part or parts of the Facility in respect of which the proceeds were received.

19.2 All insurance proceeds paid under any Material Damage Policy in respect of a single event or a series of related events shall be paid into a bank account to be opened in the name of the Private Party ("Insurance Account"), and SANParks shall have unfettered and reasonable rights of access to the details of the Insurance Account for the duration of this PPP Agreement.

19.3 Where a claim is made, or proceeds of the insurance are received or are receivable under any Material Damage Policy in respect of a single event or a series of related events:

19.3.1 the Private Party shall deliver as soon as practicable and, in any event,

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within 10 (ten) days after the making of the claim, a plan ("Reinstatement Plan") prepared by the Private Party for the carrying out of the works necessary to repair, reinstate or replace the Facility ("Reinstatement Works") which are the subject of the claim. The Reinstatement Plan shall set out:

19.3.1.1 the identity of the person proposed to affect the Reinstatement Works, which shall be subject to the prior written agreement of SANParks and

19.3.1.2 the proposed terms and timetable upon which the Reinstatement Works are to be affected (including the date that the Project will become fully operational).

19.4 SANParks shall, within 14 (fourteen) days of receipt of the Reinstatement Plan, either approve or reject the Reinstatement Plan, provided that SANParks shall not unreasonably withhold its approval of the Reinstatement Plan.

19.5 If SANParks rejects the Reinstatement Plan, then it shall set out the reasons for such rejection and the requirements to be fulfilled in order for the Phase Proposal to be approved ("Reinstatement Plan Rejection Notice"):

19.6 Upon receipt of the Reinstatement Plan Rejection Notice, the Private Party shall be entitled at any time thereafter to request a meeting with SANParks to discuss the content of such notice within 3 (three) Business Days of being requested to do so by the Private Party in writing ("Reinstatement Plan Rejection Notice Meeting").

19.7 If the Private Party is not satisfied with the explanations of the written reasons set out in the Reinstatement Plan Rejection Notice at the Reinstatement Rejection Meeting, it may refer the issue to an Independent Expert for final determination.

19.8 if SANParks is satisfied that the Reinstatement Plan (as amended by

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agreement SANParks or in accordance with the decision of the Independent Expert) will enable the Private Party to comply with clause 19.10 below within a reasonable timescale, then:

19.8.1 the Reinstatement Plan shall be adopted;

19.8.2 the Private Party shall enter into contractual arrangements to affect the Reinstatement Works with the person agreed to by SANParks;

19.8.3 prior to the earlier of the Termination Date and the Expiry Date, any amount standing to the credit of the Insurance Account together with any interest accrued (the "Relevant Proceeds") may be withdrawn by the Private Party to the extent required to enable it to make payments in accordance with the terms of the contractual arrangements referred to in clause 19.8.2 above, and to meet any other reasonable costs and expenses of the Private Party for the sole purposes of funding the Reinstatement Works;

19.9 SANParks agrees and undertakes that, subject to compliance by the Private Party with its obligations under this clause 19 (*REINSTATEMENT*), and provided that the Private Party procures that the Reinstatement Works are carried out and completed in accordance with the contractual arrangements referred to in clause 19.8.2 above, it shall not exercise any right which it might otherwise have had to terminate this PPP Agreement by virtue of the event which gave rise to the claim for the Relevant Proceeds; and after the Reinstatement Plan has been implemented to the reasonable satisfaction of SANParks and in accordance with clause 19.10 below, SANParks shall permit the withdrawal by the Private Party of any Relevant Proceeds that have not been utilised in accordance with 19.8.3 above.

19.10 Where insurance proceeds are to be used in accordance with this PPP Agreement to repair, reinstate or replace any Project asset forming part of the Works, the Private Party shall carry out the Reinstatement Works or procure that such Reinstatement Works are carried out in such a manner that on

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completion of the Reinstatement Works, the provisions of this PPP Agreement are complied with in all respects.

20. ECONOMIC TEST

20.1 If all or substantially all of the Facility is destroyed or substantially destroyed in a single event or a series of related events and the insurance proceeds (when taken together with any other funds available to the Private Party) are equal to or greater than the amount required to repair, reinstate or replace the Facility, then the Private Party shall calculate the loan life cover ratio in accordance with the Financing Agreements (on the assumption that the Facility is repaired or reinstated in accordance with this PPP Agreement).

20.2 If the calculation referred to in clause 20.1 above shows that the loan life cover ratio calculated in accordance with the Financing Agreements is greater than or equal to the level at which an event of default shall occur under the Financing Agreements, then the Private Party shall apply the insurance proceeds in accordance with the Reinstatement Plan set out in clause 19 (*REINSTATEMENT*).

20.3 If the calculation referred to in clause 20.1 above shows that the loan life cover ratio calculated in accordance with the Financing Agreements is less than the level at which an event of default shall occur under the Financing Agreements, then, at the option of the Private Party and subject to the Private Party diligently pursuing a remedy of such event of default, an amount equal to the lesser of:

20.3.1 the amount of the insurance proceeds; and

20.3.2 the amount of the Debt less, to the extent that it is a positive amount, the aggregate, as at the date of calculation, of:

20.3.2.1 all credit balances on any bank accounts held by or on behalf of the Private Party and the value of any right of the Private Party or the Lenders to receive insurance proceeds or any proceeds

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pursuant to letters of credit and of any such proceeds actually received by them (save where such credit balances or proceeds are paid to the Department and/or are to be applied in reinstatement) and sums due and payable from the Subcontractors and any other third parties;

20.3.2.2 all amounts payable by the Lenders (or the counterparties to the interest rate or exchange rate hedging arrangements provided for in the Financing Agreements) to the Private Party in connection with the Early Termination of such hedging arrangements as a result of the prepayment of amounts outstanding under the Financing Agreements; and

20.3.2.3 the market value of any other assets and rights of the Private Party or the Lenders acquired in connection with this PPP Agreement (other than those that are transferable to the Department pursuant to this PPP Agreement) less liabilities of the Private Party or the Lenders properly incurred in connection with this PPP Agreement; provided that no account shall be taken of any liabilities and obligations of the Private Party arising out of:

20.3.2.3.1 agreements or arrangements entered into by the Private Party to the extent that such agreements or arrangements were not entered into in connection with the Private Party's obligations in relation to the Project; and/or

20.3.2.3.2 agreements or arrangements entered into by the Private Party to the extent that such agreements or arrangements were not entered into in the ordinary course of business and on commercial arm's length terms,

shall be released from the Insurance Account to the Private Party and shall be applied by the Private Party towards the prepayment of the Debt, provided, however, that such

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release shall not discharge the Private Party from performing the Project Deliverables in accordance with this PPP Agreement.

21. SANPARKS STEP-IN

21.1 Subject to the provisions of the Financing Agreements, 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.

21.2 If pursuant to clause 21.1 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 -

21.2.1 the action it wishes to take;

21.2.2 its reasons for taking such action and why it believes there to be a serious and urgent risk to the health or safety of persons or property, or to the Environment, or to national security and/or to discharge a statutory duty;

21.2.3 the date when it wishes to commence such action;

21.2.4 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

21.2.5 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.

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21.3 Following the service of the notice referred to in Clause 21.2, SANParks shall take such action as notified thereunder and any ancillary action as it reasonably believes is necessary 21 (the **"Necessary Action**") and the Private Party shall give all reasonable assistance to SANParks in the conduct of such Necessary Action.

21.4 If the Private Party is not in breach of any of its obligations under this PPP Agreement in respect of which the Necessary Action is proposed to be taken, then for so long as and to the extent that the Necessary Action is taken, and such action prevents the Private Party from providing any part of the Project Deliverables:

21.4.1 the Private Party shall be relieved from such obligations, including its obligation to make payment to SANParks in terms of Clause 17 of this Agreement; and

21.4.2 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).

21.5 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.

21.6 The relief of the Private Party's obligations as contemplated in Clause 21.5 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 26.2 (*SANParks' Options)* requiring the Private Party to remedy the Private Party Default or to put forward a Remedial Programme.

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21.7 Where the provisions of Clause 21.5 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 21.5.

22. PERMITS

22.1 The Private Party shall procure the transfer of the existing licences and permits to the Concession / Private Party SPV

22.2 The Private Party shall hold the Water License issued in terms of the National Water Act 36 of 1998 and the EIA in respect of the Concession Area.

22.3 For the duration of this Agreement the Private Party will indemnify SANParks against any losses that may be incurred by SANParks arising from the contravention by the Private Party of the EIA and Water Licence.

22.4 The Private Party shall procure all required business operating licences, certification and permits set out in Schedule 26 (*Technical Specifications*) of this PPP Agreement and KNP Operating Manual.

23. REPORTING REQUIREMENTS

23.1 General

23.1.1 The Private Party shall be required to compile and deliver to SANParks comprehensive quarterly and annual reports in the form prescribed by SANParks from time to time for purposes of reporting on the implementation and performance of the Project Deliverables.

23.1.2 In addition to the Private Party's reporting obligations stipulated in Clause 23.1.1, the Private Party shall, within 10 (ten) Business Days of the event occurring, report in writing to SANParks details of the following events -

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23.1.2.1 any encumbrance, lien or attachment imposed on any of the Private Party's property and any seizure thereof which encumbrance, lien, attachment or seizure materially affects, impedes or obstructs (whether directly or indirectly) the ability of the Private Party to perform the Project Deliverables;

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

23.1.2.3 any receipt by the Private Party of a notice of default under any Financing Agreement from the Lenders, the circumstances thereof and possible results as viewed by the Private Party.

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

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

23.1.3.2 a written report on any aspect of the Private Party's performance of the Project Deliverables or on its compliance with any other obligation under this PPP Agreement.

23.1.4 Review of the Performance by the Private Party during the Project Term

On the fifth anniversary of the Effective Date, and every fifth year thereafter, the Parties shall meet to discuss the financial and operational performance of the Project. For the avoidance, the purpose of this review is not to amend the PPP Agreement, but for the Parties to enter into meaningful discussions regarding the progress of the Project.

23.2 **Appointment of Private Party Auditors**

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23.2.1 The Private Party will be obliged to appoint a firm of nationally recognised independent auditors for the PPP opportunity. Failure to do so may result in termination of this PPP Agreement.

23.2.2 In furtherance of its reporting obligations as a company in terms of all applicable Laws, the Private Party shall at all times comply with the record keeping and reporting requirements of the Companies Act if failure to do so would be a breach of the Companies Act and shall ensure that by the Operation Commencement 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 (depending on the principles / standards used by the Private Party) so as to properly prepare and record all financial information relating to the Private Party's activities in respect of the PPP opportunity. Copies of such accounts and reports shall be provided to SANParks on written request, and SANParks shall have the right to have access to and the right to remove such accounts and reports if acting within its rights and if so, required in terms of applicable Laws.

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

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

23.2.5 SANParks may also, on reasonable suspicion of fraud or fraudulent

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misrepresentation by the Private Party and without any prior notice, conduct or require that a firm of independent auditors conduct additional audits of the Private Party, at the cost of SANParks.

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

23.3 **Bi-Annual Management Reports**

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

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

23.3.3 an income statement; and

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

23.4 **Annual Reports**

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

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Commencement Date -

23.4.1.1 3 (three) hardcopies and 1 (one) electronic copy of the Private Party's complete financial statements for such Financial Year as signed by a duly authorised officer of the Private Party, all in accordance with the requirements of accounting best practice (which must be consistent with the books of accounts and prepared in accordance with IFRS, together with an audit report thereon;

23.4.1.2 a copy of the Annual Financial Statements;

23.4.1.3 a copy of any audit findings report prepared by the Private Party's auditors y or to its management in relation to the Private Party's financial, accounting and other systems, management and accounts; and

23.4.1.4 a reconciliation of the profit and loss account and the budget for that Financial Year, and an analysis thereof.

24. INFORMATION AND AUDIT ACCESS

24.1 The Private Party shall provide to SANParks all information, documents, records and the like (including all contracts concluded by it for the purposes of or ancillary to the implementation of this PPP opportunity) in relation to the PPP opportunity, 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, No. 2 of 2000, the Promotion of Administrative Justice Act, No. 3 of 2000, the Promotion of Equality and Prevention of Unfair Discrimination Act, No. 4 of 2000, the PFMA and the Public Audit Act, No. 25 of 2004.

24.2 Without limiting the generality of the aforegoing, the Private Party shall:

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24.2.1 provide and shall procure that its Subcontractors shall provide all such information as SANParks may reasonably require from time to time to enable SANParks to provide reports and returns as required by any Responsible Authority, including reports and returns regarding the physical condition of any building occupied by SANParks for purposes of the PPP opportunity, health and safety, national security, and Environmental safety; and

24.2.2 note and facilitate SANParks' compliance with the Promotion of Access to Information Act, 2000 in the event that SANParks is required to provide information to any person pursuant to that Act.

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

25. 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:

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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, 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 Concession Area from any of the events referred to in Clauses 25.1.1 and 25.1.2 above,

25.1.1.4 epidemic and pandemic declared as a state of national disaster in terms of the Disaster Management Act 57 of 2002,

to the extent that by direct reason of the Force Majeure either Party is 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 endeavours to remedy its failure to perform; and

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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 18

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 period of 5 (five) Business Days. The written notice shall contain such relevant information relating to the failure to perform (or delay in performing) as is available, including (without limitation) the effect of the event of Force Majeure on the ability of the Party to perform, the action being taken in accordance with Clause 25.1.3, 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 endeavour to agree any modifications to this PPP

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Agreement, which may be equitable having regard to the nature of an event or events of Force Majeure. This PPP Agreement shall terminate in terms of Clause 26 if no such agreement is reached.

25.2 **Termination on Force Majeure**

25.2.1 If, in the circumstances referred to in Clause 25.1.9, the Parties have failed to reach agreement on any modification to this PPP Agreement pursuant to that Clause, within one hundred and eighty (180) days of the date on which the Party affected serves notice on the other Party in accordance with that Clause, either Party may at any time afterwards terminate this PPP Agreement by written notice to the other Party having immediate effect, provided always that the effects of the relevant event of Force Majeure continue to prevent either Party from performing any material obligation under this PPP Agreement.

25.2.2 **Termination Amount on Force Majeure**

On Early Termination of this PPP Agreement as a result of Force Majeure, and without derogating from any other rights which the Private Party may have in law, SANParks shall, pay the Private Party the Termination Amount less:

25.2.2.1 liquidated damages that became due before termination;

25.2.2.2 any undisputed amounts owed by the Private Party to identified regulatory authorities;

25.2.2.3 outstanding maintenance costs and outstanding lifecycle replacement costs due at the time of termination;

25.2.2.4 value of the insurance proceeds and recoveries received by the Private Party under the Project Insurances that have not been

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applied towards Reinstatement; and

25.2.2.5 any other amounts owing from the Private Party due to SANParks

26. PRIVATE PARTY DEFAULT

26.1 Definition

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

26.1.1.1 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;

26.1.1.2 a liquidator, business rescue practitioner or the like taking possession of or being appointed over, or any business rescue proceedings, winding-up, execution or other process being levied or enforced (and not being discharged within ten (10) Business Days) upon, the whole or any material part of the assets of the Private Party (in any of these cases, where applicable, whether provisional or final, and whether voluntary or compulsory);

26.1.1.3 the Private Party ceasing to carry on business;

26.1.1.4 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);

26.1.1.5 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

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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;

26.1.1.6 the Private Party fails to pay any sum or sums due to SANParks under this PPP Agreement including but not limited to the requirements contained in Clauses 47.11, 12.6 and Schedule 6 (which sums are not bona fide in dispute) and such failure continues for 10 (ten) Business Days from receipt by the Private Party of a notice of non-payment from SANParks;

26.1.1.7 the Private Party or any of its directors is found guilty of a criminal offence involving fraud or bribery or dishonesty, by a court of law, with punishment imposed of a fine of not less than R 500,000 (five hundred thousand Rand) or imprisonment for a period exceeding six (6) months unless such finding is the subject of an appeal that is being diligently pursued by the Private Party or relevant director of officer;

26.1.1.8 the Private Party or any of its directors falsifies any report, document or information that is provided by the Private Party to SANParks;

26.1.1.9 breach of any provision of this PPP Agreement has occurred at least 3 (three) times in any Financial Year and the Private Party having failed to remedy such breach within the time stipulated therefor in terms of a breach notice issued to it by SANParks in terms of this PPP Agreement;

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

26.1.1.11 the Private Party fails to obtain and maintain any Project

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Insurances as required in terms of this PPP Agreement;

26.1.1.12 the Private Party fails to commence trading at the Concession Area on the Operation Commencement Date;

26.1.1.13 Private Party fails to obtain all the required permits, authorisations, licences and permits; or

26.1.1.14 Private Party fails to provide a Performance Bond in the amount and form indicated in Clause 17.

26.2 **SANParks' Options**

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

26.2.1.1 in the case of the Private Party Default referred to in Clauses 26.1.1.1, 26.1.1.2, 26.1.1.3, 26.1.1.4, 26.1.1.6, 26.1.1.7, 26.1.1.8, 26.1.1.9 and 26.1.1.11 terminate this PPP Agreement in its entirety by notice in writing having immediate effect;

26.2.1.2 in the case of any other Private Party Default referred to in Clauses 26.1.1.5, 26.1.1.10 and 26.1.1.12, serve notice of default on the Private Party requiring the Private Party to remedy the Private Party Default referred to in such notice of default (if the same is continuing) within ten (10) Business Days of such notice of default; or

26.2.1.3 request that the Private Party put forward, within 10 (ten) Business Days of a notice of default, a reasonable programme for remedying the Private Party Default or to remedy the underlying cause of such Private Party Default ("Remedial Programme"). The Remedial Programme shall specify in reasonable detail the manner in and the latest date by which, such Private Party Default is proposed to

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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.

26.2.2 If the Private Party Default is notified to the Private Party in a notice of default in terms of Clause 26.2.1.2 and the Private Party Default is not remedied before the expiry of the period referred to in the notice, then SANParks may terminate this PPP Agreement with immediate effect by written notice to the Private Party and the Lenders.

26.3 **Remedy Provisions**

26.3.1 Where the Private Party puts forward a Remedial Programme in accordance with Clause 26.2.1.3, SANParks shall have 20 (twenty) Business Days from receipt of the same within which to notify the Private Party that it does not accept the Remedial Programme, failing which SANParks shall be deemed to have accepted the Remedial Programme. SANParks shall act reasonably in rejecting the Remedial Programme and shall give reasons for its decision. Where SANParks notifies the Private Party that it does not accept the Remedial Programme, the Parties shall endeavour within the following 5 (five) Business Days to agree any necessary amendments to the Remedial Programme put forward. In the absence of agreement within 5 (five) Business Days, the question of whether the Remedial Programme (as the same may have been amended by agreement) will remedy the Private Party Default in a reasonable manner and within a reasonable time period.

26.3.2 If -

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

26.3.2.2 where the Private Party puts forward a Remedial Programme

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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

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

26.3.3 then SANParks may terminate this PPP Agreement in its entirety by written notice to the Private Party with immediate effect; provided that for the purposes of Clause 25 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.

26.4 **SANParks' Costs**

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

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

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Agreement).

26.5 **Termination Amount on Private Party Default**

26.5.1 On termination of this PPP Agreement as a result of a Private Party Default, without derogating from any other rights which SANParks may have in law, SANParks shall pay the Private Party the Termination Amount as at the Date of Early Termination, less:

26.5.1.1 the cost and expense incurred or to be incurred in the reinstatement of the Concession Area as at date of Early Termination, fair wear and tear accepted;

26.5.1.2 an amount equal to any liquidated claims recoverable at law;

26.5.1.3 all costs and expenses incurred and/or reasonably expected to be incurred in restoring or remedying material damage to the Concession Area 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

26.5.1.4 any unpaid Assessment Rates and/or Utility Charges payable by the Private Party as at the date of Early Termination.

27. SANPARKS DEFAULT

27.1 Notwithstanding the provisions of this Agreement, SANParks Default shall mean a breach by SANParks of its 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**

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27.2.1 On the occurrence of a SANParks Default, or within ten (10) days after the Private Party becomes aware of same, the Private Party may serve notice on SANParks of the occurrence (and specifying details) of such SANParks Default. If the SANParks Default 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 on 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, on Early Termination, pay the Private Party the Termination Amount.

28. **CORRUPT GIFTS AND FRAUD**

28.1 **Definition and Warranty**

28.1.1 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 26.1.1.5.

28.1.2 **"Corrupt Act"** means:

28.1.2.1 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:

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28.1.2.2 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

28.1.2.3 for showing or not showing favour or disfavour to any person in relation to this PPP Agreement or any other contract with SANParks or any other organ of state;

28.1.2.4 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;

28.1.2.5 committing any offence:

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

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

28.1.2.8 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

28.1.2.9 defrauding or attempting to defraud or conspiring to defraud SANParks or any other public body,

"Corrupt Acts" shall have a corresponding meaning.

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28.2 Compensation for termination for Corrupt Acts

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. CONSEQUENCES OF TERMINATION

29.1 Termination of the PPP Agreement

29.1.1 Notwithstanding any provision of this PPP Agreement, on termination of PPP Agreement shall terminate on expiry of the Project Term or on Early Termination in accordance with the provisions of this clause 29 (*Consequences of Termination*).

29.2 Transfer to SANParks of Concession Area on Termination

29.2.1 On termination of this PPP Agreement for the reasons fully outlined in this Agreement, the Private Party shall:

29.2.1.1 handover the Concession Area/ Concession Area, the Camp(s), all Concession Assets (excluding all New Concession Assets) and its rights or interest in the Development to SANParks free of charge, liens, claims or encumbrances of any kind whatsoever, and free of any liabilities, in good condition, fair wear and tear accepted in accordance with the standards set out in SANParks' Requirements. The Private Party shall procure handover of any

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assets and or Concession Area managed and/or operated by the Subcontractors.

29.2.1.2 transfer all rights in respect of Concession Area to SANParks on payment of outstanding Capital Amount plus interest. In the event of the Private Party Default, the Private Party shall transfer all rights in respect of the Concession Area to SANParks free of charge irrespective of whether or not the Capital Amount plus interest due and payable by SANParks is paid in full or not;

29.2.1.3 transfer the Transferrable Licenses Intellectual Property;

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

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

29.2.1.4.2 the historical operating data and plans of the Concession Area, its furniture, fittings and equipment in a format acceptable to SANParks;

29.2.1.5 use all reasonable endeavours to procure that the benefit of all manufacturer's warranties in respect of mechanical and electrical equipment used or made available by the Private Party under this PPP Agreement and included in the Project Assets are assigned, or otherwise transferred, to SANParks;

29.2.1.6 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

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position to comply with its obligations in accordance herewith;

29.2.1.7 remove from the Concession Area and Concession Area 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; and

29.2.1.8 deliver to SANParks:

29.2.1.8.1 any keys, remote access apparatus and computer access cards to the Concession Area;

29.2.1.8.2 complete asset registers and data registers pertaining to the PPP opportunity;

29.2.1.8.3 permits and licenses; and

29.2.1.8.4 vacate the Concession Area and shall leave same in a safe, clean and orderly condition.

29.2.2 In the event of termination of this PPP Agreement on the expiry of the Project Term or as a result of Early Termination, the Private Party shall be mandated to handover the Concession Area to a new Private Party or any appointed operator at the time of termination. Such handover will be subject to the principles set out in *SCHEDULE 25 (HANDOVER PRINCIPLES*).

29.2.2.1 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

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practicable any inconvenience or any risk to the health and safety of SANParks Employees and members of the public;

29.2.2.2 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:

29.2.2.2.1 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 29.2.2.2.1, "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

29.2.2.2.2 assisting SANParks by providing all (or any) participants in such tender process with access on reasonable notice and at reasonable times to the Concession Area subject to the Private Party's safety rules and regulations.

29.3 **Continuing Obligations**

29.3.1 Save as otherwise expressly provided in this PPP Agreement -

29.3.1.1 termination of this PPP Agreement shall be without prejudice to any accrued rights and obligations of the Parties under this PPP Agreement as at the Termination Date; and

29.3.1.2 termination of this PPP Agreement shall not affect the continuing

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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.

29.4 **Compensation for Termination on Expiry of the Project Term**

29.4.1.1 Save for all of the accrued and continuing financial obligations of either Party set out in this PPP Agreement after the Termination Date and notwithstanding anything to the contrary in this PPP Agreement, the Parties agree that in the event of termination of this PPP Agreement on expiry of the Project Term, SANParks shall not be liable for any payment or compensation to the Private Party or any Subcontractor or any third party, including payment or compensation for any asset transfers contemplated in clause 29.2 (Transfer of the Concession Area on Termination).

29.5 **Compensation on Early Termination**

29.5.1 The Parties agree that notwithstanding anything to the contrary in this PPP Agreement, in the event of Early Termination of this PPP Agreement:

29.5.1.1 as a result of a SANParks Default, Private Party Default or Force Majeure, SANParks shall be liable for payment of the Termination Amount prescribed in accordance with clause 26.5 (Termination Amount on Private Party Default); and 27.3(Termination Amount on SANParks Default) of this PPP Agreement; and

29.5.1.2 as a result of Corrupt Acts by the Private Party, the Private Party shall be liable for payment or compensation to SANParks for all the costs incurred as contemplated in clause 28.2 of this PPP Agreement; and

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29.5.1.3 all of the accrued and continuing financial obligations of either Party set out in this PPP Agreement shall remain.

30. DISPUTE RESOLUTION

30.1 Referable Disputes

30.1.1 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 endeavours 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:

30.3.2.1 held and will be completed as soon as possible;

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

30.3.2.3 in accordance with the provisions of the Commercial Arbitration

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Rules of the Arbitration Foundation of Southern Africa ("AFSA");

30.3.2.4 in Gauteng;

30.3.2.5 conducted in the English language; and

30.3.2.6 in the presence of only the arbitrator/s, his assistant/s and recording staff the arbitrator/s so require/s, the legal and other representatives of the claimant and respondent who wish to be present or represented, and only if and for so long as the arbitrator/s may permit, such witnesses as either of the claimant or respondent may wish to call to present expert or other evidence.

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 (fifteen) years' standing;

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

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

30.3.3.4 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.

30.3.3.5 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

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legal nature, unless otherwise agreed and such disputes shall all be deemed to be legal matters.

30.3.3.6 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.

30.3.3.7 Notwithstanding the provisions of this clause 30.3.3.7, the High Court of South Africa shall have jurisdiction to determine any proceedings instituted by way of notice of motion by any of the Parties against any of the other Parties thereto in which interim relief, or urgent final relief, is claimed howsoever arising out of or in connection with this PPP Agreement. In respect of such applications, each of the Parties specifically submits itself to and consents to the exclusive jurisdiction of the High Court of South Africa, Gauteng Division, Pretoria.

30.4 **Performance to Continue**

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

31. CHANGE IN CONTROL AND CHANGE IN OWNERSHIP

31.1 For the duration of the Project Term, the Private Party shall procure that there is no Change in Control in the Private Party 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.

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31.2 The Private Party may not, within 5 (five) years, from the Operation Commercial Date, undertake a Change in Control 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.

31.3 Notwithstanding the provisions of clause 31.1 but subject to the Lenders' rights in respect of any security held by the Lenders (or any agent acting on their behalf, or any security company, trust or other entity holding any security pursuant to the Financing Agreements), prior to the expiry of a period of 36 (thirty six) months commencing on the Effective Date, the Private Party shall procure that there is no sale, assignment, cession, transfer, exchange, renunciation or other disposal of the whole or any part of the equity and/or the shareholder loans held by the active shareholders or of any company of which they are a subsidiary (excluding any active shareholder that is itself or through one of its affiliates the of Subcontractors without the prior written approval of the SANParks. For the avoidance of doubt, this clause shall not prevent a passive Shareholders from effecting a sale, assignment, cession, transfer, exchange, renunciation or other disposal of the whole or any part of the equity and/or the shareholder loans held by them in the Private Party; provided that in so doing, the Private Party's obligations in Schedule 5 (*B-BBEE Obligations*).

31.4 The Private Party shall procure that for the duration of 36 (thirty-six) months commencing from the Effective Date:

31.4.1 subject to the Lenders' rights in respect of any security held by them (or any agent acting on their behalf, or any security company, trust or other entity holding any security pursuant to the Financing Agreements for the benefit of the Lenders) there is no sale, assignment, cession, transfer, exchange, renunciation or other disposal (at any time) of the whole or any part of the Black Equity and/or the shareholder loans of any Black Shareholder other than to another Black Shareholder, Black Person or Black Enterprise; and

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31.4.2 there is no dilution in the aggregate Black Equity holdings of the Black Shareholders below the Minimum Black Exercisable Voting Rights and the Minimum Black Economic Interest.

31.5 For the duration of the Project Term, the Private Party shall procure that there is no Change in Ownership in the Private Party which change in ownership will result in the Technical Partner owning less than 30% equity interest in the Private Party, without the prior written approval of SANParks.

31.6 SANParks reserves the right to refuse the proposed Change in Ownership if it is of the view that such change will affect the ability of the Private Party to perform the Project Deliverables.

32. CESSION, TRANSFER AND SUBSTITUTED ENTITY

32.1 Transfer by the Private Party

32.1.1 The Private Party may not, without the prior written consent of SANParks, which consent shall not be unreasonably withheld, cede, delegate, assign, or transfer:

32.1.1.1 this PPP Agreement or any Associated Agreement; or

32.1.1.2 any of its rights, interests or obligations thereunder, save, in each case, to the extent required for the financing of the operation of the Concession Area 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 Concession Area, provided that:

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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; and

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 subject to agreement by the Lenders, 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).

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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 any proven 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, B-BBEE and technical capability of the Private Party to perform and assume the obligations of the Private Party under the PPP Agreement and the Financing Agreements; 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 request 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

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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 which includes all registered trademarks of SANParks, including but not limited to South African National Parks and Kruger National Park "Protected Names ") are associated with and peculiar to SANParks and are the Intellectual Property

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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 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. The name chosen by the Private Party and approved by SANParks for use in relation to the Project, if it incorporates any of the Protected Names, shall be the property of the Private Party only for the duration of the Agreement and shall be changed in terms of 33.8 above upon termination. Should the name of the Private Party's business operating name, as approved by SANParks, not incorporate any Protected Names or elements thereof, nor any Project Trade Marks, as defined in 33.12 below, the name shall remain the 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. The Private Party may not use SANParks

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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 Concession Area and Concession Area 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.

33.12 The Private Party shall not, in its own name, apply to register any trade marks incorporating the Protected Names or any elements of the Protected Names, nor shall it assist any third party to do so. Any applications to register trade-marks developed specifically for use in relation to the Project ("the Project Trade Marks") must be done in consultation, and with the prior written authorisation of, SANParks, at the Private Party's own expense. In that respect, the Parties agree that SANParks's nominated attorneys will be responsible for the filing, prosecution and maintenance of any Project Trade Marks, and that any Project Trade Marks shall be registered in SANParks's name, unless agreed otherwise, in writing.

33.13 To that end, the Private Party undertakes to cooperate with SANParks and its nominated attorneys and to sign all such documents and do all such things as may be necessary, whether in relation to the filing, maintenance, or transfer of any Project Trade Marks. The Private Party hereby grants SANParks a power of attorney in rem suam to do all such things and sign all such documents in the event that the Private Party refuses or fails to do so. In the event that any Project Trade Marks are, by prior written agreement between the Parties, registered in the name of the Private Party, the Private Party agrees the SANParks shall become the proprietor of all rights in and to the Project Trade Marks, and without any consideration payable to the Private Party. The Private

Party hereby cedes, assigns to SANParks all rights in and to such Project Trade Marks with effect from the date of termination of this Agreement.

33.14 The Parties record and agree that any goodwill and reputation attaching to the Project Trade Marks shall be owned by SANParks.

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/or any third party, on termination of this PPP Agreement for any reason whatsoever before the Expiry Date, grant to SANParks (or its nominee) a non-exclusive licence to use such Intellectual Property for the Project or any operational and maintenance service to be provided in the future by or for SANParks in relation to the Concession Area and Concession Area, or any Concession Area that succeed them.

34.2 In the event that any Intellectual Property is not owned by the Private Party but was specifically developed for the PPP opportunity, 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 (or its nominee) and at SANParks' cost, a non-exclusive licence, on terms no less favourable than those applicable to the Private Party, to use that Intellectual Property for the purpose of the PPP opportunity; 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 purpose of implementation of the PPP opportunity.

34.3 In the event that the Private Party uses any Intellectual Property owned by any third party i**n** the PPP opportunity, 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

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ensure that the Private Party is at all times after the Operation Commencement Date entitled to –

34.3.1 grant to SANParks a non-exclusive licence, on terms no less favourable than those applicable to the Private Party, and at SANParks' cost to use that Intellectual Property for use in relation to the PPP opportunity, which licences shall be capable of being further transferred by SANParks to third parties at no additional cost; or

34.3.2 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 additional cost, for use in relation to the PPP opportunity.

34.4 If the owner of Intellectual Property contemplated in clause 34.1 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.

34.5 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 PPP opportunity, or to whom any rights in respect of the Intellectual Property are assigned for the PPP opportunity, 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

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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 PPP opportunity, 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.

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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

38.1 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.

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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;

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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, operation and maintenance of the PPP opportunity; or

40.3.7 any disclosure of information by SANParks to any Responsible Authority.

40.4 The disclosures permitted above may only be made subject to obtaining appropriate confidentiality restrictions consistent with the provisions of this Clause 40 (*Confidentiality*) from the intended recipients.

41. CONSENTS

41.1 SANParks shall not unreasonably withhold or delay the giving of any consent, approval or expression of satisfaction referred to in the PPP Agreement and shall exercise its rights to consent, approve or express satisfaction reasonably and fairly. In any, circumstance where consent or approval is required to be given by SANParks in terms of this PPP Agreement, such consent or approval shall not be unreasonably withheld.

42. NOTICES

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

42.2 The addresses for Notices are as follows:

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SANParks:

Marked for the attention of the CEO:

c/o Legal Services

Groenkloof National Park

643 Leyds Street

Muckleneuk
Pretoria

Telephone: (012) 426-5000

Facsimile: (012) 343-0155

E-mail: fahlaza.monaledi@SANParks.org

Private Party:

Marked for the attention of the Directors: _____

Telephone: _____

Facsimile: _____

E-mail: _____

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

42.3.1 on the same day, if delivered by hand; and

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

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

43. STIPULATION FOR THE BENEFIT OF THE LENDERS

43.1 The Parties agree that the provisions of this PPP Agreement that refers to the Lenders comprise stipulations for the benefit of the Lenders and that the Lenders may at any time accept such stipulations in their favours provided that they accept the obligations imposed upon them in terms of this PPP Agreement.

44. COUNTERPARTS

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

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SIGNED AT …… ON THE …….. 2024.

For and on behalf of
SOUTH AFRICAN NATIONAL PARKS

_____

who warrants his authority hereto

SIGNED AT …… ON THE …….. 2024.

For and on behalf of
THE PRIVATE PARTY

_____

who warrants his authority hereto

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45. SCHEDULE 1 - DESCRIPTION OF CONCESSION AREA

45.1 The Concession Area will include all the Concession Area and infrastructure within the following designated area.

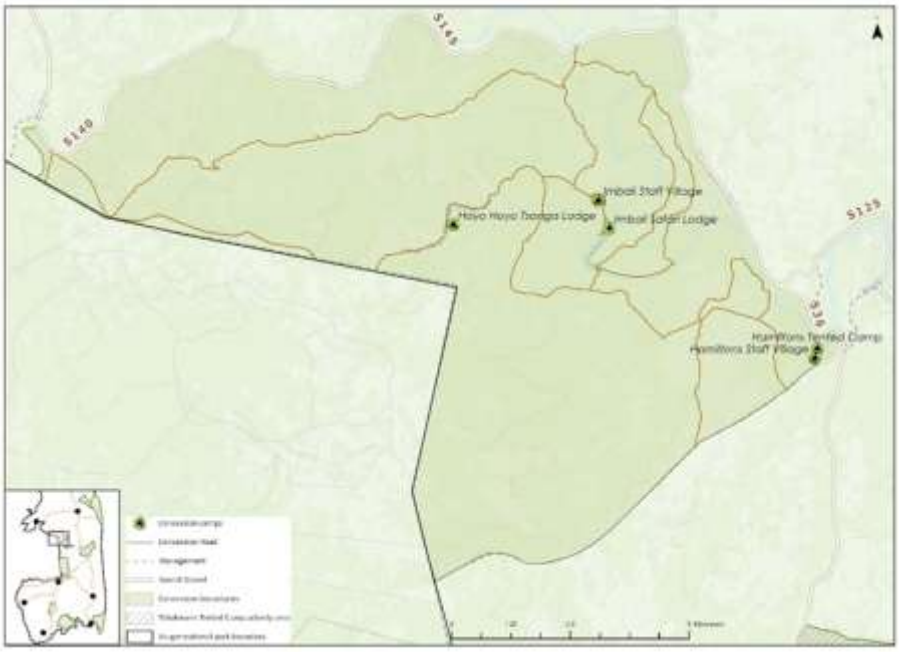








45.2 The Mluwati Concession is located in the Kruger National Park off THE H1-2 on S36, ±40km from Orpen Gate.



45.3 The Concession currently comprises 3 lodges – currently known as Imbali Lodge, Hamilton's Tented Camp and Hoyo-Hoyo Traditional Camp

45.4 The co-ordinates for the lodges are: -24.600992364620332, 31.62981484659911

45.5 The maximum number of people to sleep on site is 60 people including guests and staff. The total number of camps is not specified.

45.6 The size of the concession is 10 000ha with 40km of existing roads and 20 kms that can still be developed.

45.7 **Description of the Existing Physical Facilities**

45.7.1 The following comprises a high-level description of the physical facilities/area within the recorded footprint. Bidders are to use this description as a guide and undertake their own investigations to assess the facilities and plan its future physical facilities proposal.

45.7.2 **Lodge 1 - currently known as Imbali Safari Lodge**

45.7.2.1 Very modern and contemporary

45.7.2.2 Thatch roof with brick walls.

45.7.2.3 Wooden outside decks

45.7.2.4 Dining area (internal and outside seating)

45.7.2.5 Inside lounge areaBoma

45.7.2.6 Communal swimming pool

45.7.2.7 12 rooms (24 beds)

45.7.2.7.1 Thatch and brick buildings

45.7.2.7.2 Inside bed and seating area

45.7.2.7.3 Wooden decks with splash pool and seated areas

45.7.2.7.4 En-suite bathroom with bath (Victorian) and shower

45.7.2.8 Raised wooden walkways

45.7.3 **Lodge** 2 - **currently known as** Hamilton's Tented Camp

45.7.3.1 Traditional Victorian (19th century) Safari tented camp

45.7.3.2 Main area tented on wooden decks

45.7.3.3 Indoor Lounge area

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45.7.3.4 Outside seating on decks

45.7.3.5 Communal pool

45.7.3.6 In and outdoor dining areas

45.7.3.7 6 tents (12 beds) on wooden decks

45.7.3.7.1 King size beds with small seating area

45.7.3.7.2 Raised wooden walkways

45.7.3.7.3 Splash pools

45.7.3.7.4 Outside deck Salas

45.7.3.7.5 En-suite bathroom with Victorian bath (indoor) and outside shower

45.7.4 **Lodge** 3 - **currently known as** Hoyo -Hoyo Traditional Camp

45.7.4.1 The building style is based on the Tsonga tradition

45.7.4.2 Rooms and Main lodge built with thatch and brick

45.7.4.2.1 Indoor and outdoor deck dining area and lounge seating area

45.7.4.2.2 Fire pit around outdoor area

45.7.4.3 Communal swimming pool

45.7.4.4 6 units (12 beds) - Rondawels

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45.7.4.4.1 Queen size beds with small indoor seating area

45.7.4.4.2 Stone bath (indoor)

45.7.4.4.3 Shower (outdoor)

45.7.4.4.4 Outdoor deck seating area

45.7.4.4.5 The walkways are sand and stone pathways

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

46.1 Private Party Requirements:

46.1.1 Private Party Responsibility:

46.1.1.1 The Private Party shall be solely responsible for the maintenance of the lodge and support infrastructure (internal and external included access roads). The Private Party shall be solely responsible for the insurance of the Business Assets

46.1.1.2 In co-operation with SANParks, manage, operate and maintain the Concession Area, in a manner that allows for the desired objectives to be achieved.

46.1.1.3 Co-operate with SANParks in general and fit the property into both the SANParks and their own brand of properties.

46.1.1.4 Accept the limitations of operating conditions and rules and regulations that prevail in Kruger National Park.

46.1.1.5 Comply with conditions set out in the Kruger National Park Management Plan 2018 – 2028 as may be amended and/or replaced from time to time or such equivalent document that may be applicable.

46.1.1.6 Carry out advertising, marketing and sales that are both site specific and for their group in general. Preparedness to participate in trade shows under both the SANParks banner and their own brand.

46.1.1.7 The Private Party shall be solely responsible for the upgrade and maintenance of the lodge and support infrastructure (internal and

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external) for compliance with (where applicable):

46.1.1.7.1 SANS 10400: National Building Regulations

46.1.1.7.2 SANS Specifications

46.1.1.7.3 SANS 1200 : Standardized Specification for Civil Engineering Construction (All Parts)

46.1.1.7.4 Occupational Health & Safety Act 85 of 1993

46.1.1.7.5 Periodical structural inspections of building infrastructure must be conducted according to SANS 13822.

46.1.1.8 The Private Party shall be responsible for all the maintenance and renovation of all finishes and fittings of the interior and exterior of the guest and general areas/buildings including roofs, electrical light fittings, sanitary ware, ironmongery, tiling, plastering, plumbing and painting. It includes but not limited to the following:

46.1.1.8.1 Building Infrastructure

46.1.1.8.2 The periodical structural inspections of existing building infrastructure were introduced with the promulgation of the Occupational Health and Safety Act 85 of 1993. Regulation 11(2), Part 11 of the OHSA Regulations sets out the requirements governing periodic structural inspection of existing buildings.

46.1.1.9 The inspections are to be carried out strictly to the required SANS 13822: 2016 (Basis for design of structures- Assessment of existing structures)

46.1.1.10 Periodic structural inspections are carried out based on the following frequency:

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46.1.1.10.1 An owner (in this instance the Private Party) of a structure must ensure that-inspections are carried out periodically by competent persons in order to render the structure safe for continued use; and

46.1.1.10.2 That the inspections contemplated above are carried out at least once every six months for the first two years and thereafter yearly;

46.1.1.11 The records of inspections and maintenance are kept and made available on the request of the KNP Inspector.

46.1.1.12 The inspection consists of one or both of the following stages:

46.1.1.12.1 Stage 1: Preliminary Assessment - Visual Inspection

46.1.1.12.2 Stage 2: Detailed Assessment - Full Structural Investigation

46.1.1.12.3 Stage 3: Intervention.

46.1.1.13 The Owner (in this instance the Private Party) must ensure the structure is maintained in such a manner that it remains safe for continued use.

46.1.1.14 The records of inspections and maintenance are kept and made available on request to an Inspector.

46.1.2 **Maintenance and Renovation Requirement:**

46.1.2.1 Internal and external wall finishes (plastering, painting, tiling, cladding);

46.1.2.2 Private Party to ensure that plaster cracks in external and internal walls are repaired and walls re-painted.

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46.1.2.3 Private Party to ensure that painted external and internal walls are maintained and re-painted as and when required.

46.1.2.4 Private Party to ensure that wall tiling in kitchen, on exposed corners, are protected with corner-protectors.

46.1.2.5 Internal and external floor finishes (screed, tiling, tinted granos, carpets, timber decking and concrete/paved aprons);

46.1.2.5.1 Private Party to ensure that internal floor tiling is maintained and repaired.

46.1.2.5.2 Private Party to ensure that timber decking is sanded and sealed as and when required.

46.1.2.5.3 Private Party to ensure that when the kitchen floor finish is upgraded, coved skirtings are fitted between the wall and floor tiling.

46.1.2.5.4 External concrete/paved aprons, 900 mm wide concrete/paved aprons are to be placed against buildings (BOH), along roof overhangs that is without gutters and rainwater downpipes.

46.1.2.6 Sanitary fittings where these falls within the footprint area (basins, sinks, toilets, urinals);

46.1.2.7 Periodic inspections to ensure that no cracks develop in porcelain sanitary fittings.

46.1.2.8 Internal and external plumbing (all internal piping, valves and taps);

46.1.2.8.1 Periodic inspections to ensure no water leaks in piping, valve and tap washers are maintained to avoid water wastage.

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46.1.2.9 Internal and external doors – Private Party to ensure that BOH doors are protected be means of stainless-steel kick and push plates.

46.1.2.10 Gas bottles/cylinders (LP Gas)

46.1.2.10.1 The Private Party needs to ensure that the gas cylinder installation and equipment complies with SANS 10087 legislation and is serviced/tested or replaced accordingly.

46.1.2.11 Water sources – Borehole, storage tanks, main supply pipeline and pumps. Compliance with SANS 1200 - Standardized Specification for Civil Engineering Construction (All Parts)

46.1.2.12 Internal waste drainage system (all internal piping up to and including the first fat trap or gulley situated on the outside of the building and well maintained);

46.1.2.13 Periodic inspections to ensure that there is no build-up of fat/grease in piping.

46.1.2.14 Periodic inspections to ensure that fat traps and/or gulleys are cleaned-out at regular intervals.

46.1.2.15 Ceilings, air conditioning, and geysers;

46.1.2.16 Ceilings

46.1.2.16.1 Private Party to ensure that ceilings in kitchens are maintained and painted with anti-mould and anti-bacterial paint.

46.1.2.16.2 Private Party to ensure that kitchen concrete ceiling soffits are plastered and painted as above.

46.1.2.17 General HVAC Systems

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46.1.2.17.1 Ensure continuous compliance with Occupational Health and Safety Act 85 of 1993.

46.1.2.17.2 Compliance with SANS 10142-1 The wiring of premises Part 1- Low-voltage installations.

46.1.2.17.3 Compliance with SANS 10400 The application of the National Building Regulations – Part A: General principles and requirements.

46.1.2.17.4 Compliance with SANS10400-O - Part O Lighting and ventilation.

46.1.2.17.5 Periodic inspections to ensure heat loads in areas do not change due to equipment upgrades or additions.

46.1.2.18 Toilet extract systems

46.1.2.18.1 Periodic inspections to all toilet extract air are operational and is directly or ducted to the outside as per SANS10400-O - Part O Lighting and ventilation.

46.1.2.19 DX, Chiller water and Heat pump systems

46.1.2.19.1 To ensure and maintain that DX systems use environmentally friendly and safe refrigerants. If units use refrigerants like R22 or other HCFC, a plan to replace them with an approved alternative drop-in refrigerant should be made. Drop-in refrigerants are acceptable for short-term solutions but a more sustainable plan to replace these units needs to be in place and executed soonest.

46.1.2.19.2 Periodic cleaning and replacement of filters as required.

46.1.2.20 Ducted HVAC systems

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46.1.2.20.1 Periodic inspections to ensure all ducted systems for operations of fire dampers.

46.1.2.20.2 Periodic inspections to ensure no leakage and potential energy losses in duct runs.

46.1.2.21 Roofs and all external infrastructure relating to the lodge;

46.1.2.21.1 Private Party to ensure that roof leaks are repaired on sheeted and thatched roofs.

46.1.2.22 Thatched roofs:

46.1.2.22.1 Periodic inspections to be carried out and any relevant maintenance work to be done i.e. Re-ridging and/or patching or total re-thatch.

46.1.2.22.2 Thatch to be cleaned every now and then by raking to remove moss and leaves.

46.1.2.22.3 Thatch to be brushed every 5-8 yrs. to ensure no deep rotting or thatch degeneration occurs.

46.1.2.23 Compliance and maintenance with SANS standard for Grey water plant, storage tanks and fire-fighting systems.

46.1.2.24 The Private Party shall be responsible for maintenance for all kitchen and laundry equipment, including the walk-in cool rooms and freezers with their refrigeration equipment.

46.1.2.25 Kitchen canopies

46.1.2.25.1 Periodic inspections to ensure all extract ventilation for kitchens to be complaint and operational. All baffle filters are to be kept clean for hygiene and to prevent potential fires.

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46.1.2.26 Cool and freezer rooms

46.1.2.26.1 To do periodic inspections to operation of freezer and cold rooms and no ice buildup on coils. If so, refrigerant charge to be checked to ensure no refrigerant leaks are present.

46.1.2.27 Ducted Industrial Laundry Systems

46.1.2.27.1 Periodic inspections to ensure laundry dryer ducts are free from lint to prevent fire hazard and to ensure dryers operate optimally.

46.1.2.28 The Private Party shall maintain all walkways, parking areas, stairs, handrails, retaining structures, fencing, gardens, irrigation systems, swimming pool, health gym, grey water plant and drainage structures to ensure that it is in good working order and safe for public use.

46.1.2.29 Access roads with efficient stormwater drainage to the Lodge (Roads must be operated and maintained as per the contents of the SANParks Roads Manual)

46.1.2.30 Swimming pool pump and filtration system. Periodic inspections to ensure all swimming pool pump and filtration systems are clean and that media filters are backwashed as needed.

46.1.2.31 The borrow pits to be used by the Concessionaires during the construction phase will be determined by the SR and the Division Technical Services and submitted in writing to the Concessionaire. After the construction phase, the SR, Technical Services representative and the Concessionaire must determine the “life pits” to be used during the operational phase of the concession.

46.1.2.32 The use of gravel during the operational phase of the Concession will have to comply with the following guidelines:

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46.1.2.33 The Concessionaire must consult with the SR/PM who will inform the Division: Technical Services of the intention to use one or more of the gravel pits for whatever purpose, i.e. maintaining of roads.

46.1.2.34 The use of the gravel pit must comply with the stipulations of the Environmental Management Plan (EMP) for the Operational Phase drafted during the EIA process.

46.1.2.35 The local SR must monitor the use of the gravel pit/s to ensure compliance with the EMP.

46.1.2.36 In terms of the current KNP Rules and government legislation, no new gravel pits may be developed in a national park. However, SANParks have approved in principle that where an existing gravel pit is not economically viable to use, the Concessionaire may apply for a new pit by completing a full EIA. Final approval will depend on the merits of each case. The KNP is in a process to rationalise gravel pits and the use thereof in the park and has no desire to open up new gravel pits.

46.1.2.37 Maintenance of roads will vary between the Concession Areas and needs to be done in consultation with the SANParks Technical Services Department.

46.1.2.38 In some Concession Areas, however, it may be necessary to import gravel for hardening and capping certain roads to ensure year-round access. The locations of ‘borrow pits’ or quarries for this purpose must be done in consultation with Park staff and subject to an EIA. If gravel must be imported from outside the Park, the Concessionaire must notify SANParks, and SANParks will ensure that the gravel comes from an acceptable source.

46.1.2.39 Gravel pits must be used and rehabilitated according to the stipulations of the Operational EMP and “Specifications for

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Construction of Roads in the KNP and Concession Areas" document

46.1.2.40 The Private Party needs to ensure that the firefighting equipment complies with applicable legislation and is serviced/tested or replaced accordingly.

46.1.2.41 The Private Party shall be required to develop and adhere to a whole lifecycle costing and maintenance regime.

46.1.2.42 The Private Party will provide monthly water and electrical readings to SANParks and ensure that the annual water and energy saving targets are achieved.

46.1.2.43 The Private Party will ensure that the staff housing allocated are well maintained and included in the maintenance plan.

46.1.2.44 Should the Private Party make changes and improvements during the concession period to any structures within the footprint of the lodge, the Private Party is obliged to adhere to the latest recommendations of the following South African Standards:

46.1.2.44.1 MIP facilities – SANS 10400 Part S - Facilities for Persons with Disabilities.

46.1.2.44.2 Swimming Pools – SANS 10400 Part D – Public Safety

46.1.2.44.3 Balustrades – SANS 10400 Part D – Public Safety

46.1.2.44.4 Stairs – SANS 10400 Part M – Stairways

46.1.3 Electrical

46.1.3.1 The Mluwati concession currently has installed a 200kVA Eskom

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mains connection, located ±5km from Imbali. 3.3kV step-up / step-down transformers supply power to Imbali and Hoyo-Hoyo. The 200kVA emergency backup generator is currently installed at Imbali & Hoyo Hoyo are also located at this point. Hamilton's has no Eskom mains connection and uses 2x 100kVA generators (1x day / 1x night) – no other supplementary supplies. There are no photovoltaic systems for Imbali and Hoyo Hoyo. The existing photovoltaic plant for Hamilton's is not operational due to the battery room explosion.

46.1.3.1.1 The bidder shall provide/maintain the security fencing around the electrical mains connection to protect against unauthorized access and wildlife damaging (i.e. elephants) the equipment. The electrical installation shall be maintained / upgraded to comply with the latest recommendations of the following South African Standards were applicable.

46.1.3.2 Electrical installation shall be maintained / upgraded to comply with the latest recommendations of the following South African Standards were applicable:

46.1.3.2.1 Occupational Health & Safety Act 85 of 1993

46.1.3.2.2 SANS 10400: National Building Regulations

46.1.3.2.3 SANS 10400XA: National Building Regulations Part XA – Energy Usage

46.1.3.2.4 SANS 10142-1: The wiring of premises – Part 1.

46.1.3.2.5 SANS 10142-2: The wiring of premises – Part 2

46.1.3.2.6 SANS 10114-1: Artificial Lighting

46.1.3.2.7 SANS 10114-2: Emergency Lighting

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46.1.3.2.8 SANS 10313: Lightning Protection of Structures

46.1.3.2.9 SANS 62305: Protection against lightning

46.1.3.2.10 SANS 10139: Fire detection and alarm systems for buildings

46.1.3.2.11 SANS 8528 (Part 1-10): Standard for reciprocating internal combustion engine driven alternating current generator sets.

46.1.4 **Sustainability & Electrical Performance Requirements**

46.1.4.1 The total electrical consumption per annum may not exceed the maximum value of 125kWh/m²/a (SANS 10400XA: Classification = H1; Energy Zone = 5).

46.1.4.2 Smart metering shall be installed to ensure that monthly / annual energy usage is recorded.

46.1.4.3 Renewable energy initial target/guideline shall be 15-20% of the overall energy usage must be from a renewable source. The ultimate target during the concession period is that the bidder shall endeavour to have the renewable energy as the primary source and generators as secondary source (backup).

46.1.4.4 Should the Private Party plan to continue with diesel generation, the following applies:

46.1.4.4.1 It is recommended that the Electricity uptime needs to be kept at a minimum level of 95%. Generator sets must comply with SANS 8528 – Parts 1 to 10, including the following:

46.1.3.4.1.1. Sound attenuation: 70dB @ 7m radius

46.1.3.4.1.2. Ensure Diesel storage (i.e. under / above ground

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storage) that complies with the SANS standard

46.1.3.4.1.3. Local Fire Department (where applicable)

46.1.3.4.1.4. SANParks / fire department must do site inspections during the installation of any new tank.

46.1.4.5 New installations - The tank supplier shall be required to issue a certificate when the installation is complete.

46.1.4.6 Ensure checks that the bulk tank shall is fitted with an alarm to provide an audible alarm on the generator control panel when the fuel level in the tank drops to below 25%. All the required connection pipes, valves etc. shall be supplied, installed and connected with the bulk fuel tank.

46.1.4.7 The bulk tank shall automatically refuel the day tank when the day tank. Fuel transfer pumps shall be supplied and installed as backup to the gravity feed system. These pumps shall be positive displacement vane pumps. The pumps shall be controlled by means of the day tank level switch.

46.1.4.8 The bulk storage tank shall be positioned at least 3m away from any building structure shall be maintained.

46.1.4.9 The bulk diesel tank shall be provided with a bund wall to contain any spillage and shall be rated to 110% capacity of the diesel storage vessel.

46.1.4.10 Generator maintenance needs to be planned and conducted during off – peak low occupancy times so that the impact of downtime is minimal.

46.1.5 **Earthing and Lightning Protection**

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46.1.5.1 Maintenance of Earthing and bonding shall be done in accordance with SANS 10142-1 and special attention must be given to the effect of aging thatch and steel structures. Structures shall be protected against lightning strikes in accordance with SANS 10313 & SANS 62305. Careful consideration shall be given to the following “types of loss” criteria:

46.1.5.1.1 loss of human life (including permanent injury);

46.1.5.1.2 loss of cultural heritage;

46.1.5.1.3 loss of economic value (structure, its content, and loss of activity).

46.1.5.2 Internal Electrical Installations

46.1.5.2.1 Periodic inspections shall be conducted on all distribution boards and ensure that the Electrical Certificates of Compliance are still valid. In general, the bidder shall ensure that the internal electrical installation shall comply with the latest recommendations of SANS 10142-1 (Wiring of premises). Remedial action shall be required to replace aging / non-functioning / non-compliant electrical protection equipment, outlets, lights and cabling. Artificial illumination shall be maintained / upgraded to the recommendations of SANS 10114-1 & 10114-2. Emergency lighting shall be provided as required by the OHS act 85 of 1993 and SANS 10114-2. In general, all escape routes shall be provided with battery back-up lighting.

46.1.5.2.2 The external lighting must be designed/upgraded to limit light pollution in line with recommendations of the Green Building Council of South Africa.

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47. SCHEDULE 3 – PRIVATE PARTY OPERATIONAL REQUIREMENTS

47.1 Promotion and conduct of business

47.1.1 In the conduct of the Business the Private Party shall actively promote the Concession Area and use its best endeavours to further the mutual business interests of SANParks and the Private Party and, without limiting the generality of the aforegoing, shall provide and promote the goods and/or services required of the Business as specified herein.

47.2 Standards of Concession Area and Concession Area

47.2.1 In the conduct of the Business the Private Party shall at all times maintain the Concession Area and Concession Area and all services provided therein to Good Industry Practice and ensure that the premises are at all times clean and safe for customers.

47.2.2 Specific emphasis should be placed on the procedures to remove human waste from the coach toilets. No disposal of human waste onto the tracks will be allowed and hence chemical holding tanks which need to be emptied at the Concession Area have to be used.

47.3 Branding

47.3.1 Private Party's brand design must take cognisance of the Protected Area's ambience. This includes the colour of the coaches – should not be overly visible due to the colour scheme when parked at the Concession Area. Maroon, dark green or beige will be preferable.

47.4 Service Provision

47.4.1 In the conduct of the Business the Private Party shall keep the Concession Area open for business in accordance with the reasonable requests of the Park and the requirements of any relevant statute, by-law or regulation relating to the Business.

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47.5 **Product Offering**

47.5.1 The Private Party bid submission and Bid variants document submitted by the Private Party must be adhered to unless otherwise agreed by SANParks.

47.5.2 The Private Party is obliged to offer dining options to guests staying on the train and should as a minimum include breakfast and dinner options.

47.5.3 The Private Party will be obliged to adapt their menu on request by SANParks to reflect any changes that may have been identified through research, or that is otherwise offensive or undesirable. For the purposes of this clause 47.5.3 as well as any other additional clauses in this Agreement that makes reference to SANParks' approval, such approval shall be deemed to vest with the SANParks Director: Tourism.

47.5.4 The Private Party is obliged to maintain and utilize the Concession Area' platform and restaurant facility as outlined in the Private Parties bid submission.

47.5.5 Where food is prepared and served to visitors to National Parks, SANParks reserves the right to implement quality and hygiene audit mechanisms. These will be agreed with the Private Party and cost for these services will be agreed.

47.5.6 The Private Party is obliged to provide universal access at the Concession Area and Concession Area.

47.6 **Uniforms**

47.6.1 The Private Party is obliged to provide all staff with suitable and customized apparel in line with the theme proposed for the Concession Area.

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

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47.6.3 Any member of staff serving guests in the Concession Area will not be permitted to wear open shoes or sandals.

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

47.7 **Loyalty Card Programme**

47.7.1 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.

47.8 **Customer Survey Programme**

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

47.9 **Customer Feedback System**

47.9.1 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 Concession Area.

47.10 **Concession Area Staff and Staff Transport**

47.10.1 In the conduct of the Business the Private Party shall be solely responsible for all staffing requirements at the Concession Area. The Private Party is responsible for the transport of their employees between from the workplace to the living quarters, particularly after-hours transport where living quarters are logistically distanced from the

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Concession Area. Where staff resides outside the park, SANParks will issue early entry and late exit permits to allow for after hour staff transport. The Private Party is responsible for the transport of their staff to the required medical Concession Area. In the event that SANParks' transport can be utilised, the related cost of transport will be for the Private Party's account.

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

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

47.11 **Staff Housing**

47.11.1 A model where all non-essential staff resides outside the park remains desirable. Essential staff to use staff accommodation on a shared basis when on duty.

47.11.2 The Private Party will be obliged to conclude separate Housing Rental Agreements with SANParks for any employees that reside in SANParks' housing. Were in such case, the Private Party will be obliged to provide SANParks with a housing deposit equal to 2 (two) months housing rentals.

47.11.3 In the event that SANParks is unable to provide the necessary building/s for staff housing or accommodation or such a building is in such a state that it needs repairs and/or renovations and SANParks is not able to undertake such repairs or renovations immediately, then the Private Party has a right to build or repair and/or renovate such a building/s subject to Private Party negotiating and agreeing on terms with SANParks for building, or renovating, and/or repairing such building/s.

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47.12 **Advertising**

47.12.1 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.

47.13 **Maintain stocks**

47.13.1 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 Concession Area are properly catered for.

47.14 **Supplier Accounts**

47.14.1 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.

47.15 **Meetings**

47.15.1 To provide for a forum where the parties can resolve disputes and agree operational issues, it is encouraged that the Private Party and Local Communities agrees on a monthly meeting that will be attended by both parties.

47.16 **Procedure Manuals**

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

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

47.17 **Quality Audit**

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

47.18 **Games**

47.18.1 The Private Party shall not be entitled to introduce any arcade type amusement or gaming machines into the Concession Area without the prior written approval of SANParks.

47.19 **Electrical Certificate of Compliance**

47.19.1 SANParks shall supply the Private Party with an electrical certificate of compliance (CoC) for the Concession Area during handover of the site to the Private Party.

47.19.2 The Private Party shall supply SANParks with an electrical certificate of compliance (**"CoC"**) for the Concession Area before handing the site back after Contract Termination.

47.20 **Problem Animal Management**

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

47.20.2 The Problem Animal Policy of the KNP will apply to the Private Party with the following strategy:

47.20.2.1 to have functional fences around Concession Area, waste storage

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Concession Area and along borders.

47.20.2.2 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.

47.20.2.3 to prevent animals from gaining access to these food sources, and

47.20.2.4 to educate and sensitize staff, contractors, guests and visitors on the issues related to problem animals.

47.20.3 No food or food waste may be left unattended from the beginning of the hand over phase and during the operational phase.

47.20.4 All solid and wet waste must be stored in bins in scavenger-proof storage areas, and cleared regularly.

47.20.5 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.

47.21 **Conservation Levy**

47.21.1 The Private Party guests shall be required to pay the Conservation Levy as required from SANParks' guests in accordance with the prescribed international and domestic conservation levies by SANParks and in accordance with such guidelines issued by the Department of Forestry, Fisheries and Environment (DFFE) issued in accordance with the Environmental Conservation Act 73 of 1989.

47.21.2 The Private Party shall develop an After-Hours Travel Procedure (AHTP) to be approved by the Regional Manager, which will take night drive and other activities in consideration. Night drive travel times should be in line with that of SANParks. Any travel outside the agreed AHTP will apply to

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the normal procedure of Late Permits arranged through and approved by the local section ranger. This includes late arrivals of guests.

47.22 **Waste**

47.22.1 Waste management to adhere to SANParks' waste management guidelines / Latest version of the DFFE – National Environmental Management: Waste Act;

47.22.2 Following appointment of the Private Party, a waste stream analysis to be conducted to confirm whether the lodges waste facility has sufficient capacity or if waste needs to be disposed of outside of the park at an authorised disposal facility; and

47.22.3 Disposal of waste at the lodges waste facility would be subject to fees being payable in line with KNP Tariff Document.

47.23 **Water**

47.23.1 The lodge must abide by the latest approved requirement WATER USE PROTOCOL FOR KNP CONCESSIONS and the DEPARTMENT OF WATER AND SANITATION - NATIONAL NORMS AND STANDARDS FOR DOMESTIC WATER AND SANITATION SERVICES.

47.23.2 Note: All water for irrigation and game water holes at lodges and staff housing must come from grey water systems (as per Annexure A3 of the KNP Concession Operations Manual – Guidelines for the Provision of Artificial Water in the KNP Concession Areas).

47.23.3 Water Allocation Formula

47.23.4 It is agreed between SANParks and the concessions that an allocation will be calculated using set bed numbers (guests and staff) and not with

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variable amounts. Variable amounts used for the allocation can only be calculated in retrospect at the end of each month and therefore makes rectification overdue. The approach is to use the set and agreed bed numbers for each lodge and have a set water allocation for each concession. This makes for improved and monitoring and rectification.

47.23.5 Example of a water allocation for a 30-bed lodge with 60 permanent staff and 25-day staff for a 30-day month:

47.23.6 Guests: 350 l x 30 guests x 30 days = 315 000 l

47.23.7 Permanent Staff: 270 l x 60 staff x 30 days = 486 000 l

47.23.8 Day Staff: 40 l x 25 staff x 30 days = 30 000 l

47.23.9 Total Water Allocation = 831 000 l / month.

47.23.10 The South African National Standard (SANS) 241 Drinking Water Specification states the minimum requirements for potable water to be considered safe for human consumption. The below tables outline these requirements. Requirements include microbiological, physical, aesthetic and chemical properties. These should be tested every 6 months or when non-conformance is suspected. Records of all tests should be kept on site.

47.23.11 Microbiological determinants

Determinant	Unit	Risk	Standard Limit
E. coli / faecal coliforms	(count per 100 mL)	Acute health	Not Detected
Cryptosporidium spp	(count per 10 Litre)	Acute health	Not Detected
Giardia spp	(count per 10 Litre)	Acute health	Not Detected

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Total Coliforms	(count per 100 mL)	Operational	≤10
Heterotrophic Plate Count	(count per 1 mL)	Operational	≤1000
Somatic Coliphages	(count per 10 mL)	Operational	Not Detected

47.23.12 Physical and Aesthetic determinants

Determinant	Unit	Risk	Standard Limit
Colour	(mg / L as Pt-Co)	Aesthetic	≤ 15
Conductivity @ 25˚C	(mS / m)	Aesthetic	≤ 170
Total Dissolved Solids	(mg / L)	Aesthetic	≤ 1200
Turbidity	(NTU)	Operational	≤ 1
Turbidity	(NTU)	Aesthetic	≤ 5
pH @ 25˚C	(pH units)	Operational	≥ 5 to ≤ 9.7

47.23.13 Chemical Properties – Macro determinants

Determinant	Unit	Risk	Standard Limit
Free chlorine	(mg / L as Cl2)	Chronic health	≤ 5
Monochloramine	(mg / L)	Chronic health	≤ 3

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Nitrate	(mg / L as N)	Acute health	≤ 11
Nitrite	(mg / L as N)	Acute health	≤ 0.9
Combined nitrate plus nitrite (2)	(mg / L as N)	Acute health	≤ 1
Sulphate	(mg / L as SO4)	Acute health	≤ 500
Sulphate	(mg / L as SO4)	Aesthetic	≤ 250
Fluoride	(mg / L as F)	Chronic health	≤ 1.5
Ammonia	(mg / L as N)	Aesthetic	≤ 1.5
Chloride	(mg / L as Cl)	Aesthetic	≤ 300

47.24 **Sewerage**

47.24.1 Liquid Waste

47.24.1.1 Weekly inspections to be conducted on all sewerage systems, e.g., liquid waste drains, grease traps, septic tanks, french drains and reed bed systems.

47.24.1.2 Any leakage/blockage/odour omitted from a sewerage system must be recorded and rectified as soon as possible.

47.24.1.3 Grey water/sewerage water discharge must be within Department of Water and Sanitation's specifications.

47.24.1.4 All septic tanks must be emptied with a honey sucker every 3 – 5 years or when the pit reaches 80% of capacity to remove the accumulation of sludge.

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47.24.2 Reed Bed Sewage System

47.24.2.1 The reedbed should be designed and operated as per SANParks specification, fenced off and electrified.

47.24.3 A firebreak must be maintained around the reed bed.

47.24.4 Reedbed walls must be cleared of woody vegetation.

47.24.5 Outflow of reedbed should be odour free and the quality must be within the prescribed SANS and Department of Water and Sanitation' standards

47.24.6 If the system is not working correctly, there is strong possibility that the sewerage levels in effluent water will be above recommended standards. The effluent water is currently discharging to holding tanks (irrigation) or direct into the veld and with high levels of sewerage could potentially be health and environmental risks and would trigger an EIA failure.

47.25 **Sustainable Sites**

47.25.1 Flood Damage

47.25.1.1 Heavy rainfall and subsequent flooding can significantly impact safari lodges, potentially leading to temporary closures due to damaged roads, flooded areas, and compromised guest experiences.

47.25.2 Construction Activities Pollution Prevention

47.25.2.1 Building construction best management practices were integrated into the EMP as Construction Activities Pollution Prevention and will be applied on site during construction.

47.25.2.2 SANParks waste management policy for the KNP is also included in for construction improvement processes in order to limit waste

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and pollution as a result of the construction works. This included the sorting of construction waste and diversion of waste to recycling.

47.25.2.3 Dust control during construction activities

47.25.2.3.1 As much as possible, trees on the site are to be protected during construction.

47.25.2.4 Storm Water Quantity & Quality

47.25.2.4.1 Storm water management on site during construction is incorporated into the EMP for the site. The design for the Lodge also includes the harvesting of rainwater for re-use irrigation of the areas around the lodge.

47.26 **Water Efficiency**

47.26.1 Water use reduction target of 35% must be achieved with the inclusion of various water saving initiatives to be installed by the concessionaire.

47.27 **Energy and Atmosphere**

47.27.1 Building and Commissioning Process

47.27.2 Monitoring will be carried out by the responsible Engineer / commissioning agent to ensure that all aspects of the services installation comply with the specification and that there are no abnormalities within the building that could affect building performance.

47.27.3 Energy Performance

47.27.3.1 Compliance and monitoring of the energy, thermal comfort and daylight model that has been developed for the project in the output specification; use model for value engineering and have influenced

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the selection of glazing, roofing finishes, Air-conditioning Plant, Hot Water Plant & Kitchen Equipment.

47.27.4 ECO Audits

47.27.4.1 The Private Party will be required to perform quarterly audits by an appointed independent Environmental Control Officer (ECO). The ECO must evaluate compliance against the environmental authorisation or any other relevant conservation aspects of managing the Lodge – a checklist of areas to be audited is to be compiled. In addition, a staff member must be allocated to monitor environmental compliance / health & safety requirements on a day-to-day basis.

47.27.5 Hygiene Audits

47.27.5.1 The Private Party must conduct hygiene audits at the Lodge on a quarterly basis and furnish SANParks with the outcomes within five (5) business days of its completion. In the event the Private Party fails to conduct hygiene audits, then SANParks shall have the right to conduct or commission such an audit and the costs thereof shall be borne by the Private Party. The Private Party must at all times score a minimum of at least seventy five percent (75%) on the Hygiene Audit total quality index.

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48. SCHEDULE 4 – PRIVATE PARTY BID SUBMISSION

Save for any agreed variations between the Parties, the Private Party shall adhere to and comply with the Private Party's Bid Submission. Notwithstanding the generality of the aforegoing, the Private Party is obliged to adhere to the Business, Operational and Design Plan and Risk Matrix attached herewith.

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48.1 **Private Party Business Operational and Design Plan**

48.1.1 [Schedule to be finalised before Commercial Close and shall be based on Private Party RFP submission and negotiated terms with SANParks]

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48.2 **Private Party Risk Matrix**

48.2.1 [Schedule to be finalised before Commercial Close and shall be based on Private Party RFP submission and negotiated terms with SANParks]

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49. SCHEDULE 5 – B-BBEE OBLIGATIONS

In this Schedule,

49.1 any term, defined in the Broad-based Black Economic Empowerment Act, No. 53 of 2003 ("**B-BBEE Act**"), or in terms of any Codes of Good Practice issued in terms of section 9 of the B-BBEE Act, when used in the scorecard below shall have the same meaning as there defined, save where such meaning may be in conflict with the provisions of the Tourism B-BBEE Charter and Scorecard, in which case the provisions of the Tourism B-BBEE Charter and Scorecard will prevail.

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

49.2.1 "**B-BBEE Reporting Period**" means a period of 12 (twelve) months falling within a period of 12 months after the Effective Date of the PPP Agreement;

49.2.2 "**Black Empowered SMME**" means a small, medium or micro enterprise (with a turnover of up to R10 million per annum) which has between 25 percent and 50 per cent direct ownership and management by Black People;

49.2.3 **"Black Owned SMME"** means a small, medium or micro enterprise (with a turnover of up to R10 million per annum) which has more than 50 per cent direct ownership and management by Black People;

49.2.4 **"Black People"** means Africans, Coloureds and Indians who are citizens of the Republic of South Africa by birth or descent or who became citizens of the Republic of South Africa by naturalisation –

49.2.4.1 Before 27 April 1994; or

49.2.4.2 On or after 27 April 1994 and who have been entitled to acquire citizenship by naturalisation prior to that date but were precluded

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from doing so by Apartheid policies;

"**Black Person**" shall have a corresponding meaning;

49.2.5 **“Black Women”** means female Black People;

49.2.6 **"Local Community Trust"** means a trust of the local community trust registered in terms of the Trust Property Control Act;

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

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

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

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

49.2.8.3 Broad-based B-BBEE schemes, employee share option schemes (ESOPs) and other employee share schemes, where the beneficiaries have the unconditional right to receive economic benefits and the capacity to elect and remove trustees, are specifically recognised as direct ownership. The flow-through principle will be applied to determine the level of black ownership represented by the employee share option scheme;

49.2.8.4 Direct ownership is measured as being the lower of the level of black participation in voting rights and black participation in the unencumbered economic interest of an enterprise, measured using the flow-through principle;

49.2.8.5 employment related expenditure;

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49.2.8.6 procurement from public utilities and natural monopolies; and

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

49.2.9 **“Dispossessed Land Owner Communities”** means the communities with which the government of the Republic of South Africa has entered into settlement agreements in respect of land claims instituted by such communities. “**DLOC**” shall carry the same meaning;

49.2.10 **"Enterprise Development"** may take a variety of forms, including:

49.2.10.1 direct investment in Black Owned and Black Empowered SMMEs;

49.2.10.2 joint ventures with Black Owned and Black Empowered SMMEs that result in "substantive" skills transfer;

49.2.10.3 support and funding for the grading of emerging tourism companies, as well as providing mentorship, business relationships and linkages which, in turn, provide business opportunities to these enterprises; and

49.2.10.4 twinning initiatives with Black Owned and Black Empowered SMMEs which result in cost savings or revenue generation for those SMMEs;

49.2.11 "**Learnership**" refers to learnerships as defined in the Skills Development Act, No. 97 of 1998, amended in 2003;

49.2.12 **"Local"** means the geographic area specified by SANParks in respect of the PPP opportunity, being either within 100 km kilometre radius of the Concession Area or within a 30 km reach of the boundary of the Protected Area fence (but excluding boundaries to the neighbouring countries);

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49.2.13 **"Local Communities"** means communities within 100km radius of the Concession Area;

49.2.14 **"Management"** refers to all senior and middle management who do not form part of the executive management of the board of directors of the Private Party;

49.2.15 **"Ownership"** refers to equity participation and the ability to exercise rights and obligations, including voting rights and the rights to the flow of economic benefits, which accrue under such ownership;

49.2.16 **"Preferential Procurement"** refers to all spend with B-BBEE compliant suppliers, to be calculated as follows:

49.2.16.1 one Rand (R1) for every one Rand (R1) spent with Excellent B-BBEE Contributors, Good B-BBEE Contributors, B-BBEE Compliant SMMEs and Black Women Owned B-BBEE Contributors; and

49.2.16.2 fifty cents (50c) for every one Rand (R1) spent with Satisfactory B-BBEE Contributors;

49.2.16.3 all of which terms are defined as follows:

49.2.16.4 an Excellent B-BBEE Contributor means a company which has scored in excess of 90 percent on a B-BBEE scorecard under a scorecard governing that company's sector or a B-BBEE scorecard issued in the Codes of Good Practice and under the B-BBEE Act;

49.2.16.5 a Good B-BBEE Contributor means a company which has scored in excess of 65 percent, but less than 90 percent, on a B-BBEE scorecard under a scorecard governing that company's sector or a B-BBEE scorecard issued in the Codes of Good Practice and under the B-BBEE Act;

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49.2.16.6 a Satisfactory B-BBEE Contributor means a company which has scored in excess of 40 percent but less than 65 percent, on a B-BBEE scorecard under a scorecard governing that company's sector or a B-BBEE scorecard issued in the Codes of Good Practice and under the B-BBEE Act;

49.2.16.7 a Limited B-BBEE Contributor means a company which has scored less than 40 percent, on a B-BBEE scorecard under a scorecard governing that company's sector or a B-BBEE scorecard issued in the Codes of Good Practice and under the B-BBEE Act;

49.2.16.8 a B-BBEE Compliant SMME means a small, medium or micro enterprise (with a turnover of up to R10 million per annum) which is either an Excellent, Good or Satisfactory Contributor to B-BBEE; and

49.2.16.9 a Black Women Owned B-BBEE Contributor is a company which is more than 30 percent owned by black women and which is also an Excellent, Good or Satisfactory contributor to B-BBEE;

49.2.17 **"Skills Development Spend"** refers to investment in skills development initiatives through both external training providers and the quantifiable costs of accredited internal training programmes. Internal training spend does not include the opportunity cost of employees attending the skills development initiatives;

49.2.18 **"Tourism B-BBEE Charter"** means the Amended Tourism B-BBEE Sector Codes in terms of section 9(1) of the B-BBEE Act, as amended, gazetted on 20 November 2015, Government Gazette No. 39430.

49.3 **B-BBEE Project Scorecard Milestones and Targets**

49.3.1 The B-BBEE Project Scorecard has been developed in accordance with and all monitoring and compliance with the B-BBEE milestones and compliance targets for the duration of the PPP Term shall be determined

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by the B-BBEE Generic Codes of Good Practice, Tourism B-BBEE Sector Codes, Tourism BEE Charter, B-BBEE Act as gazetted from time to time, and in accordance with the KNP Beneficiation Scheme and SANParks Commercialization Strategy.

49.3.2 The Amended Tourism B-BBEE Charter was developed to be in line with the Department of Trade and Amended Codes of Good Practice to advance the objectives of the B-BBEE Act, and to provide a framework and establish the principles upon which B-BBEE will be implemented within the Tourism Sector.

49.3.3 In the event of Change in Law and measurement principles set out in the B-BBEE Generic Codes of Good Practice, Tourism B-BBEE Sector Codes, Tourism BEE Charter, B-BBEE Act, the milestones and targets set out B-BBEE Project Scorecard shall be modified accordingly. The Private Party would receive notification of such amendments and be provided with a satisfactory remedy period to address the amendments.

49.4 **External B-BBEE Verification**

49.4.1 The Private Party shall for the duration of the operations period, and for each submission of a verification certificate, measure its B-BBEE compliance, by calculating the aggregate number of points scored by it under the Project B-BBEE Scorecard.

49.4.2 The Private Party shall appoint a reputable external verification agency to determine the Private Party's B-BBEE status and a copy of such an independent verification certificate shall be provided to SANParks within 15 (fifteen days) after the end of each Project Year.

49.4.3 The B-BBEE Verification Certificate will categorise the Private Party according to the Private Party's contribution to B-BBEE.

49.4.3.1 The Private Party shall be obliged in terms of this Agreement to, at a minimum, comply with the B-BBEE Status Level contemplated in

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clause 49.9.1 for each Project Year, in line with the B-BBEE Recognition Levels set herein below–

B-BBEE Contributor Status Level based on the Project Scorecard of 111 points	***Qualification***	***B-BBEE Recognition Level***
Level 1 Contributor	*≥ 82 points on the Project Scorecard*	*111%*
Level 2 Contributor	*≥ 78 points on the Project Scorecard*	*100%*
Level 3 Contributor	≥ 74 *points on the Project Scorecard*	*90%*
Level 4 Contributor	≥ 66 *points on the Project Scorecard*	*80%*

49.4.3.2 For the avoidance of doubt, the first B-BBEE Verification Certificate shall be delivered to SANParks within 1 (one) month after the end of the Financial Year in which the Signature Date falls and thereafter 1 (one) month after the end of each subsequent Financial Year for the duration of the Project Term until the Expiry Date or the Termination Date.

49.5 **B-BBEE Contributor Status Level**

49.5.1 The Private Party must be at least a level 4 B-BBEE Contributor Status at the Effective Date of the PPP Agreement. From the 3rd Anniversary from Effective Date of the PPP Agreement, the Private Party must at least achieve a level 2 B-BBEE Contributor Status based on the B-BBEE Project Scorecard which must be maintained throughout the term of the

PPP Agreement.

49.6 **B-BBEE Penalties**

49.6.1 In the event the Private Party fails to meet the Compliance Targets set out in Column 4 of the B-BBEE Project Scorecard at the end of the B-BBEE Reporting Period, the Private Party shall be subject to the B-BBEE penalties calculated in accordance with Penalties set out in the KNP Operating Manual.

49.6.2 Any B-BBEE penalties levied on the Private Party shall be paid by the Private Party to SANParks within a period of 6 (six) months from the date of confirmation of penalties incurred by the Private Party for the relevant B-BBEE Reporting Period, and shall not be carried forward to the next B-BBEE Reporting Period.

49.6.2.1 In the event of default by the SPV/s Private Party to comply with these provisions and the default is not remedied before the expiry of the period referred to in the notice by SANParks, SANParks will impose penalties as set out in the PPP Agreement. In the event of failure by the Private Party to meet its B-BBEE obligations for three (3) consecutive B-BBEE reporting periods, SANParks shall have the right to terminate the PPP Agreement.

49.6.2.2 The Private Party is obliged to comply with the B-BBEE commitments as outlined in the bid submission. In addition, the Private Party is required to comply with commitments made to involve Local Communities and/or Dispossessed Land Owner Communities either as equity shareholders or to fill vacant positions with people from the beneficiary list as determined and verified as residence from Local Communities. Failure to do this might result in termination of the Agreement.

49.7 **B-BBEE Project Scorecard**

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Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7
B-BBEE Element	**B-BBEE Element Weighting (points)**	**Sub-element Weighting (points)**	**Measurement Category and Criteria**	**Compliance Target %**	**Bid Offer Year 1**	**Bid Offer Year 3**
Ownership	30	**Exercisable Voting Rights: 15 points**				
		7.5	Percentage share of exercisable voting rights as reflected by direct shareholding by Black People in the Private Party, to which Black People are entitled.	40%		
		5	Percentage share of exercisable voting rights as reflected by direct shareholding by Black Women in	40%		

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Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7
B-BBEE Element	**B-BBEE Element Weighting (points)**	**Sub-element Weighting (points)**	**Measurement Category and Criteria**	**Compliance Target %**	**Bid Offer Year 1**	**Bid Offer Year 3**
			the Private Party, to which Black Women are entitled.			
		2.5	Percentage share of exercisable voting rights as reflected by direct shareholding by Dispossessed Land Owner Communities and/or Local Community entities in the Private Party	10% free carry equity which should be warehoused and will be allocated as per SANParks instructions		
		Economic Interest: 15 points				

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Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7
B-BBEE Element	B-BBEE Element Weighting (points)	Sub-element Weighting (points)	Measurement Category and Criteria	Compliance Target %	Bid Offer Year 1	Bid Offer Year 3
		7.5	Percentage share of economic benefit as reflected by direct shareholding by Black People in the Private Party, to which Black People are entitled.	40%		
		5	Percentage share of economic benefit as reflected by direct shareholding by Black Women in the Private	40%		

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Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7
B-BBEE Element	**B-BBEE Element Weighting (points)**	**Sub-element Weighting (points)**	**Measurement Category and Criteria**	**Compliance Target %**	**Bid Offer Year 1**	**Bid Offer Year 3**
			Party, to which Black Women are entitled.			
		2.5	Percentage share of economic benefit as reflected by direct shareholding by Dispossessed Land Owner and/or Local Community entities in the Private Party	10% free carry equity which should be warehoused and will be allocated as per SANParks instructions		
Management Control and	30	2.5	Black People as a percentage of board of	50%		

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Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7
B-BBEE Element	**B-BBEE Element Weighting (points)**	**Sub-element Weighting (points)**	**Measurement Category and Criteria**	**Compliance Target %**	**Bid Offer Year 1**	**Bid Offer Year 3**
Employment Equity			all directors in the Private Party.			
		2	Black Women as a percentage of board of all directors in the Private Party.	30%		
		2.5	Black People as a percentage of executive management in the Private Party	50%		
		2	Black Women as percentage of executive	30%		

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Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7
B-BBEE Element	**B-BBEE Element Weighting (points)**	**Sub-element Weighting (points)**	**Measurement Category and Criteria**	**Compliance Target %**	**Bid Offer Year 1**	**Bid Offer Year 3**
			management in the Private Party			
		2.5	Black People as a percentage of middle management in the Private Party.	70%		
		2	Black Women as a percentage of middle management in the Private Party	40%		
		2.5	Black People as a percentage of junior	70%		

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Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7
B-BBEE Element	B-BBEE Element Weighting (points)	Sub-element Weighting (points)	Measurement Category and Criteria	Compliance Target %	Bid Offer Year 1	Bid Offer Year 3
			management & supervisors in the Private Party.			
		2	Black Women as a percentage of junior management & supervisors in the Private Party.	40%		
		2	Black Women/Youth from local communities as a percentage of junior managemen	45%		

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Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7
B-BBEE Element	**B-BBEE Element Weighting (points)**	**Sub-element Weighting (points)**	**Measurement Category and Criteria**	**Compliance Target %**	**Bid Offer Year 1**	**Bid Offer Year 3**
			t & supervisors in the Private Party.			
		2	Black People as a percentage of total staff.	75% (as staff leave, they must be replaced by a person from the Dispossessed Land Owner Communities so in time these persons represent 60% of employment. Please note this does not apply to management positions in categories C and above of the SANParks jobs grading system which in respect of this Scorecard		

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Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7
B-BBEE Element	B-BBEE Element Weighting (points)	Sub-element Weighting (points)	Measurement Category and Criteria	Compliance Target %	Bid Offer Year 1	Bid Offer Year 3
				classification refers to junior management/supervisors, middle management and executive management.)		
		2	Black Women as a percentage of total staff	40% (as staff leave, they must be replaced by a person from the Dispossessed Land Owner Communities so in time these persons represent 60% of employment. Please note this does not apply to management positions in categories C and above of the SANParks jobs grading system		

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Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7
B-BBEE Element	B-BBEE Element Weighting (points)	Sub-element Weighting (points)	Measurement Category and Criteria	Compliance Target %	Bid Offer Year 1	Bid Offer Year 3
				which in respect of this Scorecard classification refers to junior management/supervisors, middle management and executive management.)		
		3	Black People from Local Communities as a percentage of total staff	70% (as staff leave, they must be replaced by a person from the Dispossessed Land Owner Communities so in time these persons represent 60% of employment. Please note this does not apply to management positions in categories C and above of the		

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Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7
B-BBEE Element	**B-BBEE Element Weighting (points)**	**Sub-element Weighting (points)**	**Measurement Category and Criteria**	**Compliance Target %**	**Bid Offer Year 1**	**Bid Offer Year 3**
				SANParks jobs grading system which in respect of this Scorecard classification refers to junior management/supervisors, middle management and executive management.)		
		3	Black Women/Youth from Local Communities as a percentage of total staff	45% (as staff leave, they must be replaced by a person from the Dispossessed Land Owner Communities so in time these persons represent 60% of employment. Please note this does not apply to management positions in		

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Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7
B-BBEE Element	**B-BBEE Element Weighting (points)**	**Sub-element Weighting (points)**	**Measurement Category and Criteria**	**Compliance Target %**	**Bid Offer Year 1**	**Bid Offer Year 3**
				categories C and above of the SANParks jobs grading system which in respect of this Scorecard classification refers to junior management/supervisors, middle management and executive management.)		
Skills Development	12	3.5	Skills Development Expenditure on Learning Programmes specified in the Learning Programme Matrix for	3% of Leviable Amount		

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Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7
B-BBEE Element	**B-BBEE Element Weighting (points)**	**Sub-element Weighting (points)**	**Measurement Category and Criteria**	**Compliance Target %**	**Bid Offer Year 1**	**Bid Offer Year 3**
			Black People in any of the following three tourism sub-sectors as a percentage of Leviable Amount: - Accommodation; - Hospitality and related services; - Travel and related services. *(Targets for Black People must be split according to*			

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Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7
B-BBEE Element	**B-BBEE Element Weighting (points)**	**Sub-element Weighting (points)**	**Measurement Category and Criteria**	**Compliance Target %**	**Bid Offer Year 1**	**Bid Offer Year 3**
			the Economically Active Population)			
		3.5	Number of Black Employees participating in Learnerships, Apprenticeships and Internships paid for by the measured entity as a percentage of total Employees participating in Learnership	75%		

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Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7
B-BBEE Element	**B-BBEE Element Weighting (points)**	**Sub-element Weighting (points)**	**Measurement Category and Criteria**	**Compliance Target %**	**Bid Offer Year 1**	**Bid Offer Year 3**
			s, Apprenticeships. *(Targets for Black People must be split according to the Economically Active Population)*			
		3.5	Number of learnerships as a percentage of total employees	10%		
		1.5	Number of Black Unemployed Learners participating in	10%		

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Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7
B-BBEE Element	**B-BBEE Element Weighting (points)**	**Sub-element Weighting (points)**	**Measurement Category and Criteria**	**Compliance Target %**	**Bid Offer Year 1**	**Bid Offer Year 3**
			Learnerships, Apprenticeships and Internships paid for by the measured entity as a percentage of number of total Learners participating in Learnerships, Apprenticeships and Internships. (*Targets for Black People must be split*			

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Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7
B-BBEE Element	**B-BBEE Element Weighting (points)**	**Sub-element Weighting (points)**	**Measurement Category and Criteria**	**Compliance Target %**	**Bid Offer Year 1**	**Bid Offer Year 3**
			according to the Economically Active Population			
Enterprise Development and Supplier Development	35	**Preferential Procurement: 30 points**				
		6	B-BBEE Procurement Spend from all Empowering Suppliers based on the B-BBEE Procurement Recognition Levels as a percentage of Total Measured Procurement Spend	50%		
		4	B-BBEE	20%		

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Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7
B-BBEE Element	**B-BBEE Element Weighting (points)**	**Sub-element Weighting (points)**	**Measurement Category and Criteria**	**Compliance Target %**	**Bid Offer Year 1**	**Bid Offer Year 3**
			Procurement Spend from all Locally owned Empowering Suppliers that are Qualifying Small Enterprises based on the applicable B-BBEE Procurement Recognition Levels as a percentage of Total Measured Procurement Spend	(minimum 20% of all procurement spend must be from Dispossessed Land Owner Community entities)		
		4	B-BBEE	20%		

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Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7
B-BBEE Element	**B-BBEE Element Weighting (points)**	**Sub-element Weighting (points)**	**Measurement Category and Criteria**	**Compliance Target %**	**Bid Offer Year 1**	**Bid Offer Year 3**
			Procurement Spend from all Locally owned Empowering Suppliers that are Exempted Micro Enterprises based on the applicable B-BBEE Procurement Recognition Levels as a percentage of Total Measured Procurement Spend	(a minimum 20% of all procurement spend must be from Dispossessed Land Owner Community entities)		

Draft

Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7
B-BBEE Element	B-BBEE Element Weighting (points)	Sub-element Weighting (points)	Measurement Category and Criteria	Compliance Target %	Bid Offer Year 1	Bid Offer Year 3
		8	B-BBEE Procurement Spend from Empowering Suppliers that are at least 51% Black Owned based on the applicable B-BBEE Procurement Recognition Levels as a percentage of Total Measured Procurement Spend	80% (a minimum 20% of all procurement spend must be from Dispossessed Land Owner Community entities)		
		8	B-BBEE Procuremen	70% (a minimum 20% of		

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Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7
B-BBEE Element	**B-BBEE Element Weighting (points)**	**Sub-element Weighting (points)**	**Measurement Category and Criteria**	**Compliance Target %**	**Bid Offer Year 1**	**Bid Offer Year 3**
			t Spend from Empowering Suppliers that are at least 51% Black Women Owned based on the applicable B-BBEE Procurement Recognition Levels as a percentage of Total Measured Procurement Spend	all procurement spend must be from Dispossessed Land Owner Community entities)		
		Enterprise Supplier Development: 5 points				
		3	Annual value of all	3% of NPAT (The Private Party		

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Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7
B-BBEE Element	B-BBEE Element Weighting (points)	Sub-element Weighting (points)	Measurement Category and Criteria	Compliance Target %	Bid Offer Year 1	Bid Offer Year 3
			qualifying Supplier Development contributions to Dispossessed Land Owner Community entities and/or local community entities made by the measured entity as a percentage of the target	can opt to set up its own supplier development programme or contribute directly to a centrally funded supplier development programme established by the Dispossessed Land Owner Community Entities).		
		2	Annual value of all qualifying Enterprise Developme	0.5% of NPAT (The Private Party can opt to set up its own supplier development		

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Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7
B-BBEE Element	**B-BBEE Element Weighting (points)**	**Sub-element Weighting (points)**	**Measurement Category and Criteria**	**Compliance Target %**	**Bid Offer Year 1**	**Bid Offer Year 3**
			nt contributions and Sector Specific Contributions to Dispossessed Land Owner Community entities and/or local community entities made by the measured entity as a percentage of the target	programme or contribute directly to a centrally funded supplier development programme established by the Dispossessed Land Owner Community Entities).		
Social Economic Development	4	2	Annual value of all local Qualifying Socio-	0.5% of NPAT		

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Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7
B-BBEE Element	**B-BBEE Element Weighting (points)**	**Sub-element Weighting (points)**	**Measurement Category and Criteria**	**Compliance Target %**	**Bid Offer Year 1**	**Bid Offer Year 3**
			Economic Development contributions by the measured entity as a percentage of the target			
		2	Mandatory CSI contribution to SANParks	0.5% of NPAT		
Total Points	**111**					
Score Out of 111 Points*						

Please note Free Carry is defined as: *"10% Free Carry means: the 10% (ten percent) ownership stake in an enterprise that will be granted to Dispossessed Landowner Communities / Local Communities without them having to pay for the shares or*

contribute Capital. The 10% free carry is to be initially warehoused at bidding stage by the Bidders and later granted by the Successful Bidders to either the Dispossessed Landowner Communities or to the Local Communities. Furthermore, such communities will not be contributing to the ongoing development and operational costs for the duration of the PPP Agreement."

49.8 **B-BBEE and Socio-Economic Targets and Timelines**

Timeline (Year)	At RFP	Year 1 – 2	Year 3 - 25
Minimum B-BBEE Contributor Status Level	Level 4 (Based on SPV Consolidated B-BBEE Scorecard)	Level 4 (SPV B-BBEE Certificate based on the B-BBEE Project Scorecard)	Level 2 (SPV B-BBEE Certificate based on the B-BBEE Project Scorecard)

49.9 **Private Party Performance Obligations, Reporting and Monitoring**

49.9.1 Private Party's BBBEE Level Contributor Status

49.9.2 External B-BBEE Verification

49.9.2.1 The Private Party shall appoint a reputable external verification agency to determine the SPV/s B-BBEE status and a copy of such an independent verification certificate shall be provided to SANParks within 15 (fifteen days) after the end of each Project Year.

49.9.2.2 The B-BBEE Verification Certificate will categorise the SPV/s according to their contribution to B-BBEE. The Private Party shall be obliged in terms of the PPP Agreement to ensure that the SPV/s, at a minimum, complies with

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50. SCHEDULE 6 – PPP FEE

50.1 Variable PPP Fee

50.1.1 The Variable PPP Fee shall be expressed as a flat percentage of Gross Revenue generated by the Concession Area included under the Agreement.

50.1.2 The Variable PPP Fee shall be as follows:

50.2 Variable PPP Fee =

[ ] % of **GROSS REVENUE [Drafting Note: To be inserted when Variable PPP Fee agreed with SANParks.]**

50.3 Minimum PPP Fee

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

R[ ] Minimum Fee per year [Drafting Note: To be inserted when minimum PPP Fee agreed with SANParks.]

50.4 Private Party PPP Fee Offer

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51. SCHEDULE 7 – ENVIRONMENTAL SPECIFICATIONS FOR THE OPERATION OF CONCESSION AREA WITHIN THE PROTECTED AREAS

51.1 Introduction

51.1.1 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.

51.1.2 The Private Party undertakes to take all reasonable steps in conducting of the Project to prevent and limit the occurrence of any Environmental or health hazards and to ensure the health and safety of the Private Parties and the general public.

51.2 Legislative Basis for these Guidelines

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

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

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

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51.2.4 The EIA laws and Regulations do not specifically require an EIA for a development such as the refurbishment and/or expansion of the Concession Area. However, given that the development is taking place within a protected area such as a National Park, SANParks requires environmental scoping to be conducted on any proposal to expand or modify the existing Concession Area or shop that is being bid for. Modifications include both structural changes to the facility and additions to the facility or its environs, including signage. The scoping report must be submitted to DEA, the "relevant environmental authority" as defined in the EIA Guideline documents. [Drafting Note: In the case of the SANParks, the 'relevant environmental authority' for review of EIAs conducted **in National Parks is the national Department of Environmental Affairs and Tourism.]**

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

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

51.2.7 In addition to the environmental laws the Private Party will also be bound by any laws pertaining to operation on a railway line as determined by the Rail Safety Regulator.

51.3 Guidelines Based on SANParks Internal Requirements

51.3.1 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.

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

51.3.3 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.

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

51.3.5 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.

51.4 **Precautionary Principle**

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51.4.1 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.

51.5 **Code of Conduct**

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

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

51.6 **Environmental Impact**

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

51.6.2 The operator needs to subscribe to the South African Seafood Initiative (SASSI) and only sell/include fish on the menu with green status or SASSI certified.

51.7 **Water Management and Guidelines**

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

51.7.2 The Private Party undertakes to:

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51.7.2.1 Monitor the use of water;

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

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

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

51.8 Chemical Substances

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

51.8.2 The Private Party acknowledges that all chemicals listed as “Prohibited” may not be brought into, sold or used in any National Park. The products include items such as Rattex, Finale, Dyant, Doom and Target (an extensive list is attached herein as Schedule 14);

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

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

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

51.9 Waste Management

51.9.1 Liquid Wastes

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

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

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

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

51.9.1.5 The Private Party undertakes to install a grease tap for:

51.9.1.5.1 Pot and Rinse Sinks attached to Dish Washers;

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

51.9.1.5.3 Soup Kettles or similar devices;

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

51.9.1.6 The Private Party undertakes to implement processes and procedures which stipulates the following:

51.9.1.6.1 Kitchen staff should inspect grease traps and interceptors at least monthly and maintain a log sheet of each trap inspection detailing condition of the trap and any maintenance activity;

51.9.1.6.2 that grease traps are cleaned when 25% of the liquid level of the trap is grease or oil; and

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51.9.1.6.3 That waste recovered from the grease traps be removed from the park and disposed of at an authorized facility.

51.9.2 Solid Wastes

51.9.2.1 The Private Party undertakes to manage all waste that are generated in such a way that direct and indirect impacts are kept to a minimum.

51.9.2.2 The Private Party undertakes to achieve Solid Waste Management Best Practices which implies the following:

51.9.2.2.1 Manage solid waste from source to disposal;

51.9.2.2.2 Strive to eliminate non-recyclable or hazardous packaging or containers at the procurement phase;

51.9.3 The Private Party undertakes to include the following policies in the waste management:

51.9.3.1 Green Procurement Policy: This policy defines the procedures that the Private Party will implement to ensure that all produce, containers and packaging come from suppliers that under-write environmental principles, and that waste be recyclable as far as possible;

51.9.3.2 Hazardous Waste Policy: The Hazardous Waste Policy defines procedures that the Private Party will implement to manage any hazardous waste, to ensure that it is firstly minimized, but also that it is stored and discarded in a safe and legal way.

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

51.9.4.1 Minimise solid waste production at all sources, by striving for the

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minimization of all waste

51.9.4.2 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 approved camp waste disposal site.

51.9.4.3 All waste must be removed from the park to an approved waste disposal site and incinerator for disposal and recycling. The dumping and disposal of waste other than to an approved waste site is strictly prohibited and failure to comply may result in a penalty.

51.9.4.4 Waste storage and sorting areas must be properly constructed and maintained. Back-of-house waste cages and waste storage areas must remain clean and secure from problem animals.

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

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

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

51.9.4.8 Ensure that all areas are kept free of litter by:

51.9.4.8.1 Promoting an ethic amongst guests and staff alike.

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

51.10 **Pest Control**

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51.10.1 The Private Party undertakes to comply with the integrated pest management plan as outlined in Schedule 15.

51.10.2 Where and if required the Private Party undertakes to control bats as outlined in Schedule 16.

51.10.3 The Private Party undertakes to make use of preferred pest control chemicals as outlined in Schedule 17.

51.11 **Visual Impacts**

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

51.11.2 Describe efforts to minimise the visual impacts of the development, including lighting.

51.11.3 Provide locations of lightning arrestors and radio masts (where applicable) and how the visual impacts of these will be minimized.

51.11.4 Specifically outline how brand signage and colours will be mitigated to complement the environment.

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

51.12 **Monitoring**

51.12.1 The Private Party agrees to cooperate with SANParks in compiling a monitoring checklist that encompasses all environmental conditions. The checklist would be used for auditing purposes and would be conducted once every 4 months; and

51.12.2 The Private Party agrees that SANParks will monitor, evaluate and score the operations (based on the line items in the checklist) and that a score of

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less than 85% for three (3) consecutive audits would imply material breach of the Agreement.

51.12.3 The Private Party shall in consultation with SANParks appoint an Environmental Control Officer (ECO), during both the Construction and Operational Phases. The cost of the ECO shall be borne by the Private Party. The individual appointed must be an independent consultant, as defined by the EIA Guidelines and be acceptable to SANParks. The appointment of the ECO is to ensure that mitigation measures and other requirements set forth in the EMP are adhered to. During the Construction Phase the ECO shall submit monthly reports, and during the Operational Phase the ECO shall submit twice-yearly reports and all findings in the report is to be corrected by the Private Party before the next audit. In both cases, reports must be submitted to both SANParks and the Private Party.

51.13 **Off-Road Game Driving**

51.13.1 Please refer to the SANParks Concessions Operation Manual for detail but for the purposes of this Information Memorandum the following key issues are identified:

51.13.2 Game drives are only permitted on designated tracks within the Concession Area. The general public road network is available for use by the Concessionaire, but normal SANParks rules will apply.

51.13.3 Within CA's:

51.13.3.1 Driving after dark is permitted in agreed areas up to 22h00. Driving later than this time requires SANParks approval;

51.13.3.2 Concessionaires that are allowed to drive off-road must comply with the guidelines set out below;

51.13.3.3 Off-road driving may only be undertaken in the event of a confirmed sighting of elephant, leopard, lion, rhino, buffalo, wild

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dog, and cheetah;

51.13.3.4 Off-road driving will not be permitted in areas where Red Data Plant species are known to exist, or in any other areas that SANParks are using for conservation or other management purposes;

51.13.3.5 Vehicles driving off-road may under no circumstances follow in the tracks of another vehicle;

51.13.3.6 No off-road driving will be permitted at river crossings. Concessionaires wishing to drive along riverbeds must develop and carefully manage track spurs into and out of the river(s), which will count as part of the road and track network allocation;

51.13.3.7 Off-road driving is not permitted in wet conditions, on sodic patches, or duplex soils; and

Any off-road damage to be repaired immediately (compaction reversed, ruts erased).

51.14 Private Party Environmental Proposal

The Private Party shall, for the duration of the full term of the PPP Agreement, comply with the Environmental Provisions. The Private Party shall, as part of its annual reporting obligations, provide a report to SANParks confirming compliance with the Environmental Provisions.

The penalties for failure to comply with the Environmental Provisions, the penalties set out in the KNP Operating Manual on environmental guidelines shall apply.

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52. SCHEDULE 8 – PRIVATE PARTY PREQUALIFICATION RESOLUTION

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

52.2 The major areas of qualification are outlined below.

52.3 **Financial Requirements:**

52.4 **The Submitting Company shall submit**

52.4.1 audited financial statements corresponding to the last two (3) years

52.4.2 annual reports for the last two (3) years

52.4.3 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.

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

52.5 **Financial capacity**

52.5.1 The asset value of the Private Party must be at least R10 million;

52.5.2 The bidder must also demonstrate, to SANParks' satisfaction, that its shareholders are solvent;

52.5.3 Audited financial statements for at least 3 years, along with a letter confirming that the asset value exceeds the stipulated amount and that the shareholders are solvent, must be provided to illustrate any assertion

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made by a Private Party in this regard;

52.5.4 The Private Party must demonstrate their ability to raise debt and equity and to provide security; and

52.5.5 The Private Party must demonstrate sufficient cashflows for the initial months of operations where revenues may not be sufficient to cover expenses.

52.6 **Experience**

52.6.1 The Private Party must have proven lodge operation experience in Africa of no less than 5 years;

52.6.2 The Private Party must have previous experience with lodge operations in protected areas;

52.6.3 The Private Party must have previous experience in operating tourism activities such as game drives, game walks, etc;

52.6.4 Strong marketing and branding experience and existing channel relationships to the international tourism markets to South Africa.

52.7 **Performance Bond**

52.7.1 The Private Party will be obliged to issue SANParks with a performance bond (or to deposit into SANParks' account) to the sum of **[amount to be agreed based on bid offer]** (Rand) for the first twelve-month period as from the Signature Date and will be increase by CPI for each year thereafter.

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52.8 Private Party Prequalification Resolution

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53. SCHEDULE 9 – PRIVATE PARTY CONSTITUTIONAL DOCUMENTS

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54. SCHEDULE 10 – INSURANCE

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55. SCHEDULE 11 – PERFORMANCE BOND

55.1 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 contract for Concession Area operation, management and maintenance of the SANParks Concession Area and Concession Area in the Kruger National Park under this PPP Agreement (hereinafter called the **"Agreement"**) to [●] (hereinafter called the **"Private Party"**); and

(b) The Private Party is obliged by the terms of the Agreement to provide this Bond to SANParks to secure the performance of its obligations under the Agreement**.**

We, the undersigned

_____and _____

(Name) (Name)

acting herein as

_____and _____

(Position) (Position)

of _____

(hereinafter called the **"Bank/Private Party"**)

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

1. The Bank hold at SANParks' disposal the sum of R (Rand) to secure the performance of the Private Party's obligations under the Agreement.

   or

   The Private Party will deposit a cash amount of R (Rand) into SANParks' banking account to secure the performance of the Private Party's obligations under the Agreement.

2. The Bank shall pay or SANParks shall deduct from the Bond amount deposited by the Private Party an amount not exceeding 3 (three) months' payments of the Minimum PPP Fee, namely an amount of […….] in aggregate (the "Maximum Amount") without delay, on receipt by the Bank or the Private Party 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 or the Private Party shall be given 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 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.

3. 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 or Private Party'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.

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4. 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 or Private Party 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 Agreement, any sub-contract or any ancillary or related document (the "Underlying Documents") will discharge the Bank or Private Party from liability under this Bond. For the avoidance of doubt, the Bank's or Private Party'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.

5. This Bond shall:

5.1. remain in full force and effect from the date hereof, and shall expire on the earlier of:

5.1.1. the issuance of a replacement Bond in accordance with the terms of the Agreement;

5.1.2. 90 (ninety) Business Days after the expiry or earlier termination of the Agreement; or

5.1.3. the date when the Bank has paid to SANParks an amount which is equal to (or amounts which in aggregate total) the Maximum Amount;

5.2. exist independently of the Agreement or any amendment, variation or novation thereof;

5.3. 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;

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5.4. be returned to the Bank or Private Party on its expiry, cancellation, withdrawal or this Bond being fully drawn; and

5.5. be governed by the laws of the Republic of South Africa.

6. The Bank or Private Party shall deposit any payment made under this Bond into an account designated by SANParks.

7. The Bank shall make any payment or the Private Party shall deposit any cash amount demanded under this Bond free, clear of and without any deduction, withholding, counterclaim or set-off of any kind. If the Bank or Private Party 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.

8. The obligations of the Bank or the Private Party 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.

9. The Bank or the Private Party 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.

10. Addresses and Notices:

10.1. The parties hereto choose domicilium citandi et executandi for all purposes of and in connection with this Agreement as follows:

SANParks:

Groenkloof National Park
643 Leyds Street
Muckleneuk
Pretoria

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Telephone: (012) 426-5027

Facsimile: (012) 343-3849

The Bank or Private Party:

_____

Telefax: _____

10.2. 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.

10.3. All notices, demands, communications or payments intended for any party shall be made or given at such party's domicilium for the time being.

10.4. Any notice required or permitted to be given under this Bond shall be valid and effective only if in writing.

10.5. A notice sent by one party to another party shall be deemed to be received

10.5.1. on the same day, if delivered by hand;

10.5.2. on the same day of transmission, if sent by telefax with a receipt confirming completion of transmission.

10.6. 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 _____ _____202[ ]

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AT _____ (Place)

SIGNATURE _____SIGNATURE_____

[NAME] [NAME]

[TITLE] [TITLE]

WITNESS 1 _____WITNESS 2 _____

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55.2 **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 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

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55.3 **Private Party Performance Bond**

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56. SCHEDULE 12 – CAPITAL EXPENDITURE PLAN

56.1 Introduction

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

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

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57. SCHEDULE 13 – CONSUMER PROTECTION ACT

57.1 This Schedule sets 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 PPP opportunity, 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.

57.2 **Purpose and Policy of CPA**

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

57.2.1.1 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;

57.2.1.2 reducing and ameliorating any disadvantages experienced in accessing any supply of goods or services by consumers: -

57.2.1.3 who are low-income persons or persons comprising low-income communities;

57.2.1.4 who live in remote, isolated or low-density population areas or communities;

57.2.1.5 who are minors, seniors or other similarly vulnerable consumers; or

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57.2.1.6 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;

57.2.1.7 promoting fair business practices;

57.2.1.8 protecting consumers from: -

57.2.1.8.1 unconscionable, unfair, unreasonable, unjust or otherwise improper trade practices; and

57.2.1.8.2 deceptive, misleading, unfair or fraudulent conduct.

57.2.1.9 The Private Party shall in the course of operating the Concession Area in the Protected Area observe the following procedures:

57.3 **Disclosure and Information**

57.3.1 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.

57.3.2 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 Concession Area, the price of which should be expressed in South African currency (Rand), and in the following manner:

57.3.2.1 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

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mounted for display or exposed for sale; or

57.3.2.2 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.

57.3.3 Product labelling and trade descriptions - The Private Party shall not:

57.3.3.1 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

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

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

57.3.3.3.1 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

57.3.3.3.2 a trade description or trademark applied to the products has been altered

57.3.3.4 Private Party shall be required to display a notice that discloses the presence of any genetically modified ingredients in products to be sold at the Concession Area, such notice shall be in a manner and form as described in CPA and related legislations.

57.3.4 Sales records

57.3.4.1 Private Party shall provide a written record of each transaction to the

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consumer to whom any products are sold.

57.3.4.2 The record must include at least the following information:

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

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

57.3.4.2.3 the date on which the transaction occurred;

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

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

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

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

57.3.4.2.8 the amount of any applicable taxes; and

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

57.4 **Fair and Honest Dealing**

57.4.1 **Unconscionable conduct**

57.4.1.1 Private Party or any of its representatives or employees during the course of conducting the Business in the Concession Area 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.

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57.4.2 **False, misleading or deceptive representations**

57.4.2.1 Private shall not, by words or conduct:

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

57.4.2.1.2 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

57.4.2.1.3 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.

57.5 **Quality Service**

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

57.5.1.1 making sure that the consumer does not wait for too long in the queue, when the consumer is purchasing some product items at the Concession Area;

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

57.5.2 If a Private Party fails to perform a service to the standards contemplated in Clause 57.5.1 above, the consumer is entitled to demand from the Private Party, to either:-

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

57.5.2.2 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.

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58. SCHEDULE 14 – PROHIBITED CHEMICAL SUBSTANCES

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59. SCHEDULE 15 – PEST MANAGEMENT PLAN

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60. SCHEDULE 16 – BAT MANAGEMENT GUIDELINES

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61. SCHEDULE 17 – PREFERRED PEST CONTROL CHEMICALS

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62. SCHEDULE 18A – CONCESSION ASSETS

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63. **SCHEDULE 18B – EXCLUDED ASSETS**

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64. **SCHEDULE 19 – POPIA PROVISIONS**

64.1 **68.1Definitions**

For purposes of this Agreement, the following terms shall bear the meanings ascribed to them:

64.1.1 **"Data Subject"** means the Person to whom personal information relates;

64.1.2 **"Personal Information"** means information relating to an identifiable, living, natural person, and where it is applicable, an identifiable, existing juristic person, including, but not limited to -

64.1.2.1 information relating to the race, gender, sex, pregnancy, marital status, national, ethnic or social origin, colour, sexual orientation, age, physical or mental health, well-being, disability, religion, conscience, belief, culture, language and birth of the person;

64.1.2.2 information relating to the education or the medical, financial, criminal or employment history of the person;

64.1.2.3 any identifying number, symbol, e-mail address, physical address, telephone number, location information, online identifier or other particular assignment to the person;

64.1.2.4 the biometric information of the person;

64.1.2.5 the personal opinions, views or preferences of the person;

64.1.2.6 correspondence sent by the person that is implicitly or explicitly of a private or confidential nature or further correspondence that would reveal the contents of the original correspondence;

64.1.2.7 the views or opinions of another individual about the person; and

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64.1.2.8 the name of the person if it appears with other personal information relating to the person or if the disclosure of the name itself would reveal information about the person;

64.1.3 **"Person"** means a natural or juristic person;

64.1.4 **"Process/Processed/Processing"** means any operation or activity or any set of operations, whether or not by automatic means, concerning personal information, including -

64.1.4.1 the collection, receipt, recording, organisation, collation, storage, updating or modification, retrieval, alteration, consultation or use;

64.1.4.2 dissemination by means of transmission, distribution or making available in any other form; or

64.1.4.3 merging, linking, as well as restriction, degradation, erasure or destruction of information;

64.1.5 **"Responsible Party"** means a public or private body or any other person which, alone or in conjunction with others, determines the purpose of and means for processing personal information.

64.2 **Data Protection and Processing**

64.2.1 The Parties hereby warrants, represents and undertakes in favour of each other that they shall at all times strictly comply with all applicable data protection laws and with all the provisions and requirements of each other's respective data protection policies and procedures which may be in force from time to time.

64.2.2 The Parties shall take all appropriate and reasonable steps to ensure that their acts and omissions under this PPP Agreement will not result in the breach of the other Party's data protection laws and shall, on request, comply with all instructions by the other Party to comply with their

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respective obligations under applicable data protection laws.

64.2.3 Each Party indemnifies the other against all claims, demands, actions, costs, expenses (including but not limited to legal costs and disbursements on a full indemnity basis), losses and damages arising from or incurred by reason of any wrongful processing of any Personal Information or breach of its obligations under this clause 64.

64.2.4 Each Party acknowledges that in discharging its obligations as contemplated in this PPP Agreement, it may have access to Personal Information relating to Data Subjects. Accordingly, each Party shall:

64.2.4.1 process such Personal Information only with the written instructions of the other Party unless such Party is required by applicable data protection laws to otherwise process the Personal Information. To the extent a Party is relying on applicable data protection laws as the basis for processing the Personal Information, such Party shall promptly notify the other Party of this, before performing the processing required by the applicable data protection laws, unless such applicable data protection laws prohibit such Party from so notifying;

64.2.4.2 treat the Personal Information as strictly confidential in accordance with the provisions of this PPP Agreement;

64.2.4.3 not disclose or otherwise make available the Personal Information to any third party (including sub-contractors) other than authorised personnel or third parties who require access to such Personal Information strictly in order for the respective Parties to carry out their obligations under this PPP Agreement;

64.2.4.4 ensure that all the Parties personnel, all subcontractors, and any other persons having access to and/or processing the Personal Information are bound by appropriate and legally binding

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confidentiality and non- use obligations in relation to the Personal Information on substantially the same terms and conditions as set forth in this PPP Agreement;

64.2.4.5 where either Party receives an instruction to delete Personal Information by a Data Subject, each Party will, in turn, instruct the other Party to implement such request to any Personal Information of such Data Subject (or alternatively where the Data Subject contacts the Party directly and requests the Party to erase his/her/its Personal Information), the Party will attend to such request without any delay and ensure that such Personal Information has been deleted. If the Party is acting in the capacity of operator, it should not respond to Data Subject requests directly and it should instead direct the request to the Party that is the Responsible Party in respect of that Data Subject's Personal Information;

64.2.4.6 take appropriate, reasonable technical and organisational measures to ensure that the integrity of the Personal Information in its possession or under its control is secure and that such Personal Information is protected against unauthorised or unlawful processing, accidental loss, destruction or damage, alteration, disclosure or access by having regard to:

64.2.4.6.1 Any requirement set forth in Law to which either Party is subject; and/or

64.2.4.6.2 generally accepted information security practices and procedures which apply to both Parties business, including the state of technological development and the cost of implementing any measures (which measures may include, where appropriate, pseudonymising and encrypting the Personal Information, ensuring confidentiality, availability and resilience of its systems and services, ensuring that

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availability of and access to the Personal Information can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it);

64.2.4.6.3 harm that might result from such unauthorised or unlawful Processing or accidental loss, destruction or damage and the nature of the Personal Information being protected;

64.2.4.6.4 complying with any requirements set forth in their respective policies;

64.2.4.6.5 taking steps to identify all reasonably foreseeable internal and external risks associated with Personal Information security and, at least once in every 12 (twelve) month period, take all reasonable and necessary steps to:

64.2.4.6.6 identify all reasonably foreseeable internal and external risks to Personal Information in their possession or under its control using generally accepted auditing methodologies;

64.2.4.6.7 implement and maintain appropriate safeguards against the risks identified;

64.2.4.6.8 regularly verify that the safeguards which each Party has in place have been effectively implemented; and

64.2.4.6.9 ensure that the safeguards are continually and proactively updated in response to new risks or deficiencies in previously implemented safeguards.

64.2.4.6.10 complying with the auditing requirements in respect of the Agreement as read with this Agreement, and applicable data protection laws, as applicable; and

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64.2.4.6.11 agreeing to reasonable amendments to the Agreement and this Agreement from time to time, to the extent that data protection legislation or the law generally requires such amendments for the benefit of Data Subjects.

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65. SCHEDULE 20 - CONCESSION AREA CONDITIONS REPORT AND IMMOVABLE ASSET REGISTER

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66. **SCHEDULE 21 - PRIVATE PARTY UNDERTAKINGS SCHEDULE.**

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67. SCHEDULE 22 - LIST OF CONSENTS AND APPROVALS

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68. **SCHEDULE 23 (PROJECT ASSETS NOT INCLUDED IN SCHEDULES 18 AND 24)**

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69. **SCHEDULE 24 (CONCESSION ASSETS)**

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70. **SCHEDULE 25 (HANDOVER PRINCIPLES)**

No	Principle	Description
Handover Process		
1.	Definitions	"**Concessionaire Exit Date**" has the meaning ascribed to in the Handover Agreement;
2.	General	From the first Calendar Day after the Signature Date of the PPP Agreement, the Private Party shall be bound by the terms of the Handover Agreement and shall work with the Concessionaire to ensure the completion of the Handover Process within the Handover Period. <u>Handover Period (five months period)</u> During the period of the Long Stop Date : a) the Concessionaire and the Private Party shall negotiate and agree on the Handover Process in terms of the provisions of the Handover Agreement; and b) the remainder of 2 (two) months shall be utilised by the Concessionaire to vacate and exit of the Concession Area. In the event the Concessionaire successfully bids and is selected as a

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		preferred bidder in respect of the Concession Area and subsequently appointed as Private Party on Signature Date, the Handover Process shall be dispensed with and the Handover Agreement shall fall away. The Concessionaire shall conclude the PPP Agreement with SANParks, which shall commence on the Operations Commencement Date as defined in the PPP Agreement.
3.	Commencement of Handover Process	Within 5 (five) Business Days from the date on which the preferred bidder has been notified of the outcome of the Tender Process, SANParks shall notify the Concessionaire in writing of the date of the anticipated Signature Date of the PPP Agreement. Within 5 (five) Business Days from the Signature Date, SANParks shall issue a written notice to the Concessionaire and Private Party in writing confirming the signing of the PPP Agreement. The notification from SANParks shall include the details of the Private Party and the contact details of the Concessionaire to enable the Parties to commence and negotiate the Handover Process.

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4.	Payment of the Concession Fee	The Concessionaire shall continue to be liable for payment of the Concession Fee during the Handover Period up to the Concessionaire Exit Date. The Private Party's obligation to pay the Concession Fee (PPP Fee) shall commence on the Operations Commencement Date and shall continue until a date prescribed following the Early Termination of the PPP Agreement or on termination on expiry of the Project Term in accordance with the PPP Agreement.
5.	Handover Governance and Relationship Management	The Concessionaire and the Private Party shall be responsible to implement the Handover Process. Both the Concessionaire and the Private Party shall have Representatives for the implementation of the Handover Process.
6.	Intellectual Property	<u>Name of the Concession Area</u> Where the Concession Area operates under the SANParks Protected Name, SANParks shall retain the name of the Concession Area and the Concessionaire shall cease to operate or conduct any business using the Protected Name in singular, combination or in association with any other name.

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		Where the chosen name of the Concession Area by a Concessionaire is linked to a landmark surrounding the Concession Area, the name shall be deemed to be SANParks Protected name. For avoidance of doubt, reference to landmark shall carry the ordinary dictionary meaning and shall include, a name of a mountain, road, river, prominent or indigenous vegetation, objects or any feature the Concession Area or Kruger National Park Protected Area is recognised for. <u>Branding and Websites</u> The Concessionaire shall cease to utilise any branding used in combination of the SANParks Protected Name, trademarks and logos on all of its proprietary material and official websites within 7 (seven) days from the date of completion of the Handover Process. SANParks shall cease to utilise and shall remove any material incorporating the Concessionaire's IP on all of its official websites, promotional material, and other publications distributed in the course of business (including signage and maps), within 10 (ten) Business

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		Days from the Concessionaire Exit Date. <u>Operating Systems and Manuals</u> The Parties agree and confirm that the operating system, software and related licences utilised by the Concessionaire during the operation of the Concession Area is the intellectual property of the Concessionaire and shall be retained by the Concessionaire at the end of the term of the Concession Contract. The Concessionaire and the Private Party may agree regarding use and/ or transfer of the Concessionaire's operating system, software and related licences, subject to such agreement not limiting SANParks rights and entitlements to prescribe the Concession Area's operating requirements and limiting the Private Party's obligation to operate the Concessionaire in accordance with its contractual obligations.
7.	Movable Assets	On the Concessionaire Exit Date, the Concessionaire shall remove all its movable assets in the Concession Area. The Concessionaire and the Private Party may agree regarding movable assets in the Concession Area.

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8.	Forward Bookings	If the Concessionaire has guest bookings for a period post the Concessionaire Exit Date the Concessionaire shall inform such guests either on its own or jointly with the Private Party, through official modes of communication, of the transition of operations from the Concessionaire to the Private Party. The Private Party shall honour all future bookings / reservations for use of Concession Area that have been confirmed and paid for prior to the end of the term of the Concession Contract, at the same cost to the guests/ patrons. The Concessionaire shall provide such other relevant information necessary for the successor Private Party to honour such upcoming reservations at the Concession Area. <u>Paid Bookings</u> To the extent applicable, the Concessionaire and the Private Party shall agree on the commission payable to the Concessionaire for paid bookings and the dates for the transfer of the booking fees to the Private Party.
9.	Marketing Activities and Costs	To the extent applicable the Concessionaire and the Private Party shall agree on the marketing activities

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		and allocation of costs during the Handover Period.
10.	Access to the Concession Area	<u>Access to the Concession Area during the Bidding Stage</u> SANParks and the Concessionaire shall agree on the date and time in order for the Concessionaire to allow the bidders access to the Concession Area for site inspection for the purpose of preparation of bids during the Tender Process. The bidders shall be given access to the Concession Area on a single day and at the same time as provided for in the procurement documents for the Tender Process. <u>Access to the Concession Area during Handover Process.</u> The Concessionaire shall ensure that during the Handover Process SANParks and Private Party are granted access to the Concession Area on terms agreed and subject to the provisions of the Concession Contract, this Addendum, Park Rules and Concession Operation Manual as amended from time to time. Access to the Concession Area shall be granted by the Concessionaire on a request made within a reasonable time

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		prior to the required date and time of access, and which shall not be unreasonably withheld.
11.	Transfer of Concessionaire's Existing Employees	SANParks has determined that the termination and/or expiry of the term of the Concession Contract triggers the requirements of section 197 of the Labour Relation Act ("**LRA**"), regarding the transfer of the existing employees of the Concessionaire exclusively employed within the Concession Area to the Private Party. In the event the Concessionaire is unsuccessful in the process of retender for procurement of an operator and a Private Party is appointed as a new operator for the Concession Area, the Concessionaire shall facilitate the section 197 of the LRA transfer of the existing employees of the Concessionaire. Section 197 places a duty of care on the new and previous employer who conclude a transfer of employee contracts of employment or a business to ensure that the same benefits of the employees are reserved. As such, the Concessionaire shall prepare and provide SANParks with a report within 30

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		(thirty) days from the Signature Date of the Handover Agreement containing, but not limited to, the following information: a) the total number of all employees employed to provide services within the Concession Area; b) sample of employment contract for each level/ grade of employees; and c) designation (positions), skills and expertise of the employees.
12.	Permits and Environmental Authorisations	The Concessionaire shall maintain and keep valid, all permits, licences and authorisations required for operation of the Concession Area during the Handover Period.
13.	List of Concession Assets	The Concessionaire shall provide a list of all Concession Assets to be handed over to the Private Party.
14.	List of Prohibited Disclosures	The Concessionaire shall provide a list of Prohibited Disclosures to the Private Party during the Handover Process.

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71. SCHEDULE 26 (TECHNICAL SPECIFICATION)

[This is a placeholder schedule and will be completed during PPP Agreement negotiations with the preferred bidder]

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72. **SCHEDULE 27 (CONDITIONS PRECEDENTS)**

[The list of the CPs listed in this schedule is not absolute and will be amended during PPP Agreement negotiations with the preferred bidder]

This PPP Agreement shall become unconditional and fully effective only upon the fulfilment or written waiver of the conditions precedent set out below on or before the Long Stop Date, and until such fulfilment or waiver, the Parties shall comply with all obligations expressed to apply prior to the satisfaction of the conditions precedent

1.	Incorporation of the Special Purpose Vehicle (SPV)
2.	Submission of the Private Party memorandum of incorporation and confirmation of lodgement with the Companies Intellectual Property Commission
3.	Submission of the Private Party Shareholders Agreement
4.	Submission of the full terms of sub-contractors of the SPV, if any
5.	Submission of any additional DLOC participation agreements, if any
6.	Delivery of the Performance Bond
7.	Confirmation of opening of a Private Party SPV bank account
8.	Opening of a Maintenance Reserve Account
9.	Completion of all Scheduled and project documents
10.	Submission of lender's security documents in executed form, if any
11.	[Completion of the section 197 of the LRA process]

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12.	Submission of the required business insurance policies
13.	Submission of SANParks consents and approvals.

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